

Exhibit 1

Date Transmitted: Nov. 23, 2018

From: Brent Richardson

Subject: *Letter to Secretary DeVos*

VIA HAND DELIVERY

November 23, 2018

The Honorable Betsy DeVos
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos,

It is now with extreme concern that I write this letter to inform you of the harsh reality of the status of our schools should the U.S. Department of Education fail to fund our institutions as discussed and confirmed by your team on Friday, November 16, 2018.

Over the past nine months DCEH has made significant strides on where we came from to where we are now with our accomplishments (*on pages 3-4*). However, without the funding and collaboration from the DoE, it is with tremendous concern that I must, once again, bring to your attention the magnitude of issues that will occur.

At the beginning of this process the DoE and DCEH agreed that it would cost \$75 Million dollars to teach out 31 campuses, and keep the remaining 30 campuses operating so they could be placed with strong owners with no negative impact for students and faculty.

At this time, the Department has only funded \$22 Million dollars with 90 percent of the job completed. DCEH has worked diligently towards this outcome, and we are confident that if the DoE will fully fund the \$75 Million dollars, of non-tax payer money, as agreed to by December 31, 2018, we can reach a positive resolution for all parties involved.

NEGATIVE Consequences Due to Lack of Funding and Collaboration from the DoE:

- 9,000 employees will be impacted
- 36,000 displaced students with a scarcity of transfer institutions for many programs
 - Commercial art and design programs – 12,600 students at the Art Institutes
 - Specialized licensure programs in healthcare – 700 students at South University
 - Specialized licensure programs in psychology – 1,300 at Argosy University
- Students in debt, without a degree(s)
- Faculty struggling to find jobs (two year cycles)
- Billions lost in Title IV Loans
 - Loan discharge risk of nearly \$1 Billion dollars
 - 36,000 students with average Title IV loans of \$27,000 / student

- Litigation for years
 - \$300 Million dollars in remaining lease obligations
 - 33 physical locations impacted by closure

POSITIVE Outlook As A Result of Funding and Collaboration from the DoE:

- Creation of more high-paying jobs
- Significant economic impact to our communities
- Students win as a result of:
 - Lower tuition rates, less debt, additional skills set, increased opportunities and faster graduation rates
- No bad press: Lower Tuition, Less Debt, Faster Graduation, Purpose
- Receivership attracts investors as a result of no financial liabilities
- Saved \$1 Billion dollars of Title IV loans
- No litigation
- Ability to brag about improved oversight of troubled institutions
- Gain support from ALF-CIO
- More skills-based grads for employers
- Arts promoted/taught
- Improved opportunities for minority women
- Grows and fosters Ohio Governor Mike DeWine's vision for Ohio's community colleges
- Continued assistance from the Dream Center Foundation with the needs of struggling individuals from all over the U.S. by providing food, clothing, and focusing on the successful transformation of people's lives through various community outreach programs, all free of charge

Again, I must reiterate the vital importance of the DoE's support and financing. Time is of the essence in order for DCEH to continue providing our students with lower tuition rates, less debt, additional skills sets, increased opportunities and so much more.

Finally, I'd like to emphasize that from the beginning I have kept my word with the Department while continuing as a voluntary CEO. All I ask is that we keep the commitments we made to each other.

Thank you in advance for your time and attention to this serious matter.

All the best,



Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC

DCEH ACCOMPLISHMENTS OVER THE PAST YEAR

- 3,000 students who were at schools already closed by EDMC were served and taught by DCEH to allow them to graduate even though EDMC defaulted and failed to pay DCEH for those costs.
- Over 15,000 of our DCEH students have graduated and celebrated that monumental event in their life.
- Over 32,000 students on the 32 campuses we are not closing will continue their education journey while we implement substantial tuition reductions in Fall of 2018 and Spring of 2019.
- 9000 jobs in place (includes 4500 adjunct faculty) in our "right-sized" organization.
- Successfully taught out 30 campuses representing 9,000 plus students: (i) 3,000 will graduate by this December (with 50% tuition discount given to them), (ii) 2,000 students are expected to transfer to another DCEH campus or finish up with DCEH online with a tuition reduction of 50%, (iii) 1,000 students are transferring to a neighboring college or university through transfer agreements put in place with tuition assistance of \$5,000.00, (iv) 2700 students withdrew and (v) several hundred students remain undecided.
- The 1,000 effected employees at the campuses we are winding down have been provided a long lead time to find other employment and have been given a reasonable severance based on their years of service. Released employees are generally reporting a dignified approach to a difficult situation.
- Accreditors have been notified of restructuring plans for Argosy University, South University and remaining Art Institutes with positive responses and additional "next" steps in process where needed.
- Eastern Gateway Community College board of trustees have voted to move forward with a transaction to acquire Argosy University and the Attorney General of Ohio is expected to issue a positive opinion that acquiring the multi-state platform is allowable under State Law.
- Negotiating the formation of "Union College" with the State of Ohio which will provide low cost education through Argosy University and South University to union members and families impacting up to 48 million people.
- South University has the financial strength and balance sheet to continue as a standalone non-profit institution with a 3rd party managed services agreement or alternatively Eastern Gateway Community College has expressed a desire to acquire.
- Substantial term sheets for funding a 3rd party Managed Services company are in consideration.
- 12 remaining Art Institutes are moving to a bundled services agreement with substantial funding from Studio Enterprise (agreements finalized and ready to fund) with an option for them to purchase or retain as non-profit institutions. Approvals received from all but one of the affected accreditors.
- Attorneys General's oversight which was inherited from EDMC would most likely conclude with the Gateway transaction.
- Successfully worked with accrediting bodies with all SACS schools coming off probation and WASC long term reaffirmation in final stages of approval (despite negative experience with HLC and Middle States).

- Federal Receivership plan in motion to facilitate the restructuring and to dispense with \$140 million of debt inherited from EDMC.
- OAG has appointed special counsel to represent Eastern Gateway Community College in the negotiation and documentation of a transaction with Dream Center/Argosy.
- Calfee, on behalf of Dream Center/Argosy has met with and been in regular communication with special counsel to assess (i) any statutory restrictions that could affect the structure(if not the fact of the transaction), (ii) the timing of the transaction, (iii) possible approaches to liability limitation in the transaction (i.e. receivership dynamics), (iv) initial drafting responsibility for ultimate asset purchase agreement between EGCC and Dream Center/Argosy, and (v) communications and outreach strategy by both EGCC and Dream Center to elevate state stakeholders who would likely take an interest in the transaction even if not directly involved etc.

Exhibit 2

Date Transmitted: July 19, 2019

From: U.S. Department of Education

Subject: *Responses to Senator Murray Questions for the Record*

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

BORROWERS AND OUTSTANDING LOAN VOLUME ELIGIBLE FOR CLOSED SCHOOL DISCHARGE

Question:

Please provide, disaggregated for each of the following school groups, the number of borrowers and the total estimated balance of outstanding loans whom the Department estimates are eligible for the applicable closed school discharge window (either 120 days or as extended due to extenuating circumstances) and the number of borrowers and the total amount that has already been discharged through closed school discharge applications:

- a. ITT Educational Services, Inc.
- b. Charlotte School of Law
- c. Education Corporation of America
- d. Vatterott Colleges
- e. Dream Center Education Holdings.

Response:

As of May 16, 2019:

INSTITUTION	Number of borrowers that the Department estimates are eligible for the applicable CSLD window	Total estimated balance of outstanding loans that the Department estimates are eligible for the applicable CSLD window	Number of borrowers that received a CSLD	Total amount already discharged through CSLD
ITT Educational Services	52,211	\$832,862,264	17,982	\$254,364,233
Charlotte School of Law	139	\$10,698,705	65	\$5,031,154
Education Corporation of America	20,750	\$185,735,350	3,364	\$22,621,331
Vatterott Colleges	2,312	\$32,892,819	435	\$5,111,043
Dream Center Education Holdings	14,652	\$600,328,700	417	\$10,586,895

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

NUMBER OF APPLICATIONS RECEIVED FOR TRADITIONAL CLOSED SCHOOL DISCHARGE

Question:

How many individual applications has the Department received for traditional (not automatic) closed school discharge on or after January 20, 2017, disaggregated by state and by claim status (i.e. received, pending, and approved).

Response:

Please see the attached spreadsheet.



Murray%20QFR%20
47%20Traditional%2

STATE-BY-STATE BREAKDOWN OF PUBLIC SERVICE LOAN FORGIVENESS EMPLOYMENT CERTIFICATION

Question:

Please provide a state-by-state breakdown of PSLF Employment Certification Forms (ECFs), including the unique number of borrowers who have any approved, have any denied ECF, and the cumulative number who have submitted any ECF.

Response:

Please find the requested data enclosed.



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48%20State%20PSLF

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

DATA ON CLOSED SCHOOL GROUPS

Question:

For Education Corporation of America, Vatterott Colleges, and Dream Center Education Holdings, respectively, please provide the following information disaggregated by each school group:

- b. How many students who attended colleges owned by each school group have applied for closed school discharge?
 - i. How many of those applications have been granted?
 - ii. What is the total outstanding debt of the students that have submitted applications and how much of it has been discharged?

Response:

See the attached spreadsheet.



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DOLLAR AND BORROWER VOLUME OF INITIATED LOAN REHABILITATIONS

Question:

Please provide the total volume of initiated loan rehabilitations (rehabs) (in dollars and unique number of borrowers), including:

- a. Total volume of initiated rehabs using income-driven rehab formula (15% of discretionary income)
 - i. Total volume of initiated IDR rehabs with payment of \$5
 - ii. Total volume of initiated IDR rehabs with payment greater than \$5
- b. Total volume of initiated rehabs using 'reasonable and affordable' formula
 - i. Total volume of initiated R&A rehabs with payment of \$5
 - ii. Total volume of initiated R&A rehabs with payment greater than \$5

Response:

We are unable to provide data on loan rehabilitations that were initiated but not completed. Please see the Department's response to the next question for completed rehabilitation information.

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

DOLLAR AND BORROWER VOLUME OF COMPLETED LOAN REHABILITATIONS

Question:

Please provide the total volume of completed rehabs (in dollars and unique number of borrowers), including:

- a. Total volume of completed rehabs using income-driven rehab formula (15% of discretionary income)
 - i. Total volume of completed IDR rehabs with payment of \$5
 - ii. Total volume of completed IDR rehabs with payment greater than \$5
- b. Please provide the total volume of completed rehabs using 'reasonable and affordable' formula, including:
 - i. Total volume of completed R&A rehabs with payment of \$5
 - ii. Total volume of completed R&A rehabs with payment greater than \$5

Response:

Detailed data on loan rehabilitation payment formulas is available at the individual borrower level but is not maintained in a format that allows for aggregated analysis. As a result, we are unable to provide the requested information. As an alternative, we do know that for the 349,000 borrowers who completed rehabilitation during FY 2017, approximately 276,000 (79 percent), representing \$5.5 billion (72 percent) of volume rehabilitated, had a payment schedule with a required monthly amount of \$5. We should note that some borrowers required to pay \$5 per month actually make larger payments; the counts provided are based on the required payment amount.

COLLECTION VOLUMES FOR CLOSED SCHOOL GROUPS

Question:

Disaggregated by each school group, please provide the number of former Corinthian Colleges, Inc.; ITT Educational Services, Inc.; Charlotte School of Law; and Educational Corporation of America students in some form of debt collection (Treasury offset, wage garnishment, assigned to PCAs) and the total outstanding loan balance of borrowers in each school group.

Response:

See the enclosed spreadsheet.



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76%20Collection%20

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

PELL GRANT LIFETIME ELIGIBILITY USED RESTORATION DATA

Question:

Please provide an update on Pell Grant Lifetime Eligibility Used (LEU) restored due to school closure, according to the Department's April 3, 2017 notice, Guidance on COD Processing of Pell Grant Restoration for Students who Attended Closed Schools, including total number of unduplicated students receiving restoration of Pell LEU, total number of institutions which those students attended, and total number of semesters restored.

Response:

Federal Pell Grant Lifetime Eligibility Used (LEU) has been restored for 323,666 students attending 1,072 institutions. This equates to approximately 653,000 semesters worth of Pell Grant eligibility restored.

DISCHARGES UNDER TOTAL AND PERMANENT DISABILITY

Question:

Please provide the most recent data available on the total number of borrowers discharged under total and permanent disability (TPD). Within this update please include:

- Number of SSA (SSI/SSDI) matched borrowers and total amount discharged;
- Number of Veterans Affairs matched borrowers and total amount discharged;
- Number of borrowers who matched either SSA or VA databases who are subject to types of forced collections, disaggregated by type (i.e. Tax Refund Offset, Treasury Offset Program, Administrative Wage Garnishment, etc.), and including the number of borrowers who are subject to multiple types of forced collections;
- Number of borrowers have had judgments entered against them (including those entered prior to TPD eligibility). Of those judgments, if any, the number of those still in effect;
- The number of borrowers in each state who have received a match notification and received discharge, separately, for SSA TPD borrowers;
- The number of borrowers in each state who have received a match notification and received discharge, separately, for VA TPD borrowers.

Response:

Please see the enclosed spreadsheet.



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FINAL.V2.xlsx

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

ACICS OUTCOMES DATA FOR ACCREDITED COLLEGES

Question:

Please provide an updated ACICS outcomes data file as of April 5, 2019 that shows for all ACICS-accredited colleges:

- the date of a school's site visit, if any;
- the date that a school's application to a prospective accreditor was denied, if applicable;
- the date that a school's application to a prospective accreditor was withdrawn, if applicable;
- the compliance status of each institution with the terms of the Program Participation Agreement (PPA) in control as of April 5, 2019;
- the status of any colleges deemed non-compliant with their PPA terms, including provisions are they non-compliant with and corresponding consequences;
- for any closed or announced to be closed institutions, information on the schools' plan for closing and teach-out agreements;
- a summary of any revisions to the PPA made for each school after June 2018.

Response:

Please see the enclosed spreadsheet for information responsive to the last four bullet points.



ACICS%20Outcomes%20Data.xlsx

The first tab titled “ACICS Schools as of Apr. 2019” identifies the 49 institutions or OPEIDs that identified ACICS as their primary institutional accreditor in the U.S. Department of Education's Postsecondary Education Participants System (PEPS) as of April 5, 2019.

Please note that while there are 49 institutions that continue to identify ACICS as their primary accreditor, the eight institutions shaded in pink have a pending Application for Approval to Participate in Federal Student Financial Aid Programs (eApp) in process, which would update their primary accreditor in PEPS. The prospective new institutional accreditor is identified in Column Q titled “Name of New Accreditor Obtained (per School eApp).”

The compliance status of each institution is listed in the first tab under column N titled “Non-Compliant with Sanctions.” As noted in this column, all 49 institutions are deemed compliant with the terms and conditions of their Program Participation Agreement (PPA) in effect as of April 5, 2019.

For the 49 institutions noted in the first tab, “ACICS Schools as of April 2019”, 21 had a new or revised PPA rendered after June 2018 as noted under column J titled “Revision to PPA After June 2018.” The certification status for each institution is noted in column K titled “Certification Status.” Additionally, the date in which the revised PPA was executed (as applicable) by the Department is identified in column L titled “PPA Execution Date.” Lastly, a summary of any provisional certification conditions for institutions whose PPA had been revised after June 2018

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

and were in effect as of April 2019 are listed under column M titled “Provisional Certification Conditions.”

Since the closures of the main locations of Education Corporation of America owned institutions in December 2018, there have not been further known closures of ACICS accredited institutions. When an institution announces a planned closure, they are required to submit a teach-out plan to their respective accrediting agency. These teach-out plans are not required to be submitted to the Department for approval. 34 CFR § 602.3 defines teach-out plans, teach-out agreements, and the requirements accrediting agencies must enforce under the Higher Education Act (HEA).

ACICS was the accrediting agency for nearly all ECA institutions. ACICS notified the Department that ECA had submitted the required teach-out plans. Attached is a summary of teach-out plan information that ECA submitted to ACICS in November 27, 2018, in response to ACICS’s show-cause notice. The Department subsequently requested that ECA also share this summary with ED. Columns A through C indicate the ECA-brand campus, program, and degree level. The remaining columns provide information regarding similar programs that were identified at other nearby institutions. Specifically, Columns D through G identify ground-based campuses, while Columns H and I identify institutions offering a comparable program and degree level online.

However, for copies of teach-out plans and fully executed teach-out agreements (where applicable and consummated), please direct this request to ACICS. Under the HEA, the accreditor is the legal entity for receipt and approval of such documents.



ECA%20Schools%20with%20Geographic

REHABILITATED LOANS WITH SUBSEQUENT INCOME-DRIVEN REPAYMENT ENROLLMENT

Question:

Please provide the volume of completed rehabs where a borrower has subsequently enrolled in IDR and made at least one monthly income-driven payment within 12 months of rehab (in dollars and unique number of borrowers).

Response:

Detailed data about loan rehabilitation payment formulas are available at the individual borrower level but are not maintained in a format that allows for aggregated analysis. As a result, the Department is unable to provide the requested information. As an alternative, the Department has provided the requested information by those who rehabilitated their federally managed loans under a payment schedule with a required payment amount of \$5 and those who rehabilitated their loans under a payment schedule with a required payment amount greater than \$5. Note that some borrowers required to pay \$5 per month actually make larger payments; the information below was provided by the Title IV servicers and is based on the required rehabilitation payment

POST-PUBLICATION QFR RESPONSES FOR SENATE APPROPRIATIONS COMMITTEE

amount.

Approximately 48,000 borrowers, who rehabilitated \$1.2 billion in defaulted loans in FY 2017 by making nine monthly on-time payments with a required rehabilitation payment amount of \$5 per month, successfully made an IDR payment within 12 months of their rehabilitation date. More than 10,000 borrowers, who rehabilitated \$450 million in defaulted loans in FY 2017 with a required payment greater than \$5 per month successfully made an IDR payment within 12 months of their rehabilitation date. A successful payment includes a \$0 payment if the borrower's scheduled payment amount is \$0.

Please note that not all borrowers enter an IDR plan after rehabilitation.

TIME REQUIRED FROM REHABILITATION COMPLETION TO SUCCESSFUL FIRST PAYMENT UNDER INCOME-DRIVEN REPAYMENT

Question:

Please provide the average number of months from rehab completion to first successful IDR monthly payment.

Response:

It took approximately 8.2 months for borrowers who completed rehabilitation in FY 2017 with scheduled rehab payments of \$5 to make an IDR payment, while it took approximately 8.1 months for borrowers who completed rehabilitation in FY 2017 with scheduled rehab payments greater than \$5 to make an IDR payment. A successful payment includes a \$0 payment if the borrower's scheduled payment amount is \$0.

Exhibit 3

Date Transmitted: Jan. 20, 2018

From: Higher Learning Commission

Subject: *Public Disclosure Notice*



**Public Disclosure:
Illinois Institute of Art and
Art Institute of Colorado
From “Accredited” to “Candidate”
Effective: January 20, 2018**

The Illinois Institute of Art located in Chicago, Illinois, and the Art Institute of Colorado located in Denver, Colorado, have transitioned to being a candidate for accreditation after previously being accredited. The Higher Learning Commission Board of Trustees voted to impose “Change of Control-Candidacy” on the Institutes as of the January 20 close of their sale by Education Management Corp. to the Dream Center Foundation through Dream Center Education Holdings.

This new status also applies to the Illinois Institute of Art campus in Schaumburg and its Art Institute of Michigan campus in Novi, Michigan.

In spring 2017 EDMC requested approval of a Change of Control seeking the extension of the accreditation of these institutions after their proposed sale to the Dream Center Foundation. During its review process of the Change of Control, HLC evaluated the potential for the institutions to continue to ensure a quality education to students after the change of ownership took place. The period of Change of Control-Candidacy status lasts from a minimum of six months to a maximum of four years. During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards for candidacy.

What This Means for Students

Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC and may not be accepted in transfer to other colleges and universities or recognized by prospective employers. Institute courses completed and degrees earning prior to this January 20, 2018, change of status remain accredited. In most cases, other institutions of higher education will accept those credits in transfer or for admission to a higher degree program as they were earned during an HLC accreditation period.

All colleges and universities define their own transfer and admission policies. Students should contact any institution they plan to attend in the future so they are knowledgeable about the admission and transfer policies for that institution.

Next Steps

HLC requires that the Institutes provide proper advisement and accommodations to students in light of this action, which may include, if necessary, assisting students with financial accommodations or transfer arrangements if requested.

Dream Center Education Holdings and Dream Center Foundation are required to submit a report to HLC every 90 days detailing quarterly financials to assess adequate operating resources at each entity and both Institutes.

The Institutes will each submit Eligibility Filings no later than March 1, 2018 providing documentation that each institution meets the HLC Eligibility Requirements and Assumed Practices. The Institutes will also host a campus visit within six months of the transaction date as required by HLC policy and regulation. The HLC Board will consider reinstatement of Accredited status at a future meeting.

About the Higher Learning Commission

The Higher Learning Commission accredits approximately 1,000 colleges and universities that have a home base in one of 19 states that stretch from West Virginia to Arizona. HLC is a private, nonprofit accrediting agency. It is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation. Questions? Contact info@hlcommission.org or call 312.263.0456.

Exhibit 4

Date Transmitted: June 1, 2018

From: Colleen Dunn

Subject: *My Feedback*

From: [Dunn, Colleen](#)
To: [Jones, Joshua E.](#); [Pond, Josh](#); [Carson, Monica](#); [Hernandez, Justin R.](#); [Richardson, Brent D.](#)
Subject: My feedback
Date: Friday, June 1, 2018 12:12:58 PM
Attachments: [image001.jpg](#)

It is with an intense amount of sadness that I am submitting my resignation to The Art Institute of Colorado, effective today, June 1, 2018. This is not a decision that I am making without an extreme amount of forethought and internal angst as I have dedicated thirteen years of my life to this college for a mission that I completely believed in.

The events of the last six months have made it impossible for me to continue my employment. I can no longer continue enrolling students without compromising my ethics and morals. When the admissions department was initially told about our "Change of Status Candidacy" it was presented as a misunderstanding with HLC that would quickly be resolved. Our team was told to "punt" on any questions we received about that status and to change the conversation to a more favorable topic. We believed what we were told and dutifully continued to enroll for the July class. As time went on, I began to realize that perhaps we were not given the full story, and concerns began to arise about our upcoming July start. What was presented as a glitch that would quickly be resolved is now obviously something much bigger.

My heart breaks for the students who have trusted us so completely. Our July class has students who have shelled out money for plane tickets to visit the campus, turned down scholarships to other institutions, and left other stable opportunities for the reputable education they believe we will give them. These students have not been given all of the necessary and appropriate information they need to make the best choice for their own futures. If our HLC visit does not result in our accreditation being restored, these students will have tangible damages against the school and I want no part in that legal debacle.

Perhaps if I had been given legitimate reassurance from The Dream Center Leadership in less than two weeks time, I would be able to continue my employment. Unfortunately, instead of reassurance, the only actions taken have been to increase our July start goal. It is now public knowledge, as disclosed in the Republic Report, that our accreditation is lacking and there has yet to be any communication from DCEH. It is only a matter of time before the story is disseminated across more mainstream sources. While my Senior Director of Admissions has attempted to soothe the admissions team, it is abundantly clear that his hands are tied. I can now only assume the words printed online speak the truth about AiC's situation, and I can no longer, in good faith, continue to participate.

I will be forever grateful for my years in admissions at The Art Institute of Colorado. Being surrounded by such incredibly creatively brilliant students has been an honor. I have had the privilege of working with amazing and dedicated faculty and staff, who have forever impacted my life. Hopefully, my fears of an unsuccessful HLC visit are unwarranted and the best years of AiColorado are yet to come. I truly hope for only the best for my colleagues, my friends, and most importantly, my students.

Sincerely,

Colleen Dunn

Colleen Dunn

Associate Director of Admissions

Email: codunn@aii.edu | Phone: 303.824.4734 | Fax: 303.824.4700 | www.artinstitutes.edu/denver
1200 Lincoln Street, Denver, CO 80203

AiC Logo



The Art Institute of Colorado is one of The Art Institutes, a system of non-profit schools throughout the United States. Programs, credential levels, technology, and scheduling options vary by school and are subject to change. Not all online programs are available to residents of all U.S. states. Some institutions in The Art Institutes system are campuses of Argosy University. The Art Institute of Colorado © 2018. The Art Institutes. All rights reserved. Our email address is materialsreview@aii.edu.

See [aiprograms.info](#) for program duration, tuition, fees and other costs, median debt, salary data, alumni success, and other important info.

If you do not wish to receive any additional e-mails from The Art Institutes, please reply to the sender of this message with the subject line 'Unsubscribe.'

Exhibit 5

Date Transmitted: April 19, 2018

From: David Harpool

Subject: *HLC – Call from Outside Counsel*

From: [David Harpool](#)
To: [Ronald L. Holt](#)
Cc: [Richardson, Brent D.](#); [Richardson, Chris C.](#); [Randall Barton \[REDACTED\]@gmail.com](#); [\[REDACTED\]@gmail.com](#); [Murphy, Shelly M.](#); [Megan R. Banks](#)
Subject: Re: HLC - Call from Outside Counsel
Date: Thursday, April 19, 2018 3:56:23 PM

I'd let it sit. Provides more runway to operate. I'd have you engage a week from now. I wouldn't have clients on so you can't commit to anything immediately.

David Harpool, J.D., PHD

On Apr 19, 2018, at 12:51 PM, Ronald L. Holt [\[REDACTED\]@rousefrets.com](#)> wrote:

Hi All, just wanted to briefly follow up on this. [\[REDACTED\]](#)
[\[REDACTED\]](#), but just wanted to see if one of you will follow up on this and reach out to [\[REDACTED\]](#), outside counsel for HLC, or if, instead, you think we should, for now, just let the matter lie silent, as HLC did for some 2 months. I defer to your judgment on that. Ron

Ronald L. Holt, Attorney
[\[REDACTED\]](#)

1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

<image002.jpg>

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Circular 230 Disclosure: Any advice contained in this email (including any attachments unless expressly stated otherwise) is not intended or written to be used, and cannot be used, for purposes of avoiding tax penalties that may be imposed on any taxpayer.

From: Ronald L. Holt
Sent: Tuesday, April 17, 2018 6:12 PM

[\[REDACTED\]](#)
[\[REDACTED\]](#)
Subject: HLC - Call from Outside Counsel

Hi All, I received the attached voicemail message on my office phone, earlier today, from outside counsel to HLC, [\[REDACTED\]](#), offering to discuss the February 23 letter that Dr. David Harpool and I sent her in response to HLC's public notice about the

nature of the accreditation status, following the closing of the DCEH transaction, of The Art Institute of Colorado and The Illinois Art Institute. I have attached the February 23 letter, and the earlier HLC February 7 letter, for convenient reference. Given the passage of time, without any apparent adverse impact on the two Art Institutes from HLC's faulty and unfair characterization of the accreditation status of these two schools, I am wondering how much of an attack we want to make here, assuming that USDOE treats the schools as being in "pre-accreditation" status and therefore remaining eligible for Title IV aid? I recognize HLC's inappropriate characterization of status could impact the timetable for the schools to achieve full accreditation. I think we should have a call tomorrow to discuss this before I and/or others (David Harpool? Chris Richardson? Shelley Murphy?) call back [REDACTED]. Please advise. Ron

Ronald L. Holt, Attorney
[REDACTED]

1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

<image003.jpg>

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Exhibit 6

Date Transmitted: May 31, 2018

From: Ronald L. Holt

Subject: *HLC Schools; Proposed Student Notice*

From: [Ronald L. Holt](#)
To: [Richardson, Chris C.](#)
Cc: [Randall Barton \(rbarton4953@gmail.com\) \(rbarton4953@gmail.com\)](#); [Murphy, Shelly M.](#); [Richardson, Brent D.](#); [David Harpool](#)
Subject: HLC Schools: Proposed Student Notice
Date: Thursday, May 31, 2018 8:24:44 PM
Attachments: [image003.jpg](#)
[Notice About Accreditation Status - AiCO and AiIL.docx](#)

Hi Chris, attached for your review and consideration is the proposed notice to be given to students concerning DCEH's plan to pursue an appeal of the actions that HLC has taken. This Notice, as you know, follows the response that we have drafted to the memo from the Consent Judgment Settlement Administrator, who, among other things, has called out DCEH on the fact that we have told the students of the HLC schools that the schools remain accredited but HLC on its website says they do not. So, our response to the Administrator explains we were misled by HLC and are now appealing HLC's actions and that we will be issuing notice to the students to inform them of the appeal we are taking. I think that, even if all we do is set up a meeting with the HLC Executive Committee in Chicago to get them to 'stand down' to some extent on their position, we are still 'appealing' or challenging the HLC position, so sending out the notice now, but later not actually pursuing a full-blown internal appeal would not be inconsistent. But that is something that you and Randy will have to weigh. Certainly, for now, we have told HLC that we are challenging their action, their action is adverse to our students, these HLS schools are still open and we have to take action to serve the interests of these students. Regards, Ron

Ronald L. Holt, Attorney

rholt@rousefrets.com | Direct: (816) 292-7604 | Cell: (816) 509-5194 | Phone: (913) 387-1600 | Fax: (913) 928-6739

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Exhibit 7

Date Transmitted: Nov. 13, 2019

From: President Gellman-Danley

Subject: *Letter to Lynn Mahaffie*



November 13, 2019

VIA EMAIL AND OVERNIGHT CARRIER

Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Dr. Mahaffie:

Thank you for your letter of October 24, 2019 ("October 24 Letter"). As always, the Higher Learning Commission ("HLC" or the "Commission") appreciates the opportunity to provide the U.S. Department of Education (the "Department" (the term "the Department" is used to refer to both the Accreditation group and the Federal Student Aid (FSA) group)) with information regarding its policies and procedures, as well as its actions related to the Illinois Institute of Art ("ILIA") and the Art Institute of Colorado ("AIC") (or collectively, the "Institutions" or the "Institutes").

HLC has at all times been committed to promptly and completely addressing any requests made of it by the Department, including any requests relating to HLC's policies and practices, and will do so with respect to the Department's questions in its October 24 Letter. However, as a preliminary matter, HLC must correct the Department's misapprehension regarding HLC's lack of response to a letter sent to it on October 31, 2018 by Principal Deputy Under Secretary Diane Auer Jones (see October 31, 2018 Jones to Gellman-Danley at [HLC-OPE 15163-15167](#)). Jones' letter did not inform HLC regarding the kind of response sought by the Department (e.g., documents, written explanations, attendance at a meeting etc.).

On the evening of October 31, 2018, HLC staff spoke to Jones regarding the letter in two phone conversations. In the second of those phone conversations, Jones informed HLC that the only response needed was a brief statement from HLC acknowledging receipt of the October 31, 2018 letter and confirming for the Department that HLC intended to review its policies in light of the concerns contained in the letter.

In reliance on Jones' specific instructions, HLC sent its response on November 7, 2018 and, even before that letter was sent, began an internal policy review focused on the concerns raised by Jones in her October 31, 2018 letter (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)). Jones promptly acknowledged receipt of HLC's response on November 7, 2018 without further request for clarification (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)).

Since November 2018, Jones and other representatives of the Department have communicated on numerous occasions with HLC regarding the Institutions. Not once did they ask for a status report on the policy analysis or suggest that HLC's response to the October 31, 2018 letter was inadequate.

Indeed, when Jones wrote to Senator Durbin on May 9, 2019 she indicated that the Department prospectively intended to review HLC's policies and actions with the respect to the Institutes, *and yet did not mention the October 31, 2018 letter or any deficiency in HLC's response to that letter* (see May 9, 2019 Jones to Durbin at [HLC-OPE 15366-15368](#)).

In short, HLC appreciates the opportunity to now respond to any questions the Department may have regarding accrediting decisions relating to the Institutes and would have happily done so previously if it had been asked to do so.

This letter sets forth narrative responses to each of the 21 requests in the October 24 Letter with additional contextualizing information as needed. The following documents are also being provided for the Department's review (via separate link and password provided by email to Dr. Mahaffie and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education), indicated as HLC-OPE 1-15429:

- (1) The HLC administrative records for ILIA and AIC from August 1, 2016 to the present. Where duplicative documents appear in the HLC administrative record for both Institutes, only a single copy of the document is provided.
- (2) Applicable HLC policies and procedures.
- (3) Other documents related to the requests. Where email threads span multiple days, the thread is referenced by the earliest date in the thread.

Where these documents may be helpful to further explain HLC's narrative responses to the requests, the documents are referenced in the responses and linked.

In order to respond to these requests, HLC reviewed applicable agency records. The following individuals also contemporaneously provided additional information:

- Barbara Gellman-Danley, President, HLC.
- Mary Kohart, Partner, Elliott Greenleaf.
- Lisa Noack, Assistant to the President and the Board, HLC.
- Robert Rucker, Manager for Compliance and Complex Evaluations, HLC.
- Anthea Sweeney, Vice President for Legal and Governmental Affairs, HLC. Prior to March 1, 2018, Sweeney served as Vice President for Accreditation Relations. In that role, she served as the HLC staff liaison to the Institutes. As staff liaison, Sweeney was the primary point of contact for HLC with the Institutes and would regularly communicate with personnel of the Institutes by email and phone. On March 1, 2018, Sweeney transitioned from her previous role to Vice President for Legal and Governmental Affairs. In order to assure continuity, Sweeney remained as the staff liaison to the Institutes until December 13, 2018, when HLC Chief of Staff Dr. Eric Martin was assigned as the Institutes' staff liaison (see December 13, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15199](#) and Gellman-Danley to Ramey at [HLC-OPE 15200](#)).

On November 1, 2019, Bounds informed Gellman-Danley and Sweeney that the Department intended to publish the October 24 Letter in the Federal Register as a "Notice of Investigation and Records Request." When asked whether this type of publication was standard, Bounds indicated that this type of publication was uncommon for an inquiry of this nature. As of the date of this response, this publication has not occurred. If the Department does choose to publish the October 24 Letter, HLC would expect the Department will likewise make the narrative portion of HLC's response public in its entirety out of fairness to HLC. The Department did issue a press release on November 8, 2019 (<https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>) that incorrectly characterizes HLC's actions with respect to the Institutes. HLC's responses herein also clarify the incorrect statements made by the Department in that press release.

Narrative Response

As initial matters, and as further explained below in detail, it is essential that the Department understand the following:

- The HLC Board (hereinafter the "Board") did not "place" the Institutes on Change of Control candidacy status. Nor did the Board "move" the Institutes from accredited status to candidate status. Rather, as a condition of HLC's approval of the proposed transaction in which Dream Center Education Holdings (DCEH) was purchasing the Institutes from Education Management Corporation (EDMC), the Institutes—after full consideration and extensive negotiation with HLC on various issues other than candidacy—voluntarily accepted Change of Control candidacy status and proceeded with the transaction. When the transaction closed, on a date in the middle of an academic term as chosen by the parties, rather than the date originally proposed, the Institutes automatically assumed candidacy status. Only after this date did the parties begin to complain about the fact of their status as candidates. See HLC Responses #1, #4, #10-12.
- The Board did not take any adverse action with respect to the Institutes in November 2017 (or November 2018). As such, the actions of the Board were not subject to appeal. Nonetheless, in response to a letter from DCEH legal counsel in May 2018, and well after the time period in which even an adverse action could be appealed, HLC afforded the Institutes an opportunity to proceed with an appeal. The Institutes did not follow through with their appeal efforts until several months later. In lieu of an appeal, DCEH legal counsel attempted to directly negotiate the Institutes' status with HLC staff in a manner that was not supported by HLC policy or procedures. See HLC Responses #1, #2, #3, #4, #10-12.
- HLC has consistently been clear to all constituencies—including the Institutes, students, and the Department that candidacy status (including Change of Control candidacy status) is a pre-accreditation status as understood within HLC policies. HLC communicated this in policy, letters to the Institutes and their counsel, Public Disclosure Notices, and communications with the Department. Any "misunderstandings" to the contrary by the Institutes or the Department simply are not supported by HLC's clear and consistent communication on this point. That said, the Department, not HLC, is responsible for determining an institution's eligibility for Title IV funding. HLC does not make determinations as to eligibility for Title IV funding and does not

make any representations to institutions or the public regarding an institution's eligibility for Title IV funding. See HLC Responses #1, #4, #5, #7, #8, #9, #10-12, #15, #17.

- As early as June 2018, Jones began actively discussing the possibility of retroactive accreditation for the Institutes with HLC, at times seemingly in contradiction to the statements being made by other representatives of the Department. In October 2018, in response to concerns from HLC that retroactive accreditation, even if permissible under new federal guidance, was not consistent with HLC policy, Jones indicated, as she had previously indicated in July 2018, that she would provide HLC with a letter indicating that applying retroactive accreditation to the Institutes was acceptable to the Department in this situation. While still noting that such an approach was not aligned with current HLC policy, HLC indicated that it would certainly review anything that Jones provided. The resulting communication from Jones was the October 31, 2018 letter. In this letter, the Department raised, for the first time, serious concerns about HLC's actions with respect to long-standing HLC policy and HLC's actions with respect to the Institutes. In evening and then late night phone calls on the night before the November 1, 2018 Board meeting the next day in which the Board was slated to take action with respect to the Institutes, Jones offered to retract the letter and then, indicating that she could not retract the letter, specified that all HLC needed to do in response to the letter was provide a very short response stating that HLC would review its policies. HLC provided this response on November 7, 2018 and Jones acknowledged the response without further request for clarification. HLC did not receive any further communication from the Department regarding the October 31 letter or its November 7, 2018 response until receiving the October 24 Letter. See HLC Responses #10-12, #19.

In addition, HLC's responses to the Department's individual inquiries are as follows:

1. On November 2-3, 2017, the Board of Trustees of HLC voted to allow the Institutions to be placed on "Change of Control Candidate for Accreditation" status ("CCC-status"), with the written assent (within 14 days) of the Institutions. HLC sent a formal letter on November 16, 2017, to Dream Center Education Holdings, LLC ("DCEH") notifying it about the Board's action and laying out the terms for complying with CCC-status, which would become effective on January 20, 2018 upon agreement. *See Letter from HLC to the Art Institute of Colorado, Illinois Institute of Art, and Dream Center Education Holdings, LLC, Board vote to approve the application for Change of Control, Structure, or Organization.* (Nov. 16, 2017) (Exhibit 3). Is Exhibit 3 the official accreditation notice from HLC to the Institutions? If not, then identify the official notice. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) the Institutions and (b) CCC-status. The time frame for this request is August 1, 2016 to the present.

HLC Response #1:

HLC's November 16, 2017 action letter was the first communication to the Institutes and DCEH indicating the Board's conditional approval of the proposed transaction (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)). In the action letter, the Board's approval

was expressly contingent upon the Institutes' explicit acceptance of several conditions listed, including the acceptance of Change of Control candidacy status.

The November 16, 2017 action letter is incorporated by reference in a second action letter issued on January 12, 2018, after the Board voted by mail ballot (upon the Institutes' express request) to extend its original conditional approval related to the Change of Control application to accommodate a later closing date (see January 12, 2018 Change of Control Action Letter at [HLC-OPE 7769-7771](#)).

Neither action letter sets forth a specific effective date certain for the Institutes' change in status from accredited to candidate. This is for two important reasons. First, confirmation of the Institutes' acceptance of all conditions in writing was required; otherwise the Board's approval would be null and void. Second, the conditions the Board articulated, including Change of Control candidacy, would be triggered, if at all, only upon the parties' consummation of the proposed transaction. If the Institutes and the buyers did not accept the conditions (and thus likely chose not to pursue the proposed transaction), the Board made clear that "[i]n that event, the Institutes will remain accredited institutions" (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 2 and page 4).

Each of these two factors then, whether to accept the conditions at all and when precisely to consummate the proposed transaction, was entirely within the control of, and remained to be determined by, the parties to the transaction—not HLC.

To be clear, the November 16, 2017 action letter set forth that while the Institutes had not demonstrated that the five Change of Control "Approval Factors" were met without issue for purposes of continuing their accreditation post-transaction as required by HLC policy (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)), they had demonstrated sufficient compliance to be considered for "pre-accreditation status identified as 'Change of Control Candidate for Accreditation'...." Correspondingly, the letter set forth a significant monitoring protocol that would need to be satisfied during the period of candidacy, including the submission of quarterly interim reports and Eligibility Filings by each Institute, an onsite visit at each Institute within six months of the transaction date consistent with HLC policy and federal regulations, and a second onsite visit no later than June 2019. Each condition outlined by the Board illustrated the Board's concerns with discrete aspects of the Institutes' compliance with specific HLC requirements after the transaction. If at the time of the second onsite visit, the Institutes were able to demonstrate to the satisfaction of the Board that following the transaction they were in compliance with the host of HLC requirements that had been called into question in the course of evaluating the Change of Control application, then the Board would "reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action" (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 4).

The second action letter dated January 12, 2018 (see January 12, 2018 Change of Control Action Letter at [HLC-OPE 7769-7771](#)), was issued at the Institutes' request and only after the parties indicated their acceptance of the conditions in writing on January 4, 2018 (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)). See also HLC Response #4. This second action letter also did not specify an effective date beyond reiterating that Change of Control candidacy would be "effective immediately upon the closing of the transaction." The letter went on to express HLC's

expectations that the Institutes would properly notify their students of the acceptance of the Board's condition of Change of Control candidacy, as well as the implications and impact of that status once the transaction closed, and that the Institutes would provide students with advisement and accommodations, including financial accommodations or transfer as needed.

When HLC's November 16, 2017 action letter was transmitted to the Institutes, a simultaneous courtesy copy was transmitted to Michael Frola, Director, Multi-Regional and Foreign Schools Participation Division, U.S. Department of Education, and Bounds (see November 16, 2017 Noack to Frola, Bounds at [HLC-OPE 15284](#)).

Courtesy copies of the January 12, 2018 action letter were also transmitted to Frola and Bounds on January 23, 2018 (see January 23, 2018 Noack to Frola, Bounds at [HLC-OPE 15291](#)). These copies of the January 12, 2018 action letter were belatedly transmitted to the Department precisely because they would only become necessary if the parties consummated the proposed transaction. The transaction closed on January 20, 2018 (see January 20, 2018 Pond to Sweeney at [HLC-OPE 7776-7777](#)) and the Department was provided a courtesy communication by HLC three days later.

At all times the Institutes, whether through their respective governing boards or otherwise, remained exclusively responsible to make reasonable inquiry of the Department of the implications of accepting candidacy status as a condition of Board approval, and further, to inform the Department that they had, in fact, accepted such conditions and closed the transaction.

2. Did HLC regard the accreditation action referenced in Exhibit 3 as an "adverse action" under either the Department's definition or HLC's definition of that term? If so, what duties did HLC have upon taking such an action? Describe the agency's definitions of "candidacy status" and "adverse action" in effect at that time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's definition of "candidacy status" and "adverse action", and/or (b) application of those definitions to the Institutes. The time frame for this request is August 1, 2016 to the present

HLC Response #2:

No, the Board actions described in the November 16, 2017 action letter did not meet the definition of an "adverse action" as defined in either federal regulations or HLC policy.

First, under federal regulations, an "[a]dverse accrediting action or adverse action means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program" (see 34 CFR §602.3).

Additionally, HLC policy in effect at that time defined "adverse action" as "those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status" (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15255](#)).

Had the Board in November 2017 approved the transaction and moved the Institutes from accredited to candidate status against their will without seeking consent in advance, this would be an adverse action. But that was not what occurred in this situation. Rather, the Institutes consented to the condition and subsequently consummated a transaction they knew would trigger the change in their accreditation status. See also HLC Response #4.

In addition to the plain language of the definition of "adverse action" in regulations and HLC policy, the Board's November 2017 actions are not appropriately characterized as adverse actions because the defining characteristic of an adverse action is that it is forced. Adverse actions do not depend on voluntary cooperation, acceptance, or acquiescence. HLC did not immediately effectuate Change of Control candidacy status, nor did it set a date certain when the change in status would inevitably take effect. That is because the consummation of the transaction, which was the key step necessary to trigger Change of Control candidacy status and the accompanying loss of accreditation, was exclusively within the control of the parties to the transaction themselves, and not HLC. In consummating the transaction, the Institutes voluntarily accepted candidacy status, and relinquished their accreditation, on the transaction date in order to pursue new ownership under DCEH. While the end result was the loss of accreditation, this voluntary action on the part of the Institutes is inconsistent with the definition of an adverse action under HLC policy or federal regulations.

HLC's November 2017 action, including the offering of the condition of Change of Control candidacy, was designed to permit an unproven, inexperienced entity the opportunity, if it was willing, to prove its ability to properly manage institutions of higher education, without completely terminating the Institutes' affiliation with HLC. If the condition of Change of Control candidacy was unacceptable to the parties, then the parties could have signaled their rejection of the conditions and the Board's approval of the transaction would have been null and void. Presumably, the parties would have then abandoned their plans to consummate the proposed transaction, and the Institutes would have continued to be accredited while remaining subsidiaries of their original corporate parent, EDMC. This choice was made abundantly clear in the November 16, 2017 action letter: the parties were free to reject the conditions.

Instead, after a reasonable period for consideration, research and inquiry that lasted almost two months (November 16, 2017 to January 4, 2018), during which the parties made several inquiries to HLC, including through their legal counsel, as to the significance of the conditions in the Board's November 16, 2017 action letter, the parties accepted the conditions for approval set forth by the Board (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)). See also HLC Response #4. The parties then automatically triggered the effective date of those conditions when they consummated the transaction on January 20, 2018 (see January 20, 2018 Pond to Sweeney at [HLC-OPE 7776-7777](#)), while aware of the implications, even though they could have abandoned the proposed transaction at any time.

An explanation of "candidacy," as of November 2017, can be found in HLC Policy INST B.20.020, Candidacy (see HLC Policy INST.B.20.020, Candidacy—current version/last revised November 2012 at [HLC-OPE 15229-15235](#)), with further explanation as to the concept of Change of Control candidacy found in HLC Policy INST.E.50.010, Accredited to Candidate Status (see HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#)). See also HLC Response #17.

3. Did HLC consider the accreditation action referenced in Exhibit 3 to trigger an opportunity to appeal? If so, please describe HLC's notice to the Institutions. If not, please explain why HLC believed that to be the case. Describe HLC's policy describing the accreditation actions that could be appealed, and the agency's appeal policy in effect at the time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's policy regarding appeals of accreditation actions, (b) its definitions of relevant terms, and/or (c) application of those definitions to the Institutions. The time frame for this request is August 1, 2016 to the present.

HLC Response #3:

No, the actions described in the November 16, 2017 action letter did not trigger an opportunity to appeal because they were not adverse actions. HLC's policy on Appeals contemplates that only those actions specifically defined as "adverse actions" may be appealed (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15264](#)). Because no adverse action had taken place, no opportunity to appeal was triggered. Correspondingly, no action of the Board raised a due process concern pursuant to 34 CFR §602.25. See also HLC Responses #2, #10-12.

4. Did the Institutions agree to the terms of Exhibit 3 in writing? If so, please provide records demonstrating such acceptance. If not, did the institutions reject the conditions or otherwise indicate their intention to refuse to comply? Please provide records indicating such intent.

HLC Response #4:

Yes, after extensive discussion between HLC and the Institutes, DCEH voluntarily and affirmatively accepted the conditions in the November 16, 2017 action letter, with minor modifications, in writing on January 4, 2018 (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)).

This acceptance was well past the 14-day time frame for acceptance articulated in the November 16, 2017 action letter. The delay was, at least in part, the result of extensive conversations between HLC and the parties regarding the proposed conditions.

First, in a November 29, 2017 institutional response to the November 16, 2017 action letter, the Institutes expressed that they understood that "both AIC and ILIA will undergo a period of candidacy beginning with the close of the transaction," in addition to confirming their understanding of several other conditions. The communications made several requests. For example:

- The parties requested an extension of the date by which the transaction would close (after which they consummated what was never expected to be a closing in the middle of an academic term);
- The parties requested an extension from February 1, 2018 to March 1, 2018 for delivery of their respective Eligibility Filings;
- The parties requested that certain interim reports be jointly filed; and

- The parties requested that the substantive requirements for reports related to a previous Consent Judgment be modified. HLC was aware that the appointment of the Settlement Administrator originally appointed as part of the referenced Consent Judgment would expire in 2018. Dissatisfied with the fact that several EDMC employees would migrate to DCEH or its related entities in what had been described repeatedly as a "lift and shift" by representatives of the Institutes during the Fact-Finding Visit (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)), HLC sought assurances that an independent third-part entity would continue monitoring the Institutes at least for some period to ensure ongoing compliance with the Consent Judgment, notwithstanding that the Institutes would be under new ownership;

(see November 29, 2017 Richardson, et al. to Gellman-Danley at [HLC-OPE 7740-7741](#); November 29, 2017 Pond to Sweeney at [HLC-OPE 7738-7739](#)).

Notably, however, *the institutional response expressed no desires or objections related to candidacy status.*

On December 1, 2017, HLC's former Executive Vice President for Legal and Governmental Affairs, Karen Peterson Solinski, attended a Federal Student Aid conference. There, she met in person with external legal counsel for EDMC, Devitt Kramer; DCEH General Counsel, Chris Richardson (the brother of Brent Richardson, then CEO of DCEH); and Ron Holt, external counsel to DCEH. In a series of emails following up on this conversation, Solinski and Holt continued to discuss the possibility of making several modifications to the November 2017 action (see December 2017 Solinski-Holt Email Exchanges at [HLC-OPE 7742-7761](#)). Solinski indicated that some of the requests would require separate Board approval, while some could be managed through staff action (see HLC Policy COMM.B.10.020, Staff Authority for Minor Changes Related to an Institution's Relationship with the Commission—current version/last revised November 2012 at [HLC-OPE 15219-15220](#)). *Again, none of Holt's requests during December 2017 conversations addressed candidacy status or otherwise suggested that there was any objection to the candidacy condition.*

On January 3, 2018, HLC informed the Institutes that a clear acceptance of the conditions in the November 16, 2017 action letter had still not been received from the Institutes—and was still required (see January 3, 2018 Sweeney, Pond Emails at [HLC-OPE 15285-15287](#)). Such a clear acceptance was all the more essential given the ongoing conversations regarding the particulars of the conditions in the November 16, 2017 action letter (see January 3, 2018 Richardson to Solinski at [HLC-OPE 7762](#)).

Finally, on January 4, 2018, the Institutes, in a letter signed by DCEH CEO Brent Richardson, formally accepted the conditions with the one modification that would allow quarterly financial statements to be delivered within 45 days after the end of the quarter (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)).

With the receipt on January 4, 2018 of an explicit acceptance that referenced only the non-substantive change regarding delivery of quarterly financials, HLC interpreted this as the parties having concluded any substantive negotiations. The second January 12, 2018 action letter therefore incorporated by reference the Board's original November 16, 2017 action letter, while indicating the single non-substantive modification (see January 12, 2018 Change of Control Action Letter at [HLC-OPE 7769-7771](#)). *Remarkably, modifications to the Change of Control candidacy condition had not been discussed throughout the negotiations.*

Even after the issuance of the second letter, HLC would continue to grant courtesies such as allowing the Institutes to submit their respective Eligibility Filings on March 1, 2018, rather than February 1, 2018 (see January 8, 2018 Sweeney, Pond Emails at [HLC-OPE 15288-15290](#)).

This type of interactive process culminating in affirmative acceptance by the Institutes is exactly the type of due process contemplated by 34 CFR §602.25.

While the Institutes knowingly and voluntarily accepted the conditions as set forth in the November 16, 2017 action letter, subsequent to closing, the Institutes and the new parent corporation, DCEH, began engaging in actions that indicated a belated refusal to comply with conditions the parties had accepted. See also HLC Response #10-12.

5. Did HLC conduct a financial analysis of the Institutions prior to issuing Exhibit 3? Did this analysis account for the likelihood or possibility the Institutions would lose Title IV funding eligibility? Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control (a) regarding its financial analysis processes and procedures, and/or (b) application of those processes and procedures to the Institutions. The time frame for this request is August 1, 2016 to the present.

HLC Response #5:

Yes, in accordance with its policies and procedures, HLC reviewed financial aspects of the Institutes and the transaction, prior to taking action in November 2017. Based on information provided to the Institutes by the Department, HLC was aware of the Institutes' status with respect to Title IV. Critically, however, no part of the Board's decision was predicated upon an analysis of prospective or continued Title IV funding eligibility.

HLC policy in effect at the time related to Change of Control contemplated the analysis of five "Approval Factors." Those factors included Approval Factor 3: "[s]ubstantial likelihood that [after the transaction] the institution...will continue to meet the...Eligibility Requirements and Criteria for Accreditation" and Approval Factor 4: "sufficiency of financial support for the transaction" (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)).

Related to Approval Factor 3, Criterion Five, Core Component 5.A states: "The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future" (see HLC Policy CRRT.B.10.010, Criteria for Accreditation—current version/last revised June 2014 at [HLC-OPE 15221-15228](#)). The Board's analysis entailed determining the likelihood that after the transaction the Institutes would be able to remain in compliance with Criterion Five, Core Component 5.A.

Related to Approval Factor 4, the Board's analysis entailed understanding the financial underpinnings of the transaction itself, while not second-guessing the parties' decision to engage in the transaction.

In conducting its analysis, the Board applied *de novo* review, consistent with HLC policy and due process, in evaluating the evidence as uncovered by the Fact-Finding Visit team and as explicated in

the Staff Summary Report (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)).

The Board did additionally review the pre-acquisition review letter supplied by the Department to the Institutes, as this was an official prerequisite to Board consideration under HLC policy at that time (see October 9, 2017 DOE Pre-acquisition Information at [HLC-OPE 7081-7106](#); HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)). Generally, the Board's focus in reviewing pre-acquisition letters was to gain insight into the Department's orientation toward a transaction and to learn, preliminarily, what if any conditions the Department might impose, including, for example, limitations on enrollment or the posting of a letter of credit.

While the Board had general familiarity with the fact that non-profit institutions in candidacy are afforded the opportunity to participate in Title IV, the Board was not intimately familiar with all the procedural steps required to convert from for-profit to non-profit status. It simply knew more steps needed to be taken according to the pre-acquisition letter and proceeded with its decision-making based on the Approval Factors articulated in HLC policy.

Again, however, the Board's November 2017 actions in no way hinged on a determination regarding the Institutes' continued Title IV funding eligibility. Participation in, or eligibility for, Title IV funding is not a requirement of any aspect of HLC affiliation or any HLC evaluation processes, including as related to candidacy, accreditation, or the approval of a Change of Control application.

Rather, the Board's November 16, 2017 action letter expressed significant doubt about the Institutes' compliance with Core Component 5.A after the transaction for several reasons, including that their underlying financial assumptions appeared to heavily rely on the desired change in tax status when there were no guarantees from the Department that this change would occur (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 6).

6. Please describe the matters raised, discussions during, activities undertaken and/or decisions made at the November 2-3, 2017 HLC board meeting. Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing matters raised, discussions during, activities undertaken and/or decisions made at that board meeting. The time frame for this request is October 1, 2017 to the present.

HLC Response #6:

The November 16, 2017 change of control action letter describes the matters raised during the November 2-3, 2017 Board meeting pertaining to the Institutes' proposed Change of Control (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)).

A second action letter issued on the same date, pertaining solely to ILIA, describes the outcome of a separate review of ILIA's progress after a period spent on the sanction of Notice (see November 16, 2017 HLC Letter to ILIA [HLC-OPE 7733-7736](#)). The Board removed ILIA from the Notice sanction during the November 2017 meeting prior to its conditional approval of the Change of Control application pertaining to both Institutes.

Consistent with HLC policy, the Commission publishes within 30 days of each Board meeting a notice of the actions taken (see HLC Policy COMM.A.10.010, Commission Public Notices and Statements—current version/last revised August 2016 at [HLC-OPE 15216-15218](#)). This list of all institutional actions taken by the Board at the November 2017 Board meeting remains publicly available at: <https://www.hlcommission.org/Student-Resources/november-2017-actions.html>.

7. Please provide the Department with the HLC's change of control policy in effect between October 1, 2016 and October 31, 2018, include at least HLC policies INST.F.20.070, INST.B.20.040, and INST.E.50.010. Please also provide the summary report made by Commission staff prior to the Board's decision on November 2-3, 2017. Did the Institutions respond to the staff summary report? If so, describe the response. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its change of control policy. The time frame for this request is August 1, 2016 to the present.

HLC Response #7:

HLC's policies related to change of control in effect between October 1, 2016 and October 31, 2018 can be found as follows:

- HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)
- HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#)
- HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)
- HLC Policy INST.F.20.060, Monitoring Related to Change of Control, Structure or Organization—version effective at all relevant times/last revised November 2019 at [HLC-OPE 15265-15267](#)

The Staff Summary Report and Fact-Finding Visit Report can be found at [HLC-OPE 7030-7080](#). The Institutes' response to the Staff Summary Report and Fact-Finding Visit Report can be found at [HLC-OPE 7109-7551](#).

8. On January 20, 2018, HLC published its decision to move the Institutions to CCC-status. HLC, *Public Disclosure: Illinois Institute of Art and Art Institute of Colorado from "Accredited" to "Candidate"* (Jan. 20, 2018) (Exhibit 4). The public disclosure seems inconsistent with the letter sent to DCEH on November 16, 2017, outlining the terms of CCC-status. The letter does not mention that CCC-status is a final adverse action, while the public notice reads as if it is a final action. Describe why HLC believed the November 16, 2017 letter and the January 20, 2018 public notice were consistent and correct. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) Exhibit 4 and/or (b) the CCC-status of the Institutions. The time frame for this request is December 1, 2017 to the present.

HLC Response #8:

The November 16, 2017 action letter and subsequent public disclosures issued by HLC regarding the actions taken by the Board were consistent and correct. On January 29, 2018, following the consummation of the transaction on January 20, 2018, HLC published a disclosure on HLC's website, primarily to apprise students and the public of the change in ownership as well as the change in the Institutes' status from "Accredited" to "Candidate for Accreditation" (see January 20, 2018 Public Disclosure Notice (January 20 Version) at [HLC-OPE 7780-7781](#)). As a technical matter, the document actually constituted a "Public Statement" under HLC policy and thus was not previewed to the Institutes (see HLC Policy COMM.A.10.010, Commission Public Notices and Statements—current version/last revised August 2016 at [HLC-OPE 15216-15218](#)). The term "Public Disclosure Notice" is used herein.

HLC routinely issues Public Disclosure Notices in various circumstances. HLC's Public Disclosure Notices are intended for the general public and are written, as far as possible, in layman's terms. Public Disclosure Notices are meant to provide an institution's stakeholders, primarily current and prospective students, with accurate information concerning matters that may be of significance to them in deciding whether to enroll or remain enrolled. As a result, Public Disclosure Notices typically do not provide all the details provided to an institution in an action letter.

Public Disclosure Notices are typically silent on matters related to Title IV participation or eligibility as those matters are beyond HLC's purview. See also HLC Responses #5, #9, #10-12.

The actions outlined in the November 16, 2017 action letter were not adverse actions. Rather, the actions were "final actions" (see HLC Policy INST.D.10.010, Board of Trustees—version effective at all relevant times/last revised February 2019 at [HLC-OPE 15243-15244](#)). The term "final adverse action" in the October 24 Letter conflates these two terms. In actuality, in HLC policy the terms "adverse action" and "final action" have exactly opposite meanings: Adverse actions are subject to appeal; final actions are not subject to appeal. See also HLC Response #2.

Although no action had been taken that would require a Public Disclosure Notice per HLC policy, HLC determined that, in the interest of transparency to students, it should affirmatively inform students of the change in the accreditation status of the Institutes they attended, and explain in plain English the significance of that change. Students had a right to know that they were no longer attending an accredited institution and that, depending on other institutions' transfer and admissions policies, their credits *may or may not* be accepted for transfer by an institution (as determined by that institution, not an accreditor) or be recognized by prospective employers.

See also HLC Response #10-12.

9. Did HLC conduct a financial analysis of the Institutions contemplating the potential loss of Title IV eligibility prior to issuing Exhibit 4? If so, describe that analysis. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing the Institutes' Title IV eligibility. The time frame for this request is October 1, 2016 to the present.

HLC Response #9:

No, HLC did not conduct a financial analysis of the Institutes related to the potential loss of Title IV eligibility between November 2017 and January 2018.

As further detailed above in HLC Response #5, in accordance with its policies and procedures, HLC reviewed financial aspects of the Institutes and the transaction prior to taking action in November 2017. Based on information provided to the Institutes by the Department, HLC was aware of the Institutes' status with respect to Title IV. Critically, however, no part of the Board's decision was predicated upon an analysis of prospective or continued Title IV funding eligibility.

The January 20, 2018 Public Disclosure Notice was silent on the matter of Title IV because this was not within HLC's purview, although the Board did review the Department's pre-acquisition review letter.

It was expected and understood that the question of Title IV eligibility would be communicated *by the Institutes themselves* following the final determination of their tax status. All affiliated institutions (whether fully accredited member institutions or candidates for accreditation) are under an ongoing obligation to accurately disclose their status to their constituents at all times in accordance with various HLC requirements. This includes, for example, being transparent as to whether or not such institutions remain eligible for, or currently participate in, Title IV programs.

On January 26, 2018, Josh Pond, then President of ILIA, and Sweeney had a telephone call in which Sweeney reinforced the need for the Institutes to be transparent in their disclosures to their students. During the call, at Pond's request, Sweeney committed to reviewing the Institutes' proposed language, which it had sent to her, but made clear that any language she provided would be assuming a final determination had been reached that the Institutes were now non-profit entities. The language provided by Pond contained several phrases that were inaccurate in terms of fairly representing the Institutes' status. (see January 25, 2018 Sweeney, Pond Emails at [HLC-OPE 15292-15296](#)). It later became clear that the Institutes never implemented the guidance provided. See HLC Response #10-12.

Between November 16, 2017 and January 20, 2018, HLC did conduct a *non*-financial indicator (NFI) analysis with respect to ILIA. The NFI process serves as an early warning system related to an institution's current compliance with the Criteria for Accreditation, but the Institute's response to that analysis was entirely separate from and came after the Board's decision (see November 20, 2017 ILIA Non-Financial Indicators Letter at [HLC-OPE 7737](#); January 16, 2018 ILIA Non-Financial Indicators Report at [HLC-OPE 7772-7775](#)).

10. On February 2, 2018, DCEH, through its legal counsel, sent to HLC a response to the January 20, 2018 public disclosure. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 2, 2018) ([Exhibit 5](#)). Did HLC provide to the Institutions an opportunity to appeal the decision as requested? If not, explain why this was the case. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) [Exhibit 5](#) and/or (b) any appeal by the Institutions. The time frame for this request is February 2, 2018 to the present.

11. On February 7, 2018, HLC sent a response that seemingly reaffirms statements made in the January 20, 2018 public disclosure. *See* Letter from HLC to Rouse Frets Gentile Rhodes, LLC (Feb. 7, 2018) (Exhibit 6). Between November 16, 2017, and January 20, 2018, did HLC modify the terms and conditions of the accreditation action taken on November 16, 2017? If so, what prompted the modification? Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the action taken or described in the November 16, 2017 letter, and/or (b) Exhibit 6. The time frame for this request is February 7, 2018 to the present.
12. On February 23, 2018, DCEH, through its legal counsel, sent HLC a response to its February 7, 2018 letter. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 23, 2018) (Exhibit 7). It appears that, based upon our review of the aforementioned correspondence, there was significant confusion among HLC and DCEH officials regarding the accreditation status of the Institutes. Please provide to the Department all correspondence between DCEH and HLC between November 2, 2017, and December 31, 2018, including HLC's response to the February 23, 2018 letter and any further communication HLC had with DCEH regarding this letter. If HLC did not respond to the February 23, 2018 letter from DCEH please provide a written narrative explaining why. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing Exhibit 7.

HLC Response #10-12:

Note: In order to most effectively respond to the inquiries posed in a contextualized manner, HLC has combined its responses to inquiries #10-12. As initial matters, please note that (a) although not required to do so by HLC policy, HLC did provide the Institutes an opportunity to appeal, of which they then did not avail themselves; and (b) as further described in HLC Response #4, very minor modifications to timing and reporting requirements detailed in the November 16, 2017 action letter were made prior to January 20, 2018, all of which were made at the request of the Institutes. As further described below, HLC is not aware of any reasonable basis for confusion on the part of the Institutes or DCEH with respect to the accreditation status of the Institutes following their consummation of the transaction on January 20, 2018.

February 2, 2018 Letter and Related Events

On February 2, 2018, external counsel for DCEH and the Institutes wrote to HLC's President with what was the first indication of a negative response to the previously agreed-upon conditions (see February 2, 2018 Rouse Frets to HLC at [HLC-OPE 7782-7783](#)). See also HLC Response #4.

As far as HLC could tell, the objections came because the language in the Public Disclosure Notice, which set forth that Eligibility Filings were being required of the Institutes, among other next steps, could, according to the Institutes and DCEH, be interpreted by the public to suggest that the Institutes were "essentially in pre-candidacy, not candidacy" because the Eligibility Filings are "documents normally required to achieve candidacy" (see January 20, 2018 Public Disclosure Notice (January 20 version) at [HLC-OPE 7780-7781](#); February 2, 2018 Rouse Frets to HLC at [HLC-OPE 7782-7783](#)).

The Public Disclosure Notice included significant details about HLC's monitoring of the Institutes, including the requirement that the Institutes would need to submit Eligibility Filings. HLC had required these documents, not because the Institutes were being treated as institutions yet to seek candidacy status, but rather, as a relatively simple way of satisfying HLC that concerns that had been raised related to potential compliance with the Eligibility Requirements after the transaction had been resolved. The submission of Eligibility Filings would allow peer reviewers to conduct what was expected to be a routine review culminating in a determination that each Eligibility Requirement was "Met" or "Not Met."

The source of the Institutes' confusion was not clear to HLC. First, the header to the Public Disclosure Notice included the words "From Accredited to Candidate." Second, the Public Disclosure Notice stated: "During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards of candidacy....Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC...." (see January 20, 2018 Public Disclosure Notice (January 20 version) at [HLC-OPE 7780-7781](#)).

Moreover, the concerns articulated by the Institutes *had never before been raised, despite ample opportunity through active conversations prior to their January 4 acceptance*. If the Institutes believed, as stated in the February 2, 2018 letter, that "they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e. they would be immediately placed in candidacy (already approved)," this is exactly what Change of Control candidacy achieved, and what the Institutes had agreed to in their January 4, 2018 letter. See also HLC Response #4.

HLC responded by letter on February 7, 2018 (see February 7, 2018 Gellman-Danley to Rouse Frets at [HLC-OPE 7784-7785](#)). In this letter, HLC clarified that none of the terms of the most recent agreement between the Institutes and HLC had been modified by the Public Disclosure Notice. Eligibility Filings had been originally required in the November 16, 2017 action letter (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 2). Indeed, as stated above, the Institutes had asked for an extension of the deadline to file the Eligibility Requirements in their November 29, 2017 letter, a request that was granted by the Commission (see November 29, 2017 Richardson, et al. to Gellman-Danley at [HLC-OPE 7740-7741](#); January 8, 2018 Sweeney, Pond Emails at [HLC-OPE 15288-15290](#)).

HLC also clarified that it had no status known as "pre-candidacy."

Nevertheless, without changing the underlying substance, HLC promptly published a revised disclosure that same day to further clarify the issues that were concerning to the Institutes and DCEH (see January 20, 2018 Public Disclosure Notice (February 2 Version) at [HLC-OPE 7778-7779](#)). (The updated Public Disclosure Notice does not reflect an updated date.) This version of the Public Disclosure Notice omitted any reference to the Eligibility Filings (though the Institutes would still be responsible for preparing and submitting those documents until the requirements were suspended).

With the new Public Disclosure Notice, HLC was confident that the concerns expressed by the Institutes in the February 2, 2018 letter were adequately addressed.

Though not listed as a copied party on the February 2, 2018 letter, Frola from FSA was copied on the email transmission (see February 2, 2018 Frola, Solinski Emails at [HLC-OPE 15297](#)). On February 5,

2018, Frola then emailed Solinski requesting a copy of the published statement referenced in the February 2, 2018 letter (see February 2, 2018 Frola, Solinski Emails at [HLC-OPE 15297](#)). HLC records do not indicate whether Solinski responded.

February 23, 2018 Letter and Related Events

On February 23, 2018, external legal counsel for the Institutes and DCEH again wrote to HLC (see February 23, 2018 Rouse Frets to Gellman-Danley at [HLC-OPE 7786-7787](#)).

The letter set forth several assumptions that the Institutes wished to "confir[m]." One assumption was that the Institutes "remain eligible for Title IV." The letter indicated that it was the Institutes' position that they had "relied in good faith" on HLC's use of the term "preaccreditation" in its November 16, 2017 action letter to come to a conclusion that that the Institutes remained eligible for Title IV as non-profit institutions.

Curiously, on the issue of Title IV eligibility, the February 23, 2018 letter referred to 34 CFR §600.2, which contains the definition of "preaccredited," and 34 CFR §600.4(a)(5)(i), which defines "Institution of Higher Education" as a "public or private nonprofit educational institution that...is... [a]ccredited or preaccredited." However, the letter does not acknowledge that the definition of "Nonprofit institution," appearing just prior to "[p]reaccredited" in 34 CFR §600.2, explicitly states that the U.S. Internal Revenue Service ("IRS") makes determinations related to any organization's tax status.

To be clear, HLC does not play a role in determining an institution's eligibility for Title IV funding. The IRS makes determinations related to any organization's tax status and, in turn, the Department's FSA office makes any determination related to Title IV eligibility. See also HLC Responses #5 and #9.

This division of responsibilities would have been clearly known to the Institutes not only based on the plain language of the federal regulations but also based on previous dealings regarding Title IV. First, on September 12, 2017, the Department issued a letter to Brent Richardson, CEO of DCEH, setting forth in detail the Department's Pre-acquisition Review of the Proposed Change in Ownership and Conversion to Nonprofit Status. The pre-acquisition letter made clear that, although the Department "ha[d] not identified any known or present impediments to the Institutes' requested conversion to nonprofit status, following the CIO, and as described herein, [the Dream Center Foundation would] have to submit additional documentation and information to confirm the other elements of nonprofit status" (see October 9, 2017 DOE Pre-acquisition Information at [HLC-OPE 7081-7106](#)). The conditional nature of the pre-acquisition letter, including, of course, the fact that the letter and any potential determinations regarding Title IV were coming from the Department and not HLC, was reinforced to the Institutes in HLC's report regarding its evaluation of the transaction (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), page 8).

Second, the February 23 letter makes the completely erroneous statement that the Institutes "remain accredited, in the status of Change of Control Candidate for Accreditation...and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review." This statement was incorrect as to the meaning of Change of Control candidacy based on the language of the November 16, 2017 and January 12, 2018 action letters. See also HLC Responses #1, 4.

Moreover, with respect to timing, by the explicit terms of the November 16, 2017 action letter, the Institutes would only have the opportunity to regain accreditation after they had demonstrated to the Board's satisfaction that they met several HLC requirements. The Board anticipated that fully evaluating an evidence-based resolution of these concerns would take time and therefore indicated it would not consider granting accreditation until after the second on-site focused evaluation, which would take place no later than June 2019.

Third, the February 23 letter demands assurances that the Institutes "will receive an objective review...with team members who have the requisite skill and experience to render an unbiased decision." HLC's standard practice is to conduct objective reviews and to seek out peer reviewers with the requisite skill, experience, and expertise to meaningfully evaluate its institutions. Among other measures of skill and experience, peer review teams typically include individuals who hail from institutions that are representative of the sector, Carnegie classification, and mission of the institution to be evaluated. In any event, peer review teams do not render any decision; they make recommendations to formal HLC decision-making bodies who then render decisions. In this case, based on its concerns, the Board had taken the added step of routing the outcomes of the Eligibility Reviews (which were later suspended) and the on-site focused evaluations (which were not suspended) directly back to the Board itself, rather than delegating to any other decision-making body.

In stating their third demand "for an objective review for continued accreditation," DCEH and the Institutes appeared to preview a future argument to be made that HLC was irrationally biased against for-profit institutions. As was widely published, EDMC had produced a very significant and negative record of dealings with students, prompting multiple investigations from numerous State Attorneys General plus the District of Columbia, resulting in an almost \$100 million settlement and Consent Judgment that could not responsibly be ignored. HLC's careful scrutiny through monitoring was objectively justified on EDMC's record, a record that also came to the attention of members of Congress (see June 22, 2017 US Senate to HLC at [HLC-OPE 5332-5336](#); July 13, 2017 Gellman-Danley to Senators at [HLC-OPE 5372-5373](#)). Even more, during the Change of Control Fact Finding Visit, EDMC employees repeatedly referred to the transaction as a "lift and shift" transaction, in which EDMC employees would become DCEH employees (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)). If the so-called "lift and shift" meant the migration of key EDMC personnel to DCEH (or its related entities) and would merely cloak predatory practices in what they believed to be a preferable non-profit status, thereby placing students whose backgrounds rendered them vulnerable, then HLC needed to set forth a monitoring protocol, and deliver a team of peer reviewers with the requisite skill, experience and expertise, to lay that subterfuge bare.

Finally, the February 23 letter indicates—again erroneously—that the Institutes would "communicate to their students that [the Institutes] remain accredited in the capacity of Change of Control Candidate for Accreditation." With this, the parties essentially previewed their intention to make incorrect disclosures that were inconsistent with HLC's aforementioned action letters, as well as the express guidance offered by Sweeney on January 26, 2018 (see January 25, 2018 Sweeney, Pond emails at [HLC-OPE 15292-15296](#)). The internal analysis at the Institutes and DCEH that led to this choice was later revealed in a series of email threads provided to HLC in the form of a complaint (see September 14, 2018 Sweeney to Mesecar, Ramey at [HLC-OPE 14816-14857](#); October 11, 2018 Ramey, Mesecar to Sweeney at [HLC-OPE 14988-14989](#)).

Inaccurate disclosures by the Institutes would continue to be a concern moving forward. Over the course of the next several months, HLC would have repeated conversations with the Institutes in

which HLC insisted that the Institutes accurately disclose their accreditation status (see June 12, 2018 Sweeney, Ramey, Monday Emails at [HLC-OPE 15316-15319](#); July 12, 2018 Sweeney to Monday, Ramey, Richardson at [HLC-OPE 12562-12580](#); July 12, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15343-15346](#); August 23, 2018 Sweeney, Gellman-Danley, Jones Emails at [HLC-OPE 15356-15358](#)).

(The Institutes had also previously exhibited a pattern of conduct showing an inability to make appropriate disclosures with respect to this transaction. For example, on October 20, 2017, Sweeney wrote to EDMC, then still the parent of the Institutes, to express concerns about the "Spotlight" section of EDMC's website that included a purported disclosure related to the transaction that remained incomplete (see October 20, 2017 Sweeney, Kramer Emails at [HLC-OPE 15281-15283](#)).

The February 23 letter closed with a statement that the parties wished "to avoid pursuit of an appeal and possible litigation." Given the circumstances, Solinski shared the letter with HLC's external legal counsel, Mary Kohart, Partner at the law firm of Elliott Greenleaf. Solinski's employment with HLC ended shortly thereafter and Sweeney assumed the role of Vice President for Legal and Governmental Affairs on March 1, 2018. Once situated, Sweeney specifically instructed Kohart in March 2018 to follow up with the Institutes' counsel regarding the February 23, 2018 letter. Kohart made attempts to contact the parties' counsel, but they did not respond to the outreach. As such, it appeared to HLC that the Institutes did not wish to communicate further about the matter.

Involvement of the Department's FSA Office

On the same day that the Institutes transmitted the February 23, 2018 letter, Frola emailed Solinski, indicating that "the candidacy status that HLC has Dream Center on following the CIO could be problematic for the schools title IV [sic] eligibility" (see February 23, 2018 Sweeney, Solinski, Frola Emails at [HLC-OPE 15298-15299](#)). Frola had received copies of both HLC's action letters dated November 16, 2017 and January 12, 2018 (see November 16, 2017 Noack to Frola, Bounds at [HLC-OPE 15284](#); January 23, 2018 Noack to Frola, Bounds at [HLC-OPE 15291](#)). However, February 23, 2018 was the first time that Frola reached out to Solinski indicating that candidacy status could be problematic for the Institutes. Solinski responded on February 24 that a call should be scheduled on Monday, February 26, 2018. She copied Sweeney and indicated that she expected Sweeney, as staff liaison, would join the call (see February 23, 2018 Sweeney, Solinski, Frola Emails at [HLC-OPE 15298-15299](#)).

The anticipated February 26 call took place on March 9, 2018—following postponements by Frola and the personnel transitions at HLC (see March 8, 2018 Sweeney, Frola Emails at [HLC-OPE 15300-15301](#)).

On the call, Frola, who was accompanied by numerous Department officials, including legal counsel, specifically asked Sweeney whether candidacy was considered accredited status and whether the Board "had made an independent determination that the Institutes were non-profit institutions." Sweeney responded that under HLC policy, candidacy is a formally recognized status that, insofar as it precedes accreditation, is considered a pre-accreditation status, ***but it is NOT accredited status***. Further, Sweeney unequivocally informed Frola and those on the call ***that the Board had made no***

independent determination as to the Institutes' tax status, as that was the rightful purview of the IRS and that the Board had made no independent determination as to the Institutes' eligibility for Title IV funding, as that was the rightful purview of the Department.

This apparent confusion on the part of the Department regarding the respective role of accreditors vs. the Department regarding determinations for Title IV eligibility would re-emerge in Jones' October 31, 2018 letter to HLC. See also HLC Response #19.

May 21, 2018 Intent to Appeal/Further Communications with the Department's FSA Office

On May 21, 2018, HLC received a formal letter of intent to appeal on behalf of both Institutes (see May 21, 2018 Rouse Frets to HLC at [HLC-OPE 12264-12266](#)).

Given the references in the letter to Title IV eligibility, and remembering the phone conversation with Frola on March 9, Sweeney telephoned Frola on May 22, 2018 to learn what, if any, final determination had been made by the Department regarding the Institutes' eligibility for Title IV funding. Frola informed her of what he termed the Department's "extraordinary measure" to grant "temporary interim non-profit status" as described in May 3, 2018 letters separately issued by the Department to each Institute (see May 3, 2018 ILIA DOE Grant of Temp Interim NFP Status at [HLC-OPE 12261-12263](#); May 3, 2018 AIC DOE Grant of Temp Interim NFP Status at [HLC-OPE 12258-12260](#)). Frola insisted HLC had been copied on the May 3 letters. After the phone call, Sweeney reviewed agency records (including Solinski's emails) to determine that HLC had not received the letters and reiterated to Frola via email that HLC had not received copies. Frola then forwarded the requested letters (see May 22, 2018 Sweeney, Frola Emails at [HLC-OPE 15302-15311](#)). (On June 14, 2018, Sweeney would then provide copies of the May 3, 2018 letters granting the Institutes temporary interim non-profit status to Bounds after a passing reference to them during a phone conversation on a separate matter indicated that Bounds may not have been aware of the determinations (see June 14, 2018 Sweeney to Bounds at [HLC-OPE 15320-15321](#))).

HLC responded to the May 21, 2018 letter on May 30, 2018 (see May 30, 2018 Sweeney to Rouse Frets at [HLC-OPE 12267-12268](#)). No adverse action had occurred that would trigger an opportunity to appeal. See also HLC Responses #2, #3. Moreover, the tardiness of any appeal was inconsistent with the timing in HLC's published Appeals Procedures, which require an appeal to be initiated within two weeks of Commission action (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15264](#)). Nonetheless, HLC informed the parties in the May 30 letter that, while not required under HLC policy, an appeal on behalf of both Institutes would be considered, and attached HLC's Appeals Procedures to the letter. In offering this appeal, HLC continued to provide the Institutes all manner of due process, as generally contemplated by 34CFR §602.25.

The Institutes ultimately failed to timely submit an Appellate document in accordance with the Appeals Procedures and the opportunity lapsed.

Simultaneously, upon receipt of the May 21 letter, HLC immediately suspended ongoing evaluative activity in an effort to minimize embroiling its volunteer peer reviewers in a potential appeal situation. This meant, among other things, that the review of the required Eligibility Filings, which was all but complete, was suspended along with the requirement that the Institutes submit quarterly financial

reports. The peer reviewers' analysis of the respective Eligibility Filings almost certainly would have resulted in official HLC findings that improper disclosures to students had been made.

There was only one exception to the suspended activities: the on-site evaluations required of each Institute within six months of the transaction date would go on as planned. No exception was allowed under federal regulations, a fact confirmed by Department analyst Elizabeth Daggett to Sweeney in writing on May 30, 2018 (see Sweeney, Daggett emails May 30, 2018 at [HLC-OPE 15312-15315](#)).

In November 2018, the Institutes would again attempt to renew their efforts to appeal both the November 2017 actions and subsequent November 2018 actions by the Board continuing the Institutes' candidacy until their planned December 2018 closures. These attempts to appeal were improper both as to timing and the continued fact that the Board had not taken an adverse action with respect to the Institutes in November 2017 or November 2018 (see November 7, 2018 AIC Action Letter at [HLC-OPE 15172-15179](#); November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#); November 20, 2018 Ramey to Gellman-Danley at [HLC-OPE 15187-15189](#); November 21, 2018 Mesecar to Gellman-Danley at [HLC-OPE 15190-15191](#); November 28, 2018 Gellman-Danley to Ramey at [HLC-OPE 15195-15198](#); November 28, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15192-15194](#)).

Initial Interactions with DCEH and the Department Regarding Retroactive Accreditation

The Institutes were not on the agenda of the Board's June 2018 meeting as institutional action items. However, Commission staff were scheduled to provide a full update to the Board regarding the Institutes at the meeting.

By that time, not only were the previously established evaluation efforts overtaken by the prospect of an appeal, but external counsel for the Institutes had contacted HLC with a new proposal that would allow for "[a]ll students who earned credits or graduated, from the time of the Schools respective initial accreditation through [its closing date], will be deemed to have attended or graduated from an accredited institution" (see June 20, 2018 Rouse Frets, Gellman-Danley, Sweeney Emails at [HLC-OPE 15322-15324](#)). Although not explicitly using the term "retroactive accreditation," this proposal was tantamount to retroactive reinstatement of accreditation.

Certainly, it was unusual for HLC to receive such a proposal from an institution at all. Even more, however, the substance of the proposal appeared to be suggesting an outcome that was not contemplated by HLC policy and one that HLC also understood to be prohibited by federal regulations and Department guidance.

First, retroactive accreditation, as proposed, was not permitted under current HLC policy. HLC policy does allow students who graduate 30 days prior to the grant of accreditation to an institution to benefit from that accreditation, notwithstanding the fact that the institution had been unaccredited as a candidate at the time they attended (see HLC Policy INST.B.20.030, Accreditation—current version/last revised November 2015 at [HLC-OPE 15236-15238](#)). The same would be true for students graduating from the Institutes within 30 days prior to any Board decision to grant accreditation. Otherwise, however, HLC policy did not provide for retroactive accreditation and any change in HLC policy would need to adhere to other established policies governing policy revisions (see HLC Policy PPAR.A.10.010, Dating of Policies—current/never revised at [HLC-OPE 15276](#); HLC Policy PPAR.A.10.030, Program for Review of Institutional Accreditation Policies—current

version/last revised November 2012 at [HLC-OPE 15277](#); HLC Policy PPAR.A.10.040, Revision of Accreditation Policy—current version/last revised November 2012 at [HLC-OPE 15278](#)).

Moreover, HLC had operated for some time under a general understanding that back-dating any substantive change approval was frowned upon under the federal regulations (see, for example, 34 CFR §602.22(b)) as well as Departmental guidance. In fact, when Sweeney sought to confirm HLC's prevailing understanding of retroactive accreditation with Daggett on June 26, 2018, Daggett specifically provided Sweeney a June 6, 2017 Memorandum on the issue ("2017 Memorandum") (see June 26, 2018 Daggett to Sweeney (2017 DOE Memo) at [HLC-OPE 15325-15327](#)). The 2017 Memorandum, with the subject line "Accreditation Effective Date," clearly stated that "The Department of Education requires an accreditation decision to be effective on the date an accrediting agency's decision-making body makes the decision. It cannot be made retroactive, except to the limited extent provided in 34 C.F.R. §602.22(b) with respect to changes in ownership" (see June 26, 2018 Daggett to Sweeney (2017 DOE Memo) at [HLC-OPE 15325-15327](#)). The exception refers to the fact that an agency may designate the date of a change in ownership as the effective date of its approval of a substantive change to be included in the institution's accreditation, if the substantive change decision is made within 30 days of the change in ownership.

Almost immediately thereafter, however, Jones reached out to Gellman-Danley. As Sweeney described to Daggett: "[Jones]...has now reached out to our President with different ideas about the [application of retroactive accreditation to the Institutes], despite Herman's memo" (see June 27, 2018 Daggett, Sweeney Emails at [HLC-OPE 15328-15330](#)).

This is at odds with the implications of what Jones indicated in her Congressional testimony in May 2019 when she said that "somebody from HLC called me to ask me about retroactive accreditation..." (see May 22, 2019 Congressional Hearing Before the Subcommittee on Economic and Consumer Policy of the Committee on Oversight at <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109532>). To be clear, HLC did not initiate contact with Jones on this issue. Rather, Jones initiated the conversation with HLC by calling Gellman-Danley.

In subsequent emails and phone conversations on June 27, 2018:

- (1) Jones informed Sweeney and Gellman-Danley by email that the "guidance document [2017 Memorandum] was issued in error and we will be releasing corrected guidance." Jones indicated that she was "disappointed" that the 2017 Memorandum had been sent "since it is known that we are retracting that policy" (see June 27, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15331-15332](#));
- (2) Daggett and Bounds informed Sweeney by phone that the 2017 Memorandum was not applicable to the Institutes in this situation, but reminded Sweeney that, as Sweeney would then reiterate to Jones later that afternoon, HLC "should be mindful of current federal regulations on ensuring consistency in decision making (34 CFR §602.18)" (see June 27, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15331-15332](#));
- (3) In an evening phone call between Jones and Sweeney, Jones reiterated to Sweeney her disappointment that Daggett and Bounds had shared the 2017 Memorandum, again indicated that

the Department would be releasing additional guidance on the issue of retroactive accreditation, and specifically asked Sweeney to work exclusively with her at the Department on this issue.

This new information from the Department regarding its position on retroactive accreditation was included in the already-planned update that Commission staff would deliver to the Board at the June 2018 meeting.

Communications with the Department continued following the June 2018 Board meeting. On July 3, 2018, in an email addressing several topics related to the Institutes, Sweeney indicated to Jones on behalf of HLC that "[w]hat we would like to request is written assurance from the Department of Education that an HLC Board decision to have the Institutes' accredited status reinstated effective as of January 19, 2018 through December 31, 2018 (in other words ensuring continuous accredited status and eliminating the period of Change of Control candidacy) will be acceptable to the Department of Education and will not jeopardize HLC's recognition" (see July 3, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15333-15335](#)).

In response, Jones indicated that the Department would be issuing "guidance to address the retroactive accreditation date more generally, but I will also be happy to provide a written letter to HLC on this specific issue to make sure that you don't need to worry about how this might impact your own recognition at a later time" (see July 3, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15333-15335](#)). See also HLC Response #19.

Indeed, on July 25, 2018 the Department issued a memorandum that effectively superseded the 2017 Memorandum (see July 25, 2018 DOE Memo at [HLC-OPE 15354-15355](#)).

To be clear, retroactive accreditation was still generally prohibited by HLC policy, and a letter from the Department would not change HLC's usual process for making any such policy revisions. Rather, the letter would inform HLC's understanding as to whether retroactive accreditation was problematic under federal regulations and Department guidance.

Communications about retroactive accreditation continued throughout July 2018. In an email exchange on July 29-30, 2018, Sweeney once again explained to Jones that, other than in the thirty days prior to accreditation being granted, students graduating from a candidate institution were graduating from an unaccredited institution (see July 12, 2018 Gellman-Danley, Sweeney, Jones Emails (with additional emails from 7.29-7.30) at [HLC-OPE 15347-15353](#)).

Yet, despite all of these communications, as recently as May 2019, Jones continued to state that:

- "[T]he letter that the Department received from HLC described change-of-control candidacy status as a pre-accredited status, and pre accredited status is accredited status;" and
- "Let me be clear that it is the Department's position that [the Institutes] were accredited throughout the period between the change of control in January, and the closure in December 2018. Otherwise, the schools could not have participated in Title IV programs"

(see October 22, 2019 Committee on Education and Labor to Secretary DeVos at [HLC-OPE 15369-15412](#), FN 29; May 22, 2019 Congressional Hearing Before the Subcommittee on Economic and

Consumer Policy of the Committee on Oversight at:

<https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109532>).

The current federal definition of "preaccredited" under 34 CFR §600.2 is unambiguous that such status is accorded to unaccredited institutions. That definition is silent on Title IV eligibility.

13. The public notice issued on January 20, 2018, states that HLC's action meant that courses or degrees offered by the Institutions were not accredited, even though the Institutions would enjoy a "recognized status" with HLC. Yet, on July 16, 2018, HLC conducted a site visit at the Illinois Institute of Art in which the site reviewer told students and faculty that it was possible for accreditation to be retroactively restored. Please explain (a) why the site visitor conveyed this message to students and faculty, and (b) whether HLC was considering rescinding its action to place the Institutions on CCC-status at the time of the site visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the site visit, (b) the report that was produced by the site visitors and sent to HLC's Board, and/or (c) HLC deliberations regarding the Institutions accreditation status. The time frame for this request is April 1, 2018 to the present.

HLC Response #13:

As further described below, an HLC peer reviewer faced with a very chaotic and difficult situation made unnuanced comments regarding next steps. HLC was not—in July 2018 or at any time—considering "rescinding" its November 2017 actions, as such rescission is not contemplated by HLC policy. (Indeed, the only time the Board may "rescind" an action is if the parties to a change of control that has been conditionally approved "do not respond in writing or decline to accept the conditions" (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#))).

HLC first learned of the existence of the video of the July 16, 2018 ILIA site visit meeting through Jones directly when she emailed a link to the video to Gellman-Danley on October 15, 2018, approximately two weeks before the Board would take action on the Institutes (October 15, 2018 Jones email to Gellman-Danley and Sweeney at [HLC-OPE 15359-15360](#)).

It is important to note that at no time was the site visitor (which HLC refers to as a "peer reviewer") authorized, instructed, or trained by anyone at HLC to provide any indication to ILIA students, faculty or administrators, regarding what the Board would ultimately decide. Peer reviewers are explicitly trained not to make any statements that might be interpreted as a prediction of any future action by HLC's decision-making bodies (see HLC Procedure Exit Session Protocol for Commission Visits: Commission Procedure at [HLC-OPE 15279-15280](#)). HLC's formal decision-making bodies, in this case, the Board, which held final decision-making authority, had the authority of *de novo* review. Therefore, as in all other cases, the Board could choose to agree or disagree with any aspect of the peer reviewers' evaluation of the evidence, including their findings on specific HLC requirements and/or their ultimate recommendation. In addition, the Board could take into account additional information, including publicly available information, or weigh the absence of certain evidence in its decision. The authority of peer reviewers involved in evaluative activity extends only as far as making recommendations that are aligned with HLC policy, not ultimate accreditation decisions. These

procedures are also generally consistent with HLC's due process obligations pursuant to 34 CFR §602.25.

That said, it had always been contemplated that, if the Institutes satisfied the conditions set forth in the November 16, 2017 action letter and were otherwise in compliance with HLC requirements, accreditation would be reinstated (but not retroactively, for the reasons described in HLC Responses #10-12 and #19) (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 2 and page 4).

The peer reviewer whose statements about retroactive accreditation are now being questioned was aware of the limited HLC rule regarding the extension of accreditation to graduations that occur 30 days prior to accreditation being granted (see HLC Policy INST.B.20.030, Accreditation—current version/last revised November 2015 at [HLC-OPE 15236-15238](#), as further described in HLC Response #10-12), and likely gave over-generalized responses to the rapid fire inquiries. His unnuanced responses, given hurriedly in a well-intentioned attempt to reassure a large group of very upset students in a fast-paced, chaotic, and high pressure situation, did not change the fact that any accreditation decision would be made by the Board solely on the basis of evidence and evaluation and in a manner consistent with HLC policy.

Importantly, the second peer reviewer who was present at the same ILIA meeting made it abundantly clear, while demonstrating compassion for the students' plight, that the scope of the peer review team's work was not to serve as the outlet for student frustration regarding the recent announcement of closure and revelation regarding loss of accredited status, but to validate through thoughtful inquiry the evidence presented by ILIA related to its operations since the consummation of the transaction on January 20, 2018 (see <https://www.youtube.com/watch?v=-Bn0qKMNqIM> at 31:29-32:24).

Much had changed since January 20, and by mid-July 2018, the Institutes' closure announcement meant circumstances were now present that were dramatically different from anything the Board contemplated in November 2017. HLC was now in the process of evaluating separately the Institutes' respective Teach-Out Plans. As a result, the HLC peer reviewers assigned to the ILIA visit were asked by Sweeney, in addition to their original charge, to obtain on-site a preliminary sense of ILIA's apparent capacity to responsibly conduct a teach-out through its initially stated closure date of December 31, 2018. It was during their attempt to gather additional information on behalf of HLC from ILIA constituents that these interactions took place.

Ultimately, the decision by the Institutes and DCEH to consummate the proposed transaction in the middle of an academic term on January 20, 2018 rather than after a graduation, knowing it would automatically trigger a change in ILIA's accreditation status, and then to withhold information regarding that change in status for several months, only to release this critical information at the time of its closure announcement (see September 14, 2018 Sweeney to Mesecar, Ramey at [HLC-OPE 14816-14857](#); October 11, 2018 Ramey, Mesecar to Sweeney at [HLC-OPE 14988-14989](#)), created a perfect storm of confusion just days before the peer review team's arrival.

A false narrative quickly developed, which remained uncorrected by officials of the Institutes or DCEH, that on January 20, 2018, HLC withdrew ILIA's accreditation thereby precipitating the Institute's closure. In stark contrast to this narrative, CEO Brent Richardson revealed during a transcribed Board Committee Hearing for AIC that a \$95 million hole, discovered after the fact, in DCEH's own due diligence, actually precipitated the Institutes' closure (see October 8, 2018 AIC

Board Committee Hearing Transcript at [HLC-OPE 14862-14980](#), page 11 lines 2-9). In addition, as each peer review team informally and separately reported to HLC days before the respective on-site visits (see July 6, 2018 Sweeney, Koch Emails at [HLC-OPE 15336-15339](#); July 6, 2018 Sweeney, Nolan Emails at [HLC-OPE 15340-15342](#)), significant doubt appeared to exist at each Institute regarding whether the planned on-site evaluations would occur at all, despite explicit communication to the contrary that under no circumstances would these evaluations be waived (see May 30, 2018 Sweeney, Daggett Emails at [HLC-OPE 15312-15315](#); May 30, 2018 Sweeney to Rouse Frets at [HLC-OPE 12267-12268](#)).

As a result of all these events, the HLC peer review team was inevitably greeted by a frantic and somewhat hostile environment. The meeting represented in the video was atypical of on-site evaluations owing to students and faculty who were, quite understandably, extremely distraught and at times, verbally aggressive. The very short lead-time between ILIA's closure announcement and the peer reviewers' arrival on-site meant that, despite their careful advance review, in-depth briefing with HLC staff, and trained analysis of documentation available, they could not respond succinctly to every nuanced, hypothetical question that arose from these extremely unique circumstances. Most of all, they simply could not explain to students why they were just learning their institutions were not accredited. The peer reviewers did make clear to all, however, that they were an evaluation body and not the final decision-making authority.

14. Please provide a list of all site visits conducted by HLC to the Institutions from January 1, 2017, to the date of their closure. Describe each such visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing each such site visit. The time frame for this request is December 1, 2016 to the present.

HLC Response #14:

The site visits conducted by HLC to the Institutes from January 1, 2017 to their closure at the end of December 2018 are as follows:

- AIC Midcycle Standard Pathway Comprehensive Evaluation with Embedded Substantive Change Request—Comprehensive evaluation conducted in 2016. Official action by the Institutional Actions Council (an HLC decision-making body) on January 30, 2017. Outcome: Interim monitoring and approval of two new programs (see January 30, 2017 AIC IAC Mid-Cycle Review Standard Action Letter at [HLC-OPE 1877](#); January 30, 2017 AIC IAC Substantive Change Action Letter at [HLC-OPE 1878](#)).
- ILIA Notice Visit—Focused Visit (Notice Visit) conducted in May 2017. Official action by the Board in November 2017. Outcome: Removal of Notice (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)).
- AIC and ILIA Change of Control Fact Finding Visit—Fact Finding Visit conducted in August 2017. Official action by the Board in November 2017. Outcome: Approval of Transaction with Conditions (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)).

- AIC and ILIA Post-Transaction Focused Visits—Focused Visits conducted in July 2018. Recommendation from ILIA visit was that adequate progress was being made and that accreditation should be reinstated. Recommendation from AIC visit was that evidence was insufficient and candidacy should be withdrawn. AIC afforded a Board Committee Hearing based on team recommendation. Outcome: Both Institutes' candidacy continued through anticipated close date of December 28, 2018, with various requirements (see July 16, 2018 AIC Focused Visit Team Report at [HLC-OPE 13276-13317](#); July 16, 2018 ILIA Focused Visit Team Report at [HLC-OPE 14316-14355](#); October 8, 2018 AIC Board Committee Hearing Transcript at [HLC-OPE 14862-14980](#); November 7, 2018 AIC Action Letter at [HLC-OPE 15172-15179](#); November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#)).

Full materials related to all of these site visits are included in the Institutes' administrative records.

15. On March 9, 2018, Department officials had a conference call with Anthea Sweeney, Vice President for Legal and Governmental Affairs at HLC, to inquire about the nature of its CCC-status. On the call, Ms. Sweeney told the Department that HLC viewed CCC-status to be the equivalent of a preaccredited status. Does HLC view CCC-status as being the equivalent of a preaccredited status? If not, why was that assertion made on the March 9, 2018 phone call? Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its communications with the Department regarding (a) CCC-status, (b) pre-accreditation, and/or (c) the Institutes. The time frame for this request is February 1, 2018 to the present.

HLC Response #15:

Yes, HLC has consistently been clear to all constituencies that Change of Control candidacy is a pre-accreditation status. See also HLC Responses #1, #4, #7, #8 and #10-12. See also 34 CFR §600.2.

16. Has HLC ever placed any other institution on CCC-status? If so, describe the Board's decision to place such institutions on that status. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such decision and the public notice given therewith.

HLC Response #16:

No, to the best of current HLC employees' knowledge, HLC has never "placed" *any* institution on Change of Control candidacy status, including the Institutes.

HLC did not "place" the Institutes on Change of Control candidacy status. Rather, the Institutes voluntarily and knowingly accepted that status as a condition of HLC approving the Change of Control transaction and automatically triggered the status upon choosing to close the transaction. See HLC Response #1, #2, and #4.

In one previous case very similar to the one currently under review, the parties to a transaction, though initially willing to accept Change of Control candidacy as a condition of approval, ultimately found themselves unwilling and abandoned their plans to consummate the transaction. The relevant institution remains accredited by HLC to date.

17. INST.E.50.010 states that "Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal." However, INST.E.50.010 fails to provide details on whether candidacy status is the equivalent to preaccredited status or should be considered a loss of accreditation. Describe why INST.E.50.010 does not address the issue and provide the agency's definition of "candidacy status."

HLC Response #17:

HLC Policy INST.E.50.010, Accredited to Candidate Status does not elaborate on this aspect of candidacy because the policy cross-references other related policies in a footer titled Related Policies. In turn, the cross-referenced HLC Policy INST B.20.020, Candidacy is clear that candidacy is a status that precedes accredited status (see HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#); HLC Policy INST.B.20.020, Candidacy—current version/last revised November 2012 at [HLC-OPE 15229-15235](#)). See also HLC Response #7.

18. INST.B.20.040 provides that "An institution shall apply for Commission approval of a proposed Change of Control, Structure or Organization transaction through processes outlined in this policy and must demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that approval of the proposed Change of Control, Structure or Organization is in the best interest of the Commission." Please describe how HLC defines "best interest of the Commission." Please also describe how HLC ensures that this "best interest" standard does not result in arbitrary and capricious decision-making.

HLC Response #18:

HLC holistically considers "the best interest of the Commission." The best interest of HLC, first and foremost, is to consistently take actions that align with the Commission's almost 125-year history of "serving the common good by assuring and advancing the quality of higher education." In the context of Change of Control, Structure or Organization, HLC's decision to extend its accreditation to an institution after any proposed change governed by HLC policy represents the agency's affirmation that the resulting institution, exhibits sufficient indicia of quality justifying HLC's trusted imprimatur. Indeed, when need be, such endorsement is qualified in some way, whether by public sanction or otherwise. Particularly given the prospective nature of any Change of Control review, HLC's scrutiny is necessarily enhanced (see HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)).

The best interests of the Commission align with HLC's deep commitment to serving members of the public—chief among them, students—who invest in pursuing whatever academic goals matter most to them at quality institutions of higher education. HLC's Mark of Affiliation represents a significant institutional achievement. It is necessarily enhanced by the success of its institutions, but also challenged by institutions that fall short. Thus, it serves HLC's best interests to be of assistance to students and the public through rigor and transparency when for any number of reasons (including, for example, poor governance, insufficient resources, poor outcomes or lack of fundamental integrity) students may be exposed to a significant risk of harm at an institution bearing HLC's imprimatur.

Additionally, given that HLC's status as a federally recognized accreditor makes it a gatekeeper for Title IV funds, HLC takes seriously its obligation in that capacity to serve the public and most significantly, taxpayers, by preventing fraud, waste and abuse of taxpayer monies.

Finally, HLC prevents arbitrary and capricious actions, and ensures due process as required by 34 CFR §602.25, through a variety of means. These include, for example:

- Pursuing its evaluation and decision-making activities with utmost integrity;
- Ensuring robust training and professional development of its peer corps, staff and decision-making bodies;
- Adhering rigorously to the mechanisms of due process, including checks and balances through *de novo* review;
- Protecting against conflicts of interest and undue influence;
- Cultivating transparency with its member institutions concerning the rationales and underpinnings for its decisions and the steps needed to remedy concerns; and
- Adhering, in all respects, to the ideal of quality improvement for itself and its voluntary member institutions.

19. Please provide the results of HLC's review of the concerns raised by the Department in the October 31, 2018 letter from Diane Jones and include any policy or procedural changes made in response to the results of the review. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) Exhibit 1 or (b) Diane Jones. The time frame for this request is March 1, 2018 to the present.

HLC Response #19:

Events of October-November 2018

On October 29, 2018, Jones reached out to Gellman-Danley numerous times by phone. Building on the conversations from June and July 2018 (see also HLC Response #10-12), once Jones was able to connect with Gellman-Danley, she informed Gellman-Danley that she had identified a way for the Board to retroactively reinstate the Institutes' accredited status. Much like she had mentioned in July 2018, she stated that she would be sending HLC a letter indicating that such a decision by HLC would not be problematic to the Department. Gellman-Danley indicated that while HLC's own policies did

not currently allow for retroactive accreditation, the Board would certainly review anything provided by the Department in anticipation of its meeting later that week on November 1-2, 2018.

At 4:56pm Central time on October 31, 2018, HLC received the letter in question (see October 31, 2018 Gellman-Danley, Jones Emails at [HLC-OPE 15361-15362](#); October 31, 2018 Jones to Gellman-Danley at [HLC-OPE 15163-15167](#)).

As an initial matter, HLC was puzzled that none of the critiques raised by Jones in her letter of October 31, 2018 had been previously raised in March 2018, June-July 2018, or during any other previous conversations between HLC and the Department. Specifically, at no point prior had Jones or anyone else at the Department raised concerns about the legitimacy of Change of Control candidacy generally, HLC's alleged failure to provide the Institutes' appropriate due process, or HLC's alleged responsibility for the Institutes' eligibility for Title IV funds as a result of their choice to accept candidacy status. See also HLC Response #10-12.

Among other things, HLC had participated in two successful recognition processes with the Department, subsequent to the Board's 2009 adoption of Change of Control candidacy, in which Change of Control candidacy featured clearly as one of the Board's decision-making options under HLC policy. This acceptance of HLC policy through the recognition process clearly signifies that the simple concept of Change of Control candidacy was not problematic *per se* under the current regulations.

Moreover, new language in the federal regulations recently published on November 1, 2019 would entirely prohibit Change of Control candidacy (see 34 CFR §602.23(f)(iv), effective July 1, 2020). Logically, this change would not be needed if such an action was already clearly prohibited under previous regulations.

Additionally, given the receipt of the letter on the night before the meeting at which the Board was scheduled to take further action regarding the Institutes, the timing of the letter failed to supply HLC with sufficient and meaningful advance notice to consider any Department position that was contrary to established HLC policy. To the extent that the Department, separately, was bound to adhere to federal regulations related to the issuance of Title IV, these limitations were not relevant to HLC.

Following HLC's receipt of the letter, Jones spoke with Sweeney and Gellman-Danley by phone after close of business on October 31, 2018. Gellman-Danley commented that the letter was very different from what Jones had indicated the Department would provide in the phone conversation on October 29. Gellman-Danley expressed deep concerns that the letter was both inaccurate and highly inappropriate in terms of timing. Jones said that the letter was certainly full of language that lawyers would use. She told Sweeney and Gellman-Danley that no one else, other than herself and "the lawyers" had seen the letter, and that it would be retracted. Neither Sweeney nor Gellman-Danley had requested that the letter be retracted. Sweeney asserted that as a matter of ethical obligations to the Board, the letter would certainly need to be shared and Gellman-Danley informed Jones that in fact the letter had already been shared with the Board (see October 31, 2018 Noack to Board at [HLC-OPE 15363](#)).

On that same phone call, Jones also indicated another option that the Board could potentially consider regarding the Institutes. Jones suggested that perhaps the Board could rescind its November 2017 action entirely, and place the Institutes on a sanction or issue a Show-Cause Order. She reminded

Sweeney and Gellman-Danley (who were already aware) that the Middle States Commission on Higher Education (MSCHE) had issued a Show-Cause order to one of the DCEH institutions that it accredited. Sweeney and Gellman-Danley did not specifically respond to Jones, but instead simply reiterated that the Board would evaluate each Institute based on the evidence available and in accordance with HLC policies.

In a second telephone call much later in the night on October 31, 2018, Jones then informed Gellman-Danley (Sweeney was not on the call) that the Department could not retract the letter (again, neither Sweeney nor Gellman-Danley had requested a retraction), but Jones specifically indicated that the only thing that HLC needed to do in response to the letter was inform the Department via a brief response that HLC intended to review its policies (see October 31, 2018 Gellman-Danley, Jones Emails at [HLC-OPE 15361-15362](#)).

HLC promptly sent the requested response on November 7, 2018 (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)). Within an hour of receiving the response, Jones replied "Thanks, Barbara!" (see November 7, 2018 Gellman-Danley, Jones (and Emails) at [HLC-OPE 15364-15365](#)). HLC understood Jones's response to mean that the response HLC had provided was acceptable to the Department.

Lack of Further Interactions Regarding the October 31 Letter or Policy Concerns

Following November 7, 2018, HLC did not hear anything further from the Department indicating that its timely response was somehow deficient, or that a further response to the October 31, 2018 letter was requested, until receiving the October 24 Letter.

Indeed, in November-December 2018 and then again in March 2019, Jones was in regular communication with HLC, and other accreditors, regarding next steps for various DCEH-owned institutions. For example, Jones reached out to HLC to discuss the possibility of an HLC institution that might want to "take over" a DCEH institution that was not accredited by HLC. HLC indicated that its usual policies and procedures, which would need to be initiated by the HLC institution itself, would need to be followed (see November 30, 2018 Gellman-Danley, Jones, et al. Emails at [HLC-OPE 15418-15429](#)). At no point during these conversations were the matters in the October 31, 2018 letter discussed.

Yet, in May 2019, Jones indicated in a letter to Senator Durbin that the Department intended to initiate a review into HLC's policies, but did not mention the existence of the October 31, 2018 letter to HLC and Jones' acceptance of HLC's initial response to it (see May 9, 2019 Jones to Durbin at [HLC-OPE 15366-15368](#)).

HLC's Policy Review Efforts

That said, HLC takes seriously its responsibility to continuously scrutinize its policies and procedures (see HLC Policy PPAR.A.10.030, Program for Review of Institutional Accreditation Policies—current version/last revised November 2012 at [HLC-OPE 15277](#)). As such, as part of this ongoing process, and additionally in light of the October 31, 2018 letter from the Department, HLC took the opportunity over the past year to carefully review its policies related to Change of Control generally, and Change of Control candidacy status more specifically.

HLC policy provides that the Board may modify HLC policies through a two-meeting process that involves the opportunity for member comment between the two meetings (see HLC Policy PPAR.A.10.040, Revision of Accreditation Policy—current version/last revised November 2012 at [HLC-OPE15278](#)).

At its most recent Board meeting in November 2019, the Board adopted several policy changes on "second reading" related to candidacy and Change of Control candidacy. Specifically, (1) the Board voted to entirely eliminate the option of Change of Control candidacy from HLC policy; and (2) the Board revised the Change of Control evaluative framework, among other things, to emphasize that the factors listed are "key factors," not an exhaustive list of factors to be considered (see November 2019 Board Resolution with adopted changes at [HLC-OPE_15413-15417](#)). Corresponding conforming changes are also being made to other HLC policies to eliminate any references to Change of Control candidacy. The Board's determinations regarding policy revisions were made based on its own independent analysis and in accordance with its customary practices, not because of the October 31, 2018 letter or the reasons articulated therein.

These changes to HLC policy will also be consistent with the newly adopted regulations (see 34 CFR §602.23(f)(iv), effective July 1, 2020).

20. During the time period of the proposed change of control, or any time through January 20, 2018, did HLC discover any evidence that degree requirements, course requirements, syllabi, faculty locations of educational offerings, or other academically relevant conditions had changed at the institutions to such an extent that the Institutions accreditation would be jeopardized? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such change. The time frame for this request is July 1, 2016 to the present.

HLC Response #20:

During its review of the proposed transaction, HLC identified myriad evidence that, based on its Criteria for Accreditation and other HLC requirements, would impact the Institutes' accreditation post-transaction.

As an institutional accreditor, HLC is responsible for assuring the quality of the institution as a whole and therefore conducts its evaluations, in accordance with established policies and the Criteria for Accreditation, by reviewing all aspects of its member institutions, recognizing their impact on the academic enterprise (see HLC Policy CRRT.B.10.010, Criteria for Accreditation—current version/last revised June 2014 at [HLC-OPE15221-15228](#)).

A historical review of ILIA and AIC as member institutions reveals that each Institute had at some point previously been placed on the sanction of Notice. AIC was on Notice from June 2013 to February 2015. ILIA was on Notice from November 2015 to November 2017. At the time that AIC was placed on Notice, Notice indicated that an institution was "pursuing a course of action that if continued would cause it to be out of compliance" with HLC requirements (see HLC Policy INST.E.10.010, Notice—version effective in June 2013 at [HLC-OPE 15245-15246](#)). At the time that ILIA was placed on Notice, Notice indicated that an institution is "at risk of being out of compliance"

with HLC requirements (see HLC Policy INST.E.10.010, Notice—version effective in November 2015 at [HLC-OPE 15247-15249](#)). Each Institute worked to address the concerns articulated by the Board and had succeeded in having its sanction removed.

While a history that includes a sanction is certainly taken into account as a concerning part of an institution's overall record with HLC, neither ILIA's nor AIC's sanction ultimately presented a barrier to the Board's consideration of the Change of Control transaction in November 2017 (see HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)). ILIA's record was before the Board as a separate matter bearing a recommendation to remove the sanction of Notice based on evidence and evaluation that supported that recommendation. After thoroughly reviewing the record *de novo*, the Board removed the sanction (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)).

That said, unlike sanction reviews that assess the extent of an institution's current compliance with the Criteria for Accreditation, Change of Control reviews are prospective in nature and seek to make a reasonable prediction about an institution's future compliance.

The Summary Report generated as a result of HLC's Change of Control Fact Finding Visit identified uncertainty related to ongoing compliance based on significant challenges anticipated if the transaction was consummated. The Summary Report raised questions related to the Institutes' post-transaction compliance with HLC's Eligibility Requirements due to underlying questions concerning governance, mission, educational programs, information to the public, finances, administration, policies and procedures. The Summary Report also anticipated that four Eligibility Requirements in particular would not be met, related to stability, planning, integrity of operations and accreditation record. While acknowledging that many of these issues might be remedied through and after the transaction, the Summary Report indicated HLC would need to "monitor the situation carefully to be sure they are remedied" (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), pages 37-38).

In addition, HLC anticipated that after the transaction the Institutes would meet the Criteria for Accreditation, but with concerns related to several Core Components related to demonstrating a commitment to the public good; operating with integrity in their financial, academic, personnel and auxiliary functions; presenting themselves clearly and completely to students and the public; maintaining sufficiently autonomous governing boards; demonstrating responsibility for the quality of educational programs; having sufficient resources; and engaging in systematic and integrated planning. Specifically related to academic programs, the Summary Report highlighted several concerns related to Criterion Four, Core Component 4.A, ("the institution demonstrates responsibility for the quality of its educational programs") (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), pages 27-29).

While these concerns did not warrant the Board declining to approve the proposed transaction, they were significant enough to qualify the Board's approval of the transaction in November 2017.

21. In HLC's letter of November 16, 2018, to the Institutes, HLC found full compliance but did not make a final accreditation decision due to "procedural error." What was/were the/those error/errors? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all

records in HLC's possession or control regarding or referencing HLC's actions memorialized in Exhibit 3. The time frame for this request is July 1, 2017 to the present.

HLC Response #21:

HLC did not issue a letter to the Institutes on November 16, 2018. HLC issued a joint letter to the Institutes on November 16, 2017 regarding Change of Control (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)) and a letter to ILIA regarding removal of the sanction of Notice (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)). HLC did not reference any procedural error in those letters.

HLC issued letters to each Institute on November 7, 2018 (see November 7, 2018 AIC Action Letter at HLC-OPE 15172-15179; November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#)). HLC did not reference any procedural error in those letters.

Finally, HLC issued a letter to each Institute on November 28, 2018 (see November 28, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15192-15194](#); November 28, 2018 Gellman-Danley to Ramey at [HLC-OPE 15195-15198](#)) in response to their respective last requests for an appeal. The only reference to a procedural error in those letters is in standard policy language outlining potential grounds for appeal as listed in current HLC policy. The letters would go on to explain why an appeal would not be considered in either case. See also HLC Response #10-12.

Again, HLC appreciates the opportunity to provide this information to the Department. Please do not hesitate to let me know if you have any additional questions.

Sincerely,



Barbara Gellman-Danley
President

CC (via email only): Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education
Elizabeth Daggett, Analyst, U.S. Department of Education

Exhibit 8

Date Transmitted: Feb. 19, 2020

From: Committee on Education and Labor, U.S. House of Representatives

Subject: *Transcribed Interview of: Barbara Gellman-Danley*

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6 EXECUTIVE SESSION

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8 COMMITTEE ON EDUCATION AND LABOR,

9 U. S. HOUSE OF REPRESENTATIVES,

10 WASHINGTON, D. C.

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13

14 INTERVIEW OF: BARBARA GELLMAN-DANLEY

15

16

17

18 Wednesday, February 19, 2020

19

20 Washington, D. C.

21

22

23 The interview in the above matter was held in Room 2175, Rayburn

24 House Office Building, commencing at 9:30 a.m.

1

2 Appearances:

3

4 For the COMMITTEE ON EDUCATION AND LABOR:

5

6 TYLEASE ALLI, CHIEF CLERK

7 RACHEL BEERS, GAO DETAILEE

8 CHRISTIAN HAINES, GENERAL COUNSEL

9 KIA HAMADANCHY, COUNSEL

10 JUSTIN LAM, LEGAL INTERN

11 MAX MOORE, OFFICE AIDE

12 BENJAMIN SINOFF, DIRECTOR OF EDUCATION OVERSIGHT

13 AMY RAAF JONES, MINORITY DIRECTOR OF EDUCATION AND HUMAN SERVICES POLICY

14 ALEX RICCI, MINORITY PROFESSIONAL STAFF MEMBER

15 CHANCE RUSSELL, MINORITY LEGISLATIVE ASSISTANT

16 MANDY SCHAUMBURG, MINORITY CHIEF COUNSEL AND DEPUTY DIRECTOR OF EDUCATION

17 AND HUMAN SERVICES POLICY

18

1 For BARBARA GELLMAN-DANLEY:

2

3 MARY E. KOHART, ESQ.

4 Elliott Greenleaf

5 300 Harvest Drive

6 Blue Bell, PA 19422

7

8

9 For the HIGHER LEARNING COMMISSION:

10

11 MARLA MORGEN, ESQ.

12 230 South LaSalle Street

13 Suite 7-500

14 Chicago, IL 60604

1

2 Mr. Sinoff. So this is a transcribed interview of Dr. Barbara
3 Gellman-Danley conducted by the U.S. House of Representatives Committee
4 on Education and Labor.

5 Did I pronounce your name right?

6 Ms. Gellman-Danley. Yes.

7 Mr. Sinoff. Wonderful.

8 This interview was requested by Chairman Scott as part of the
9 committee's investigation into Dream Center.

10 Can you please state your full name and spell your last name for
11 the record?

12 Ms. Gellman-Danley. Barbara Gellman-Danley, G-e-l-l-m-a-n, hyphen,
13 D-a-n-l-e-y.

14 Mr. Sinoff. Wonderful. My name is Ben Sinoff, majority counsel
15 for the U.S. House of Representatives Committee on Education and Labor.
16 I want to thank you for coming in today for this interview. We
17 appreciate you're willing to speak with us voluntarily.

18 At this time, I will ask the additional staff in the room to
19 introduce themselves.

20 Mr. Hamadanchy. Kia Hamadanchy with the House Education and Labor
21 majority.

22 Ms. Schaumberg. Mandy Schaumberg with the minority, House
23 Education and Labor. I work for Dr. Foxx.

24 Mr. Ricci. Alex Ricci. I'm a professional staff member working
25 for Dr. Foxx in the minority.

1 Mr. Russell. Chance Russell with Dr. Foxx in the minority.

2 Ms. Jones. Amy Jones with Dr. Foxx in the minority.

3 Mr. Haines. Christian Haines with Chairman Scott.

4 Mr. Moore. Max Moore with Chairman Scott.

5 Mr. Lam. Justin Lam with Chairman Scott.

6 Ms. Beers. Rachel Beers with Chairman Scott.

7 Ms. Alli. Tylease Alli, Chief Clerk, Education and Labor
8 Committee.

9 Ms. Morgen. Marla Morgen with the Higher Learning Commission.

10 Ms. Kohart. Mary Kohart. I'm representing the witness.

11 Mr. Sinoff. Thank you.

12 And before we begin, I would like to go over the ground rules for
13 this interview.

14 The way this interview will proceed is as follows: The majority
15 and minority staffs will alternate asking you questions, 1 hour per side
16 per round, with the exception of the second round, which we have
17 negotiated that it will be cut off after 45 minutes per side per round.

18 The majority staff will begin and proceed for an hour. The
19 minority staff will then have an hour to ask questions. We'll alternate
20 back and forth in this manner until we are finished.

21 During the interview, we will do our best to limit the number of
22 people who are directing questions at you during any given hour. That
23 said, from time to time, following up or clarifying questions may be
24 useful, and if that's the case, you might hear from additional people
25 around the table.

1 You're allowed to have an attorney present to advise you. Do you
2 have an attorney representing you in a personal capacity present with you
3 today?

4 Ms. Gellman-Danley. Yes.

5 Mr. Sinoff. Would counsel for witness please identify --

6 Ms. Kohart. Mary Kohart, K-o-h-a-r-t.

7 Ms. Morgen. Marla Morgen, M-o-r-g-e-n.

8 Mr. Sinoff. There is a stenographer taking down everything I say
9 and everything you say to make a written record of the interview. For
10 the record to be clear, please wait until I finish each question before
11 you begin your answer, and I will wait until you finish your response
12 before asking you the next question.

13 The stenographer cannot record nonverbal answers such as shaking
14 your head, so it is important that you answer each question with an
15 audible verbal answer. Do you understand?

16 Ms. Gellman-Danley. Yes.

17 Mr. Sinoff. We want you to answer our questions in the most
18 complete and truthful manner possible, so we're going to take our time.
19 If you have any questions or do not understand any of the questions,
20 please let us know. We will be happy to clarify or rephrase questions.
21 Do you understand?

22 Ms. Gellman-Danley. Yes.

23 Mr. Sinoff. If I ask you about conversations or events in the past
24 and you are unable to recall the exact words or details, you should
25 testify to the substance of those conversations or events to the best of

1 your recollection.

2 If you recall only a part of a conversation or event, you should
3 give us your best recollection of those events or parts of conversations
4 that you do recall.

5 Do you understand?

6 Ms. Gellman-Danley. Yes.

7 Mr. Sinoff. If you need to take a break, please let us know.

8 We're happy to accommodate you.

9 Ordinarily, we take a 5-minute break at the end of the first hour
10 of each round of questioning and a 10-minute break after each full round,
11 but if you need a break before that, just let us know.

12 However, to the extent there is a pending question, I would just
13 ask that you finish answering the question before you take a break. Do
14 you understand?

15 Ms. Gellman-Danley. Yes.

16 Mr. Sinoff. One final thing. Although you are here voluntarily
17 and we will not swear you in, you are required by law to answer questions
18 from Congress truthfully.

19 Pursuant to Title 18 of the U.S. Code, section 1001, it is unlawful
20 to knowingly and willfully falsify any statement, representation,
21 writing, document, or material fact presented to Congress or otherwise
22 conceal or cover up a material fact. This statute also applies to
23 questions posed by congressional staff in an interview.

24 Do you understand?

25 Ms. Gellman-Danley. Yes.

1 A No problem.

2 I spent over 40 years in higher education. I've been a faculty
3 member, a department chair, a vice president, and twice a president of
4 two separate institutions.

5 I served as a State vice chancellor. We call it the State Higher
6 Ed Executive Officers -- location. And I served as a vice chancellor in
7 the State of Oklahoma and in the State of Ohio interspersed within my
8 career.

9 My two presidencies, one was 10 years at a private university. The
10 other one was 5 years at an institution that is both private and, by
11 partnership, runs a public community college.

12 As a result of the State jobs that I had, I have had exposure to
13 all types of institutions. And so, therefore, at the Higher Learning
14 Commission, I bring that experience of all different types of
15 institutions, from not-for-profits to profits, to Tribal colleges, to
16 research universities. I spent a substantial amount of time in both
17 community colleges as well as private universities.

18 As far as other things that may be related, I served 10 years as a
19 peer reviewer for the Higher Learning Commission, never knowing I would
20 end up in this position one day. And I've enjoyed the opportunity, and
21 I'm honored to serve as president of HLC.

22 Q Wonderful. Well, thank you very much for telling us all that.

23 A Uh-huh.

24 Q I'd like to ask you, given your extensive experience with HLC,
25 about some of the policies that are relevant at issue in our Dream Center

1 investigation.

2 So the Department of Education and Dream Center Education Holdings
3 -- I'll refer to them as "Dream Center" throughout this interview -- have
4 voiced concerns about the clarity of HLC's change in control candidacy
5 status. I'd like to get some facts up front on HLC's policy as it
6 existed during the Dream Center and Education Management Corporation
7 transaction.

8 So, during 2017, at the time of the Education Management
9 Corporation to Dream Center transaction, did HLC have an explicit policy
10 on accredited to candidate transition?

11 A Change of control candidacy. There are two times for
12 candidacy. One is in a state of preaccreditation when they are in
13 candidacy; they are not members of the Higher Learning Commission. And
14 then there is calling it candidate for accreditation. There's been
15 aspirational likelihood that they will meet HLC's eligibility, and
16 evidence is in hand to show the potential positive outcome of that, that
17 they're making progress toward where they are headed with candidacy.

18 We had a change of control candidacy policy in place that allowed
19 for when a new organization came into either an ownership or affiliation,
20 acquisition or affiliation, that an institution by virtue of the new
21 leadership would be placed into candidacy.

22 Q And why might you place an institution into candidacy rather
23 than just continue accreditation, broadly speaking?

24 A Well, broadly speaking, it would be an entity that perhaps did
25 not have experience in higher education, an unknown entity, one that was

1 nascent in the world of higher education. And, as a result of that, in
2 our right and ability and purpose to protect quality assurance, we would
3 give an institution that opportunity to start in a preaccreditation
4 candidacy stage to prove that they are eligible to move on to the next
5 step.

6 Q And when HLC came up with that policy, did they envision
7 applying it to institutions that mainly held the same staff but changed
8 general -- I should say, the controlling officers changed?

9 A I was not there when the policy was first written.

10 Q Fair enough.

11 Did the Department ever review this HLC policy prior to November
12 2017?

13 A Well, as part of our normal recognition process, this policy
14 was put in place in 2009, and we subsequently had a couple of times in
15 front of NACIQI and the Department where all our policies were available
16 for review.

17 Q Including this policy?

18 A Absolutely.

19 Q And was there any way in particular that the NACIQI and the
20 Department reviews might have viewed this policy?

21 A I was never and my predecessors, to my knowledge, were never
22 questioned about this policy.

23 Q Between November 2017 and March 2019, HLC had a glossary of
24 terms.

25 A Uh-huh.

1 Q How did HLC's glossary define "candidacy" status?

2 A "Preaccreditation" --

3 Ms. Morgen. Can you direct her to the exhibit, please?

4 Mr. Sinoff. I'd be happy to. Exhibit 15.

5 Ms. Morgen. Thank you.

6 Ms. Gellman-Danley. "Preaccreditation status offering affiliation,
7 not membership, with HLC.

8 "Candidate for Accreditation -- An institution with the
9 preaccredited candidacy status that has met HLC's Eligibility
10 Requirements and shows evidence that it is making progress toward meeting
11 all the Criteria for Accreditation."

12 Do you need me to go through the whole list?

13 Q No, no, no.

14 A Okay.

15 Q That is fine. Thank you.

16 In your opinion, do you believe that candidacy status is an
17 accredited status?

18 A It is preaccredited. No, it's not an accredited status.

19 Q And is preaccredited an accredited status under the
20 Department's regulations?

21 I'd be happy to point you to the regulations that are in
22 exhibit 16.

23 In your professional opinion, is preaccredited an accredited
24 status?

25 A I'd like to look at the language specifically.

1 Q Certainly.

2 Ms. Kohart. Yeah.

3 Ms. Gellman-Danley. Would any of you be able to point me to this
4 language?

5 Ms. Kohart. Yes.

6 And, of course, the witness is not an attorney. I'm sure you all
7 recognize that.

8 Ms. Gellman-Danley. I am outnumbered by attorneys.

9 Ms. Kohart. Could you tell me what provision you're looking at
10 here, Mr. Sinoff, just so we don't have to -- this is not alphabetical.

11 Mr. Sinoff. Sorry. I'm having trouble finding it, myself, right
12 now.

13 Ms. Kohart. I actually think this might not be the correct CF --

14 Mr. Sinoff. Oh. Apologies. Well --

15 Ms. Gellman-Danley. The answer is no.

16 Mr. Sinoff. Okay.

17 Ms. Kohart. This might not be the right CFR.

18 BY MR. SINOFF:

19 Q Well, Under Secretary Jones has testified before Congress on
20 this issue, stating that change in control candidacy status was, quote,
21 "a preaccredited status, and preaccredited is an accredited status," end
22 quote.

23 Do you agree with the Under Secretary's testimony?

24 A No.

25 Q Why did HLC approve Dream Center's purchase of these campuses

1 on the condition that they accept change of control candidacy status?

2 A I'm glad to answer that question.

3 The Dream Center itself has an admirable focus and goals. It's
4 faith-based. They are known for -- their work, from my understanding, is
5 to help the homeless and make sure that the hungry are fed, et cetera.
6 And it was definitely the belief of the organization, HLC and its board,
7 that that is a very commendable background, but it is no experience at
8 all in higher education.

9 If you take the previous owner, EDMC, and Dream Center, it's
10 important to note something that I've learned from experts, that if you
11 take two potentially weak or unknown organizations and you merge or
12 affiliate or you have an acquisition, that doesn't necessarily mean it
13 will equal a strong organization.

14 So, in the best interests of the students, it was our thought that
15 -- the idea was to find a way for sustainability for these institutions,
16 and we were not confident that that experience was there. We look for
17 evidence, and the background was completely different than things we had
18 seen previously related to higher education, and we felt it was very
19 risky. And yet we wanted to give them that opportunity. We wanted to
20 give the existing institutions an opportunity in this new environment.

21 Secondly, it was our understanding there was a likelihood that
22 several of the same employees would move over to the Dream Center. So we
23 actually felt that we were doing the right thing by giving this new
24 organization, and, therefore, everybody involved, an opportunity to
25 succeed. But we were not confident that we could just give it a pass to

1 move right to a higher level.

2 Q And you indicated that you had some concerns -- or that HLC
3 had some concerns with the staff at EDMC. Can you explain why --

4 A Well, yes.

5 Q -- you might have had that?

6 A There was a history of sanctions or monitoring that our
7 institutions within the organization had experienced. And patterns
8 emerge and trends emerge, and we see this at all of our institutions. If
9 you have a financial sustainability issue or if you have a quality
10 assurance issue, it does not get cured overnight. And so sometimes we're
11 happy to see an improvement, but then an institution may come back.

12 And there was a history of that. And with the possibility that
13 there would be a movement of existing staff, one certainly would be left
14 to wonder how things would change.

15 Q And, to your knowledge, was HLC alone in these concerns, or
16 did other accreditors -- State agencies, attorneys general, relevant
17 actors in the State -- did any of them have concerns about EDMC or the
18 staff that would be transferred over?

19 A There were a lot of concerns, but I speak to HLC.

20 Q Fair enough.

21 Has HLC ever offered change of control candidacy status to another
22 institution as a condition of preacquisition approval?

23 A Yes.

24 Q And, to your knowledge, did that institution inquire about the
25 impact of change in control candidacy status?

1 A Yes.

2 Q Did HLC provide similar notification to that institution?

3 A Yes.

4 Q Did that institution voice concerns about HLC's clarity of
5 communication regarding change in control status?

6 A No.

7 Q And at the time HLC offered change in control candidacy status
8 to that institution, were HLC's written policies defining candidacy
9 status, change of control from accredited candidate, all of the relevant
10 policies in this space, were any of them different?

11 A No.

12 Q Thank you.

13 Now, the Department has stated in questions for the record that,
14 quote, "the Department believed then and continues to believe that these
15 campuses" -- "these campuses" referring to the two Dream Center campuses
16 -- "that these campuses were in an accredited status until their date of
17 closure," end quote, referring to the two Dream Center-owned campuses
18 accredited by HLC.

19 Under Secretary Jones later reiterated this point in congressional
20 testimony.

21 Do you agree with that statement?

22 A No.

23 Q Does the Department have authority to accredit institutions,
24 to your knowledge?

25 A No.

1 Q And do they have authority to overrule Higher Learning
2 Commission's accreditation decisions?

3 Ms. Kohart. Yeah, I just want to caution the witness.

4 Ms. Gellman-Danley. I'd like to think about that.

5 Ms. Kohart. She's not an attorney.

6 Ms. Gellman-Danley. I would prefer not to answer that question.

7 BY MR. SINOFF:

8 Q Fair.

9 I'd like to move on to the topic of retroactive accreditation,
10 which is at the center of the committee's investigation.

11 Who first proposed retroactive accreditation of these institutions
12 to Higher Learning Commission?

13 A Ms. Jones.

14 Q "Ms. Jones," referring to?

15 A Diane Auer Jones.

16 Q Thank you. When did she propose it? And I can point you
17 to --

18 A I would say it was about 7 or 8 months after the transaction
19 had taken place, but let me check that.

20 Q Certainly. I believe exhibit 1, page 22 to 23, might be
21 instructive.

22 A No, I was pretty accurate. It was a certain amount, it was
23 that many months, in June of -- I mean, it was about 6 or 7 months after
24 the actual business of January 20th, after the transaction had closed.

25 Q In your 40 years of higher education experience, did that seem

1 normal to you?

2 A No.

3 Q Was it unusual in any way?

4 A We were surprised -- I was surprised that these issues were
5 raised after a lot of ongoing conversations, that there seemed to be a
6 misinterpretation of our policies. It was rather surprising. I've not
7 experienced that.

8 Q And after Under Secretary Jones proposed retroactive
9 accreditation, did HLC have concerns about the legality of retroactive
10 accreditation under the Department's regulations?

11 Ms. Kohart. And, once again, she's not --

12 Mr. Sinoff. Okay.

13 Ms. Kohart. The term "legality" kind of bothers me.

14 But you can just talk about the propriety from your perspective.

15 BY MR. SINOFF:

16 Q Certainly.

17 A Yes. I would say that it's our responsibility to follow
18 existing policies and compliance issues with the Department. And, in
19 2017, we had all accreditors, I mean every one, had received a letter
20 saying retroactive accreditation cannot be done, and it was very, very
21 specific. It was sent by Herman Bounds. And the accreditors had a lot
22 of discussions about that to assure that they complied. And it was a
23 change from what previously had been in place.

24 And so I was very aware of that, so when it was brought up, yes, it
25 was a surprise to me that something was being suggested as a possibility

1 for some kind of resolution that went against the actual Department
2 directions.

3 Q Do you understand Herman Bounds' memo to be narrowly tailored?

4 A No.

5 Q So do you understand it to apply to retroactive accreditation
6 broadly?

7 A Well, your question is a little confusing to me.

8 Q Sure. I can rephrase it if that would be helpful.

9 A Yes, if you would.

10 Q Do you understand the Bounds memo, the memo you referred to,
11 as prohibiting retroactive accreditation generally or only in specific
12 circumstances?

13 A Across the board.

14 Q Do you believe that your view was shared by all accreditors?

15 A Yes.

16 Q And what's the basis of your belief?

17 A There were accreditors, when it was presented to us, that
18 commented they had just changed their policy to allow for some
19 retroactive accreditation. There were those that were surprised it had
20 come up. And so there were a lot of queries. And we were very clear,
21 and the letter was actually quite clear, this is what you cannot do.

22 Q And when Under Secretary Jones proposed retroactive
23 accreditation, did she do so directly to you?

24 A In a rather casual way, yes, about, "This might be a
25 resolution," and understanding that perhaps these students -- it was a

1 misunderstanding. Certainly it was brought to our attention prior to Ms.
2 Jones, by the actual Dream Center folks, that "we thought that these
3 students were accredited." And very soon after the transaction, they
4 protested, saying, "We didn't know what we did, what we signed," so to
5 say.

6 And so discussions had ensued for a long time, but it did not come
7 up with Diane for several months. And in those discussions, I did
8 comment to her, "You are aware, I imagine, that we got a letter over a
9 year earlier from Herman saying we can't do this."

10 Q And what was her response?

11 A She questioned the credibility of the letter, and she said she
12 was disappointed, and she didn't think it should have been sent.

13 Q Can you elaborate? Did she explain why she didn't think it
14 should've been sent?

15 A Well, I certainly got the impression she didn't think that
16 that reversal of policy or that particular letter was the best way to
17 operate, and she had a different opinion.

18 Q Was this the first you heard about that, about --

19 A It was absolutely the first time I heard about it. We deal
20 regularly with the staff, and we were clear with the direction we'd been
21 given.

22 Q From the staff?

23 A From the career staff, yes.

24 Q And what direction was that?

25 A You cannot do retroactive accreditation past a certain time.

1 You can't.

2 Q Now, leaving aside Department policy, was Under Secretary
3 Jones's retroactive accreditation proposal allowed under HLC policy?

4 A No.

5 Q And HLC's November 13, 2019, letter -- exhibit 1, and I'll be
6 referring to page 22 -- to the Department indicates HLC's belief that, at
7 the time, Ed regulations only allowed an accreditor to, quote, "designate
8 the date of a change in ownership as the effective date of its approval
9 of a substantive change to be included in the institution's accreditation
10 if the substantive change decision is made within 30 days of the change
11 in ownership," end quote.

12 Was the Under Secretary proposing an action allowed under that
13 30-day exception?

14 A I can't be specific. The conversations certainly suggested
15 that there would be a long-range potential to address the frustration.

16 Q Now, if Federal guidance and HLC policy barred HLC from
17 retroactively accrediting these institutions and both HLC and the
18 Department were aware of this prohibition, can you explain how HLC might
19 have taken these -- or Under Secretary Jones recommended HLC might take
20 these prohibited steps with her full knowledge?

21 Ms. Kohart. I'm sorry. Could you -- do you understand that?

22 Ms. Gellman-Danley. I understand it enough, I believe, to answer.
23 And if I'm not answering --

24 Mr. Sinoff. Certainly. I can rephrase it.

25 Ms. Gellman-Danley. -- the question, please let me know.

1 These were brainstorming kind of conversations. They came up a
2 lot, about retroactive accreditation. We were very aware that we were
3 not allowed to do it. And I was very clear that the final
4 decision-makers at the Higher Learning Commission are the Board of
5 Trustees. They hold the fiduciary responsibility, and they are our
6 decision-makers. Therefore, regardless of the conversations, our policy
7 would not allow it.

8 However, I did point to Herman's email, and I said, "This is not
9 something we can do. We cannot do this," followed by her saying, "Well,
10 we can make this work." And that was the preliminary conversation.

11 BY MR. SINOFF:

12 Q So, to clarify a couple of points, when you say "Herman's
13 email," you mean the Bounds memo?

14 A Yes, his -- yeah.

15 Q And you said this came up a lot. What time period did it come
16 up a lot, these brainstorming --

17 A Well, from the first time it was mentioned, there were a lot
18 of conversations about this, sometimes informally, sometimes on phone
19 calls with other Dream Center participants, but mostly with us, because
20 it would've been relevant to the way we responded to the requests for the
21 change of control.

22 Q And in your experience in higher education, in your experience
23 in accreditation, was this type of contact with the Under Secretary
24 common?

25 A No. However, a lot of the interaction was positive. It was a

1 matter of looking forward and seeing what could be done. This particular
2 issue you are discussing, however, posed a dilemma, and it has been a
3 continued dilemma.

4 We have great respect for the career staff. And Anthea Sweeney is
5 very, very much in touch with the career staff. When in doubt, we ask
6 very detailed questions to assure our compliance and, in many ways, to
7 assure our institutions' compliance.

8 And to have somebody at a higher level suggest an alternate path
9 was confusing. And we felt and we continue to feel caught in the middle.

10 Q Did you feel as though anyone at the Department pressured
11 Higher Learning Commission?

12 A I don't want to use a judgmental term.

13 Q Fair enough.

14 Now, during the period in question, between January 20, 2018, and
15 the time that you were discussing retroactive accreditation with the
16 Under Secretary, was the Dream Center in substantial compliance with all
17 of HLC's criteria for accreditation?

18 A No.

19 Q What weren't they in compliance with?

20 A Well, there were several things outlined in our initial
21 letter, and I'd like some help finding that.

22 Ms. Morgen. Sure. If you turn to exhibit 12 -- I'm sorry -- yes,
23 exhibit 12 in that binder.

24 Ms. Gellman-Danley. All right. So we're going to this binder,
25 exhibit 12.

1 Ms. Morgen. Uh-huh.

2 Ms. Gellman-Danley. When we write a letter to an institution -- on
3 November 16th, after the action, we listed several things that would have
4 to be observed in the focused visit.

5 Core Component 1.D, on page 3, addressing the fact that we needed
6 very strong information related to mission and serving the public good.

7 We wanted them to possess effective policies and procedures. And
8 we were concerned about evidence of the parent company continuing to
9 perform voluntarily the obligations of the consent agreement.

10 The institutions needed to demonstrate that the policies and
11 procedures were in compliance.

12 I can go through each of these if you'd like, but --

13 Q No, no. I think that's sufficient.

14 A -- it was extremely important that we took a look at all of
15 that.

16 And we also referenced -- if I could go to page 5.

17 Q Certainly.

18 A We referenced in this letter that they had previous criteria
19 that were met with concerns. And we reiterated what those concerns were,
20 for several reasons, so that in the new organization they would have an
21 opportunity to perhaps remedy those as they were looking to moving
22 forward with us.

23 One in particular I'll call to your attention is to ensure
24 transparency to students.

25 Q And why did you call that to my attention?

1 A Because it's the kind of -- as I go through the list, we felt
2 integrity is a very important issue as we look at a new arrangement like
3 this.

4 Q And during the period in question, did HLC have concerns with
5 Dream Center's compliance with that component?

6 Ms. Kohart. Ben, are you talking about the period in question
7 being January 2018 through December? Are you using the same dates?

8 Mr. Sinoff. Yes. So January 20th, 2018 --

9 Ms. Kohart. Yeah.

10 Mr. Sinoff. -- through the period that you were discussing
11 retroactively.

12 Ms. Gellman-Danley. We had concerns, yes.

13 BY MR. SINOFF:

14 Q And what was the foundation of those concerns?

15 A The notice to the students was inaccurate about the
16 accreditation status.

17 Q And would that have violated HLC's policy on transparency?

18 A Yes. It violates good practice. It's not a specific
19 criterion that would just address that particular behavior, but, yes, it
20 violated a few policies. And we were very concerned that the students
21 were being given misinformation.

22 Q Given misinformation by?

23 A Students were not clear by those at the Dream Center, at The
24 Art Institutes, over which we had authority, that they were not attending
25 an accredited institution.

1 When the letter was written in November and a lot of conversations
2 previous to that, many conversations, and subsequent, it certainly
3 would've been our hope that the Dream Center would've notified those
4 students even prior to enrollment in the first semester after the
5 transaction.

6 Q Okay. Thank you.

7 And so if HLC did retroactively accredit these Dream Center-owned
8 institutions during the relevant period, would you have had any concerns
9 with HLC violating 34 CFR 602.18 -- I'll describe what that is -- which
10 requires federally recognized accrediting agencies, like HLC, to ensure
11 consistent decision-making?

12 Ms. Kohart. I'm a little bit on --

13 BY MR. SINOFF:

14 Q Okay. Then how about I ask, would you have concerns about
15 HLC's consistency in decision-making given what you just described that
16 HLC had concerns about?

17 A In all cases, we are concerned about consistency in
18 decision-making.

19 Q Fair enough.

20 Now, in HLC's November 13, 2019, letter to the Department that's
21 exhibit 1 -- I will direct you to page 22 and 23 -- that letter indicated
22 that, on June 26th, Under Secretary Jones called you with, quote,
23 "different ideas," end quote, regarding retroactive accreditation.

24 Can you elaborate on what you meant by this?

25 A Yes. As we were speaking about the possibility of retroactive

1 accreditation, Under Secretary Jones thought this would be a good
2 opportunity for the students and good for the institution. And we had
3 discussions about the fact that it wasn't possible for us to do that; our
4 board would make the final decision. And I was extremely clear that we
5 can do nothing if we don't get something in writing.

6 Q And, during this period, what was your primary method of
7 communication with Under Secretary Jones?

8 A Well, sometimes we were on phone calls that were group phone
9 calls. Other times there were emails and sometimes one-on-one phone
10 calls. And sometimes we would run into each other at all kinds of
11 meetings.

12 Q And that letter, again, HLC's November 13, 2019, letter,
13 indicates that on June 27th, 2018, Dr. Sweeney emailed Under Secretary
14 Jones, stating, quote, "I understand from President Gellman-Danley that
15 The Art Institutes have reached out to your office seeking support for a
16 confidential proposal which they presented to HLC this week in lieu of
17 proceeding with HLC's established processes," end quote.

18 How did you know that Dream Center had reached out to Under
19 Secretary Jones for her support?

20 A We had a lot of communication with the Dream Center since the
21 transaction, and some of the communication -- and you have these in your
22 binders -- implied that we could negotiate with the Dream Center, which
23 is not the appropriate policy for any accreditor.

24 And in those negotiations, they were written in a proactive way,
25 saying, this is what you should do. And, in effect, with respect to all

1 attorneys in the room, some of the expressions that are used -- "Well,
2 you would agree that." And so they were kind of written in that format.
3 "You would agree that these kinds of things should happen."

4 So I am not the person who dealt with the Dream Center. I was on a
5 few phone calls. But Anthea, in particular, had opportunities to
6 interact with them, or we would get a letter that would say they were
7 interested in looking at all kinds of possibilities. I am not privy to
8 the communications they had with anybody outside our organization.

9 Q And you just indicated that negotiations on matters of
10 accreditation would be inappropriate. Can you explain --

11 A Yes.

12 Q -- more what you mean there?

13 A Yes. There's an opportunity in certain cases for an appeal,
14 but we do not -- when an institution has signed an agreement and moved
15 forward with a particular process, they do not come back after the fact.

16 And I will give a metaphor to that. If you buy a home and you put
17 down 10 percent and you have to pay private mortgage insurance and you
18 sign and you agree to buy the home, you cannot go back to the bank after
19 and say, "I didn't know what I was signing. I don't want to pay private
20 mortgage insurance."

21 And so we found it an odd approach. We had not experienced
22 something like that.

23 Q Had you ever experienced something like that outside of your
24 time at HLC?

25 A No.

1 Q I'd like to dive in a little bit to HLC's more recent
2 communications with the Department, starting off with HLC's November 13,
3 2019, letter that we've been referring to. This is exhibit 1, for anyone
4 who's curious.

5 In that letter, HLC indicated to the Department that on October 29,
6 2018, Under Secretary Jones reached out multiple times to you via phone.
7 Can you describe what transpired on those phone calls?

8 A Yes. On October 29th, which was, I believe, a Monday, I was
9 in D.C. for a meeting, another meeting, separate from this issue. And
10 when I got on the airplane, Under Secretary Jones gave me a call. I
11 noticed there were some messages, and she reached through to me just in
12 time to speak prior to the "take your phone and put it away" moment. And
13 she said, I have found a way to make this easy for you to do retroactive
14 accreditation.

15 And I said, well, it's up to the board, you know. We can't violate
16 policy, and the board makes the final decision. If you have something
17 you want to send me that shows how you will make it easy, that's
18 something I will bring to an appropriate conversation with either staff
19 or the board.

20 That was a very brief conversation on the 29th. The general
21 premise and her terminology was "I have an easy way to make this work."

22 Q Can you describe in the coming days what transpired? What was
23 the easy way? Did you ever find out?

24 A To date, I have not found out the easy way.

25 We did receive a letter on October 31st. And if you want me to

1 walk you through the letter and those events of that day --

2 Q Please do. Yes.

3 A Okay.

4 So, on that date, we had a board meeting. And during that board
5 meeting, we started with a full several hours of what is called the
6 Committee on Strategy meeting also with the Committee on Accreditation.
7 And we were going to discuss something we were very excited about. We
8 had received, to date, a million dollars from the Lumina Foundation for a
9 lot of initiatives. This was from our first grant of a half a million
10 dollars on student success.

11 And I actually had invited the Under Secretary to attend, because
12 she speaks frequently of the importance of student success. So I had
13 invited her well in advance of that meeting. "Diane, would you like to
14 come? I think you might find it fascinating. We've had a lot of experts
15 write papers on this. There are issues related to terms like 'student
16 intent' and how you measure it." And so she had accepted that she was
17 going to attend.

18 She contacted me the day before, and she said she had a really bad
19 cold, she was sick, bronchitis -- I don't remember exactly what she
20 called it -- and she regretted she could not attend. So I was
21 disappointed, I thought it would be a great opportunity for her, but
22 people get sick, and I understand that.

23 After that meeting on strategy, at approximately 6 o'clock, because
24 this is the normal time the Executive Committee meets, I meet privately
25 with the Executive Committee of the board. When I am in any of those

1 meetings, I don't look at my cell phone. When I left the Executive
2 Committee, I noticed Diane had called a few times, and she sent me a
3 note, "Can you give me a call?"

4 I also received a letter. And when I opened up the letter, which
5 had been sent just after close of day here in D.C., I believe, and I
6 looked at the letter, I was shocked. It was not an easy way. It was the
7 first time ever that we had been told we were not following our policy.

8 So there was a lengthy letter sent by Lynn Mahaffie, and it -- is
9 that correct?

10 Ms. Morgen. I think you're talking about on October 31st, 2018.

11 Ms. Gellman-Danley. No, that was sent by Diane. That was sent by
12 -- you're absolutely right -- under Diane's signature, a letter that was
13 several pages that talked about how we had not followed our policy.
14 There was no request for any specific action. It was written differently
15 than most letters that are very specific as to what the follow-up is.
16 And I knew she wanted to talk.

17 So, based on that letter, I asked Anthea Sweeney, our vice
18 president for legal and governmental affairs, to join me for the phone
19 call. It followed by a phone call with Diane about what happened. Would
20 you like me to explain that phone call?

21 BY MR. SINOFF:

22 Q In just a moment. I had a couple of questions --

23 A Okay.

24 Q -- for you on what you just said.

25 So, when you received this October 31, 2018, letter, was the

1 content of the letter consistent with your conversations to date?

2 A No. I want to make sure I say that so you can hear me and not
3 use a nonverbal. It was not. It was totally the first time any of those
4 issues had been raised.

5 Q Had you discussed the surrounding circumstances with Under
6 Secretary Jones or with folks at the Department prior to that letter,
7 though?

8 A No. I'd never had -- everything I already told you was we
9 talked about retroactive accreditation, the rules, what can't be done.
10 And this was the first time there was any insinuation that our policy had
11 not been followed consistently.

12 Q But, sorry, to clarify my earlier question, had HLC, you in
13 your capacity, had conversations with the Department about HLC's
14 application of its policy --

15 A No.

16 Q -- in this instance?

17 A No. We were never asked about that. I mean, no.

18 Q And this letter, you said it was written differently than the
19 standard Department communication. Can you elaborate on that?

20 A The main point was it didn't have any action that,
21 specifically, this is what you need to do by this date. That is the
22 normal process when you get a letter from the Department.

23 Q And have you received such letters in the past?

24 A I have as a college president and at HLC.

25 Q Roughly, would you say, more or less than five have you

1 received from the Department?

2 A Just a couple.

3 Q Just a couple. Okay.

4 A We do see the letters that they send to our institutions as
5 well.

6 Q Okay.

7 A So, if we are copied on those letters, it is always very
8 specific about: This is the concern, here is what you need to do and by
9 this time and in this format.

10 Q Now, in general, then, if the Department has concerns with
11 HLC's policies or an accreditor's policy in general, is it standard that
12 the first you would hear about it would be through such a letter?

13 A It depends, but normally the career staff has a good open
14 communication with their accrediting contacts, and it would be likely
15 that we would hear there are concerns ahead of time. There are occasions
16 where you would just get a letter.

17 Q Now, regarding the phone calls that followed that letter,
18 could you just continue --

19 A Yes.

20 Q -- in your description?

21 A Sure.

22 Anthea and I took the call together, and we spoke with Diane. And
23 I said, "I don't know how to respond to this. This is not what you told
24 me. You said you were going to find an easy way, which, by the way, we
25 don't know that we could follow up on that anyway, because it's up to the

1 board." We also have a long process for policies to be approved. We
2 have a first and second reading with our members, et cetera, which I can
3 elaborate more down the road if you so choose.

4 I said, "I don't get this. I mean, I'm really flabbergasted. What
5 is this letter? We've had all these conversations. You've never
6 mentioned that there was a concern with our policy. We have focused on
7 what should we do for the students, how do we make sure the Dream Center
8 is on target, et cetera."

9 And she said, "I know. That's how lawyers write."

10 And so I said, "Well, I'm uncomfortable with this, and I really
11 don't understand why we got this."

12 And she said, "Well, lawyers write that way."

13 And after a while, I said, "I'm a little uncomfortable, Diane,
14 because this is not a precedent, that the night before a board meeting we
15 would get a call saying you did all this. And then I don't know what
16 you're expecting us to do because there's no action. And as a member of
17 the triad, I feel uncomfortable with this approach."

18 And she said, "No, I understand, I understand. We can retract the
19 letter."

20 Q Did she ever indicate why she felt the need to call you to
21 discuss the letter?

22 A No. But I think she wanted to see my reaction to it. Per the
23 conversation, it wasn't a very difficult thing to deduce that she wanted
24 to talk about it.

25 Q And HLC's November 13, 2019, letter to the Department

1 indicated that you voiced concerns with inaccuracies. I know you just
2 said that you --

3 A No.

4 Q No?

5 A Intent. We didn't understand the intent of the letter.

6 The conversations had been collegial, with suggestions and ideas
7 about what could happen with the Dream Center, discussions about policies
8 that would allow or not allow anything that was being recommended. And
9 this was a scolding that we had done something wrong, and so I had no
10 idea where this was coming from.

11 Q Did you feel that scolding was warranted?

12 A No.

13 Q Did Under Secretary Jones elaborate on what she meant by "full
14 of language that lawyers would use"?

15 A Well, she just implied that -- and she said, you know, she
16 might write a less complex letter, perhaps. But it was her signature.
17 And she said, this is -- you know, obviously, it was clearly implied that
18 she had involved the lawyers at the Department, and this is how they
19 write.

20 When she said she would redact it, she also said, "And the only
21 people who have seen it are the lawyers and" -- or "the lawyer"; I do not
22 remember if it was plural or singular -- "and me and you." So there were
23 supposedly four people who had seen it: Anthea, me, Diane, and a lawyer
24 or lawyers.

25 Q And why do you think that she offered to redact it, or retract

1 it?

2 A I am not -- I don't -- I'm based on evidence. I will not
3 project.

4 I did say, after she mentioned that four people had -- or only a
5 few of us had seen it, that that was not the case because I am always
6 transparent and I had already immediately forwarded it to my Board of
7 Trustees.

8 Q Was there a reaction to that?

9 A No. No reaction.

10 Q Has it been your experience in your 40 years in higher
11 education that the Under Secretary would write a letter, such as the one
12 that they sent you, and offer to retract it the same day?

13 A No.

14 Q Is there anything else that transpired on that call that you
15 can remember?

16 A I just remember it was uncomfortable. It wasn't the typical
17 collegial kind of conversation, that I found myself in a dilemma. I said
18 it was unusual to happen the night before a board meeting. It certainly
19 more than implied that there might be some hope we would do something at
20 the board meeting.

21 And Anthea and I were both uncomfortable with it. So Diane
22 accepted that we were uncomfortable, and she said, "I understand. I'll
23 retract it."

24 Q And --

25 A That was one of two conversations that night.

1 Q Can you describe the second conversation?

2 A Yes.

3 Following that conversation, I met several trustees to catch up on
4 issues outside of the formal meeting. And I got back to my room at
5 10 o'clock central time. And I had seen Diane had reached out many times
6 to talk to me, a few times. I don't remember the exact amount. I did
7 not want to delay calling her back because it was 11 o'clock her time, as
8 I recall. It was late. And I also did not want to wake up Anthea,
9 should she be asleep.

10 And so I called Diane back, and she said, "Well, the letter won't
11 be retracted." That's all she said about it, not any rationale or
12 anything. "But I want you to know that all you have to do is write an
13 acknowledgment you received it and you'll look into your policy -- very
14 brief, couple sentences." And I said, "Okay. Thank you." Brief
15 conversation.

16 Q Did Under Secretary Jones indicate on this call that the
17 letter meant the Department was opening an investigation into HLC?

18 A No. She did not say that. She simply said, all you need to
19 do is write me a brief note saying you acknowledge you got the letter,
20 and that's the end of it. I mean, she did not say anything specifically
21 per your question, "And, by the way, Barbara, we're going to be launching
22 an investigation." There was no such discussion.

23 Q And when she told you this, that you just had to respond,
24 ultimately did you respond?

25 A Yes, about a week later, because we had the board meeting and

1 an immediate follow-up to the board. And we sent back a brief note,
2 which is your records.

3 Ms. Morgen. You can look at exhibit 35 --

4 Ms. Gellman-Danley. Thank you.

5 Ms. Morgen. -- in your binder.

6 BY MR. SINOFF:

7 Q So you did ultimately respond. And can you describe any
8 conversations you had internally at HLC at that time regarding your
9 planned response?

10 A Well, I certainly --

11 Ms. Kohart. If you consulted with attorneys, don't describe those
12 conversations. That's to the extent that Dr. Sweeney's discussions with
13 you were in a legal capacity.

14 Ms. Gellman-Danley. I won't be speaking of that.

15 Ms. Kohart. Okay.

16 Ms. Gellman-Danley. I can only say that I did follow up with the
17 board and explained the events from the previous evening. I had sent
18 them the letter, so I wanted them to know that, while it was proposed to
19 be retracted -- because they didn't know that -- it wasn't going to be
20 retracted; however, we were only asked to do a brief response. And so I
21 spoke about that briefly with the board to keep them informed.

22 BY MR. SINOFF:

23 Q Now, moving on to about a year later, regarding the
24 Department's October 24, 2019, letter, what was your reaction when HLC
25 received that letter?

1 A Well, I guess it was shock sequel number two, because we had
2 not had a single conversation or mention of this policy between the two
3 letters. And almost exactly to a year, and once again close to a board
4 meeting, we got this letter, a second letter.

5 Q So, to be clear, HLC did not communicate with the Department
6 at all regarding this matter in the intervening, roughly, year?

7 A We were not asked to communicate about that, and it was never
8 brought up again.

9 Q In HLC's November 13, 2019, letter to the Department,
10 exhibit 1, it stated that on November 1st, about a week after the
11 Department's 2014 letter -- or, I'm sorry, the Department's October 24th,
12 2019, letter, Herman Bounds informed HLC the Department's October 24,
13 2019, letter would be made public in the Federal Register.

14 Were you made aware of that?

15 A Yes. He called us and he said, "I just want to give you a
16 heads-up," and he told us that.

17 Q And what was your reaction to that?

18 A I was surprised, because that's not common practice. And we
19 asked him on the phone call, is this common practice, and he very
20 courteously said no. And so I was surprised that we hadn't even had a
21 chance to respond to the letter or think through the letter and all of a
22 sudden it was going to be publicly posted.

23 Q Did Mr. Bounds indicate why the Department might publish this
24 letter?

25 A No. And we did not talk about any intent. We would not ever

1 put him in that situation. He gave us a fact; we responded with a "thank
2 you" and a couple questions before then.

3 Q Did the Department ever publish this letter?

4 A No.

5 Q Do you have any sense of why or why not?

6 A No.

7 Q Did you have any further communications with the Department
8 regarding the publication of this letter?

9 A Not until we wrote our response to the letter. We did say
10 that, should you find a situation where you're going to publish it, then
11 we would request that you also publish our response.

12 Q Who did you tell that to?

13 A It was in the letter. It was in our response --

14 Q I see.

15 A -- to that letter.

16 Q Now, I asked you this about the October 31st, 2018, letter, so
17 I'll ask you about this: In your 40 years of higher education
18 experience, if the Department had concerns with how HLC handled the
19 actions at issue, was this consistent with how the Department would
20 normally handle those concerns?

21 A Well, I cannot speak to anything prior to my time at HLC, but
22 across the course of my career, normally this is between the Department
23 and either the institution, a college or university, or between the
24 Department and the accreditor, and it's not posted publicly.

25 Q Now, recently, the Department sent a letter on January 31st,

1 2020, following up to HLC's November 13th, 2019, response. Can you at a
2 very high level summarize what your reading of that letter is?

3 A I would prefer not to. It's privileged.

4 Ms. Kohart. I was just going to say, there are so many lawyers all
5 over this that I think it's going to be impossible for the witness to
6 respond without disclosing privileged information.

7 Ms. Gellman-Danley. And we haven't even given our response to the
8 Department yet.

9 BY MR. SINOFF:

10 Q You plan to respond to the Department?

11 A Yes.

12 Q Now, can you tell me what your understanding of the
13 Department's main concern or concerns with HLC was?

14 Ms. Kohart. Once again, I'm sorry, Ben. It's just, this is sort
15 of --

16 Mr. Sinoff. Understood.

17 Ms. Kohart. Yeah.

18 BY MR. SINOFF:

19 Q Then I will ask, I understand from Dr. Sweeney's testimony
20 yesterday that leading up to the closures of the schools, these two
21 schools at issue as well as some of the other schools owned and operated
22 by Dream Center Education Holdings, the Department convened all
23 accreditors accrediting those institutions or with relationships to those
24 institutions on calls. Can you describe what occurred on those calls?

25 A Yes.

1 We were on the calls in the beginning. The idea was to discuss the
2 current state, and the big focus was to tease out what's the next thing
3 we can do with these institutions to give their students an opportunity
4 to transfer.

5 We were on the calls for several of the first, but we found that
6 they were not necessarily talking about our institutions, and sometimes
7 they had to be cancelled, or we'd be on the call and Diane didn't get
8 there until late. And we just felt that the opportunity cost was high,
9 that we were very respectful of the calls and when they were substantive
10 and appropriate to our institutions we would engage, but many of these
11 things were different from our institutions, and we needed to spend our
12 time working directly on this and other issues.

1 [10:29 a.m.]

2 BY MR. SINOFF:

3 Q Did the Department provide the accreditors and HLC with
4 information on these calls?

5 A Well, sure. They would talk about any interactions they had
6 with the Dream Center, and they would talk about, you know, different
7 things going on at different places, because they were very different,
8 and the implications of initially there might be all these transfers to
9 the Pittsburgh Institute, but it was on show cause, and so we would
10 change the course. So those were the kind of conversations that were
11 held.

12 Q Did the Department obtain information from accreditors on
13 these calls?

14 A People spoke openly about the circumstances.

15 Q And, generally speaking, did the Department -- or did Higher
16 Learning Commission and the accreditors expect the Department to share
17 that information directly with Dream Center?

18 A I can't really say that. I can tell you that we made it clear
19 early on in one of the first calls that we have -- it had come to our
20 attention that our institutes were being given the wrong information
21 about their accreditation status. And we certainly expected our
22 institutions to follow up, but it's not my place to say what Diane's
23 follow-up would be, unless she specifically said there was something she
24 was going to do, and in those particular early calls, that was not the
25 case.

1 Q Could you briefly review the final exhibit in your binder?

2 A The one that says end or the one before it?

3 Ms. Kohart. The one before it.

4 BY MR. SINOFF:

5 Q The one, the email from Under Secretary Jones to John Huston
6 dated --

7 Ms. Kohart. Is this the one from the --

8 Mr. Sinoff. No, I'm sorry, that is not the correct one.

9 BY MR. SINOFF:

10 Q It is dated Thursday, April 18th. There, you can have my
11 copy. You don't need to review that first page, just the subsequent two
12 pages.

13 A Yes, I mean, in general, I believe this followed up on the
14 information that was provided by many of us.

15 Q And are you comfortable with that information being shared
16 with the Dream Center?

17 A I'd have to read this in detail to respond to that.

18 Q That's okay.

19 A I'll read the first sentence of each. For example, where it
20 said, accreditors need a complete list of campus leaders, I actually
21 think I said, we don't know who's in charge anymore, because the
22 presidents were turning over quickly at our two institutes, and we didn't
23 know who to contact. And the folks who had been previously holding those
24 positions mentioned that there was pretty much a shell left at the
25 institution, and we just didn't know who to contact. So that one, yes.

1 You're asking, do I think it's normal course of business --

2 Q Yes.

3 A -- to have these kind of conversations? I don't think I
4 should pass judgment on that.

5 Q Okay, that's fair.

6 The time is almost up, so I'll ask you sort of about one more
7 issue. Dr. Sweeney indicated that the Department conducted reviews of
8 Dream Center's teach-out plans across all institutions prior to Dream
9 Center's submission to accreditors. Did you -- are you aware of those
10 reviews?

11 A Not individually. I mean, I knew that Anthea said those
12 things were going to happen, but we tend to deal with our teach-out plans
13 with us, between the institutions and us. So no, I can't really speak to
14 that.

15 Q Okay. When the institutions submitted their teach-out plans,
16 HLC's institutions, did you find those initial submissions as effective
17 teach-out plans?

18 A In places, they were vacuous. We weren't sure that it was
19 going to happen. In particular, a discussion came up, which we can talk
20 about now or in the future, about an institution in Ohio that might take
21 all the students. That was an important conversation.

22 But we look directly to what we receive from the institutions, and
23 we're always a little reticent to just say, that's okay. So sometimes
24 we'll check with the receiving institution and to see if they actually
25 are going to do it. Sometimes it's aspirational, and it will be

1 submitted to us that this is going to happen, and then we determine it's
2 actually just a hope it will happen.

3 And so I do not deal directly with that. I'm certain that
4 appropriate staff at HLC followed up, and I don't think we were in a
5 position to say, we're totally comfortable. That's not uncommon, though.

6 Mr. Sinoff. All right. I'll stop my questioning to ensure that we
7 don't run over time. Off the record.

8 [Discussion off the record.]

9 Ms. Schaumburg. Thank you for coming again today. My colleague
10 covered a lot of this stuff. And, again, it started this way yesterday,
11 it's going to start again today. We're going to ask you some duplicative
12 questions. It's just the nature of the fact that we've both been
13 preparing for these interviews and some of the ground to be covered will
14 be the same.

15 Just to go over who I have with me today on our team, I'm Mandy
16 Schaumburg. This is Alex Ricci, he is the lead higher ed staffer; Amy
17 Jones, the director of education policy; and Chance Russell, who is a
18 legislative assistant for the education team.

19 I'm going to ask a lot of the questions today, but Alex will ask
20 some as well. You might see us pass some notes back and forth or talk.
21 It's just the nature of the job. It's not anything. Please don't let it
22 distract you. But, very importantly, if something doesn't make sense or
23 you're confused by anything, please do not hesitate to ask us to repeat
24 or clarify. Does that all make sense?

25 Ms. Gellman-Danley. Yes.

1 Ms. Schaumburg. Okay. And, with that, I'm going to turn it over
2 to Alex to start us off.

3 EXAMINATION

4 BY MR. RICCI:

5 Q Thanks so much for being here. We really appreciate you
6 burning a whole day to sit and talk with us. We know it takes a lot of
7 your time and we appreciate you spending it with us.

8 A lot of my questions are framing questions, just trying to get a
9 better understanding about your job, how the president interacts within
10 the larger HLC framework. So, to that end, the only official higher
11 capacity you've worked at in HLC is as president, correct?

12 A I don't know that we would call it higher. They are both
13 CEOs.

14 Q Okay. Understood.

15 A But it's a different job.

16 Q And you said earlier today that you did serve for 10 years as
17 a volunteer peer reviewer --

18 A Yes.

19 Q -- with HLC. What years did you do that?

20 A Let's see. I went --

21 Q Approximately.

22 A Well, I'm going to have to think about that, so let me pause
23 for a moment and think. Approximately, the late nineties or around 2007
24 or '08.

25 Q Thank you. In your job as president of the Commission, HLC,

1 what are some of your official capacities in the job description, so to
2 speak?

3 A Well, I report directly to a 19-member board of trustees. I
4 am responsible for all hiring and firing of personnel. I have the right,
5 by policy, to sometimes call for a focused visit, or a recommendation to
6 the board that is more immediate, because of something going on with an
7 institution.

8 I am the external face for HLC. I've met several legislative staff
9 over the course of my time there. I officially am responsible for the
10 budget and all those kinds of things that would come with a CEO's
11 position. I am tasked with certain things by the board, such as
12 strategic planning that I'm responsible for. I'm the CEO. So I don't
13 know that that gives you a complete answer, but I'm sure you can drill
14 down if you want to.

15 Q No, that's helpful for our understanding. This relationship
16 between the board of trustees and your job as president is one that we'd
17 like to explore just a little bit.

18 A Okay.

19 Q You mentioned that there are circumstances where the board
20 might receive recommendation from you or where you have certain immediate
21 discretion to highlight things. Can you elaborate on what those specific
22 events are where you would offer a recommendation to the board, or call
23 for some sort of --

24 A If we have done a focused visit and there is -- it's the kind
25 of thing that the peer reviewers don't make a recommendation, they just

1 say, this is what we found on a focused visit or a monitoring kind of
2 situation, I can bring it to the board and say, this is a rather strong,
3 problematic situation, you can't consider this for probation.

4 But I don't make the final decision. I have 19 bosses. And so,
5 those are the kinds of things that I can bring to the board.

6 Q And you can never overrule the board's decision?

7 A No, I don't. No. I have 19 bosses. They don't have one
8 boss. And I think it's important for me to share that I'm kind of a
9 governance junkie. I don't know if you're familiar with an organization
10 called the Association of Governing Boards, but when I was a college
11 president, I served on the Council of Presidents.

12 I'm well aware the board has a responsibility, the duties of care,
13 loyalty, and obedience; and that obedience is not to me, it's to the
14 mission of the organization.

15 Q How often has the board taken one of your recommendations and
16 disagreed with it?

17 A I wouldn't say -- I don't want you to misinterpret
18 recommendations. When I bring a strategic plan to them, everybody's
19 involved throughout the entire process. So my recommendation is
20 something for them to consider.

21 And as with all recommendations that come to them, they are -- and
22 I've had the pleasure and challenge of serving for many boards in my
23 career working with them, and this board is the most deliberative, caring
24 board I've ever seen in my entire career. So once we say, here's
25 something to consider, we don't intervene in the discussion. That's the

1 board's.

2 Q How is the board -- how are members of the board appointed to
3 their position? Are there certain qualifications that they need, and
4 what does their tenure look like?

5 A Sure. The maximum amount of years that they can serve is 8
6 years if they've been an officer. So they go for 4 years, and then if
7 they have a special assignment -- that's a terminology that's used in the
8 bylaws -- they can continue. Often, that would be a chair of a
9 committee, or it could be the parliamentarian, et cetera.

10 They are not appointed. They are elected by the membership. And
11 so, the way it works -- and I'll tell you the process. It's a relatively
12 arduous process, so it's fair and reasonable. And we're about to come up
13 on another one, so I'll give you an example.

14 We take a look at the types of institutions that we serve. We do
15 what we can to reflect that, as possible, within our board. We always
16 want the best candidates, but a nominating committee exists, which is
17 recommended some by the board, some by the members, and some by previous
18 members of the nominating committee. And then the board says, yes, we
19 accept this nominating committee. And then it's the process we're
20 involved in. That's it. It's up to the nominating committee who they
21 recommend.

22 So for this year, as an example, we would go in front of them and
23 say, we have nobody from the State of Oklahoma and we need to fill a
24 private institution position. So we always start with a situation. We
25 say, these are the States where we are missing representation, okay? And

1 these are the areas where a trustee or trustees are going to leave the
2 board, so, therefore, we won't have a person to fill that particular
3 spot. We will tell them, however, there are two others who might be able
4 to -- who could handle that on the board.

5 So let's take an example. If a member -- and we have a current
6 member now -- of Tribal colleges were to leave the board, we would make a
7 very specific point to the nominating committee that there will be no
8 representation from Tribal colleges when a board member leaves.

9 So we give them the geographic area. We give them the types of
10 institutions. We announce that nominations are open. And so, an
11 individual can self-nominate or somebody can nominate for a member --
12 somebody else for a member on the board.

13 We create a very detailed spreadsheet where we take a look at each
14 of these individuals, and we have links internally that we could take a
15 look and see, you know, what their background is. We always like to
16 identify whether or not they've been a peer reviewer. That gives them a
17 little more insight. We also take a look at how long they have served in
18 their position.

19 We get a mix of those that represent faculty, provosts, presidents.
20 And while we have -- we have people who are currently now college or
21 university presidents from different types, including Tribal colleges, we
22 have representation from those that are provosts, deans, and faculty. So
23 we currently do not have someone who's a CFO. We are always, as all
24 accreditors, kind of encouraging that because of all the financial issues
25 that come up.

1 We then take that list and we internally vet it. So if we find
2 that someone has been recommended and they've only been in their term for
3 6 months before we put that in front of the nominating committee, we say
4 that person is not seasoned enough. We take into consideration if they
5 have served as a peer reviewer at another agency as well. At least, that
6 gives them that kind of thinking of what peer review is. And then if an
7 institution is on a sanction, we tend to say, we maybe need to not move
8 them to the top of the list.

9 So we do all that -- and then my assistant is amazing at this --
10 and we have a very detailed call with the nominating committee members,
11 and it's done electronically. And we do -- we are looking at community
12 colleges, first round, choice one, two, three. Private universities,
13 public.

14 So even if we don't have an opening that year, we go through all
15 those categories and we keep them on a list in case a board member
16 leaves. And then we have those names in priority order. So there may be
17 more details, but it's very -- it's very complex.

18 And then we have our public members, and we follow the rules on
19 public members that are in the Federal rules and in our bylaws. They're
20 hard to find, but we go through that with them as well.

21 Q I appreciate it. It sounds like it's a very rigorous process
22 with respect to making sure you're geographically diverse and
23 institutionally diverse, and making sure they have a good representation
24 on the board of what your membership looks like.

25 A Thank you for acknowledging that.

1 Q I appreciate the walkthrough there. That's helpful for us.
2 Along this process, and just trying to figure out how the board is
3 comprised, it seems like there's a lot of interactions with faculty
4 members, deans, provosts, presidents. I'm wondering, separate now from
5 the board, in your job as president of HLC, how often with your members
6 now do you interact with personnel at colleges and universities, and how
7 does that relationship change over time throughout the accreditation
8 process?

9 A Sure. Let me explain that. I hate it to be a hierarchy. I'm
10 more into circles and everybody works together. But the board is here,
11 the president is here. And then we have the vice presidents, the
12 liaisons who work directly with the institutions.

13 And I never meet with an institution unless in the rare cases
14 they've complained about a president -- one of the liaisons without the
15 liaison present. I am not the one who has all the details and everything
16 that's going on, the regular calls, et cetera.

17 However, when something is good, I don't hear about it. If
18 something is problematic, then I am involved as we prepare for the board,
19 or as we're interacting with the institutions, I'm informed. I certainly
20 take a look at any actions that would have my signature on it, and I
21 really dig deep into knowing as best I can about it. But the bottom line
22 is, I'm advised by any legal staff that we have and the liaisons.

23 So how do I -- what do -- how do I spend my time? You know, what
24 do I do related to this is we -- I would -- let me give you an example.
25 I would say when I got there, where's our risk management plan? Okay,

1 let's put together a committee. Let's get the risk management plan.

2 My style is to come up with the ideas and get out of the way. And
3 so, I'm aware of what's going on. There is a dance you always have with
4 folks to say, this is the time I should come and see the president. When
5 I have a couple people come in and shut the door, I think, uh-oh, you
6 know, something's going on somewhere.

7 As far as my relationship with the institutions, I do not ever
8 invite myself to a campus, but I have been invited. So, for example, I
9 would go to a campus-- sometimes, because I have such a strong governance
10 background, if a board is distracted from what they should be doing,
11 paying attention to students, and they're having internecine wars within
12 the board, sometimes I'm the person that they ask to come speak with
13 them, so that I can provide an opportunity to get on the table the
14 implications for their institution, and the implications for
15 accreditation if they're completely, you know, keeping their eye off
16 what's really important. So I have a couple of those visits coming up.

17 I do get calls from presidents when they have frustrations in
18 general. I can give you an example of a president who was very concerned
19 that we were going to hear from her Faculty Senate, and they weren't
20 happy with the president. And I explained our process and that the
21 president gets to respond to our process and, you know, breathe. There
22 are opportunities here for you to have your voice.

23 I hear from presidents when they have an idea, and they're not
24 really asking necessarily about does this follow your policy, but what do
25 you think about this idea? That is more based on the course of my career

1 reputation for being a change agent and being very excited about
2 innovation.

3 I have considerably more interaction as a result of our strategic
4 planning. And I'm proud, as I've said, that we have combined, for two
5 plans, \$1 million of support from the Lumina Foundation. And so we have
6 set up all kinds of groups, and we get representation across our
7 campuses. This is a membership plan, finally approved by the board.

8 I'm simply the architect of making sure it happens, because that's
9 where I've done most of the consulting in my career. So I interact with
10 people at all levels of the institution on those kind of special
11 projects. I attend the IAC meetings when I'm available. That's the
12 Institutional Actions Council.

13 So if a self-study has come to us, a response to the self-study,
14 and all the steps along the way, and it recommends, for example, some
15 kind of a sanction or the joyous ones, a removal from a sanction, I
16 attend the IAC meetings and -- unless I have any ties to that
17 institution, then I will recuse myself and go to another meeting at the
18 same time.

19 Q Understood. When presidents have concerns, it sounds like
20 sometimes it's internal issues at the institution that they serve as
21 president at. Sometimes it might be an HLC policy. Sometimes maybe it's
22 a Federal rule or regulation.

23 Is it always in the negative, or usually in the negative, when a
24 president approaches you about an HLC policy or a Federal regulation
25 or --

1 A No. No, not at all. I think it might be important for you to
2 know that I have four certifications as a coach, executive coach. So
3 it's not unusual that people who know I have a background as a consultant
4 and working as a coach that they'll call me and they'll say, I'm very
5 frustrated. In that case, you don't get into the situation, you get into
6 how they can handle it.

7 So if I have a president who says, my board is driving me crazy,
8 oftentimes, that's you've been a president twice, you've seen this before
9 and, hint-hint, you might hear about it in your role, and it's those kind
10 of conversations. The joyous conversations are the ones that say, we
11 would love you to come to our campus. We want you to see that we've
12 opened a new center that is going to change the world in these ways, and
13 these are exciting things that are going to happen.

14 But the times I'm out on the road are not often to go to the
15 campuses unless it's a special invitation for a reason of excitement,
16 which is sometimes a really joyous trip to make, or to help resolve a
17 problem. But I'm not the person on the day-to-day basis that deals with
18 every single policy implementation. That's impossible as a CEO. I have
19 huge responsibilities. I could -- I said kiddingly, as C-RAC, the
20 Council of Regional Accrediting Commissions, we should just all chip in
21 and have a place we stay here, because we're here so much.

22 So I speak a lot at national conferences. That does not allow me
23 the time to be the day-to-day person. We have hired experts to take care
24 of that.

25 Q You've hired experts to take care of the day-to-day

1 interaction with respect to HLC and the institutions that you accredit,
2 but then you also have these volunteer peer reviewers. You brought this
3 up a couple of times earlier today. I want to drill in a little bit more
4 on how those peer reviewers go about their work and the education that
5 they receive before going out and performing those peer reviews.

6 Is this an ongoing process where I want to be a peer reviewer,
7 however that process works out? You selected me, and there's sort of a
8 one-time experience where you educate me on what my responsibilities are,
9 and I think, you send me off into the woods and look at these things, or
10 is this an ongoing process?

11 A This is what we would call lifelong learning. The minute you
12 become a peer reviewer, you have to go through extensive training before
13 you would even be considered to be added to a team.

14 I'm very impressed with how it's done at HLC. It's emerged over
15 the years. We'll do a case study. We have one we call Neverland
16 University. Whatever it is, it's not a real university. And the
17 training that's done is we bring all the peer reviewers together. Those
18 that are seasoned, they often pair them up with those that are new. And
19 they'll say, how would you handle this? And then we have seasoned peer
20 reviewers say, eh, no, you can't do that, you're misinterpreting the
21 criteria or core component or et cetera.

22 So there's a massive amount of training, and it is ongoing. There
23 are webinars. There's face-to-face. There's time where peer reviewers
24 come together at the annual conference for a long period of time, like a
25 full day preconference. So I really think it's exemplary.

1 Q It sounds like they get significant time familiarizing
2 themselves with HLC policy and what happens in certain circumstances.
3 What role or responsibility does HLC have in overseeing statements made
4 by peer reviewers when they're on campus and interviewing faculty, staff,
5 and students?

6 A Well, first of all, you have to remember in all our positions,
7 we're dealing with human beings. So the liaison, who is the Vice
8 President for that institution, is very involved. When the team is
9 selected, that's done, the institution has a right, if there's a
10 conflict, to say, we don't want that person on our team. I've done that
11 when I was a college president. You have to have a reason, though, not
12 just I think they'll be hard.

13 And the peer reviewers and the liaison stay in contact if it's a
14 particularly testy situation, or could be difficult throughout the
15 process, but we do not tell the peer reviewers what to say as far as the
16 final report. That's why it's a good independent job.

17 Now, what happens is there are occasions where a peer reviewer will
18 misinterpret something, or they'll say something inappropriate, or they
19 will say something on the way out that might offend a president. And in
20 those cases, we speak with the peer reviewer. We do -- you know, we
21 apologize, as appropriate, and we usually don't use them again.

22 Q Are the consequences ever public when, you know, a peer
23 reviewer is dismissive or insulting to a college president, for instance,
24 in an example, or do you just simply remove them from your circle of peer
25 reviewers?

1 A It's not public. We don't shame people publicly.

2 Q You had mentioned earlier in our conversation that a peer
3 reviewer might not make a recommendation. How often does that occur?

4 A Well, there are certain policies that they are not supposed to
5 make recommendations. And I'm not the policy to the letter guru, but if
6 it's a focused visit they're making observations and -- correct, Marla?
7 They're making observations; they're not coming back saying, you should
8 do this. So there are certain kinds of visits that they're not supposed
9 to make recommendations.

10 Ms. Morgen. Our policies are all publicly available.

11 Ms. Gellman-Danley. They're all on the website, yeah.

12 BY MR. RICCI:

13 Q The process is generally when a peer reviewer is going out for
14 a routine visit that they make sure that things are going in line with
15 the initial report, and they submit some recommendations typically to the
16 IAC or to the board, depending --

17 A Well, they submit them and then we determine if it needs to go
18 to the IAC, based on what the submission is. So if it's a comprehensive
19 visit -- I'll use my Ph.D. program, University of Oklahoma, and they are
20 what's called the Open Pathway.

21 We actually have what would popularly be called differential
22 accreditation, those schools that need a little bit more attention, those
23 that need a little less attention. And so, under those circumstances --
24 risk managed, actually, accreditation would be a more appropriate term --
25 that institution, to my pleasure, had a glowing report, and so, they were

1 put on what's called the Open Pathway. That was before I got there. The
2 Open Pathway has a special project that's involved in that Pathway.

3 So what we would get is the report back. First of all, we get the
4 self-study, all right, and we take a really good look at the self-study.
5 The liaison, not me. The liaison will take a good look at it. It is
6 sent to the peer reviewers, and any voluminous attachments, as needed.

7 So we have an Assurance System that has a lot of information in
8 that about how many, you know, placement rates or graduation rates or
9 such things. I'm not giving you the specifics accurately necessarily,
10 but we have a lot of information and the peer reviewers have access to
11 that.

12 So whatever they need, they get. They go out on the visit.
13 They've been well-trained. And then they come back and they give us a
14 report, and they have to give a rationale. So it's very detailed. Here
15 is the criteria one, mission, vision, that kind of thing. Here are the
16 core components. Here's how we expect them to be effectuated.

17 And they will comment and they can say, met, met with concerns, not
18 met. If there's even one core component-- one criterion that is not met,
19 that then moves to a sanction situation. If there are a few or more met
20 with concerns, that would likely become a notice situation, which is to
21 say we're putting you on notice that you could go out of compliance. And
22 then obviously, it can get more serious than that, probation and then
23 show cause. All of these sanctions are listed very clearly. They're
24 publicly available on our website.

25 And under these circumstances, then what happens is that comes back

1 to us if it should go to the IAC, if it's a kind of sanction or, as I
2 said, joyous removal from a sanction, then that goes to the IAC for
3 consideration. Then that goes to the board. The board has the final
4 decision. And sometimes information comes up between the IAC and the
5 actual time that the board gets the information, or even between the
6 original peer review visit and the IAC, and we share that information.

7 So peer review visit. Team visit report comes in. Then there's an
8 opportunity for the institution to respond. That response is included
9 with the next group, the IAC. After the IAC makes a recommendation, it
10 may be different from the original recommendation. Sometimes, no,
11 they've met that now, they're okay, or, I think that really is more of a
12 problem, because we haven't seen much progress when they came to visit
13 us.

14 The board will take a look at that, and they will say, okay, this
15 is what -- we are very transparent. This is what one group said. This
16 is what the second group said. And then the board -- this is why I think
17 they're amazing. I can't even imagine the hours that they spend on a
18 volunteer board position. And they analyze everything, and they have
19 very rigorous discussions about things, and they debate and they play off
20 of each other. And then in that case, they say, This is what we
21 recommend. And then they open it up for discussion, and then they vote,
22 and that's the final decision.

23 Q Those board decisions, are they ever unanimous or is that --

24 A Oh, often they're unanimous, yeah. I mean, most of the time
25 they're unanimous because they worked it out ahead of time. But there

1 are -- if -- we have very good conflict-of-interest policies. There are
2 trustees that will recuse themselves from the vote. And there -- it's a
3 rare occasion where they say, I don't agree with the recommendation
4 because, trust me, they have fought it out before. They've debated it
5 very thoroughly before they go to the vote part.

6 Q Yesterday, Dr. Sweeney mentioned that there wasn't necessarily
7 a minute-by-minute archive of these board meetings, but that there is
8 some note-taking that happens at a board meeting. Is the result of the
9 vote of a board's decision recorded in those?

10 A Yes, and it becomes the resolution that goes into the letter
11 that goes to the institution, and that action letters are publicly posted
12 on our website under the institution's name.

13 Q Perfect. Thank you. I'll return our time back to Mandy.

14 Ms. Schaumburg. Thanks.

15 BY MS. SCHAUMBURG:

16 Q Just a couple of followups to start with on some of Alex's
17 questions. The board members, not all, but some of them, if they are --
18 they're member institutions of HLC. Is that correct?

19 A They have to be.

20 Q They have to be, correct?

21 A Everybody has to be within our region. They can be retired if
22 they still have a tie to the institution. So if someone has retired but
23 is consulting for the institution or teaches one course, that qualifies.

24 Q Okay. And if that institution is on -- and I will apologize.
25 I am not a higher ed expert, so I will use the wrong term. Correct me,

1 please. But if that institution is on a sanction, are they removed from
2 the board?

3 A No. No, but they have absolutely -- they can't -- if they got
4 put on a sanction -- they wouldn't have gotten on the board if they were
5 on a sanction initially. But if they're on the board and a subsequent
6 sanction comes up, they're -- I can think of one case where I think it
7 was notice. Well, certainly they don't vote on and they're not removed
8 from the board.

9 Q They're not removed. They recuse themselves from the
10 situation, but they are not removed from the board. They serve out their
11 term.

12 A That's highly unusual.

13 Q I would assume with the vetting you described, but I am just
14 trying to make sure I understand it fully.

15 A I think there was -- now, I'm not even sure there were any
16 examples. I don't know for sure.

17 Q Okay. When you say that you recuse yourself or you step out
18 of meetings when you have ties to the institution, what would some of
19 those ties be?

20 A Well, Antioch College. Antioch College, I was part of Antioch
21 University, and Antioch University represented a group of seven
22 institutions that originally was -- the founding college was Antioch
23 College. And when they had issues -- they closed, they were coming back
24 to reopen -- I didn't say a word about it.

25 But I would like to go back to further answer your question by

1 saying, I sit in the meetings. I'm there if information is needed. And
2 the same thing with the liaisons, they're available. But we don't get up
3 there with -- and say, this is what we think you should do.

4 Q So you provide information, you do not try to sway or offer a
5 suggestion?

6 A Oh, absolutely not. Absolutely not.

7 Q So that's what you mean by you recuse yourself, or is that in
8 general?

9 A No, no. Those are two separate things.

10 Q Oh, okay. That's in general what you do?

11 A That's in general, I respect the fact, we all respect the fact
12 that the board is the decision-making body.

13 Q Okay.

14 A And any CEO would have a sense of fatality to their position
15 if they thought that they had any sway over the board to tell them what
16 to do. What you do is you're responsible for doing your job and
17 providing the best possible information.

18 And because we're an evidence-based organization, which you would
19 understand as attorneys, here's the evidence, have the discussion.
20 Sometimes they'll say, Geez, they were a little tougher than we might
21 have been. But it's up to the board.

22 Q Okay.

23 A The recusal is if I've ever worked at an institution, if I'm
24 friends with the president. This applies to everybody in the room. That
25 we don't -- liaisons don't go to an institution where they used to work.

1 We have very stringent conflict of interest. But I sit next to the
2 trustee. The only notes I pass are you missed something on this agenda,
3 go back to item one, et cetera.

4 Q Okay. Thank you.

5 A Uh-huh.

6 Q In terms of your job as running the office and running HLC
7 from internally, do you review your staff's work? Do you have any type
8 of review process or --

9 A I do an annual evaluation of the staff and I meet with them on
10 a regular basis. And I always start with, tell me about the cases that
11 you're working on. Tell me about which institutions. And they'll say,
12 Well, I need to give you a heads-up that institution X, you might have
13 read it in the press, the board is killing each other, and half of them
14 want to get rid of the president, the other half don't.

15 I mean, I've known situations in my career where half the board
16 sued the other half over the president's contract. Or they'll come to me
17 and say situations like this institution is growing so rapidly, we're
18 keeping an eye on it to make sure that it's high quality. They've moved
19 into a different kind of delivery. We've approved it. Or they'll come
20 to me and they'll say, we have concerns about faculty qualifications.
21 You're going to hear about that. There's a debate. They say they are in
22 a rural area, they can't find these faculty, but we have qualifications.

23 They always -- kind of rule number one, I don't like surprises, so
24 they do keep me informed. We also have groups --

25 Q I'm sorry to interrupt. They keep you informed on an ongoing

1 basis, or just at this annual review?

2 A Oh, no. I didn't mean to mix it. We have an annual review,
3 and I meet with them regularly separate from that.

4 Q Okay.

5 A We also have two meetings that we have, which I attend if I'm
6 in town. One is called Liaison Council, and that's where all the Vice
7 Presidents who work with the schools, come together, and we talk about
8 policies or -- there are other separate policy groups, but we say, a
9 pretty popular one is dual enrollment, and the fact that we want certain
10 qualifications.

11 We require them for faculty members. If you're teaching a college
12 course, you should be qualified to teach a college course. Just because
13 you watch Law and Order, you can't be a law professor. So we have all
14 kinds of things like that we talk about, but we also talk about the
15 strategic plan; we talk about, you know, several issues.

16 We have a separate group that's more case-based. And we're very
17 careful not to bias each other and we say -- we call it case review. And
18 in that -- this was put in place a long time before I was there. And in
19 that case, we'll say, I have an institution that has a consortial
20 arrangement and there are 20 institutions a part of this consortium in
21 that State, and their State rules say X, and ours say this, and how are
22 we going to handle this?

23 And so there's an awful -- nobody is a solo player, you know. And
24 I am not unaware of what's going on. And in the rare occasions where I'm
25 not aware, neither were the liaisons. So they happen quickly.

1 Q So in the liaison meeting, is that something that Dr. Sweeney
2 or Dr. Solinski would have sat in on --

3 A Both.

4 Q -- in their positions?

5 A Yes.

6 Q And what type of role would they have been sitting in in that
7 meeting?

8 A Well, Dr. Sweeney is -- was a liaison, okay. As our legal and
9 policy adviser, that's why Karen was there. In this case, now that she's
10 not with us and Anthea holds the role, she's there as having been a
11 liaison, and all the other liaisons are there.

12 But there are times we would invite Marla in and we would invite
13 the head of our peer review process in. And we would say, we have a
14 concern about something that's not really clear to our peer reviewers,
15 what can we do about the training?

16 So there's the core group. And you're visiting a little bit more
17 these days, you know, based on the complexity of our cases, so we can
18 have two legal minds and the liaisons working on it. So yes, that's part
19 of normal course of business that they would be there.

20 Q And what about the case review meeting, the same?

21 A The same.

22 Q And in that case review meeting, do you get into specifics
23 about individual cases, like really dig into them to feel what's going
24 on, or is that a more general?

25 A They're made up -- they're not made up cases. They're

1 disguised cases -- so there's absolutely no bias. We're not necessarily
2 talking about this level of institution or type. We're saying, here's an
3 issue. And it's so we can be, as best as humanly possible, consistent in
4 our application.

5 So, for example, when I got there, I brought up, you know,
6 competency-based education. Let's talk about competency-based education.
7 I said, everybody write down a definition of competency-based. Well,
8 that was interesting. You can imagine. And so, we get to a point where
9 we say, we've identified that we all need to make sure we are
10 implementing these things the same way when we work with our
11 institutions. We're advising them appropriately, et cetera.

12 And sometimes the liaison in there will say, You know, I'm just
13 over my head on this one. I've only been here a year. We always do a
14 big huge training for the liaisons and a buddy system, et cetera, -- and
15 so, they'll bounce all the ideas off all the other liaisons, at which
16 point they're in a position to say, now I feel more confident with what
17 I'm going to say to the institution. But we don't get into a specific
18 case --

19 Q Okay.

20 A -- in case review. Sometimes it will come out, because we
21 have an institutional problem that is a district that has 11 campuses,
22 and they're called colleges. In higher ed, sometimes they're called a
23 campus and sometimes they're called a college. It depends on the system
24 and the language. Just like the term "president/chancellor" can be
25 reverse, so if you think the chancellor is the top person in one system,

1 it might be the president in reverse.

2 And in that case, we will be specific. It may be a special meeting
3 or in one of those meetings, because with 11 campuses, we have 11
4 different assignments for liaisons, because they are separately
5 accredited, but they're part of a system.

6 Q Okay. And then back to the employee reviews, do you look at
7 it, or is there anybody in your hierarchy that reviews to make sure all
8 the notices are going out appropriately, all the conversations are going
9 out, kind of checking in to see how those conversations are going to
10 understand --

11 A There's more --

12 Q -- the communication?

13 A Pardon me for interrupting.

14 There's more than one person. I have a chief of staff. He meets
15 with the liaisons constantly. And because of my external role, he is
16 very involved in that. I believe he serves on our policy committee --

17 Ms. Morgen. That is correct.

18 Ms. Gellman-Danley. -- and other such --

19 BY MS. SCHAUMBURG:

20 Q Sorry to interrupt. What is his name?

21 A Eric Martin. But they come in when they want training -- or
22 questions about how would I implement this policy, how should I do that?
23 But I'll tell you the staff that makes sure everybody is on target are
24 the support staff for all these, those that set up the teams and we need
25 the report, we haven't heard from you, we've got to get it by this date.

1 So it's a cog in a wheel. None of us operates independently.

2 Q On the notices of institution, once the board has made their
3 decision and the notice goes to the institution, do you sign that or does
4 the liaison sign that?

5 A They come out from me.

6 Q They come out from you?

7 A Yes.

8 Q All of them?

9 A Yes, and I'm well aware what's in them.

10 Q So you -- okay. That was my next question.

11 A Well, that's one of the reasons I attend the IAC meetings. I
12 don't -- while they go out under my signature, if it's not a problem I
13 don't know, you know. All I know is there's not a problem. The letters,
14 the action letters that go out after a board meeting.

15 Prior to the board meeting, there are discussions with -- about the
16 individual case. And from that individual discussion and the reviews
17 that the peer reviewers have done, possible actions that could be taken
18 are described. And we sometimes will bring options to the board.
19 Sometimes they'll say, this is the recommendation the peer reviewers
20 made. And I'm involved in those discussions.

21 Q And you're involved in writing the letter and building the
22 letter or are you involved in just reviewing it?

23 A I review the letter.

24 Q Okay.

25 A I am not the author of the letter.

1 Q Okay. And is it the liaison that's the author of the letter?

2 A It's the liaison and it's legal and government affairs. And
3 it's gone through a variety of steps to get to that point, but there's
4 rarely something in there that surprises me, because there are
5 recommendations coming out of all these other steps that I've described.

6 Q Okay. Quickly back to the Liaison Council and the case
7 review. Did the Dream Center schools ever come up in either of those
8 meetings?

9 A I can't recall specifically.

10 Q Okay. Would it have been typical for them to come up in that
11 situation if there was a question or only if there was a question?

12 A It would not be typical. If there were a situation where we
13 wanted to really flesh through a particular circumstance, it would come
14 up. So I'm not saying it did or it did not, but I'm not in every single
15 meeting and I cannot recall.

16 Q So even though this was pretty precedent-setting, this
17 candidacy, the change of control candidacy, you don't recall it coming up
18 in this situation to talk it through?

19 A It was not talked through with the full group that way --

20 Q Okay.

21 A -- because it didn't apply to the full group. You know, those
22 that were involved. But we would -- we would always make sure everybody
23 was informed and --

24 Q When you say "everybody," what does that mean to you?

25 A The liaisons.

1 Q All the liaisons?

2 A We would make sure the liaisons and we would tap their wisdom,
3 but their -- you know, Anthea is as competent as you're going to get and
4 she was the liaison. And so, she wasn't going to run it by somebody who
5 had less experience with them. So, because the Dream Center had more
6 than one institute, there were more than one liaisons who were involved
7 as a transaction was taking place.

8 Q Okay. Thank you.

9 As a part of your work, you said that you met often with Members of
10 Congress or staff. Can you describe some of those interactions?

11 A Sure. Sure. Sometimes, and mostly with my colleagues from
12 other regional accreditors, but also, by myself on behalf of HLC, we meet
13 with staff that are writing legislation. That's a primary role. So we
14 had great conversations related to the College Transparency Act, both
15 sides of the aisle on the Higher Ed Act, the partial Higher Ed Act, you
16 know, some of the things that came out.

17 And we'll look at the language. We like to consider ourselves
18 higher education experts, not just accreditation experts. And so we go
19 in and we would talk about those things with the staff, but we do not
20 talk about individual cases.

21 Q So you do not -- so Dr. Sweeney told us yesterday that Senator
22 Durbin's staff would call when there's a school that looked like it was
23 going to close, or there was a questionable status. So that would be an
24 instance where you are talking about a specific school, correct?

25 A I have never talked to Senator Durbin about that. We'll hear

1 from a staff person. We might get a letter. We read the letter. As
2 with everything else, we study it. But we are not influenced by
3 political letters. We're not. Because we're not a political
4 organization. So we read it, just as we read everything that comes in.

5 If we get complaints from students, we read those when we're
6 looking at an institution. We are respectful, and Anthea might follow up
7 with a staff person to talk about that or I might talk to a staff person,
8 but, you know, you'd have to ask further questions to get my response.

9 Q Okay. Dr. Sweeney mentioned yesterday that you had actually
10 created a government affairs specific position to handle some of these.
11 Can you explain that position to us?

12 A Well, not these kinds of things. Well, let me explain, okay.
13 We brought on an individual to work with the States -- because it's the
14 Triad. It's the States, accreditors and the Federal Government,
15 Department of Ed.

16 And so what we -- we have very strong relations with our States, as
17 best we can, because some of the States don't have a coordinating board,
18 like Michigan. So they'll have a community college association,
19 something like that, but they don't have any authority.

20 But we work with the States. We have an annual meeting with the
21 States. We meet with them again in our annual conference, so twice a
22 year, and lots of calls in between. So pick up the call and say, we read
23 there's an AG complaint about X, et cetera, and we need to know what's
24 going on. And often, the AGs can't discuss it, but we talk with the
25 State coordinating board so we know what activities are going on.

1 When I was a negotiator for negotiated rulemaking related to
2 accreditation and innovation in 2019, this individual helped me a lot
3 organizing the documents and all the regulations that were put in front
4 of us. That's the kind of work that he does.

5 Q And he is on staff now, that's when you say "he"?

6 A He's on staff now, yes. And so, we have an advocacy plan, and
7 we say this is the advocacy that we do in a yearly advocacy plan. These
8 are the key issues that we want, and they reflect our strategic plan that
9 are critical issues for advocacy. So, for example, the current one would
10 say, we're advocating for what we think is best for Higher Ed Act.
11 That's obviously pretty hot right now.

12 Q Okay. Did you talk to anybody in Congress, either you or your
13 staff, Members or staff of Congress about --

14 A About the higher ed?

15 Q -- about Dream Center?

16 A No.

17 Q No?

18 A No. I think that there were courtesy calls. If we got a
19 letter, or if we got a call from a staff member from Senator Durbin's
20 office, a Chicago person, I think there were times there might be a brief
21 interaction. What are your concerns? I mean, it would be rude to just
22 ignore it. So it doesn't matter which party it is. If we get a kind of
23 call like that, we are willing to engage in a conversation.

24 Q Would you be aware if your staff reached back out to a call
25 they had gotten? Would they have definitely informed you? Is there a

1 chance that they would have talked to them without your knowledge?

2 A They would have informed me.

3 Q They would have informed you, you're 100 percent on that?

4 A If they're still employed, they would have informed me.

5 Q Okay.

6 A It's very important to have a consistent line of
7 communication.

8 Q Okay. Thank you.

9 HLC accredits University of Phoenix. Is that correct?

10 A Yes.

11 Q Okay. Were there any conversations with Congress about the
12 University of Phoenix?

13 Ms. Kohart. With Congress?

14 BY MS. SCHAUMBURG:

15 Q With any Members of Congress.

16 A With congressional staff members?

17 Q Yeah, with congressional staff.

18 A Not since I've been there.

19 Q Not since you've been there?

20 A Not to my recollection. A lot before, but not --

21 Q I've got some follow-ups, but I think this is actually a good
22 time for us to stop for round one. So --

23 Ms. Kohart. Five more minutes for a break?

24 Ms. Schaumburg. Yes. Off the record.

25 [Discussion off the record.]

1 BY MR. SINOFF:

2 Q Dr. Gellman-Danley, thank you again for staying for this
3 second round of questioning. I have a few more things to ask, mainly
4 regarding the events and occurrences that we were discussing in the first
5 hour and a little bit following up on what you discussed in the second
6 hour.

7 So I'm going to start off by going back to the November 16, 2017
8 notice. We have that listed as exhibit 12 for your reference. So I
9 won't be referencing anything, too, in particular on there. And I will
10 also be referencing Exhibit 22, which is the January 20, 2018 public
11 disclosure notice.

12 The Department has raised concerns about the consistency of these
13 two notices, and I wanted to ask you if you read these two notices as
14 consistent with one another?

15 A They are. One is written in a more complex appropriate
16 language as an action letter, and the other one is written in a way that
17 students and other stakeholders could just get to the bare facts.

18 Q And can you elaborate a bit on HLC's rationale for writing one
19 in a more technically complex way versus the other?

20 A Yes. I don't think that most students are going to read an
21 entire action letter like this, and be able to follow the history of it.
22 The idea of a notice or a public disclosure notice is you get right to
23 the point. So you can see that it's outlined as here's the situation,
24 what this means for students, next steps, and that's it. And so this is
25 what you need to know about. It's not hiding anything. It's just -- it

1 just gets right to the point.

2 Q And why might you expect that institutions would be more able
3 to understand more technically complex language?

4 A Well, this is written in ways that the members of our
5 organization --

6 Q Sorry. When you say "this," you mean?

7 A The letter that you have under tab 12 --

8 Q Thank you.

9 A -- is written in a way that is very specific to the
10 interactions we've been having with them and our criteria and our
11 policies, et cetera.

12 Q Wonderful. And is it your understanding that, generally
13 speaking, institutions are comfortable with technical language from
14 accreditors?

15 A Absolutely. And if they're not, they will call their liaison
16 and say tell us what this means. They'll ask questions.

17 Q Now, are you aware of between November 16, 2017, and January
18 4, 2018, when Dream Center signed a letter accepting the change of
19 control candidacy status, are you aware of communications with the
20 liaison asking for clarification about provisions in the November 16
21 letter?

22 A I don't -- I mean, there are -- you have several examples of
23 emails, both with Anthea and with Karen Solinski where there was a lot of
24 interaction throughout the entire process. But at no time during that
25 period, I'm not aware specifically of what the questions are.

1 You know, the emails and the kinds of things that I've seen that
2 we've provided, as I say, you know, when we're asked by you or we're
3 asked by someone in a staff through a letter, give them a call and follow
4 up on things, we do that. And in this case, when all of this was put
5 together, I certainly have gone through it. But I'm not aware at that
6 moment, but there's ongoing communication.

7 And I think What's important is that we never ignore phone calls as
8 far as, you know, we need clarity. We may need a little time to respond
9 to it, but in this process there's lots of opportunities between those
10 States that you mentioned for interaction.

11 Q And, to your knowledge, Dream Center did not raise any
12 concerns with change of control candidacy status prior?

13 A I'm not the one who communicated with them, so I simply can
14 say, to my knowledge, the issue was raised post the date you mentioned.

15 Q Then I'll ask, in your capacity as president or in your 40
16 years of education experience, have you engaged with other accreditors
17 much?

18 A I have engaged with them as specialized accreditors. So when
19 I was a president, business, education, all of those that would come to
20 my campus. And I have engaged with my colleagues since I've been
21 president. I've engaged with the regional, the nationals, et cetera.

22 Q And to your knowledge, do some other accreditors have
23 candidate status?

24 A We have different terminology and we have different language
25 as to how we use it.

1 Q Understood.

2 A But if you take them and you cross-check them, there's a lot
3 of similarities.

4 Q And do you happen to know if candidate status is one of those
5 similarities, if that is consistent?

6 A Well, they have candidacy.

7 Q They have candidacy?

8 A Right, yeah. But I don't have their policies --

9 Q Understood, yes.

10 A -- memorized, so I don't want to give an inaccurate response.

11 Q That's fair.

12 Is it your general understanding -- it's okay if you can't answer
13 this question, but is it your general understanding that candidacy status
14 at other accreditors does not mean accredited?

15 A The way -- yes.

16 Q And is it your understanding that individuals familiar with
17 the accreditation process would understand the difference between
18 candidacy and accreditation?

19 A Yes. But remember, there's candidacy and there's candidate
20 for accreditation. And everybody would -- should understand the
21 difference.

22 Q Under HLC's policies, can candidate institutions -- and am I
23 using this correctly, that candidate institutions would refer to the two
24 Dream Center campuses that we've been discussing? They were candidates,
25 correct?

1 A They were candidates.

2 Q Candidates.

3 A That by that terminology pointed out earlier, that meant they
4 were not members. They were in a pre-accreditation status.

5 Q And in that status, under HLC's policies, can those
6 institutions advertise themselves as accredited or fully accredited?

7 A Well, they can. They may not.

8 Q Can you explain?

9 A Yes. They should not. We expect all of our institutions to
10 communicate with accuracy as to their status.

11 Q And it would be inaccurate for an institution to communicate
12 to students to publicly advertise as, quote, "fully accredited," end
13 quote, if they were in candidate status?

14 A Correct.

15 Q Is that what occurred in the Dream Center case?

16 A They misrepresented the status to the students. We were
17 notified by individuals at the institution, and we noticed that Anthea
18 was very observant that their statement was not accurate.

19 Q Now, generally speaking, between November 2017 and March 2019,
20 did the Department prohibit the use of change of control candidacy status
21 under its regulations?

22 A No. We had gone through two recognitions. It was not
23 questioned that that was something that couldn't be done.

24 Q And are you aware of the Department changing its regulations
25 recently on accreditation?

COMMITTEE SENSITIVE

1 A Well, I'm aware of the negotiated rulemaking very much. And
2 yes, I'm aware of things that jumped out a little bit as relevant to
3 interactions with HLC. And yes, I'm aware that when the final NPRM came
4 out, what was in it. I sat in the negotiations.

5 Q Can you describe how -- can you describe that change, the one
6 that you're referring to?

7 A My understanding -- and, again, I'm not a lawyer, I'm not a
8 policy expert -- was that they wanted that to go away.

COMMITTEE SENSITIVE

1 [11:59 a.m.]

2 A The change of control. I'm trying to think, and I really have
3 to be very clear. I don't have it in front of me.

4 BY MR. SINOFF:

5 Q Okay.

6 A So what I would have in front of me to answer that question
7 most clearly is what was handed out to regulators that had track changes
8 and on the side had explanations. And I don't have all that in front of
9 me to give you the clearest answer, but I know it was part of negotiated
10 rulemaking to look at all of that.

11 Q Okay. Now, going back to Dream Center's November 2017 notice
12 to -- or I'm sorry, HLC's 2017 notice to Dream Center, did HLC request
13 that Dream Center explicitly agree to change of control candidacy status?

14 A Yes. Yes.

15 Q And why did HLC make that request?

16 A Well, it was not a sanction and it was not forced. A
17 sanction -- if we put an institution on probation, they don't get to say
18 we don't accept that. All right. In this case, we gave them an
19 opportunity to have an avenue to sustainability, which was what we
20 presented in the November 16th, 2017, letter, and they accepted it.

21 Q And sorry, I didn't mean to say HLC explicitly called out
22 change of control candidacy status amongst -- as you noted in our
23 previous conversation that there were many things in that November 16 --
24 there were many conditions in that November 16, 2017, notice, but HLC
25 explicitly, in fact, in one email, Dr. Sweeney bolded change of control

1 candidacy status. Why was it that change of control candidacy status was
2 so explicitly called out to Dream Center?

3 A Well, I suspect she wanted to make sure they fully understood
4 it, and it's in this -- let me rephrase that. I think she wanted to make
5 sure that, like with any letter, you know exactly what the action is.
6 And it's in the first paragraph: This approval is subject to the
7 requirement of change of control candidacy status.

8 Q And your understanding was that that was sort of the top line
9 takeaway from the letter?

10 A No. I think the whole thing was.

11 Q Okay.

12 A And I think -- I can't really explain why somebody would bold
13 something.

14 Q That makes sense.

15 Do you know whether HLC was represented by counsel experienced in
16 accreditation?

17 Ms. Kohart. Whether HLC was?

18 BY MR. SINOFF:

19 Q I apologize. Obviously HLC was. Whether Dream Center was?

20 A I can't --

21 Q You can't speak to that?

22 A I can't talk to their qualifications.

23 Q Okay. Dream Center claimed that they found out the change of
24 control candidacy status meant that they would be unaccredited only when
25 HLC sent its January 20, 2018, public disclosure notice. Does that

1 surprise you that they did not know --

2 A Yes.

3 Q -- before that time?

4 And why does that surprise you?

5 A Well, one could certainly make the assumption that when you
6 have such a complex transaction as far as business that involves a lot of
7 money and a lot of exchanges, that you wouldn't sign something and then
8 come back later and say you didn't understand it. So that was -- but
9 there was so much interaction right up until the day that the letter was
10 written. Karen Solinski had a lot of interaction with them. She
11 absolutely knew what the policy was. She knew it was pre-accreditation
12 status. She discussed that with the other staff, and she worked with
13 them on a regular basis, and she presented it to them, and Anthea
14 interacted with them. So I'm not either of those individuals, but it
15 came as a surprise that they said they didn't understand it.

16 Q You said that Karen Solinski absolutely knew that this was
17 pre-accreditation status. Can you elaborate on why you understand that
18 to be the case?

19 A Well, she was very active in not only constructing policies
20 but interpreting policies, and helping people understand policies and
21 advising individuals, and she had a lot of background in that. So I --
22 absolutely she knew.

23 Q And I might point you to the Department's January 31st, 2020,
24 letter, which I don't have the exhibit number in front of me. If you'll
25 give me one moment.

1 A I know what letter you're talking about.

2 Q In that letter, Under Secretary King has an email exchange --
3 I'm sorry. Assistant Secretary King has an email exchange with Karen
4 Solinski in which it appears as though she makes the statement that she
5 disagrees with HLC's application of policy. Can you explain?

6 A Well, I'm going to be very cautious with my response to that.
7 It's an inaccurate response. That's -- I don't want to get into that
8 letter as a result of the fact that we haven't responded yet, but I do
9 want to say that did not align with everything that happened while she
10 was there. I can't say more than that.

11 Q So on February 2nd, 2018, Dream Center notified HLC of its
12 concerns through a letter that Dream Center expressed surprise that it
13 was a candidate for accreditation. If Dream Center did have a concern
14 with how HLC interpreted its November 16 notice, what would normally be
15 Dream Center's remedy?

16 A Well, in this case, this was not an appealable action. Down
17 the road, we gave them that opportunity. We never got the appellate
18 record, and we specifically had asked for that. And some emails were
19 sent to us down the road that we never received. But at that time,
20 February 2nd, it's not a letter -- they signed it. They agreed to it.
21 It's not -- it wasn't appealable by policy.

22 Q And is that a standard policy that HLC applies across the
23 board?

24 A Yes. It's appealable if it's a sanction, but it wasn't a
25 sanction.

1 Q And has HLC used -- well, what would you call that, that type
2 of action, an action that is not appealable?

3 A It is -- I want to explain it the right way.

4 Q Yeah, please do.

5 A And I want my colleagues to help me if I'm misrepresenting
6 policy at all. But the bottom line is that they were offered an
7 opportunity and they accepted it.

8 Q And that means that it is not appealable?

9 A Yes.

10 Q And does that -- has HLC offered other institutions
11 opportunities that institutions have accepted in the past?

12 A This is not -- there's nothing here that we did with this that
13 doesn't follow our policy and procedures.

14 Ms. Morgen. Dr. Gellman-Danley, you might just want to refer to
15 the exhibit, which is the appeals policy.

16 Ms. Gellman-Danley. Yes.

17 Ms. Morgen. The first paragraph of that.

18 Ms. Gellman-Danley. Yeah. Under exhibit 24, policy title appeals.
19 Your exhibit 24. An institution may appeal an adverse action -- I'd like
20 to refer back to that -- of the board of trustees prior to the action
21 becoming final by filing a written request to appeal following the
22 appeals procedures of the Commission. Adverse actions are defined as
23 those that, one, would draw or deny accreditation, accept and denial of
24 accreditation where the board denies an early application for
25 accreditation, and continues candidate for accreditation status or

1 extends it to a fifth year. Not this case. Withdraw or deny candidacy
2 or moves the institution from accredited to candidate status.

3 We did not move anybody. We said here is an option. They accepted
4 it. This was not top-down imposed.

5 BY MR. SINOFF:

6 Q Now, let's say we were talking about an appealable action, so
7 not this action, just in general. I believe you have the appeals process
8 in front of you. How long after an action letter does an institution
9 generally have to appeal?

10 A I'd have to look at the specific dates. Again, I'm not the
11 policy expert --

12 Q Okay.

13 A -- when it comes to these things, but if you specifically want
14 me to find the time in here --

15 Q No.

16 A -- I can, but there is a -- it's very outlined and public in
17 our policy. And if they say we're interested in an appeal and they
18 qualify for it, we would certainly walk them through the policy and tell
19 them all the steps that need to be followed.

20 Q That's all right. You don't need to -- I believe it is
21 2 weeks.

22 A I think it's 14 days, but I don't want to be inaccurate in my
23 response.

24 Q Did Dream Center appeal within, let's say, 6 weeks?

25 A They never appealed.

1 Q They never appealed.

2 A It says right here you have to have an appellate document.
3 Even past the time and even though that did not fit their institution, in
4 the interest of, you know, due diligence and being gracious and trying to
5 give them an opportunity, many months later, Anthea offered -- because
6 they delayed asking about it, Anthea offered the opportunity for appeal
7 and asked very specifically, as I recall, for an appellate document.
8 Now, I'm not going to sit here with all these lawyers and tell you
9 exactly what all that means, but she did give that opportunity, and it
10 was never sent.

11 Q Now, I'll get to that opportunity in just a minute, but I want
12 to ask about a couple more communications between HLC and Dream Center,
13 if that's all right, regarding this matter.

14 So the four official, and I'm sure there may have been other email
15 or phone calls in this period, but the four exchanged letters that I have
16 during this period begin with January 20 public disclosure notice,
17 followed by -- I'll let you take notes -- yeah, January 20th public
18 disclosure notice; followed by Dream Center's -- I'll describe it as a
19 negative response to that notice on February 2nd, which we just
20 discussed; followed by HLC's February 7th amendment of its January 20
21 notice; concluding with Dream Center's February 23rd proposal of
22 conditions.

23 Can you describe HLC's February 7th letter just at a high level?

24 Ms. Morgen. It's at exhibit 25?

25 Mr. Sinoff. Yeah.

1 Ms. Gellman-Danley. My understanding of that, and I want to make
2 sure I'm correct, is that was tweaking. That wasn't any major big
3 change.

4 No. 25 is their letter, not ours.

5 Ms. Kohart. Yes. It's probably --

6 Ms. Morgen. It's at the end of that exhibit.

7 Ms. Gellman-Danley. Okay.

8 Ms. Kohart. No. Maybe look at the second letter in 25, I think.

9 Ms. Morgen. Uh-huh. They're back to back.

10 Ms. Kohart. Go back two pages -- or two exhibits.

11 Ms. Gellman-Danley. Oh, I'm sorry.

12 Ms. Kohart. It's all right.

13 Ms. Gellman-Danley. This is a tab. This is not just a divider.
14 I've got it.

15 Ms. Kohart. There you go.

16 Ms. Gellman-Danley. Okay. Does everybody have that February 7th
17 letter?

18 Mr. Sinoff. Yes, ma'am.

19 Ms. Gellman-Danley. And so I'm going to look at it now.

20 Ms. Morgen. It's their 25 and it's, like, buried in the back.

21 Ms. Kohart. It's the second letter in there.

22 Ms. Gellman-Danley. As I'm looking at this, can you remind me what
23 your question was?

24 BY MR. SINOFF:

25 Q Yes. My question was just generally, why send that letter?

1 What was the purpose of sending that letter?

2 A We wanted to affirm that they understood that their initial
3 letter, which said we don't understand it, would have made it clear
4 again.

5 Q And following that letter, Dream Center sent a February 23rd
6 letter. I believe that is the next exhibit.

7 Did you see this letter when it was sent?

8 A Yes.

9 Q And what was your reaction to that letter?

10 A It looked like a negotiation letter.

11 Q And would that have been appropriate for HLC to negotiate at
12 this point?

13 A I've never received a letter from any institution after an
14 action and after all the interactions over the course of many, many
15 months that said, basically, we are confirming that and then put their
16 statements in there that were not necessarily aligned with what the
17 action was. So if you're asking is this a common kind of thing or -- for
18 example, if you take number two, both institutions remain accredited. We
19 are confirming. They are confirming something that's opposite of what we
20 told them.

21 Q Now, what did HLC do with this letter?

22 A At one point, there was a conversation, and I do not remember
23 the specific date, and it was very similar to some kind of attempt to
24 negotiate. I do not remember the specific follow-up to this, but we
25 could not -- when it came to the PDN, there were a couple little

1 technical things that could be fixed, but these are major, when it says
2 confirm that you're accredited. So I -- sorry. I cannot give you a very
3 specific answer on that.

4 Q Could you, in fact, confirm that they were accredited, for
5 instance?

6 A No, of course not.

7 Q What would you have to do to confirm that they were
8 accredited? What would HLC have to do? Would it be possible at all, I
9 should say?

10 A We would have -- there's no route for that, so we could not
11 confirm they were accredited because they were not.

12 Q Did you understand that this document is an appeal?

13 A No. This is not an appellate document.

14 Q Did you understand it's -- I'm sorry. Go on.

15 A No, that's fine.

16 Q Did you understand that it's a request for an appeal?

17 A Frankly, when I read it, I understand as we are ensuring that
18 you agree with the way we see it, which wasn't the way it was -- the
19 action took place.

20 Q And HLC did not subsequently send a written notice to Dream
21 Center?

22 A I'd have to look for it.

23 Q Okay.

24 A But this timing was such that this day, right before a board
25 meeting, and there were only five remaining days that Karen Solinski was

1 on staff and then Anthea took over her position. Any response would have
2 been a couple weeks later than that to give her time to settle in.

3 Q Okay.

4 A But I do not -- you're going to have to understand that we
5 have close to a thousand institutions. I can't have all of this
6 memorized. I don't want to give you inaccurate responses.

7 Q No. That makes sense.

8 Then you say you have close to a thousand institutions. Would you
9 say that, generally speaking, HLC expects the institutions to reach out
10 to HLC with any problems, concerns, as opposed to --

11 A Before a transaction, yes.

12 Q Before a transaction. Great.

13 Now, going to the May 21st communication that you just previously
14 referenced, Dream Center requested to appeal HLC's November 2016 -- well,
15 actually, I believe it was your January 20th letter. Did HLC allow Dream
16 Center to appeal?

17 A As I've noted, in the interest of giving them an opportunity
18 to be heard, we determined that we would give them an opportunity to file
19 an appellate brief, or whatever it's called, and so we gave them that
20 opportunity.

21 Q And why did HLC think it was important to give them that
22 opportunity?

23 A Well, there were a lot of conversations with the
24 representatives there. There were conversations with the Department, and
25 we felt that there was -- it was an opportunity, in all fairness, or it

1 was an exception, but that to -- you know, my response is that there was
2 open communication. They wanted to talk to us. They wanted to go
3 through an appeal. Even though they were way past the deadline and they
4 did not qualify for an appeal because it was not a sanction, that Anthea
5 and I thought we would give them that opportunity.

6 Q Would it be safe to say that HLC wanted to understand the
7 facts that they believed that Dream Center --

8 A We wanted to put it all out there on the table, yes. And so
9 Anthea, in her role, adequately and appropriately asked for an actual
10 appellate document, which we never received.

11 Q And can you get into that a little bit more? I understand
12 that you said something a moment ago about how you never received it, but
13 there was some confusion. Can you describe that a bit?

14 A Well, one, separately, we never received a letter in June that
15 was asking for an appeal, because we -- it was sent to the wrong address.
16 And so we never got --

17 Was it June 20 -- I have to look it up.

18 Ms. Kohart. It was like the 27th or 26th.

19 Ms. Gellman-Danley. Yeah. So --

20 Ms. Morgen. It's in your binder at No. 20 -- exhibit 23.

21 Ms. Gellman-Danley. My binder?

22 Ms. Morgen. Your binders.

23 Ms. Kohart. I know. I know.

24 Ms. Gellman-Danley. All right. So we have that date stamped for
25 us as not received. So this did -- this is something that came to us

1 and -- let me see. This letter represents a formal appeal provided by
2 the Dream Center Education Holdings, parent company, et cetera, and we
3 never got that.

4 Q And I'm sorry. Again, you said something about the address.
5 Can you elaborate on --

6 A Yes.

7 Q -- why you believe you didn't receive that?

8 A We were asked if we received -- it was -- I know. Commission.
9 They spelled "commission" wrong. So we were given something. It was
10 sent by Chris Richardson. Lopes Capital is not a company that's ever
11 been part of the interactions. It went to the spam of our attorneys, and
12 ours were HL Commission, missing an M. We never got that, and we never
13 got a subsequent call saying why haven't we heard from you about this.

14 Q Would you have -- it sounds like -- would you have expected
15 that call?

16 A I would have called someone if I sent an email and they didn't
17 respond. That's -- that's the way I can answer that question.

18 Q Now, committee staff tried emailing that address last night to
19 see if we would receive a bounce-back notification. We did. And I'm
20 curious if Higher Learning Commission has changed their email system at
21 all between that time and now.

22 A No. I mean, that's -- no, absolutely not. If you sent -- so,
23 for example, my name, BGDanley, all right, and if you said BGGellman
24 instead because it's a hyphenated name, I would assume you'd get a
25 kickback notice saying that wasn't received. I get them all the time

1 from Microsoft when I mistype something. That's just a technology thing.
2 We didn't get it.

3 Q Okay.

4 A We did provide an opportunity for them, subsequently, to talk
5 to our board, but not in an appeal. They wanted to come talk to our
6 board, so we gave them that opportunity. A few members of our board.

7 Q Now, as part of the committee's investigation, the committee
8 released documents showing that on May 31st, 2018, Dream Center officials
9 contemplated sending notice to students that they would appeal HLC's
10 action. This is exhibit 31, I believe.

11 Ms. Kohart. In your notebook.

12 Mr. Sinoff. Yes.

13 Ms. Gellman-Danley. I'm aware of this, so I know what you're
14 talking about.

15 BY MR. SINOFF:

16 Q Now, this --

17 A No, that's something else.

18 Q In these emails, Dream Center counsel stated, quote: I think
19 that even if all we do is set up a meeting with the HLC executive
20 committee in Chicago to get them to stand down to some extent on their
21 position, we are still appealing or challenging the HLC position, so
22 sending out the notice now but not later -- but later not actually
23 pursuing a full-blown internal appeal would not be inconsistent.

24 You referenced that HLC provided Dream Center the opportunity to
25 speak with the HLC executive committee. Is that correct?

1 A Not the executive committee. A few representatives. But that
2 wasn't an appeal. They just came in to speak with us.

3 Q When you became aware of this email that I just referenced,
4 what was your reaction?

5 A I felt sorry for the students. That email suggests that we're
6 going to tell the students -- you started by saying something was
7 written -- I think you did. If not -- the students were told we're
8 seeking an appeal, okay.

9 Q Yes.

10 A And then that document, which is something that was external,
11 is basically saying how can we position this as an appeal. Disappointed,
12 but that's all I'll say about it.

13 Q When an institution appeals an HLC action, does HLC require
14 the institution to continue to abide by HLC's disclosure requirements
15 around that action?

16 A Yes.

17 Q So in this case, if Dream Center had successfully filed an
18 appeal, which as you said, they did not, if they had, would Dream Center
19 be allowed, under HLC policy, to describe their status as, quote,
20 accredited, or, quote, fully accredited?

21 A Just by filing it?

22 Q Just by filing it.

23 A No. Kick me if I'm wrong, but if you appeal, that doesn't
24 mean any action was taken on it.

25 Q HLC would expect them to continue to indicate they were

1 candidates for accreditation, then --

2 A Yes.

3 Q -- during that period?

4 Now, the Department seems concerned that HLC did not provide Dream
5 Center due process during this period. In your estimation, did HLC
6 provide due process to Dream Center?

7 A Yes. I would disagree. We did provide due process. Things
8 were asked for that were not part of due process. So asking us to --
9 that early February 2nd or 7th letter that you referenced that we do
10 agree, we couldn't agree with something that wasn't true.

11 And, secondly, we never had to give an appeal option, and we were
12 gracious to do that. I mean, there were a lot of things going on, a lot
13 of individuals had opinions, and so we gave them that opportunity to put
14 it -- let's put everything on the table. And so we did not violate any
15 processes.

16 Q Did you tell the Department that?

17 A You have the November letter, correct?

18 Q I do, yes.

19 A Yes.

20 Mr. Sinoff. Kia, do you have any additional questions?

21 BY MR. HAMADANCHY:

22 Q The change in control candidacy status, has that ever been
23 used before in any other transactions with sales involving for-profit
24 colleges?

25 A It was offered to one that chose not to accept it.

1 Q And was that one the University of Phoenix?

2 A It was Everest College.

3 Q Oh, it was Everest.

4 And what do you mean --

5 A In Phoenix, but not University of Phoenix. That's the
6 confusion.

7 Q And so when you say they chose not to accept it, what does
8 that mean?

9 A That means exactly what it says, that this is what we were
10 going -- you know, the whole large organization was crashing. They were
11 one of the campuses that we had within our region, and they had a lot of
12 problems. And they were -- we said this is one way you can go about it.
13 And the powers that be, whoever they were, with or behind that
14 institution said we can't accept that.

15 Q And in your estimation, did they say that because they were
16 aware that the status meant they would be unaccredited?

17 A Yes.

18 Q And so what was -- so as a result, the transaction did not go
19 through?

20 A Correct, but not -- I can't say that it was directly
21 correlated to that campus. This was a very large cross-country
22 situation.

23 Q Fair enough.

24 Mr. Hamadanchy. That's all I have.

25 Mr. Sinoff. Okay. We're happy to cede the last 10 minutes. Thank

COMMITTEE SENSITIVE

1 you very much. We really appreciate it.

2 Ms. Kohart. Do you want to take some time before you start?

3 Ms. Morgen. I'd like to take a break, please. We need to move
4 anyway.

5 Mr. Sinoff. Thank you very much. We really appreciate you
6 answering all these questions.

7 We can go off the record now.

8 [Recess.]

COMMITTEE SENSITIVE

1 [12:39 p.m.]

2 BY MS. SCHAUMBURG:

3 Q Okay. I'm going to follow up on some things that have been
4 asked over time, and then I have a few questions, so I'm going to start
5 with those, and then I'll get into some of the followups along the way.
6 These are, as you see, the notes that I take, so if I have something
7 slightly wrong or you want to explain it a different way, please just let
8 me know that and we'll discuss it a little bit.

9 But first, I want to turn to the November 7th, 2018, letter from
10 HLC to Diane Jones. I have it as exhibit 3 in this little book. I'm not
11 sure what exhibit it is, but it's your November 7th letter.

12 Ms. Morgen. I think it's 35 in that binder.

13 Ms. Schaumburg. Thank you. Sorry.

14 Ms. Kohart. The one that's right in front of you. Thank you. Is
15 it 35?

16 Ms. Gellman-Danley. No, I'm not there yet. Oh, yes, my response.
17 Yes. I'm with you.

18 Ms. Schaumburg. All right. In that you say, regarding a decision
19 by the HLC Board of Trustees to approve the extension of accredited --

20 Ms. Gellman-Danley. No. It's not the right one. I'm sorry, I
21 have the wrong letter. This is my brief response.

22 Ms. Kohart. This is November 7, '18. Which one are you looking
23 for?

24 Voice. Is that not it?

25 Ms. Kohart. Yeah, that's it.

1 Ms. Gellman-Danley. That's it. Okay. All right. I'm sorry. Go
2 ahead.

3 BY MS. SCHAUMBURG:

4 Q I'm truncating some of the words here, but regarding a
5 decision by the HLC Board of Trustees to approve the extension of
6 accreditation following a change of control transaction. An extension of
7 accreditation implies the accreditation is current and is being
8 continued.

9 A I apologize, but that is not the letter I'm looking at.
10 That's my brief response to the October 31st letter. You seem to be
11 saying something that's longer.

12 Q HLC Board of Trustees to approve the extension of
13 accreditation following a change in control transaction. I'm just
14 cutting out a bunch of words and summarizing the sentence.

15 A Okay. I'm with you now.

16 Q Okay. Sorry.

17 A That's where we're repeating what she said. Okay. Got it.

18 Q So my question is about the extension of accreditation. It
19 implies that the accreditation is current and it's being continued. Is
20 that accurate?

21 A This was her language. We were -- in which you raise concerns
22 regarding a decision, and I believe that was her language.

23 Q Okay. So that is you repeating Diane?

24 A I believe so.

25 Q Okay.

1 A I don't have everything in front of me.

2 Q Okay.

3 A I would have to look up her letter.

4 Q In that letter, that same letter, you note that HLC will
5 review in detail the concerns raised and determine if revisions are
6 warranted in accordance with HLC's established policy on revisions of HLC
7 policy. Is that correct?

8 A Yes.

9 Q What were some of the concerns that were raised? What did
10 those concerns relate to?

11 A Well, on a regular basis -- I mean, first of all, there was a
12 letter outlining their concerns.

13 Q And that was the October 2018 letter?

14 A Yes.

15 Q Okay.

16 A That Diane signed. And then we have a regular process of
17 going through policies and taking a look at them. And so we said, okay,
18 we'll throw that into the consideration, and we did. And when we say
19 concerns, we're saying, okay, I'm going to give you a parallel policy.
20 We have a policy on, let's say, dual enrollment, and the wording is
21 something that after it's been in a place for a long time and there's
22 some confusion, we go through and we say, okay, we're going to tweak this
23 a little bit.

24 So through our normal course of action, we took this policy, and we
25 analyzed it and we studied it, and we determined that a lot of noise was

1 created, and this was something that was never the intent, and we thought
2 it was very clear. We just said we're going to eliminate that change of
3 control candidacy status.

4 Q Okay. So that was my -- that answers my next question.

5 A Yeah.

6 Q After you did this review --

7 A Yes.

8 Q -- there were revisions made?

9 A Yes. But I also want to point out the way that we do that is
10 we give it back to membership to take a look at it. We don't just do
11 that internally.

12 Q When you say we, you don't --

13 A The Higher Learning Commission.

14 Q Internal staff?

15 A We publish -- the Higher Learning Commission staff, prior to
16 bringing something as a change, we discuss it among ourselves. We put it
17 out for membership, and then we get the membership input, and we bring
18 that -- that's after the first reading. So the first reading, we bring
19 it to the board. They always get to look at it first. After the first
20 reading, we ask for member input. We take that into account. Usually
21 there's not much. And then we have a second reading and the board says
22 now it's passed, and that's been taken care of.

23 Q Okay. And how long does that process take?

24 A It's between board meetings. So if you say a policy came up
25 in February to a board, it would be the following meeting in June. If it

1 came up in June, it would be the meeting in November, and November to
2 February.

3 Q Okay. So not quite quarterly, but like every 4 months?

4 A Yes.

5 Q And your membership is all of your institutions?

6 A Yes.

7 Q Do you --

8 A All of them.

9 Q Do they all weigh in or -- you say they rarely --

10 A No. We don't get much of a response.

11 Q Okay.

12 A When we put things out, for example, our criteria for
13 accreditation, we did some revisions, and we had a lot of input on one
14 thing about where we moved some wording on mission statement, and so the
15 next version of that, we fixed that.

16 In this case, we sent it out saying we're going to do a couple --
17 we have it in here somewhere where it shows the Xing out and all that,
18 right, and so that's available, and we publish that after the board
19 meeting.

20 Q And do you recall getting many comments back on that one? So
21 it's normal course of practice?

22 A Yeah, but I don't -- yeah. It's very normal course of
23 practice.

24 Q Okay. Did you inform the Department about those revisions or
25 those changes?

1 A We were not asked to follow up on the letter that we received
2 from Diane Jones. I personally did not report that, but when we got a
3 subsequent letter a year later, we did report that that policy had
4 already, previous to that letter being sent, had been changed.

5 Q So that would be in reply to the October 2019 --

6 A Yes.

7 Q -- letter is when you told the board -- I'm sorry -- you told
8 the Department about --

9 A Right.

10 Q -- the change in policy?

11 A And I cannot say that there weren't some conversations that
12 Anthea might have had or something like that, but our formal reporting
13 was in response to that letter.

14 Q Okay. All right. Thank you.

15 Q Moving to the January 31st, 2020, letter. Do you know who signed
16 that letter?

17 A Yeah.

18 Q Ms. Kohart. From the Department?

19 BY MS. SCHAUMBURG:

20 Q From the Department.

21 A Lynn Mahaffie, I believe. I'd have to look.

22 Q Have you worked with her in the past?

23 A I don't work directly with her, no.

24 Q Okay. Do you know if your team does in general or has?

25 A Our team works with Herman Bounds --

1 Q Uh-huh.

2 A -- and our analyst Beth Daggett.

3 Q Uh-huh.

4 A And sometimes Mike Frola in the financial aid department.

5 Q Uh-huh.

6 A But I don't know the -- I don't know.

7 Q Okay.

8 A It may have happened, but I don't believe we interact directly
9 with Lynn.

10 Q Okay. So you're not aware that she is an employee at the
11 Department for 21 years?

12 A Oh, we knew she was a -- I mean --

13 Q A longstanding career employee?

14 A Yeah. We did not think she made up a letterhead, no.

15 Q I understand. I just didn't know if you knew her tenure and
16 that she is a career employee at the Department of Ed.

17 A I did not know.

18 Q All right. He's asked a lot of these, so I'm trying to --
19 you've already been asked a lot of these, so I'm trying to get -- move
20 fast forward.

21 Yesterday, Dr. Sweeney described a lot of the day-to-day work she
22 does for HLC. Is her work similar to what Dr. Solinski's work was with
23 HLC when they --

24 A Yes.

25 Q -- were in that same role?

1 A Yes.

2 Q Okay.

3 A Now, as a result of being a different person in the role, she
4 set up some different committees or has gone, you know, different
5 directions on things, but she -- it's the same title.

6 Q Okay.

7 A Minus the executive, because --

8 Q What does that mean?

9 A Ms. Solinski had a title that began with executive vice
10 president, and that is not part of Anthea's title because she hasn't been
11 there as many years.

12 Q Okay. So does that --

13 A They were both -- it didn't change the job. It was just a
14 tenure award or observation. But they -- no. It's the same job.

15 Q Okay. And I believe Ben asked you about this, but
16 Dr. Solinski told the Department that she believed the institutions would
17 remain accredited during the 6-month period beginning on the date of the
18 transaction. Are you aware that Dr. Solinski said that to the
19 Department?

20 A We received a letter and the attachments on January 31st.

21 Q Okay. So that is when you -- you did not know that beforehand
22 is what you're saying? Okay.

23 A We were not contacted for that, and I can't go into too many
24 details.

25 Q Okay. I understand.

1 A But as I said to Ben, there was -- it's different from when
2 she was with us.

3 Q Okay. And I'm summarizing a little about that letter, but --
4 Ms. Kohart. The January 31st --

5 Ms. Schaumburg. The January 31st, 2020, letter. The Department's
6 letter states several additional factors about HLC's -- I'm using their
7 words -- failure to provide clear, accurate information regarding the
8 punitive loss of accreditation. They say HLC does not explicitly state
9 accreditation must be forfeited.

10 I'm just reading.

11 Ms. Kohart. Yeah, I know.

12 Ms. Schaumburg. I'm not asking her to respond.

13 Ms. Kohart. Okay.

14 Ms. Schaumburg. Yet.

15 BY MS. SCHAUMBURG:

16 Q Without mentioning the potential loss of access to Title IV
17 funding, it was reasonable that DCH would not be aware that HLC was
18 removing accreditation. Responses to counsel representing DCH are not
19 consistent with the facts or sound practice of addressing these concerns.

20 At the conclusion of this, on the bottom of page 7 of that letter,
21 the Department finds that HLC violated the institution's due process
22 rights for failure to provide clear standards regarding institutional
23 accreditation and pre-accreditation.

24 Is that what the letter states?

25 A I'm not reading it with you.

1 Q Is that your understanding --

2 A Yes.

3 Q -- of the letter?

4 A Yes. And as you mentioned, due process, I do want to say one
5 thing. Earlier when I mentioned that the Dream Center had an opportunity
6 to speak with us, that was actually part of due process, because one of
7 the institutes, the Colorado Institute of Art, the team recommended
8 withdrawal. So due process is, is they get to have a hearing with the
9 board, and that's what that was.

10 Q Okay. Thank you.

11 The Department's letter establishes that they believe the November
12 16, 2017, letter was, in fact, an adverse action. You disagree with
13 that, correct?

14 A I will not -- I'm sorry. I'm not going to answer that
15 letter --

16 Q Okay.

17 A -- in this hearing.

18 Q Okay. I think that's -- and you've already indicated that
19 you're not going to talk about -- you're not going to answer our question
20 regarding your response to let us know if you are responding to that.

21 The letter requested a response in 30 days. When would you assume
22 that -- when do you see that letter --

23 Ms. Kohart. I'm sorry. It's such --

24 Ms. Gellman-Danley. We can't talk about this. I'm sorry.

25 BY MS. SCHAUMBURG:

1 Q All right. That's fine.

2 So following up on today's questions and conversation. You were
3 asked about the development of HLC policy regarding the change in control
4 candidacy. You said you were not involved in those because it predated
5 you. Is that correct?

6 A Yes.

7 Q Okay. And you've now since, though, revised those policies.
8 Is that correct?

9 A Yes.

10 Q Okay. And you were involved in that or you just -- like, what
11 was your engagement in that change of policy as we just discussed it?

12 A Well, certainly I've seen it before it went to the board, and
13 I knew why we were looking at it, because we had -- they send me a list
14 and say here's all the policies we're going to look at. So, for example,
15 for this -- the next board meeting we have because the negotiated
16 rulemaking is coming in place, and we want to be compliant. We will be
17 compliant by July 1. We have like seven or eight policies. So as normal
18 course of business, whenever policies are going in front, I see them.

19 Q Okay. Thank you.

20 You and Dr. Sweeney said there was one previous case where change
21 in control candidacy status was previously discussed with an institution.
22 Were there any of the Dream Center individuals involved in that
23 institution at all?

24 A I'm not -- we don't talk about an individual case, so I don't
25 recall.

1 Q You don't recall if any of the same people would have been
2 involved in that?

3 A I would not have been in that granular level.

4 Q Okay. Thank you.

5 If HLC considers those schools to not be in accredited status, but
6 if they accept the candidacy status, why would an institution agree to
7 that status? Doesn't that harm the students that are there? Or can you
8 help us understand that a little bit better?

9 A Yeah, I can. First of all, we care about students. In a
10 couple of weeks, we're going to be back in D.C. with funding, external
11 funding -- thank you, Lumina Foundation -- to develop a guide that
12 students right to know, what they need to know through the lens of the
13 creditors, and not just about accreditation. We care very much about the
14 students. That whole first grant was all about student success.

15 We always find ourselves in a dilemma, and it's an awkward dilemma.
16 There's a psychological term, "cognitive dissonance," where you're kind
17 of having a battle internally. And the bottom line is that the harm to
18 the students in staying with an institution that hasn't been successful.
19 And so we -- there is nothing we could -- in our imagination, that would
20 lead us to an opportunity to say we had complete confidence that the
21 Dream Center, which was not experienced in higher education, was going to
22 be successful. I think that it is not harmful to the students to protect
23 them from the new parent and to assure that the new parent, we would
24 hope, would reach the status that it would have succeeded.

25 And just to clarify -- I want to make sure I clarify. The term

1 candidacy and candidacy for accreditation, one is a brief statement, the
2 other one is how it happens, so they're not exactly separate. So I'd
3 like to point that out.

4 Q Okay.

5 A But when it comes back to -- and those are in your tabs to
6 look at the definitions, but that's the dilemma that we always have. We
7 were not confident that the institution was ready to succeed, and so we
8 gave them an opportunity. I think giving them an opportunity to do
9 everything right and meet the eligibility requirements is in the best
10 interest of the students. And we were very clear that the period can
11 be -- the visit had to happen within a certain amount of time. It could
12 be between 6 months and up to 4 years. And had they proven themselves
13 sooner, it would have likely been the sooner timeframe. Although until
14 that time happened, we wouldn't know.

15 Q Okay. What happened -- what is put on the students'
16 transcripts? Are they accredited -- are they considered accredited if
17 they come out of candidacy, or what happens to the students in that
18 timeframe?

19 A We don't do transcripts, so --

20 Q Can they say that they were at an accredited institution if
21 they are going through it, and they were a candidate?

22 A They were not accredited at that time.

23 Q So the students will always -- if the institution selects
24 that --

25 A I think, first of all, I don't see the -- I don't know what

1 they put on the transcript. We don't deal directly at that level. I do
2 know that they were not accredited at the time. However, I do want to
3 point out that the idea of teach-out agreements and working with other
4 institutions is another institution can take that and say I want to put
5 this course next to this course. And they completed that course, and
6 we're going to accept them to our institution, and we're going to give it
7 that accreditation. That transfers are up to the individual
8 institutions. So that opportunity was there.

9 Q Okay. Thank you.

10 A But in no case with any of our institutions have we seen a
11 transcript or told them what to put on it.

12 Q And you don't -- or how to refer to those students, like if
13 they were --

14 A We don't refer to the students. We say after January 20th,
15 they were not -- it was not an accredited institution.

16 Q They were not attending an accredited institution?

17 A Right.

18 Ms. Schaumburg. Did you have questions?

19 Mr. Ricci. Yeah.

20 So if they're not accredited during this status, but then in
21 a hypothetical situation, the institution meets all of the quality
22 assurance standards that HLC has set out in the policy book and they are
23 then accredited, they are taking off -- all the adverse actions are taken
24 off and they're no longer being sanctioned.

25 Ms. Gellman-Danley. Not an adverse action.

1 Mr. Ricci. This institution is no longer in the candidacy status.
2 How does HLC refer to credits earned during -- and I understand you don't
3 go into the granular level, but theoretically, students that were
4 attending while in candidacy status are still there while the institution
5 is now fully accredited.

6 Ms. Gellman-Danley. One, we do not have an ability or a policy
7 that allows for us to look at that 6-month or 4-year gap and say suddenly
8 you're accredited. What we say is your institution became accredited on
9 this date. That's when the courses are accredited.

10 BY MS. SCHAUMBURG:

11 Q How does the policy about -- so getting into the -- the
12 College of Nursing program that was -- there's a policy that you have
13 that is if you can announce it, but it's 30 days, if they graduated
14 30 days prior.

15 A I'd have to look at the policy. You're asking me granular
16 questions that I would like to refer to any policy that you're talking
17 about.

18 Q Okay. I think we have that.
19 Oh, do you have it? Is that their letter?

20 A I would prefer to look at a policy since you're asking me.

21 Q There's a letter that you sent to the Department in relation
22 to the Commission on Collegiate Nursing that discusses your policy that
23 was in there. That's fine. I was just curious how you distinguish it,
24 but somebody can look that up later. We don't need to take time now.

25 In your conversation with my colleague, you mentioned that you were

1 surprised that your policies were misunderstood. This is in respect to
2 the conversation on retroactive accreditation, and that was 7 to 8 months
3 after the transaction. You said, yes, I was surprised our policies were
4 misunderstood.

5 What do you mean -- who do you mean misunderstood them?

6 A Well, first of all, we heard sooner than that time from the
7 actual Dream Center Education Holdings group that they had concerns and
8 that they didn't understand it. And then later on, many months later, we
9 heard that the Department said that they didn't quite understand it. So
10 they thought it was a different kind of transaction.

11 Q Okay. So you're saying that it was misunderstood by both the
12 Department and the Dream Center, and you were surprised?

13 A We did not hear till many months later, and some of it we
14 actually heard indirectly by reading about it in the press, that the
15 Department had had concerns that it wasn't -- we weren't following our
16 policy.

17 Q Okay. And then there was a conversation here about
18 retroactive accreditation and the Bounds memo which says retroactive
19 accreditation is not allowed. You said you were surprised that your --
20 I'm sorry. Wrong one.

21 You said that your colleagues -- well, I wasn't really sure what
22 you were saying about your colleagues, but some of your colleagues had
23 apparently changed their policies to allow for retroactive accreditation.
24 Do I understand that correctly?

25 A I can clarify that.

1 Q Okay.

2 A I am not intimately familiar with all of my colleagues'
3 policies. When Herman explained that, it was new news, and so everybody
4 followed it. Then later, when Diane wrote a letter reversing that, it
5 left us that simply was saying, wait, this year it's this way. The next
6 year it's another way. That's hard for to us operate that way.

7 Q Okay.

8 A We will comply, but it's hard for us to operate that way. And
9 the second letter allowed for it. It didn't say you have to do it, it
10 allowed for it, and we had no such policy, and we still do not, that
11 allows for it.

12 Q The second letter being the reversal?

13 A Diane's letter --

14 Q Okay.

15 A -- in July of the following year from Herman's December
16 letter.

17 Q Okay.

18 A From '17 to '18.

19 Q Okay.

20 A I believe.

21 Q So, in your opinion, and what you're saying, the Bounds memo
22 changed the policy to say it was not allowed?

23 A I wouldn't say -- I can't -- I don't know that I would say
24 changed policy because I wasn't that familiar with that at the time. I
25 believe the way he wrote the letter, the 2017 letter, you can all find

1 it, but he wrote it and said, implied some of you are doing something you
2 shouldn't be doing. It wasn't us.

3 Q Uh-huh.

4 A So he was saying all of you accreditors need to know this is
5 the stop date, and you can't go back and give retroactive accreditation.

6 Q All right. So --

7 A It wasn't like a Dear HLC letter.

8 Q Correct.

9 A This was in general, and his letter, as I recall, and I'd have
10 to find it, implies that there were some agencies that may have been
11 giving retroactive accreditation. He was saying cease and desist.

12 Ms. Morgen. If you'd like to look at it, it's exhibit 22 in
13 your --

14 Ms. Gellman-Danley. I'd like to look at it. In mine. Okay.

15 Ms. Kohart. This one here.

16 Ms. Gellman-Danley. So I'd like to find that wording. It wasn't a
17 very long letter, and so some questions have arisen.

18 BY MS. SCHAUMBURG:

19 Q Okay.

20 A Okay. We didn't raise any questions.

21 Q That's fine. I just wanted to be clear that that memo was
22 new. There were people out there that thought -- it appears there were
23 accreditors out there that believed retroactive accreditation was
24 allowed, so Herman was coming in and explaining for everybody that it is
25 not, and then the Diane Jones letter came in and said yes, it is --

1 A That's -- that's pretty --

2 Q -- allowable, not required.

3 A Yes.

4 Q Okay. Just clarifying that point.

5 Then moving on, you were asked about your interaction with Diane
6 Jones regarding the teach-outs and brainstorming conversations. When you
7 say brainstorming conversations, what was that?

8 A Oh, I can -- I can actually give you a specific example. I
9 won't remember all of them. There were discussions in, I believe it was
10 2019, and I may be wrong. I'd have to look at the dates, but let me see.
11 No. It was '18.

12 A few months prior to the holiday break, discussions -- Diane said
13 we may have a solution for teach-out, and the solution is an institution
14 in Ohio that is likely to take the credits from all these -- take all
15 these institutions. And she mentioned Argosy, which wasn't ours, but she
16 mentioned Art Institutes, and they would take their credits. And she did
17 not name the institution, but by coincidence, I happened to have been the
18 vice chancellor at the State level in the State of Ohio, and I deduced
19 the institution, which she later named in December because it was an
20 unusual institution. There were two institutions that came together, and
21 then eventually this was formed, et cetera.

22 And so she mentioned that this institution might have a possibility
23 of taking all these credits. She said a community college.

24 Q Uh-huh. I hate to interrupt there, because I want to speak a
25 little bit more broadly.

1 A Sure.

2 Q If we have time, we can go back to that. But the
3 brainstorming conversations, were these focused on helping students
4 find -- or solidifying teach-out plans or helping students find paths so
5 they could continue their programs, or is that what the nature of them
6 were?

7 A A teach-out is exactly that. A teach-out is a requisite of a
8 closing institution, that you will develop teach-out plans. And if you
9 look at the new regulations, it pushes it back even prior to a closing,
10 when you look like you might close, and that you as a student would be
11 able to -- either the institution would, before they close, teach-out,
12 finish students to complete a course for something, a degree perhaps, a
13 certificate, or another institution. So we require, like all
14 accreditors, but I'll speak to us because that's what I know. We
15 accredit -- we require teach-out plans for an institution that's closing.

16 Q So that the brainstorming conversations were between you and
17 other accreditors in the Department. Is that what you mean?

18 A It was part of -- a lot of -- a part of it were the calls that
19 she had with everybody on it.

20 Q Okay. That said --

21 A One of them, like the one I mentioned with that particular
22 college --

23 Q Uh-huh.

24 A -- where it was perceived that there was an absolute solution
25 in place, that call was with me because we accredit Ohio.

1 Q Uh-huh.

2 A They're within our region. And so any institution in the
3 State of Ohio would have to go through HLC. Therefore, if something were
4 going to happen in Ohio, we'd have to be involved in that discussion.

5 Q Okay. And those were all with the goal of trying to help the
6 students. Is that your understanding?

7 A It's the goal of following policy that you're supposed to have
8 a teach-out, so --

9 Q Okay.

10 A -- that's the purpose of it.

11 Q Okay. You also mentioned that in this process, you felt like
12 you were caught in the middle. What did you mean by that? Between who?

13 A When we spoke to Herman Bounds and Beth, we asked them, if
14 something is changing, are we allowed to do retroactive accreditation,
15 and nothing had changed at the time. And it's very typical to call your
16 analyst. And we did not have a policy. So even with the new letter
17 coming out from Diane, the July 25th letter, if we didn't have a policy,
18 we would be violating our own policy. It doesn't -- we don't have a
19 retroactive accreditation policy. They always advise us, follow your
20 policies.

21 Q Uh-huh.

22 A So caught in the middle of we're giving you an opportunity.
23 An opportunity means an accrediting agency may -- I'm using the terms I
24 learned in negotiated rulemaking. You will do, and then you may do.

25 Q Uh-huh.

1 A This fell into the may do category. We didn't have a policy.
2 And to date, we still don't have a policy allowing for it. So if we were
3 to do what we were asked to do, the caught in the middle is we are
4 violating a policy. And our analyst, the Office of Inspector General,
5 anyone could come back in and say, but you didn't follow your policy.
6 That puts us in between a lot of swirling objectives.

7 Q Okay. Thank you.

8 And that is not any of the policies that you changed recently,
9 correct?

10 A No. It's a matter of we don't have a policy --

11 Q Okay.

12 A -- to do retroactive --

13 Q Okay.

14 A -- accreditation.

15 Q So in regard to the letter from Dream Center, the email, you
16 said you looked at it as their February --

17 A 2nd or 7th.

18 Q Yeah. You looked at it as a negotiation, not an appeal, that
19 they sent you these terms as the terms you disagreed with?

20 A There's a formal appeals process.

21 Q Uh-huh.

22 A It was not that.

23 Q Uh-huh. You said you felt it was an odd approach. Do you
24 attribute any of that to the idea that most of the individuals you were
25 dealing with at that -- HLC was dealing with at that point did not have

1 any experience in higher ed? So didn't know the accrediting process,
2 didn't know --

3 A No, I did not mean that at all.

4 Q Okay.

5 A No. What I meant was that there's formal processes that are
6 all published.

7 Q Uh-huh.

8 A If you're going -- first of all, if you're not allowed to do
9 that, you don't do that. But if you're given the opportunity to do it,
10 you need to go through the same procedure any other institution would go
11 through. It wasn't a judgment of expertise.

12 Q Okay. When you were talking about that Diane Jones had
13 reached out and said she's found a way to make it easy to do this, and
14 then you discussed that we don't have a policy to do this, did you ever
15 tell her you oppose it or just that you do not have a policy to do this?

16 A I told her that all policy decisions as to what we would
17 implement would be up to our board.

18 Q Okay. So you never told her you oppose it. You just
19 explained you don't have a policy?

20 A I didn't judge it either way --

21 Q Okay.

22 A -- because there was nothing to judge. I didn't have anything
23 that said we could change direction.

24 Q Uh-huh. There's a bunch of talk about meeting on strategy
25 and -- with the executive committee, and that Diane had called. This is

1 the back and forth between your calls with Diane relating to the October
2 31st letter and then the board meeting and stuff. When were you meeting
3 with the exec team, and was that --

4 A Sure. I'll tell you the schedule that day. The first day of
5 a board meeting is a Wednesday. There are some committee meetings that
6 take place. One of them is the executive committee, with me.

7 Q Who was in that meeting?

8 A The executive committee of the board and just me.

9 Q Okay.

10 A So there are five members, I believe.

11 Q Okay.

12 A And so we meet, we have dinner, we talk during dinner, and we
13 recess. So, normally, we're there between 6 or 8 or 8:30, 9 o'clock at
14 night, depending on what the business is.

15 Q And the Diane Jones letter came in during that meeting, or
16 that's when she was trying to reach you?

17 A The Diane Jones letter came in -- well, you have it.

18 Ms. Kohart. There's a time stamp on the cover.

19 Ms. Gellman-Danley. I think it was like 6 o'clock East Coast time,
20 something like that, and I was in the strategy committee at that time. I
21 believe I had about a 3-minute bio break, and then I was in the executive
22 committee meeting, and I didn't look at my mail. I don't do that --

23 Q Understandable.

24 A -- until after.

25 Q Okay. But this is when she was trying to reach you and talk

1 to you also, correct?

2 A Yes.

3 Q And you had directed Dr. Sweeney to talk to her at some point
4 in time?

5 A No. When I got back to my room --

6 Q Uh-huh.

7 A -- after the meeting, I noticed -- I checked my email before I
8 went to have more interaction with trustees.

9 Q Uh-huh.

10 A Okay. More social interaction, but we get a lot of business
11 done that way too. And so I went back to my room to drop off all my
12 notebooks, and I checked my mail. And that's when I saw the email, at
13 which point I then invited Dr. Sweeney to join me when I called --

14 Q Okay.

15 A -- Under Secretary Jones back.

1 [1:12 p.m.]

2 BY MS. SCHAUMBURG:

3 Q Thank you. And that is -- what day are the meeting?
4 Wednesday still?

5 A That's a Wednesday.

6 Q That's still Wednesday.

7 A The full board meets on Thursday and Friday morning.

8 Q Okay. When you say --

9 A Sometimes just Thursday, depending on the schedule.

10 Q When you say you had already -- you had shared the letter with
11 the board, was that the full board or the executive?

12 A That was the full board.

13 Q The full board?

14 A When I got the letter, I asked my assistant, who -- we use
15 Diligent software for Board books. I asked her to upload it and notify
16 the board that we had received this letter.

17 Q Okay. And is that common practice?

18 A If you get something like that, it would be, yeah.

19 Q Okay.

20 A It doesn't happen -- this was not common practice, to get a
21 letter like that --

22 Q In general, is it common practice?

23 A -- a day before a board meeting. We normally do not do that.

24 Q Okay. But, in general, when you get communications, you would
25 upload them to the system and inform the board, and that's how they are

1 notified of correspondence?

2 A If it's a board meeting, we would do that. That's the only
3 time that's been related to getting a letter from the Department.

4 Normally, what would happen if I got a letter from the Department,
5 I would send an email to the board informing them, "We've received this
6 letter. We will respond. We'll keep you posted."

7 But this was during a board meeting. We got it right during a
8 board meeting.

9 Q Okay. I understand.

10 There was a conversation about, do you know why Diane would have
11 called you or wanted to talk to you. I believe you said that you believe
12 she wanted to see the reaction, but she did not tell you why --

13 A I didn't use that terminology.

14 Q -- she was calling. Okay. How would you phrase that?

15 A I respect somebody in her position. And she said, "Can we
16 talk?" I didn't read anything into it. I saw the letter, and I assumed
17 she wanted to talk about that.

18 Q Okay.

19 A But it wasn't a reaction, that term. No, it was just she said
20 she wanted to talk; I called her back.

21 Q So you're saying you're not intoning anything into it other
22 than wanting to talk about the letter itself and just in a course of
23 business --

24 A Yes.

25 Q -- have a communication?

1 A Right.

2 Q Okay. Thank you.

3 When you were talking with Diane about this letter and it was this
4 idea of, well, I can retract it, I can't retract it, all you have to do
5 is send a letter that says you acknowledge receipt and that you'll look
6 at your policies, is that a pretty quick, accurate summary?

7 A Yes. But I think it's important to note, we never asked her
8 to retract it.

9 Q You never asked her to retract it.

10 A We never asked her to retract it.

11 Q She said that, and then she told you she can't in a subsequent
12 phone call, correct?

13 A That is correct.

14 Q Okay. Did you follow up with the board on that aspect of it?

15 A Well, as I mentioned previously, the next morning, I said,
16 "This isn't on the agenda, but since it came during a board meeting, I
17 sent it to you. There was a subsequent -- there was a call. Here's call
18 one, and here's call two." And that was it, just to keep them informed.

19 Q Okay. So did the board have to approve your response?

20 A No.

21 Q And that is within your normal course of business --

22 A Yes.

23 Q -- that you can respond --

24 A Yes.

25 Q -- and make that declaration?

1 A Yes. Absolutely.

2 Q Okay. Is there ever a situation where the board has to
3 approve your response?

4 A To the Department of Education?

5 Q To the Department of Education.

6 A I would think only if the Department of Education said I did
7 something unethical personally. Other than that, I'm the CEO of the
8 organization, and the only time the -- no, there's no case like that.

9 Q Okay. Thank you.

10 In terms of publishing their October letter, where you had said
11 that you -- was it you specifically that spoke with Herman --

12 A We were asked to give him a call. And so Anthea and I -- and
13 I don't know if anybody else -- Marla, were you in the room?

14 Ms. Morgen. I was not.

15 Ms. Gellman-Danley. Okay. So we gave him a call back.

16 BY MS. SCHAUMBURG:

17 Q So you were on the phone, about asking --

18 A I was on the phone --

19 Q Yes. Sorry. I was pointing the wrong --

20 A That's okay -- with Anthea, and we called him back.

21 Q Okay. And you asked him about publishing, that they had said
22 they were going to publish that letter and if they were actually going to
23 publish that letter?

24 A No. Just to clarify, Herman said, "I want to give you a
25 heads-up. I want to give you a heads-up that this letter" -- and he said

1 that the Department knew he was going to give us a heads-up. I don't
2 know who in the Department.

3 Q Okay.

4 A We just listened. And he said that this is going to be
5 published. It was all from the Department. We didn't call them. We
6 didn't ask. We didn't know it was going to be published.

7 Q Okay.

8 A He called to give us a heads-up.

9 Q When he said that, did you ask him not to publish it?

10 A No. It wasn't presented as a way of there was that option.
11 It was, "I'm giving you a heads-up, this is going to happen."

12 Q Did you have any followup after that, since the letter has not
13 been published, to our knowledge?

14 A Not about that issue.

15 Q Not about that issue?

16 A To my knowledge, I do not recall saying, "Well, is it ever
17 going to be published?" I don't think we've had that conversation. But
18 I would say that was really a listening moment.

19 Q Okay. You have not had that conversation, and you do not
20 believe Dr. Sweeney has had that conversation. Is that what you're
21 saying?

22 A To my knowledge.

23 Q Okay.

24 A I know that we were very curious as to -- we watched the
25 Federal Register for a while, and we didn't see it. And so it didn't

1 happen.

2 Q Okay. Thank you.

3 Between the November 2017 letter and the January 4th notice, there
4 were emails between HLC and Dream Center asking or discussing
5 modifications, giving them lots of opportunity to interact. Am I
6 characterizing that correctly?

7 A Uh-huh.

8 Q Okay.

9 A Not modifications.

10 Q They were not asking for modifications?

11 A The modifications were mostly on tweaking of the PDNs. Those
12 conversations -- and this was others, not me -- the normal course of
13 business. "We're headed this way" -- and what they were about. I'll
14 tell you what. There were modifications on date, because the -- prior to
15 the November letter --

16 Ms. Morgen. Dr. Gellman, you might want to review exhibit 20 in
17 their binder.

18 Ms. Gellman-Danley. Okay. Because they've changed the closing
19 date. So let's see.

20 All right. All right.

21 Okay, please ask your question again.

22 BY MS. SCHAUMBURG:

23 Q So I just was characterizing -- or trying to sum up. There
24 were a few communications between November 2017 and January 4, 2018,
25 between HLC and Dream Center. If you don't want to use the word

1 "modifications," that's fine. However you would characterize the
2 conversation about that, I'll leave that to you.

3 But I think the point you were making before was that there was
4 lots of opportunity for them to interact with HLC.

5 A That's right.

6 Q Okay. Is that common practice, to have that back-and-forth?
7 I know you aren't the one that does that; it's your staff that does that.
8 But is that pretty common practice?

9 A It depends. Lots of times, an institution will say, "Okay,
10 you want us to look at assessment, and we got your action letter, and we
11 want to talk through some ideas on assessment." So that kind of
12 interaction with the liaison or our Legal and Government Affairs Office
13 is always available.

14 Q Okay. And that is the -- I'm sorry, that's the Liaison that's
15 always available?

16 A It depends on what the situation is.

17 Q On what the question is.

18 A Because of the complexity of this transaction, Legal and
19 Government Affairs is involved as well, because when it's a for-profit
20 change of ownership, that's typical practice.

21 Q Okay. Thank you.

22 Then there was a conversation related to that people should
23 understand the difference in terms in the -- and I'm going to get them
24 wrong in saying this -- the change of control candidacy and the change
25 in what -- if you're a candidate and all of that. And you said, yes,

1 people should understand the terms, or that you believe they should
2 understand the terms. Is that correct?

3 A Yes. If I may?

4 Q Uh-huh.

5 A Any institution that is going through any discussions with us
6 about anything of our policies always makes a point of being very clear
7 about the terms. And the terms are publicly posted. So it would not be
8 unusual if institution X said, you're putting us on notice and I don't
9 really understand what that means. This was a voluntary situation. But
10 it's not at all unusual to have interactions about that.

11 Q Is there anything in your policies that require the
12 institution to have an affirmative response, that they do understand the
13 terms and that they clearly understand what they're getting into? Are
14 there any documents, any proofs, or any questions that are asked?

15 Ms. Kohart. The January 4th letter or email we got from --

16 Ms. Morgen. I can find that. I'm not understanding that's the
17 question, but I can find that.

18 BY MS. SCHAUMBURG:

19 Q But is that a general -- what I'm asking is more general.

20 A Well, in the case of something that's voluntary and we say,
21 this is what we're offering to you as an option, they were given a date
22 to accept it by a certain time.

23 In a case where it is a sanction, an adverse action, that's
24 not voluntary. So the follow-up to that is much more specific. "Here
25 are the problems that we identified. We want this report. We want this.

1 There will be a focused visit at this date." That's a different
2 situation.

3 For something like this, I do believe we did ask them to accept it
4 by a certain time.

5 Q Accept the terms, but --

6 A Yes.

7 Q -- is there anything in there that clarifies they understand
8 the terms? I'm just asking about general policy. Do you have any type
9 of affirmative statement that you ask to make sure that the institution
10 understands what they're accepting?

11 A I do not recall offhand that we have that statement.

12 Q Okay.

13 A But I do know that it would be very normal practice for an
14 institution to talk to us about that.

15 Q Okay. Thank you.

16 A And they accepted the letter that each of the presidents wrote
17 us, and --

18 Q Uh-huh.

19 A -- Brent Richardson.

20 Q Yep. I've seen those. Thank you.

21 Moving on to the NPRM, you said you were aware of the change, that
22 they wanted to make a change. When you say "they," you mean the
23 Department of Education?

24 A The Department of Education-- when negotiated rulemaking was
25 done this time, it was done, to my understanding -- because I haven't

1 been involved before -- differently. Normally, "Here's all the language,
2 everybody take a look at it and see what updates" -- the current
3 language. So here's what's in the language.

4 Q Uh-huh.

5 A This time it was, "We've gone through it, and we're going to
6 give you our first draft, knowing there are going to be changes and
7 negotiations along the way."

8 From that first draft on, there were a lot of things that said "an
9 institution may" or "we no longer want," and change of control candidacy
10 status was mentioned. Without having the negotiated rulemaking in front
11 of me, I cannot tell you exactly what that was.

12 Q Okay. I think I just want to -- well, I know I wanted to just
13 clarify, when you say "they" wanted it --

14 A The Department.

15 Q The Department wanted it. Are you interpreting that because
16 of the changes they gave you on that sheet, or were there conversations?

17 A It's not about -- no. It's about all accreditors.

18 Q Uh-huh.

19 A This negotiation was for all accreditors.

20 Q Correct.

21 A So those who sat on negotiated rulemaking were given this to
22 debate. And through the different sessions -- there ended up being four
23 sessions; a fourth was added due to the depth of all of it -- all
24 accreditors had a chance to look and say, I don't like this language, I
25 like this language, I need clarification. That's what took up 4 months.

1 Q But no one from the Department of Ed that you are saying
2 specifically said to you, "I want to change this policy." It was because
3 of the papers they presented to you that you are saying it's clear what
4 they wanted. Is that accurate?

5 A It wasn't always clear on any of them --

6 Q Negotiated rulemaking, I can understand that.

7 A -- I can assure of that. So they have lawyers present, and
8 they had a member who served on it who could thumbs-up or thumbs-down,
9 and there were a million questions about just about everything.

10 Q Okay.

11 I only have 47 seconds left, so I'm going to try to get through
12 just two more things here, or a few more things here.

13 The Department -- well, we've already covered that. I'll skip off
14 that one.

15 With the open communication about the appeal, that they didn't have
16 a right to an appeal but you decided to grant the appeal anyway -- this
17 is for Dream Center -- did the board have to approve you giving that
18 appeal, or was that an action that you can decide?

19 A We can decide that. I do not recall if we had a discussion
20 with the board about it.

21 Q Okay. And, again, when you say "we," you mean --

22 A The staff.

23 Q -- we, HLC staff?

24 A Right.

25 Q Okay. Would that have been a recommendation that came up from

1 Dr. Sweeney to you and you agreed with it, or is that a decision you
2 would have come up with?

3 A It came from Dr. Sweeney to me, but it wasn't like we hadn't
4 discussed it --

5 Q Okay.

6 A -- throughout. So we discuss a lot of things, and sometimes
7 we come up with the exact same idea, and other times I thought about
8 this, I thought about it 3 hours earlier. So it wasn't like I didn't
9 know that we were thinking about it.

10 Q Okay.

11 And just quickly on the bounceback of the email, you say that you
12 would assume they got a bounceback, but you do not know, you have --

13 A I would have no way of knowing.

14 Q -- never tested it, you would have no way of knowing that,
15 correct?

16 A Right. I do know that we never got it.

17 Q Okay. Thank you.

18 A Thank you.

19 Ms. Kohart. Thank you for accommodating our time requests. I
20 appreciate that very much.

21 Ms. Schaumburg. It worked.

22 Off the record.

23 [Whereupon, at 1:25 p.m., the interview was concluded.]

Barbara Gellman-Danley
Transcribed Interview
Exhibit 1



November 13, 2019

VIA EMAIL AND OVERNIGHT CARRIER

Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Dr. Mahaffie:

Thank you for your letter of October 24, 2019 ("October 24 Letter"). As always, the Higher Learning Commission ("HLC" or the "Commission") appreciates the opportunity to provide the U.S. Department of Education (the "Department" (the term "the Department" is used to refer to both the Accreditation group and the Federal Student Aid (FSA) group)) with information regarding its policies and procedures, as well as its actions related to the Illinois Institute of Art ("ILIA") and the Art Institute of Colorado ("AIC") (or collectively, the "Institutions" or the "Institutes").

HLC has at all times been committed to promptly and completely addressing any requests made of it by the Department, including any requests relating to HLC's policies and practices, and will do so with respect to the Department's questions in its October 24 Letter. However, as a preliminary matter, HLC must correct the Department's misapprehension regarding HLC's lack of response to a letter sent to it on October 31, 2018 by Principal Deputy Under Secretary Diane Auer Jones (see October 31, 2018 Jones to Gellman-Danley at [HLC-OPE 15163-15167](#)). Jones' letter did not inform HLC regarding the kind of response sought by the Department (e.g., documents, written explanations, attendance at a meeting etc.).

On the evening of October 31, 2018, HLC staff spoke to Jones regarding the letter in two phone conversations. In the second of those phone conversations, Jones informed HLC that the only response needed was a brief statement from HLC acknowledging receipt of the October 31, 2018 letter and confirming for the Department that HLC intended to review its policies in light of the concerns contained in the letter.

In reliance on Jones' specific instructions, HLC sent its response on November 7, 2018 and, even before that letter was sent, began an internal policy review focused on the concerns raised by Jones in her October 31, 2018 letter (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)). Jones promptly acknowledged receipt of HLC's response on November 7, 2018 without further request for clarification (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)).

Since November 2018, Jones and other representatives of the Department have communicated on numerous occasions with HLC regarding the Institutions. Not once did they ask for a status report on the policy analysis or suggest that HLC's response to the October 31, 2018 letter was inadequate.

Indeed, when Jones wrote to Senator Durbin on May 9, 2019 she indicated that the Department prospectively intended to review HLC's policies and actions with the respect to the Institutes, *and yet did not mention the October 31, 2018 letter or any deficiency in HLC's response to that letter* (see May 9, 2019 Jones to Durbin at [HLC-OPE 15366-15368](#)).

In short, HLC appreciates the opportunity to now respond to any questions the Department may have regarding accrediting decisions relating to the Institutes and would have happily done so previously if it had been asked to do so.

This letter sets forth narrative responses to each of the 21 requests in the October 24 Letter with additional contextualizing information as needed. The following documents are also being provided for the Department's review (via separate link and password provided by email to Dr. Mahaffie and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education), indicated as HLC-OPE 1-15429:

- (1) The HLC administrative records for ILIA and AIC from August 1, 2016 to the present. Where duplicative documents appear in the HLC administrative record for both Institutes, only a single copy of the document is provided.
- (2) Applicable HLC policies and procedures.
- (3) Other documents related to the requests. Where email threads span multiple days, the thread is referenced by the earliest date in the thread.

Where these documents may be helpful to further explain HLC's narrative responses to the requests, the documents are referenced in the responses and linked.

In order to respond to these requests, HLC reviewed applicable agency records. The following individuals also contemporaneously provided additional information:

- Barbara Gellman-Danley, President, HLC.
- Mary Kohart, Partner, Elliott Greenleaf.
- Lisa Noack, Assistant to the President and the Board, HLC.
- Robert Rucker, Manager for Compliance and Complex Evaluations, HLC.
- Anthea Sweeney, Vice President for Legal and Governmental Affairs, HLC. Prior to March 1, 2018, Sweeney served as Vice President for Accreditation Relations. In that role, she served as the HLC staff liaison to the Institutes. As staff liaison, Sweeney was the primary point of contact for HLC with the Institutes and would regularly communicate with personnel of the Institutes by email and phone. On March 1, 2018, Sweeney transitioned from her previous role to Vice President for Legal and Governmental Affairs. In order to assure continuity, Sweeney remained as the staff liaison to the Institutes until December 13, 2018, when HLC Chief of Staff Dr. Eric Martin was assigned as the Institutes' staff liaison (see December 13, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15199](#) and Gellman-Danley to Ramey at [HLC-OPE 15200](#)).

On November 1, 2019, Bounds informed Gellman-Danley and Sweeney that the Department intended to publish the October 24 Letter in the Federal Register as a "Notice of Investigation and Records Request." When asked whether this type of publication was standard, Bounds indicated that this type of publication was uncommon for an inquiry of this nature. As of the date of this response, this publication has not occurred. If the Department does choose to publish the October 24 Letter, HLC would expect the Department will likewise make the narrative portion of HLC's response public in its entirety out of fairness to HLC. The Department did issue a press release on November 8, 2019 (<https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>) that incorrectly characterizes HLC's actions with respect to the Institutes. HLC's responses herein also clarify the incorrect statements made by the Department in that press release.

Narrative Response

As initial matters, and as further explained below in detail, it is essential that the Department understand the following:

- The HLC Board (hereinafter the "Board") did not "place" the Institutes on Change of Control candidacy status. Nor did the Board "move" the Institutes from accredited status to candidate status. Rather, as a condition of HLC's approval of the proposed transaction in which Dream Center Education Holdings (DCEH) was purchasing the Institutes from Education Management Corporation (EDMC), the Institutes—after full consideration and extensive negotiation with HLC on various issues other than candidacy—voluntarily accepted Change of Control candidacy status and proceeded with the transaction. When the transaction closed, on a date in the middle of an academic term as chosen by the parties, rather than the date originally proposed, the Institutes automatically assumed candidacy status. Only after this date did the parties begin to complain about the fact of their status as candidates. See HLC Responses #1, #4, #10-12.
- The Board did not take any adverse action with respect to the Institutes in November 2017 (or November 2018). As such, the actions of the Board were not subject to appeal. Nonetheless, in response to a letter from DCEH legal counsel in May 2018, and well after the time period in which even an adverse action could be appealed, HLC afforded the Institutes an opportunity to proceed with an appeal. The Institutes did not follow through with their appeal efforts until several months later. In lieu of an appeal, DCEH legal counsel attempted to directly negotiate the Institutes' status with HLC staff in a manner that was not supported by HLC policy or procedures. See HLC Responses #1, #2, #3, #4, #10-12.
- HLC has consistently been clear to all constituencies—including the Institutes, students, and the Department that candidacy status (including Change of Control candidacy status) is a pre-accreditation status as understood within HLC policies. HLC communicated this in policy, letters to the Institutes and their counsel, Public Disclosure Notices, and communications with the Department. Any "misunderstandings" to the contrary by the Institutes or the Department simply are not supported by HLC's clear and consistent communication on this point. That said, the Department, not HLC, is responsible for determining an institution's eligibility for Title IV funding. HLC does not make determinations as to eligibility for Title IV funding and does not

make any representations to institutions or the public regarding an institution's eligibility for Title IV funding. See HLC Responses #1, #4, #5, #7, #8, #9, #10-12, #15, #17.

- As early as June 2018, Jones began actively discussing the possibility of retroactive accreditation for the Institutes with HLC, at times seemingly in contradiction to the statements being made by other representatives of the Department. In October 2018, in response to concerns from HLC that retroactive accreditation, even if permissible under new federal guidance, was not consistent with HLC policy, Jones indicated, as she had previously indicated in July 2018, that she would provide HLC with a letter indicating that applying retroactive accreditation to the Institutes was acceptable to the Department in this situation. While still noting that such an approach was not aligned with current HLC policy, HLC indicated that it would certainly review anything that Jones provided. The resulting communication from Jones was the October 31, 2018 letter. In this letter, the Department raised, for the first time, serious concerns about HLC's actions with respect to long-standing HLC policy and HLC's actions with respect to the Institutes. In evening and then late night phone calls on the night before the November 1, 2018 Board meeting the next day in which the Board was slated to take action with respect to the Institutes, Jones offered to retract the letter and then, indicating that she could not retract the letter, specified that all HLC needed to do in response to the letter was provide a very short response stating that HLC would review its policies. HLC provided this response on November 7, 2018 and Jones acknowledged the response without further request for clarification. HLC did not receive any further communication from the Department regarding the October 31 letter or its November 7, 2018 response until receiving the October 24 Letter. See HLC Responses #10-12, #19.

In addition, HLC's responses to the Department's individual inquiries are as follows:

1. On November 2-3, 2017, the Board of Trustees of HLC voted to allow the Institutions to be placed on "Change of Control Candidate for Accreditation" status ("CCC-status"), with the written assent (within 14 days) of the Institutions. HLC sent a formal letter on November 16, 2017, to Dream Center Education Holdings, LLC ("DCEH") notifying it about the Board's action and laying out the terms for complying with CCC-status, which would become effective on January 20, 2018 upon agreement. *See Letter from HLC to the Art Institute of Colorado, Illinois Institute of Art, and Dream Center Education Holdings, LLC, Board vote to approve the application for Change of Control, Structure, or Organization.* (Nov. 16, 2017) (Exhibit 3). Is Exhibit 3 the official accreditation notice from HLC to the Institutions? If not, then identify the official notice. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) the Institutions and (b) CCC-status. The time frame for this request is August 1, 2016 to the present.

HLC Response #1:

HLC's November 16, 2017 action letter was the first communication to the Institutes and DCEH indicating the Board's conditional approval of the proposed transaction (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)). In the action letter, the Board's approval

was expressly contingent upon the Institutes' explicit acceptance of several conditions listed, including the acceptance of Change of Control candidacy status.

The November 16, 2017 action letter is incorporated by reference in a second action letter issued on January 12, 2018, after the Board voted by mail ballot (upon the Institutes' express request) to extend its original conditional approval related to the Change of Control application to accommodate a later closing date (see January 12, 2018 Change of Control Action Letter at [HLC-OPE7769-7771](#)).

Neither action letter sets forth a specific effective date certain for the Institutes' change in status from accredited to candidate. This is for two important reasons. First, confirmation of the Institutes' acceptance of all conditions in writing was required; otherwise the Board's approval would be null and void. Second, the conditions the Board articulated, including Change of Control candidacy, would be triggered, if at all, only upon the parties' consummation of the proposed transaction. If the Institutes and the buyers did not accept the conditions (and thus likely chose not to pursue the proposed transaction), the Board made clear that "[i]n that event, the Institutes will remain accredited institutions" (see November 16, 2017 Change of Control Action Letter at [HLC-OPE7726-7732](#), page 2 and page 4).

Each of these two factors then, whether to accept the conditions at all and when precisely to consummate the proposed transaction, was entirely within the control of, and remained to be determined by, the parties to the transaction—not HLC.

To be clear, the November 16, 2017 action letter set forth that while the Institutes had not demonstrated that the five Change of Control "Approval Factors" were met without issue for purposes of continuing their accreditation post-transaction as required by HLC policy (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)), they had demonstrated sufficient compliance to be considered for "pre-accreditation status identified as 'Change of Control Candidate for Accreditation'...." Correspondingly, the letter set forth a significant monitoring protocol that would need to be satisfied during the period of candidacy, including the submission of quarterly interim reports and Eligibility Filings by each Institute, an onsite visit at each Institute within six months of the transaction date consistent with HLC policy and federal regulations, and a second onsite visit no later than June 2019. Each condition outlined by the Board illustrated the Board's concerns with discrete aspects of the Institutes' compliance with specific HLC requirements after the transaction. If at the time of the second onsite visit, the Institutes were able to demonstrate to the satisfaction of the Board that following the transaction they were in compliance with the host of HLC requirements that had been called into question in the course of evaluating the Change of Control application, then the Board would "reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action" (see November 16, 2017 Change of Control Action Letter at [HLC-OPE7726-7732](#), page 4).

The second action letter dated January 12, 2018 (see January 12, 2018 Change of Control Action Letter at [HLC-OPE 7769-7771](#)), was issued at the Institutes' request and only after the parties indicated their acceptance of the conditions in writing on January 4, 2018 (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)). See also HLC Response #4. This second action letter also did not specify an effective date beyond reiterating that Change of Control candidacy would be "effective immediately upon the closing of the transaction." The letter went on to express HLC's

expectations that the Institutes would properly notify their students of the acceptance of the Board's condition of Change of Control candidacy, as well as the implications and impact of that status once the transaction closed, and that the Institutes would provide students with advisement and accommodations, including financial accommodations or transfer as needed.

When HLC's November 16, 2017 action letter was transmitted to the Institutes, a simultaneous courtesy copy was transmitted to Michael Frola, Director, Multi-Regional and Foreign Schools Participation Division, U.S. Department of Education, and Bounds (see November 16, 2017 Noack to Frola, Bounds at [HLC-OPE 15284](#)).

Courtesy copies of the January 12, 2018 action letter were also transmitted to Frola and Bounds on January 23, 2018 (see January 23, 2018 Noack to Frola, Bounds at [HLC-OPE 15291](#)). These copies of the January 12, 2018 action letter were belatedly transmitted to the Department precisely because they would only become necessary if the parties consummated the proposed transaction. The transaction closed on January 20, 2018 (see January 20, 2018 Pond to Sweeney at [HLC-OPE 7776-7777](#)) and the Department was provided a courtesy communication by HLC three days later.

At all times the Institutes, whether through their respective governing boards or otherwise, remained exclusively responsible to make reasonable inquiry of the Department of the implications of accepting candidacy status as a condition of Board approval, and further, to inform the Department that they had, in fact, accepted such conditions and closed the transaction.

2. Did HLC regard the accreditation action referenced in Exhibit 3 as an "adverse action" under either the Department's definition or HLC's definition of that term? If so, what duties did HLC have upon taking such an action? Describe the agency's definitions of "candidacy status" and "adverse action" in effect at that time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's definition of "candidacy status" and "adverse action", and/or (b) application of those definitions to the Institutes. The time frame for this request is August 1, 2016 to the present

HLC Response #2:

No, the Board actions described in the November 16, 2017 action letter did not meet the definition of an "adverse action" as defined in either federal regulations or HLC policy.

First, under federal regulations, an "[a]dverse accrediting action or adverse action means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program" (see 34 CFR §602.3).

Additionally, HLC policy in effect at that time defined "adverse action" as "those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status" (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15255](#)).

Had the Board in November 2017 approved the transaction and moved the Institutes from accredited to candidate status against their will without seeking consent in advance, this would be an adverse action. But that was not what occurred in this situation. Rather, the Institutes consented to the condition and subsequently consummated a transaction they knew would trigger the change in their accreditation status. See also HLC Response #4.

In addition to the plain language of the definition of "adverse action" in regulations and HLC policy, the Board's November 2017 actions are not appropriately characterized as adverse actions because the defining characteristic of an adverse action is that it is forced. Adverse actions do not depend on voluntary cooperation, acceptance, or acquiescence. HLC did not immediately effectuate Change of Control candidacy status, nor did it set a date certain when the change in status would inevitably take effect. That is because the consummation of the transaction, which was the key step necessary to trigger Change of Control candidacy status and the accompanying loss of accreditation, was exclusively within the control of the parties to the transaction themselves, and not HLC. In consummating the transaction, the Institutes voluntarily accepted candidacy status, and relinquished their accreditation, on the transaction date in order to pursue new ownership under DCEH. While the end result was the loss of accreditation, this voluntary action on the part of the Institutes is inconsistent with the definition of an adverse action under HLC policy or federal regulations.

HLC's November 2017 action, including the offering of the condition of Change of Control candidacy, was designed to permit an unproven, inexperienced entity the opportunity, if it was willing, to prove its ability to properly manage institutions of higher education, without completely terminating the Institutes' affiliation with HLC. If the condition of Change of Control candidacy was unacceptable to the parties, then the parties could have signaled their rejection of the conditions and the Board's approval of the transaction would have been null and void. Presumably, the parties would have then abandoned their plans to consummate the proposed transaction, and the Institutes would have continued to be accredited while remaining subsidiaries of their original corporate parent, EDMC. This choice was made abundantly clear in the November 16, 2017 action letter: the parties were free to reject the conditions.

Instead, after a reasonable period for consideration, research and inquiry that lasted almost two months (November 16, 2017 to January 4, 2018), during which the parties made several inquiries to HLC, including through their legal counsel, as to the significance of the conditions in the Board's November 16, 2017 action letter, the parties accepted the conditions for approval set forth by the Board (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)). See also HLC Response #4. The parties then automatically triggered the effective date of those conditions when they consummated the transaction on January 20, 2018 (see January 20, 2018 Pond to Sweeney at [HLC-OPE 7776-7777](#)), while aware of the implications, even though they could have abandoned the proposed transaction at any time.

An explanation of "candidacy," as of November 2017, can be found in HLC Policy INST B.20.020, Candidacy (see HLC Policy INST.B.20.020, Candidacy—current version/last revised November 2012 at [HLC-OPE 15229-15235](#)), with further explanation as to the concept of Change of Control candidacy found in HLC Policy INST.E.50.010, Accredited to Candidate Status (see HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#)). See also HLC Response #17.

3. Did HLC consider the accreditation action referenced in Exhibit 3 to trigger an opportunity to appeal? If so, please describe HLC's notice to the Institutions. If not, please explain why HLC believed that to be the case. Describe HLC's policy describing the accreditation actions that could be appealed, and the agency's appeal policy in effect at the time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's policy regarding appeals of accreditation actions, (b) its definitions of relevant terms, and/or (c) application of those definitions to the Institutions. The time frame for this request is August 1, 2016 to the present.

HLC Response #3:

No, the actions described in the November 16, 2017 action letter did not trigger an opportunity to appeal because they were not adverse actions. HLC's policy on Appeals contemplates that only those actions specifically defined as "adverse actions" may be appealed (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15264](#)). Because no adverse action had taken place, no opportunity to appeal was triggered. Correspondingly, no action of the Board raised a due process concern pursuant to 34 CFR §602.25. See also HLC Responses #2, #10-12.

4. Did the Institutions agree to the terms of Exhibit 3 in writing? If so, please provide records demonstrating such acceptance. If not, did the institutions reject the conditions or otherwise indicate their intention to refuse to comply? Please provide records indicating such intent.

HLC Response #4:

Yes, after extensive discussion between HLC and the Institutes, DCEH voluntarily and affirmatively accepted the conditions in the November 16, 2017 action letter, with minor modifications, in writing on January 4, 2018 (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)).

This acceptance was well past the 14-day time frame for acceptance articulated in the November 16, 2017 action letter. The delay was, at least in part, the result of extensive conversations between HLC and the parties regarding the proposed conditions.

First, in a November 29, 2017 institutional response to the November 16, 2017 action letter, the Institutes expressed that they understood that "both AIC and ILIA will undergo a period of candidacy beginning with the close of the transaction," in addition to confirming their understanding of several other conditions. The communications made several requests. For example:

- The parties requested an extension of the date by which the transaction would close (after which they consummated what was never expected to be a closing in the middle of an academic term);
- The parties requested an extension from February 1, 2018 to March 1, 2018 for delivery of their respective Eligibility Filings;
- The parties requested that certain interim reports be jointly filed; and

- The parties requested that the substantive requirements for reports related to a previous Consent Judgment be modified. HLC was aware that the appointment of the Settlement Administrator originally appointed as part of the referenced Consent Judgment would expire in 2018. Dissatisfied with the fact that several EDMC employees would migrate to DCEH or its related entities in what had been described repeatedly as a "lift and shift" by representatives of the Institutes representatives during the Fact-Finding Visit (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)), HLC sought assurances that an independent third-part entity would continue monitoring the Institutes at least for some period to ensure ongoing compliance with the Consent Judgment, notwithstanding that the Institutes would be under new ownership;

(see November 29, 2017 Richardson, et al. to Gellman-Danley at [HLC-OPE 7740-7741](#); November 29, 2017 Pond to Sweeney at [HLC-OPE 7738-7739](#)).

Notably, however, *the institutional response expressed no desires or objections related to candidacy status.*

On December 1, 2017, HLC's former Executive Vice President for Legal and Governmental Affairs, Karen Peterson Solinski, attended a Federal Student Aid conference. There, she met in person with external legal counsel for EDMC, Devitt Kramer; DCEH General Counsel, Chris Richardson (the brother of Brent Richardson, then CEO of DCEH); and Ron Holt, external counsel to DCEH. In a series of emails following up on this conversation, Solinski and Holt continued to discuss the possibility of making several modifications to the November 2017 action (see December 2017 Solinski-Holt Email Exchanges at [HLC-OPE 7742-7761](#)). Solinski indicated that some of the requests would require separate Board approval, while some could be managed through staff action (see HLC Policy COMM.B.10.020, Staff Authority for Minor Changes Related to an Institution's Relationship with the Commission—current version/last revised November 2012 at [HLC-OPE 15219-15220](#)). *Again, none of Holt's requests during December 2017 conversations addressed candidacy status or otherwise suggested that there was any objection to the candidacy condition.*

On January 3, 2018, HLC informed the Institutes that a clear acceptance of the conditions in the November 16, 2017 action letter had still not been received from the Institutes—and was still required (see January 3, 2018 Sweeney, Pond Emails at [HLC-OPE 15285-15287](#)). Such a clear acceptance was all the more essential given the ongoing conversations regarding the particulars of the conditions in the November 16, 2017 action letter (see January 3, 2018 Richardson to Solinski at [HLC-OPE 7762](#)).

Finally, on January 4, 2018, the Institutes, in a letter signed by DCEH CEO Brent Richardson, formally accepted the conditions with the one modification that would allow quarterly financial statements to be delivered within 45 days after the end of the quarter (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)).

With the receipt on January 4, 2018 of an explicit acceptance that referenced only the non-substantive change regarding delivery of quarterly financials, HLC interpreted this as the parties having concluded any substantive negotiations. The second January 12, 2018 action letter therefore incorporated by reference the Board's original November 16, 2017 action letter, while indicating the single non-substantive modification (see January 12, 2018 Change of Control Action Letter at [HLC-OPE 7769-7771](#)). *Remarkably, modifications to the Change of Control candidacy condition had not been discussed throughout the negotiations.*

Even after the issuance of the second letter, HLC would continue to grant courtesies such as allowing the Institutes to submit their respective Eligibility Filings on March 1, 2018, rather than February 1, 2018 (see January 8, 2018 Sweeney, Pond Emails at [HLC-OPE 15288-15290](#)).

This type of interactive process culminating in affirmative acceptance by the Institutes is exactly the type of due process contemplated by 34 CFR §602.25.

While the Institutes knowingly and voluntarily accepted the conditions as set forth in the November 16, 2017 action letter, subsequent to closing, the Institutes and the new parent corporation, DCEH, began engaging in actions that indicated a belated refusal to comply with conditions the parties had accepted. See also HLC Response #10-12.

5. Did HLC conduct a financial analysis of the Institutions prior to issuing Exhibit 3? Did this analysis account for the likelihood or possibility the Institutions would lose Title IV funding eligibility? Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control (a) regarding its financial analysis processes and procedures, and/or (b) application of those processes and procedures to the Institutions. The time frame for this request is August 1, 2016 to the present.

HLC Response #5:

Yes, in accordance with its policies and procedures, HLC reviewed financial aspects of the Institutes and the transaction, prior to taking action in November 2017. Based on information provided to the Institutes by the Department, HLC was aware of the Institutes' status with respect to Title IV. Critically, however, no part of the Board's decision was predicated upon an analysis of prospective or continued Title IV funding eligibility.

HLC policy in effect at the time related to Change of Control contemplated the analysis of five "Approval Factors." Those factors included Approval Factor 3: "[s]ubstantial likelihood that [after the transaction] the institution...will continue to meet the...Eligibility Requirements and Criteria for Accreditation" and Approval Factor 4: "sufficiency of financial support for the transaction" (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)).

Related to Approval Factor 3, Criterion Five, Core Component 5.A states: "The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future" (see HLC Policy CRRT.B.10.010, Criteria for Accreditation—current version/last revised June 2014 at [HLC-OPE 15221-15228](#)). The Board's analysis entailed determining the likelihood that after the transaction the Institutes would be able to remain in compliance with Criterion Five, Core Component 5.A.

Related to Approval Factor 4, the Board's analysis entailed understanding the financial underpinnings of the transaction itself, while not second-guessing the parties' decision to engage in the transaction.

In conducting its analysis, the Board applied *de novo* review, consistent with HLC policy and due process, in evaluating the evidence as uncovered by the Fact-Finding Visit team and as explicated in

the Staff Summary Report (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)).

The Board did additionally review the pre-acquisition review letter supplied by the Department to the Institutes, as this was an official prerequisite to Board consideration under HLC policy at that time (see October 9, 2017 DOE Pre-acquisition Information at [HLC-OPE 7081-7106](#); HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)). Generally, the Board's focus in reviewing pre-acquisition letters was to gain insight into the Department's orientation toward a transaction and to learn, preliminarily, what if any conditions the Department might impose, including, for example, limitations on enrollment or the posting of a letter of credit.

While the Board had general familiarity with the fact that non-profit institutions in candidacy are afforded the opportunity to participate in Title IV, the Board was not intimately familiar with all the procedural steps required to convert from for-profit to non-profit status. It simply knew more steps needed to be taken according to the pre-acquisition letter and proceeded with its decision-making based on the Approval Factors articulated in HLC policy.

Again, however, the Board's November 2017 actions in no way hinged on a determination regarding the Institutes' continued Title IV funding eligibility. Participation in, or eligibility for, Title IV funding is not a requirement of any aspect of HLC affiliation or any HLC evaluation processes, including as related to candidacy, accreditation, or the approval of a Change of Control application.

Rather, the Board's November 16, 2017 action letter expressed significant doubt about the Institutes' compliance with Core Component 5.A after the transaction for several reasons, including that their underlying financial assumptions appeared to heavily rely on the desired change in tax status when there were no guarantees from the Department that this change would occur (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 6).

6. Please describe the matters raised, discussions during, activities undertaken and/or decisions made at the November 2-3, 2017 HLC board meeting. Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing matters raised, discussions during, activities undertaken and/or decisions made at that board meeting. The time frame for this request is October 1, 2017 to the present.

HLC Response #6:

The November 16, 2017 change of control action letter describes the matters raised during the November 2-3, 2017 Board meeting pertaining to the Institutes' proposed Change of Control (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)).

A second action letter issued on the same date, pertaining solely to ILIA, describes the outcome of a separate review of ILIA's progress after a period spent on the sanction of Notice (see November 16, 2017 HLC Letter to ILIA [HLC-OPE 7733-7736](#)). The Board removed ILIA from the Notice sanction during the November 2017 meeting prior to its conditional approval of the Change of Control application pertaining to both Institutes.

Consistent with HLC policy, the Commission publishes within 30 days of each Board meeting a notice of the actions taken (see HLC Policy COMM.A.10.010, Commission Public Notices and Statements—current version/last revised August 2016 at [HLC-OPE 15216-15218](#)). This list of all institutional actions taken by the Board at the November 2017 Board meeting remains publicly available at: <https://www.hlcommission.org/Student-Resources/november-2017-actions.html>.

7. Please provide the Department with the HLC's change of control policy in effect between October 1, 2016 and October 31, 2018, include at least HLC policies INST.F.20.070, INST.B.20.040, and INST.E.50.010. Please also provide the summary report made by Commission staff prior to the Board's decision on November 2-3, 2017. Did the Institutions respond to the staff summary report? If so, describe the response. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its change of control policy. The time frame for this request is August 1, 2016 to the present.

HLC Response #7:

HLC's policies related to change of control in effect between October 1, 2016 and October 31, 2018 can be found as follows:

- HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)
- HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#)
- HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)
- HLC Policy INST.F.20.060, Monitoring Related to Change of Control, Structure or Organization—version effective at all relevant times/last revised November 2019 at [HLC-OPE 15265-15267](#)

The Staff Summary Report and Fact-Finding Visit Report can be found at [HLC-OPE 7030-7080](#). The Institutes' response to the Staff Summary Report and Fact-Finding Visit Report can be found at [HLC-OPE 7109-7551](#).

8. On January 20, 2018, HLC published its decision to move the Institutions to CCC-status. HLC, *Public Disclosure: Illinois Institute of Art and Art Institute of Colorado from "Accredited" to "Candidate"* (Jan. 20, 2018) (Exhibit 4). The public disclosure seems inconsistent with the letter sent to DCEH on November 16, 2017, outlining the terms of CCC-status. The letter does not mention that CCC-status is a final adverse action, while the public notice reads as if it is a final action. Describe why HLC believed the November 16, 2017 letter and the January 20, 2018 public notice were consistent and correct. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) Exhibit 4 and/or (b) the CCC-status of the Institutions. The time frame for this request is December 1, 2017 to the present.

HLC Response #8:

The November 16, 2017 action letter and subsequent public disclosures issued by HLC regarding the actions taken by the Board were consistent and correct. On January 29, 2018, following the consummation of the transaction on January 20, 2018, HLC published a disclosure on HLC's website, primarily to apprise students and the public of the change in ownership as well as the change in the Institutes' status from "Accredited" to "Candidate for Accreditation" (see January 20, 2018 Public Disclosure Notice (January 20 Version) at [HLC-OPE 7780-7781](#)). As a technical matter, the document actually constituted a "Public Statement" under HLC policy and thus was not previewed to the Institutes (see HLC Policy COMM.A.10.010, Commission Public Notices and Statements—current version/last revised August 2016 at [HLC-OPE 15216-15218](#)). The term "Public Disclosure Notice" is used herein.

HLC routinely issues Public Disclosure Notices in various circumstances. HLC's Public Disclosure Notices are intended for the general public and are written, as far as possible, in layman's terms. Public Disclosure Notices are meant to provide an institution's stakeholders, primarily current and prospective students, with accurate information concerning matters that may be of significance to them in deciding whether to enroll or remain enrolled. As a result, Public Disclosure Notices typically do not provide all the details provided to an institution in an action letter.

Public Disclosure Notices are typically silent on matters related to Title IV participation or eligibility as those matters are beyond HLC's purview. See also HLC Responses #5, #9, #10-12.

The actions outlined in the November 16, 2017 action letter were not adverse actions. Rather, the actions were "final actions" (see HLC Policy INST.D.10.010, Board of Trustees—version effective at all relevant times/last revised February 2019 at [HLC-OPE 15243-15244](#)). The term "final adverse action" in the October 24 Letter conflates these two terms. In actuality, in HLC policy the terms "adverse action" and "final action" have exactly opposite meanings: Adverse actions are subject to appeal; final actions are not subject to appeal. See also HLC Response #2.

Although no action had been taken that would require a Public Disclosure Notice per HLC policy, HLC determined that, in the interest of transparency to students, it should affirmatively inform students of the change in the accreditation status of the Institutes they attended, and explain in plain English the significance of that change. Students had a right to know that they were no longer attending an accredited institution and that, depending on other institutions' transfer and admissions policies, their credits *may or may not* be accepted for transfer by an institution (as determined by that institution, not an accreditor) or be recognized by prospective employers.

See also HLC Response #10-12.

9. Did HLC conduct a financial analysis of the Institutions contemplating the potential loss of Title IV eligibility prior to issuing Exhibit 4? If so, describe that analysis. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing the Institutes' Title IV eligibility. The time frame for this request is October 1, 2016 to the present.

HLC Response #9:

No, HLC did not conduct a financial analysis of the Institutes related to the potential loss of Title IV eligibility between November 2017 and January 2018.

As further detailed above in HLC Response #5, in accordance with its policies and procedures, HLC reviewed financial aspects of the Institutes and the transaction prior to taking action in November 2017. Based on information provided to the Institutes by the Department, HLC was aware of the Institutes' status with respect to Title IV. Critically, however, no part of the Board's decision was predicated upon an analysis of prospective or continued Title IV funding eligibility.

The January 20, 2018 Public Disclosure Notice was silent on the matter of Title IV because this was not within HLC's purview, although the Board did review the Department's pre-acquisition review letter.

It was expected and understood that the question of Title IV eligibility would be communicated *by the Institutes themselves* following the final determination of their tax status. All affiliated institutions (whether fully accredited member institutions or candidates for accreditation) are under an ongoing obligation to accurately disclose their status to their constituents at all times in accordance with various HLC requirements. This includes, for example, being transparent as to whether or not such institutions remain eligible for, or currently participate in, Title IV programs.

On January 26, 2018, Josh Pond, then President of ILIA, and Sweeney had a telephone call in which Sweeney reinforced the need for the Institutes to be transparent in their disclosures to their students. During the call, at Pond's request, Sweeney committed to reviewing the Institutes' proposed language, which it had sent to her, but made clear that any language she provided would be assuming a final determination had been reached that the Institutes were now non-profit entities. The language provided by Pond contained several phrases that were inaccurate in terms of fairly representing the Institutes' status. (see January 25, 2018 Sweeney, Pond Emails at [HLC-OPE 15292-15296](#)). It later became clear that the Institutes never implemented the guidance provided. See HLC Response #10-12.

Between November 16, 2017 and January 20, 2018, HLC did conduct a *non*-financial indicator (NFI) analysis with respect to ILIA. The NFI process serves as an early warning system related to an institution's current compliance with the Criteria for Accreditation, but the Institute's response to that analysis was entirely separate from and came after the Board's decision (see November 20, 2017 ILIA Non-Financial Indicators Letter at [HLC-OPE 7737](#); January 16, 2018 ILIA Non-Financial Indicators Report at [HLC-OPE 7772-7775](#)).

10. On February 2, 2018, DCEH, through its legal counsel, sent to HLC a response to the January 20, 2018 public disclosure. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 2, 2018) ([Exhibit 5](#)). Did HLC provide to the Institutions an opportunity to appeal the decision as requested? If not, explain why this was the case. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) [Exhibit 5](#) and/or (b) any appeal by the Institutions. The time frame for this request is February 2, 2018 to the present.

11. On February 7, 2018, HLC sent a response that seemingly reaffirms statements made in the January 20, 2018 public disclosure. *See* Letter from HLC to Rouse Frets Gentile Rhodes, LLC (Feb. 7, 2018) ([Exhibit 6](#)). Between November 16, 2017, and January 20, 2018, did HLC modify the terms and conditions of the accreditation action taken on November 16, 2017? If so, what prompted the modification? Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the action taken or described in the November 16, 2017 letter, and/or (b) Exhibit 6. The time frame for this request is February 7, 2018 to the present.
12. On February 23, 2018, DCEH, through its legal counsel, sent HLC a response to its February 7, 2018 letter. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 23, 2018) ([Exhibit 7](#)). It appears that, based upon our review of the aforementioned correspondence, there was significant confusion among HLC and DCEH officials regarding the accreditation status of the Institutes. Please provide to the Department all correspondence between DCEH and HLC between November 2, 2017, and December 31, 2018, including HLC's response to the February 23, 2018 letter and any further communication HLC had with DCEH regarding this letter. If HLC did not respond to the February 23, 2018 letter from DCEH please provide a written narrative explaining why. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing Exhibit 7.

HLC Response #10-12:

Note: In order to most effectively respond to the inquiries posed in a contextualized manner, HLC has combined its responses to inquiries #10-12. As initial matters, please note that (a) although not required to do so by HLC policy, HLC did provide the Institutes an opportunity to appeal, of which they then did not avail themselves; and (b) as further described in HLC Response #4, very minor modifications to timing and reporting requirements detailed in the November 16, 2017 action letter were made prior to January 20, 2018, all of which were made at the request of the Institutes. As further described below, HLC is not aware of any reasonable basis for confusion on the part of the Institutes or DCEH with respect to the accreditation status of the Institutes following their consummation of the transaction on January 20, 2018.

February 2, 2018 Letter and Related Events

On February 2, 2018, external counsel for DCEH and the Institutes wrote to HLC's President with what was the first indication of a negative response to the previously agreed-upon conditions (see February 2, 2018 Rouse Frets to HLC at [HLC-OPE 7782-7783](#)). See also HLC Response #4.

As far as HLC could tell, the objections came because the language in the Public Disclosure Notice, which set forth that Eligibility Filings were being required of the Institutes, among other next steps, could, according to the Institutes and DCEH, be interpreted by the public to suggest that the Institutes were "essentially in pre-candidacy, not candidacy" because the Eligibility Filings are "documents normally required to achieve candidacy" (see January 20, 2018 Public Disclosure Notice (January 20 version) at [HLC-OPE 7780-7781](#); February 2, 2018 Rouse Frets to HLC at [HLC-OPE 7782-7783](#)).

The Public Disclosure Notice included significant details about HLC's monitoring of the Institutes, including the requirement that the Institutes would need to submit Eligibility Filings. HLC had required these documents, not because the Institutes were being treated as institutions yet to seek candidacy status, but rather, as a relatively simple way of satisfying HLC that concerns that had been raised related to potential compliance with the Eligibility Requirements after the transaction had been resolved. The submission of Eligibility Filings would allow peer reviewers to conduct what was expected to be a routine review culminating in a determination that each Eligibility Requirement was "Met" or "Not Met."

The source of the Institutes' confusion was not clear to HLC. First, the header to the Public Disclosure Notice included the words "From Accredited to Candidate." Second, the Public Disclosure Notice stated: "During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards of candidacy....Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC...." (see January 20, 2018 Public Disclosure Notice (January 20 version) at [HLC-OPE 7780-7781](#)).

Moreover, the concerns articulated by the Institutes *had never before been raised, despite ample opportunity through active conversations prior to their January 4 acceptance*. If the Institutes believed, as stated in the February 2, 2018 letter, that "they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e. they would be immediately placed in candidacy (already approved)," this is exactly what Change of Control candidacy achieved, and what the Institutes had agreed to in their January 4, 2018 letter. See also HLC Response #4.

HLC responded by letter on February 7, 2018 (see February 7, 2018 Gellman-Danley to Rouse Frets at [HLC-OPE 7784-7785](#)). In this letter, HLC clarified that none of the terms of the most recent agreement between the Institutes and HLC had been modified by the Public Disclosure Notice. Eligibility Filings had been originally required in the November 16, 2017 action letter (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 2). Indeed, as stated above, the Institutes had asked for an extension of the deadline to file the Eligibility Requirements in their November 29, 2017 letter, a request that was granted by the Commission (see November 29, 2017 Richardson, et al. to Gellman-Danley at [HLC-OPE 7740-7741](#); January 8, 2018 Sweeney, Pond Emails at [HLC-OPE 15288-15290](#)).

HLC also clarified that it had no status known as "pre-candidacy."

Nevertheless, without changing the underlying substance, HLC promptly published a revised disclosure that same day to further clarify the issues that were concerning to the Institutes and DCEH (see January 20, 2018 Public Disclosure Notice (February 2 Version) at [HLC-OPE 7778-7779](#)). (The updated Public Disclosure Notice does not reflect an updated date.) This version of the Public Disclosure Notice omitted any reference to the Eligibility Filings (though the Institutes would still be responsible for preparing and submitting those documents until the requirements were suspended).

With the new Public Disclosure Notice, HLC was confident that the concerns expressed by the Institutes in the February 2, 2018 letter were adequately addressed.

Though not listed as a copied party on the February 2, 2018 letter, Frola from FSA was copied on the email transmission (see February 2, 2018 Frola, Solinski Emails at [HLC-OPE 15297](#)). On February 5,

2018, Frola then emailed Solinski requesting a copy of the published statement referenced in the February 2, 2018 letter (see February 2, 2018 Frola, Solinski Emails at [HLC-OPE 15297](#)). HLC records do not indicate whether Solinski responded.

February 23, 2018 Letter and Related Events

On February 23, 2018, external legal counsel for the Institutes and DCEH again wrote to HLC (see February 23, 2018 Rouse Frets to Gellman-Danley at [HLC-OPE 7786-7787](#)).

The letter set forth several assumptions that the Institutes wished to "confir[m]." One assumption was that the Institutes "remain eligible for Title IV." The letter indicated that it was the Institutes' position that they had "relied in good faith" on HLC's use of the term "preaccreditation" in its November 16, 2017 action letter to come to a conclusion that that the Institutes remained eligible for Title IV as non-profit institutions.

Curiously, on the issue of Title IV eligibility, the February 23, 2018 letter referred to 34 CFR §600.2, which contains the definition of "preaccredited," and 34 CFR §600.4(a)(5)(i), which defines "Institution of Higher Education" as a "public or private nonprofit educational institution that...is... [a]ccredited or preaccredited." However, the letter does not acknowledge that the definition of "Nonprofit institution," appearing just prior to "[p]reaccredited" in 34 CFR §600.2, explicitly states that the U.S. Internal Revenue Service ("IRS") makes determinations related to any organization's tax status.

To be clear, HLC does not play a role in determining an institution's eligibility for Title IV funding. The IRS makes determinations related to any organization's tax status and, in turn, the Department's FSA office makes any determination related to Title IV eligibility. See also HLC Responses #5 and #9.

This division of responsibilities would have been clearly known to the Institutes not only based on the plain language of the federal regulations but also based on previous dealings regarding Title IV. First, on September 12, 2017, the Department issued a letter to Brent Richardson, CEO of DCEH, setting forth in detail the Department's Pre-acquisition Review of the Proposed Change in Ownership and Conversion to Nonprofit Status. The pre-acquisition letter made clear that, although the Department "ha[d] not identified any known or present impediments to the Institutes' requested conversion to nonprofit status, following the CIO, and as described herein, [the Dream Center Foundation would] have to submit additional documentation and information to confirm the other elements of nonprofit status" (see October 9, 2017 DOE Pre-acquisition Information at [HLC-OPE 7081-7106](#)). The conditional nature of the pre-acquisition letter, including, of course, the fact that the letter and any potential determinations regarding Title IV were coming from the Department and not HLC, was reinforced to the Institutes in HLC's report regarding its evaluation of the transaction (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), page 8).

Second, the February 23 letter makes the completely erroneous statement that the Institutes "remain accredited, in the status of Change of Control Candidate for Accreditation...and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review." This statement was incorrect as to the meaning of Change of Control candidacy based on the language of the November 16, 2017 and January 12, 2018 action letters. See also HLC Responses #1, 4.

Moreover, with respect to timing, by the explicit terms of the November 16, 2017 action letter, the Institutes would only have the opportunity to regain accreditation after they had demonstrated to the Board's satisfaction that they met several HLC requirements. The Board anticipated that fully evaluating an evidence-based resolution of these concerns would take time and therefore indicated it would not consider granting accreditation until after the second on-site focused evaluation, which would take place no later than June 2019.

Third, the February 23 letter demands assurances that the Institutes "will receive an objective review...with team members who have the requisite skill and experience to render an unbiased decision." HLC's standard practice is to conduct objective reviews and to seek out peer reviewers with the requisite skill, experience, and expertise to meaningfully evaluate its institutions. Among other measures of skill and experience, peer review teams typically include individuals who hail from institutions that are representative of the sector, Carnegie classification, and mission of the institution to be evaluated. In any event, peer review teams do not render any decision; they make recommendations to formal HLC decision-making bodies who then render decisions. In this case, based on its concerns, the Board had taken the added step of routing the outcomes of the Eligibility Reviews (which were later suspended) and the on-site focused evaluations (which were not suspended) directly back to the Board itself, rather than delegating to any other decision-making body.

In stating their third demand "for an objective review for continued accreditation," DCEH and the Institutes appeared to preview a future argument to be made that HLC was irrationally biased against for-profit institutions. As was widely published, EDMC had produced a very significant and negative record of dealings with students, prompting multiple investigations from numerous State Attorneys General plus the District of Columbia, resulting in an almost \$100 million settlement and Consent Judgment that could not responsibly be ignored. HLC's careful scrutiny through monitoring was objectively justified on EDMC's record, a record that also came to the attention of members of Congress (see June 22, 2017 US Senate to HLC at [HLC-OPE 5332-5336](#); July 13, 2017 Gellman-Danley to Senators at [HLC-OPE 5372-5373](#)). Even more, during the Change of Control Fact Finding Visit, EDMC employees repeatedly referred to the transaction as a "lift and shift" transaction, in which EDMC employees would become DCEH employees (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)). If the so-called "lift and shift" meant the migration of key EDMC personnel to DCEH (or its related entities) and would merely cloak predatory practices in what they believed to be a preferable non-profit status, thereby placing students whose backgrounds rendered them vulnerable, then HLC needed to set forth a monitoring protocol, and deliver a team of peer reviewers with the requisite skill, experience and expertise, to lay that subterfuge bare.

Finally, the February 23 letter indicates—again erroneously—that the Institutes would "communicate to their students that [the Institutes] remain accredited in the capacity of Change of Control Candidate for Accreditation." With this, the parties essentially previewed their intention to make incorrect disclosures that were inconsistent with HLC's aforementioned action letters, as well as the express guidance offered by Sweeney on January 26, 2018 (see January 25, 2018 Sweeney, Pond emails at [HLC-OPE 15292-15296](#)). The internal analysis at the Institutes and DCEH that led to this choice was later revealed in a series of email threads provided to HLC in the form of a complaint (see September 14, 2018 Sweeney to Mesecar, Ramey at [HLC-OPE 14816-14857](#); October 11, 2018 Ramey, Mesecar to Sweeney at [HLC-OPE 14988-14989](#)).

Inaccurate disclosures by the Institutes would continue to be a concern moving forward. Over the course of the next several months, HLC would have repeated conversations with the Institutes in

which HLC insisted that the Institutes accurately disclose their accreditation status (see June 12, 2018 Sweeney, Ramey, Monday Emails at [HLC-OPE 15316-15319](#); July 12, 2018 Sweeney to Monday, Ramey, Richardson at [HLC-OPE 12562-12580](#); July 12, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15343-15346](#); August 23, 2018 Sweeney, Gellman-Danley, Jones Emails at [HLC-OPE 15356-15358](#)).

(The Institutes had also previously exhibited a pattern of conduct showing an inability to make appropriate disclosures with respect to this transaction. For example, on October 20, 2017, Sweeney wrote to EDMC, then still the parent of the Institutes, to express concerns about the "Spotlight" section of EDMC's website that included a purported disclosure related to the transaction that remained incomplete (see October 20, 2017 Sweeney, Kramer Emails at [HLC-OPE 15281-15283](#)).

The February 23 letter closed with a statement that the parties wished "to avoid pursuit of an appeal and possible litigation." Given the circumstances, Solinski shared the letter with HLC's external legal counsel, Mary Kohart, Partner at the law firm of Elliott Greenleaf. Solinski's employment with HLC ended shortly thereafter and Sweeney assumed the role of Vice President for Legal and Governmental Affairs on March 1, 2018. Once situated, Sweeney specifically instructed Kohart in March 2018 to follow up with the Institutes' counsel regarding the February 23, 2018 letter. Kohart made attempts to contact the parties' counsel, but they did not respond to the outreach. As such, it appeared to HLC that the Institutes did not wish to communicate further about the matter.

Involvement of the Department's FSA Office

On the same day that the Institutes transmitted the February 23, 2018 letter, Frola emailed Solinski, indicating that "the candidacy status that HLC has Dream Center on following the CIO could be problematic for the schools title IV [sic] eligibility" (see February 23, 2018 Sweeney, Solinski, Frola Emails at [HLC-OPE 15298-15299](#)). Frola had received copies of both HLC's action letters dated November 16, 2017 and January 12, 2018 (see November 16, 2017 Noack to Frola, Bounds at [HLC-OPE 15284](#); January 23, 2018 Noack to Frola, Bounds at [HLC-OPE 15291](#)). However, February 23, 2018 was the first time that Frola reached out to Solinski indicating that candidacy status could be problematic for the Institutes. Solinski responded on February 24 that a call should be scheduled on Monday, February 26, 2018. She copied Sweeney and indicated that she expected Sweeney, as staff liaison, would join the call (see February 23, 2018 Sweeney, Solinski, Frola Emails at [HLC-OPE 15298-15299](#)).

The anticipated February 26 call took place on March 9, 2018—following postponements by Frola and the personnel transitions at HLC (see March 8, 2018 Sweeney, Frola Emails at [HLC-OPE 15300-15301](#)).

On the call, Frola, who was accompanied by numerous Department officials, including legal counsel, specifically asked Sweeney whether candidacy was considered accredited status and whether the Board "had made an independent determination that the Institutes were non-profit institutions." Sweeney responded that under HLC policy, candidacy is a formally recognized status that, insofar as it precedes accreditation, is considered a pre-accreditation status, *but it is NOT accredited status*. Further, Sweeney unequivocally informed Frola and those on the call *that the Board had made no*

independent determination as to the Institutes' tax status, as that was the rightful purview of the IRS and that the Board had made no independent determination as to the Institutes' eligibility for Title IV funding, as that was the rightful purview of the Department.

This apparent confusion on the part of the Department regarding the respective role of accreditors vs. the Department regarding determinations for Title IV eligibility would re-emerge in Jones' October 31, 2018 letter to HLC. See also HLC Response #19.

May 21, 2018 Intent to Appeal/Further Communications with the Department's FSA Office

On May 21, 2018, HLC received a formal letter of intent to appeal on behalf of both Institutes (see May 21, 2018 Rouse Frets to HLC at [HLC-OPE 12264-12266](#)).

Given the references in the letter to Title IV eligibility, and remembering the phone conversation with Frola on March 9, Sweeney telephoned Frola on May 22, 2018 to learn what, if any, final determination had been made by the Department regarding the Institutes' eligibility for Title IV funding. Frola informed her of what he termed the Department's "extraordinary measure" to grant "temporary interim non-profit status" as described in May 3, 2018 letters separately issued by the Department to each Institute (see May 3, 2018 ILIA DOE Grant of Temp Interim NFP Status at [HLC-OPE 12261-12263](#); May 3, 2018 AIC DOE Grant of Temp Interim NFP Status at [HLC-OPE 12258-12260](#)). Frola insisted HLC had been copied on the May 3 letters. After the phone call, Sweeney reviewed agency records (including Solinski's emails) to determine that HLC had not received the letters and reiterated to Frola via email that HLC had not received copies. Frola then forwarded the requested letters (see May 22, 2018 Sweeney, Frola Emails at [HLC-OPE 15302-15311](#)). (On June 14, 2018, Sweeney would then provide copies of the May 3, 2018 letters granting the Institutes temporary interim non-profit status to Bounds after a passing reference to them during a phone conversation on a separate matter indicated that Bounds may not have been aware of the determinations (see June 14, 2018 Sweeney to Bounds at [HLC-OPE 15320-15321](#))).

HLC responded to the May 21, 2018 letter on May 30, 2018 (see May 30, 2018 Sweeney to Rouse Frets at [HLC-OPE 12267-12268](#)). No adverse action had occurred that would trigger an opportunity to appeal. See also HLC Responses #2, #3. Moreover, the tardiness of any appeal was inconsistent with the timing in HLC's published Appeals Procedures, which require an appeal to be initiated within two weeks of Commission action (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15264](#)). Nonetheless, HLC informed the parties in the May 30 letter that, while not required under HLC policy, an appeal on behalf of both Institutes would be considered, and attached HLC's Appeals Procedures to the letter. In offering this appeal, HLC continued to provide the Institutes all manner of due process, as generally contemplated by 34CFR §602.25.

The Institutes ultimately failed to timely submit an Appellate document in accordance with the Appeals Procedures and the opportunity lapsed.

Simultaneously, upon receipt of the May 21 letter, HLC immediately suspended ongoing evaluative activity in an effort to minimize embroiling its volunteer peer reviewers in a potential appeal situation. This meant, among other things, that the review of the required Eligibility Filings, which was all but complete, was suspended along with the requirement that the Institutes submit quarterly financial

reports. The peer reviewers' analysis of the respective Eligibility Filings almost certainly would have resulted in official HLC findings that improper disclosures to students had been made.

There was only one exception to the suspended activities: the on-site evaluations required of each Institute within six months of the transaction date would go on as planned. No exception was allowed under federal regulations, a fact confirmed by Department analyst Elizabeth Daggett to Sweeney in writing on May 30, 2018 (see Sweeney, Daggett emails May 30, 2018 at [HLC-OPE 15312-15315](#)).

In November 2018, the Institutes would again attempt to renew their efforts to appeal both the November 2017 actions and subsequent November 2018 actions by the Board continuing the Institutes' candidacy until their planned December 2018 closures. These attempts to appeal were improper both as to timing and the continued fact that the Board had not taken an adverse action with respect to the Institutes in November 2017 or November 2018 (see November 7, 2018 AIC Action Letter at [HLC-OPE 15172-15179](#); November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#); November 20, 2018 Ramey to Gellman-Danley at [HLC-OPE 15187-15189](#); November 21, 2018 Mesecar to Gellman-Danley at [HLC-OPE 15190-15191](#); November 28, 2018 Gellman-Danley to Ramey at [HLC-OPE 15195-15198](#); November 28, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15192-15194](#)).

Initial Interactions with DCEH and the Department Regarding Retroactive Accreditation

The Institutes were not on the agenda of the Board's June 2018 meeting as institutional action items. However, Commission staff were scheduled to provide a full update to the Board regarding the Institutes at the meeting.

By that time, not only were the previously established evaluation efforts overtaken by the prospect of an appeal, but external counsel for the Institutes had contacted HLC with a new proposal that would allow for "[a]ll students who earned credits or graduated, from the time of the Schools respective initial accreditation through [its closing date], will be deemed to have attended or graduated from an accredited institution" (see June 20, 2018 Rouse Frets, Gellman-Danley, Sweeney Emails at [HLC-OPE 15322-15324](#)). Although not explicitly using the term "retroactive accreditation," this proposal was tantamount to retroactive reinstatement of accreditation.

Certainly, it was unusual for HLC to receive such a proposal from an institution at all. Even more, however, the substance of the proposal appeared to be suggesting an outcome that was not contemplated by HLC policy and one that HLC also understood to be prohibited by federal regulations and Department guidance.

First, retroactive accreditation, as proposed, was not permitted under current HLC policy. HLC policy does allow students who graduate 30 days prior to the grant of accreditation to an institution to benefit from that accreditation, notwithstanding the fact that the institution had been unaccredited as a candidate at the time they attended (see HLC Policy INST.B.20.030, Accreditation—current version/last revised November 2015 at [HLC-OPE 15236-15238](#)). The same would be true for students graduating from the Institutes within 30 days prior to any Board decision to grant accreditation. Otherwise, however, HLC policy did not provide for retroactive accreditation and any change in HLC policy would need to adhere to other established policies governing policy revisions (see HLC Policy PPAR.A.10.010, Dating of Policies—current/never revised at [HLC-OPE 15276](#); HLC Policy PPAR.A.10.030, Program for Review of Institutional Accreditation Policies—current

version/last revised November 2012 at [HLC-OPE 15277](#); HLC Policy PPAR.A.10.040, Revision of Accreditation Policy—current version/last revised November 2012 at [HLC-OPE 15278](#)).

Moreover, HLC had operated for some time under a general understanding that back-dating any substantive change approval was frowned upon under the federal regulations (see, for example, 34 CFR §602.22(b)) as well as Departmental guidance. In fact, when Sweeney sought to confirm HLC's prevailing understanding of retroactive accreditation with Daggett on June 26, 2018, Daggett specifically provided Sweeney a June 6, 2017 Memorandum on the issue ("2017 Memorandum") (see June 26, 2018 Daggett to Sweeney (2017 DOE Memo) at [HLC-OPE 15325-15327](#)). The 2017 Memorandum, with the subject line "Accreditation Effective Date," clearly stated that "The Department of Education requires an accreditation decision to be effective on the date an accrediting agency's decision-making body makes the decision. It cannot be made retroactive, except to the limited extent provided in 34 C.F.R. §602.22(b) with respect to changes in ownership" (see June 26, 2018 Daggett to Sweeney (2017 DOE Memo) at [HLC-OPE 15325-15327](#)). The exception refers to the fact that an agency may designate the date of a change in ownership as the effective date of its approval of a substantive change to be included in the institution's accreditation, if the substantive change decision is made within 30 days of the change in ownership.

Almost immediately thereafter, however, Jones reached out to Gellman-Danley. As Sweeney described to Daggett: "[Jones]...has now reached out to our President with different ideas about the [application of retroactive accreditation to the Institutes], despite Herman's memo" (see June 27, 2018 Daggett, Sweeney Emails at [HLC-OPE 15328-15330](#)).

This is at odds with the implications of what Jones indicated in her Congressional testimony in May 2019 when she said that "somebody from HLC called me to ask me about retroactive accreditation..." (see May 22, 2019 Congressional Hearing Before the Subcommittee on Economic and Consumer Policy of the Committee on Oversight at <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109532>). To be clear, HLC did not initiate contact with Jones on this issue. Rather, Jones initiated the conversation with HLC by calling Gellman-Danley.

In subsequent emails and phone conversations on June 27, 2018:

- (1) Jones informed Sweeney and Gellman-Danley by email that the "guidance document [2017 Memorandum] was issued in error and we will be releasing corrected guidance." Jones indicated that she was "disappointed" that the 2017 Memorandum had been sent "since it is known that we are retracting that policy" (see June 27, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15331-15332](#));
- (2) Daggett and Bounds informed Sweeney by phone that the 2017 Memorandum was not applicable to the Institutes in this situation, but reminded Sweeney that, as Sweeney would then reiterate to Jones later that afternoon, HLC "should be mindful of current federal regulations on ensuring consistency in decision making (34 CFR §602.18)" (see June 27, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15331-15332](#));
- (3) In an evening phone call between Jones and Sweeney, Jones reiterated to Sweeney her disappointment that Daggett and Bounds had shared the 2017 Memorandum, again indicated that

the Department would be releasing additional guidance on the issue of retroactive accreditation, and specifically asked Sweeney to work exclusively with her at the Department on this issue.

This new information from the Department regarding its position on retroactive accreditation was included in the already-planned update that Commission staff would deliver to the Board at the June 2018 meeting.

Communications with the Department continued following the June 2018 Board meeting. On July 3, 2018, in an email addressing several topics related to the Institutes, Sweeney indicated to Jones on behalf of HLC that "[w]hat we would like to request is written assurance from the Department of Education that an HLC Board decision to have the Institutes' accredited status reinstated effective as of January 19, 2018 through December 31, 2018 (in other words ensuring continuous accredited status and eliminating the period of Change of Control candidacy) will be acceptable to the Department of Education and will not jeopardize HLC's recognition" (see July 3, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15333-15335](#)).

In response, Jones indicated that the Department would be issuing "guidance to address the retroactive accreditation date more generally, but I will also be happy to provide a written letter to HLC on this specific issue to make sure that you don't need to worry about how this might impact your own recognition at a later time" (see July 3, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15333-15335](#)). See also HLC Response #19.

Indeed, on July 25, 2018 the Department issued a memorandum that effectively superseded the 2017 Memorandum (see July 25, 2018 DOE Memo at [HLC-OPE 15354-15355](#)).

To be clear, retroactive accreditation was still generally prohibited by HLC policy, and a letter from the Department would not change HLC's usual process for making any such policy revisions. Rather, the letter would inform HLC's understanding as to whether retroactive accreditation was problematic under federal regulations and Department guidance.

Communications about retroactive accreditation continued throughout July 2018. In an email exchange on July 29-30, 2018, Sweeney once again explained to Jones that, other than in the thirty days prior to accreditation being granted, students graduating from a candidate institution were graduating from an unaccredited institution (see July 12, 2018 Gellman-Danley, Sweeney, Jones Emails (with additional emails from 7.29-7.30) at [HLC-OPE 15347-15353](#)).

Yet, despite all of these communications, as recently as May 2019, Jones continued to state that:

- "[T]he letter that the Department received from HLC described change-of-control candidacy status as a pre-accredited status, and pre accredited status is accredited status;" and
- "Let me be clear that it is the Department's position that [the Institutes] were accredited throughout the period between the change of control in January, and the closure in December 2018. Otherwise, the schools could not have participated in Title IV programs"

(see October 22, 2019 Committee on Education and Labor to Secretary DeVos at [HLC-OPE 15369-15412](#), FN 29; May 22, 2019 Congressional Hearing Before the Subcommittee on Economic and

Consumer Policy of the Committee on Oversight at:

<https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109532>).

The current federal definition of "preaccredited" under 34 CFR §600.2 is unambiguous that such status is accorded to unaccredited institutions. That definition is silent on Title IV eligibility.

13. The public notice issued on January 20, 2018, states that HLC's action meant that courses or degrees offered by the Institutions were not accredited, even though the Institutions would enjoy a "recognized status" with HLC. Yet, on July 16, 2018, HLC conducted a site visit at the Illinois Institute of Art in which the site reviewer told students and faculty that it was possible for accreditation to be retroactively restored. Please explain (a) why the site visitor conveyed this message to students and faculty, and (b) whether HLC was considering rescinding its action to place the Institutions on CCC-status at the time of the site visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the site visit, (b) the report that was produced by the site visitors and sent to HLC's Board, and/or (c) HLC deliberations regarding the Institutions accreditation status. The time frame for this request is April 1, 2018 to the present.

HLC Response #13:

As further described below, an HLC peer reviewer faced with a very chaotic and difficult situation made unnuanced comments regarding next steps. HLC was not—in July 2018 or at any time—considering "rescinding" its November 2017 actions, as such rescission is not contemplated by HLC policy. (Indeed, the only time the Board may "rescind" an action is if the parties to a change of control that has been conditionally approved "do not respond in writing or decline to accept the conditions" (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#))).

HLC first learned of the existence of the video of the July 16, 2018 ILIA site visit meeting through Jones directly when she emailed a link to the video to Gellman-Danley on October 15, 2018, approximately two weeks before the Board would take action on the Institutes (October 15, 2018 Jones email to Gellman-Danley and Sweeney at [HLC-OPE 15359-15360](#)).

It is important to note that at no time was the site visitor (which HLC refers to as a "peer reviewer") authorized, instructed, or trained by anyone at HLC to provide any indication to ILIA students, faculty or administrators, regarding what the Board would ultimately decide. Peer reviewers are explicitly trained not to make any statements that might be interpreted as a prediction of any future action by HLC's decision-making bodies (see HLC Procedure Exit Session Protocol for Commission Visits: Commission Procedure at [HLC-OPE 15279-15280](#)). HLC's formal decision-making bodies, in this case, the Board, which held final decision-making authority, had the authority of *de novo* review. Therefore, as in all other cases, the Board could choose to agree or disagree with any aspect of the peer reviewers' evaluation of the evidence, including their findings on specific HLC requirements and/or their ultimate recommendation. In addition, the Board could take into account additional information, including publicly available information, or weigh the absence of certain evidence in its decision. The authority of peer reviewers involved in evaluative activity extends only as far as making recommendations that are aligned with HLC policy, not ultimate accreditation decisions. These

procedures are also generally consistent with HLC's due process obligations pursuant to 34 CFR §602.25.

That said, it had always been contemplated that, if the Institutes satisfied the conditions set forth in the November 16, 2017 action letter and were otherwise in compliance with HLC requirements, accreditation would be reinstated (but not retroactively, for the reasons described in HLC Responses #10-12 and #19) (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 2 and page 4).

The peer reviewer whose statements about retroactive accreditation are now being questioned was aware of the limited HLC rule regarding the extension of accreditation to graduations that occur 30 days prior to accreditation being granted (see HLC Policy INST.B.20.030, Accreditation—current version/last revised November 2015 at [HLC-OPE 15236-15238](#), as further described in HLC Response #10-12), and likely gave over-generalized responses to the rapid fire inquiries. His unnuanced responses, given hurriedly in a well-intentioned attempt to reassure a large group of very upset students in a fast-paced, chaotic, and high pressure situation, did not change the fact that any accreditation decision would be made by the Board solely on the basis of evidence and evaluation and in a manner consistent with HLC policy.

Importantly, the second peer reviewer who was present at the same ILIA meeting made it abundantly clear, while demonstrating compassion for the students' plight, that the scope of the peer review team's work was not to serve as the outlet for student frustration regarding the recent announcement of closure and revelation regarding loss of accredited status, but to validate through thoughtful inquiry the evidence presented by ILIA related to its operations since the consummation of the transaction on January 20, 2018 (see <https://www.youtube.com/watch?v=-Bn0qKMNqIM> at 31:29-32:24).

Much had changed since January 20, and by mid-July 2018, the Institutes' closure announcement meant circumstances were now present that were dramatically different from anything the Board contemplated in November 2017. HLC was now in the process of evaluating separately the Institutes' respective Teach-Out Plans. As a result, the HLC peer reviewers assigned to the ILIA visit were asked by Sweeney, in addition to their original charge, to obtain on-site a preliminary sense of ILIA's apparent capacity to responsibly conduct a teach-out through its initially stated closure date of December 31, 2018. It was during their attempt to gather additional information on behalf of HLC from ILIA constituents that these interactions took place.

Ultimately, the decision by the Institutes and DCEH to consummate the proposed transaction in the middle of an academic term on January 20, 2018 rather than after a graduation, knowing it would automatically trigger a change in ILIA's accreditation status, and then to withhold information regarding that change in status for several months, only to release this critical information at the time of its closure announcement (see September 14, 2018 Sweeney to Mesecar, Ramey at [HLC-OPE 14816-14857](#); October 11, 2018 Ramey, Mesecar to Sweeney at [HLC-OPE 14988-14989](#)), created a perfect storm of confusion just days before the peer review team's arrival.

A false narrative quickly developed, which remained uncorrected by officials of the Institutes or DCEH, that on January 20, 2018, HLC withdrew ILIA's accreditation thereby precipitating the Institute's closure. In stark contrast to this narrative, CEO Brent Richardson revealed during a transcribed Board Committee Hearing for AIC that a \$95 million hole, discovered after the fact, in DCEH's own due diligence, actually precipitated the Institutes' closure (see October 8, 2018 AIC

Board Committee Hearing Transcript at [HLC-OPE 14862-14980](#), page 11 lines 2-9). In addition, as each peer review team informally and separately reported to HLC days before the respective on-site visits (see July 6, 2018 Sweeney, Koch Emails at [HLC-OPE 15336-15339](#); July 6, 2018 Sweeney, Nolan Emails at [HLC-OPE 15340-15342](#)), significant doubt appeared to exist at each Institute regarding whether the planned on-site evaluations would occur at all, despite explicit communication to the contrary that under no circumstances would these evaluations be waived (see May 30, 2018 Sweeney, Daggett Emails at [HLC-OPE 15312-15315](#); May 30, 2018 Sweeney to Rouse Frets at [HLC-OPE 12267-12268](#)).

As a result of all these events, the HLC peer review team was inevitably greeted by a frantic and somewhat hostile environment. The meeting represented in the video was atypical of on-site evaluations owing to students and faculty who were, quite understandably, extremely distraught and at times, verbally aggressive. The very short lead-time between ILIA's closure announcement and the peer reviewers' arrival on-site meant that, despite their careful advance review, in-depth briefing with HLC staff, and trained analysis of documentation available, they could not respond succinctly to every nuanced, hypothetical question that arose from these extremely unique circumstances. Most of all, they simply could not explain to students why they were just learning their institutions were not accredited. The peer reviewers did make clear to all, however, that they were an evaluation body and not the final decision-making authority.

14. Please provide a list of all site visits conducted by HLC to the Institutions from January 1, 2017, to the date of their closure. Describe each such visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing each such site visit. The time frame for this request is December 1, 2016 to the present.

HLC Response #14:

The site visits conducted by HLC to the Institutes from January 1, 2017 to their closure at the end of December 2018 are as follows:

- AIC Midcycle Standard Pathway Comprehensive Evaluation with Embedded Substantive Change Request—Comprehensive evaluation conducted in 2016. Official action by the Institutional Actions Council (an HLC decision-making body) on January 30, 2017. Outcome: Interim monitoring and approval of two new programs (see January 30, 2017 AIC IAC Mid-Cycle Review Standard Action Letter at [HLC-OPE 1877](#); January 30, 2017 AIC IAC Substantive Change Action Letter at [HLC-OPE 1878](#)).
- ILIA Notice Visit—Focused Visit (Notice Visit) conducted in May 2017. Official action by the Board in November 2017. Outcome: Removal of Notice (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)).
- AIC and ILIA Change of Control Fact Finding Visit—Fact Finding Visit conducted in August 2017. Official action by the Board in November 2017. Outcome: Approval of Transaction with Conditions (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)).

- AIC and ILIA Post-Transaction Focused Visits—Focused Visits conducted in July 2018. Recommendation from ILIA visit was that adequate progress was being made and that accreditation should be reinstated. Recommendation from AIC visit was that evidence was insufficient and candidacy should be withdrawn. AIC afforded a Board Committee Hearing based on team recommendation. Outcome: Both Institutes' candidacy continued through anticipated close date of December 28, 2018, with various requirements (see July 16, 2018 AIC Focused Visit Team Report at [HLC-OPE 13276-13317](#); July 16, 2018 ILIA Focused Visit Team Report at [HLC-OPE 14316-14355](#); October 8, 2018 AIC Board Committee Hearing Transcript at [HLC-OPE 14862-14980](#); November 7, 2018 AIC Action Letter at [HLC-OPE 15172-15179](#); November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#)).

Full materials related to all of these site visits are included in the Institutes' administrative records.

15. On March 9, 2018, Department officials had a conference call with Anthea Sweeney, Vice President for Legal and Governmental Affairs at HLC, to inquire about the nature of its CCC-status. On the call, Ms. Sweeney told the Department that HLC viewed CCC-status to be the equivalent of a preaccredited status. Does HLC view CCC-status as being the equivalent of a preaccredited status? If not, why was that assertion made on the March 9, 2018 phone call? Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its communications with the Department regarding (a) CCC-status, (b) pre-accreditation, and/or (c) the Institutions. The time frame for this request is February 1, 2018 to the present.

HLC Response #15:

Yes, HLC has consistently been clear to all constituencies that Change of Control candidacy is a pre-accreditation status. See also HLC Responses #1, #4, #7, #8 and #10-12. See also 34 CFR §600.2.

16. Has HLC ever placed any other institution on CCC-status? If so, describe the Board's decision to place such institutions on that status. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such decision and the public notice given therewith.

HLC Response #16:

No, to the best of current HLC employees' knowledge, HLC has never "placed" *any* institution on Change of Control candidacy status, including the Institutes.

HLC did not "place" the Institutes on Change of Control candidacy status. Rather, the Institutes voluntarily and knowingly accepted that status as a condition of HLC approving the Change of Control transaction and automatically triggered the status upon choosing to close the transaction. See HLC Response #1, #2, and #4.

In one previous case very similar to the one currently under review, the parties to a transaction, though initially willing to accept Change of Control candidacy as a condition of approval, ultimately found themselves unwilling and abandoned their plans to consummate the transaction. The relevant institution remains accredited by HLC to date.

17. INST.E.50.010 states that "Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal." However, INST.E.50.010 fails to provide details on whether candidacy status is the equivalent to preaccredited status or should be considered a loss of accreditation. Describe why INST.E.50.010 does not address the issue and provide the agency's definition of "candidacy status."

HLC Response #17:

HLC Policy INST.E.50.010, Accredited to Candidate Status does not elaborate on this aspect of candidacy because the policy cross-references other related policies in a footer titled Related Policies. In turn, the cross-referenced HLC Policy INST B.20.020, Candidacy is clear that candidacy is a status that precedes accredited status (see HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#); HLC Policy INST.B.20.020, Candidacy—current version/last revised November 2012 at [HLC-OPE 15229-15235](#)). See also HLC Response #7.

18. INST.B.20.040 provides that "An institution shall apply for Commission approval of a proposed Change of Control, Structure or Organization transaction through processes outlined in this policy and must demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that approval of the proposed Change of Control, Structure or Organization is in the best interest of the Commission." Please describe how HLC defines "best interest of the Commission." Please also describe how HLC ensures that this "best interest" standard does not result in arbitrary and capricious decision-making.

HLC Response #18:

HLC holistically considers "the best interest of the Commission." The best interest of HLC, first and foremost, is to consistently take actions that align with the Commission's almost 125-year history of "serving the common good by assuring and advancing the quality of higher education." In the context of Change of Control, Structure or Organization, HLC's decision to extend its accreditation to an institution after any proposed change governed by HLC policy represents the agency's affirmation that the resulting institution, exhibits sufficient indicia of quality justifying HLC's trusted imprimatur. Indeed, when need be, such endorsement is qualified in some way, whether by public sanction or otherwise. Particularly given the prospective nature of any Change of Control review, HLC's scrutiny is necessarily enhanced (see HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)).

The best interests of the Commission align with HLC's deep commitment to serving members of the public—chief among them, students—who invest in pursuing whatever academic goals matter most to them at quality institutions of higher education. HLC's Mark of Affiliation represents a significant institutional achievement. It is necessarily enhanced by the success of its institutions, but also challenged by institutions that fall short. Thus, it serves HLC's best interests to be of assistance to students and the public through rigor and transparency when for any number of reasons (including, for example, poor governance, insufficient resources, poor outcomes or lack of fundamental integrity) students may be exposed to a significant risk of harm at an institution bearing HLC's imprimatur.

Additionally, given that HLC's status as a federally recognized accreditor makes it a gatekeeper for Title IV funds, HLC takes seriously its obligation in that capacity to serve the public and most significantly, taxpayers, by preventing fraud, waste and abuse of taxpayer monies.

Finally, HLC prevents arbitrary and capricious actions, and ensures due process as required by 34 CFR §602.25, through a variety of means. These include, for example:

- Pursuing its evaluation and decision-making activities with utmost integrity;
- Ensuring robust training and professional development of its peer corps, staff and decision-making bodies;
- Adhering rigorously to the mechanisms of due process, including checks and balances through *de novo* review;
- Protecting against conflicts of interest and undue influence;
- Cultivating transparency with its member institutions concerning the rationales and underpinnings for its decisions and the steps needed to remedy concerns; and
- Adhering, in all respects, to the ideal of quality improvement for itself and its voluntary member institutions.

19. Please provide the results of HLC's review of the concerns raised by the Department in the October 31, 2018 letter from Diane Jones and include any policy or procedural changes made in response to the results of the review. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) Exhibit 1 or (b) Diane Jones. The time frame for this request is March 1, 2018 to the present.

HLC Response #19:

Events of October-November 2018

On October 29, 2018, Jones reached out to Gellman-Danley numerous times by phone. Building on the conversations from June and July 2018 (see also HLC Response #10-12), once Jones was able to connect with Gellman-Danley, she informed Gellman-Danley that she had identified a way for the Board to retroactively reinstate the Institutes' accredited status. Much like she had mentioned in July 2018, she stated that she would be sending HLC a letter indicating that such a decision by HLC would not be problematic to the Department. Gellman-Danley indicated that while HLC's own policies did

not currently allow for retroactive accreditation, the Board would certainly review anything provided by the Department in anticipation of its meeting later that week on November 1-2, 2018.

At 4:56pm Central time on October 31, 2018, HLC received the letter in question (see October 31, 2018 Gellman-Danley, Jones Emails at [HLC-OPE 15361-15362](#); October 31, 2018 Jones to Gellman-Danley at [HLC-OPE 15163-15167](#)).

As an initial matter, HLC was puzzled that none of the critiques raised by Jones in her letter of October 31, 2018 had been previously raised in March 2018, June-July 2018, or during any other previous conversations between HLC and the Department. Specifically, at no point prior had Jones or anyone else at the Department raised concerns about the legitimacy of Change of Control candidacy generally, HLC's alleged failure to provide the Institutes' appropriate due process, or HLC's alleged responsibility for the Institutes' eligibility for Title IV funds as a result of their choice to accept candidacy status. See also HLC Response #10-12.

Among other things, HLC had participated in two successful recognition processes with the Department, subsequent to the Board's 2009 adoption of Change of Control candidacy, in which Change of Control candidacy featured clearly as one of the Board's decision-making options under HLC policy. This acceptance of HLC policy through the recognition process clearly signifies that the simple concept of Change of Control candidacy was not problematic *per se* under the current regulations.

Moreover, new language in the federal regulations recently published on November 1, 2019 would entirely prohibit Change of Control candidacy (see 34 CFR §602.23(f)(iv), effective July 1, 2020). Logically, this change would not be needed if such an action was already clearly prohibited under previous regulations.

Additionally, given the receipt of the letter on the night before the meeting at which the Board was scheduled to take further action regarding the Institutes, the timing of the letter failed to supply HLC with sufficient and meaningful advance notice to consider any Department position that was contrary to established HLC policy. To the extent that the Department, separately, was bound to adhere to federal regulations related to the issuance of Title IV, these limitations were not relevant to HLC.

Following HLC's receipt of the letter, Jones spoke with Sweeney and Gellman-Danley by phone after close of business on October 31, 2018. Gellman-Danley commented that the letter was very different from what Jones had indicated the Department would provide in the phone conversation on October 29. Gellman-Danley expressed deep concerns that the letter was both inaccurate and highly inappropriate in terms of timing. Jones said that the letter was certainly full of language that lawyers would use. She told Sweeney and Gellman-Danley that no one else, other than herself and "the lawyers" had seen the letter, and that it would be retracted. Neither Sweeney nor Gellman-Danley had requested that the letter be retracted. Sweeney asserted that as a matter of ethical obligations to the Board, the letter would certainly need to be shared and Gellman-Danley informed Jones that in fact the letter had already been shared with the Board (see October 31, 2018 Noack to Board at [HLC-OPE 15363](#)).

On that same phone call, Jones also indicated another option that the Board could potentially consider regarding the Institutes. Jones suggested that perhaps the Board could rescind its November 2017 action entirely, and place the Institutes on a sanction or issue a Show-Cause Order. She reminded

Sweeney and Gellman-Danley (who were already aware) that the Middle States Commission on Higher Education (MSCHE) had issued a Show-Cause order to one of the DCEH institutions that it accredited. Sweeney and Gellman-Danley did not specifically respond to Jones, but instead simply reiterated that the Board would evaluate each Institute based on the evidence available and in accordance with HLC policies.

In a second telephone call much later in the night on October 31, 2018, Jones then informed Gellman-Danley (Sweeney was not on the call) that the Department could not retract the letter (again, neither Sweeney nor Gellman-Danley had requested a retraction), but Jones specifically indicated that the only thing that HLC needed to do in response to the letter was inform the Department via a brief response that HLC intended to review its policies (see October 31, 2018 Gellman-Danley, Jones Emails at [HLC-OPE 15361-15362](#)).

HLC promptly sent the requested response on November 7, 2018 (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)). Within an hour of receiving the response, Jones replied "Thanks, Barbara!" (see November 7, 2018 Gellman-Danley, Jones (and Emails) at [HLC-OPE 15364-15365](#)). HLC understood Jones's response to mean that the response HLC had provided was acceptable to the Department.

Lack of Further Interactions Regarding the October 31 Letter or Policy Concerns

Following November 7, 2018, HLC did not hear anything further from the Department indicating that its timely response was somehow deficient, or that a further response to the October 31, 2018 letter was requested, until receiving the October 24 Letter.

Indeed, in November-December 2018 and then again in March 2019, Jones was in regular communication with HLC, and other accreditors, regarding next steps for various DCEH-owned institutions. For example, Jones reached out to HLC to discuss the possibility of an HLC institution that might want to "take over" a DCEH institution that was not accredited by HLC. HLC indicated that its usual policies and procedures, which would need to be initiated by the HLC institution itself, would need to be followed (see November 30, 2018 Gellman-Danley, Jones, et al. Emails at [HLC-OPE 15418-15429](#)). At no point during these conversations were the matters in the October 31, 2018 letter discussed.

Yet, in May 2019, Jones indicated in a letter to Senator Durbin that the Department intended to initiate a review into HLC's policies, but did not mention the existence of the October 31, 2018 letter to HLC and Jones' acceptance of HLC's initial response to it (see May 9, 2019 Jones to Durbin at [HLC-OPE 15366-15368](#)).

HLC's Policy Review Efforts

That said, HLC takes seriously its responsibility to continuously scrutinize its policies and procedures (see HLC Policy PPAR.A.10.030, Program for Review of Institutional Accreditation Policies—current version/last revised November 2012 at [HLC-OPE 15277](#)). As such, as part of this ongoing process, and additionally in light of the October 31, 2018 letter from the Department, HLC took the opportunity over the past year to carefully review its policies related to Change of Control generally, and Change of Control candidacy status more specifically.

HLC policy provides that the Board may modify HLC policies through a two-meeting process that involves the opportunity for member comment between the two meetings (see HLC Policy PPAR.A.10.040, Revision of Accreditation Policy—current version/last revised November 2012 at [HLC-OPE15278](#)).

At its most recent Board meeting in November 2019, the Board adopted several policy changes on "second reading" related to candidacy and Change of Control candidacy. Specifically, (1) the Board voted to entirely eliminate the option of Change of Control candidacy from HLC policy; and (2) the Board revised the Change of Control evaluative framework, among other things, to emphasize that the factors listed are "key factors," not an exhaustive list of factors to be considered (see November 2019 Board Resolution with adopted changes at [HLC-OPE_15413-15417](#)). Corresponding conforming changes are also being made to other HLC policies to eliminate any references to Change of Control candidacy. The Board's determinations regarding policy revisions were made based on its own independent analysis and in accordance with its customary practices, not because of the October 31, 2018 letter or the reasons articulated therein.

These changes to HLC policy will also be consistent with the newly adopted regulations (see 34 CFR §602.23(f)(iv), effective July 1, 2020).

20. During the time period of the proposed change of control, or any time through January 20, 2018, did HLC discover any evidence that degree requirements, course requirements, syllabi, faculty locations of educational offerings, or other academically relevant conditions had changed at the institutions to such an extent that the Institutions accreditation would be jeopardized? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such change. The time frame for this request is July 1, 2016 to the present.

HLC Response #20:

During its review of the proposed transaction, HLC identified myriad evidence that, based on its Criteria for Accreditation and other HLC requirements, would impact the Institutes' accreditation post-transaction.

As an institutional accreditor, HLC is responsible for assuring the quality of the institution as a whole and therefore conducts its evaluations, in accordance with established policies and the Criteria for Accreditation, by reviewing all aspects of its member institutions, recognizing their impact on the academic enterprise (see HLC Policy CRRT.B.10.010, Criteria for Accreditation—current version/last revised June 2014 at [HLC-OPE15221-15228](#)).

A historical review of ILIA and AIC as member institutions reveals that each Institute had at some point previously been placed on the sanction of Notice. AIC was on Notice from June 2013 to February 2015. ILIA was on Notice from November 2015 to November 2017. At the time that AIC was placed on Notice, Notice indicated that an institution was "pursuing a course of action that if continued would cause it to be out of compliance" with HLC requirements (see HLC Policy INST.E.10.010, Notice—version effective in June 2013 at [HLC-OPE 15245-15246](#)). At the time that ILIA was placed on Notice, Notice indicated that an institution is "at risk of being out of compliance"

with HLC requirements (see HLC Policy INST.E.10.010, Notice—version effective in November 2015 at [HLC-OPE 15247-15249](#)). Each Institute worked to address the concerns articulated by the Board and had succeeded in having its sanction removed.

While a history that includes a sanction is certainly taken into account as a concerning part of an institution's overall record with HLC, neither ILIA's nor AIC's sanction ultimately presented a barrier to the Board's consideration of the Change of Control transaction in November 2017 (see HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)). ILIA's record was before the Board as a separate matter bearing a recommendation to remove the sanction of Notice based on evidence and evaluation that supported that recommendation. After thoroughly reviewing the record *de novo*, the Board removed the sanction (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)).

That said, unlike sanction reviews that assess the extent of an institution's current compliance with the Criteria for Accreditation, Change of Control reviews are prospective in nature and seek to make a reasonable prediction about an institution's future compliance.

The Summary Report generated as a result of HLC's Change of Control Fact Finding Visit identified uncertainty related to ongoing compliance based on significant challenges anticipated if the transaction was consummated. The Summary Report raised questions related to the Institutes' post-transaction compliance with HLC's Eligibility Requirements due to underlying questions concerning governance, mission, educational programs, information to the public, finances, administration, policies and procedures. The Summary Report also anticipated that four Eligibility Requirements in particular would not be met, related to stability, planning, integrity of operations and accreditation record. While acknowledging that many of these issues might be remedied through and after the transaction, the Summary Report indicated HLC would need to "monitor the situation carefully to be sure they are remedied" (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), pages 37-38).

In addition, HLC anticipated that after the transaction the Institutes would meet the Criteria for Accreditation, but with concerns related to several Core Components related to demonstrating a commitment to the public good; operating with integrity in their financial, academic, personnel and auxiliary functions; presenting themselves clearly and completely to students and the public; maintaining sufficiently autonomous governing boards; demonstrating responsibility for the quality of educational programs; having sufficient resources; and engaging in systematic and integrated planning. Specifically related to academic programs, the Summary Report highlighted several concerns related to Criterion Four, Core Component 4.A, ("the institution demonstrates responsibility for the quality of its educational programs") (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), pages 27-29).

While these concerns did not warrant the Board declining to approve the proposed transaction, they were significant enough to qualify the Board's approval of the transaction in November 2017.

21. In HLC's letter of November 16, 2018, to the Institutes, HLC found full compliance but did not make a final accreditation decision due to "procedural error." What was/were the/those error/errors? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all

records in HLC's possession or control regarding or referencing HLC's actions memorialized in Exhibit 3. The time frame for this request is July 1, 2017 to the present.

HLC Response #21:

HLC did not issue a letter to the Institutes on November 16, 2018. HLC issued a joint letter to the Institutes on November 16, 2017 regarding Change of Control (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)) and a letter to ILIA regarding removal of the sanction of Notice (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)). HLC did not reference any procedural error in those letters.

HLC issued letters to each Institute on November 7, 2018 (see November 7, 2018 AIC Action Letter at HLC-OPE 15172-15179; November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#)). HLC did not reference any procedural error in those letters.

Finally, HLC issued a letter to each Institute on November 28, 2018 (see November 28, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15192-15194](#); November 28, 2018 Gellman-Danley to Ramey at [HLC-OPE 15195-15198](#)) in response to their respective last requests for an appeal. The only reference to a procedural error in those letters is in standard policy language outlining potential grounds for appeal as listed in current HLC policy. The letters would go on to explain why an appeal would not be considered in either case. See also HLC Response #10-12.

Again, HLC appreciates the opportunity to provide this information to the Department. Please do not hesitate to let me know if you have any additional questions.

Sincerely,



Barbara Gellman-Danley
President

CC (via email only): Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education
Elizabeth Daggett, Analyst, U.S. Department of Education

Barbara Gellman-Danley
Transcribed Interview
Exhibit 2

Re: DCEH and The Art Institutes

Anthea Sweeney

Mon 6/25/2018 4:27 PM

To: David Harpool [REDACTED]

Cc: Barbara Gellman-Danley [REDACTED]; Mary E. Kohart [REDACTED];

Sensitivity Confidential

Good Afternoon,

We do indeed believe a call tomorrow would still be helpful. Please refer to the dial-in information previously provided by the external counsel's office.

Thanks,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: David Harpool <[REDACTED]>
Sent: Sunday, June 24, 2018 8:16 PM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley; Mary E. Kohart
Subject: RE: DCEH and The Art Institutes

I have my client's authority to agree to the following. Here is their request, which I believe to be in the best interest of the Commission, their students and my clients.

1. My clients will, through their ordinary course of business, provide a three-option teach-out plan, for each school within the Commission's region. Each of the schools, will provide their students, three paths/options to degree completion. Path one, is to complete the required course work for graduation, on their current campus, by 12/31/2018. We anticipate, based on our analysis that 1/3 of the students will graduate through the on-campus teach out. Path two, is the option for students to transfer to our online offering. Based on the number of students who have taken online courses, we anticipate 1/3 of the students will complete their degree online. Path three, is to transfer to other regionally accredited institutions, receiving credit for all courses taken and

permitted to pay for their remaining courses, at or below, our institutions current tuition. All three options, will be designed and implemented according to the Commission's teach-out plan guidelines and submitted for approval, no later than 30 days from your agreement, to this proposal. Ordinary course of business means, my client will continue to provide and adequately staff all services required to carry out the teach-out as they have provided prior to the teach-out.

2. All students who earned credits or graduated, from the time of the Schools respective initial accreditation through 12/31/2018, will be deemed to have attended or graduated from an accredited institution Further, that the schools are, have and will continue, to be accredited through 12/31/2018. These statements will be made clear and unambiguous, in our Statement of Affiliation and any required disclosure.

3. My client will, immediately upon approval of this agreement, cease to admit new students to any of the impacted schools.

Please let me know if this proposal is accepted, and whether or not you believe the call, scheduled for Tuesday, is necessary or beneficial.

From: Anthea Sweeney [REDACTED]
Sent: Thursday, June 21, 2018 4:37 PM
To: David Harpool
Cc: Barbara Gellman-Danley; Mary E. Kohart
Subject: Re: DCEH and The Art Institutes

Mr. Harpool,

Thank you for your message. I am responding on behalf of President Barbara Gellman-Danley who is currently away on HLC business. As you may be aware our Board of Trustees will be meeting soon. As a result, this is a very busy time and we are unable to accommodate an in-person meeting. Nevertheless, we would like the opportunity to provide our Board a full update regarding this matter and any proposal you wish to make may benefit from the Board's input.

For that reason, we are proposing a conference call, in lieu of a meeting at one of the following times in advance of our Board meeting:

Monday June 25 - 11:30 a.m. - 12:45 p.m. Central
Tuesday June 26 - 9:30 a.m. - 10:45 a.m. Central

Our external counsel, Mary Kohart Esq., will also be in attendance. A prompt response to this message confirming your availability and who else will be participating on the call would be greatly appreciated. I will then send out dial-in information.

Thanks in advance.

Best Wishes,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

-----Original Message-----

From: David Harpool [REDACTED]
Sent: Wednesday, June 20, 2018 3:08 PM
To: President [REDACTED]
Subject: DCEH and The Art Institutes

Dr. Barbara Gellman-Hanley

I am writing on behalf of our client, DCEH to request a meeting as soon as possible, to discuss the matters raised in our May 21, 2018 letter.

My clients are considering their options in terms of the Art Institutes and I believe a meeting may help us resolve this matter and avoid litigation.

David Harpool, J.D., PHD
Attorney at Law

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Barbara Gellman-Danley
Transcribed Interview
Exhibit 3

FW: Memo from Herman Bounds

Daggett, Elizabeth [REDACTED]

Tue 6/26/2018 2:14 PM

To: Anthea Sweeney [REDACTED]

1 attachments (856 KB)

Memo to agencies re accreditation effective date.pdf;

FYI

Elizabeth Daggett

Tel: [REDACTED]

From: Sheffield, Cathy

Sent: Tuesday, June 06, 2017 12:36 PM

To: New York Board of Regents-5 [REDACTED]; 'Accreditation Commission for Acupuncture and Oriental Medicine' [REDACTED]; Accreditation Commission for Education in Nursing [REDACTED]; Accreditation Commission for Midwifery Education' [REDACTED]; Accreditation Commission for Midwifery Education'-2 [REDACTED]; Accreditation Council for Education in Nutrition and Dietetics [REDACTED]; 'Accrediting Bureau of Health Education Schools' [REDACTED] 'Accrediting Commission of Career Schools and Colleges; 'Accrediting Council for Continuing Education and Training' [REDACTED]; 'American Bar Association' [REDACTED]; 'American Board of Funeral Service Education' [REDACTED]; 'American Council on Pharmaceutical Education' [REDACTED]; 'American Dental Association' [REDACTED]; American Occupational Therapy Association [REDACTED]; 'American Optometric Association' [REDACTED]; 'American Osteopathic Association (E-mail)' [REDACTED]; 'American Physical Therapy Association' [REDACTED]; 'American Podiatric Medical Association' [REDACTED]; 'American Psychological Association' [REDACTED]; 'American Speech-Language-Hearing Association' [REDACTED]; 'American Veterinary Medical Association'; 'Association for Biblical Higher Education (E-mail)' [REDACTED]; 'Association for Clinical Pastoral Education Inc' [REDACTED]; 'Association for Clinical Pastoral Education Inc' [REDACTED]; Association of Advanced Rabbinical and Talmudic Schools [REDACTED]; Association of Institutions of Jewish Studies [REDACTED]; Commission on Accreditation of Healthcare [REDACTED]; Commission on Accrediting of the Association of Theological Schools (ats@ats.edu); 'Commission on Collegiate Nursing Education' [REDACTED]; 'Commission on English Language Program Accreditation (E-mail)' [REDACTED]; 'Commission on Massage Therapy Accreditation (E-mail)' [REDACTED]; 'Council on Accreditation of Nurse Anesthesia Educational Programs (E-mail)' [REDACTED]; Council on Chiropractic Education' [REDACTED]; Council on Education for Public Health' [REDACTED]; 'Council on Naturopathic Medical Education (E-mail)' [REDACTED]; 'Council on Occupational Education (E-mail)' [REDACTED]; 'Distance Education Accrediting Commission' [REDACTED]; 'Joint Review Committee on Education in Radiologic Technology' [REDACTED]; Karen Moynahan [REDACTED]; 'Liaison Committee on Medical Education' [REDACTED]; Middle States Commission on Higher Education [REDACTED]; Middle States Commission on Secondary Schools [REDACTED]; Middle States Commission on Secondary Schools [REDACTED] Midwifery Education Accreditation

Council [REDACTED]; 'Montessori Accreditation Council for Teacher Education' [REDACTED]; 'National Accrediting Commission of Career Arts & Sciences (NACCAS) (E-mail) ' [REDACTED]; 'National Asso of Schools of Art & Design' [REDACTED]; 'National Association of Nurse Practitioners in Women's Health' [REDACTED]; New England Association of Schools and Colleges Commission Institutions of Higher Education [REDACTED]; New York Board of Regents --2 [REDACTED]; New York State Board of Regents and Commissioner [REDACTED]; North Central Association of Colleges and Schools HLC [REDACTED]; North Central Association of Colleges and Schools The Higher Learning Commission [REDACTED]; Northwest Commission on Colleges and Universities [REDACTED]; Southern Association of Colleges and Schools Commission on Colleges [REDACTED]; 'Transnational Association of Christain Colleges and Schools (E-mail) ' [REDACTED]; Western Association of Schools and Colleges AccreditingCommission for Community and Junior Colleges [REDACTED]; Western Association of Schools and Colleges AccreditingCommission for Senior Colleges and Universities; [REDACTED]; Kansas Board of Nursing; Maryland State Board of Nursing [REDACTED]; Maryland State Board of Nursing 1 [REDACTED]; [REDACTED]; Missouri Board of Nursing 1 [REDACTED]; 'New York State Board of Regents public postsecondary(E-mail) ' [REDACTED]; North Dakota Board of Nursing [REDACTED]; Oklahoma Board of Career and Technology [REDACTED]; Oklahoma Board of Career and Technology Education [REDACTED]; Pennsylvania BCT [REDACTED]; Pennsylvania St BD VT [REDACTED]; Puerto Rico State Approval Agency ([REDACTED]); Puerto Rico Voc Ed ([REDACTED])

Cc: Bounds, Herman; Daggett, Elizabeth; Mula, Chuck; Harris, Nicole S.; Shultz, Rachael; McKissic, Stephanie; Lefor, Valerie

Subject: Memo from Herman Bounds

Dear Executive Directors:

The purpose of this correspondence is to clarify the Department of Education's expectation regarding the accreditation effective date used by accrediting agencies.

Thank you

Cathy Sheffield

Staff Assistant
Accreditation Group
LBJ 6W243

E-mail: [REDACTED]



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

DATE: June 6, 2017

TO: Executive Directors and Presidents,
Recognized Accrediting Agencies

FROM: Herman Bounds Jr. 
Director
Accreditation Division

SUBJECT: Accreditation Effective Date

The purpose of this correspondence is to clarify the U.S. Department of Education's (Department) expectation regarding the accreditation effective date used by accrediting agencies.

The Department of Education requires an accreditation decision to be effective on the date an accrediting agency's decision-making body makes the decision. It cannot be made retroactive, except to the limited extent provided in 34 C.F.R. § 602.22(b) with respect to changes in ownership.

Some questions have arisen as to whether the accreditation effective date can be the date of the on-site review. The answer is no. Sections 602.15(a) (3-6) of the Secretary's Criteria for Recognition (Criteria) clearly reference and distinguish an evaluation body and a decision-making body. The team that conducts the on-site review is an evaluation body and does not have decision-making authority. Establishing the accreditation date as the date of the on-site review is essentially giving that team decision-making authority, which is not in accordance with the Criteria.

As noted in 34 C.F.R. § 602.18, the Department expects the decision-making body to review the entire record, which includes information and documentation other than the on-site review team report, when making its accreditation decision. The on-site review team does not have the information necessary to make an accreditation decision for an accrediting agency, nor is it authorized to do so by the Criteria.

Therefore, any accrediting agency that does not use the date that an accrediting agency's decision-making body makes the decision as the accreditation effective date must amend its policies and cease this practice going forward.

My staff and I are available, as always, to respond to any questions you may have.

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www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

HLC-OPE 15327

Barbara Gellman-Danley
Transcribed Interview
Exhibit 4



Policy Title: Accreditation

Number: INST.B.20.030

Grant of Initial Accreditation

The Board of Trustees reviews an institution's application for initial accreditation and all related materials after the institution has undergone evaluation by a team of peer reviewers and an Institutional Actions Council hearing, as defined in Commission policy. Only institutions that have completed candidacy, or been exempted from candidacy by the Board of Trustees following Commission policies on Candidacy, shall be eligible for initial accreditation. The Board of Trustees may grant or deny initial accreditation based on its determination of whether the institution meets the Eligibility Requirements, Criteria for Accreditation, Core Components, and Federal Compliance Requirements. If the Board of Trustees grants initial accreditation, it may grant such accreditation subject to interim monitoring, restrictions on institutional growth or substantive change, or other contingency.

Early Initial Accreditation

An institution may apply for early initial accreditation after two or three years of candidacy following Commission policies on candidacy. The Board of Trustees shall have the discretion to continue candidacy, instead of granting early initial accreditation, in circumstances including, but not limited to, the following: if the Board determines that one or more of the Core Components are not met or met with concerns; if a recommendation for early initial accreditation is conditioned on the scheduling of interim monitoring; or in other circumstances where the Board concludes that a continuation of candidacy, or extension of candidacy to a fifth year, is warranted. Any extension of candidacy to a fifth year shall be granted following Commission policies on extension of candidacy. Such actions to continue candidacy, thereby denying early initial accreditation, or to extend candidacy to a fifth year shall not be considered denial of status and are not subject to appeal.

Accreditation Cycle

Institutions must have accreditation reaffirmed not later than four years following initial accreditation, and not later than ten years following a reaffirmation action. The time for the next reaffirmation is made a part of the accreditation decision, but may be changed if the institution experiences or plans changes. The Commission may extend the period of accreditation not more than one year beyond the decennial cycle or one year beyond the initial accreditation cycle for institutions that present good and sufficient reason for such extension.

Effective Date of Accreditation

The effective date of initial accreditation or reaffirmation of accreditation or other Commission action will be the date the action was taken.

The Commission's Board may grant initial accreditation, with the contingency noted in this subsection, to an institution that applies for accreditation and is determined by the Commission to have met the Criteria for Accreditation but has not yet graduated a class of students in at least one of its degree programs, as required by the Eligibility Requirements. Institutions shall have completed the two-year required minimum candidacy period or received a waiver from the Commission's Board of Trustees. Such action shall be contingent on the institution's graduation of its first graduating class in at least one of its degree programs within no more than thirty days of the Board's action. In such cases, the effective date of accreditation will be the date of this graduating class.

Assumed Practices in the Evaluative Framework for Initial and Reaffirmation of Accreditation

An institution seeking initial accreditation, accredited to candidate status, or removal of Probation or Show-Cause, must explicitly address these requirements when addressing the Criteria. The institution must demonstrate conformity with these Practices as evidence of demonstrating compliance with the Criteria. Institutions undergoing reaffirmation of accreditation will not explicitly address the Assumed Practices except as identified in section INST.A.10.030. Any exemptions from these Assumed Practices must be granted by the Board and only in exceptional circumstances.

Policy Number Key

Section INST: Institutional Processes

Chapter B: Requirements for Achieving and Maintaining Affiliation

Part 20: Defining the Affiliated Entity

Last Revised: November 2015

First Adopted: August 1987

Revision History: renumbered November 2010, revised February 2012, June 2015, November 2015

Notes: Policies combined November 2012 - 1.1(a)1, 1.1(a)2, 1.1(a)3, 1.4, 2013 – 1.1(a)1.2, 1.1(a)1.3, 1.1(a)1.4. The Revised Criteria for Accreditation, Assumed Practices, and other new and revised related policies adopted February 2012 are effective for all accredited institutions on January 1, 2013.

Related Policies:

Barbara Gellman-Danley
Transcribed Interview
Exhibit 5



User Name: Ben Sinoff

Date and Time: Friday, February 14, 2020 12:16:00 PM EST

Job Number: 110082716

Document (1)

1. [34 CFR 602.22](#)

Client/Matter: -None-

34 CFR 602.22:

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Content Type
Administrative Codes and
Regulations

Narrowed by
-None-

[34 CFR 602.22](#)

This document is current through the February 12, 2020 issue of the Federal Register. Title 3 is current through January 31, 2020.

Code of Federal Regulations > TITLE 34 -- EDUCATION > SUBTITLE B -- REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION > CHAPTER VI -- OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION > PART 602 -- THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES > SUBPART B -- THE CRITERIA FOR RECOGNITION > REQUIRED OPERATING POLICIES AND PROCEDURES

Notice

 There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 602.22 Substantive change. [Effective until July 1, 2020.]

[PUBLISHER'S NOTE: This section was revised at [84 FR 58834, 58922](#), Nov. 1, 2019, effective July 1, 2020. For the convenience of the user, the section has been set out twice. The version effective until July 1, 2020, immediately follows this note. For the version effective July 1, 2020, see the version following this section, also numbered § 602.22.]

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

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

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

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

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

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

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

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

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

(vii)If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or

34 CFR 602.22

organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

(viii)

(A)If the agency's accreditation of an institution enables it to seek eligibility to participate in title IV, HEA programs, the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has--

(1)Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;

(2)At least three additional locations that the agency has approved; and

(3)Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes--

(i)Clearly identified academic control;

(ii)Regular evaluation of the locations;

(iii)Adequate faculty, facilities, resources, and academic and student support systems;

(iv)Financial stability; and

(v)Long-range planning for expansion.

(B)The agency's procedures for approval of an additional location, pursuant to paragraph (a)(2)(viii)(A) of this section, must require timely reporting to the agency of every additional location established under this approval.

(C)Each agency determination or redetermination to preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section may not exceed five years.

(D)The agency may not preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in *34 CFR 600.31* until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.

(E)The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraph (a)(2)(viii)(A) of this section.

(ix)The acquisition of any other institution or any program or location of another institution.

(x)The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

(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.

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

(c) Except as provided in paragraph (a)(2)(viii)(A) of this section, if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location where at least 50 percent of an educational program is offered must provide for a determination of the institution's fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include--

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) An effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

(3) An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

Statutory Authority

([20 U.S.C. 1099b](#))

History

[[59 FR 22258](#), Apr. 29, 1994; [64 FR 55612, 55621](#), Oct. 20, 1999; [74 FR 55414, 55428](#), Oct. 27, 2009]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[74 FR 55414, 55428](#), Oct. 27, 2009, amended this section, effective July 1, 2010.]

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

34 CFR 602.22

CROSS-REFERENCE: Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for increasing the Access of all Students to That Instruction, 34 CFR Part 208.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Final priorities, see: 78 FR 5036, Jan. 23, 2013; [79 FR 17035](#), Mar. 27, 2014; [79 FR 31028, May 30, 2014](#); [79 FR 31031, May 30, 2014](#); [79 FR 31870, June 3, 2014](#); [79 FR 32651, June 6, 2014](#); [79 FR 33432, June 11, 2014](#); [80 FR 27036, May 11, 2015](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Interpretation, see: [83 FR 10619](#), Mar. 12, 2018.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 602 Clarification, see: [80 FR 73991](#), Nov. 27, 2015.]

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End of Document

Barbara Gellman-Danley
Transcribed Interview
Exhibit 6

Re: Dream Center/Art Institutes Follow-Up

Anthea Sweeney

Tue 7/3/2018 7:52 PM

To: Jones, Diane [REDACTED];

Cc: Barbara Gellman-Danley [REDACTED];

Dear Diane,

We can certainly connect on Thursday or Friday this week. My schedule offers the most flexibility on in the afternoons on both days. However, feel free to call my direct line at your convenience.

Thanks so much for your response. Have a Happy 4th.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Jones, Diane [REDACTED]
Sent: Tuesday, July 3, 2018 1:36 PM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley
Subject: RE: Dream Center/Art Institutes Follow-Up

Thanks so much, Anthea, for the update. We will be issuing guidance to address the retroactive accreditation date more generally, but I will also be happy to provide a written letter to HLC on this specific issue to make sure that you don't need to worry about how this might impact your own recognition at a later time. I've been on the receiving end of enough ED decisions to know that having things in writing is critically important!!!

We agree that this is a challenging situation, and are grateful that HLC and other accreditors are willing to work with us to make sure that these are high quality teach-outs that serve the best interests of students.

I have meetings until around 5pm, so if we don't connect today, can we touch base later this week?

Thanks,
Diane

From: Anthea Sweeney [REDACTED]
Sent: Tuesday, July 03, 2018 2:08 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Dream Center/Art Institutes Follow-Up
Importance: High

Dear Under-Secretary-Jones,

I write to follow up on our recent telephone conversation on June 28 and at the request of Dr. Gellman-Danley concerning the Art Institutes. This morning a working group met to discuss the recent developments with the institutions. We appreciate your desire to coordinate required teach-out processes to ensure consistency across the multiple regional accreditors.

Here is our current status:

- 1) The Institutes will both very shortly host focused visits that are required by federal regulation after their recent transaction on July 16-17, 2018.
- 2) We believe our Board can consider an earlier reinstatement of accreditation than initially contemplated in its original action letter based on the best interests of students.
- 3) What we would like to request is written assurance from the Department of Education that an HLC Board decision to have the Institutes' accredited status reinstated effective as of January 19, 2018 through December 31, 2018 (in other words ensuring continuous accredited status and eliminating the period of Change of Control candidacy) will be acceptable to the Department of Education and will not jeopardize HLC's recognition.

As you can appreciate, these are highly extraordinary circumstances and we want to be sure our Board is fully apprised of the Department's unequivocal support for what will be a unique action. At the same time, we share your concern for the welfare of students currently enrolled at the Institutes.

I am available through close of business today at my direct line below and will reach out by phone to follow up later this afternoon.

Thank you.

Best Regards,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

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Barbara Gellman-Danley
Transcribed Interview
Exhibit 7

Re: Art Institutes

Anthea Sweeney

Wed 6/27/2018 9:22 PM

To: Jones, Diane [REDACTED];

Cc: Barbara Gellman-Danley [REDACTED];

Thanks. I am available anytime tonight or between 6.00 a.m. and 7.30 a.m. Central tomorrow. I will watch for your call. Our Board meeting begins at 8.00 a.m. Central. Same cell number [REDACTED]. Thank you.

Anthea

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From: Jones, Diane
Sent: Wednesday, June 27, 7:51 PM
Subject: RE: Art Institutes
To: Anthea Sweeney
Cc: Barbara Gellman-Danley

Hi Anthea,

I am finally back in the office – lots of detours along the way....sorry about that. If you are available and wish to chat tonight, I am happy to speak now, and if not, when might be a good time to call you tomorrow?

Diane

From: Anthea Sweeney [mailto:[REDACTED]]
Sent: Wednesday, June 27, 2018 4:45 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Re: Art Institutes

Dr. Jones,

Thanks so much for your message. I will wait for your call. I just also got off the phone with both Beth Daggett and Herman Bounds, who called me together and indicated (similarly) that the memo is not applicable in this particular situation.

They have advised that HLC should be mindful of current federal regulations on ensuring consistency in decisionmaking (34 CFR 602.18) and that the cleanest way to do this is to look at our reconsideration policy, which is a policy that already exists and is available already to all institutions.

I am free and stand ready to speak with you at your convenience at [REDACTED].

Thank you,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604

Main Tel.: [REDACTED]

Direct Line: [REDACTED]

Fax: [REDACTED]

From: Jones, Diane [REDACTED]

Sent: Wednesday, June 27, 2018 3:32 PM

To: Anthea Sweeney

Cc: Barbara Gellman-Danley

Subject: Re: Art Institutes

Hi Anthea,

I am on my way back from meetings and will call you as soon as I get back. The guidance document was issued in error and we will be releasing corrected guidance. We've actually been working on a document to rescind that guidance and we were planning to issue it this week. I'm disappointed that it got sent to you since it is known that we are retracting that policy because it creates a catch 22 for students who enroll in programs that won't issue accreditation until the first class graduates. That accreditation should apply to the students enrolled in the cohort that led to accreditation.

The main point is that we want students who are graduating to be able to graduate from an accredited program since it was accredited when they enrolled and during their enrollment. It would be limited to students in the teach out plan as well as those who are transferring credits earned at AI until this point or who are transitioning to the accredited on-line campus. AI would not be allowed to enroll new students and the teach out would be carefully monitored, but the goal is to make students whole and close the school.

I'll call you ASAP.

Diane

Sent from my iPhone

On Jun 27, 2018, at 3:47 PM, Anthea Sweeney [REDACTED] wrote:

Dear Under-Secretary Jones,

I write urgently to follow up on my voicemail earlier this afternoon. I understand from President Gellman-Danley that the Art Institutes have reached out to your office seeking support for a confidential proposal which they presented to HLC this week, in lieu of proceeding with HLC's established processes, to seek reinstatement of accreditation.

The proposal in short indicates that with agreement by HLC to nullify its Board's previous action, which was based on evaluation and evidence, to move the Institutes from Accredited to Candidate status after approving their transaction with the Dream Center, they would cease enrolling students and teach-out currently enrolled students through 12/31/2018, except for those students who transfer to their online Division which is accredited by Middle States. Such an action would involve our Board deeming the Institutes "accredited" retroactive to the date of action (January 20, 2018).

Yesterday we listened and clarified the salient points of the proposal. We were already scheduled to provide our Board an update this week and committed only to proceeding with that update. We also received guidance (attached) from our analyst at the U.S. Department of Education, Beth Daggett, regarding retroactive actions by accreditors, as authored by Herman Bounds. We would greatly appreciate having clarity from the Department for purposes of our Board update as to how any decision they may make at a later date will be viewed by the Department.

I am available by cell at [REDACTED] and look forward to speaking with you.

Best Wishes,

Anthea M. Sweeney

Vice President for Legal and Governmental Affairs

Higher Learning Commission

230 South LaSalle Street, Suite 7-500

Chicago, IL 60604

Barbara Gellman-Danley
Transcribed Interview
Exhibit 8



User Name: Ben Sinoff

Date and Time: Friday, February 14, 2020 12:24:00 PM EST

Job Number: 110083794

Document (1)

1. [34 CFR 602.18](#)

Client/Matter: -None-

34 CFR 602.22:

Search Type: Natural Language

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Content Type

Administrative Codes and
Regulations

Narrowed by

-None-

[34 CFR 602.18](#)

This document is current through the February 12, 2020 issue of the Federal Register. Title 3 is current through January 31, 2020.

Code of Federal Regulations > TITLE 34 -- EDUCATION > SUBTITLE B -- REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION > CHAPTER VI -- OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION > PART 602 -- THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES > SUBPART B -- THE CRITERIA FOR RECOGNITION > REQUIRED STANDARDS AND THEIR APPLICATION

Notice

 There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 602.18 Ensuring consistency in decision-making. [Effective until July 1, 2020.]

[PUBLISHER'S NOTE: This section was revised at [84 FR 58834, 58920](#), Nov. 1, 2019, effective July 1, 2020. For the convenience of the user, the section has been set out twice. The version effective until July 1, 2020, immediately follows this note. For the version effective July 1, 2020, see the version following this section, also numbered § 602.18.]

The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency--

- (a) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited;
- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards;
- (d) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate; and
- (e) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards.

Statutory Authority

[\(20 U.S.C. 1099b\)](#)

History

[[64 FR 55612, 55620](#), Oct. 20, 1999; [74 FR 55414, 55427](#), Oct. 27, 2009]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[74 FR 55414, 55427](#), Oct. 27, 2009, amended this section, effective July 1, 2010.]

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

CROSS-REFERENCE: Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for increasing the Access of all Students to That Instruction, 34 CFR Part 208.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Final priorities, see: 78 FR 5036, Jan. 23, 2013; [79 FR 17035](#), Mar. 27, 2014; [79 FR 31028, May 30, 2014](#); [79 FR 31031, May 30, 2014](#); [79 FR 31870, June 3, 2014](#); [79 FR 32651, June 6, 2014](#); [79 FR 33432, June 11, 2014](#); [80 FR 27036, May 11, 2015](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Interpretation, see: [83 FR 10619](#), Mar. 12, 2018.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 602 Clarification, see: [80 FR 73991](#), Nov. 27, 2015.]

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Barbara Gellman-Danley
Transcribed Interview
Exhibit 9

Re: Cmte on Accreditation Notes

Anthea Sweeney

Wed 6/27/2018 2:55 PM

To: Daggett, Elizabeth [REDACTED]

Cc: Bounds, Herman [REDACTED]

Perfect. Thank you so much. I have not heard back from Under-Secretary Jones as of yet. I look forward very much to speaking with you both.

Anthea

From: Daggett, Elizabeth [REDACTED] >
Sent: Wednesday, June 27, 2018 2:29 PM
To: Anthea Sweeney
Cc: Bounds, Herman
Subject: RE: Cmte on Accreditation Notes

Herman and I will call you at 4pm ET. Thanks.

Elizabeth Daggett

Tel: [REDACTED]

[REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, June 27, 2018 2:52 PM
To: Daggett, Elizabeth
Subject: Re: Cmte on Accreditation Notes

Yes. Please call my cell at [REDACTED] after 3.30p.m. your time. I am offsite. I need to speak with you too as Diane Auer Jones (new Under-Secretary) has now reached out to our President with different ideas about the Art Institutes, despite Herman's memo. I am urgently asked to reach her asap. I will look to connect with you after.

Thanks, Beth.

Anthea

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From: Daggett, Elizabeth [REDACTED]
Sent: Wednesday, June 27, 2018 8:23:59 AM

To: Anthea Sweeney
Subject: RE: Cmte on Accreditation Notes

Hi, Anthea. I've taken a look at your proposal and have some questions. Do you have time this afternoon?
Beth

Elizabeth Daggett

Tel: ([REDACTED])
[REDACTED]

From: Anthea Sweeney [mailto:[REDACTED]]
Sent: Tuesday, June 26, 2018 3:28 PM
To: Daggett, Elizabeth
Subject: Fw: Cmte on Accreditation Notes

Beth,

Here is the concept as I described to the Committee on Accreditation (a subcommittee of our Board). They're still thinking it over. I would greatly value your opinion on such a policy before Thursday morning.
Thanks,
Anthea

From: Anthea Sweeney
Sent: Saturday, June 23, 2018 11:30 AM
To: [REDACTED]; John Richman [REDACTED]; [REDACTED]; [REDACTED]
Cc: Barbara Gellman-Danley
Subject: Re: Cmte on Accreditation Notes

Greetings All,



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for your consideration.

Very Respectfully,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

Barbara Gellman-Danley
Transcribed Interview
Exhibit 10



Policy Title: Criteria for Accreditation

Number: CRRT.B.10.010

HLC's Board of Trustees adopted [revised Criteria for Accreditation](#) at its February 2019 meeting. The revised Criteria will go into effect on September 1, 2020.

The Criteria for Accreditation are the standards of quality by which the Commission determines whether an institution merits accreditation or reaffirmation of accreditation. They are as follows:

Criterion 1. Mission

The institution's mission is clear and articulated publicly; it guides the institution's operations.

Core Components

1.A. The institution's mission is broadly understood within the institution and guides its operations.

1. The mission statement is developed through a process suited to the nature and culture of the institution and is adopted by the governing board.
2. The institution's academic programs, student support services, and enrollment profile are consistent with its stated mission.
3. The institution's planning and budgeting priorities align with and support the mission. (This sub-component may be addressed by reference to the response to Criterion 5.C.1.)

1.B. The mission is articulated publicly.

1. The institution clearly articulates its mission through one or more public documents, such as statements of purpose, vision, values, goals, plans, or institutional priorities.
2. The mission document or documents are current and explain the extent of the institution's emphasis on the various aspects of its mission, such as instruction, scholarship, research, application of research, creative works, clinical service, public service, economic development, and religious or cultural purpose.

3. The mission document or documents identify the nature, scope, and intended constituents of the higher education programs and services the institution provides.
- 1.C. The institution understands the relationship between its mission and the diversity of society.
 1. The institution addresses its role in a multicultural society.
 2. The institution's processes and activities reflect attention to human diversity as appropriate within its mission and for the constituencies it serves.
 - 1.D. The institution's mission demonstrates commitment to the public good.
 1. Actions and decisions reflect an understanding that in its educational role the institution serves the public, not solely the institution, and thus entails a public obligation.
 2. The institution's educational responsibilities take primacy over other purposes, such as generating financial returns for investors, contributing to a related or parent organization, or supporting external interests.
 3. The institution engages with its identified external constituencies and communities of interest and responds to their needs as its mission and capacity allow.

Criterion 2. Integrity: Ethical and Responsible Conduct

The institution acts with integrity; its conduct is ethical and responsible.

Core Components

- 2.A. The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff.
- 2.B. The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships.
- 2.C. The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.
 1. The governing board's deliberations reflect priorities to preserve and enhance the institution.
 2. The governing board reviews and considers the reasonable and relevant interests of the institution's internal and external constituencies during its decision-making deliberations.

3. The governing board preserves its independence from undue influence on the part of donors, elected officials, ownership interests, or other external parties when such influence would not be in the best interest of the institution.
4. The governing board delegates day-to-day management of the institution to the administration and expects the faculty to oversee academic matters.

2.D. The institution is committed to freedom of expression and the pursuit of truth in teaching and learning.

2.E. The institution's policies and procedures call for responsible acquisition, discovery and application of knowledge by its faculty, students and staff.

1. The institution provides effective oversight and support services to ensure the integrity of research and scholarly practice conducted by its faculty, staff, and students.
2. Students are offered guidance in the ethical use of information resources.
3. The institution has and enforces policies on academic honesty and integrity.

Criterion 3. Teaching and Learning: Quality, Resources, and Support

The institution provides high quality education, wherever and however its offerings are delivered.

Core Components

3.A. The institution's degree programs are appropriate to higher education.

1. Courses and programs are current and require levels of performance by students appropriate to the degree or certificate awarded.
2. The institution articulates and differentiates learning goals for its undergraduate, graduate, post-baccalaureate, post-graduate, and certificate programs.
3. The institution's program quality and learning goals are consistent across all modes of delivery and all locations (on the main campus, at additional locations, by distance delivery, as dual credit, through contractual or consortial arrangements, or any other modality).

3.B The institution demonstrates that the exercise of intellectual inquiry and the acquisition, application, and integration of broad learning and skills are integral to its educational programs.

1. The general education program is appropriate to the mission, educational offerings, and degree levels of the institution.

2. The institution articulates the purposes, content, and intended learning outcomes of its undergraduate general education requirements. The program of general education is grounded in a philosophy or framework developed by the institution or adopted from an established framework. It imparts broad knowledge and intellectual concepts to students and develops skills and attitudes that the institution believes every college-educated person should possess.
3. Every degree program offered by the institution engages students in collecting, analyzing, and communicating information; in mastering modes of inquiry or creative work; and in developing skills adaptable to changing environments.
4. The education offered by the institution recognizes the human and cultural diversity of the world in which students live and work.
5. The faculty and students contribute to scholarship, creative work, and the discovery of knowledge to the extent appropriate to their programs and the institution's mission.

3.C. The institution has the faculty and staff needed for effective, high-quality programs and student services.

1. The institution has sufficient numbers and continuity of faculty members to carry out both the classroom and the non-classroom roles of faculty, including oversight of the curriculum and expectations for student performance; establishment of academic credentials for instructional staff; involvement in assessment of student learning.
2. All instructors are appropriately qualified, including those in dual credit, contractual, and consortial programs.
3. Instructors are evaluated regularly in accordance with established institutional policies and procedures.
4. The institution has processes and resources for assuring that instructors are current in their disciplines and adept in their teaching roles; it supports their professional development.
5. Instructors are accessible for student inquiry.
6. Staff members providing student support services, such as tutoring, financial aid advising, academic advising, and co-curricular activities, are appropriately qualified, trained, and supported in their professional development.

3.D. The institution provides support for student learning and effective teaching.

1. The institution provides student support services suited to the needs of its student populations.

2. The institution provides for learning support and preparatory instruction to address the academic needs of its students. It has a process for directing entering students to courses and programs for which the students are adequately prepared.
3. The institution provides academic advising suited to its programs and the needs of its students.
4. The institution provides to students and instructors the infrastructure and resources necessary to support effective teaching and learning (technological infrastructure, scientific laboratories, libraries, performance spaces, clinical practice sites, museum collections, as appropriate to the institution's offerings).
5. The institution provides to students guidance in the effective use of research and information resources.

3.E. The institution fulfills the claims it makes for an enriched educational environment.

1. Co-curricular programs are suited to the institution's mission and contribute to the educational experience of its students.
2. The institution demonstrates any claims it makes about contributions to its students' educational experience by virtue of aspects of its mission, such as research, community engagement, service learning, religious or spiritual purpose, and economic development.

Criterion 4. Teaching and Learning: Evaluation and Improvement

The institution demonstrates responsibility for the quality of its educational programs, learning environments, and support services, and it evaluates their effectiveness for student learning through processes designed to promote continuous improvement.

Core Components

- 4.A. The institution demonstrates responsibility for the quality of its educational programs.
 1. The institution maintains a practice of regular program reviews.
 2. The institution evaluates all the credit that it transcripts, including what it awards for experiential learning or other forms of prior learning, or relies on the evaluation of responsible third parties.
 3. The institution has policies that assure the quality of the credit it accepts in transfer.
 4. The institution maintains and exercises authority over the prerequisites for courses, rigor of courses, expectations for student learning, access to learning resources, and faculty

qualifications for all its programs, including dual credit programs. It assures that its dual credit courses or programs for high school students are equivalent in learning outcomes and levels of achievement to its higher education curriculum.

5. The institution maintains specialized accreditation for its programs as appropriate to its educational purposes.
6. The institution evaluates the success of its graduates. The institution assures that the degree or certificate programs it represents as preparation for advanced study or employment accomplish these purposes. For all programs, the institution looks to indicators it deems appropriate to its mission, such as employment rates, admission rates to advanced degree programs, and participation rates in fellowships, internships, and special programs (e.g., Peace Corps and Americorps).

4.B. The institution demonstrates a commitment to educational achievement and improvement through ongoing assessment of student learning.

1. The institution has clearly stated goals for student learning and effective processes for assessment of student learning and achievement of learning goals.
2. The institution assesses achievement of the learning outcomes that it claims for its curricular and co-curricular programs.
3. The institution uses the information gained from assessment to improve student learning.
4. The institution's processes and methodologies to assess student learning reflect good practice, including the substantial participation of faculty and other instructional staff members.

4.C. The institution demonstrates a commitment to educational improvement through ongoing attention to retention, persistence, and completion rates in its degree and certificate programs.

1. The institution has defined goals for student retention, persistence, and completion that are ambitious but attainable and appropriate to its mission, student populations, and educational offerings.
2. The institution collects and analyzes information on student retention, persistence, and completion of its programs.
3. The institution uses information on student retention, persistence, and completion of programs to make improvements as warranted by the data.

4. The institution's processes and methodologies for collecting and analyzing information on student retention, persistence, and completion of programs reflect good practice. (Institutions are not required to use IPEDS definitions in their determination of persistence or completion rates. Institutions are encouraged to choose measures that are suitable to their student populations, but institutions are accountable for the validity of their measures.)

Criterion 5. Resources, Planning, and Institutional Effectiveness

The institution's resources, structures, and processes are sufficient to fulfill its mission, improve the quality of its educational offerings, and respond to future challenges and opportunities. The institution plans for the future.

Core Components

- 5.A. The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future.
 1. The institution has the fiscal and human resources and physical and technological infrastructure sufficient to support its operations wherever and however programs are delivered.
 2. The institution's resource allocation process ensures that its educational purposes are not adversely affected by elective resource allocations to other areas or disbursement of revenue to a superordinate entity.
 3. The goals incorporated into mission statements or elaborations of mission statements are realistic in light of the institution's organization, resources, and opportunities.
 4. The institution's staff in all areas are appropriately qualified and trained.
 5. The institution has a well-developed process in place for budgeting and for monitoring expense.
- 5.B. The institution's governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.
 1. The governing board is knowledgeable about the institution; it provides oversight of the institution's financial and academic policies and practices and meets its legal and fiduciary responsibilities.

2. The institution has and employs policies and procedures to engage its internal constituencies—including its governing board, administration, faculty, staff, and students—in the institution’s governance.
 3. Administration, faculty, staff, and students are involved in setting academic requirements, policy, and processes through effective structures for contribution and collaborative effort.
- 5.C. The institution engages in systematic and integrated planning.
1. The institution allocates its resources in alignment with its mission and priorities.
 2. The institution links its processes for assessment of student learning, evaluation of operations, planning, and budgeting.
 3. The planning process encompasses the institution as a whole and considers the perspectives of internal and external constituent groups.
 4. The institution plans on the basis of a sound understanding of its current capacity. Institutional plans anticipate the possible impact of fluctuations in the institution’s sources of revenue, such as enrollment, the economy, and state support.
 5. Institutional planning anticipates emerging factors, such as technology, demographic shifts, and globalization.
- 5.D. The institution works systematically to improve its performance.
1. The institution develops and documents evidence of performance in its operations.
 2. The institution learns from its operational experience and applies that learning to improve its institutional effectiveness, capabilities, and sustainability, overall and in its component parts.

Policy Number Key

Section CRRT: Criteria and Requirements

Chapter B: Criteria for Accreditation

Part 10: General

Last Revised: June 2014

First Adopted: August 1992

Revision History: Criterion Three revised August 1998; revised February 2002; revised February 2007. New Criteria for Accreditation adopted February 2003, effective January 2005; New Criteria for Accreditation adopted February 2012, effective January 2013; Revised June 2013, June 2014.

Barbara Gellman-Danley
Transcribed Interview
Exhibit 11



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

October 31, 2018

By E-mail Transmission Only

Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, Illinois 60604

**Re: Art Institute of Colorado and the Illinois Institute of Art – Change of Control
Candidacy Status**

Dear Barbara:

The Department understands that the Higher Learning Commission (“HLC”) will consider the accreditation status of the Art Institute of Colorado (“AI Colorado”) and the Illinois Institute of Art (“AI Illinois”) (collectively, the “Art Institutes”) at its upcoming meeting in November. These two institutions were formerly owned by Education Management Corporation (“EDMC”) and were sold to Dream Center Education Holdings, Inc. (“DCEH”) in a transaction that closed on January 20, 2018. By action taken by its Board of Trustees (“Board”) during its meeting on November 2-3, 2017, HLC moved the Art Institutes to Change of Control Candidacy Status (“CCC-Status”) effective on the closing date of the transaction with DCEH. This decision was communicated to DCEH in a letter dated November 16, 2017 (“CCC-Status Letter” or “Ltr.”).

The Department is concerned that CCC-Status has caused disruption and confusion for students, graduates and the Department. This confusion was further exacerbated by information provided by an HLC site visitor during a meeting with students on July 16, 2018, in which the site visitor assured students that should accreditation be awarded, which he said was likely given all of the evidence he reviewed in preparation for and during the site visit, it would be given a “retroactive” effective date concurrent with the date of change of control.

It appears that this is the first time that HLC has placed an institution on CCC-Status. Even the Department did not understand until recently that HLC considered CCC-Status an adverse action that resulted in the withdrawal of accreditation for the Art Institutes. However, under

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Department regulations, an “adverse action” is a denial, withdrawal, suspension, revocation, or termination of accreditation or pre-accreditation, or a comparable action. 34 C.F.R. § 602.03. The Department’s regulations do not include an adverse action that would take an institution from accredited to non-accredited status and potentially back to accredited status within a period of time of less than one year and based on the results of a focused review. Once an agency takes a withdrawal action, short of rescinding that action (at which time the rescission would date back to the date of the action), the institution must undergo the full initial accreditation review process pursuant to the agency’s published standards, policies and processes. Absent rescission, an institution that has had its accreditation withdrawn for cause is Title IV ineligible for two years. 34 C.F.R. § 600.11(c).

The Department has several concerns regarding CCC-Status, and how it was implemented and communicated in regard to AI Illinois and AI Colorado. As noted above, the Department’s regulations define “adverse action” as “the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution.” *See* at 34 C.F.R. § 602.3(definitions). The HLC Policy Book (“Policy”) identifies “Accredited to Candidate Status” as an adverse action that is not a final action and is subject to appeal (INST.E.50.010). However, the CCC-Status Letter does not state that the change to CCC-Status is an adverse action, nor did it advise the Art Institutes or DCEH that it had a right to appeal. Rather, the CCC-Status Letter conveyed that the status constituted “conditions” upon which HLC would approve the change of ownership, and those conditions could be accepted or not. Ltr. at 4, 7. **The Art Institutes apparently “accepted” the conditions so that the change of ownership would be approved, and as a result – seemingly inadvertently – acquiesced to a non-accredited status. There is no basis in the Department’s regulations for such a status.** In addition, the CCC-Status Letter is in conflict with HLC’s policy regarding change of control status which lists the “conditions” of approval to include limitations on enrollment growth, new programs or the establishment of branch campuses. *See* INST.F.20.070. These conditions do not include forfeiture of accreditation. Subsequent communications between HLC and counsel for DCEH that have been shared with the Department, as well as our review of the videotaped conversation between the HLC site visitor and students at AI Illinois, only further muddied the situation.

The confusion about the status is not cleared up by a review of the related Policies. In INST.F.20.070, HLC states that “the Board may approve the change, thereby authorizing accreditation subsequent to the close of the transaction, or it may deny approval for the change.” This suggests that if HLC approves a change in control status, accreditation will continue beyond the close of the transaction. The policy goes on to state that upon approval of change of control,

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the Board may impose certain conditions upon the institution, such as limitations on new programs, enrollment growth, or the establishment of branch campuses. It does not list loss of accreditation as a possible “condition” of the change of control. Later, the policy states that “if the Board votes to approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction...,” which similarly suggests that if the Board approves the change of control, accreditation continues, though is subject to further review and the application of the limitations described above. INST.F.20.070 also states that if the Board determines that the transaction does not meet its five requirements, it will not approve the transaction.

In addition, if the Board determines that a proposed change of ownership and control constitutes the creation of a new institution (the parameters of which are not defined), the institution is moved to CCC-Status. *See* INST.B.20.040 and INST.F.20.070. No such finding is reflected in the CCC-Status Letter. Further, INST.E.50.010 states that the Board may move an institution to CCC-Status only if it meets all of the Eligibility Requirements and conforms with Assumed Practices “but *no longer meets* all of the Criteria for Accreditation and Federal Compliance Requirements.” The CCC-Status Letter does not indicate that the Art Institutes “no longer meet” all of the Criteria or Compliance Requirements. Instead, in regard to the basis upon which the Board based its action, the CCC-Status Letter indicates that approval factors were “met” or were “Met with Concerns.” Ltr. at 4-6. Similarly, INST.F.20.080 provides that if the post-transaction evaluation determines that if the Eligibility Requirements are met, “but not the Criteria for Accreditation,” the institution may be recommended “to be continued in status only as a candidate for accreditation.” The situation is further confused by INST.B.20.040, which states that HLC’s approval of a change in control is necessary prior to its consummation to *effectuate the continued accreditation of the institution*. Indeed, the CCC-Status Letter reads more like a probation or show cause notification, neither of which would have constituted a withdrawal, loss, or termination of accreditation.

Nor does CCC-Status comport with the requirements for withdrawal of accreditation set forth in INST.B.60.010, although the effect of CCC-Status appears to be the same. There has been no finding that the Art Institutes do not meet one or more Criteria or HLC’s Federal Compliance Requirements, that they failed to conform with the Assumed Practices, or that they failed to meet the Obligations of Affiliation. In fact, as noted above, the CCC-Status Letter indicates that the approval factors were “met” or “Met with Concerns” and that the Art Institutes were required to provide additional documentation and complete a focused on-site review.

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When the Board takes an action, INST.D.40.010 requires the action letter to provide information about opportunities for institutional response. Here, the only information provided was for the Art Institutes to accept or reject the conditions. The CCC-Status Letter did not advise the institutions that the decision to impose CCC-Status could be appealed.

Only in INST.E.50.010, but not in its other policies regarding change of control review, does HLC define change of control candidacy as an adverse action, but it refers back to INST. B.20.040, where change of control status is the result of the Board's determination that the transaction effectively "builds a new institution" bypassing the Eligibility Process and initial status review by means of a comprehensive evaluation. However, INST.B.20.040 states that under such circumstances, the Board will not approve the change of control. That the Board approved the change of control suggests that it did not determine that the change of control resulted in the building of a new institution.

There is no provision in the Department's regulations for an adverse action that would revoke accreditation and at the same time award candidacy status, which the Department assumes is the equivalent of preaccreditation. Indeed, the CCC-Status Letter refers to CCC-Status as a "preaccreditation status." However, there is no adverse action that would automatically transition an accredited institution to a preaccredited institution rather than a non-accredited institution.

An adverse action that immediately removed accreditation status would require the agency to follow its normal due process requirements, including the imposition of its published wait-out period prior to considering a new application for Eligibility or accreditation. HLC's Eligibility Requirements (CRR.T.A.10.010 -18) state that an institution may not have had its accreditation revoked within five years of the initiation of the Eligibility Process. Therefore, HLC could not take an adverse action (such as withdrawal of accreditation) at the time of change of control, and then propose to consider a new award of accreditation within a period of less than five years and without requiring the institution to submit a new application for accreditation. Doing so would violate the Department's regulations regarding due process and the consistent application of the agency's standards.

Having now seen the first example of HLC's application of CCC-Status, the Department has grave concerns as to whether the Policy itself, and as applied to the Art Institutes, is in compliance with the Department's requirements. As set forth in 34 C.F.R. § 602.25, the Department requires the agency's standards to be written clearly and applied consistently, which is not the case here since neither the Department, the HLC site visitor, nor apparently DCEH fully understood what CCC-Status meant. The policy appears to create a new accreditation

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category that is not listed in the Department's regulations, and that creates an accreditation "no man's land." Neither the Department's regulations nor HLC Policy provide a basis upon which the Art Institutes could have been moved to an unaccredited status between the date of the approved change of control (January 20, 2018) and the date of the Board's decision.

Separate from this case, the Department would like to point out its concern about the statement in INST. B. 20.040 which suggests that change of control status will be granted only when such a change is in the best interest of the Commission. It is unclear to the Department how the Commission would determine what is or is not in its best interest, but the point of accreditation reviews and determinations is to do what is in the best interest of the student. Allowing a previously accredited institution to continue educating students for ten months, knowing that credits or degrees earned during that time would not be accredited absent a retroactive "re-accreditation," simply does not serve the students' or the Commission's best interests.

Sincerely,



Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of the Under
Secretary and the Assistant Secretary for
Postsecondary Education

Barbara Gellman-Danley
Transcribed Interview
Exhibit 12



HIGHER LEARNING COMMISSION

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November 16, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC
7135 East Camelback Road
Phoenix, AZ 85251

Dear President Monday, President Pond, and Mr. Richardson:

This letter is formal notification of action taken by the Higher Learning Commission (“HLC” or “the Commission”) Board of Trustees (“the Board”) concerning Illinois Institute of Art (“IIA”) and the Art Institute of Colorado (“AIC”) (“the Institutes” or “the institutions,” collectively). During its meeting on November 2-3, 2017, the Board voted to approve the application for Change of Control, Structure, or Organization wherein the Dream Center Foundation (“DCF”), through Dream Center Education Holdings LLC (“DCEH” or “the buyers”) and related intermediaries, acquires certain assets currently held by Education Management Corporation (“EDMC”), including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below. In taking this action, the Board considered materials submitted to the Commission including: the Change of Control, Structure or Organization application, the Summary Report and its attachments, the additional information provided by the Institutes throughout the review process, and the Institutes’ responses to the Summary Report.

As noted under policy, the Commission considers five factors in determining whether to approve a requested Change of Control, Structure, or Organization. It is the applying institution’s burden, in its request and submission of related information, to demonstrate with clear and convincing evidence that the transaction meets these five factors and to resolve any concerns or ambiguities regarding the transaction and its impact on the institution and its ability to meet Commission

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requirements. The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future.

The conditions set forth by the Board in its approval of the application subject to Change of Control Candidate for Accreditation are as follows:

The institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.

The institutions submit an interim report every 90 days following the date of the consummation of the transaction until their next comprehensive evaluations on the following topics:

- Current term enrollment at the institutions. This should include the number of full- and part-time students, as well as comparisons to planned enrollment numbers. The institutions should also provide revised enrollment projections based on enrollments at the time of submission;
- Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institutions;
- Information regarding any complaints received by DCF, DCEH or any of the institutions;
- Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, (“DCEM”), or any of the institutions;
- Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions;
- Information regarding reductions in faculty and/or staff at any of the institutions;
- Updated student retention and completion measures for each of the institutions;
- Copies of any information sent to the U.S. Department of Education (“USDE”), including any information sent in response to the USDE’s September 11, 2017 letter (or any updates to that letter); and
- An update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator.

The institutions submit separate Eligibility Filings no later than February 1, 2018, providing detailed documentation that each institution meets the Eligibility Requirements

and Assumed Practices, as well as a highly detailed plan with timelines, action steps, and personnel assignments to remedy issues related to Core Components 1.D, regarding commitment to the public good; 2.A, regarding integrity and ethical behavior; 2.B, regarding public disclosure and transparency; 2.C, regarding the autonomy of board governance; 4.A, regarding improving program outcomes; 5.A, regarding financial resources; and 5.C, regarding planning, with specific focus on enrollment and financial planning. The outcome of this process shall be reported to the HLC Board of Trustees at its spring 2018 meeting.

The institutions host a visit within six months of the transaction date, as required by HLC policy and federal regulation, focused on ascertaining the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.

The institutions host a focused visit no later than June 2019, to include a visit to the Dream Center Foundation and Dream Center Education Holdings, on the following topics:

- Core Component 1.D:
 - The institutions should provide evidence that the missions of the institutions demonstrate a commitment to public good. Specifically, that the institutions' operations align to the pursuit of the stated missions in terms of recruiting, marketing, advertising, and retention.
- Core Component 2.A:
 - The institutions should demonstrate that they possess effective policies and procedures for assuring integrity and transparency.
 - DCEH and the institutions should provide evidence that the parent company and the institutions are continuing to perform voluntarily the obligations of the Consent Agreement, as assured by DCEH to the Higher Learning Commission in writing.
- Core Component 2.B:
 - DCEH and the institutions must demonstrate that policies and procedures following the Consent Judgment have been fully implemented and are effective in ensuring the proper training and oversight of personnel.
- Core Component 2.C:
 - Evidence that the DCF, DCEH, DCEM and the Art Institutes organizations, as well as related corporations, demonstrate that they have organizational documents and have engaged in a pattern of behavior that indicates the respective boards of the institutions have been able to engage in appropriately autonomous oversight of their institutions.
- Core Component 4.A:
 - Evidence that the institutions have engaged in effective planning processes to address programs that have failed the USDE's gainful employment requirements (when those requirements were still applicable), as well as those that are "in the zone." The institutions should also provide any plans that have been implemented to improve program outcomes.

- Core Component 5.A:
 - Evidence that the institutions have increased enrollments to the levels set forth in the application for Change of Control, Structure, or Organization. This should include any revised budgetary projections and evidence of when the institutions intend to achieve balanced budgets.
- Core Component 5.C:
 - The institutions should provide any revised plans or projections that occur following consummation of the transaction.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action.

The Board will receive and review the Eligibility Filing, related staff comments, and the report of the first focused visit team to determine whether to continue the Change of Control Candidacy status. If the Eligibility Filing and focused evaluation does not provide clear, convincing and complete evidence of each institution meeting each Eligibility Requirement and of making substantial progress towards meeting the Criteria for Accreditation in the maximum period allotted for such Change of Control Candidacy as indicated in this letter, the Board may withdraw Change of Control Candidate for Accreditation status at its June 2018 meeting.

The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation.

Assuming acceptance of these conditions, the Institutes and buyers must provide written notice of the closing date within 24 hours after the transaction has closed. The Institutes are also obligated to notify the Commission prior to closing if any of the material terms of this transaction have changed or appear likely to change. By Commission policy the closing must take place within no more than thirty days from the date of the Board's approval. If there is any delay such that the transaction cannot close within this time frame, the Institutes must notify the Commission as soon as possible so alternate arrangements can be identified to ensure that the Board's approval remains in effect.

The Board based its action on the following findings made in regard to the Institutes:

In reference to the first, second, and fourth approval factors and, related to the continuity of the institutions accredited by the Commission and sufficiency of financial support for

the transaction, the institutions and the buyers have provided reasonable evidence that these factors have been met.

In reference to the third approval factor, the substantial likelihood that following consummation of the transaction the institutions will meet the Commission's Criteria for Accreditation, with specific reference to governance, mission, programs, disclosures, administration, policies and procedures, finances, and integrity, the institutions and the buyers have provided reasonable evidence that this factor is met, although the following Criteria for Accreditation are Met with Concerns:

- Criterion One, Core Component 1.D: "The institution's mission demonstrates commitment to the public good," for the following reasons:
 - Neither institution has demonstrated evidence that its underlying operations, in addition to its tax status, will be transformed to reflect a non-profit mission;
 - Neither institution has demonstrated significant planning required to undertake a mission that includes the responsibility of educating a potentially very different student population represented by the Dream Center clientele; and
 - The buyers have not provided evidence that the institutions' educational purposes will take primacy over contributing to a related or parent organization, which will be struggling in its initial years to improve the enrollment and financial wherewithal of a large number of institutions purchased from EDMC.
- Criterion Two, Core Component 2.A: "The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff," for the following reason:
 - Although each institution is making changes to procedures specifically identified in the November 2015 Consent Judgment, neither institution has yet established a long-term track record of integrity in its auxiliary functions.
- Criterion Two, Core Component 2.B: "The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships," for the following reasons:
 - Changes being made by the institutions to ensure transparency, particularly with students, are recent in nature and have yet to fully penetrate the complex organizational structure of which the institutions are a part; and
 - Given the replication of that operational structure and the continuity of personnel following the transaction, the potential for continuing challenges is of concern.
- Criterion Two, Core Component 2.C: "The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity," for the following reasons:
 - There remain questions about how the governance of DCEH, its related service provider Dream Center Education Management, and the Art Institutes will take place after the transaction and how that governance will affect the governance of the AIC and IIA, and the mere replication of the EDMC corporate structure with new non-profit corporations does not resolve the

- question of how these new corporations will function in the future to assure autonomy and governance in the best interest of the institutions;
- An apparent conflict of interest exists owing to an investment by the DCEH CEO of 10% in the purchase price for which limited documentation exists; and
 - No evidence was provided indicating that either institution’s board had yet engaged in significant consideration of the role that typifies non-profit boards.
 - Criterion Four, Core Component 4.A: “The institution demonstrates responsibility for the quality of its educational programs,” for the following reasons:
 - Neither institution has demonstrated that improvements have been made to academic programs identified since January 2017 by the USDE as having poor outcomes, or that such programs have been eliminated; and
 - The risk of harm to students admitted to such programs absent such improvement or elimination is of concern, regardless of the institutions’ tax-status or whether they are subject to gainful employment regulations.
 - Criterion Five, Core Component 5.A: “The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future,” for the following reasons:
 - Despite the adoption of certain cost-reducing and related measures, the impact of which are yet to be determined, the ability of each institution to sustain its resource base and improve enrollment beyond 2019 depends on the occurrence of several contingencies, most of which are assumptions tied to the institutions’ change in tax status, and none of which are guaranteed;
 - The ability of the buyers to provide the cash flow infusions necessary to sustain the institutions over the next five years are also linked to assumptions related to the institutions’ change in tax status and the long-term debt taken on by DCEH and DCF in addition to the debt acquired for the purchase price; and
 - Although the buyers are expected to have \$35 million in cash at closing (based on debt as noted above), these funds are intended to support multiple transactions within Argosy University, South University and the Art Institutes, and the potential need for and access to additional debt financing on the part of the buyers is of concern.
 - Criterion Five, Core Component 5.C: “The institution engages in systematic and integrated planning,” for the following reasons:
 - Neither institution has demonstrated that the impacts of the transaction have been accounted for in their strategic planning; and
 - IIA’s strategic planning process is still in the process of maturing.

In reference to the fifth approval factor, the experience of the buyers, administration, and board with higher education, the officers (CEO and CDO) of the buyers have some experience in higher education but do not have any experience as chief officers of a large system of non-profit institutions or with the specific challenges pertinent to EDMC institutions, including challenges related to marketing and recruitment policies, governance, administration, and student outcomes across institutions with many campuses and programs operating across the United States.

The Board action, if the conditions are accepted by the Institutes and the buyers, resulted in changes to the affiliation of the Institutes. These changes will be reflected on the Institutional Status and Requirements Report. Some of the information on that document, such as the dates of the last and next comprehensive evaluation visits, will be posted to the HLC website.

Commission policy COMM.A.10.010, Commission Public Notices and Statements, requires that HLC prepare a summary of actions to be sent to appropriate state and federal agencies and accrediting associations and published on its website within thirty days of any action. The summary will include HLC Board action regarding the Institutes. The Commission will also simultaneously inform the U.S. Department of Education of this action by copy of this letter. As further explained in policy, HLC may publish a Public Statement regarding this action and the transaction following the institutions' and the buyer's decision of whether to accept the conditions outlined above. Please note that any public announcement by the buyers about this action must include the information that any approval provided by the Commission is subject to the condition of the buyers accepting Change of Control candidacy for not less than six months up to a maximum of four years.

On behalf of the Board of Trustees, I thank you and your associates for your cooperation. If you have questions about any of the information in this letter, please contact Dr. Anthea Sweeney.

Sincerely,



Barbara Gellman-Danley
President

cc: Chair of the Board of Trustees, Illinois Institute of Art
Chair of the Board of Trustees, Art Institute of Colorado
Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, the Art Institute of Colorado
Diane Duffy, Interim Executive Director, Colorado Department of Higher Education
Stephanie Bernoteit, Senior Associate Director, Academic Affairs, Illinois Board of
Higher Education
Evaluation team members
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning
Commission
Karen Peterson Solinski, Vice President for Legal and Governmental Affairs, Higher
Learning Commission
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Herman Bounds, Director, Accreditation Group, U.S. Department of Education

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Exhibit 13

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions

Barbara Gellman-Danley
Transcribed Interview
Exhibit 14



Policy Title: Accredited to Candidate Status

Number: INST.E.50.010

The Board of Trustees may determine that an institution be moved from accredited to candidate status subsequent to the close of a Change of Control, Structure or Organization transaction as a result of the findings of an on-site team, including either a Fact-Finding or other team, visiting the institution or the findings in a summary report. The Board must find that the institution, as a result of or related to the Change of Control, Structure or Organization, meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices but no longer meets all of the Criteria for Accreditation and Federal Compliance Requirements. It must also find that the institution meets the requirements of the candidacy program. Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.

Process for Moving an Institution From Accredited to Candidate Status

The Board of Trustees may take an action to move an institution from accredited to candidate status in conjunction with a Change of Control, Structure or Organization, as outlined in [Commission policy INST.B.20.040](#). In addition, a team recommendation arising out of a comprehensive or focused evaluation within six (6) months of the close of a transaction approved under [INST.B.20.040](#) to move the institution from accredited to candidate status, will automatically be referred to an Institutional Actions Council Hearing Committee. The Board will consider both the team recommendation and the Institutional Actions Council Hearing Committee recommendations in its deliberations. In all cases, the Board of Trustees will act on a recommendation to move an institution from accredited to candidate status only if the institution's chief executive officer has been given at least two weeks to place before the Board of Trustees a written response to the recommendation of the team or Institutional Actions Council Hearing Committee.

Public Disclosure of Accredited to Candidate Status

A Public Disclosure Notice for an institution whose status has shifted under this policy will be available on the Commission's website shortly after, but not more than twenty-four (24) hours after, the Commission notifies the institution of the action moving the institution from accredited to candidate status. An

institution moved from accredited to candidate status must notify its Board members, administrators, faculty, staff, students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the institution must also disclose this new status whenever it refers to its Commission affiliation.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 50: Accredited to Candidate Status

Last Revised: February 2014

First Adopted: June 2009

Revision History: February 2011, February 2014

Notes: Policies combined November 2012 – 2.5(e), 2.5(e)1, 2.5(e)2

Related Policies: INST.B.20.020 Candidacy, INST.B.20.040 Change of Control, Structure, or Organization

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Exhibit 15

staff liaison – One of HLC’s Vice Presidents for Accreditation Relations who serves as a resource for affiliated institutions.

Eligibility and Candidacy

candidacy – Preaccreditation status offering affiliation, not membership, with HLC.

Candidate for Accreditation – An institution with the preaccredited candidacy status that has met HLC’s Eligibility Requirements and shows evidence that it is making progress toward meeting all the Criteria for Accreditation.

Candidacy Program – The steps an institution must follow to gain candidacy with HLC.

Eligibility Filing – Documentation submitted by an institution considering affiliation with HLC that demonstrates that it meets the Eligibility Requirements.

Eligibility Process – The process by which HLC determines whether a non-affiliated institution is ready to begin the Candidacy Program.

Eligibility Requirements – A set of requirements an institution must meet before it is granted candidacy.

Initial Accreditation – An accreditation status for institutions in their first years of accreditation. Institutions in candidacy must undergo a comprehensive evaluation to ensure they meet the Assumed Practices and the Criteria for Accreditation in full to move to Initial Accreditation.

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Exhibit 16



User Name: Ben Sinoff

Date and Time: Friday, February 14, 2020 1:39:00 PM EST

Job Number: 110093708

Document (1)

1. [34 CFR 600.2](#)

Client/Matter: -None-

34 CFR 600.2:

Search Type: Natural Language

Narrowed by:

Content Type

Administrative Codes and
Regulations

Narrowed by

-None-

[34 CFR 600.2](#)

This document is current through the February 12, 2020 issue of the Federal Register. Title 3 is current through January 31, 2020.

Code of Federal Regulations > TITLE 34 -- EDUCATION > SUBTITLE B -- REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION > CHAPTER VI -- OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION > PART 600 -- INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED > SUBPART A -- GENERAL

Notice

 There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 600.2 Definitions. [Effective until July 1, 2020.]

[PUBLISHER'S NOTE: This section was amended at [84 FR 58834, 58914](#), Nov. 1, 2019, effective July 1, 2020. For the convenience of the user, the section has been set out twice. The version effective until July 1, 2020, immediately follows this note. For the version effective July 1, 2020, see the version following this section, also numbered § 600.2.]

The following definitions apply to terms used in this part:

Accredited: The status of public recognition that a nationally recognized accrediting agency grants to an institution or educational program that meets the agency's established requirements.

Award year: The period of time from July 1 of one year through June 30 of the following year.

Branch Campus: A location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location --

- (1) Is permanent in nature;
- (2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
- (3) Has its own faculty and administrative or supervisory organization; and
- (4) Has its own budgetary and hiring authority.

Clock hour: A period of time consisting of --

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or
- (3) Sixty minutes of preparation in a correspondence course.

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.

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(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

(3) A correspondence course is not distance education.

Credit hour: Except as provided in [34 CFR 668.8\(k\)](#) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than--

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

Direct assessment program: A program as described in [34 CFR 668.10](#).

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include--

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

Educational program: (1) A legally authorized postsecondary program of organized instruction or study that:

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in [34 CFR part 668](#), subpart O; and

(ii) May, in lieu of credit hours or clock hours as a measure of student learning, utilize direct assessment of student learning, or recognize the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment and with the provisions of § 668.10.

(2) The Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: Instruction provided by other institutions or schools; examinations or direct assessments provided by agencies or organizations; or other accomplishments such as "life experience."

Eligible institution: An institution that --

(1) Qualifies as --

(i) An institution of higher education, as defined in § 600.4;

(ii) A proprietary institution of higher education, as defined in § 600.5; or

(iii) A postsecondary vocational institution, as defined in § 600.6; and

(2) Meets all the other applicable provisions of this part.

Federal Family Education Loan (FFEL) Programs: The loan programs (formerly called the Guaranteed Student Loan (GSL) programs) authorized by title IV-B of the HEA, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (Federal SLS), and Federal Consolidation Loan

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programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the students' attendance at eligible institutions. The Federal Stafford Loan, Federal PLUS, Federal SLS, and Federal Consolidation Loan programs are defined in [34 CFR part 668](#).

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency: An agency or association that the Secretary recognizes as a reliable authority to determine the quality of education or training offered by an institution or a program offered by an institution. The Secretary recognizes these agencies and associations under the provisions of [34 CFR part 602](#) and publishes a list of the recognized agencies in the FEDERAL REGISTER.

Nonprofit institution: An institution that --

(1)

(i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(iii) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with [section 501\(c\)\(3\) of the Internal Revenue Code \(26 U.S.C. 501\(c\)\(3\)\)](#); or

(2) For a foreign institution--

(i) An institution that is owned and operated only by one or more nonprofit corporations or associations; and

(ii)

(A) If a recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, is determined by that tax authority to be a nonprofit educational institution; or

(B) If no recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, the foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

(3) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with [section 501\(c\)\(3\) of the Internal Revenue Code \(26 U.S.C. 501\(c\)\(3\)\)](#).

One-academic-year training program: An educational program that is at least one academic year as defined under [34 CFR 668.2](#).

Preaccredited: A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

Recognized equivalent of a high school diploma: The following are the equivalent of a high school diploma --

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

Recognized occupation: An occupation that is--

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O*Net-SOC code established by the Department of Labor, which is available at www.onetonline.org or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

[Effective July 1, 2020.] State authorization reciprocity agreement: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

Title IV, HEA program: Any of the student financial assistance programs listed in [34 CFR 668.1\(c\)](#).

Statutory Authority

([20 U.S.C. 1001](#), [1002](#), [1071](#), et seq., [1078-2](#), [1088](#), [1091](#), [1094](#), [1099b](#), [1099c](#), [1141](#); [26 U.S.C. 501\(c\)](#))

History

[[53 FR 11210](#), Apr. 5, 1988; [58 FR 39620](#), [July 23, 1993](#); [59 FR 22336](#), Apr. 29, 1994; [59 FR 32656](#), [32657](#), [June 24, 1994](#); [63 FR 40622](#), [July 29, 1998](#); [64 FR 58608](#), [58615](#), Oct. 29, 1999; [71 FR 45666](#), [45692](#), Aug. 9, 2006; [74 FR 55414](#), [55425](#), Oct. 27, 2009; [74 FR 55902](#), [55932](#), Oct. 29, 2009; [75 FR 66832](#), [66946](#), Oct. 29, 2010; [75 FR 67170](#), [67192](#), Nov. 1, 2010; [79 FR 64890](#), [65006](#), Oct. 31, 2014; [81 FR 92232](#), [92262](#), Dec. 19, 2016; [83 FR 31296](#), [31303](#), [July 3, 2018](#); [84 FR 36471](#), [July 29, 2019](#)]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[79 FR 64890, 65006](#), Oct. 31, 2014, amended this section, effective July 1, 2015; [81 FR 92232, 92262](#), Dec. 19, 2016, added definition of "State authorization reciprocity agreement", effective July 1, 2018; [83 FR 31296, 31303, July 3, 2018](#), delayed the effective date of the amendment appearing at [81 FR 92232](#), until July 1, 2020; [84 FR 36471, July 29, 2019](#), provides: "In *National Education Association v. DeVos*, No. 18--cv-- 05173--LB (N.D. CA April 26, 2019), the court vacated the rule amending [34 CFR 600.2, 600.9\(c\), 668.2](#), and the addition of [34 CFR 668.50](#), published December 19, 2016 at [81 FR 92236](#), and delayed [June 29, 2018 \(83 FR 31296\)](#), is effective May 26, 2019."]

Case Notes

LexisNexis® Notes

Education Law : Administration & Operation : Student Financial Aid : Eligibility
Education Law : Departments of Education : U.S. Department of Education : General Overview
Governments : Federal Government : Employees & Officials

Education Law : Administration & Operation : Student Financial Aid : Eligibility

[Instituto De Educacion Universal Corp. v. Riley, 973 F. Supp. 95, 1997 U.S. Dist. LEXIS 12825 \(D PR Aug. 15, 1997\)](#).

Overview: *Although the United States Department of Education was entitled to summary judgment with regard to a school's claims regarding reimbursement and eligibility to receive funds under Title IV of the Higher Education Act of 1965, the court dismissed without prejudice the school's clock-hour claim because judicial intervention was premature.*

- The United States Secretary of Education has a regulatory formula to determine whether an educational program qualifies in credit hours as an eligible Title IV program, and the amount of Title IV program assistance that a student who is enrolled in that eligible program may receive. The formula requires that a semester, trimester, or quarter hour contain a specific minimum number of clock hours of instruction. A clock hour of instruction is a period of time consisting of: (1) a 50- to 60-minute class, lecture, or recitation in a 60-minute period; (2) a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or (3) 60 minutes of preparation in a correspondence course. [34 C.F.R. § 600.2 \(1994\)](#).
[Go To Headnote](#)

Education Law : Departments of Education : U.S. Department of Education : General Overview

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[Go To Headnote](#)

Governments : Federal Government : Employees & Officials

[Instituto De Educacion Universal Corp. v. Riley, 973 F. Supp. 95, 1997 U.S. Dist. LEXIS 12825 \(D PR Aug. 15, 1997\).](#)

Overview: *Although the United States Department of Education was entitled to summary judgment with regard to a school's claims regarding reimbursement and eligibility to receive funds under Title IV of the Higher Education Act of 1965, the court dismissed without prejudice the school's clock-hour claim because judicial intervention was premature.*

- The United States Secretary of Education has a regulatory formula to determine whether an educational program qualifies in credit hours as an eligible Title IV program, and the amount of Title IV program assistance that a student who is enrolled in that eligible program may receive. The formula requires that a semester, trimester, or quarter hour contain a specific minimum number of clock hours of instruction. A clock hour of instruction is a period of time consisting of: (1) a 50- to 60-minute class, lecture, or recitation in a 60-minute period; (2) a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or (3) 60 minutes of preparation in a correspondence course. 34 C.F.R. § 600.2 (1994).
[Go To Headnote](#)

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

CROSS-REFERENCE: Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for increasing the Access of all Students to That Instruction, 34 CFR Part 208.

34 CFR 600.2

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Final priorities, see: 78 FR 5036, Jan. 23, 2013; [79 FR 17035](#), Mar. 27, 2014; [79 FR 31028, May 30, 2014](#); [79 FR 31031, May 30, 2014](#); [79 FR 31870, June 3, 2014](#); [79 FR 32651, June 6, 2014](#); [79 FR 33432, June 11, 2014](#); [80 FR 27036, May 11, 2015](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Interpretation, see: [83 FR 10619](#), Mar. 12, 2018.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 600 Clarification, see: [80 FR 73991](#), Nov. 27, 2015.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 600 Identification of inapplicable regulatory provisions, see: [82 FR 48424](#), Oct. 18, 2017.]

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End of Document

Barbara Gellman-Danley
Transcribed Interview
Exhibit 17

November 29, 2017

Barbara Gellman-Danley, President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

Dear President Gellman-Danley,

The Art Institute of Colorado (AiC), Illinois Institute of Art (ILIA), and Dream Center Education Holdings, LLC (DCEH) jointly acknowledge receipt of conditional HLC approval of the two applications for Change of Control, Structure, or Organization. Per the approval letter, AiC and ILIA will proceed with completion of the transaction and change of institutional ownership from Education Management Corporation (EDMC) to the Dream Center Foundation (DCF). We will advise the Commission immediately upon the close of the transaction.

With regard to the specific conditions articulated with the November 16 letter, we respond as follows:

- We understand that both AiC and ILIA will undergo a period of candidacy beginning with the close of the transaction.
- We understand that the two institutions must complete separate Eligibility Filings accompanied by an action plan pertaining to Core Components 1.D, 2.A, 2.B, 2.C, 4.A, 5.A, and 5.C. Respectfully, we ask that the submission deadline for the Eligibility Filings be extended from February 1, 2018 to March 1, 2018. The extension will allow sufficient time for the institutions to closely review each of the Eligibility Requirements in consideration of a change of ownership and legal status, which has not yet occurred. The extension will also provide the time needed for the institutions to simultaneously develop the requested action plan.
- We understand that the two institutions will be required to submit an interim report every 90 days to include the specified data and documentation. We understand the financial and complaint, dispute and settlement information to be included in such interim reports shall be that which applies to the two HLC institutions (AiC and ILIA). Respectfully, we request that the interim report be submitted as single report to be jointly prepared by the two institutions. A combined report will include the requested data and information for the two HLC institutions (AiC and ILIA), as well as include any data and information pertaining to DCF and DCEH, where required.
- We understand that AiC and ILIA will each host a site visit within six months of the close of the transaction. We further understand that both institutions will host a site visit by June 2019 to include visits to DCF and DCEH facilities.
- While the November 17 letter stipulates closure of the transaction within 30 days of the conditional approval (i.e., by December 2 or 3), in accordance with the email request sent to HLC by The Illinois

Institute of Art's Institutional President, Josh Pond on November 29, we respectfully ask that the deadline for the close of the transaction be extended to January 15. As detailed in Mr. Pond's email, extension of the transaction deadline will allow DCF to better coordinate the purchase of the two HLC institutions with the timeline of the purchase of other non-HLC institutions, which, due to requirements imposed on those institutions by the Pennsylvania Department of Education, cannot be transferred until the second week of January. Requiring separate closings for these acquisitions will result in significant expense to DCEH, as the U.S. Department of Education has stated it will require an opening day balance sheet audit of DCEH for any subsequent closings of its acquisition of the post-secondary institutions owned by EDMC. In addition, an extension will allow time for receipt of formal approval of the transaction from the Illinois Board of Higher Education, which meets on December 12 (the IBHE staff has recommended approval), and for AiC, ILIA and DCF to discuss the conditions to approval with HLC, as set forth in this letter.

- In order for HLC to be assured of continuing compliance with the Consent Judgment, we will promptly deliver to HLC all periodic reports received by DCF and DCEH from the Settlement Administrator, who is acting as an independent third party agent on behalf of 39 states and the District of Columbia charged with the duty of overseeing and ensuring compliance of EDMC and now DCEH with the terms of the Consent Judgment. We do not believe any further reports would be any more meaningful, as the Settlement Administrator is acting as an expert independent third party agent.

AiC, ILIA, and DCF appreciate the review and conditional HLC approval of the institutional applications for Change of Control, Structure, or Organization. Thank you for the guidance and support provided throughout this process.

Sincerely,



Elden Monday, Interim President
The Art Institute of Colorado



Josh Pond, Institutional President
The Illinois Institute of Art

Brent Richardson, Chief Executive Officer
Dream Center Education Holdings, LLC

Barbara Gellman-Danley
Transcribed Interview
Exhibit 18

Ai The Illinois Institute of Art®—Chicago

January 4, 2018

Barbara Gellman-Danley, President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

Dear President Gellman-Danley,

The Art Institute of Colorado (AiC), The Illinois Institute of Art (ILIA), and Dream Center Education Holdings, LLC (DCEH) jointly acknowledge receipt of conditional HLC approval of the two applications for Change of Control, Structure, or Organization. AiC and ILiA agree to accept Change of Control candidacy status set forth in the Higher Learning Commission's approval letter dated November 16, 2017, and, as indicated in our November 29, 2017 letter, the institutions also accept the conditions stated in the November 16, 2017 letter, as modified by non-substantive revisions set forth in Karen Solinski's email to Ron Holt on December 22, 2017 (we understand that details concerning implementation of third-party monitoring in 2019 can be provided later).

We confirm that the terms of the transaction, through which ownership of AiC and ILiA will be transferred to subsidiaries of DCEH, remain unchanged from the terms set forth in the parties Amended and Restated Asset Purchase Agreement entered February 24, 2017, as amended by the Second Amendment dated October 13, 2017, copies of which have been previously furnished to HLC. As we have previously shared with Ms. Solinski, the parties were not able to carry out the closing of the transaction within 30 days of receipt of the HLC approval letter, due to pending state agency approvals for AiC and ILiA and for other institutions involved in the transaction. DCEH plans to effectuate the transfer no later than January 15, 2018.

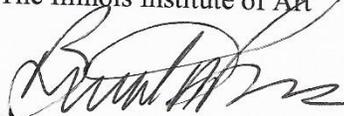
Sincerely yours,



Elden Monday, Interim President
The Art Institute of Colorado



Josh Pond, Institutional President
The Illinois Institute of Art



Brent Richardson, Chief Executive Officer
Dream Center Education Holdings, LLC



cc: Karen Solinski
Anthea Sweeney

Barbara Gellman-Danley
Transcribed Interview
Exhibit 19

Re: Important Notification: Formal Letter Required

Anthea Sweeney

Fri 1/5/2018 12:39 PM

To: Pond, Josh [REDACTED];

Cc: Monday, Elden [REDACTED]; Karen Solinski [REDACTED];

President Pond,

I write to acknowledge receipt and thank you for your email and letter. I have forwarded the same to our president as well. We will be in touch with next steps soon.

Best,

Anthea M. Sweeney, Ed.D.
Vice President for Accreditation Relations and Eligibility
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Pond, Josh [REDACTED]
Sent: Friday, January 5, 2018 12:27 PM
To: Anthea Sweeney
Cc: Monday, Elden; Karen Solinski
Subject: Re: Important Notification: Formal Letter Required

Dr. Sweeney,

Please find the attached response.

Regards,

Josh Pond
Institutional President

The Illinois Institute of Art
350 N Orleans St.
Suite 136
Chicago, IL 60654

From: Anthea Sweeney [REDACTED]
Date: Wednesday, January 3, 2018 at 3:04 PM
To: Josh Pond [REDACTED]
Cc: "Monday, Elden" [REDACTED]
Subject: Important Notification: Formal Letter Required

Good Afternoon President Pond,

I am writing to inform you that HLC staff conferred internally regarding the response to the action letter received via email on November 29, 2017. Because we have since received requested modifications related to certain conditions of the HLC Board's recent approval, requests that go beyond merely technical modifications to substantive changes, and because HLC staff have no authority to respond to those requests, we will need to communicate with the HLC Board so it can make a determination of its own on whether and how to address the parties' concerns.

However, as a prerequisite, we will require a formal letter from the institutions, cosigned by DCEH, providing a formal indication of whether the parties accept the **Change of Control candidacy status** indicated in the HLC Board's action letter of November 16, 2017, before we can determine how best to proceed with communicating with our Board concerning the requested modifications. We anticipate the HLC Board will want to know whether there has, at least, been a clear and formal statement of acceptance by the parties of Change of Control candidacy status for the institutions prior to considering the aforementioned requests. That statement is notably absent from the letter we received on November 29, 2017. (Only a minimal statement acknowledging the existence of that particular condition, among others, has been set forth.)

The sooner we receive a formal indication that Change of Control candidacy status is accepted by both ILIA and Art Institute of Colorado, cosigned by both institutional presidents and DCEH, the sooner HLC Staff can determine how best to proceed with the HLC Board. Karen Solinski is in contact separately with internal counsel at DCEH; her message is essentially the same. Please feel free to address the requested letter to President Barbara Gellman-Danley and transmit the letter to me at this email address as soon as possible and no later than close of business on Friday January 5. There is some potential for Board consideration in January, so time is of the essence. Thank you.

Best Wishes,

Anthea M. Sweeney, Ed.D.
Vice President for Accreditation Relations and Eligibility



Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

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Barbara Gellman-Danley
Transcribed Interview
Exhibit 20

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Monday, December 11, 2017 8:38 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

On behalf of The Dream Center Foundation (DCF) and its subsidiary Dream Center Education Holdings (DCEH) and its indirect subsidiaries, The Illinois Institute of Art, LLC, The Illinois Institute of Art at Schaumburg, LLC, The Art Institute of Michigan, LLC and The Art Institute of Colorado, LLC (collectively Buyers), which plan to acquire the two institutions currently owned by subsidiaries of Education Management Corporation (EDMC) – The Illinois Art Institute with campuses in Chicago, Schaumburg and Detroit and The Art Institute of Colorado with a campus in Denver (Institutions) – that are accredited by the Higher Learning Commission (HLC), I am writing to respond further to several of the conditions set forth in HLC’s November 16, 2017 letter notifying the Institutions of HLC’s conditional approval of the proposed change in ownership.

The Institutions responded in a November 29, 2017 letter sent by Josh Pond, Elden Monday and Brent Richardson (Clarifying Letter), setting forth their understanding with respect to certain proposed reporting conditions and a condition concerning monitoring of compliance under the Consent Judgment into which EDMC and the Attorneys General of 39 States and the District of Columbia entered effective January 1, 2016. In response to the Institutions’ Clarifying Letter, email messages were sent on December 5, 2017 by you and Dr. Anthea Sweeney which indicate that the quarterly reports made by the Institutions must contain financial and other information not only

for the Institutions but also for their parent and related entities, including DCEH and DCF.

While we agree that certain information about the Institutions and their parent entities is relevant to the Institutions and their accreditation by HLC, we also believe that information dealing only with other 'sister' institutions also owned by parent entities – which is not reasonably likely to have any material impact on the Institutions – is not relevant and has not been reported to HLC by EDMC on a regular basis. We, therefore, propose that the bullet points quoted below from page 2 of HLC's November 16, 2017 letter be modified as provided in boldface and italicized type beneath each HLC point:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

Information regarding any complaints received by DCF, DCEH or any of the institutions

Information received by DCF or DCEH regarding any complaints about any of the Institutions

Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, ("DCEM"), or any of the institutions

Information received by DCF or DCEH regarding any governmental investigation, enforcement actions, settlements, etc. involving the Institutions or any information received by DCF, DCEH, or its related service provider Dream Center Education Management, ("DCEM"), regarding any governmental investigation, enforcement actions, settlements, etc. which could materially affect the Institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the Institutions, or any information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the institutions DCF or DCEH which could materially affect the institutions

In addition, regarding the request for “audit processes” (by a third party entity acceptable to HLC) following the conclusion of the work of the Settlement Administrator under the Consent Judgment, we respectfully submit that any decision at this time concerning the extent of any need for such further audit processes is premature and should be deferred until early 2019. As HLC no doubt is aware, section 49 of the Consent Judgment envisions a review being done by the Attorneys General, at the end of the Settlement Administrator’s three-year term, of the nature of the compliance by the affected institutions with the requirements of the Consent Judgment and a determination as to the extent to which any further oversight is needed:

“49. If, at the conclusion of the Administrator’s three-year term, the Attorneys General determine in good faith and in consultation with the Administrator that justifiable cause exists, the Administrator’s engagement shall be extended for an additional term of up to two (2) years, subject to the right of EDMC to commence legal proceedings for the purpose of challenging the decision of the Attorneys General and to seek preliminary and permanent injunctive relief with respect thereto. For purposes of this paragraph, ‘justifiable cause’ means a failure by EDMC to achieve and maintain substantial compliance with the substantive provisions of the Consent Judgment.”

If the Attorneys General, who imposed the Consent Judgment requirements on EDMC as a condition to settling their various legal actions and who certainly are independent qualified third parties that are highly motivated to protect students, conclude in early 2019 that the EDMC institutions acquired by DCF and DCEH have made and maintained substantial compliance with the requirements and there is no need to extend the term of the Settlement Administrator, we believe that determination should be reviewed by HLC and, barring any substantial credible reason to believe that the Attorneys General have overlooked any material facts that are of concern to HLC with respect to its accrediting oversight of the Institutions, should be accepted by HLC, meaning the Institutions should not be required by HLC to arrange for further monitoring or audit processes. And, to the extent that HLC in early 2019 – after reviewing the determination of the Attorneys General and receiving input from the Institutions – concludes there is some substantial credible reason to not accept the conclusion of the Attorneys General and to require further oversight of Consent

Judgment compliance by the Institutions accredited by HLC, the nature of such further oversight should be discussed, evaluated and determined at that time.

Between now and early 2019 when the Attorneys General make their determinations, DCF, DCEH and the Institutions, of course, will promptly provide HLC with copies of all reports issued by the Settlement Administrator, just as EDMC has done.

We appreciate all the time and consideration that HLC has given to the proposed change in the ownership of the Institutions and to the conditions relating to HLC's approval of that change and we look forward to hearing from HLC with confirmation that our proposed clarifications are acceptable.

Regards, Ron Holt, Regulatory Counsel to DCF and DCEH and Subsidiaries

Ronald L. Holt, Attorney

██████████@rousefrets.com | Direct: (██████████) | Cell: ██████████ | Phone: ██████████ | Fax: ██████████



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

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From: Karen Solinski [mailto:ksolinski@hlcommission.org]

Sent: Tuesday, December 05, 2017 12:03 PM

To: Ronald L. Holt

Cc: crichardson@dcedh.org; Kramer, Devitt (devitt.kramer@edmc.edu); Megan R. Banks

Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for this summary of our conversation and think it fairly describes that conversation. I do want to provide an additional clarification. While it is accurate the Commission is not requiring that financial and other data for, for example, South University, be included in the interim reports, the reports must contain financial and other information for the parent and related entities, including DCEH and DCF. Please let me know if there are additional questions subsequent to this e-mail

Best regards,

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]@rousefrets.com>
Sent: Friday, December 1, 2017 7:19:27 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

Thanks you for taking time out of your FSA Conference schedule this afternoon to talk to Devitt Kramer (EDMC General Counsel), Chris Richardson (DCEH General Counsel) and me about the request made by The Illinois Art Institute and The Art Institute of Colorado, on behalf of Dream Center Education Holdings, for an extension of the closing deadline to the second week of January, due to the timetable for state approvals of the transfer of these institutions and uncertainties at the present time as to the extent and nature of any USDOE audit requirements.

Per our discussion, we understand that, given the factors we discussed which (were also outlined in Dr. Josh Pond's November 29 email message), HLC does not expect the closing on the transfer of these schools to occur within 30 days of the Commission's decision at its November 2-3 meeting and that EDMC and DCEH must submit written confirmation to HLC, no later than 30 days before the planned closing, that no material changes have been made to the terms of the transaction. We will be sending that letter by next Friday, as we are anticipating that the closing will occur between January 8 and 15.

We also discussed the letter that was sent by Dr. Pond and others concerning the conditions set forth in HLC's November 16 letter. While the letter from Dr. Pond largely provides our understanding of the conditions, it does also propose that no third party report be provided concerning the institutions' compliance with requirements of the November 2015 Consent Judgment because the Settlement Administrator is charged with oversight duties and he issues reports that can be sent to HLC. You clarified that the Commission's direction for a third party review and report is focused on the time period, beginning in 2019, when the Administrator will no longer be serving in that capacity, and I told you that DCEH will further evaluate that condition in light of this clarification and provide a further response in the next few weeks.

Thank you again for your time and input. Regards, Ron

Ronald L. Holt, Attorney
[REDACTED]@rousefrets.com | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] Fax: [REDACTED]



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Kansas City, Missouri 64106
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From: Karen Solinski
Sent: Friday, December 22, 2017 11:10 AM
To: Ronald L. Holt
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for your e-mail. We have had an opportunity to review and discuss it internally. HLC staff has concluded that it can make the following amendment without Board review and approval:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

HLC Response: HLC has concluded that it make this non-substantive adjustment in the action.

The other proposed amendments, we believe, would require the Board's approval. In several cases the proposed language would appear to undercut the intent of the original wording. While HLC does not necessarily need information about other institutions such as South or Argosy, which are accredited by other accreditors, it does need sufficient information about DCF, DCEH and the institutions that have status with HLC to ensure that it is monitoring effectively. While Commission staff could clarify the language to ensure that it does not appear to include other institutions not accredited by HLC, we do not believe we could go beyond such changes without Board authorization. Finally, your e-mail proposes a material modification to the Board's action related to review of the recruiting and admissions processes to begin after the work of the administrator concludes.

To summarize, HLC staff can make the modification with regard to the quarterly financials and clarify

that information about institutions NOT accredited by HLC is not being required in this action. If these changes are sufficient, your clients can notify us in writing by January 2, 2018 that they accept the conditions in the letter with these modifications and would like authorization to close on or around the middle of January. The Board will consider the revised action date via a mail ballot process, and you will be notified as soon as it concludes. It will likely take about seven (7) days.

If these changes are not sufficient, and your clients believe they must press forward with the other proposed changes noted in your e-mail, they should notify us in writing by January 2, 2018. HLC staff in consultation with the Board chair will determine when the Board can discuss and act on the requested changes. The next scheduled meeting is on February 22-23, 2018. The Board does have telephonic meetings from time to time. However, such consideration and subsequent notification of any revised action would be unlikely to take place in time for the parties to close by the date requested.

Please let me know if you have any questions. I hope everyone's holidays are happy and joyful.

Karen

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]@rousefrets.com>
Sent: Monday, December 11, 2017 8:38:28 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

On behalf of The Dream Center Foundation (DCF) and its subsidiary Dream Center Education Holdings (DCEH) and its indirect subsidiaries, The Illinois Institute of Art, LLC, The Illinois Institute of Art at Schaumburg, LLC, The Art Institute of Michigan, LLC and The Art Institute of Colorado, LLC (collectively Buyers), which plan to acquire the two institutions currently owned by subsidiaries of Education Management Corporation (EDMC) – The Illinois Art Institute with campuses in Chicago, Schaumburg and Detroit and The Art Institute of Colorado with a campus in Denver (Institutions) – that are accredited by the Higher Learning Commission (HLC), I am writing to respond further to several of the conditions set forth in HLC's November 16, 2017 letter

notifying the Institutions of HLC's conditional approval of the proposed change in ownership.

The Institutions responded in a November 29, 2017 letter sent by Josh Pond, Elden Monday and Brent Richardson (Clarifying Letter), setting forth their understanding with respect to certain proposed reporting conditions and a condition concerning monitoring of compliance under the Consent Judgment into which EDMC and the Attorneys General of 39 States and the District of Columbia entered effective January 1, 2016. In response to the Institutions' Clarifying Letter, email messages were sent on December 5, 2017 by you and Dr. Anthea Sweeney which indicate that the quarterly reports made by the Institutions must contain financial and other information not only for the Institutions but also for their parent and related entities, including DCEH and DCF.

While we agree that certain information about the Institutions and their parent entities is relevant to the Institutions and their accreditation by HLC, we also believe that information dealing only with other 'sister' institutions also owned by parent entities – which is not reasonably likely to have any material impact on the Institutions – is not relevant and has not been reported to HLC by EDMC on a regular basis. We, therefore, propose that the bullet points quoted below from page 2 of HLC's November 16, 2017 letter be modified as provided in boldface and italicized type beneath each HLC point:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

Information regarding any complaints received by DCF, DCEH or any of the institutions

Information received by DCF or DCEH regarding any complaints about any of the Institutions

Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, ("DCEM"), or any of the institutions

Information received by DCF or DCEH regarding any governmental investigation, enforcement actions, settlements, etc. involving the Institutions or any information received by DCF, DCEH, or its related service provider Dream Center Education Management, (“DCEM”), regarding any governmental investigation, enforcement actions, settlements, etc. which could materially affect the Institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the Institutions, or any information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the institutions DCF or DCEH which could materially affect the institutions

In addition, regarding the request for “audit processes” (by a third party entity acceptable to HLC) following the conclusion of the work of the Settlement Administrator under the Consent Judgment, we respectfully submit that any decision at this time concerning the extent of any need for such further audit processes is premature and should be deferred until early 2019. As HLC no doubt is aware, section 49 of the Consent Judgment envisions a review being done by the Attorneys General, at the end of the Settlement Administrator’s three-year term, of the nature of the compliance by the affected institutions with the requirements of the Consent Judgment and a determination as to the extent to which any further oversight is needed:

“49. If, at the conclusion of the Administrator’s three-year term, the Attorneys General determine in good faith and in consultation with the Administrator that justifiable cause exists, the Administrator’s engagement shall be extended for an additional term of up to two (2) years, subject to the right of EDMC to commence legal proceedings for the purpose of challenging the decision of the Attorneys General and to seek preliminary and permanent injunctive relief with respect thereto. For purposes of this paragraph, ‘justifiable cause’ means a failure by EDMC to achieve and maintain substantial compliance with the substantive provisions of the Consent Judgment.”

If the Attorneys General, who imposed the Consent Judgment requirements on EDMC as a condition to settling their various legal actions and who certainly are independent qualified third parties that are highly motivated to protect students, conclude in early 2019 that the EDMC institutions acquired by DCF and DCEH have made and maintained substantial compliance with the requirements and there is no need to

extend the term of the Settlement Administrator, we believe that determination should be reviewed by HLC and, barring any substantial credible reason to believe that the Attorneys General have overlooked any material facts that are of concern to HLC with respect to its accrediting oversight of the Institutions, should be accepted by HLC, meaning the Institutions should not be required by HLC to arrange for further monitoring or audit processes. And, to the extent that HLC in early 2019 – after reviewing the determination of the Attorneys General and receiving input from the Institutions – concludes there is some substantial credible reason to not accept the conclusion of the Attorneys General and to require further oversight of Consent Judgment compliance by the Institutions accredited by HLC, the nature of such further oversight should be discussed, evaluated and determined at that time.

Between now and early 2019 when the Attorneys General make their determinations, DCF, DCEH and the Institutions, of course, will promptly provide HLC with copies of all reports issued by the Settlement Administrator, just as EDMC has done.

We appreciate all the time and consideration that HLC has given to the proposed change in the ownership of the Institutions and to the conditions relating to HLC's approval of that change and we look forward to hearing from HLC with confirmation that our proposed clarifications are acceptable.

Regards, Ron Holt, Regulatory Counsel to DCF and DCEH and Subsidiaries

Ronald L. Holt, Attorney

██████████@rousefrets.com | Direct: ██████████ | Cell: ██████████ | Phone: ██████████ | Fax: ██████████



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From: Karen Solinski ██████████@hlcommission.org]

Sent: Tuesday, December 05, 2017 12:03 PM

To: Ronald L. Holt

Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for this summary of our conversation and think it fairly describes that conversation. I do want to provide an additional clarification. While it is accurate the Commission is not requiring that financial and other data for, for example, South University, be included in the interim reports, the reports must contain financial and other information for the parent and related entities, including DCEH and DCF. Please let me know if there are additional questions subsequent to this e-mail

Best regards,

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Friday, December 1, 2017 7:19:27 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

Thanks you for taking time out of your FSA Conference schedule this afternoon to talk to Devitt Kramer (EDMC General Counsel), Chris Richardson (DCEH General Counsel) and me about the request made by The Illinois Art Institute and The Art Institute of Colorado, on behalf of Dream Center Education Holdings, for an extension of the closing deadline to the second week of January, due to the timetable for state approvals of the transfer of these institutions and uncertainties at the present time as to the extent and nature of any USDOE audit requirements.

Per our discussion, we understand that, given the factors we discussed which (were also outlined in Dr. Josh Pond's November 29 email message), HLC does not expect the closing on the transfer of these schools to occur within 30 days of the Commission's decision at its November 2-3 meeting and that EDMC and DCEH must submit written confirmation to HLC, no later than 30 days before the planned closing, that no material changes have been made to the terms of the transaction. We will be sending that letter by next Friday, as we are anticipating that the closing will occur between January 8 and 15.

We also discussed the letter that was sent by Dr. Pond and others concerning the conditions set forth in HLC's November 16 letter. While the letter from Dr. Pond largely provides our understanding of the conditions, it does also propose that no third party report be provided concerning the institutions' compliance with requirements of the November 2015 Consent Judgment because the Settlement Administrator is charged with oversight duties and he issues reports that can be sent to HLC. You clarified that the Commission's direction for a third party review and report is focused on the time period, beginning in 2019, when the Administrator will no longer be serving in that capacity, and I told you that DCEH will further evaluate that condition in light of this clarification and provide a further response in the next few weeks.

Thank you again for your time and input. Regards, Ron

Ronald L. Holt, Attorney

[@rousefrets.com](mailto:ron@rousefrets.com) | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



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[REDACTED]

From: Karen Solinski
Sent: Friday, December 22, 2017 11:10 AM
To: Ronald L. Holt
Cc: [REDACTED]@dcedh.org; Kramer, Devitt ([REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for your e-mail. We have had an opportunity to review and discuss it internally. HLC staff has concluded that it can make the following amendment without Board review and approval:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

HLC Response: HLC has concluded that it make this non-substantive adjustment in the action.

The other proposed amendments, we believe, would require the Board's approval. In several cases the proposed language would appear to undercut the intent of the original wording. While HLC does not necessarily need information about other institutions such as South or Argosy, which are accredited by other accreditors, it does need sufficient information about DCF, DCEH and the institutions that have status with HLC to ensure that it is monitoring effectively. While Commission staff could clarify the language to ensure that it does not appear to include other institutions not accredited by HLC, we do not believe we could go beyond such changes without Board authorization. Finally, your e-mail proposes a material modification to the Board's action related to review of the recruiting and admissions processes to begin after the work of the administrator concludes.

To summarize, HLC staff can make the modification with regard to the quarterly financials and clarify

that information about institutions NOT accredited by HLC is not being required in this action. If these changes are sufficient, your clients can notify us in writing by January 2, 2018 that they accept the conditions in the letter with these modifications and would like authorization to close on or around the middle of January. The Board will consider the revised action date via a mail ballot process, and you will be notified as soon as it concludes. It will likely take about seven (7) days.

If these changes are not sufficient, and your clients believe they must press forward with the other proposed changes noted in your e-mail, they should notify us in writing by January 2, 2018. HLC staff in consultation with the Board chair will determine when the Board can discuss and act on the requested changes. The next scheduled meeting is on February 22-23, 2018. The Board does have telephonic meetings from time to time. However, such consideration and subsequent notification of any revised action would be unlikely to take place in time for the parties to close by the date requested.

Please let me know if you have any questions. I hope everyone's holidays are happy and joyful.

Karen

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Monday, December 11, 2017 8:38:28 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt ([REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

On behalf of The Dream Center Foundation (DCF) and its subsidiary Dream Center Education Holdings (DCEH) and its indirect subsidiaries, The Illinois Institute of Art, LLC, The Illinois Institute of Art at Schaumburg, LLC, The Art Institute of Michigan, LLC and The Art Institute of Colorado, LLC (collectively Buyers), which plan to acquire the two institutions currently owned by subsidiaries of Education Management Corporation (EDMC) – The Illinois Art Institute with campuses in Chicago, Schaumburg and Detroit and The Art Institute of Colorado with a campus in Denver (Institutions) – that are accredited by the Higher Learning Commission (HLC), I am writing to respond further to several of the conditions set forth in HLC's November 16, 2017 letter

notifying the Institutions of HLC's conditional approval of the proposed change in ownership.

The Institutions responded in a November 29, 2017 letter sent by Josh Pond, Elden Monday and Brent Richardson (Clarifying Letter), setting forth their understanding with respect to certain proposed reporting conditions and a condition concerning monitoring of compliance under the Consent Judgment into which EDMC and the Attorneys General of 39 States and the District of Columbia entered effective January 1, 2016. In response to the Institutions' Clarifying Letter, email messages were sent on December 5, 2017 by you and Dr. Anthea Sweeney which indicate that the quarterly reports made by the Institutions must contain financial and other information not only for the Institutions but also for their parent and related entities, including DCEH and DCF.

While we agree that certain information about the Institutions and their parent entities is relevant to the Institutions and their accreditation by HLC, we also believe that information dealing only with other 'sister' institutions also owned by parent entities – which is not reasonably likely to have any material impact on the Institutions – is not relevant and has not been reported to HLC by EDMC on a regular basis. We, therefore, propose that the bullet points quoted below from page 2 of HLC's November 16, 2017 letter be modified as provided in boldface and italicized type beneath each HLC point:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

Information regarding any complaints received by DCF, DCEH or any of the institutions

Information received by DCF or DCEH regarding any complaints about any of the Institutions

Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, ("DCEM"), or any of the institutions

Information received by DCF or DCEH regarding any governmental investigation, enforcement actions, settlements, etc. involving the Institutions or any information received by DCF, DCEH, or its related service provider Dream Center Education Management, (“DCEM”), regarding any governmental investigation, enforcement actions, settlements, etc. which could materially affect the Institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the Institutions, or any information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the institutions DCF or DCEH which could materially affect the institutions

In addition, regarding the request for “audit processes” (by a third party entity acceptable to HLC) following the conclusion of the work of the Settlement Administrator under the Consent Judgment, we respectfully submit that any decision at this time concerning the extent of any need for such further audit processes is premature and should be deferred until early 2019. As HLC no doubt is aware, section 49 of the Consent Judgment envisions a review being done by the Attorneys General, at the end of the Settlement Administrator’s three-year term, of the nature of the compliance by the affected institutions with the requirements of the Consent Judgment and a determination as to the extent to which any further oversight is needed:

“49. If, at the conclusion of the Administrator’s three-year term, the Attorneys General determine in good faith and in consultation with the Administrator that justifiable cause exists, the Administrator’s engagement shall be extended for an additional term of up to two (2) years, subject to the right of EDMC to commence legal proceedings for the purpose of challenging the decision of the Attorneys General and to seek preliminary and permanent injunctive relief with respect thereto. For purposes of this paragraph, ‘justifiable cause’ means a failure by EDMC to achieve and maintain substantial compliance with the substantive provisions of the Consent Judgment.”

If the Attorneys General, who imposed the Consent Judgment requirements on EDMC as a condition to settling their various legal actions and who certainly are independent qualified third parties that are highly motivated to protect students, conclude in early 2019 that the EDMC institutions acquired by DCF and DCEH have made and maintained substantial compliance with the requirements and there is no need to

extend the term of the Settlement Administrator, we believe that determination should be reviewed by HLC and, barring any substantial credible reason to believe that the Attorneys General have overlooked any material facts that are of concern to HLC with respect to its accrediting oversight of the Institutions, should be accepted by HLC, meaning the Institutions should not be required by HLC to arrange for further monitoring or audit processes. And, to the extent that HLC in early 2019 – after reviewing the determination of the Attorneys General and receiving input from the Institutions – concludes there is some substantial credible reason to not accept the conclusion of the Attorneys General and to require further oversight of Consent Judgment compliance by the Institutions accredited by HLC, the nature of such further oversight should be discussed, evaluated and determined at that time.

Between now and early 2019 when the Attorneys General make their determinations, DCF, DCEH and the Institutions, of course, will promptly provide HLC with copies of all reports issued by the Settlement Administrator, just as EDMC has done.

We appreciate all the time and consideration that HLC has given to the proposed change in the ownership of the Institutions and to the conditions relating to HLC's approval of that change and we look forward to hearing from HLC with confirmation that our proposed clarifications are acceptable.

Regards, Ron Holt, Regulatory Counsel to DCF and DCEH and Subsidiaries

Ronald L. Holt, Attorney

[@rousefrets.com](mailto:ron@rousefrets.com) | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



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From: Karen Solinski [REDACTED]@hlcommission.org]

Sent: Tuesday, December 05, 2017 12:03 PM

To: Ronald L. Holt

Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for this summary of our conversation and think it fairly describes that conversation. I do want to provide an additional clarification. While it is accurate the Commission is not requiring that financial and other data for, for example, South University, be included in the interim reports, the reports must contain financial and other information for the parent and related entities, including DCEH and DCF. Please let me know if there are additional questions subsequent to this e-mail

Best regards,

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Friday, December 1, 2017 7:19:27 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

Thanks you for taking time out of your FSA Conference schedule this afternoon to talk to Devitt Kramer (EDMC General Counsel), Chris Richardson (DCEH General Counsel) and me about the request made by The Illinois Art Institute and The Art Institute of Colorado, on behalf of Dream Center Education Holdings, for an extension of the closing deadline to the second week of January, due to the timetable for state approvals of the transfer of these institutions and uncertainties at the present time as to the extent and nature of any USDOE audit requirements.

Per our discussion, we understand that, given the factors we discussed which (were also outlined in Dr. Josh Pond's November 29 email message), HLC does not expect the closing on the transfer of these schools to occur within 30 days of the Commission's decision at its November 2-3 meeting and that EDMC and DCEH must submit written confirmation to HLC, no later than 30 days before the planned closing, that no material changes have been made to the terms of the transaction. We will be sending that letter by next Friday, as we are anticipating that the closing will occur between January 8 and 15.

We also discussed the letter that was sent by Dr. Pond and others concerning the conditions set forth in HLC's November 16 letter. While the letter from Dr. Pond largely provides our understanding of the conditions, it does also propose that no third party report be provided concerning the institutions' compliance with requirements of the November 2015 Consent Judgment because the Settlement Administrator is charged with oversight duties and he issues reports that can be sent to HLC. You clarified that the Commission's direction for a third party review and report is focused on the time period, beginning in 2019, when the Administrator will no longer be serving in that capacity, and I told you that DCEH will further evaluate that condition in light of this clarification and provide a further response in the next few weeks.

Thank you again for your time and input. Regards, Ron

Ronald L. Holt, Attorney

[@rousefrets.com](mailto:ron@rousefrets.com) | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



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Barbara Gellman-Danley
Transcribed Interview
Exhibit 21

Re: Urgent Question regarding Suspending a Required Evaluation

Anthea Sweeney

Thu 5/31/2018 8:15 AM

To: Daggett, Elizabeth [REDACTED];

Sensitivity Confidential

You too, Beth. I deeply appreciate your attentiveness at what was a critical decisionmaking moment yesterday.

Have a wonderful day.

Anthea Sweeney

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From: Daggett, Elizabeth [REDACTED]
Sent: Thursday, May 31, 2018 8:11:15 AM
To: Anthea Sweeney
Subject: RE: Urgent Question regarding Suspending a Required Evaluation

Thank you for this additional information, Anthea. I have not shared this information and understand the need for discretion. Please keep me posted and let me know if you have any other questions. Thanks again and have a good day.
Beth

Elizabeth Daggett
Tel: [REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, May 30, 2018 1:52 PM
To: Daggett, Elizabeth
Subject: Re: Urgent Question regarding Suspending a Required Evaluation
Sensitivity: Confidential

Hi Beth,

I've been in meetings this morning, but thank you for this swift and clear response. I suspected there were no exceptions to the regulation, so we will continue our planning for the evaluations in July. I should add that we have not yet responded to the institutions request for Appeal, but plan to do so later today. I am asking that this information not be shared with the institutions by the Department.

The Commission agreed to extend the Board's conditional approval on the transaction when the institutions made it clear the transaction would not close within 30 days of initial Board action (due to pending state agency approvals for the subject institutions, as well as other non-HLC accredited

institutions involved in the transaction.) However, LGA at the time made it clear it would only seek that extension following acceptance by the institutions of the Board's conditions.

- The institutions accepted the Board's conditions via letter on January 4, 2018.
- HLC issued a second action letter extending the Board's approval on January 12, 2018.
- The transaction was finalized on January 20, 2018 (which explains the evaluation occurring this summer.)

The institutions first sent a "Letter of Protest" via email on February 2nd, 2018 to HLC, three weeks after the second Board action largely focused on language in HLC's Public Disclosure Notice. Our Appeals Procedure, which is available on our website, requires a letter of intent to appeal within two weeks of Commission action. HLC's response to the institutions' letter of February 2nd was silent on the matter of appeal. However, at that time HLC considered the immediate matter resolved rather simply by a modification to the institutions' Public Disclosure Notices, which while technically accurate in their original form, set forth a level of detail to which the institutions vigorously objected at the time.

Last week we received this recent letter demanding response by today regarding access to HLC's Appeal process. This comes as we are discovering the following problematic text on the institutions' websites:

"We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. Higher Learning Commission (230 S. LaSalle Street, Suite 7-500, Chicago, IL 60604-1413, 1.800.621.7440, www.hlcommission.org/)." (HLC's Mark of Affiliation is then correctly displayed.)

Despite language in the HLC Board's action letter of November 16, 2017 and repeated communications between Karen Peterson Solinski and their external counsel in early December 2017 and beyond, that acceptance of the Change of Control candidacy condition imposed by the HLC Board in its action letter would represent a form of status, *but not accredited status*, the institutions are now alleging that they did not fully understand what Change of Control candidacy would signify at the time they accepted the Board's condition. They have openly threatened litigation, absent access to the HLC Appeal process. Since they are specifically claiming they were "misled" (which places the effectiveness of their consent in doubt) and the full record of Karen's communications with the external counsel are not completely known, (some conversations took place in person or by phone without other HLC staff in attendance), we thought to provide the institutions' access to the Appeal process, though not required, might assist in limiting any ensuing litigation to arbitration (under HLC's Obligations of Affiliation).

I hope this additional background is helpful.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Daggett, Elizabeth [REDACTED]
Sent: Wednesday, May 30, 2018 7:50 AM
To: Anthea Sweeney
Subject: RE: Urgent Question regarding Suspending a Required Evaluation

Good morning, Anthea. Unfortunately, Section 602.24(b) does not provide any leeway for delaying the site visit for a change of ownership. The regulation is quite clear that the site visit must occur "as soon as practicable, but no later than six months after the change of ownership." There is no language related to the *approval* of the change of ownership by the agency in this section, so the appeal of such approval would not affect this requirement. Therefore, I do not see a way for HLC to delay the site visit and meet the regulations. Please let me know if you have any further questions.

In addition to your question, I guess I would have a question as to how the institution still has the opportunity to appeal a decision that occurred in November 2017? That seems like a very long window for the intent to appeal of any agency decision.

Beth

Elizabeth Daggett
Tel [REDACTED]
[REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, May 30, 2018 6:43 AM
To: Daggett, Elizabeth
Subject: Urgent Question regarding Suspending a Required Evaluation
Importance: High

Good Morning Beth,

I have an urgent question regarding whether HLC is allowed to suspend an evaluation that is required by federal regulations following an approval of a Change of Control transaction, if the reason for the suspension is the institutions have appealed an aspect of the HLC Board's decision. I believe you may be familiar with the case more generally: The Dream Center's acquisition of Art Institute of Colorado and Illinois Institute of Art (EDMC subsidiaries). As you may be aware, while HLC's Board approved the transaction, it did so with several conditions, one of which was to move the Institutes from Accredited to Candidate status under HLC policy. Such a decision is subject to appeal under our policies. The Institutes have indicated their intent to appeal.

In its November 16, 2017 action letter, among several other monitoring requirements, the HLC Board required a focused visit within six months to "*ascertain the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.*"

HLC understands the Institutes' appeal to rest on concerns related to being moved from Accredited to Candidate status. Meanwhile the HLC Board thought this condition was a necessary condition of its approval based on several factors, some of which are indicated above. **Do we have the ability to suspend this evaluation on the basis of the pending appeal and not run afoul of Department expectations? Is an exception even possible?** Since the transaction closed earlier this year, we had been planning for this required evaluation to occur in July. Please advise as soon as possible today.

Thank you,
Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
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The information contained in this communication is confidential and intended only for the use of the recipient named above, and may be legally privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please resend it to the sender and delete the original message and copy of it from your computer system. Opinions, conclusions and other information in this message that do not relate to our official business should be understood as neither given nor endorsed by the organization.

Barbara Gellman-Danley
Transcribed Interview
Exhibit 22

**Public Disclosure:
Illinois Institute of Art and
Art Institute of Colorado
From “Accredited” to “Candidate”
Effective: January 20, 2018**

The Illinois Institute of Art located in Chicago, Illinois, and the Art Institute of Colorado located in Denver, Colorado, have transitioned to being a candidate for accreditation after previously being accredited. The Higher Learning Commission Board of Trustees voted to impose “Change of Control-Candidacy” on the Institutes as of the January 20 close of their sale by Education Management Corp. to the Dream Center Foundation through Dream Center Education Holdings.

This new status also applies to the Illinois Institute of Art campus in Schaumburg and its Art Institute of Michigan campus in Novi, Michigan.

In spring 2017 EDMC requested approval of a Change of Control seeking the extension of the accreditation of these institutions after their proposed sale to the Dream Center Foundation. During its review process of the Change of Control, HLC evaluated the potential for the institutions to continue to ensure a quality education to students after the change of ownership took place. The period of Change of Control-Candidacy status lasts from a minimum of six months to a maximum of four years. During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards for candidacy.

What This Means for Students

Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC and may not be accepted in transfer to other colleges and universities or recognized by prospective employers. Institute courses completed and degrees earning prior to this January 20, 2018, change of status remain accredited. In most cases, other institutions of higher education will accept those credits in transfer or for admission to a higher degree program as they were earned during an HLC accreditation period.

All colleges and universities define their own transfer and admission policies. Students should contact any institution they plan to attend in the future so they are knowledgeable about the admission and transfer policies for that institution.

Next Steps

HLC requires that the Institutes provide proper advisement and accommodations to students in light of this action, which may include, if necessary, assisting students with financial accommodations or transfer arrangements if requested.

Dream Center Education Holdings and Dream Center Foundation are required to submit a report to HLC every 90 days detailing quarterly financials to assess adequate operating resources at each entity and both Institutes.

The Institutes will each submit Eligibility Filings no later than March 1, 2018 providing documentation that each institution meets the HLC Eligibility Requirements and Assumed Practices. The Institutes will also host a campus visit within six months of the transaction date as required by HLC policy and regulation. The HLC Board will consider reinstatement of Accredited status at a future meeting.

About the Higher Learning Commission

The Higher Learning Commission accredits approximately 1,000 colleges and universities that have a home base in one of 19 states that stretch from West Virginia to Arizona. HLC is a private, nonprofit accrediting agency. It is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation. Questions? Contact info@hlcommission.org or call 312.263.0456.

Barbara Gellman-Danley
Transcribed Interview
Exhibit 23



Policy Title: Board of Trustees

Number: INST.D.10.010

The composition, selection, and term of the Board of Trustees are defined in the Bylaws of the Higher Learning Commission and subject to additional expectations outlined herein.

Decision-Making Authority

The Board of Trustees shall hold final responsibility for all accreditation actions taken by the Higher Learning Commission. The Board of Trustees shall retain its authority for deliberation and actions regarding accreditation decisions to:

1. grant or deny initial status, including initial candidacy and initial accreditation;
2. issue or withdraw a sanction, including on-notice or probation;
3. withdraw status, including candidacy or accreditation;
4. issue or remove a show-cause order;
5. initiate a reconsideration process;
6. approve or deny an application for Change of Control, Structure or Organization;
7. approve moving an institution from accredited to candidate status; and
8. approve exemptions, if any, from the Assumed Practices.

All such decisions, once issued by the Board, shall become the final action, except for those decisions that are subject to appeal. Such decisions shall become the final accreditation action as outlined in [Commission policy INST.E.90.010 Appeals](#).

For all other accreditation decisions the Board authorizes the Institutional Actions Council, as constituted in this policy, to conduct reviews and to take actions, provided that such structure is recognized as such by the U.S. Department of Education.

Academics and Administrators

The Commission through its Nominating Committee as outlined in Commission Bylaws will assure that among those Trustees on its Board of Trustees who represent institutions there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

Policy Number Key

Section INST: Institutional Processes

Chapter D: Decision-Making Bodies and Process

Part 10: Board of Trustees

Last Revised: April 2013

First Adopted: June 2011

Revision History: February 2012, April 2013

Notes: Policies combined November 2012 - 2.2(d)1.1, 2.2(d)1.1a, 2.2(d)1.1b

Related Policies: INST.E.90.010 Appeals (Conflict of Interest, Confidentiality), Trustee Policies, Chapter III. Board Authority and Responsibility, Section C, Confidentiality and D, Objectivity and Conflict of Interest.

Barbara Gellman-Danley
Transcribed Interview
Exhibit 24



Policy Title: Appeals

Number: INST.E.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.040, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board's decision whether the information is significant and

material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission's Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:



INSTITUTIONAL APPEALS

An institution that has received an action by the Commission's Board of Trustees that denies either candidacy or accreditation or that withdraws candidacy or accreditation may appeal that action. The appeals process is governed by a policy adopted by the Commission's Board of Trustees and a procedure outlining the required steps and materials.

The Commission develops a public statement, a Public Disclosure Notice, about an institution that has received an appealable action that states the action, the reasons for the action, and the next steps in the process. This statement is available in the directory of institutions on the Commission's Web site. An institution under withdrawal is required to inform its board, administrators, faculty, students, staff and other constituencies of this change in its relationship with the Commission and how to contact the Commission for information about the institution's status.

COMMISSION POLICIES ON APPEALS OF BOARD ACTIONS

NUMBER: INST.D.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest

or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.010, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board's decision whether the information is significant and material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission's Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Policies

Chapter D: Sanctions and Adverse Actions

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:

COMMISSION PROCEDURE FOR APPEAL OF BOARD ACTIONS

The Appeals Process will consist of the following procedures, timetables, and documents:

Institution's Filing of Intent to Appeal

The institution will file a letter of intent within two weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The institution will also receive a copy of the action letter by certified mail. Although the letter of intent may be transmitted to the Commission electronically, the institution's letter must also be filed with the Commission by certified or expedited mail requiring signature of receipt. The Commission will acknowledge the letter within two business days of receipt of the electronic or certified transmission, whichever it receives first, and will outline in its response the specific timeline for the appeal.

Institution's Filing of the Appellate Document

The institution will file the appellate document with the Commission within six weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The appellate document shall consist of the institution's written argument supporting its appeal along with evidence and other relevant written information that will establish the institution's asserted grounds for appeal. The institution may submit the appellate document electronically but must also submit two copies of the entire submission in paper form. (Note that the institution must submit all documents related to its appeal either with the appellate document or with the rebuttal.)

Teach-Out Plan: The institution may also be required to file a teach-out plan subsequent to the Board action according to a timetable set by the Commission President in the action letter. The Appeal will move forward once the institution has filed a Teach-Out Plan that meets Commission requirements.

The Commission's Response

The Commission's written response to the institution's appellate document will be filed by the Commission with the institution ten weeks after the date of electronic transmission of the official action letter from the Commission, or typically four weeks after receipt of the institution's document, whichever is later. (The Commission may adjust the deadline to account for holidays or Commission events. Note that the timing of this event may be altered if the institution also files a financial appeal as outlined in the next section of this document.)

Institution's Filing of the Rebuttal

The institution's rebuttal, if any, to the Commission's response shall be filed by the institution with the Commission twelve weeks after the date of electronic transmission of the action letter, or typically two weeks after receipt of the Commission's response, whichever is later. This is the final opportunity for the institution to submit any other documents, relevant to the grounds for appeal that it wants to make available to the Appeals Panel.

Establishing the Appeals Panel

The Commission will finalize the membership of the Appeals Panel and make the arrangements for the hearing. The Appeals Panel members will largely be drawn from the Appeals Body, a group of experienced peer reviewers who are not current or recent Trustees. At least one of the Appeals Panel members will be a public member as defined in Commission policy. However, the President of the Commission has the discretion to appoint as Panel members individuals who are not currently members of the Appeals Body; in

some cases, such Panel members may not be peer reviewers. The institution will receive a roster of the Panel members and institutions about the date, time and location of the hearing once the hearing arrangements are complete.

The Appeal Hearing

The Hearing may take place as soon as thirteen weeks after the date of electronic transmission of the official action but no later than seventeen weeks after that date. The Hearing is conducted according to the protocol outlined below.

Hearing Protocol

- All documents will be forwarded by the Commission President to the Appeals Panel members at least one week before the Appeals hearing. The institution sends no documents or communications directly to Panel members.
- The hearing will be conducted by the Appeals Panel at a site and time set by the Commission's President.
- Each party may have legal counsel present to advise and, when recognized by the Chair, to speak on behalf of that party.
- The institution may present no written evidence or documents at the hearing. The institution's presentation to the Appeals Panel shall be confined to oral statements and responses to questions by Panel members.
- The hearing is not public, and attendees at the hearing are confined to representatives participating in the hearing on behalf of the institution, Panel members, Commission staff, legal counsel, and a court reporter who will transcribe the session.
- A transcript of the hearing, arranged for by the President, will be prepared and sent to each party.

Findings

The Appeals Panel may affirm the Board of Trustees' action or it may amend or reverse the action. If the Appeals Panel acts to affirm the Board of Trustees' action, the action of the Board becomes final and shall not be further appealable. If the Appeals Panel amends the grounds for the action but sustains the decision, the action of the Appeals Panel becomes final and shall not be further appealable. If the Appeals Panel reverses the Board's action, the Panel then conveys its decision to the Board of Trustees for implementation in a manner consistent with the outcome of the appeal. The Appeals Panel will inform the institution and the Board of the Panel findings and decision in writing within four weeks of the hearing. The Appeals Panel's decision is final, and the institution does not have the opportunity to appeal again.

Alternatively, the Appeals Panel has the authority to remand the adverse action to the Board of Trustees for additional consideration after the Appeals Panel has completed its consideration. The Appeals Panel provides the Board with a letter of explanation of its decision to remand. The Board, after receiving the letter and taking into account the Appeals Panel's explanation of its reasons for remanding the action, will affirm, amend, or reverse its previous action within sixty (60) days of receiving the Appeals Panel's remand. The Board will inform the institution of its final action. In this situation, the Board's decision is final, and the institution does not have the opportunity to appeal again.

If the Appeals Panel has made a final decision, the Board will review and act to implement the Panel's decision no later than sixty (60) days from the transmission of the Panel's findings. The Board may consider the Panel's decision at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. If the Panel has recommended that the action be reversed or if the Panel remands the action with a letter of explanation, the Board has the discretion to define the terms and conditions (e.g., date of next evaluation, monitoring, sanction, etc.) of

the institution’s accredited or candidate status in conjunction with its implementation of the reversal. The institution makes no appearance before the Board in conjunction with this or any action subsequent to the appeals hearing.

OVERVIEW OF THE STEPS OUTLINED ABOVE

Timeline	Party Responsible	Detail
following Board action	Commission	sends institution official Commission action letter
within two weeks after the date of electronic transmission of the official action letter	Institution	files a Letter of Intent with the Commission
within two business days of receipt of letter	Commission	acknowledges the Letter of Intent and outlines the timetable for the appeal
within six weeks after the date of electronic transmission of the official action letter	Institution	submits its appellate document to the Commission; any required teach-out plan should have been provided to the Commission and determined to merit approval.
within ten weeks after the date of electronic transmission of the official action letter	Commission	files a response with the institution to the appellate document
within twelve weeks after the date of electronic transmission of the official action letter	Institution	submits to the Commission an optional rebuttal to the Commission’s response and any other new materials relevant to the grounds for appeal that the institution wants made available to the Appeals Panel (optional)
seven days or more prior to the hearing	Commission	finalizes the Appeals Panel and forwards materials to the Panel
within 13-17 weeks of the Commission action	Commission and Institution	attend Appeals Hearing
within four weeks of the hearing	Commission	informs the Board and the institution in writing of the Appeals Panel findings

Financial Reconsideration Provision

If the Commission's Board of Trustees took the adverse action based on or partly based on financial grounds, the institution may submit new financial information in lieu of an appeal OR in addition to an appeal. New financial information consists of information regarding improvements or changes in the financial situation of the institution subsequent to the action of the Board.

Letter of Intent

The new financial information must be submitted within two weeks of electronic transmission to the institution of the official action letter from the Commission. The financial information must clearly indicate whether the institution is submitting the information in addition to OR in lieu of an appeal. If the institution is submitting the information in lieu of an appeal, the institution must include a cover letter, signed by the president of the institution or other corporate officer, clearly stating that the institution is waiving its right to appeal. If the institution is pursuing an appeal in addition to filing new financial information, the institution must also file a Letter of Intent and meet all the other deadlines for the appeals process identified in this Procedure and in the Commission's acknowledgement of the Letter of Intent. The institution may submit the new financial information electronically but must also submit two copies of the entire submission in paper form.

If the institution intends to appeal the action in addition to submitting new financial information and has so stated in its initial response to the Commission's action letter, the appellate document should then be submitted within six weeks of the electronic transmission of the action letter. The appeals process will be suspended after receipt of the appellate document until the Financial Reconsideration Process has concluded.

Review of Information

The Commission's Board of Trustees will review the new financial information. The Board will review and make a decision regarding the new financial information no later than ninety days from its transmission. The Board may consider the information at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. The institution will make no appearance in conjunction with the Board's review. The Board will consider the following three questions in consideration of the new financial information: 1) Is the financial information indeed new?; 2) Is the financial information material?; and 3) Would the information have caused the Board to take a different action had it been available at the time of the accrediting action?

Outcome of the Financial Reconsideration — Negative

If the Board decides against the institution on any of the questions outlined under "Review of Information" above, then the financial reconsideration will result in a negative conclusion. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final. If the institution did file an appeal, the appeal will recommence.

The Board will issue a written notification to the institution of its decision within two weeks of the decision having been made. It will include a revised timetable to complete the appeal, if applicable. Because the Board's original action stands without modification, there will not be an opportunity for the institution to revise the appeal document that it previously filed.

Outcome of the Financial Reconsideration — Affirmative

If the Board decides affirmatively on each question outlined under “Review of Information” above, then the Board must decide whether it will take a different action or reissue its previous action.

- If the Board sustains its original action on the same grounds, with or without the grounds related to finances, and the institution had filed an appeal, the appeal will recommence. The letter will include a revised timetable to continue the appeal previously filed. Because the Board’s original action stands, the institution’s appeals document will move forward in the process, and there will not be an opportunity for the institution to revise that document. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final.
- If the Board decides that it will take a different action, it may then immediately act to place the institution in status, which may be candidate for accreditation, accreditation, or accreditation subject to sanction or show-cause or monitoring.

Alternatively, the Board may define a process to evaluate the institution to make a recommendation as to the appropriate status.

- The Board will issue a written notification to the institution of its decision within two weeks of the date the decision was made. That letter will identify the institution’s status, as identified by the Board in its action, or it will outline a timetable for any evaluation the Board determines is necessary to establish an appropriate status and accrediting cycle for the institution. Any appeal previously filed by the institution will be permanently closed.

If the Board has called for an evaluative process to help establish an appropriate status for the institution or the terms and conditions related to that status (e.g., evaluation dates, monitoring, sanctions, etc.), then the institution will remain accredited on appeal until that process is concluded, and the Board takes action. The Board will act to establish the institution’s status and any terms or conditions related to that status no later than 120 days after its decision to call for an evaluative process to advise the Board on determining the institution’s status. The Board may take action at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission’s Bylaws. The Board will issue a written notification to the institution of the final action within two weeks of the action having been taken.

Intent to Appeal Reconsidered Action

If for any reason the Board in its reconsideration on finances acts to deny or withdraw status on other grounds, not identified in the original action, the institution has two weeks from the date of its receipt of the reconsideration action to file a Letter of Intent to appeal if it did not previously file an appeal, and the appeals timetable will be set from that reconsideration action. If the institution has already filed an appeal, it will have two weeks from receipt of the letter conveying the reconsideration action to revise its appellate document and related materials to address the new grounds, and the appeals timetable will be reset from that reconsideration action.

If the Board acts in its reconsideration to continue status with monitoring, sanction, or show-cause or to place the institution in candidate for accreditation status, rather than denial or withdrawal, this action is not appealable. Any pending institutional appeal regarding the original Commission action to deny or withdraw status will be closed.

Teach-Out

An institution that has received a denial or withdrawal action must file a teach-out plan with the Commission. This plan must be determined to meet Commission expectations regarding teach-out prior to the Commission initiating or proceeding with an appeals process.

Institutional Fees for Appeals of Board Action

The fees for an appeal are outlined in the Commission Dues and Fees Schedule, which is updated annually and posted on the Commission's Web site. The fees include a flat fee as well as all costs of conducting and transcribing the hearing and assembling and supporting the panel members. The institution shall include a deposit check in the amount stipulated in the Commission dues and fees schedule when it submits its appeals materials. Subsequent to the hearing, the direct expenses will be tallied and the Commission will bill the institution for its remaining share or will refund any overage as appropriate. The institution must be current regarding all dues and fees owed to the Commission at or before the adverse action before the Commission will initiate any appeal.

Barbara Gellman-Danley
Transcribed Interview
Exhibit 25

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions



February 7, 2018

VIA ELECTRONIC MAIL

Dr. David Harpool and Ronald L. Holt
Rouse Frets Gentile Rhodes, LLC
1100 Walnut St.
Suite 2900
Kansas City, MO 64106

Dear Dr. Harpool and Mr. Holt:

I am writing in response to your letter of February 2, 2018, to confirm that the Art Institute of Colorado (“AIC”) and Illinois Institute of Art (“IIA”) are in Change of Control Candidate for Accreditation status with the Higher Learning Commission as of January 20, 2018. Your letter reaffirms their voluntary consent to such status as earlier indicated in a letter from Presidents Josh Pond of IIA and Elden Monday of AIC on January 4, 2018. As such, both institutions are eligible to seek accredited status following the requirements outlined in the November 16, 2017 Action Letter, as modified by the January 12, 2018 Action Letter, which confirmed again that approval of the extension of status was subject to a Change of Control Candidacy and clarified the schedule for the filing of an Eligibility Filing to confirm the institutions’ compliance with the Eligibility Requirements and the schedule for subsequent focused evaluations.

None of the terms outlined in these letters have changed or been modified based on any language in the Public Disclosure Notice (“PDN”). The institutions are not in pre-candidacy status, as your letter indicates; the Commission has no such status. As noted above, the institutions remain eligible to apply for accredited status based on the terms outlined in the November 16, 2017 Action Letter. I would note that your clients had a lengthy opportunity (early November 2017 to early January 2018) to review the November Action Letter, to determine the implications for their institutions prior to filing their consent on January 4, 2018, and to ask questions to their HLC staff liaison if anything in the November action was unclear.

While the Commission believes that the Public Disclosure Notice as previously published, accurately represented the terms of the November 16, 2017 Action Letter, Commission staff has modified the PDN on the HLC website to remove certain procedural language that was questioned in your letter of protest. I trust that these modifications will allay any concerns that you have that the PDN modified in some way the terms of the November 16, 2017 letter to which your clients specifically consented.

Thank you. If you have any further questions, please contact Karen Peterson, Executive Vice President for Legal and Governmental Affairs.

Dr. Harpool and Mr. Holt, February 7, 2018 2

Sincerely,

A handwritten signature in black ink that reads "Barbara Gellman-Danley". The signature is written in a cursive style with a large initial 'B'.

Barbara Gellman-Danley
President

Cc: Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
Karen Peterson, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission

Barbara Gellman-Danley
Transcribed Interview
Exhibit 26

February 23, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
Bgellman-danley@hlcommission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley,

We have discussed your letter of response and the proposed Public Notice Disclosure with our clients. To ensure that we correctly understand your response and the status of our client schools (Illinois Institute of Art and the Art Institute of Colorado), we are confirming that:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in “preaccreditation status,” a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution. *See* 34 C.F.R. §§ 600.2 & 600.4 (a)(5)(i). (We and our clients, in determining that we could accept the conditions of the November 16, 2017 letter, as modified by the Commission’s January 12, 2018 letter, and could continue to serve our students and meet their expectations, relied in good faith on this understanding.).
2. Both institutions remain accredited, in the status of Change of Control Candidate for Accreditation, per their change of ownership, and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.
3. Both institutions will receive an objective review for continued accreditation, with team members who have the requisite skill and experience to render an unbiased decision.
4. Both institutions will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.

Please confirm that our understandings, as stated above, are correct. It is our clients’ desire to avoid pursuit of an appeal and possible litigation, a goal that we trust the Commission shares, and the foregoing understandings are essential to that objective.

Higher Learning Commission
Page 2
February 23, 2018

Very truly yours,

ROUSE FRETS GENTILE RHODES, LLC

_____/s/_____
Ronald L. Holt

_____/s/_____
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc:

Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
brichardson@dcedh.org

Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Michael.frola@ed.gov

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
asweeney@hlcommission.org

Karen Solinski, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission
ksolinski@hlcommission.org

Barbara Gellman-Danley
Transcribed Interview
Exhibit 27

From: [David Harpool](#)
To: [Ronald L. Holt](#)
Cc: [Richardson, Brent D.](#); [Richardson, Chris C.](#); [Randall Barton \[REDACTED\]@gmail.com](#); [\[REDACTED\]@gmail.com](#); [Murphy, Shelly M.](#); [Megan R. Banks](#)
Subject: Re: HLC - Call from Outside Counsel
Date: Thursday, April 19, 2018 3:56:23 PM

I'd let it sit. Provides more runway to operate. I'd have you engage a week from now. I wouldn't have clients on so you can't commit to anything immediately.

David Harpool, J.D., PHD

On Apr 19, 2018, at 12:51 PM, Ronald L. Holt [\[REDACTED\]@rousefrets.com](#)> wrote:

Hi All, just wanted to briefly follow up on this. [\[REDACTED\]](#)
[\[REDACTED\]](#), but just wanted to see if one of you will follow up on this and reach out to [\[REDACTED\]](#), outside counsel for HLC, or if, instead, you think we should, for now, just let the matter lie silent, as HLC did for some 2 months. I defer to your judgment on that. Ron

Ronald L. Holt, Attorney
[\[REDACTED\]](#)

1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

<image002.jpg>

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From: Ronald L. Holt
Sent: Tuesday, April 17, 2018 6:12 PM

[\[REDACTED\]](#)
[\[REDACTED\]](#)
Subject: HLC - Call from Outside Counsel

Hi All, I received the attached voicemail message on my office phone, earlier today, from outside counsel to HLC, [\[REDACTED\]](#), offering to discuss the February 23 letter that Dr. David Harpool and I sent her in response to HLC's public notice about the

nature of the accreditation status, following the closing of the DCEH transaction, of The Art Institute of Colorado and The Illinois Art Institute. I have attached the February 23 letter, and the earlier HLC February 7 letter, for convenient reference. Given the passage of time, without any apparent adverse impact on the two Art Institutes from HLC's faulty and unfair characterization of the accreditation status of these two schools, I am wondering how much of an attack we want to make here, assuming that USDOE treats the schools as being in "pre-accreditation" status and therefore remaining eligible for Title IV aid? I recognize HLC's inappropriate characterization of status could impact the timetable for the schools to achieve full accreditation. I think we should have a call tomorrow to discuss this before I and/or others (David Harpool? Chris Richardson? Shelley Murphy?) call back [REDACTED]. Please advise. Ron

Ronald L. Holt, Attorney
[REDACTED]

1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

<image003.jpg>

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Barbara Gellman-Danley
Transcribed Interview
Exhibit 28

May 21, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission

bgdanley@hlcommission.org

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission

asweeney@hlcommission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”).

We wrote on February 2, 2018 to express our concern that the January 20, 2018 Commission's Public Disclosure (“Disclosure”) is not consistent with the terms extended to the Institutions by the Commission (following applications filed by the Institutions in late 2016 and supplemented in 2017) in the Commission’s November 16, 2017 letter with respect the planned change in ownership of the Institutions (the “Transactions”) involving their acquisition by subsidiaries of the nonprofit Dream Center Foundation.

While the Institutions regarded being placed in the status of Change of Control Candidate for Accreditation, which the Commission’s November 16, 2017 letter had described as pre-accreditation candidacy status, as an unwarranted response to the planned change in ownership, the Institutions, through letters dated November 29, 2017 and January 4, 2018, confirmed (with only a few modifications) that they would accept candidacy status, believing that they would be treated as pre-approved candidates on a fast-track needing to only address the issues raised in the November 16, 2017 letter, and they proceeded to close the Transactions on January 19, 2018 (the “Closing”) on that basis. The next day, however, the Commission issued its Disclosure describing the Institutions’ status to mean something far different from what the Institutions believed candidacy and pre-accreditation status would mean here.

As we stated in our February 2, 2018 letter, the issue here is not solely maintaining Title IV eligibility of these institutions; it is also meeting the reasonable expectations and interests of our students, a goal which should be shared by the Commission. To be frank, had the Commission plainly stated in its November 16, 2017 letter what it later said in the Disclosure, DCEH would not have carried out the Closing of the Transactions because the necessary regulatory consent would not have existed and the Transactions would not have been in the best interests of the

Higher Learning Commission
Page 2
May 21, 2018

students. Quite honestly, DCEH feels that it was misled by HLC to its detriment and the detriment of its students and that DCEH has actionable legal claims against HLC.

In an effort to avoid a legal battle, in our February 2, 2018 letter, we informed you that we believe that, pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action that is subject to appeal, we informed you of the Institutions' refusal to accept the Commission's decision as stated in the Disclosure and the Institutions' desire to appeal that decision, and we requested your input on how we should proceed with the appeal.

While President Gellman-Danley sent correspondence on February 7, 2018 indicating that a change was being made to the Disclosure, she maintained in her letter that the Institutions were not in pre-accreditation status (she indicated that HLC does not have such a status) and that the Institutions need to apply for and establish their candidacy for accreditation. She noted that some changes had been made to some of the language in the Disclosure concerning certain procedural matters. But those changes do not allay the concerns that the Institutions have about the expectations and interests of their students, as the Disclosure continues to state that all students who did not graduate prior to January 19, 2018 are attending institutions not accredited by HLC and taking programs not accredited by HLC and will be earning credentials not accredited by HLC. This, quite simply, is unacceptable. Moreover, President Gellman-Danley's letter does not acknowledge the Institutions' decision to appeal the Commission's decision to place the Institutions in the status of Change of Control Candidate for Accreditation, nor does it provide them with any directions on how to pursue their appeal, as we had requested in our February 2, 2018 letter.

Thus, to date, we have not received any guidance on how we can pursue our appeal with HLC. If such guidance is not given to us in writing within the next ten (10) days, we will assume that HLC is unwilling to allow DCEH to pursue an internal appeal, and DCEH will proceed with a legal action. We trust this can be avoided and we again repeat our request for instructions on the pursuit of an appeal.

Sincerely

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc: Mary E. Kohart, Esq.
Counsel to HLC
mek@elliottgreenleaf.com

Mr. Brent Richardson
brichardson@dcedh.org

Chris Richardson, Esq.
crichardson@dcedh.org

Mr. David Ray
dray@dcedh.org

Mr. Elden Monday
emonday@dcedh.org

Ms. Shelley Murphy
smurphy@dcedh.org

Barbara Gellman-Danley
Transcribed Interview
Exhibit 29



May 30, 2018

VIA ELECTRONIC MAIL

Ronald L. Holt, Esq.
David Harpool, Esq.
Rouse Frets Gentile Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106

Messrs. Holt and Harpool:

I am writing on behalf of the Higher Learning Commission (HLC) in response to your letter dated May 21, 2018 on behalf of Art Institute of Colorado and Illinois Institute of Art (“the Institutes”) in which you inquire about HLC’s Appeal process. HLC has reviewed your request and will proceed to convene an Appeals Panel to hear the Institutes’ appeal in accordance with the Commission’s Appeal Procedures document which is enclosed.

We believe in the integrity of our Appeals process and we will work to develop a timeline that brings swift resolution to this matter. In order for specific dates to be determined however, an Appellate Document on behalf of the Institutes must be provided in accordance with the enclosed Appeal Procedures document as soon as possible. (A single Appellate Document may be filed.) As an overview of the timeline, HLC will respond to the Appellate Document no later than 4 weeks from the date of receipt, after which the Institutes may provide, at their option, a rebuttal to HLC’s response within two weeks. Based on the time needed for an Appeals Panel to review the materials, we anticipate a hearing could proceed under these assumptions as early as August with final resolution to follow. Commission Staff will then provide an update to the Board of Trustees of the Higher Learning Commission at its November 2018 meeting.

Pending the outcome of the Institutes’ appeal of the November 2017 Board action, certain review activities related to the Institutes which were anticipated to occur in the interim will be suspended immediately. Specifically, the Commission’s ongoing review of interim reports which had been required every 90 days by the HLC Board’s action letter of November 16, 2017 will be suspended; the Institutes will not be required to provide any additional 90-day reports pending the final outcome of the appeal. Likewise, HLC’s review of the Institutes’ respective Eligibility Filings submitted on February 1, 2018 will be suspended.

In its November 16, 2017 action letter, however, the HLC Board also required a focused visit to “ascertain the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.” Because the timing of this particular evaluation is intended to satisfy the requirements of Title 34 of the Code of Federal Regulations, Section 602.24(b) following approval

of a Change of Ownership, HLC is not able to suspend this focused visit on the basis of a pending appeal. Therefore, Commission staff will continue preparations to finalize arrangements and will continue to communicate with the institutions accordingly.

Except as otherwise specifically limited by the Appeals Procedure document, routine HLC activities will continue without interruption. Thank you in advance for your cooperation. If you have questions concerning this letter, please feel free to contact me directly at asweeney@hlcommission.org or 312-881-8128.

Best Regards,



Anthea M. Sweeney
Vice President for Legal and Governmental Affairs

Enc.: HLC Appeals Procedure

Cc: Elden Monday, Interim President, Art Institute of Colorado
Dr. Ben Yohe, Accreditation Liaison Officer, Art Institute of Colorado
Jennifer Ramey, President, Illinois Institute of Art
Deann Surdo, Accreditation Liaison Officer, Illinois Institute of Art
Dr. Barbara Gellman-Danley, President, Higher Learning Commission
Executive Leadership Team, Higher Learning Commission

Barbara Gellman-Danley
Transcribed Interview
Exhibit 30



Policy Title: Appeals

Number: INST.E.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.040, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board's decision whether the information is significant and

material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission's Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:



INSTITUTIONAL APPEALS

An institution that has received an action by the Commission's Board of Trustees that denies either candidacy or accreditation or that withdraws candidacy or accreditation may appeal that action. The appeals process is governed by a policy adopted by the Commission's Board of Trustees and a procedure outlining the required steps and materials.

The Commission develops a public statement, a Public Disclosure Notice, about an institution that has received an appealable action that states the action, the reasons for the action, and the next steps in the process. This statement is available in the directory of institutions on the Commission's Web site. An institution under withdrawal is required to inform its board, administrators, faculty, students, staff and other constituencies of this change in its relationship with the Commission and how to contact the Commission for information about the institution's status.

COMMISSION POLICIES ON APPEALS OF BOARD ACTIONS NUMBER: INST.D.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest

or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission’s decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.010, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board’s decision whether the information is significant and material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission’s Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Policies

Chapter D: Sanctions and Adverse Actions

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:

COMMISSION PROCEDURE FOR APPEAL OF BOARD ACTIONS

The Appeals Process will consist of the following procedures, timetables, and documents:

Institution's Filing of Intent to Appeal

The institution will file a letter of intent within two weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The institution will also receive a copy of the action letter by certified mail. Although the letter of intent may be transmitted to the Commission electronically, the institution's letter must also be filed with the Commission by certified or expedited mail requiring signature of receipt. The Commission will acknowledge the letter within two business days of receipt of the electronic or certified transmission, whichever it receives first, and will outline in its response the specific timeline for the appeal.

Institution's Filing of the Appellate Document

The institution will file the appellate document with the Commission within six weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The appellate document shall consist of the institution's written argument supporting its appeal along with evidence and other relevant written information that will establish the institution's asserted grounds for appeal. The institution may submit the appellate document electronically but must also submit two copies of the entire submission in paper form. (Note that the institution must submit all documents related to its appeal either with the appellate document or with the rebuttal.)

Teach-Out Plan: The institution may also be required to file a teach-out plan subsequent to the Board action according to a timetable set by the Commission President in the action letter. The Appeal will move forward once the institution has filed a Teach-Out Plan that meets Commission requirements.

The Commission's Response

The Commission's written response to the institution's appellate document will be filed by the Commission with the institution ten weeks after the date of electronic transmission of the official action letter from the Commission, or typically four weeks after receipt of the institution's document, whichever is later. (The Commission may adjust the deadline to account for holidays or Commission events. Note that the timing of this event may be altered if the institution also files a financial appeal as outlined in the next section of this document.)

Institution's Filing of the Rebuttal

The institution's rebuttal, if any, to the Commission's response shall be filed by the institution with the Commission twelve weeks after the date of electronic transmission of the action letter, or typically two weeks after receipt of the Commission's response, whichever is later. This is the final opportunity for the institution to submit any other documents, relevant to the grounds for appeal that it wants to make available to the Appeals Panel.

Establishing the Appeals Panel

The Commission will finalize the membership of the Appeals Panel and make the arrangements for the hearing. The Appeals Panel members will largely be drawn from the Appeals Body, a group of experienced peer reviewers who are not current or recent Trustees. At least one of the Appeals Panel members will be a public member as defined in Commission policy. However, the President of the Commission has the discretion to appoint as Panel members individuals who are not currently members of the Appeals Body; in

some cases, such Panel members may not be peer reviewers. The institution will receive a roster of the Panel members and institutions about the date, time and location of the hearing once the hearing arrangements are complete.

The Appeal Hearing

The Hearing may take place as soon as thirteen weeks after the date of electronic transmission of the official action but no later than seventeen weeks after that date. The Hearing is conducted according to the protocol outlined below.

Hearing Protocol

- All documents will be forwarded by the Commission President to the Appeals Panel members at least one week before the Appeals hearing. The institution sends no documents or communications directly to Panel members.
- The hearing will be conducted by the Appeals Panel at a site and time set by the Commission's President.
- Each party may have legal counsel present to advise and, when recognized by the Chair, to speak on behalf of that party.
- The institution may present no written evidence or documents at the hearing. The institution's presentation to the Appeals Panel shall be confined to oral statements and responses to questions by Panel members.
- The hearing is not public, and attendees at the hearing are confined to representatives participating in the hearing on behalf of the institution, Panel members, Commission staff, legal counsel, and a court reporter who will transcribe the session.
- A transcript of the hearing, arranged for by the President, will be prepared and sent to each party.

Findings

The Appeals Panel may affirm the Board of Trustees' action or it may amend or reverse the action. If the Appeals Panel acts to affirm the Board of Trustees' action, the action of the Board becomes final and shall not be further appealable. If the Appeals Panel amends the grounds for the action but sustains the decision, the action of the Appeals Panel becomes final and shall not be further appealable. If the Appeals Panel reverses the Board's action, the Panel then conveys its decision to the Board of Trustees for implementation in a manner consistent with the outcome of the appeal. The Appeals Panel will inform the institution and the Board of the Panel findings and decision in writing within four weeks of the hearing. The Appeals Panel's decision is final, and the institution does not have the opportunity to appeal again.

Alternatively, the Appeals Panel has the authority to remand the adverse action to the Board of Trustees for additional consideration after the Appeals Panel has completed its consideration. The Appeals Panel provides the Board with a letter of explanation of its decision to remand. The Board, after receiving the letter and taking into account the Appeals Panel's explanation of its reasons for remanding the action, will affirm, amend, or reverse its previous action within sixty (60) days of receiving the Appeals Panel's remand. The Board will inform the institution of its final action. In this situation, the Board's decision is final, and the institution does not have the opportunity to appeal again.

If the Appeals Panel has made a final decision, the Board will review and act to implement the Panel's decision no later than sixty (60) days from the transmission of the Panel's findings. The Board may consider the Panel's decision at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. If the Panel has recommended that the action be reversed or if the Panel remands the action with a letter of explanation, the Board has the discretion to define the terms and conditions (e.g., date of next evaluation, monitoring, sanction, etc.) of

the institution’s accredited or candidate status in conjunction with its implementation of the reversal. The institution makes no appearance before the Board in conjunction with this or any action subsequent to the appeals hearing.

OVERVIEW OF THE STEPS OUTLINED ABOVE

Timeline	Party Responsible	Detail
following Board action	Commission	sends institution official Commission action letter
within two weeks after the date of electronic transmission of the official action letter	Institution	files a Letter of Intent with the Commission
within two business days of receipt of letter	Commission	acknowledges the Letter of Intent and outlines the timetable for the appeal
within six weeks after the date of electronic transmission of the official action letter	Institution	submits its appellate document to the Commission; any required teach-out plan should have been provided to the Commission and determined to merit approval.
within ten weeks after the date of electronic transmission of the official action letter	Commission	files a response with the institution to the appellate document
within twelve weeks after the date of electronic transmission of the official action letter	Institution	submits to the Commission an optional rebuttal to the Commission’s response and any other new materials relevant to the grounds for appeal that the institution wants made available to the Appeals Panel (optional)
seven days or more prior to the hearing	Commission	finalizes the Appeals Panel and forwards materials to the Panel
within 13-17 weeks of the Commission action	Commission and Institution	attend Appeals Hearing
within four weeks of the hearing	Commission	informs the Board and the institution in writing of the Appeals Panel findings

Financial Reconsideration Provision

If the Commission's Board of Trustees took the adverse action based on or partly based on financial grounds, the institution may submit new financial information in lieu of an appeal OR in addition to an appeal. New financial information consists of information regarding improvements or changes in the financial situation of the institution subsequent to the action of the Board.

Letter of Intent

The new financial information must be submitted within two weeks of electronic transmission to the institution of the official action letter from the Commission. The financial information must clearly indicate whether the institution is submitting the information in addition to OR in lieu of an appeal. If the institution is submitting the information in lieu of an appeal, the institution must include a cover letter, signed by the president of the institution or other corporate officer, clearly stating that the institution is waiving its right to appeal. If the institution is pursuing an appeal in addition to filing new financial information, the institution must also file a Letter of Intent and meet all the other deadlines for the appeals process identified in this Procedure and in the Commission's acknowledgement of the Letter of Intent. The institution may submit the new financial information electronically but must also submit two copies of the entire submission in paper form.

If the institution intends to appeal the action in addition to submitting new financial information and has so stated in its initial response to the Commission's action letter, the appellate document should then be submitted within six weeks of the electronic transmission of the action letter. The appeals process will be suspended after receipt of the appellate document until the Financial Reconsideration Process has concluded.

Review of Information

The Commission's Board of Trustees will review the new financial information. The Board will review and make a decision regarding the new financial information no later than ninety days from its transmission. The Board may consider the information at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. The institution will make no appearance in conjunction with the Board's review. The Board will consider the following three questions in consideration of the new financial information: 1) Is the financial information indeed new?; 2) Is the financial information material?; and 3) Would the information have caused the Board to take a different action had it been available at the time of the accrediting action?

Outcome of the Financial Reconsideration — Negative

If the Board decides against the institution on any of the questions outlined under "Review of Information" above, then the financial reconsideration will result in a negative conclusion. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final. If the institution did file an appeal, the appeal will recommence.

The Board will issue a written notification to the institution of its decision within two weeks of the decision having been made. It will include a revised timetable to complete the appeal, if applicable. Because the Board's original action stands without modification, there will not be an opportunity for the institution to revise the appeal document that it previously filed.

Outcome of the Financial Reconsideration — Affirmative

If the Board decides affirmatively on each question outlined under “Review of Information” above, then the Board must decide whether it will take a different action or reissue its previous action.

- If the Board sustains its original action on the same grounds, with or without the grounds related to finances, and the institution had filed an appeal, the appeal will recommence. The letter will include a revised timetable to continue the appeal previously filed. Because the Board’s original action stands, the institution’s appeals document will move forward in the process, and there will not be an opportunity for the institution to revise that document. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final.
- If the Board decides that it will take a different action, it may then immediately act to place the institution in status, which may be candidate for accreditation, accreditation, or accreditation subject to sanction or show-cause or monitoring.

Alternatively, the Board may define a process to evaluate the institution to make a recommendation as to the appropriate status.

- The Board will issue a written notification to the institution of its decision within two weeks of the date the decision was made. That letter will identify the institution’s status, as identified by the Board in its action, or it will outline a timetable for any evaluation the Board determines is necessary to establish an appropriate status and accrediting cycle for the institution. Any appeal previously filed by the institution will be permanently closed.

If the Board has called for an evaluative process to help establish an appropriate status for the institution or the terms and conditions related to that status (e.g., evaluation dates, monitoring, sanctions, etc.), then the institution will remain accredited on appeal until that process is concluded, and the Board takes action. The Board will act to establish the institution’s status and any terms or conditions related to that status no later than 120 days after its decision to call for an evaluative process to advise the Board on determining the institution’s status. The Board may take action at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission’s Bylaws. The Board will issue a written notification to the institution of the final action within two weeks of the action having been taken.

Intent to Appeal Reconsidered Action

If for any reason the Board in its reconsideration on finances acts to deny or withdraw status on other grounds, not identified in the original action, the institution has two weeks from the date of its receipt of the reconsideration action to file a Letter of Intent to appeal if it did not previously file an appeal, and the appeals timetable will be set from that reconsideration action. If the institution has already filed an appeal, it will have two weeks from receipt of the letter conveying the reconsideration action to revise its appellate document and related materials to address the new grounds, and the appeals timetable will be reset from that reconsideration action.

If the Board acts in its reconsideration to continue status with monitoring, sanction, or show-cause or to place the institution in candidate for accreditation status, rather than denial or withdrawal, this action is not appealable. Any pending institutional appeal regarding the original Commission action to deny or withdraw status will be closed.

Teach-Out

An institution that has received a denial or withdrawal action must file a teach-out plan with the Commission. This plan must be determined to meet Commission expectations regarding teach-out prior to the Commission initiating or proceeding with an appeals process.

Institutional Fees for Appeals of Board Action

The fees for an appeal are outlined in the Commission Dues and Fees Schedule, which is updated annually and posted on the Commission's Web site. The fees include a flat fee as well as all costs of conducting and transcribing the hearing and assembling and supporting the panel members. The institution shall include a deposit check in the amount stipulated in the Commission dues and fees schedule when it submits its appeals materials. Subsequent to the hearing, the direct expenses will be tallied and the Commission will bill the institution for its remaining share or will refund any overage as appropriate. The institution must be current regarding all dues and fees owed to the Commission at or before the adverse action before the Commission will initiate any appeal.

Barbara Gellman-Danley
Transcribed Interview
Exhibit 31



January 13, 2020

VIA EMAIL

Dr. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Lynn.mahaffie@ed.gov

Dear Dr. Mahaffie:

This letter follows up on a telephone conference that you and other staff from the U.S. Department of Education ("the Department") had with Higher Learning Commission (HLC) Associate Vice President of Legal and Regulatory Affairs Marla Morgen on December 19, 2019.

On that call, you and Department staff asked HLC to provide additional information and documentation regarding two specific issues associated with HLC's November 13, 2019 response ("November 13 Response") to the Department's October 24, 2019 letter related to the Illinois Institute of Art (ILIA), the Art Institute of Colorado (AIC) (collectively "the Institutes") and Dream Center Education Holdings (DCEH).

First, you asked for information about a June 27, 2018 letter from Brent Richardson, then CEO of DCEH, allegedly sent to HLC President Barbara Gellman-Danley, HLC Vice President of Legal and Regulatory Affairs Anthea Sweeney, and Mary Kohart, of the law firm Elliott Greenleaf, on or about that date ("June 27 Letter"). When Morgen indicated on the call that she was not familiar with the June 27 Letter, the Department indicated it would provide the letter to HLC.

Second, you asked for additional information related to the other HLC member institution that HLC indicated in its November 13 Response had previously been offered the condition of accepting Change of Control candidacy as part of a Change of Control application approval by the HLC Board of Trustees ("the Board").

Following the call, also on December 19, 2019, Department analyst Elizabeth Daggett sent an email to Morgen reiterating the requests made by the Department and attaching the June 27 Letter. Specifically, Daggett stated:

I have attached the letter from DCEH to HLC dated June 27, 2018. Please let us know if HLC received this letter and any response it provided. If in that review, HLC finds any other correspondence that was not included in the November 13, 2019 submission

by HLC to the Department, we request submission of that correspondence as well and any explanation for why it was initially excluded. Finally, we are requesting a redacted copy of the other institution that was offered the Change of Control Candidacy status as a condition of a change of control, as noted in HLC's submission.

HLC's responses to each of these supplemental requests is below.

Supplemental Request #1: June 27, 2018 Letter from Richardson to Gellman-Danley, et al.

You inquired about, and provided HLC with a copy of, a letter dated June 27, 2018 from Brent Richardson, then CEO of DCEH, that was allegedly sent by email to HLC President Barbara Gellman-Danley, and, while not expressly stated in the letter, was allegedly sent by email to HLC Vice President of Legal and Regulatory Affairs Anthea Sweeney and Mary Kohart, of the law firm Elliott Greenleaf, on or about that date ("June 27 Letter") ([HLC-OPE 15430-15433](#), watermark added by HLC).

Although the Department has the June 27 Letter itself, you indicated on the December 19, 2019 call that, to the best of your knowledge, you were not in possession of any accompanying documents related to the transmission of the June 27 Letter, such as a transmittal email or confirmation of delivery.

To begin with, on May 21, 2018, DCEH and the Institutes indicated their intent to "pursue an appeal" ([HLC-OPE 12264-12266](#)). On, May 30, 2018, HLC provided DCEH and the Institutes with HLC's Appeal Procedures (which were also at all times available on HLC's website) and outlined next steps for pursuing an appeal ([HLC-OPE 12267-12268](#) and [HLC-OPE 15252-15264](#)). For example, HLC asked DCEH to submit its Appellate Document promptly and proposed a schedule that would have allowed for an appeal hearing to be held sometime in August 2018.

HLC's Appeal Procedures permitted DCEH to submit an Appellate Document electronically but required it to "also submit two copies in paper form" ([HLC-OPE 15252-15264](#) at pg.15259).

The June 27 Letter purports to be a "formal appeal." Presumably, the June 27 Letter is the "Appellate Document" required by HLC procedures, as explained by HLC in its May 30 letter and the associated procedures that were attached.

After speaking to the Department in December 2019, HLC conducted a thorough investigation to determine whether the June 27 Letter had been attached to any email received by Gellman-Danley or Sweeney or whether paper copies had been delivered to HLC.

As further explained below, upon completion of this investigation, **HLC has not located any information indicating that HLC received the June 27 Letter in either electronic form or hard copy at any time prior to December 2019.** To the contrary, as further explained below, HLC's investigation suggests that the June 27 Letter was incorrectly transmitted to HLC ([HLC-](#)

[OPE 15434](#)). Moreover, while an email attaching the June 27 Letter was received by Kohart's law firm, HLC's external counsel, on or about June 27, 2018 ([HLC-OPE 15434](#)), the email was filtered by the law firm's software into a spam folder. It therefore never appeared in Kohart's email inbox and was never seen by her until the December 2019 searches were performed.

As also further explained below, HLC also reviewed whether there were any communications between HLC and DCEH or the Institutes that should have put HLC on notice of the June 27 Letter or a pending appeal as a result of the June 27 Letter. HLC could not identify any such communications. To the contrary, the communications between HLC and DCEH and the Institutes make plain that neither DCEH, the Institutes, nor HLC thereafter referenced the June 27 Letter, which HLC did not know existed, or otherwise thought any appeal process was underway as a result of the June 27 Letter. In fact, as further explained below, HLC's representatives participated in a June 26 conference call with representatives of DCEH and the Institutes that led HLC to believe that DCEH no longer intended to follow up with any appeal.

A. HLC's investigation indicates that HLC did not receive the June 27 Letter

The June 27 Letter states that it was sent to Gellman-Danley by email and implies that the same mode of transmission was used for Sweeney and Kohart ([HLC-OPE 15430-15433](#)). As such, HLC first thoroughly checked its email systems to see if Gellman-Danley or Sweeney received an email on or about June 27, 2018 which attached the June 27 Letter. HLC located no such email during this search.

A close examination of the transmittal email accompanying the June 27 Letter, which, as further explained below, was recently provided to HLC by Kohart, may explain why no such email was received by HLC. The transmittal email indicates that it was sent by email to bgdanley@hlcommission.org and asweeney@hlcommission.org ([HLC-OPE 15434](#)). Both email addresses for Gellman-Danley and Sweeney are incorrect. The email suffix required was "hlcommission.org" not "hlcomission.org" (incorrectly spelled with one "M" instead of two "Ms"). To the best of HLC's knowledge, an email sent to these incorrect email addresses would not reach either individual's inbox or otherwise be received by HLC, and, in this instance, did not reach HLC's email system or either individual's email inbox.

HLC also searched to see if, as required by its Appeals Procedure, DCEH or the Institutes had sent, and HLC had received, hard copies of the June 27 Letter. There is no record that HLC received the June 27 Letter prior to receiving it from the Department in December 2019.

Whether received electronically or in hard copy, HLC would have placed any document like the June 27 Letter into the administrative records it maintains relating to AIC and ILIA. HLC has confirmed that the June 27 Letter does not appear in either institution's administrative record, which once again confirms that the June 27 Letter was not received by HLC prior to December 2019.

HLC also asked Kohart, its external counsel for this matter throughout the relevant time period, to conduct the same search. Kohart found no record that she received a hard copy of the June 27

Letter. Kohart also searched the emails she had received and did not locate any email attaching the June 27 Letter. She then expanded her search to include emails not delivered to her inbox but that might have been filtered into a spam folder by the software used by her law firm. This search uncovered an unfamiliar email sent by a "crichardson@lopescapital.com" to Kohart, bgdanley@hlcommission.org and asweeney@hlcommission.org ([HLC-OPE 15434](#)). Kohart provided this email to HLC.

Ultimately, it is HLC's reasonable belief that no HLC employee received an email attaching the June 27 Letter, that the email sent to its external counsel was never received in her email inbox but treated as spam, and that neither HLC nor its external counsel received the mandated paper copies. Thus, Gellman-Danley, Sweeney, and Kohart at no time believed that any Appellate Document had been sent by DCEH or the Institutes to HLC in June 2018 and were not aware of the June 27 Letter prior to December 2019.

B. All information available to HLC indicates that HLC had no reason to know that the June 27 Letter existed and that neither HLC, DCEH, nor the Institutes was under the belief that an appeal was underway as a result of the June 27 Letter

Upon receipt of DCEH and the Institutes' May 21, 2018 intent to appeal letter, HLC provided DCEH and the Institutes with detailed information regarding next steps in the appeal process ([HLC-OPE 12264-12266](#), [HLC-OPE 12267-12268](#), and [HLC-OPE 15252-15264](#)). Specifically, among other things, HLC asked DCEH and the Institutes to submit an Appellate Document "as soon as possible" and indicated that HLC would respond to that Appellate Document "no later than 4 weeks from the date of receipt." HLC also sketched out a timeline for an appeal process that would include "a hearing...as early as August with final resolution to follow." Finally, HLC indicated that, with one limited exception as required by federal regulations, it would suspend evaluation activities for the Institutes "pending the final outcome of the appeal." Correspondingly, HLC promptly began preparing for an appeal. These preparations included gathering the names of potential individuals to serve on the Appeal Panel.

In response to a series of emails from late June 2018 from David Harpool, counsel to DCEH and the Institutes ([HLC-OPE 15322-15324](#)), the parties participated in a conference call on June 26, 2018. Gellman-Danley and Sweeney participated for HLC, accompanied by Kohart. To the best of HLC's knowledge, Harpool and attorney Ronald Holt participated on behalf of DCEH and the Institutes.

On the call, HLC and its external counsel were led to believe that DCEH and the Institutes had abandoned an appeal in light of their intention, which had not yet been publicly announced, to close the Institutes. In other words, DCEH and the Institutes indicated that they would not further follow up on their intent to appeal.

Instead, on the call, DCEH and the Institutes wanted to explore the possibility of retroactive accreditation. Indeed, in keeping with the new direction raised by DCEH and the Institutes on the June 26 call regarding retroactive accreditation, HLC almost immediately received a call from

Principal Deputy Under Secretary Diane Auer Jones ("Jones") regarding the possibility of retroactive accreditation. See November 13 Response #10-12 at pgs. 20-23.

On the call, HLC indicated three things in response to the information conveyed by DCEH and the Institutes. First, HLC indicated that retroactive accreditation was not allowable under HLC policy and therefore, no commitments could be made in that regard. Second, HLC reminded DCEH and the Institutes that the Institutes were on the agenda of the upcoming Board meeting, taking place on June 28-29, 2018, as an "update" item, rather than an "action" item, and therefore no Board action affecting the Institutes should be expected at the upcoming meeting. Third, HLC assured DCEH and the Institutes that the update to the Board regarding the Institutes would include the fact that this call had taken place.

Following the June 26, 2018 call, numerous communications and events indicate that neither HLC, DCEH, nor the Institutes believed any appeal was in process as a result of the June 27 Letter.

First, based on the information provided by DCEH and the Institutes on the June 26 call, HLC stopped its appeal preparations, such as discussion regarding scheduling and the identification of potential members of the Appeal Panel.

Additionally, in providing an update to the Board at its meeting on June 28-29, 2018, no mention was made of the June 27 Letter. Rather, the update provided by HLC staff referenced the June 26, 2018 call. In contrast, when HLC received a letter from Jones on the evening of the October 31, 2018, the night before its Board meeting, HLC staff promptly informed the Board of this letter ([HLC-OPE 15363](#)). See November 13 Response #19 at pg. 30.

Second, at no point following June 27 did anyone at the Institutes or DCEH follow up with HLC regarding the June 27 Letter in any manner whatsoever. In its letter of May 30, 2018, HLC stated it would respond to an Appellate Document within four weeks after its receipt. Assuming that the June 27 Letter was intended as the requested Appellate Document, HLC did not provide DCEH or the Institutes with such a response to the June 27 Letter (because it did not receive the June 27 Letter). Yet neither DCEH nor the Institutes contacted HLC at any time to ask why they had not received the expected responsive document from HLC. The May 30 letter also indicates that an Appeal Hearing could be held as early as August. No such hearing was scheduled. Yet, neither DCEH nor the Institutes communicated with HLC to follow up on the scheduling of such a hearing or regarding the identity of those who would serve on the Appeal Panel. Finally, the June 27 Letter included a statement that DCEH and the Institutes would commence litigation if no response was received by noon "on Friday" (June 29). Yet, that day came and went without any further mention of litigation by DCEH or the Institutes as a result of HLC's failure to respond to the June 27 Letter.

Third, in October 2018, Brent Richardson, the signatory of the June 27 Letter, along with other DCEH representatives and representatives of AIC, appeared at a hearing to address issues relating to whether AIC met HLC's Criteria for Accreditation and other HLC requirements following a recent site visit ([HLC-OPE 14862-14980](#)). At no point during the course of planning

for or conducting that hearing was any mention made of the June 27 Letter or any ongoing appeal.

Finally, in November 2018, the Institutes each submitted letters to HLC seeking to appeal actions taken by HLC's Board in November 2017 and November 2018 ([HLC-OPE 15187-15189](#) and [HLC-OPE 15190-15191](#)). HLC responded to these letters later in November 2018 ([HLC-OPE 15192-15194](#) and [HLC-OPE 15195-15198](#)). Critically, none of these letters—neither the appeal requests from the Institutes nor HLC's responses—mention the June 27 Letter or indicate that the Institutes or DCEH had previously attempted to appeal the portion of their current appeal requests related to the Board's November 2017 actions through the June 27 Letter.

Taken together, the collective conduct of all the involved parties clearly demonstrates that none of the parties were proceeding under the belief that the June 27 Letter had started an appeal process, and nothing occurred after June 27, 2018 that would have lead HLC to believe that the June 27 Letter, which it still did not know existed, had begun an appeal process.

Supplemental Request #2: Previous Institution Offered Change of Control Candidacy

In item #16 of the November 13 Response, HLC provided:

In one previous case very similar to the one currently under review, the parties to a transaction, though initially willing to accept Change of Control candidacy as a condition of approval, ultimately found themselves unwilling and abandoned their plans to consummate the transaction. The relevant institution remains accredited by HLC to date.

The Department has requested that HLC provide a redacted version of the action letter pertaining to the institution referenced in item #16 of the November 13 Response.

In 2015, the Board approved a member institution's Change of Control application with the condition that the institution accept the status of Change of Control candidacy ([HLC-OPE 15435-15440](#)). This action letter involves the institution referenced in item #16 of the November 13 Response. (Note that there were also two additional action letters pertaining to this institution's Change of Control application subsequent to this action letter; one extending the time period in which the institution could complete the transaction and one denying a request by the institution to modify the conditions of the Board's approval. However, the above-referenced action letter indicates that the Board offered Change of Control candidacy as a condition of approval of a Change of Control application.)

As further described in the November 13 Response, the member institution ultimately chose not to pursue the relevant transaction. As such, the institution remained accredited. HLC would like to take this opportunity to clarify and amend its initial response to item #16 in the November 13 Response. Although the institution remained accredited at the time of Board action, it voluntarily withdrew its accreditation thereafter and as a result is no longer accredited by HLC.

HLC appreciates the opportunity to provide this additional information and documentation.

Enclosed, please find the three documents linked in this supplemental response that were not previously provided to the Department with the November 13 Response ([HLC-OPE 15430-15433](#); [HLC-OPE 15434](#); and [HLC-OPE 15435-15440](#)).

Please do not hesitate to let me know if you have any additional questions.

Sincerely,



Barbara Gellman-Danley
President

CC (via email): Herman Bounds, Director, Accreditation Group, Office of Postsecondary
Education, U.S. Department of Education
Elizabeth Daggett, Analyst, U.S. Department of Education

Enclosures: HLC-OPE 15430-15433
HLC-OPE 15434
HLC-OPE 15435-15440

Barbara Gellman-Danley
Transcribed Interview
Exhibit 32

From: [Ronald L. Holt](#)
To: [Richardson, Chris C.](#)
Cc: [Randall Barton \(rbarton4953@gmail.com\) \(rbarton4953@gmail.com\)](#); [Murphy, Shelly M.](#); [Richardson, Brent D.](#); [David Harpool](#)
Subject: HLC Schools: Proposed Student Notice
Date: Thursday, May 31, 2018 8:24:44 PM
Attachments: [image003.jpg](#)
[Notice About Accreditation Status - AiCO and AiIL.docx](#)

Hi Chris, attached for your review and consideration is the proposed notice to be given to students concerning DCEH's plan to pursue an appeal of the actions that HLC has taken. This Notice, as you know, follows the response that we have drafted to the memo from the Consent Judgment Settlement Administrator, who, among other things, has called out DCEH on the fact that we have told the students of the HLC schools that the schools remain accredited but HLC on its website says they do not. So, our response to the Administrator explains we were misled by HLC and are now appealing HLC's actions and that we will be issuing notice to the students to inform them of the appeal we are taking. I think that, even if all we do is set up a meeting with the HLC Executive Committee in Chicago to get them to 'stand down' to some extent on their position, we are still 'appealing' or challenging the HLC position, so sending out the notice now, but later not actually pursuing a full-blown internal appeal would not be inconsistent. But that is something that you and Randy will have to weigh. Certainly, for now, we have told HLC that we are challenging their action, their action is adverse to our students, these HLS schools are still open and we have to take action to serve the interests of these students. Regards, Ron

Ronald L. Holt, Attorney

rholt@rousefrets.com | Direct: (816) 292-7604 | Cell: (816) 509-5194 | Phone: (913) 387-1600 | Fax: (913) 928-6739

RFGR_Logo



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

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Circular 230 Disclosure: Any advice contained in this email (including any attachments unless expressly stated otherwise) is not intended or written to be used, and cannot be used, for purposes of avoiding tax penalties that may be imposed on any taxpayer.

Barbara Gellman-Danley
Transcribed Interview
Exhibit 33

Huston, John

From: Jones, Diane
Sent: Thursday, April 18, 2019 7:34 PM
To: Huston, John
Subject: FW: list
Attachments: Updates 7.18.18.docx

From: Jones, Diane
Sent: Thursday, August 2, 2018 11:46 PM
To: Murphy, Shelly M. <smurphy@dcedh.org>
Subject: list

Hi Shelly,
I'm sorry for giving you the wrong list. Here is the correct one.
Diane

Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of Under Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202
202-453-7333
Diane.jones@ed.gov

Phone Call 7/18/18

- Accreditors need to be hearing from the presidents and board chairs of each educational group as well as from campus leaders. Accreditors want to hear from campus leaders, not corporate entities, and they want to hear from leaders of the institutional boards.
- DCHC must be forthcoming and honest with accreditors. This is critical.
- DCHC and the institutions must provide students with accurate information about each institution's accreditation status. Institutions that are candidates for accreditation must be clear with students candidacy status does not guarantee that the institution will be accredited, and that if the campus becomes accredited, the campus does not know whether or not that accreditation will be restored retroactively to the change of control. Note that HLC's policy for retroactive accreditation is limited to 30 days prior to the board's decision. Campus and organizational leaders may not comment on the likelihood of gaining accreditation. Campus leaders must inform students that in the event the institution does not gain accreditation status, other campuses are still permitted by their accreditors to accept these credits in transfer, but the teaching-out campus cannot guarantee that an institution will do so. Campus leaders must be working with other institutions to try to negotiate transfer agreements with institutions that agree to accept credits awarded subsequent to the change of control, while the institution was a candidate for accreditation but was not accredited. It is critical that the HLC campuses have well-developed contingency plans in the event that HLC does not accredit one or more of those campuses.
- Campus leaders, faculty and staff must have all of the information about the planned teach-out: the timeline, the date of closure, the funding that will be available to the school to complete the teach-out, who/how student records will be maintained after closure, what retention incentives are in place to retain faculty and staff, continuing student services, and ultimately the physical closure of the campus including disposal/distribution of furniture, books, supplies, etc.
- Accreditors need a complete list of campus leaders, key faculty members (program directors, department chairs, etc.), and members of each institution's BOD. These lists must be updated when personnel changes occur, which includes notifying the accreditor if and when presidents and chief academic officers leave the institution, and providing the name and credentials of the individual acting in those roles while a permanent replacement is identified. Individuals who are acting in campus leadership roles must understand the responsibilities of their new role, and ideally should be partnered with a leader at a continuing campus who can provide mentorship.
- Students must be provided with the link to FSA's website about school closures, and must be made aware of their opportunity to apply for a closed school loan discharge.
- Institutions must provide accreditors with the names of teach-out partner institutions and provide copies of formal teach-out agreements.
- Institutions must provide accreditors with names of partners for articulation agreements and with copies of those agreements.

- Institutions must be working with other institutions in their local area to assist students who wish to transfer. This includes holding transfer fairs on the closing campus, providing students with a list of comparable programs at local institutions, and working with leaders at those campuses to be sure that student credits are accepted in transfer. This includes working with local institutions to encourage them to accept credits from a campus that has candidacy status. Accreditors do not prevent institutions from accepting credits from an institution that has lost accreditation or is a candidate for accreditation.
- If the Pittsburgh campus is going to be used as the on-line teach-out campus, students must be told that this campus is on probation with its accreditor. The campus must also immediately resolve all problems associated with probation. (Note- this was updated with DCHC when Middle States put Pittsburgh on show cause such that DCHC can no longer use AI online as a teach-out option and must find a different online transfer institution if it wishes to offer an online teach-out option).
- DCHC should refrain from threatening accreditors with legal action. **Note that the Department does not need to recognize the accreditation of an institution that pursues legal action rather than arbitration in the event of a negative action.** In the case of HLC, DCHC should be aware that they missed their opportunity to file an appeal and subsequently the campuses did not provide the information HLC requested to take to their board based on the timeline provided to the campuses by HLC prior to their June board meeting.
- In the case of the HLC campuses, DCHC campuses should start immediately looking for transfer partners and teach-out partners to help students concerned about accreditation status transfer to a new institution and have their credits earned after the change of control accepted by those institutions.
- Accreditors need a complete list, by student, of the teach-out plans selected by the student, including the name of the institution to which the student will transfer or the name of the teach-out partner. Note that the difference between a transfer partner and a teach-out partner is that accreditors typically waive the 25% rule for students who enroll with a teach-out partner institution.
- It is recommended that the campus leaders of each teach-out campus provide regular and accurate communication to students about their options and the progress of the teach-out plan. For example, as new articulation, transfer or teach-out agreements are negotiated with other institutions; students must be made aware of those options and any financial support that DCHC is offering to those students to help with the transition. The website should also be updated regularly, and Facebook streamed information should be linked to the website. It is critically important that in one-on-one conversations, students be given exactly the same information as they are provided during the group discussions and through written communication.
- Students must be kept informed. We cannot overemphasize the importance of keeping students and campus staff informed.

Barbara Gellman-Danley

Transcribed Interview

Exhibit 34

Foxx Exhibit 1



Policy Title: Accreditation

Number: INST.B.20.030

Grant of Initial Accreditation

The Board of Trustees reviews an institution's application for initial accreditation and all related materials after the institution has undergone evaluation by a team of peer reviewers and an Institutional Actions Council hearing, as defined in Commission policy. Only institutions that have completed candidacy, or been exempted from candidacy by the Board of Trustees following Commission policies on Candidacy, shall be eligible for initial accreditation. The Board of Trustees may grant or deny initial accreditation based on its determination of whether the institution meets the Eligibility Requirements, Criteria for Accreditation, Core Components, and Federal Compliance Requirements. If the Board of Trustees grants initial accreditation, it may grant such accreditation subject to interim monitoring, restrictions on institutional growth or substantive change, or other contingency.

Early Initial Accreditation

An institution may apply for early initial accreditation after two or three years of candidacy following Commission policies on candidacy. The Board of Trustees shall have the discretion to continue candidacy, instead of granting early initial accreditation, in circumstances including, but not limited to, the following: if the Board determines that one or more of the Core Components are not met or met with concerns; if a recommendation for early initial accreditation is conditioned on the scheduling of interim monitoring; or in other circumstances where the Board concludes that a continuation of candidacy, or extension of candidacy to a fifth year, is warranted. Any extension of candidacy to a fifth year shall be granted following Commission policies on extension of candidacy. Such actions to continue candidacy, thereby denying early initial accreditation, or to extend candidacy to a fifth year shall not be considered denial of status and are not subject to appeal.

Accreditation Cycle

Institutions must have accreditation reaffirmed not later than four years following initial accreditation, and not later than ten years following a reaffirmation action. The time for the next reaffirmation is made a part of the accreditation decision, but may be changed if the institution experiences or plans changes. The Commission may extend the period of accreditation not more than one year beyond the decennial cycle or one year beyond the initial accreditation cycle for institutions that present good and sufficient reason for such extension.

Effective Date of Accreditation

The effective date of initial accreditation or reaffirmation of accreditation or other Commission action will be the date the action was taken.

The Commission's Board may grant initial accreditation, with the contingency noted in this subsection, to an institution that applies for accreditation and is determined by the Commission to have met the Criteria for Accreditation but has not yet graduated a class of students in at least one of its degree programs, as required by the Eligibility Requirements. Institutions shall have completed the two-year required minimum candidacy period or received a waiver from the Commission's Board of Trustees. Such action shall be contingent on the institution's graduation of its first graduating class in at least one of its degree programs within no more than thirty days of the Board's action. In such cases, the effective date of accreditation will be the date of this graduating class.

Assumed Practices in the Evaluative Framework for Initial and Reaffirmation of Accreditation

An institution seeking initial accreditation, accredited to candidate status, or removal of Probation or Show-Cause, must explicitly address these requirements when addressing the Criteria. The institution must demonstrate conformity with these Practices as evidence of demonstrating compliance with the Criteria. Institutions undergoing reaffirmation of accreditation will not explicitly address the Assumed Practices except as identified in section INST.A.10.030. Any exemptions from these Assumed Practices must be granted by the Board and only in exceptional circumstances.

Policy Number Key

Section INST: Institutional Processes

Chapter B: Requirements for Achieving and Maintaining Affiliation

Part 20: Defining the Affiliated Entity

Last Revised: November 2015

First Adopted: August 1987

Revision History: renumbered November 2010, revised February 2012, June 2015, November 2015

Notes: Policies combined November 2012 - 1.1(a)1, 1.1(a)2, 1.1(a)3, 1.4, 2013 – 1.1(a)1.2, 1.1(a)1.3, 1.1(a)1.4. The Revised Criteria for Accreditation, Assumed Practices, and other new and revised related policies adopted February 2012 are effective for all accredited institutions on January 1, 2013.

Related Policies:

Barbara Gellman-Danley

Transcribed Interview

Exhibit 35

Foxx Exhibit 2



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

July 14, 2016

Jennifer L. Butlin, Executive Director
One Dupont Circle NW, Suite 530
Washington, D.C. 20036-1120
Tel. (202) 887-6791, Fax (202) 887-8476
E-Mail address: jbutlin@aacn.nche.edu
Web address: www.aacn.nche.edu/accreditation/index.htm

Dear Dr. Butlin:

This letter serves as follow-up to our conference call held on March 10, 2016, on the Commission on Collegiate Nursing Education's use of retroactive decisions. As discussed on the call and per the American Association of Colleges of Nursing, Commission on Collegiate Nursing Education (CCNE) Baccalaureate & Graduate Nursing Programs requirements on the website, which states, "CCNE accreditation actions are retroactive to the first day of the program's most recent CCNE on-site evaluation" (<http://www.aacn.nche.edu/ccne-accreditation/new-applicant-process/baccalaureate-graduate>). This requirement is non-compliant with the Secretary's Criteria for Recognition in Subpart C of 34 CFR 602. Although, the Substantive Change section 602.22 (b) Change in Ownership criteria is applicable to Title IV gatekeepers, it is the only criteria within the Secretary's Criteria for Recognition that allows the use of a retroactive approval date. Specifically, §602.22(b) states:

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

Except as provided with respect to changes of ownership, substantive change approvals cannot be applied retroactively.

During the March conference call, it was mentioned that there was prior approval given to your agency to allow for such retroactive actions. However, documentation of such approval is not included in the agency's recognition files and will not be substantiated moving forward. With the upcoming review of your renewal petition, it is imperative that CCNE demonstrate to the Department that all decisions made by the Commission are effective on the date the Commission makes the decision and that decisions cannot be made retroactive to the day of the site visit since

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
www.ed.gov

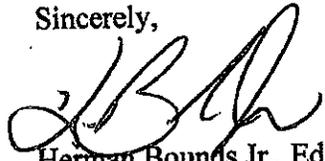
The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

000001

the on-site evaluators are not a recognized decision making body. The agency must amend its policy and procedures to cease this action immediately.

Please contact me if you have any questions regarding this information or if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Bounds Jr.', written in a cursive style.

Herman Bounds Jr., Ed.S.
Director, Accreditation Group



September 16, 2016

Herman Bounds Jr., Ed.S.
Director, Accreditation Group
United States Department of Education
Office of Postsecondary Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Bounds:

This is in response to your letter of July 14, 2016. The Commission on Collegiate Nursing Education (CCNE) disagrees with the letter's assertion that CCNE's effective date policy for accreditation is "non-compliant with the Secretary's Criteria for Recognition in Subpart C of 34 CFR 602" and that documentation of Department of Education approval of this policy is not "included in the agency's recognition files.

CCNE's effective date of accreditation policy has stated continuously since April 23, 2009, that CCNE accreditation decisions "are retroactive to the first day of the program's most recent CCNE on-site evaluation."

In your July 14, 2016 letter, you state, referring to the CCNE effective date policy,

This requirement is non-compliant with the Secretary's Criteria for Recognition in Subpart C of 34 CFR 602. Although, the Substantive Change section 602.22 (b) Change in Ownership criteria is applicable to Title IV gatekeepers, it is the only criteria within the Secretary's Criteria for Recognition that allows the use of a retroactive approval date. Specifically, §602.22(b) states:

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

Except as provided with respect to changes of ownership, substantive change approvals cannot be applied retroactively.

During the March conference call, it was mentioned that there was prior approval given to your agency to allow for such retroactive actions. However, documentation of such approval is not included in the agency's recognition files and will not be substantiated moving forward. With the upcoming review of your renewal petition, it is imperative that CCNE demonstrate to the Department that all decisions made by the Commission are effective on the date the Commission makes the decision and that decisions cannot be made retroactive to the day of the site visit since the on-site evaluators are not a recognized decision making body. The agency must amend its policy and procedures to cease this action immediately.

CCNE first received Department of Education recognition by letter, dated February 22, 2000. More than eight years later, on October 14, 2008, I sent an email to Carol A. Griffiths, Chief, Accrediting Agency Evaluation, Office of Postsecondary Education, US Department of Education, stating in part,

Also, CCNE is engaged in a revision of its accreditation procedures. For years, CCNE's policy has been that the effective date of accreditation is the date on which the CCNE Board of Commissioners acts to accredit the program. However, some brand new programs less than two years in length have expressed some concerns to us that the Board decision is made after the first class of students graduates. The Board has determined that we will only conduct a site visit to a program that has been up and running at least one year because visiting the program any earlier than that would not allow the team to do a comprehensive evaluation of the entire curriculum. As a result, these programs are inquiring as to whether CCNE can amend its policy to allow the accreditation decision for new programs to be retroactive/back dated by several months to the date of the comprehensive site visit. Doing so would allow the first class of students to graduate from a CCNE-accredited program (if the accreditation decision is a positive one, of course). I am aware of other accrediting agencies that do back-date the decision for new programs to help protect the first class of students, but before we amend our policies, I wanted to check with Department staff to make sure this is not in violation of the Secretary's criteria (or the staff's interpretation of those criteria). (Emphasis added)

In response, Ms. Griffiths sent an email to me, dated October 22, 2008, which states in part,

As to your question regarding retroactive/backdating grants of accreditation, you may recall that it was raised at the time of CCNE's initial recognition. A determination was made at that time (1999) "that the Secretary does not accept any accrediting decisions made by the agency for which the beginning of the term of accreditation granted by the agency predates the date of the site visit conducted by the agency." We are comfortable with a process by which a recognized agency establishes the date of the comprehensive site visit as the effective date for the accreditation granted, assuming that the vote on accreditation is made no later than the next regular decision meeting. (Emphasis added)

On February 20, 2009, I sent Ms. Griffiths an email stating,

As we have discussed the possible policy change to make accreditation decisions retroactive to the date of the last site visit, we are thinking it would be best to apply this policy consistently to all programs (and not just to new applicant programs, as I had proposed below). I have also verified that doing this consistently for all degree programs is a common practice among other USDE-recognized specialized accreditors. Before proposing this policy change to our constituents for comment, I wanted to verify with you that the Department would have no concerns about this. From an administrative perspective, it seems much cleaner to make actions retroactive to the most recent visit for all programs and not just the new ones. I hope to hear back from you soon as we hope to move forward with this policy change asap. (Emphasis added)

Ms. Griffiths replied by email of February 23, 2009, stating,

I see no problem with applying this policy to all reaccreditations.
(Emphasis added)

Following this good faith inquiry and the subsequent approval by the Department, CCNE revised its policy regarding effective date of accreditation on April 23, 2009. CCNE has applied this effective date policy to accreditation decisions made no later than the next regular decision meeting after the site evaluation.

Since that revision, CCNE has submitted its policies, including its effective date policy, to the Department of Education in its recognition renewal applications. By letters of August 2, 2012 and August 26, 2014, the Department renewed its recognition of CCNE without any reference to or concern about the effective date policy.

To summarize, in your July 14, 2016 letter, you assert that the CCNE effective date policy (in effect since April 23, 2009) is non-compliant with the Secretary's Criteria for Recognition. This is the first time that the Department has made this assertion since the Department specifically informed CCNE in 2008 and 2009 of its approval of the policy. As stated by Ms. Griffiths, then Chief, Accrediting Agency Evaluation, Office of Postsecondary Education, US Department of Education: "We are comfortable with a process by which a recognized agency establishes the date of the comprehensive site visit as the effective date for the accreditation granted, assuming that the vote on accreditation is made no later than the next regular decision meeting" (email correspondence to J. Butlin on October 22, 2008) and "I see no problem with applying this policy to all reaccreditations" (email correspondence to J. Butlin on February 23, 2009).

In your letter, you cite no statute or regulation as authority for your assertion. Instead, you point to §602.22(b) in support of your assertion. For at least two reasons, that section does not support your assertion. In fact, the section supports the CCNE effective date policy.

First, you concede that the section is applicable only to Title IV gatekeepers, and yet, as you know, CCNE is not a Title IV gatekeeper. You then state that, "it is the only criteria within the Secretary's Criteria for Recognition that allows the use of a retroactive approval date." This regulation's existence demonstrates that the Secretary knows how to prohibit retroactive application of an accrediting agency decision. The Secretary did so only in the setting of substantive change. The fact that the Secretary did not do so relating to any other setting supports the position that this is the only setting in which the Secretary intends to prohibit retroactive application of an accrediting agency decision.

Second, consider the history of §602.22(b). It was first published in the Federal Register on October 27, 2009 (74 FR 55414, 55428), effective July 1, 2010. But it resulted from a negotiated rule-making process beginning with a Federal Register announcement of September 8, 2008 (73 FR 51990); six public hearings from September 19, 2008 to October 15, 2008 to discuss the agenda for the negotiated rule-making sessions (73 FR 51990, 51991, September 8, 2008); another Federal Register announcement of December 31, 2008 declaring that "substantive change" would be a topic included in the negotiated rule-making process (73 FR 80314, 80316); and negotiated rule-making meetings of the "Accreditation Committee" on March 4-6, 2009, April 21-23, 2009, and May 18-19, 2009 ("substantive change" on the agenda for each of these meetings) (74 FR 39498, 39499, August 6, 2009).

The email exchanges between Ms. Griffiths and me occurred from October 14, 2008 to February 23, 2009, right in the middle of the Department of Education's rule-making process resulting in the creation of §602.22(b). If, as you propose, §602.22(b) supports your assertion that the CCNE policy is non-compliant with the Secretary's Criteria for Recognition, (1) surely the Department would not have unequivocally approved a CCNE effective date policy in 2008 and 2009 while §602.22(b) was in mid-development by the Office that Ms. Griffiths headed within the Department, and (2) that Office would have

objected to the effective date policy when CCNE was considered for continued re-recognition in 2012 (reapplication submitted January 24, 2012; action letter sent August 2, 2012; interim progress report submitted August 20, 2013; response to draft staff analysis on interim report submitted on May 15, 2014; action letter sent August 26, 2014), after the effective date of §602.22(b) on July 1, 2010. This did not occur, because the CCNE effective date policy was approved by the Department, and §602.22(b) was, and continues to be, consistent with that approval.

As you are aware, CCNE on-site evaluators visit a program to verify information previously submitted by the program and to determine compliance with accreditation standards. At its next scheduled meeting, the CCNE Board makes an accreditation decision based on (1) a written accreditation team report from the on-site evaluators, (2) the program's written response to the on-site evaluation report, and (3) a written recommendation from the Accreditation Review Committee (ARC).

It makes sense that the effective date of the accreditation decision is the date of the on-site evaluation, which is when the trained CCNE evaluation team makes on-site factual verifications and determinations about the program, including, in particular, assessments about the program's compliance with each accreditation standard.

The date of the on-site evaluation as an effective date is what Ms. Griffiths approved on behalf of the Department in her emails of October 22, 2008 and February 23, 2009. It is also consistent with the determination made by the Department at the time of CCNE's initial recognition as quoted by Ms. Griffith in her October 22, 2008 email.

Contrary to your assertion during your call of March 10, 2016, that CCNE is the only one doing this, CCNE has since verified that there are multiple Department of Education-recognized specialized accrediting agencies that are currently engaged in retroactive decision-making similar to CCNE's practice. Most (but not all) of these agencies, like CCNE, are not Title IV gatekeepers, and they have engaged in these practices for decades and are in "good standing" with the Department. While these agencies may or may not use the word "retroactive" in their written policies or specifically refer to the effective date of the decision in their action letters, their policies clearly establish that the effective date of accreditation predates the decision-making meeting. CCNE is unclear why it has been singled out when this is an accepted industry practice.

The Department of Education has failed to justify a required change in the CCNE effective date policy previously approved by the Department in 2008 and 2009, and unchallenged by the Department since then. In the absence of any contradicting statutory or regulatory authority, the Department should continue to honor its written approval of the CCNE effective date policy, as it has beginning in 2008.

Sincerely,



Jennifer Butlin, EdD
Executive Director



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

November 17, 2016

Dr. Jennifer L. Butlin
Executive Director
Commission on Collegiate Nurse Education
One Dupont Circle NW, Suite 530
Washington, D.C. 20036-1120

Dear Dr. Butlin:

Thank you for responding to the issue of retroactive accreditation discussed in my July 14, 2016, letter to the Commission on Collegiate Nurse Education (CCNE). As I stated in that letter, the accreditation decision is effective on the date that an accrediting agency's decision making body makes the accreditation decision and cannot be made retroactive. In addition, 602.15(a) (3-6) clearly references and distinguishes an evaluation body and a decision-making body. The site visit team is an evaluation body and does not have decision-making authority. Therefore, establishing the accreditation date as the day of the site visit is essentially giving the site visit team decision-making authority which is not in accordance with the Secretary's Criteria for Recognition (Criteria). The U.S. Secretary of Education recognizes the accrediting agency's decision-making body. In the case of CCNE, that would be the "Commission"; the Secretary does not recognize the site visit team. In addition, as your letter states, the Commission looks at materials other than the team report in making its decision. The site team does not have the information necessary to make an accrediting decision for the Commission, nor is it authorized to do so.

It is unfortunate that a former Accreditation Group director provided the guidance you referenced in your previous letter. However, that guidance does not change the fact that retroactively awarding accreditation to an institution or program is not in accordance with the Criteria. As stated in the July 14, 2016, letter, CCNE must amend its policies and cease this practice going forward.

CCNE is scheduled to appear at the June 2017 National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting. CCNE's petition for recognition is due to the Department of Education in early January 2017. It is critical that CCNE provide in the petition documentary evidence that it has amended its policies, and no longer awards accreditation retroactive to the date of the site visit.

Thank you for addressing this matter.

Sincerely,

Herman Bounds, Jr., Ed.S.

Director, Accreditation Group

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

000007

From: Nancy.DeBasio@researchcollege.edu
To: [Third Party Comments](#)
Subject: Written Comments: Commission on Collegiate Nursing Education
Date: Tuesday, March 07, 2017 4:20:27 PM

Nancy O. DeBasio, PhD, RN, FAAN
President
Research College of Nursing
2525 East Meyer Boulevard
Kansas City, Missouri 64132
Nancy.debasio@researchcollege.edu
816-995-2810

This email is submitted in support of the Commission on Collegiate Nursing Education's (CCNE) petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in nursing. As President of Research College of Nursing, a specialized institution of health care, I can speak to the importance of CCNE. The College chose to seek accreditation from CCNE because it is the premier accrediting body and represents a level of quality in baccalaureate and higher degree education that is consistent with our mission, goals and expected outcomes. Prior to the College's decision to seek CCNE accreditation, the College was accredited by another nursing accrediting body. In my review of the CCNE accreditation process, I found that CCNE provided comprehensive workshops for programs to assist in the preparation of the self-study document and the onsite evaluation which had not been available through our previous accrediting body. We have hosted three onsite evaluations during my tenure with the most recent in April 2013. The faculty team attended two of the workshops and found them to be invaluable to the preparation of our self-study document and to the successful outcome of the continuation of our accreditation for the full ten years. Our faculty, staff and students noted the onsite evaluation to be professional, rigorous yet fair and honest, and collegial in nature. The team was well-qualified and had an understanding of the type of institution the College is. They followed CCNE standards and procedures so there were no surprises during the onsite evaluation. It was also clear the team valued our desire to create a more innovative approach to the curriculum for our second degree students. The process afforded us the opportunity to celebrate our strengths and to develop strategies to address opportunities for further growth.

The CCNE staff are well-qualified and were very responsive to our faculty team during the preparation of the self-study document. Our team had questions regarding presentation of data in Standard IV which were readily addressed by CCNE staff. Through all phases of the process, the staff exemplified the CCNE values of integrity, accountability, inclusivity, and support for ongoing continuous improvement and program innovation and growth. CCNE also values the education of its team leaders and members. Comprehensive workshops are provided to ensure teams are well-informed about the standards and the process of accreditation. In addition, CCNE is currently reviewing and revising its own standards to assure it continues to be a relevant, rigorous and professional process.

In summary I fully support the Commission on Collegiate Nursing Education's petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in

Sincerely,



Nancy Spector, PhD, RN, FAAN
Director, Regulatory Innovations
National Council of State Boards of Nursing

UNIVERSITY OF SOUTH ALABAMA

7 March 2017

Re: Written comments-Commission on Collegiate Nursing Education

To whom it may concern:

Thank you for the opportunity to offer third party comments in support of the recognition renewal of the Commission on Collegiate Nursing Education by the US Department of Education. I am the dean of the College of Nursing at the University of South Alabama (USA) in Mobile, Alabama. The nursing programs at the USA College of Nursing have a long standing history of holding accreditation by CCNE. Our baccalaureate and master's programs were initially accredited by CCNE in 2001. Our Doctor of Nursing Practice program received initial accreditation in 2011 and our Post-Graduate APRN Certificate programs were accredited in 2016.

The reason my faculty and I continue to seek accreditation for our programs by CCNE is because of the acknowledgement within the profession that CCNE accreditation is a true reflection of the quality of a program. CCNE's values ensure that the accreditation standards and processes are thorough, transparent, fair, and congruent with professional nursing standards. The accreditation procedures which includes annual reporting, substantive change reporting, and mid-accreditation evaluation reporting etc. promotes oversight of our nursing programs and facilitates continuous quality improvement.

We consider CCNE to be the premier accrediting body for baccalaureate and higher degree nursing programs. We are especially pleased that CCNE is accrediting post-graduate APRN certificate programs as this task is very important to ensuring quality in these programs.

Thank you again for the opportunity to offer my strong support for the continued recognition of CCNE by the US Department of Education.

Sincerely,

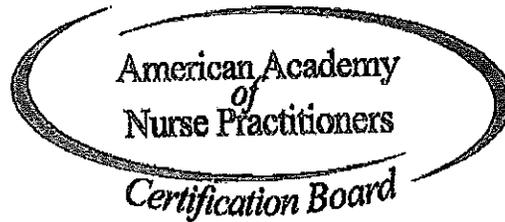

Debra C. Davis, PhD, RN
Dean and Professor

COLLEGE OF NURSING,
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nursing. CCNE assures that our students receive the highest quality of nursing education which prepares them to provide safe, quality care to our patients.

Sincerely,

Nancy O. DeBasio, PhD, RN, FAAN
President, Research College of Nursing



March 8, 2017

Thank you for the opportunity to comment on the Commission on Collegiate Nursing Education's (CCNE) application for recognition renewal by the U.S. Department of Education and expansion of scope request to include the accreditation of certificate programs in nursing. As the Chief Executive Officer of the American Academy of Nurse Practitioners Certification Board (AANPCB), I am writing to express my support of CCNE's application.

The purpose of the AANPCB is to provide a valid and reliable program for entry-level nurse practitioners that recognizes their education, knowledge, and professional expertise. AANPCB provides a psychometrically sound and legally defensible process for validation of an advanced practice registered nurse's qualifications and knowledge for practice as a primary care nurse practitioner. This certification process assures the public that the individual certified has met and maintains the entry level requirements for licensure and practice as a primary care provider.

AANPCB and CCNE have worked collaboratively in the nursing credentialing community since CCNE was established and began its accreditation activities in 1998. For example, AANPCB and CCNE participate, with numerous other national nursing organizations, on the LACE (Licensing-Accreditation-Certification-Education) Network, which meets monthly to discuss matters related to advanced practice nursing. CCNE's Executive Director, Dr. Jennifer Butlin, and I also have regular exchanges about the educational preparation of nurses and the need to protect the public through the accreditation and certification services that our two organizations offer.

AANPCB values CCNE's good accreditation practices and sound decision-making process, and AANPCB has determined that CCNE accreditation is a valid indicator of quality in a nursing program. Importantly, AANPCB considers the accreditation status of graduate degree and certificate programs when determining whether the graduate of a nurse practitioner program is eligible to sit for AANPCB's certification examinations. AANPCB relies on CCNE as a nationally recognized accrediting agency to assess the quality and effectiveness of nursing programs nationally. Students who graduate from a non-accredited nursing program are at risk of being denied eligibility to sit for certification examinations, and CCNE works diligently with new programs on setting their accreditation timelines so that students are protected by having the ability to graduate from an accredited program.

The staff at AANPCB rely on information provided by CCNE on its website regarding the accreditation status of programs and have found such information to be accurate and current. Additionally, we have found the CCNE staff to be responsive and knowledgeable about the accreditation process and the complexities of credentialing in the nursing profession.

Finally, I consider it noteworthy that CCNE a) invites AANPCB to submit comments about programs that are scheduled for accreditation evaluation, b) considers certification pass rate data in making accreditation decisions, and c) sends us "Board Action Notifications" after final accreditation decisions are made. CCNE has a history of consulting with AANPCB and other stakeholders about the metrics it sets in its accreditation standards related to student achievement. Such exchanges serve as a model for how organizations with different purposes -- but a common goal to produce high quality nurses and protect consumers -- can collaborate and share information.

I appreciate this opportunity to comment in support of CCNE's application.

Sincerely,


Richard F. Meadows, MS, RN, NP-C, FAANP
Chief Executive Officer
American Academy of Nurse Practitioners Certification Board



NCSBN

National Council of State Boards of Nursing

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March 9, 2017

Dear U.S. Department of Education:

I am in receipt of the Federal Register, issued February 13, 2017, and send this letter to express my support of the Commission on Collegiate Nursing Education (CCNE) application for renewal of recognition by the U.S. Department of Education (USDE) and expansion of scope request to include the accreditation of certificate programs in nursing.

As the Director Regulatory Innovations at the National Council of State Boards of Nursing (NCSBN), I provide our boards of nursing (BONs) with information and expertise in nursing education, for their roles in nursing program approval to promote public protection. Additionally, I am a NCSBN's liaison to nurse educators, nursing organizations and accreditors. NCSBN is an independent, not-for profit organization whose mission is to promote evidence-based regulatory excellence for patient safety and public protection.

CCNE and NCSBN have a strong history of collaboration. As a USDE-recognized accrediting agency, CCNE conducts joint site visits with BONs when reviewing nursing programs for accreditation/approval. CCNE teams and BONs' education consultants have a common interest in assessing program quality. They work together during the site visits to interview students, employers, faculty, administrators, and others, which helps reduce redundancy in the program assessment and evaluation process. In fact, a number of BONs accept reports that programs prepare for CCNE accreditation in lieu of requiring a separate report. Additionally, some BONs send education consultants to observe the CCNE site visit rather than requiring a separate site visit. Such activities have increased over the years as the BONs streamline work, avoid duplication, and help contain costs for the educational institutions/programs and the BONs alike.

NCSBN regularly engages with CCNE and other organizations through the *Licensing-Accreditation-Certification-Education Network*, and it is not unusual for NCSBN to invite representatives from CCNE to serve as accreditation content experts when an NCSBN committee or task force is charged to look at matters related to education program quality. In fact, just last week, leaders from the CCNE Board, Standards Committee, and staff joined the NCSBN *Nursing Education Outcomes and Metrics Committee* (a committee that I staff) for a rich discussion about outcomes and associated metrics related to the assessment of nursing education programs, including, in particular, program completion rates, NCLEX-RN (licensure) pass rates, and employment rates. I believe that the nursing profession is stronger when organizations like ours collaborate and keep open lines of communication.

NCSBN and CCNE have worked collaboratively in other settings, as well, e.g., by serving together on task forces and panels at national meetings. We share information related to licensure pass rates and invite comments from one another when position statements, standards, and procedures are drafted or revised. When CCNE was called upon by its community of interest to accredit doctoral programs and certificate programs in nursing, CCNE responded by developing a rigorous and comprehensive accreditation process.

I appreciate the work CCNE does to assure high quality not only in pre-licensure nursing programs, but also in advanced practice nursing. Thank you for receiving my comments in support of CCNE.

GNSA



March 9, 2017

I am writing on behalf of the Graduate Nursing Student Academy (GNSA) to express strong support for the application submitted by the Commission on Collegiate Nursing Education (CCNE) for renewal of its recognition by the U.S. Department of Education, as well as its request for an expansion of scope to include the accreditation of certificate programs in nursing.

Graduate nursing students are future leaders in transforming and improving health care. GNSA was created to provide high value programs, services, and resources to nursing students enrolled in master's and doctoral programs. As the collective voice for graduate nursing students, the GNSA fosters collaboration, innovation, and excellence in academic nursing and health care. Currently, there are 11,000 members in the GNSA. CCNE's continued recognition by the U.S. Department of Education, and the approval of CCNE's expansion of scope request, is important to tens of thousands of nursing students nationally.

With regard to CCNE practices, the GNSA appreciates the ways in which CCNE engages its community of interest in the accreditation of nursing programs nationally. For example, CCNE invites the GNSA, as well as our colleagues at the National Student Nurses Association (NSNA), to participate in a dialogue with the CCNE Board of Commissioners at its annual meeting. The most recent of these meetings occurred in September 2016. These discussions have proven to be a valuable opportunity for the GNSA to provide input into the CCNE accreditation process and to receive and provide updates on topics that are of interest to nursing students.

It is clear from CCNE's outreach to student groups and others in its community of interest that CCNE values and considers student involvement and input into the accreditation process. For instance, GNSA receives periodic announcements from CCNE inviting students to submit third-party comments about nursing programs that are under accreditation review. CCNE also shares Calls for Comment with GNSA when the accreditation standards and procedures are under revision.

The fact that CCNE's written policies and procedures enable a new nursing program to receive accreditation prior to the graduation of its first class/cohort is especially important to nursing students as it helps protect students who otherwise may be at risk. Risks to students who graduate from a non-accredited nursing program include limited employability, ineligibility to sit for licensing and certification examinations, and failure to meet admissions requirements when pursuing higher education.

Thank you for this opportunity to comment in support of CCNE's application for recognition renewal and request for an expansion of scope by the U.S. Department of Education.

Sincerely,


Tonya Smith, MSN, RN
Chair, Graduate Nursing Student Academy

From: Babington, Lynn M.
To: Third Party Comments
Subject: Commission on Collegiate Nursing Education
Date: Friday, March 10, 2017 12:56:23 PM
Attachments: 95748728-3895-459A-9D50-16DB94615DC2(3).png
8F048BCE-426F-4ABD-9A58-6005D460D53A(3).png
8F4245E0-2CDF-40AD-95F2-63B1168A8FE0(3).png
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March 10, 2017

This email is submitted in support of the Commission on Collegiate Nursing Education's (CCNE) petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in nursing. As President of Fairfield University, a private, Jesuit university where I have held various positions- as dean for the school of nursing, vice president for academic affairs, provost and now interim president. I can speak to the importance of CCNE. The school of nursing at Fairfield University chose to seek accreditation from CCNE because it is the premier accrediting body and represents a level of quality in baccalaureate and higher degree education that is consistent with the University's mission, goals and expected outcomes. CCNE protects the integrity of nursing education and hold programs accountable for excellence, thereby protecting our students. As a Jesuit, Catholic institution, it is especially important to us that the CCNE standards and processes respect the individual mission of each institution of higher education where nursing education is provided. CCNE is a well-respected accrediting agency deserving of continued USDE recognition.

In my review of the CCNE accreditation process, I found that CCNE provided comprehensive workshops for programs to assist in the preparation of the self-study document and the onsite evaluation and the entire process was supported centrally by CCNE staff. This week, we hosted an onsite evaluation for our baccalaureate, master's and doctoral programs in nursing at Fairfield University. The dean and faculty team attended two of the workshops and found them to be invaluable to the preparation of our self-study document and to hopefully the successful outcome of the continuation of our accreditation for the full ten years. Our faculty, staff and students noted the onsite evaluation to be professional, rigorous yet fair and honest, and collegial in nature. The team was well qualified and had an understanding and appreciation of the mission and values of Fairfield University. The process afforded us the opportunity to celebrate our strengths and to develop strategies to address opportunities for further growth.

The CCNE staff is well-qualified and were very responsive to our faculty team during the preparation of the self-study document. Through all phases of the process, the staff exemplified the CCNE values of integrity, accountability, inclusivity, and support for ongoing continuous improvement and program innovation and growth. CCNE also values the education of its team leaders and members. Comprehensive workshops are provided to ensure teams are well informed about the standards and the process of accreditation. In addition, CCNE is currently reviewing and revising its own standards to assure it continues to be a relevant, rigorous and professional process.

In summary I fully support the Commission on Collegiate Nursing Education's petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in nursing. CCNE assures that our students receive the highest quality of nursing education, which prepares them to provide safe, quality care to our patients.

Sincerely,

Lynn Babington, PhD, RN
Interim President, Fairfield University

Lynn Babington, PhD, RN
Interim President

[cid:F18C4620-273E-4CDS-A2AC-66F19415DDBE]

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Council on Education for Public Health

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Phone: (202) 789-1050 • Fax: (202) 789-1895 • www.ceph.org

May 8, 2017

By email to herman.bounds@ed.gov

Herman Bounds, Ed.S
Director
Accreditation Group
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C.

Dear Mr. Bounds:

I am the Executive Director of The Council on Education for Public Health (CEPH). As you know, CEPH is an independent agency, recognized by the US Department of Education (ED) to accredit schools and programs in public health at the baccalaureate, master's and doctoral levels, including those offered via distance education. I also have served as the Chair of the Association of Specialized and Professional Accreditors (ASPA) for the last three years and have been active as an accreditation professional for the past 18 years. In these roles I have been active in accreditation policy as it relates to specialized and professional accreditors and have advocated for good practice in accreditation. I have had the privilege of working with you and other ED staff on many important issues over the last several years in an effort to ensure that professional programs are producing students who are competent practitioners to safely serve the public.

Recently I was informed that the Accreditation Group of the Department of Education is taking the position that accreditation actions may be effective only on the date of the actual vote by a decision-making body. I write because I believe the latest Accreditation Group position runs counter not only to the Department's previously stated position, but also to long-established public policy interests, good practice in specialized and professional accreditation and poses a serious risk of harm to students.

As you know, many accrediting agencies require applicant institutions and programs to have students enrolled and actively engaged in their programs before they will conduct an on-site evaluation. In other cases, accrediting agencies require that at least one class of students has completed the program in its entirety before an on-site evaluation can be done. This is so that site visit teams can evaluate programs in operation and gather valuable information about the quality of the student experience from interviews and observations, validating the information presented in the self-study document. The accrediting body makes a decision about accreditation based on student experience, performance and outcomes data (including the graduation and job placement rates) of the students who were enrolled at the time of the self-study and on-site visit. Excluding those students, whose successes helped earn their program accreditation, from the benefit of graduating from an accredited program is not reasonable or fair, and it harms students. In addition, in many disciplines, students must graduate from an accredited program in order to sit for licensure or certification exams required for employment in the field. The practice of establishing an earlier effective date of accreditation permits a thorough evaluation of program effectiveness, while reasonably assuring that students will be eligible for licensure, certification and employment in the discipline upon graduation.

filing. In such circumstances, the Board would clearly establish the effective date of initial accreditation in an Action Letter made available to the public.

HLC respects CCNE's longstanding track record of compliance with the Department of Education's recognition criteria. HLC-accredited institutions benefit from the rigor of CCNE's standards and accreditation process as a specialized accreditor assuring the quality of its programs. We hope this information is helpful to your consideration of CCNE's petition for renewal of recognition by the Secretary of Education.

Sincerely,



Barbara Gellman-Danley, Ph.D.
President

Cc: Dr. Jennifer Butlin, Executive Director, Commission on Collegiate Nursing Education



DEPARTMENT OF VETERANS AFFAIRS
VA Boston Healthcare System
1400 VFW Parkway
West Roxbury, MA 02132

May 5, 2017

Jennifer Butlin, EdD
Commission on Collegiate Nursing Education
1 Dupont Circle NW, Suite 530
Washington, DC 20036

Dear Dr. Butlin:

I am writing to support the petition for continued recognition that the Commission on Collegiate Nursing Education (CCNE) has submitted to the U.S. Department of Education. As you know, the U.S. Department of Veterans Affairs, Veterans Health Administration is the largest integrated healthcare system in the country, and the VA is entrusted with caring for those who have served in our nation's military. As the Assistant Director of Nursing/Patient Care Services at the VA Boston Healthcare System (VA Boston), I am responsible for nursing and patient care at the system's three main campuses (592 inpatient beds) and five community-based outpatient clinics within a 20-mile radius of greater Boston. In total, the VA Boston employs 885 nurses and has the largest healthcare educational program in the entire VA.

VA Boston, like all Veterans Health Administration facilities, depends on a constant supply of newly educated nurses to support our mission. Our nurses come from all types of colleges and universities and all types of educational programs. This includes traditional four-year programs, accelerated format programs, and those designed for second degree students. Accelerated format programs and those designed for second degree students are often short in length and are designed to meet nursing workforce demands. These shorter programs provide a sound education and have become a much needed pipeline to alleviate the strains on our nation's healthcare. The federal government has determined that federal agencies, in an effort to protect the public health, must only employ nurses who have graduated from accredited programs. CCNE's policy of establishing the effective date of the accreditation of nursing education programs as the first day of the most recent on-site evaluation is an appropriate and reasonable policy, and one that was put into place with great care and only after consulting with other USDE-recognized accreditors and with the Department staff. It allows new programs, especially those that are shorter in length, to gain accreditation before their first class of students graduate. This accreditation allows these nurses to be employed at the VA Boston and throughout the federal government. If accreditors' policies were forced to be changed by the Department when there has been no change to statute or regulation in this regard, students enrolled in shorter programs (such as accelerated programs for nurses with degrees in other fields or programs preparing nurses for advanced practice) would be at risk in that they would not be eligible to take certification examinations or eligible for federal hire, and the pool of potential candidates would be reduced and the care to patients would be compromised.

As stated above, graduation from an accredited Advanced Practice Registered Nursing (APRN) educational program is required for program graduates to sit for APRN certification. The Veterans Health Administration employs more than 5,300 nurses who are certified APRNs. For instance, at VA Boston, Psychiatric/Mental Health Nurse Practitioners provide care to our veterans with mental health needs, and the recent wars in Iraq and Afghanistan have resulted in increased mental health

May 5, 2017

Page 2.

needs in the veteran population. If new APRN programs -- often shorter in length -- are precluded from receiving accreditation prior to graduating their first class, the ready availability of highly-skilled advanced practice providers will be impacted.

In summary, I support CCNE's practice of making the effective date of accreditation the first day of a program's most recent on-site evaluation. This policy encapsulates an appropriate review period for accreditation, ensures that an on-site evaluation occurs when there is sufficient program history upon which to base a decision, and protects the public interest and well-being. Further, I am unaware of any harm that has occurred as a result of such policies and practices.

Sincerely,

A black rectangular redaction box covering the signature of Cecilia McVey.

Cecilia McVey 
Associate Director for Nursing/PCS



Jefferson.

Hospital Administration

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mary.a.mcginley@jefferson.edu

May 4, 2017

Jennifer Butlin, EdD
Commission on Collegiate Nursing Education
1 Dupont Circle NW, Suite 530
Washington, DC 20036

Dear Dr. Butlin,

I am the Senior Vice President of Patient Care Services and Chief Nursing Officer at Thomas Jefferson University Hospitals (TJUH) in Pennsylvania and have served in this role for 32 years, and have practiced in nursing for 43 years. TJUH provides care to individuals throughout the metropolitan Philadelphia area. As Chief Nursing Officer, I employ 2,000 nurses who provide care to over 142,000 individuals on an annual basis. I am writing to support the Commission on Collegiate Nursing Education (CCNE) petition for continued recognition by the U.S. Department of Education.

TJUH employs nurses who are educated in colleges and universities that reflect the diversity of higher education in the United States. Some of these nursing programs educate large numbers of students, while others have small cohort sizes. Some are traditional educational programs, while others are designed to educate nurses in a compressed time period. These time-compressed programs are a vital means for ensuring that our healthcare systems have a steady supply of newly educated and certified nurses to fill the staffing needs in our hospitals, clinics, home health agencies, and other settings. While wanting to ensure that there are sufficient nurses to fill the available jobs, nursing employers such as myself also want to ensure that our applicants come from well-respected educational programs. Accreditation by a nationally-recognized accreditor such as CCNE fills this need by conducting quality assessments based on nationally accepted standards and practices.

I fully support CCNE's practice of establishing the effective date of accreditation as the first day of a program's on-site evaluation. In doing so, students enrolled in shorter programs are able to graduate from accredited programs and are eligible for certification. TJUH, like many comprehensive healthcare systems, requires that nurses must have graduated from an accredited nursing program to be eligible for employment and promotion. If programs that are



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May 10, 2017

Dr. Jennifer Butlin
Commission on Collegiate Nursing Education
1 Dupont Circle, NW
Suite 530
Washington, D.C. 20036

Dear Dr. Butlin,

I am sending this letter to you for inclusion with the Commission on Collegiate Nursing Education's (CCNE) official response to the U.S. Department of Education draft staff report. I urge the Department staff and members of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) to accept CCNE policy and practices with respect to the effective date of accreditation being the first day of the program's most recent site visit, as similar practices are held among other institutional and specialized accrediting agencies in order to protect students and the public.

I write this letter as the Dean of the College of Health Professions and Lienhard School of Nursing at Pace University in Pleasantville, New York. I have also held the position of Interim Provost and Executive Vice President for Academic Affairs at Pace University, and have spent 52 years as a nurse and 42 years as an educator and/or administrator in higher education.

As background, Pace University currently enrolls approximately 12,000 students. Our College of Health Professions and Lienhard School of Nursing currently enrolls approximately 920 nursing students at the baccalaureate and graduate levels. Our baccalaureate and graduate level nursing programs are accredited by CCNE. Because of CCNE's policy, many graduates of Pace University have been able to further their education in graduate studies; have qualified to achieve advanced practice nursing certification, which is a requirement to practice in many states; and have been hired as nurses not only in the state of New York but across the nation. Our reputation is stellar and is known for our excellent program outcomes.

CCNE's policy – to make the Board's accreditation decision effective as of the recent site visit – is common practice and common sense. This practice protects hundreds of nursing students *every year*. Many other accrediting agencies engage in similar practices and have done so for many decades, without being cited or challenged by the Department of Education.

shorter in length were not eligible for accreditation, their graduates would not be eligible for employment at TJUH, and they would not be eligible for certification and therefore could not practice to their full extent of their education. At a national level, such restrictions would result in greater stresses on the nursing workforce and a reduction in appropriate patient care.

From my knowledge of the health professions, establishing the effective date of accreditation prior to an accrediting board's decision making meeting is commonly accepted practice. If the U.S. Department of Education were to oppose this long-standing public policy, and one that the Department has accepted to date, I fear the unintended consequences. I am confident that accrediting bodies can make sound judgments on educational quality while establishing the effective date of accreditation as the on-site evaluation since that is when a team of trained and qualified peer reviewers has assessed the program and made determinations about compliance with the standards.

Sincerely,



Mary Ann McGinley, Ph.D., R.N.
Senior Vice President for Patient Services
and Chief Nursing Officer



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St. Augustine, Florida

May 10, 2017

Dr. Jennifer Butlin
Executive Director
Commission on Collegiate Nursing Education
One Dupont Circle, NW, Suite 530
Washington, DC 20036

Dear Dr. Butlin:

As the Chief Executive Officer of the Accreditation Commission for Education in Nursing, Inc. (ACEN), which is recognized by the U.S. Department of Education to accredit all levels of nursing education programs, I am submitting this letter to express support for the Commission on Collegiate Nursing Education (CCNE) and, specifically, its long-standing policy on the effective date related to the initial accreditation of nursing education programs.

ACEN and CCNE share a common mission to accredit quality nursing programs in order to protect nursing students, recipients of care and services provided by nurses, and other stakeholders. As I understand CCNE's policy, the accreditation decision of the Board is effective as of the first day of a program's on-site evaluation. Working for more than 35 years in higher education and for more than 9 years at two different Department-recognized accrediting agencies, I believe that CCNE's policy is reasonable. I believe it was designed to protect students who would otherwise be at risk, and that such practices are common among both institutional and specialized accrediting agencies that are recognized by the Department. I am also unaware of any statute or regulation that precludes recognized accrediting agencies from making such determinations about the effective date related to the initial accreditation of nursing education programs.

If CCNE and other accrediting agencies are forced to change their policies based on the **current Department staff's interpretation of what is not actually written in statute or regulation**, the consequences to thousands of nursing students and tens of thousands of students in other disciplines would be severe.

ACEN

Commission on Collegiate Nursing Education

PAGE 2

Specific ways that students would be at risk if they were to graduate from a non-accredited nursing program are:

1. they could be denied eligibility to take the national nursing certification examinations, and passing such an examination is a requirement for an advanced practice nurse to practice in many states;
2. their employment applications could be denied because many employers, including the U.S. Department of Veterans Affairs (which is the largest employer of nurses nationally) and U.S. Armed Forces, require graduation from an ACEN- or CCNE-accredited nursing program for employment as a nurse; and
3. they could be denied admission to continue their education at higher level of nursing education (e.g., associate, baccalaureate, master's, or doctorate degree in nursing) since many colleges and universities nationally require graduation from an accredited nursing program for admission into graduate school.

ACEN fully supports and joins in CCNE's request to the Department of Education staff to reconsider its recently revised position on this important matter of public policy. We believe the Department and the National Advisory Committee on Institutional Quality and Integrity must carefully consider the potential consequences to students should accrediting agencies be forced to change their policies in the way that is being suggested by the Department staff.

Sincerely,



Marsal P. Stoll, EdD, MSN
Chief Executive Officer



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Office of the Provost and Vice President

May 10, 2017

Jennifer Butlin, EdD
Commission on Collegiate Nursing Education
One Dupont Circle, NW
Suite 530
Washington, DC 20036

Dear Dr. Butlin,

Please accept this letter of support for the Commission on Collegiate Nursing Education's (CCNE) petition for renewal of recognition by the U.S. Department of Education, and its expansion of scope request for recognition for the accreditation of certificate programs in nursing. I am the Provost and Vice President for Academic Affairs at Georgia Southern University (GSU), located in Statesboro, Georgia. I have also served as Interim President of GSU and have served as the chief nursing administrator at two institutions during my 33-year career in higher education.

It is my understanding that the Department staff have raised concerns over CCNE's policy and practices with respect to the effective date of accreditation being the first day of the program's most recent on-site evaluation. As I understand it, assigning a specific date prior to the accrediting Board's decision-making meeting as the effective date of accreditation is not an uncommon practice among institutional and specialized accreditors and is allowable by the federal regulations.

In fact, the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), which accredits GSU, has a similar policy and practice that is specifically designed to protect students graduating from new colleges and universities in the southern region of the United States. As stated in the SACSCOC *Handbook for Institutions Seeking Initial Accreditation* (March 2011 edition), publicly accessible at <http://www.sacscoc.org/pdf/handbooks/Initial%20Accreditation%202011%20edition.pdf>:

To award Initial Accreditation - Awarded for a five-year period, Initial Accreditation is retroactive to January 1 of the year in which accreditation is awarded by the Commission and is granted only for those purposes and programs in place at the time of the Accreditation Committee's visit. (p. 70)

Other regional and specialized accreditors with which I am familiar have similar policies intended to protect students.

Georgia Southern University currently enrolls more than 22,000 students. Our School of Nursing enrolls about 400 nursing students at the baccalaureate and graduate levels. CCNE accredits our baccalaureate and graduate nursing programs, and many of our students have benefited from CCNE's policy, which was put into place with student protection in mind. Because of CCNE's policy, our graduates were deemed eligible for admission to graduate schools across the country. Additionally, because the first class of students was able to graduate from an accredited program, they were eligible to take national nursing certification exams and seek employment from hospitals that require job candidates to hold a degree

Dr. Jennifer Butlin

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May 10, 2017

If the Department were to force CCNE to change its policy, hundreds of nursing students in new applicant programs throughout the United States would be severely and adversely impacted each year. This causes great concern to me both as a higher education administrator and as a health care consumer. For example, graduate programs almost universally require that students are educated in accredited undergraduate programs in nursing. Likewise, doctoral programs expect that students are graduates of accredited master's programs.

Also, as a university administrator, it is my understanding that it is not the role of the Department of Education staff to create new regulations. I would hope that the Department of Education would consult with the higher education community before changing its position on such an important and long-standing public policy issue that has dire consequences to institutions, students, employers, patients, and the public.

Please let me know if I can provide any additional information or be of further assistance.

Sincerely,

A black rectangular redaction box covering the signature of Harriet R. Feldman.

Harriet R. Feldman, PhD, RN, FAAN

Dean and Professor

College of Health Professions and Lienhard School of Nursing

from an accredited nursing program. What possible harm comes out of such a policy is unclear from my perspective as a university official.

If accreditors were forced to change their current policies and practices that protect the first classes of graduating students, thousands of students across the nation would be harmed, and the impact on their families, careers, and society at large would be detrimental.

In closing, I urge the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and the Department of Education to accept CCNE's effective date policy and also to consider the importance of treating accrediting agencies fairly and consistently in the recognition process.

Thank you for considering these comments. Please do not hesitate to contact me if I can be of assistance or answer any questions.

Sincerely,

A solid black rectangular box redacting the signature of Jean E. Bartels.

Jean E. Bartels, PhD, RN
Provost and Vice President for Academic Affairs
Professor of Nursing
Georgia Southern University



HIGHER LEARNING COMMISSION

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May 12, 2017

VIA ELECTRONIC MAIL

Mr. Herman Bounds
Director
Accreditation Group
United States Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Mr. Bounds:

On behalf of the Higher Learning Commission (HLC), I write to provide information that may be relevant for your consideration of the petition for renewal of recognition from the Commission on Collegiate Nursing Education (CCNE). It is my understanding that the U.S. Department of Education (USDE) and the National Advisory Committee on Institutional Quality and Integrity (NACIQI) are scheduled to review CCNE's petition at the June 2017 meeting.

As you know, HLC is one of six regional institutional accreditors in the United States. HLC accredits degree-granting post-secondary educational institutions in 19 states comprising the North Central region. Many of HLC's accredited institutions offer nursing programs that are programmatically accredited by the CCNE. States and employers, including major healthcare systems, require nurses to have graduated from a program accredited by an organization such as CCNE. According to CCNE, in order to protect students' ability to become licensed, the programmatic accreditor has a longstanding practice of establishing the effective date of accreditation as the first day of a program's on-site evaluation. CCNE thought it would be useful if, as an institutional accreditor, HLC would provide information on its policy with respect to establishing the effective date of initial accreditation.

HLC policy INST.B.20.030, Accreditation, includes the following:

The Commission's Board may grant initial accreditation, with the contingency noted in this subsection, to an institution that applies for accreditation and is determined by the Commission to have met the Criteria for Accreditation but has not yet graduated a class of students in at least one of its degree programs, as required by the Eligibility Requirements. Institutions shall have completed the two-year required minimum candidacy period or received a waiver from the Commission's Board of Trustees. Such action shall be contingent on the institution's graduation of its first graduating class in at least one of its degree programs within no more than thirty days of the Board's action. In such cases, the effective date of accreditation will be the date of this graduating class [Emphasis added].

Therefore, if the effective date of initial accreditation differs from the date of the HLC Board's decision to grant initial accreditation, it is because the candidate institution's first graduating class has graduated within the preceding 30 days or will do so in the next 30 days. HLC's policy was developed in consultation with the U.S. Department of Education, and it was formally reviewed by the Department in HLC's 2012 recognition

Mr. Herman Bounds
May 8, 2017
Page 2

The Accreditation Group's position on the effective date of accreditation presents a conundrum to these agencies. If the agencies preserve good accreditation practice and continue to require students to be enrolled or even graduated by the time of the site visit, it is unavoidable that some students, especially those in shorter programs, will graduate from a program that is not yet accredited and therefore will not be eligible for licensure or certification. On the other hand, conducting earlier site visits, without students enrolled, will produce a less meaningful review with less data upon which the accreditor can make an informed decision. Neither of these options works in the interest of students or supports the value of accreditation.

It is unclear to me when the current position on effective dates was first adopted by the Accreditation Group or the Department. We are unaware of any public announcement by the Department or opportunity for the community to weigh in through public comment. We urge further study and engagement with the accreditation community by the Department and hope that, for the important public policy reasons described above, the Accreditation Group will reconsider its position.

I believe that when the Department and the specialized and professional accreditation community have worked together in the past, we have been able to arrive at reasonable compromises that alleviate ED's concerns while also allowing the specialized and professional accreditation community to protect student and public interests in our unique fields of practice. I would welcome the opportunity to meet with you and your colleagues to better understand your position and to help identify a solution that satisfies all of our needs.

Sincerely,



Laura Rasar King, MPH, MCHES
Executive Director
Council on Education for Public Health

Cc: Jennifer Butlin, EdD
Executive Director
Commission on Collegiate Nursing Education

Joseph Vibert
Executive Director
Association of Specialized and Professional Accreditors

Barbara Gellman-Danley

Transcribed Interview

Exhibit 36

Foxx Exhibit 3



HIGHER LEARNING COMMISSION

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November 7, 2018

Diane Auer Jones
Principal Deputy Under Secretary Delegated to Perform the Duties of the Under Secretary
and the Assistant Secretary for Postsecondary Education
United States Department of Education
Office of the Under Secretary
400 Maryland Ave. SW
Washington, DC 20202

Dear Diane,

I write to acknowledge receipt of your correspondence of October 31, 2018 in which you raised concerns regarding a decision by the HLC Board of Trustees on November 16, 2017 to approve the extension of accreditation following a Change of Control transaction for Art Institute of Colorado and Illinois Institute of Art upon the parties' acceptance of certain conditions, including Change of Control Candidacy status. The Higher Learning Commission takes seriously the integrity of its policies as well as their alignment with federal regulations. We will review in detail the concerns you raised to determine if revisions are warranted in accordance with HLC's established policy on Revision of Accreditation Policy (PPAR.a.10.040).

Sincerely,

Barbara Gellman-Danley
President

HLC-DCEH-014374

Barbara Gellman-Danley

Transcribed Interview

Exhibit 37

Foxx Exhibit 4



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

January 31, 2020

VIA EMAIL AND UPS OVERNIGHT

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604

Dr. Gellman-Danley:

The U.S. Department of Education (Department) is in receipt of the letter from the Higher Learning Commission (herein referred to as “HLC” or “the Agency”) dated November 13, 2019, as well as its supplemental letter dated January 13, 2020, all responding to the Department’s letter to HLC dated October 24, 2019. As you are aware, the Department has significant concerns about the process used by the HLC Board to move the Art Institute of Colorado (OPEID: 02078900)¹ and the Illinois Institute of Art (OPEID: 01258400)² (collectively the “Institutions”) to “Change of Control Candidate for Accreditation” status.

In the course of our review, the Department reviewed documents provided by HLC, other documents pertaining to the inquiry and conducted interviews with individuals involved in the transaction. Now, based on our review of the facts and pursuant to 34 C.F.R. § 602.33(c),³ the

¹ The Art Institute of Colorado (OPEID: 02078900), including the campuses located at: 1200 Lincoln Street, Denver CO (Extension: 02078900); and 675 South Broadway Street, Denver, CO (Extension: 02078904).

² The Illinois Institute of Art (OPEID: 01258400), including the campuses located at: 350 North Orleans Street, Suite 136-L, Chicago, IL (Extension: 01258400); 1000 Plaza Drive, Suite 100, Schaumburg, IL (Extension: 01258401); and 28175 Cabot Drive, Novi, MI (Extension: 01258405).

³ If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff notes that one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria, it -
(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern. The draft analysis reflects the results of the review and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or

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HLC-DCEH-014445

Department finds that HLC was not compliant with its own policy under INST.E.50.010;⁴ 34 C.F.R. § 602.18(c) (pertaining to consistency in decision making);⁵ and 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f) (due process);⁶ in moving the Institutions to Change of Control Candidate for accreditation status.

I. Noncompliance with the HLC Policy INST.E.50.010 and Department Regulations Pertaining to Consistency in Decision-Making under 34 C.F.R. § 602.18(c)

On May 1, 2017, the Institutions submitted an Application for Change of Control, Structure, or Organization to HLC under INST.B.20.040 and INST.F.20.070. After conducting an extensive review of the application, including several site visits, HLC sent a letter to the Presidents of the Institutions and the CEO of DCEH on November 16, 2017 (“the November 16, 2017 letter”). The November 16, 2017 letter states that the HLC Board “voted to approve the application for Change of Control, Structure, or Organization ... however, this approval is subject to change of control candidacy status.” The letter does not explicitly provide notice that, rather than approving or denying the application under INST.B.20.040, the Board decided to invoke its authority under INST.E.50.010 to move the institutions to “candidacy” status. Nor does the letter explicitly state that the Institutions must give up their accredited status as a condition of the HLC approving the sale of the Institutions.

terminate recognition, or require the submission of a compliance report and to continue recognition pending a final decision on compliance;

(2) Sends the draft analysis including any identified areas of non-compliance, and a proposed recognition recommendation, and all supporting documentation to the agency; and

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation, specifying a deadline that provides at least 30 days for the agency's response.

34 C.F.R. § 602.33(c).

⁴See HLC's policy INST.E.50.010 in effect at the time of the transaction on (Jan. 18, 2019) (Exhibit 1).

⁵The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency -

(c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards;

34 C.F.R. § 602.18(c).

⁶ The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.

(d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.

(e) Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(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.

34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f).

INST.E.50.010 did provide the Board with the authority to move an institution from an accredited status to candidacy status “subsequent to the close of a Change of Control, Structure or Organization,” if certain conditions are met and the Board finds that “all of the Criteria for Accreditation and Federal Compliance Requirements” are no longer met without issue. However, INST.E.50.010 clearly states that “moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.”

The November 16, 2017 letter does not provide any notice to DCEH of its right to appeal the requirement that accreditation be forfeited. As set forth in greater detail below, this failure to provide notice of the right to appeal provided evidence to support DCEH’s assumption that accreditation was not being withdrawn as a condition of the sale being approved at the time the transaction closed.

HLC now contends that the Board did not need to advise DCEH of its right to appeal because it did not “act” in approving the Institution’s application. HLC also contends that DCEH voluntarily consummated the transaction and thus absolved HLC of its duty to allow for an appeal as required by INST.E.50.010. The Department disagrees. First, Department regulations require accreditors to approve or disapprove substantive changes by an accredited institution, including changes in ownership. 34 C.F.R. §§ 602.22(a)(1) and 602.22(a)(2)(ii).⁷ The Institutions were, at the time of the transaction, fully accredited by HLC. The Agency’s approval of the sale, subject to certain conditions, clearly was an “action” within the meaning of the regulations. Second, conditioning the sale transaction upon the withdrawal of accreditation is clearly an “adverse action” as defined within the context of INST.E.50.010. As such, it required the timely provision of a notice of a right to appeal.⁸

The Department finds that HLC did not follow its published policy under INST.E.50.010 when it acted to place the Institutions on this status without providing for an opportunity to appeal. This, in turn, means that HLC’s actions were not in compliance with 34 C.F.R. § 602.18(c) as it failed to base its decision on HLC’s published standards.

⁷ If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if --

- (1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution;
- (2) The agency's definition of substantive change includes at least the following types of change:
 - (ii) Any change in the legal status, form of control, or ownership of the institution.

34 C.F.R. §§ 602.22(a)(1) and 602.22(a)(2)(ii).

⁸ HLC’s contention that it merely used Change of Control Candidate for Accreditation status as a passive condition of approval also conflicts with its own internal policy set forth in INST.B.20.040 that the purpose of approval by HLC is “to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction.”

II. Failure to Provide Due Process under 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f)

The Institutions have asserted in documents provided to the Department by HLC that the Agency misled them regarding the true nature of Change of Control Candidacy status. To assess the legitimacy of these assertions, the Department conducted an extensive review of the communications between HLC and the Institutions regarding this status. The Department finds that HLC’s communication with the Institutions, at best, obfuscated the true nature of change of control candidacy status—namely that such status required an institution to give up or otherwise lose accreditation. The excerpts and analysis detailed below regarding the communications between HLC and the Institutions illustrate this obfuscation.

On October 3, 2017, HLC sent the presidents of the Institutions and the Executive Chairman of DCEH a letter with the Staff Summary Report and Fact-finding Visit Report for the Change of Control Structure, or Organization. In the letter, HLC described the following options the Board may take in response to the Institutions’ applications for Change of Control Candidacy status: “(1) to approve the extension of accreditation following the consummation of the transaction; (2) to approve the extension of accreditation subject to certain conditions, as determined necessary by the Board; (3) to deny the extension of accreditation following the transaction; or (4) to approve the extension of accreditation following the transaction subject to a period of candidacy.”

The fourth item in the list above is the option that HLC ultimately decided to use when processing the Institutions’ applications; however, the letter describes that option as an “[approval of] the extension of accreditation,” which suggests that using that option would keep accreditation intact, rather than withdrawing accreditation, while HLC evaluated the actual performance of the new owners following the closing of the proposed transaction.

The Board met November 2-3, 2017, and then sent the November 16, 2017 letter to the Institutions. HLC contends that this letter describes the terms and conditions for the Institutions’ voluntary forfeiture of accreditation. Relevant excerpts from the letter are listed below to provide context:

During its meeting on November 2-3,2017, the Board voted to approve the application (emphasis added) for Change of Control, Structure, or Organization wherein the Dream Center Foundation, through Dream Center Education Holdings LLC and related intermediaries, acquires certain assets currently held by Education Management Corporation , including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below [. . .]

The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance (emphasis added) with the Eligibility Requirements

to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance (emphasis added) with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future [...]

The institutions undergo a period of candidacy (emphasis added) known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months (emphasis added) but shall not exceed the maximum period of four years.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway (emphasis added) and identify the date of the next comprehensive evaluation, which shall be no more than five years from the date of this action.

In the course of the review, Assistant Secretary for Postsecondary Education, Robert King, and Department staff conducted an interview with Mr. Ron Holt, Esq., outside counsel for DCEH on December 9, 2019, and with Dr. Karen Peterson Solinski, former Executive Vice President at HLC who oversaw the Education Management Corporation (EDMC) and DCEH transaction for HLC during her employment on December 23, 2019. Mr. Holt advised the Department that while representing DCEH in the larger transaction involving over forty schools and five separate accreditors, his experience with HLC was remarkably unique. Holt told the Department that until HLC published the public disclosure on January 20, 2018, advising students that accreditation had been lost, he did not believe that the approval of the sale transaction required giving up accreditation of the two institutions involved. Further, Holt stated that if DCEH understood that the schools would lose accreditation as a condition of the sale, DCEH would not have completed the transaction.^{9, 10}

Ms. Solinski told the Assistant Secretary that she believed both institutions would remain accredited during the six-month period beginning on the date of the transaction. She believed that HLC would begin monitoring the Institutions closely after the transaction to ascertain whether or not they were implementing the various requirements HLC had set forth as expectations in the letter approving the transaction. She stated in a written email to Department staff:¹¹

“...that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions ... The purpose of the Change of Control Candidacy

⁹ See transcript of Department call with Ron Holt, Esq., outside counsel for DCEH (Dec. 9, 2019) (Exhibit 2).

¹⁰ See emails between Department staff and Ron Holt (December 2019) (Exhibits 3.1-3.4).

¹¹ See e-mail from Dr. Karen Peterson Solinski, former Executive Vice President at HLC (Dec. 26, 2019) (Exhibit 4).

was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC criteria for Accreditation and other policies of the Commission going forward..."

Several additional factors compounded HLC's failure to provide clear, accurate information regarding the putative loss of accreditation:

- i. Nowhere in the November 16, 2017 letter does HLC explicitly state accreditation must be forfeited or lost if the transaction is completed.
- ii. Within the site visit report dated October 3, 2017, and the letter from the HLC Board dated November 16, 2017, extensive commentary was included regarding the capabilities of DCEH to meet the financial needs of the Institutions. The report referenced specific revenue projections, a pro forma financial statement, and an array of strategies to increase enrollment by improving the reputation of the Institutions, engaging in new advertising, expanding access to scholarships and state grants, achieving not for profit status, expanding development efforts to raise funds for scholarship programs, and "implementing cost savings in payroll, bad debts, property and excise taxes, facilities related expenses and outside services."

Nowhere in the report or in the letter from the Board did HLC mention that, if the Institutions lost access to Title IV funding as a result of the transaction, it could create a critical financial obstacle that would need to be overcome for the Institutions to remain financially viable. In the absence of such an observation or other clear statements to the contrary, it was reasonable that DCEH would not be aware that HLC was removing accreditation.

- iii. Shortly after the publication of the formal Disclosure describing the loss of accreditation, Mr. Ron Holt, attorney for DCEH, sent a letter to HLC in which he stated: "... we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the institutions for one year ... as the Commission has done for dozens of other institutions going through a Change of Control ..."

Holt wrote a letter to HLC dated February 23, 2018, in which he sought confirmation from HLC that the following statements were accurate:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in 'pre-accreditation status,' a term of art that is defined in federal regulations...

2. Both institutions remain accredited, in the status of change of Control Candidate for Accreditation ... and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.

In response to the Holt letter, Dr. Karen Peterson Solinski, former Executive Vice President at HLC, sent an email dated February 24, 2018, acknowledging receipt and advised DCEH that HLC was “reviewing it and will be in touch early next week.” For reasons unknown to the Department, Dr. Solinski’s employment with HLC ended shortly thereafter. In the November 13, 2019 HLC response to the Department, Dr. Gellman-Danley wrote that another HLC employee, Dr. Anthea Sweeney, assumed the responsibilities of managing the DCEH proceedings (Dr. Sweeney is reported to have directed an outside attorney to respond to the Holt letter). HLC’s letter states that “Kohart (outside counsel for HLC) made attempts to contact the parties’ counsel, but they did not respond to the outreach. As such, it appeared to HLC that the institutes did not wish to communicate further about the matter.”

These statements are not consistent with the facts or sound practice. If, in fact, HLC’s attorney was unable to reach anyone representing DCEH, standard practice would call for a specific, written response to the Holt letter conveying that his understandings were incorrect, if HLC’s position was that accreditation had been forfeited. No such letter was written. Further, the notion that DCEH had lost interest in further communicating is contradicted by their actions demanding an appeal.

34 C.F.R. § 602.25(a) requires accrediting agencies to provide institutions with “adequate written specification[s] of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.” Regulatory ‘adequacy’ is judged based on all of the facts and circumstances of each individual case, but at a minimum requires clear standards, fairly communicated. In this case, the Department finds that HLC’s November 16, 2017 letter and subsequent communication with the Institutions failed to provide adequate notice or written specifications, including clear standards, regarding the accreditation status described in the letter. The letter does not include clear statements that accreditation was being withdrawn, which is required when an agency removes or withdraws accreditation. Instead, it cloaked its action within the vague and ambiguous term “Change of Control Candidacy” status. Understanding the precise meaning of that term requires reference to multiple sections of HLC policy manual that are not identified in the November 16, 2017 letter. In addition, that letter describes the accreditation status using four different terms,¹² without clearly delineating the difference among them, further obfuscating the true nature and meaning of that status. Accordingly, the Department finds that HLC violated the Institutions’ due process rights under 34 C.F.R. § 602.25(a) for failure to provide clear standards regarding institutional accreditation and preaccreditation.

¹² Change of Control, Structure, or Organization; Change of Control Candidacy Status; Change of Control Candidate for Accreditation; and Change of Control Candidacy.

The Department finds that HLC did not “provide sufficient opportunity for a written response...regarding any deficiencies identified by the agency... before any adverse action is taken.” No such opportunity was afforded DCEH in the November 16, 2017 letter. Absence of this opportunity violates 34 C.F.R. § 602.25(d), further depriving DCEH of due process required by Department regulations.

In addition, the November 16, 2017 letter fails to describe the Board’s action as an adverse action, which it clearly was under INST.E.50.010. HLC has maintained that the action of the Board was not an adverse action, because the Institutions consented to having the conditions of Change of Control Candidacy Status imposed on them. In this instance, the Institutions had applied for Change of Control, Structure or Organization approval. The Board processed the application and provided the Institutions with two options: accept Change of Control Candidacy Status, meaning forfeit accreditation status in order to proceed with the purchase of the EDMC assets; or do not proceed with the transaction.

Department regulations do not allow agencies to force institutions to give up their due process rights when processing a change in ownership resulting in a change in control. Accordingly, the Department finds HLC violated the Institutions’ due process rights under INST.E.50.010 and 34 C.F.R. §§ 602.25(e) and 602.25(f).

Further, the November 16, 2017 letter indicates that a site visit would be scheduled within six months of the sale transaction being closed “focused on ascertaining the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements...” The letter further states a second focused evaluation must occur “no later than June 2019” after which the Board “shall reinstate accreditation and place the institutions on the Standard Pathway...” (at p. 4). This *ad hoc* sequence of events by the Board ignored applicable Departmental regulations.

Finally, 34 C.F.R. § 600.11(c)¹³ prohibits an institution from being considered for accreditation “for 24 months after it has had its accreditation or pre-accreditation withdrawn, revoked, or otherwise terminated for cause, unless the accreditation agency ... rescinds that action.” This regulation also prohibits agencies from moving an institution from accredited to pre-accredited status. In contrast, INST.E.50.010 allowed the Board to take an institution from accredited to candidacy status, defines such an action as an adverse action, and allows for apparent re-instatement within 6 to 18 months, contrary to the requirements of 34 C.F.R. §600.11(c). Accreditor policies that promise accreditation to institutions on terms that would not allow the institutions to meet the Department’s eligibility requirements are counterproductive at best. An

¹³ Loss of accreditation or preaccreditation.

(1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

34 C.F.R. § 600.11(c).

accreditor applying such a policy should at a minimum inform the institution of any such obvious inconsistency between its provision of accreditation to the institution and the institution's subsequent ability to use that accreditation to meet Departmental eligibility requirements. HLC did not do so here.

34 C.F.R. § 602.25(a) required HLC to provide the institutions with "adequate written specifications of its requirements, including clear standards" for accreditation. Accrediting agency policies promising accreditation to institutions on terms the accreditor knew, or should have known, would not allow subject institutions to meet the Department's eligibility requirements plainly fails this test, absent disclosure of the implications to institutions.

III. HLC's Remedial Actions in Response to its Noncompliance

As stated above, the Department finds HLC in noncompliance with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f),¹⁴ and with its own policy under INST.E.50.010.¹⁵ As provided under 34 C.F.R. § 602.33(c)(3), HLC has 30 days to respond in writing to this report. In addition to responding to each of the Department's findings of noncompliance, HLC should also provide (1) a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future; and (2) a detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions¹⁶ on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

In addition, HLC is advised that it should provide Department staff with 60 days' advance notice before its Board plans to take action to rescind, modify, revise, or change in any way its policies

¹⁴ The text for each of these regulations is provided in prior footnotes.

¹⁵ The Department is aware of the action of HLC's Board to repeal INST.E.50.010 in its entirety; however, it remains concerned about HLC's future compliance with Department regulations. *See* HLC Change of Control, Structure or Organization Policy Change published November 2019, available at http://download.hlcommission.org/policy/updates/AdoptedPolicies-ChangeofControl_2019-11_POL.pdf. In addition, it did not go unnoticed by the Department that HLC decided to use a punitive provision under its policies that it had never previously used after receiving a letter from five Members of Congress on June 22, 2017, scrutinizing the proposed EDMC/DCEH transaction. The Department would like to remind HLC that all accreditation agencies should maintain independence from undue influence from elected officials so not to run afoul with 34 C.F.R. § 602.18(c) and to ensure public confidence in the accreditation process. In addition, HLC's institutional standards under Criterion 2, Integrity: Ethical and Responsible Conduct 2.C.(3) require institutions to maintain independence from undue influence on the part of elected officials. Accordingly, it would seem antithetical to that policy if HLC's Board would not also hold itself to the same ethical standard.

¹⁶ The Art Institute of Colorado (OPEID: 02078900), the Illinois Institute of Art (OPEID: 01258400), including all of the locations, as referenced in footnote 1 and 2 of this document.

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authorized under 34 C.F.R. § 602.22(a)(2)(ii)¹⁷ relating to change in ownership or control, so the Department may review any proposals as authorized under 34 C.F.R. § 602.33(a)(2).¹⁸

The Department will evaluate HLC's response and may present its findings, as provided under 34 C.F.R. § 602.33(e),¹⁹ at the National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting in July 2020. If, however, the Department staff are satisfied with HLC's response to this letter (including by showing adequate steps have been taken to prevent due process failures and to assist in any efforts to correct the relevant transcripts of those students who attended the Institutions), then the Department staff would have a reasoned basis for finding that HLC has demonstrated compliance and for notifying NACIQI accordingly, as authorized by 34 C.F.R. § 602.33(d).²⁰

If you have any questions about this letter, please contact Herman Bounds, Director of Accreditation, at (202) 453-6128 or Herman.Bounds@ed.gov.

¹⁷ If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if -

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

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

34 C.F.R. § 602.22(a)(2)(ii).

¹⁸ Department staff may review the compliance of a recognized agency with the criteria for recognition at any time -

(2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.

34 C.F.R. § 602.33(a)(2).

¹⁹ If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has not demonstrated compliance, the staff -

(1) Notifies the agency that the draft analysis will be finalized for presentation to the Advisory Committee;

(2) Publishes a notice in the Federal Register including, if practicable, an invitation to the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(3) Provides the agency with a copy of all public comments received and, if practicable, invites a written response from the agency;

(4) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received; and

(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c).

34 C.F.R. § 602.33(e).

²⁰ If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, the staff notifies the agency in writing of the results of the review. If the review was requested by the Advisory Committee, staff also provides the Advisory Committee with the results of the review.

34 C.F.R. § 602.33(d).

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Sincerely,



Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and
Innovation

**Policy Title: Accredited to Candidate Status****Number: INST.E.50.010**

The Board of Trustees may determine that an institution be moved from accredited to candidate status subsequent to the close of a Change of Control, Structure or Organization transaction as a result of the findings of an on-site team, including either a Fact-Finding or other team, visiting the institution or the findings in a summary report. The Board must find that the institution, as a result of or related to the Change of Control, Structure or Organization, meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices but no longer meets all of the Criteria for Accreditation and Federal Compliance Requirements. It must also find that the institution meets the requirements of the candidacy program. Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.

Process for Moving an Institution From Accredited to Candidate Status

The Board of Trustees may take an action to move an institution from accredited to candidate status in conjunction with a Change of Control, Structure or Organization, as outlined in Commission policy INST.B.20.040. In addition, a team recommendation arising out of a comprehensive or focused evaluation within six (6) months of the close of a transaction approved under INST.B.20.040 to move the institution from accredited to candidate status, will automatically be referred to an Institutional Actions Council Hearing Committee. The Board will consider both the team recommendation and the Institutional Actions Council Hearing Committee recommendations in its deliberations. In all cases, the Board of Trustees will act on a recommendation to move an institution from accredited to candidate status only if the institution's chief executive officer has been given at least two weeks to place before the Board of Trustees a written response to the recommendation of the team or Institutional Actions Council Hearing Committee.

Public Disclosure of Accredited to Candidate Status

A Public Disclosure Notice for an institution whose status has shifted under this policy will be available on the Commission's website shortly after, but not more than twenty-four (24) hours after, the Commission notifies the institution of the action moving the institution from accredited to candidate status. An

institution moved from accredited to candidate status must notify its Board members, administrators, faculty, staff, students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the institution must also disclose this new status whenever it refers to its Commission affiliation.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 50: Accredited to Candidate Status

Last Revised: February 2014

First Adopted: June 2009

Revision History: February 2011, February 2014

Notes: Policies combined November 2012 – 2.5(e), 2.5(e)1, 2.5(e)2

Related Policies: INST.B.20.020 Candidacy, INST.B.20.040 Change of Control, Structure, or Organization

EXHIBIT 2



UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF POSTSECONDARY EDUCATION

Date: December 9, 2019; 3:30 PM to 4:00 PM EST

Subject: Substantially Verbatim Transcript of Phone Call between Robert King, Assistant Secretary for Postsecondary Education, and Ron Holt, attorney at Rouse Frets White Goss Gentile Rhodes, P.C. and former outside council for Dream Center Education Holdings (DCEH)

Robert King: First, thank you for making time for this call, I trust it was unexpected. We are doing an assessment of decisions made by HLC [Higher Learning Commission] as it pertained to your clients AIC [Art Institute of Colorado] and AII [Illinois Institute of Art] and DCEH. First question – do you feel comfortable discussing this? We’d like to understand what your thinking is and what concerns you might have.

Ron Holt: Yes, Mr. King, I’m certainly willing to talk to you about HLC’s actions with respect to those institutions. There may be a point where you may ask things that are within attorney client privilege.

Robert King: I totally understand, and I leave it to you to define what you can and can’t talk about.

Ron Holt: Let me give you some current history, as you know there was an effort made in second half of 2017 to transition ownership of those two schools from for-profit organizations to Dream Center and that eventually a request was made to approve the sale to HLC. They published a letter in 2017 saying the transaction can go forward, subject to a number of conditions, and embedded was the loss of accreditation, although the new enterprise would be able to have accreditation restored. That’s not how we understood it.

Robert King: I understand, but at some point, Dream Center, through you, conveyed their surprise. On February 2nd you drafted a letter on behalf of Dream Center indicating essentially shock that accreditation had been withdrawn. The reason I’m calling is there was a subsequent letter in February to Barbara Gellman-Danley seemingly indicating that an agreement had been reached that both institutions are eligible for title IV funding and are accredited. So, what prompted the writing of that letter? We sent HLC a very detailed set of questions, asking them to provide documentation, preceding and following November 2017, January 2018, and your letter on February 23rd, which never generated a written response from HLC. If you recall, what prompted the February 23rd letter, either written or oral communication?

Ron Holt: I don’t remember any communication with HLC; however, there was a communication that David Harpool and I had with our client, and I don’t remember the exact

nature of that communication. We had a conversation with Randy Barton, and he had a discussion with Brent Richardson and with someone at the Department [The U.S. Department of Education]. Because of that conversation, we wrote the letter. These two worked for Dream Center, Richardson was CEO and Barton was Chairman of the Board.

Robert King: When you said Department did you mean Department of Education?

Ron Holt: Yes. At some point in time, I had been interviewed by the staff of Bobby Scott's committee, and I shared with them that at some point in time, February or later, after that initial surprise on our part, seeing what was described as a disclosure, I was involved in both of those closing. I worked on the deal from the start throughout all of 2017. We were surprised after we closed the second closing on January 19, 2018. We saw that notice the following day and it was contrary to our understanding. We talked it through and sent out the letter. At some point we were led to understand that the executives at Dream Center were discussing this with people from the Department. We heard this through our clients, verbally. I don't think we had email communications about that, but I'm not 100 percent sure who they were with. We believe it might've been Michael Frola and maybe Donna Mangold and maybe Diane Jones. Long and short of it was the Department, specifically one or more of these individuals, were going to intervene with HLC and encourage them to change position. We never would have closed the transaction without the accreditation part. The way the closing of the transfer of these EDMC schools - that were to be sold - it was for the very purpose of getting the approval of HLC. That approval had been for October 2017, by Middle States one and HLC for the other one - for four schools. The irony is this application took a year. Initial contact was made by EDMC with HLC in November 2016, and it was a long, arduous process. HLC made visits to Dream Center in Los Angeles and made visits to Pittsburgh. They gathered a lot of information, there wasn't any reason anyone would have believed, at Dream Center, that accreditation would've been gone by the closing of this. Everyone felt betrayed and shocked - every other accreditor approved the transfer of the schools with the accreditation intact. We didn't believe that they meant what they said. That perspective informed what we did from then on, we didn't tell students because we didn't believe it to be true. In terms of that letter, I can't tell you what we heard or what I heard but there must have been our client sharing something they had heard from the Department.

Robert King: In terms of a response, we asked HLC what they did. They claimed in their response to us that they attempted to reach someone from Dream Center by phone and were unable to do so. Assuming that was correct, receiving a letter like yours, if I were unable to reach you with that content, I would've drafted a letter stating that each of your points were incorrect. Did you get such letter back from HLC?

Ron Holt: I believe we heard back from them in May - seems to me there was letter in May - I don't recall anything any sooner. Do you have the documents in front of you?

Robert King: I don't have everything but let me go back and find the section.

Ron Holt: I just found this May letter. I'll take a look at it.

Robert King: It says May 21st. That was a letter from you, and they responded on May the 30th and it's about granting you an appeal if you wanted to take advantage of it.

Ron Holt: We were trying to figure out how to take out an appeal, and we were trying to figure out in the February 23rd letter for them to give us some guidance.

Robert King: You made four points – the Institutions will remain eligible for Title IV, remain accredited, will have an objective review for continued accreditation, and that the institutions will convey to their students that they will remain accredited and undergo the reaccreditation process...So that's what you asked for.

Ron Holt: They are telling you that they responded to this letter?

Robert King: Their response says on the same day the Institutes transmitted the February letter, Frola emailed Solinski, employed at HLC, although her employment ended shortly thereafter, after this 23rd letter. On the same day, Frola emailed Solinski indicating the status could be problematic for the schools' Title IV eligibility. Frola had received the January letters, and then it says, let's see, it says February 23rd was the first time Frola reached out to Solinski indicating CCC status [Change of Control Candidacy status] could be problematic. A call was contemplated, but didn't take place until March 9th, due to postponements by Frola and Solinski. On the call it says Frola was accompanied by Department officials and legal counsel, and Frola asked Sweeney whether CCC was accredited status. Sweeney responded that candidacy is a formally recognized status, but it's not accredited status. Sweeney informed Frola that the board had made no independent determination about tax status or Title IV status, since it is under the purview of the IRS and Department of Education. Apparent confusion would reemerge in Jones' October 31st, 2018 letter to HLC. The point here is that I don't see in their response any effort to respond to your February 23rd letter – it says, Sweeney, who is an HLC employee specifically instructed Mary Kohart in March 2018 to follow up with institutes' counsel, and they made attempts but they didn't respond to the outreach. It seemed to HLC that they didn't seem to want to reach out.

Ron Holt: Here's the May 21st letter – I'm going to forward this May 21st letter to you [all follow up correspondence between Mr. Holt and Department officials is included in Exhibit 2].

Okay, this is not an excuse, but I'll put things in context. I was in and out of the picture in this time period in terms of my involvement with matters here for DCEH [Dream Center Education Holdings]. I'd have to talk to Harpool, he actually was accreditation counsel advisor to our firm, but he's now no longer with us, he's the president of a college. What happened to me was that on February 8th I went to hospital with cardiac problems – I had a minor heart attack and had some issues - I wasn't the guy that was answering all of these emails. Clients took over some of this directly, including Randy Barton, who also was an attorney. In my absence, I may have fielded some of these inquiries, as I followed up with some of these things, but I was out in March and April, so it is possible that Mary tried to reach me. I feel confident that any message that I couldn't answer I would have passed on to Harpool or Barton. We wouldn't let it go unanswered.

Robert King: Even if the statement here is accurate, they tried and no one responded, having received the February 23rd letter, HLC should've responded back to you and expressed disagreement, whether they were right or wrong. I find it remarkable given your letter stating your understanding, that they would not have made a more vigorous effort to reach out.

Ron Holt: I don't have any letter in my file from that time period. Just our May 21st letter, asking for appeal and processes for appeal. At that point, there's a lot more pressure from students and others on clarification and the status of these institutions. It still says not accredited online and HLC hasn't changed their position. By this time there was executive leadership and maybe Diane Jones suggesting an effort be made by the Department with HLC to get them to change their position. It was a position that they took, and instead they could recognize that we had accreditation provisional to these conditions and 6 months to meet these conditions, and we had negotiations with them from November to the January closing, so we debated some of those positions. There was a condition about continuing to monitor the schools, where 39 state attorneys general had an agreement to monitor that went to court for 3 years. At the end it might or might not be extended. HLC wanted us to agree that we would continue that monitoring for another 2 years. We were saying, why should we do that unless all 39 states agree to it. Never once did they bring up, through Karen, the idea that you won't be accredited anyways for 6 months. No one said you won't be accredited. The schools would have stayed with EDMC and retained their accreditation. EDMC would have taught them out which is better than what HLC did.

Robert King: The only language in the November letter - and I've read it backwards and forwards - is on page 4 after it was identified that institutions host a focused visit "on the following topics" and states all of those common things for accreditation efforts. At the end it says: "If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action."

Two paragraphs later they say: "The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation."

I find it bizarre - because in one paragraph accreditation will need to be reinstated, but they don't say they are withdrawing accreditation, which makes this insufficient - and second, if you go

ahead without approval, they might withdraw accreditation. My question – how did you interpret that paragraph on page 4?

Ron Holt: We interpreted from the lens of looking at earlier statements. On the first page they cite they've taken formal action in response to the application, filed by institution, and at the bottom, they've considered 5 factors...and it looked as if they had been met them...top of the second, board found institutions hadn't met these factors without issue but demonstrated sufficient compliance, and CCC status can rebuild full compliance....so we read that and understood it to mean that we had demonstrated probable compliance, and were on path toward compliance and demonstrated sufficient compliance, and that we were CCC which was a new category they had created. Because of that we figured it was in accreditation category, even though they make statements later, we figured that meant change into normal accreditation and out of this pre-accreditation. Honestly because it was a new status, we found ourselves to be confused, and we thought it was part of the status to be accredited.

You could read it to mean - oh what they really mean here is you're not accredited - but obviously this letter wasn't a model of communication and maybe we should have insisted on more clarity, in hindsight obviously, given what HLC did to us. It never occurred to us that what was up here was we were headed to no accreditation post-closing. It had never happened to anybody. We've never had any accreditor do this to us - write you a letter saying we have approved the deal, satisfy these conditions, and when you change owners you lose it. It was extraordinary, unique, and it's hard to find words.

Robert King: It strikes us the behavior of HLC was insufficient. The one question I asked and got a rambling answer out of them was the question of during the time this transaction was going on, above the fray, did the faculty change, curriculum change, anything change? While this stuff was going on in the boardrooms, my sense is that nothing changed in the classrooms. The kinds of things that would ordinarily lead to loss of accreditation, didn't happen here.

Ron Holt: Nothing changed but the c-suite, a small group of people that were exited. Brent and Crowley from Grand Canyon and Randy Barton coming on board and becoming part of this team, and you had a small group of people running EDMC that were leaving, everyone else stayed the same.

Robert King: Seems to me HLC lost sight of students here and got overwhelmed by other forces. I'm going to have to go, but I'm very thankful, I didn't know what to expect, and we might prevail upon you for other information, but what you have provided has been very helpful. Our expectation is to issue some sort of findings regarding HLC's conduct during this. Whether it may have consequence I don't know but it will highlight insufficiency on their part. But who knows? We want accreditors to behave appropriately and we think here that didn't happen.

Ron Holt: We did file an internal complaint in June of 2018, and I don't know if you have that, but I'd be happy to email that to you as well.

Robert King: Have they responded?

Ron Holt: I don't think they did, but shortly after they decided to teach out these schools. The Department was made aware of the teach out - Diane Jones knew and DCEH tried to right it but accreditation was never resolved in a satisfactory manner.

EXHIBIT 3.1, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf

From: Ronald L. Holt <RHolt@rousepc.com>

Sent: Monday, December 9, 2019 3:55 PM

To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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FAX 913.928.6739	FAX 816.292.7601

May 21, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
[REDACTED]

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
[REDACTED]

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”).

We wrote on February 2, 2018 to express our concern that the January 20, 2018 Commission's Public Disclosure (“Disclosure”) is not consistent with the terms extended to the Institutions by the Commission (following applications filed by the Institutions in late 2016 and supplemented in 2017) in the Commission’s November 16, 2017 letter with respect the planned change in ownership of the Institutions (the “Transactions”) involving their acquisition by subsidiaries of the nonprofit Dream Center Foundation.

While the Institutions regarded being placed in the status of Change of Control Candidate for Accreditation, which the Commission’s November 16, 2017 letter had described as pre-accreditation candidacy status, as an unwarranted response to the planned change in ownership, the Institutions, through letters dated November 29, 2017 and January 4, 2018, confirmed (with only a few modifications) that they would accept candidacy status, believing that they would be treated as pre-approved candidates on a fast-track needing to only address the issues raised in the November 16, 2017 letter, and they proceeded to close the Transactions on January 19, 2018 (the “Closing”) on that basis. The next day, however, the Commission issued its Disclosure describing the Institutions’ status to mean something far different from what the Institutions believed candidacy and pre-accreditation status would mean here.

As we stated in our February 2, 2018 letter, the issue here is not solely maintaining Title IV eligibility of these institutions; it is also meeting the reasonable expectations and interests of our students, a goal which should be shared by the Commission. To be frank, had the Commission plainly stated in its November 16, 2017 letter what it later said in the Disclosure, DCEH would not have carried out the Closing of the Transactions because the necessary regulatory consent would not have existed and the Transactions would not have been in the best interests of the

students. Quite honestly, DCEH feels that it was misled by HLC to its detriment and the detriment of its students and that DCEH has actionable legal claims against HLC.

In an effort to avoid a legal battle, in our February 2, 2018 letter, we informed you that we believe that, pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action that is subject to appeal, we informed you of the Institutions' refusal to accept the Commission's decision as stated in the Disclosure and the Institutions' desire to appeal that decision, and we requested your input on how we should proceed with the appeal.

While President Gellman-Danley sent correspondence on February 7, 2018 indicating that a change was being made to the Disclosure, she maintained in her letter that the Institutions were not in pre-accreditation status (she indicated that HLC does not have such a status) and that the Institutions need to apply for and establish their candidacy for accreditation. She noted that some changes had been made to some of the language in the Disclosure concerning certain procedural matters. But those changes do not allay the concerns that the Institutions have about the expectations and interests of their students, as the Disclosure continues to state that all students who did not graduate prior to January 19, 2018 are attending institutions not accredited by HLC and taking programs not accredited by HLC and will be earning credentials not accredited by HLC. This, quite simply, is unacceptable. Moreover, President Gellman-Danley's letter does not acknowledge the Institutions' decision to appeal the Commission's decision to place the Institutions in the status of Change of Control Candidate for Accreditation, nor does it provide them with any directions on how to pursue their appeal, as we had requested in our February 2, 2018 letter.

Thus, to date, we have not received any guidance on how we can pursue our appeal with HLC. If such guidance is not given to us in writing within the next ten (10) days, we will assume that HLC is unwilling to allow DCEH to pursue an internal appeal, and DCEH will proceed with a legal action. We trust this can be avoided and we again repeat our request for instructions on the pursuit of an appeal.

Sincerely

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc: Mary E. Kohart, Esq.
Counsel to HLC



Higher Learning Commission
Page 3
May 21, 2018

Mr. Brent Richardson
[REDACTED]

Chris Richardson, Esq.
[REDACTED]

Mr. David Ray
[REDACTED]

Mr. Elden Monday
[REDACTED]

Ms. Shelley Murphy
[REDACTED]

EXHIBIT 3.2, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM
To: [REDACTED]; [REDACTED]; [REDACTED]
Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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June 27, 2018

Ms. Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Subject: Appeal of HLC Decision to Remove Accreditation from The Art Institute of Colorado and Illinois Institute of Art

Via: Email

Dear President Gellman-Danley:

The letter represents a formal appeal prepared by Dream Center Education Holdings, LLC (DCEH), parent of The Art Institute of Colorado (AIC) and Illinois Institute of Art (ILIA). The appeal concerns the January 19, 2018 decision of the Higher Learning Commission (HLC) to remove accreditation of AIC and ILIA and place the institutions in Change of Control Candidacy Status.

This appeal of the HLC decision is founded on the following arguments:

Institutional Histories

AIC was established in 1952 and first accredited by HLC in 2008. ILIA was established in 1916 and first accredited by HLC in 2004. Since achieving HLC accreditation, both institutions have operated in accordance with the criteria, policies, and assumed practices established by HLC. At the time of the change of ownership on January 19, 2018, both institutions were in good standing and operating in compliance with all HLC expectations. Prior to January 19, 2018, HLC had never revoked nor suspended the accreditation of either institution. Following the change of ownership, there were no modifications to operational processes or academic programs and both institutions have continued to be governed by independent Boards of Trustees, which operate in accordance with established bylaws.

In other words, the institutions on January 20, 2018 were the same institutions that existed on January 19, yet the Commission announced they ceased to hold accreditation. Moreover, our review of Commission actions has confirmed removal of accreditation from an institution on the sole basis of a change of ownership is unprecedented among HLC decisions.

Discriminatory Practice

The decision of the Commission is arbitrary and capricious, unfair to the new owner who purchased the institution with good intentions, punitive to the students, and an inconsistent application of policy and practice. As the Commission is aware, it is unprecedented that the Commission would take an accredited institution, and solely on the basis of change of ownership, strip it of its accreditation. The compliance of the institution with Commission standards was the same the day before, of and after the closing of the sale. If the Commission had desired or intended to remove accreditation from the institution, it should have acted prior to the sale but not on the basis of the sale. This is especially true in light of the fact that it is well known that other HLC-accredited institutions, which have previously gone through change of ownership, including transition from for-profit to non-profit status, have not been placed in Change of Control Candidacy Status following approval of their change of control applications. By placing AIC and ILIA in Change in Control Candidacy Status, HLC has violated the consistency requirement stipulated within US Department of Education 34 CFR § 602.18. Obligations under 34 CFR § 602.18 require that HLC maintain controls that ensure the consistent application of the agency's standards across all institutions.

Ambiguous and Misleading Communications

The HLC action letter of November 16, 2017, which initially responded to the change of control applications filed by the two HLC-accredited institutions, was ambiguous and misleading. While the communication stated that the institutions would be placed in the position of candidates for accreditation, DCEH understood and assumed that the institutions were effectively pre-approved and remain accredited as candidates. The November 16 letter made no mention that accreditation would be immediately removed upon the change in ownership and during the time period while the institutions completed Eligibility Filings; if that statement had been made, DCEH would not have closed the transaction. Instead the letter stated that the institutions had demonstrated sufficient compliance to be considered for preaccreditation status; but latter HLC claimed it did not have preaccreditation status, further illustrating the confusing nature of the November 16 letter. Given that neither institution was under a show cause or probation sanction at the time of change of control, it was logical that accreditation would be extended for a customary transitional period to be followed by a site visit aimed at verifying operations and practices (which is what happened with all of the other accrediting agencies for the other institutions involved in the DCEH – EDMC transactions). Importantly, this assumption stemmed directly from HLC's own guiding framework, which attests that the commission will “[work] within the context of its

expectations for accredited institutions [to] streamline processes and procedures for member institutions.”¹

Acting in Good Faith

Being new to the higher education arena, DCEH entered into the change of control process with a somewhat limited understanding of certain protocols and practices. Throughout the entire change of control process, the entire organization (i.e., parent and institutions) acted in good faith to comply with all requests for information and evidentiary materials. Simply put, DCEH set forth on the venture with a goal to sustain the success of all acquired institutions, including AIC and ILIA. In no way did DCEH seek to disrupt student success or bring harm to the institutions, particularly with regard to the longstanding accreditation status of the two HLC-accredited institutions. In fact, the acquisition of the institutions by DCEH was intended to relieve HLC of concerns about the prior owner.

Irreparable Harm to Students

Declaring the institutions unaccredited after January 19, 2018 and further declaring all coursework completed and credentials earned after that date to lack accreditation (even when earned prior to January 19, 2018) would inappropriately harm AIC and ILIA students, especially for students graduating in the term immediately following accreditation removal. A decision to remove accreditation during their final term will cause irreparable harm to their professional and academic futures. Since learning of the Commission’s Disclosure issued on January 20, DCEH has been in communication with HLC to urge it to reconsider its position and the impact that position will have on students if it is not revised.

Limited Request

As the Commission is now aware, DCHE has made the decision to carry out an orderly closure of both institutions with a planned closure date of September 30, 2018. Therefore, the request for reinstatement of accreditation is for a very limited period through the conclusion of the teach-out (i.e., through September 30, 2018). Eligibility Filings were made on March 1, 2018, and demonstrate current compliance with all criteria, policies, and assumed practices.

With this appeal, DCEH respectfully requests that HLC reconsider their decision regarding accreditation of AIC and ILIA. DCEH requests that accreditation of the two institutions be immediately reinstated and made retroactive to the date of January 19, 2018 and be extended through closure of the institutions on September 30, 2018. Reinstatement of accreditation is

¹ VISTA: HLC’s Strategic Directions. Value to Members – Guiding Framework Item 3.



in the best interest of the students who attend the institutions. The lack of accreditation for their work and effort would have a significant adverse impact on their professional, academic, and financial lives.

DCEH has been working in good faith with the Commission for over five months to resolve this matter in an equitable manner that is to the benefit of the students and AIC and ILIA. DCEH would encourage the Commission to take this appeal up at its meeting tomorrow and do the right the thing for the students at these schools. If DCEH does not hear from the Commission by 12:00 PM CST on Friday, it will file suit to protect itself and its students. We understand this is a short time frame but unfortunately time is a luxury we cannot afford.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brent Richardson', written over a light blue horizontal line.

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC

CC

Dr. Anthea Sweeney,
Vice President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Mary E. Kohart, Esq.
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

EXHIBIT 3.3, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: DCEH - HLC Communications
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf; Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf; Peterson 2-24-18 Email to Holt.pdf; HLC Response to DCEH Letter of Intent to Appeal - May 30 2018.pdf; Letter of Appeal_HLC_Final.doc

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 8:04 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Cc: Mary K Whitmer <[REDACTED]>
Subject: DCEH - HLC Communications

Dear Assistant Secretary King, I write one more time to let you know that, since you raised the issue of what kind of response we (DCEH counsel) might have received to our February 23, 2018 letter to HLC, I reviewed my files and also touched base by email with Dr. David Harpool (my former colleague who had worked with me on representing DCEH on its accreditation matters with HLC and other accreditors), and the only communication that we believe we received from HLC, after February 23, 2018 and prior to late May 2018, is the attached February 24, 2018 email message from Karen Peterson at HLC promising that somebody from HLC would be in touch with us within the next week, which, to our recollection, did not happen. We do not recall hearing again from HLC until late May, after we had sent HLC our May 21, 2018 follow up letter, which prompted a May 30, 2018 letter from Anthea Sweeney, a copy of which is attached. As mentioned in my prior email, DCEH filed a formal appeal with HLC in late June 2018. While David Harpool and I have not been able to identify any communications with HLC during the interval from late February to late May 2018, as I mentioned during our call, it is possible that during this time period there may have been verbal communications about the HLC problem between DCEH executives and senior officials at the Department, who, in turn, might have had communications with representatives of HLC. Regards, Ron

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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ATTACHMENT "Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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ATTACHMENT "Peterson 2-24-18 Email to Holt.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); [REDACTED]; David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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Ronald L. Holt

From: Anthea Sweeney <[REDACTED]>
Sent: Wednesday, May 30, 2018 3:14 PM
To: Ronald L. Holt; David Harpool; Monday, Elden; Ramey, Jennifer A.; byohe; [REDACTED]
Cc: Barbara Gellman-Danley; Andrew Lootens-White; Eric Martin; Jim Meyer; Michael Seuring; Mary E. Kohart
Subject: Re: The Illinois Institute of Art and The Art Instiute of Colorado
Attachments: HLC Response to EDMC Letter of Intent to Appeal - May 30 2018.pdf
Importance: High

Dear All,

Attached is HLC's response to your recent correspondence received on May 21, 2018. Thank you.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, May 21, 2018 8:24 AM
To: Barbara Gellman-Danley; Anthea Sweeney
Cc: [REDACTED]; David Harpool; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: The Illinois Institute of Art and The Art Instiute of Colorado

Dear President Gellman-Danley and Vice President Sweeney:

Attached please find a letter from Dr. David Harpool and me sent on behalf of our clients, The Illinois Art Institute and The Art Institute of Colorado. We have copied Mary Kohart, whom we understand to be outside counsel for HLC.

Regards, Ron Holt

Ronald L. Holt, Attorney
[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]

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HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

May 30, 2018

VIA ELECTRONIC MAIL

Ronald L. Holt, Esq.
David Harpool, Esq.
Rouse Frets Gentile Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106

Messrs. Holt and Harpool:

I am writing on behalf of the Higher Learning Commission (HLC) in response to your letter dated May 21, 2018 on behalf of Art Institute of Colorado and Illinois Institute of Art (“the Institutes”) in which you inquire about HLC’s Appeal process. HLC has reviewed your request and will proceed to convene an Appeals Panel to hear the Institutes’ appeal in accordance with the Commission’s Appeal Procedures document which is enclosed.

We believe in the integrity of our Appeals process and we will work to develop a timeline that brings swift resolution to this matter. In order for specific dates to be determined however, an Appellate Document on behalf of the Institutes must be provided in accordance with the enclosed Appeal Procedures document as soon as possible. (A single Appellate Document may be filed.) As an overview of the timeline, HLC will respond to the Appellate Document no later than 4 weeks from the date of receipt, after which the Institutes may provide, at their option, a rebuttal to HLC’s response within two weeks. Based on the time needed for an Appeals Panel to review the materials, we anticipate a hearing could proceed under these assumptions as early as August with final resolution to follow. Commission Staff will then provide an update to the Board of Trustees of the Higher Learning Commission at its November 2018 meeting.

Pending the outcome of the Institutes’ appeal of the November 2017 Board action, certain review activities related to the Institutes which were anticipated to occur in the interim will be suspended immediately. Specifically, the Commission’s ongoing review of interim reports which had been required every 90 days by the HLC Board’s action letter of November 16, 2017 will be suspended; the Institutes will not be required to provide any additional 90-day reports pending the final outcome of the appeal. Likewise, HLC’s review of the Institutes’ respective Eligibility Filings submitted on February 1, 2018 will be suspended.

In its November 16, 2017 action letter, however, the HLC Board also required a focused visit to “ascertain the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.” Because the timing of this particular evaluation is intended to satisfy the requirements of Title 34 of the Code of Federal Regulations, Section 602.24(b) following approval

HLC-DCEH-014481

Holt and Harpool, May 30, 2018 2

of a Change of Ownership, HLC is not able to suspend this focused visit on the basis of a pending appeal. Therefore, Commission staff will continue preparations to finalize arrangements and will continue to communicate with the institutions accordingly.

Except as otherwise specifically limited by the Appeals Procedure document, routine HLC activities will continue without interruption. Thank you in advance for your cooperation. If you have questions concerning this letter, please feel free to contact me directly at [REDACTED] or 312-881-8128.

Best Regards,



Anthea M. Sweeney
Vice President for Legal and Governmental Affairs

Enc.: HLC Appeals Procedure

Cc: Elden Monday, Interim President, Art Institute of Colorado
Dr. Ben Yohe, Accreditation Liaison Officer, Art Institute of Colorado
Jennifer Ramey, President, Illinois Institute of Art
Deann Surdo, Accreditation Liaison Officer, Illinois Institute of Art
Dr. Barbara Gellman-Danley, President, Higher Learning Commission
Executive Leadership Team, Higher Learning Commission

HLC-DCEH-014482

EXHIBIT 3.4, INCLUDING ATTACHMENTS

Huston, John

From: Ronald L. Holt <[REDACTED]>
Sent: Thursday, December 12, 2019 4:48 PM
To: Huston, John
Cc: Cox, Jack; King, Robert
Subject: RE: HLC Letter
Attachments: Barton 7-3-18 Email to Holt re Conversation with DOE re HLC Retro Accreditation.pdf; Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf; DCEH Letter of Appeal_HLC_Final_6_27_2018.pdf

Hi John, I have a copy of the June 27, 2018 email message (attached) sent by Chris Richardson, then DECH General Counsel, to convey Brent Richardson's appeal letter to HLC. But I do not have a copy of any email acknowledgement that DCEH may have received from HLC. I also do not know what subsequent email, phone or other communications HLC may have had with DCEH executives, as I was not party to any such communications and they were not forwarded to me. I was made aware, through a July 3, 2018 email message from Randy Barton, DCEH Board Chairman, that he had heard that officials at the U.S. Department of Education had discussed this matter with senior management at HLC and there apparently then was a belief by the Department's officials that HLC was going to reverse its position on the 4 institutions that DCEH had acquired from EDMC and reinstate their accreditation retroactive to the January 19, 2018 closing by DECH on the purchase from EDMC of the 4 schools (the July 3, 2018 email is attached; while originally privileged, somebody earlier this year, without the knowledge of approval of DCEH's Receiver or me, disclosed it to Congressman Scott's Committee, whose staff provided a copy of it to a NY Times reporter, who later quoted it in a late July story about DCEH's collapse; so the email is no longer privileged). But, as we now know, HLC apparently reversed course and never carried out the reinstatement. The former DCEH executives who most likely would have had subsequent communications with HLC, following submission of the June 27, 2018 appeal letter, were Brent Richardson and Shelly Murphy and possibly also Randy Barton. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Huston, John <[REDACTED]>
Sent: Thursday, December 12, 2019 2:38 PM
To: Ronald L. Holt <[REDACTED]>

Cc: Cox, Jack <[REDACTED]>; King, Robert <[REDACTED]>
Subject: RE: HLC Letter

Hi Mr. Holt,

Thank you for this information. Would you be able to forward the email that was sent to HLC on June 27, 2018 delivering the appeal? Did they acknowledge receipt of the appeal or otherwise follow up to process the appeal?

Regards,

--
John Huston
Office of Postsecondary Education
U.S. Department of Education
[REDACTED]

From: Cox, Jack <[REDACTED]>
Sent: Thursday, December 12, 2019 3:29 PM
To: Huston, John <[REDACTED]>
Subject: FW: HLC Letter

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM

To: [REDACTED]; [REDACTED]; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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Ronald L. Holt

From: Randall Barton <[REDACTED]>
Sent: Tuesday, July 3, 2018 4:37 PM
To: Ronald L. Holt
Cc: Crowley, John E. ([REDACTED]); David Harpool; Garrett, Chad ([REDACTED]); [REDACTED]; [REDACTED]; [REDACTED]
Subject: Re: HLC - Any News?

We just got off the phone with DOE. It appears HLC is in sync with retro accreditation and teach out plans. Dianne at all 3 accreditors on and they will all agree to one plan with Department blessing and hopefully funding from the LOC.

On Tue, Jul 3, 2018 at 2:27 PM Ronald L. Holt <[REDACTED]> wrote:

Hi All, based on the media stories, I am sure you are quite busy dealing with lender issues and other ramifications of moving forward on plans to close 30 campuses. My only purpose in writing is to ask whether we have heard from DOE about its efforts to get HLC to accept our proposal to reinstate accreditation for ILIA and AIC? Ron

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



**Rouse Frets
Gentile Rhodes, LLC**

[1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106](http://www.rousefrets.com)
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--

Randall K. Barton

Mobile: [REDACTED]

ATTACHMENT "Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf"

(HLC contends it never received this email as it was sent to the incorrect email address)

Ronald L. Holt

From: [REDACTED]
Sent: Wednesday, June 27, 2018 6:49 PM
To: Ronald L. Holt; David Harpool
Subject: FW: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

FYI

From: [REDACTED]
Sent: Wednesday, June 27, 2018 4:48 PM
To: 'bgdanley@hlcommission.org'; 'asweeney@hlcommission.org'; '[REDACTED]'
Cc: [REDACTED]; Murphy, Shelly M. ([REDACTED])
Subject: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art

President Gellman-Danley:

Please find attached a follow up communication based on the call between DCEH and the commission yesterday. Feel free to reach out to Brent directly with any questions or to David Harpool at Rouse Frets.

Regards

Chris Richardson
General Counsel

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EXHIBIT 4

Huston, John

From: Karen Peterson <[REDACTED]>
Sent: Thursday, December 26, 2019 3:52 PM
To: King, Robert
Cc: Huston, John
Subject: Re: HLC/Dream Center transaction

Bob: Thank you for our conversation on Monday. I am writing to confirm that you have accurately described my understanding of the transaction based on my long familiarity as HLC Vice President (then Executive Vice President until 3/2018) of Legal & Governmental Affairs with oversight of Change of Control and policy development/implementation and based on the understanding of the HLC Board that adopted the Change of Control policies in 2009 and 2010. You correctly indicated in our conversation, and I agree, that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions identified in your e-mail. The purpose of the Change of Control Candidacy was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC Criteria for Accreditation and other policies of the Commission going forward because at the time of these actions there was not certainty in this regard and, as you indicated, the November 2017 letter outlining the proposed action identified significant compliance issues arising from the evaluation of the proposed transaction. As I indicated, I was not privy to conversations in November and December 2017 between HLC staff and DCEH personnel to ensure all parties had a correct understanding of either the status or the next steps from a practical implementation perspective nor do I know enough about those communications to understand whether DCEH personnel achieved sufficient understanding to consent meaningfully to the action as they attempted to do in a letter addressed to HLC in January 2018 or to provide meaningful and accurate disclosures to current and prospective students.

Please let me know if you have additional questions and the next steps in your process.

Best regards, Karen

Karen Peterson Solinski

On Monday, December 23, 2019 01:19:15 PM CST, King, Robert <[REDACTED]> wrote:

Karen: thank you, once again, for making the time to speak with us, and for filling in information we think vital to our analysis of HLC managing the request to approve the sale of a large group of educational institutions from a for profit ownership group to a non-profit group called Dream Center Education Holdings (DCEH).

I wanted to take this moment to once again confirm your understanding of the transaction with respect to the question of the accreditation of the two institutions located within the HLC jurisdiction. We understood you to say that both institutions remained accredited during a six month period following the sale during which the HLC would monitor the actions and behavior of DCEH, ascertain whether they could remain accredited (because they were progressing toward meeting each of the items that had raised "concerns" during the site visits in the fall of 2017, and then outlined in the November 16, 2017 letter), or in the alternative, to withdraw their accreditation (because they were not meeting the expectations set out in the November 16 letter).

Could you either confirm that I have accurately described your understanding as communicated to us this morning, or if not, please correct what I have written in a response email. Thanks so much, Bob

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Gellman-Danley Appendix of Edits

Appendix of Edits
Interview of Barbara Gellman-Danley
Wednesday, February 19, 2020

Page Number, Line Number	Edited Text (new text noted with <u>underline</u> , omitted text noted with strikethrough)
Page 79, lines 19-20	"there's candidacy and there's candidate <u>candidate</u> for accreditation"
Page 111, line 24	"would reach the status <u>such</u> that it would have succeeded"
Page 116, lines 4-5	"it left us that <u>it was</u> simply was saying, wait, this year it's this way"

HLC February 21, 2020
Follow Up Letter to
Committee

Elliott Greenleaf

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MARY E. KOHART
DIRECT DIAL: 215-977-1073
EMAIL: MEK@ELLIOTTGREENLEAF.COM

February 21, 2020

E-mail and First Class Mail

Ms. Tylease Alli
Chief Clerk
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515-6100

Re: Higher Learning Commission –witness interviews on February 18 and 19, 2020 of
Barbara Gellman-Danley, PhD and Anthea Sweeney, PhD.

Dear Ms. Alli:

Thank you for your help in coordinating the logistics for the interviews conducted by the House of Representatives Committee on Education and Labor of Dr. Barbara Gellman-Danley and Dr. Anthea Sweeney from the Higher Learning Commission regarding Dream Center Education Holdings (DCEH) on February 19 and 18, 2020.

I am writing to follow up on a few issues. Please direct this letter to the appropriate people involved with the interviews of Dr. Gellman-Danley and Dr. Sweeney.

First, we asked whether the transcript of Dr. Gellman-Danley's interview could be redacted to remove the name of the institution that had declined the Commission's conditional approval of its change of control application. Because this institution did not accept the Board's conditional change of control approval, the Commission's offer of conditional approval was not made public under Commission policy and we ask that the Committee cooperate with us in maintaining as non-public the name of the institution involved. Please let us know what the Committee's final decision is on this matter as soon as possible.

Second, during her interview, Dr. Sweeney was asked to provide the names of those from the Department of Education who participated in a call held on March 9, 2018 with Michael Frola in the Department's Office of Federal Student Aid. Dr. Sweeney has no record of those actually on the call with Mr. Frola. However, Mr. Frola's original call invitation was sent to Department employees Tara Sikora, Donna Mangold, Julie Arthur, Shein Dossal, Steve Finley, and Joseph Smith. Dr. Sweeney does specifically recall that Mr. Frola indicated that the Department's legal counsel was on the call.

Third, we asked for the opportunity to review the transcripts created of the interviews and to inform the Committee of any technical or other errors in the transcript. As you know, Dr. Gellman-Danley and Dr. Sweeney were interviewed when other matters were on-going in other venues involving the DCEH schools, the Department, and the Commission; and were asked about events which occurred in some instances more than two years ago. We also have no control over how the Committee may use the transcripts in the future or whether it will one day decide to make the transcripts part of a public record. In light of this combination of circumstances, fundamental fairness requires that the witnesses be given an opportunity to inform the Committee if their testimony is incorrect because, for example, they failed accurately to remember a date or a name. I would appreciate hearing back from the Committee promptly regarding this request to review transcripts.

During their interviews, both Dr. Gellman-Danley and Dr. Sweeney were asked about their communications with Congressional representatives or Congressional staff regarding the DCEH schools. After her interview, Dr. Gellman-Danley recalled that in November 2019, she spoke by phone to Bryce McKibbon, Senior Policy Administrator to the Senate's HELP Committee, who contacted Dr. Gellman-Danley regarding a press release issued by the Department of Education involving the DCEH schools. In response, Dr. Gellman-Danley caused a copy of the Commission's public statement regarding that press release to be delivered to Mr. McKibbon. In addition, Dr. Gellman-Danley recalled she had received and responded to two letters from Senators regarding the DCEH schools. *See, e.g., HLC-OPE 5372-5373.*

Dr. Sweeney also recalled after her interview that in May 2019, Benjamin Sinoff, Director of Education Oversight for the Committee, contacted her by email regarding DCEH. In response, Dr. Sweeney provided him with various contact information she had for the DCEH Receiver and others involved with the Art Institutes, as well as links to materials on the Commission's web site and certain other documents. All of these documents were subsequently produced again to the Committee (or linked to documents produced to the Committee) as part of the Commission's response to the Committee's requests for documents.

Finally, Dr. Sweeney also asked me to correct her the statement that the Commission did not accredit any institutions owned by Corinthian Colleges, Inc. (CCI). Dr. Sweeney recalled after she left the interview that the Commission accredited Everest College Phoenix, which was owned by a division of CCI. Everest College Phoenix was the only CCI institution accredited by the Commission.

Thank you once again for the kindness you showed to us while we were in Washington, D.C. It was a pleasure meeting you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MEK', with a stylized flourish extending to the right.

Mary E. Kohart

MEK/las

Exhibit 9

Date Transmitted: Oct. 24, 2018

From: Lynn Mahaffie

Subject: *Letter to President Gellman-Danley*



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

October 24, 2019

VIA EMAIL AND UPS OVERNIGHT

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604

Dr. Gellman-Danley:

On October 31, 2018, the U.S. Department of Education (the “Department”), through Diane Jones, requested information from the Higher Learning Commission (“HLC”) regarding HLC’s conduct with respect to the Art Institute of Colorado (OPEID: 02078900) and the Illinois Institute of Art (OPEID: 01258400) (collectively the “Institutions”). *See* Letter from Diane Jones to HLC re: “Art Institute of Colorado and Illinois Institute of Art—Change of Control Candidacy Status” (Exhibit 1). On November 7, 2018, HLC promised to “review in detail the concerns you raised to determine if revisions are warranted in accordance with HLC’s established policy on Revision of Accreditation Policy (PPAR.a.10.040).” *See* Letter from HLC to the U.S. Department of Education. (Nov. 7, 2018) (Exhibit 2). The Department has not been informed of the results of HLC’s review, and the questions raised in our letter have not been answered.

Consequently, the Department formally requests HLC respond in writing to each of the information requests listed below and provide responsive records. The Department is requesting narrative information and responsive records because, as it explained in its October 31, 2018, letter, it is concerned HLC may not have complied with applicable laws and regulations, including 34 CFR 602.18, 602.22, 602.25, and 602.26. *See, e.g., U.S. v. Morton Salt*, 338 U.S. 632, 642-43 (1950). Please respond no later than November 25, 2019.

1. On November 2-3, 2017, the Board of Trustees of HLC voted to allow the Institutions to be placed on “Change of Control Candidate for Accreditation” status (“CCC-status”), with the written assent (within 14 days) of the Institutions. HLC sent a formal letter on November 16, 2017, to Dream Center Education Holdings, LLC (“DCEH”) notifying it about the Board’s action and laying out the terms for complying with CCC-status, which would become effective on January 20, 2018 upon agreement. *See* Letter from HLC to the Art Institute of Colorado, Illinois Institute of Art, and Dream Center Education Holdings,

400 Maryland Avenue, S.W., Washington, DC 20202
www.ed.gov

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HLC-DCEH-014375

LLC, *Board vote to approve the application for Change of Control, Structure, or Organization*. (Nov. 16, 2017) (Exhibit 3). Is Exhibit 3 the official accreditation notice from HLC to the Institutions? If not, then identify the official notice. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) the Institutions and (b) CCC-status. The time frame for this request is August 1, 2016 to the present.

2. Did HLC regard the accreditation action referenced in Exhibit 3 as an "adverse action" under either the Department's definition or HLC's definition of that term? If so, what duties did HLC have upon taking such an action? Describe the agency's definitions of "candidacy status" and "adverse action" in effect at that time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's definition of "candidacy status" and "adverse action", and/or (b) application of those definitions to the Institutions. The time frame for this request is August 1, 2016 to the present.
3. Did HLC consider the accreditation action referenced in Exhibit 3 to trigger an opportunity to appeal? If so, please describe HLC's notice to the Institutions. If not, please explain why HLC believed that to be the case. Describe HLC's policy describing the accreditation actions that could be appealed, and the agency's appeal policy in effect at the time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's policy regarding appeals of accreditation actions, (b) its definitions of relevant terms, and/or (b) application of those definitions to the Institutions. The time frame for this request is August 1, 2016 to the present.
4. Did the Institutions agree to the terms of Exhibit 3 in writing? If so, please provide records demonstrating such acceptance. If not, did the institutions reject the conditions or otherwise indicate their intention to refuse to comply? Please provide records indicating such intent.
5. Did HLC conduct a financial analysis of the Institutions prior to issuing Exhibit 3? Did this analysis account for the likelihood or possibility the Institutions would lose Title IV funding eligibility? Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control (a) regarding its financial analysis processes and procedures, and/or (b) application of those processes and procedures to the Institutions. The time frame for this request is August 1, 2016 to the present.
6. Please describe the matters raised, discussions during, activities undertaken and/or decisions made at the November 2-3, 2017 HLC board meeting. Please identify each HLC

- employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing matters raised, discussions during, activities undertaken and/or decisions made at that board meeting. The time frame for this request is October 1, 2017 to the present.
7. Please provide the Department with the HLC's change of control policy in effect between October 1, 2016 and October 31, 2018, include at least HLC policies INST.F.20.070, INST.B.20.040, and INST.E.50.010. Please also provide the summary report made by Commission staff prior to the Board's decision on November 2-3, 2017. Did the Institutions respond to the staff summary report? If so, describe the response. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its change of control policy. The time frame for this request is August 1, 2016 to the present.
 8. On January 20, 2018, HLC published its decision to move the Institutions to CCC-status. HLC, *Public Disclosure: Illinois Institute of Art and Art Institute of Colorado from "Accredited" to "Candidate"* (Jan. 20, 2018) (Exhibit 4). The public disclosure seems inconsistent with the letter sent to DCEH on November 16, 2017, outlining the terms of CCC-status. The letter does not mention that CCC-status is a final adverse action, while the public notice reads as if it is a final action. Describe why HLC believed the November 16, 2017 letter and the January 20, 2018 public notice were consistent and correct. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) Exhibit 4 and/or (b) the CCC-status of the Institutions. The time frame for this request is December 1, 2017 to the present.
 9. Did HLC conduct a financial analysis of the Institutions contemplating the potential loss of Title IV eligibility prior to issuing Exhibit 4? If so, describe that analysis. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing the Institutions' Title IV eligibility. The time frame for this request is October 1, 2016 to the present.
 10. On February 2, 2018, DCEH, through its legal counsel, sent to HLC a response to the January 20, 2018 public disclosure. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 2, 2018) (Exhibit 5). Did HLC provide to the Institutions an opportunity to appeal the decision as requested? If not, explain why this was the case. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or

- control regarding or referencing (a) Exhibit 5 and/or (b) any appeal by the Institutions. The time frame for this request is February 2, 2018 to the present.
11. On February 7, 2018, HLC sent a response that seemingly reaffirms statements made in the January 20, 2018 public disclosure. *See* Letter from HLC to Rouse Frets Gentile Rhodes, LLC (Feb. 7, 2018) (Exhibit 6) Between November 16, 2017, and January 20, 2018, did HLC modify the terms and conditions of the accreditation action taken on November 16, 2017? If so, what prompted the modification? Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the action taken or described in the November 16, 2017 letter, and/or (b) Exhibit 6. The time frame for this request is February 7, 2018 to the present.
 12. On February 23, 2018, DCEH, through its legal counsel, sent HLC a response to its February 7, 2018 letter. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 23, 2018) (Exhibit 7). It appears that, based upon our review of the aforementioned correspondence, there was significant confusion among HLC and DCEH officials regarding the accreditation status of the Institutions. Please provide to the Department all correspondence between DCEH and HLC between November 2, 2017, and December 31, 2018, including HLC's response to the February 23, 2018 letter and any further communication HLC had with DCEH regarding this letter. If HLC did not respond to the February 23, 2018 letter from DCEH, please provide a written narrative explaining why. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing Exhibit 7.
 13. The public notice issued on January 20, 2018, states that HLC's action meant that courses or degrees offered by the Institutions were not accredited, even though the Institutions would enjoy a "recognized status" with HLC. Yet, on July 16, 2018, HLC conducted a site visit at the Illinois Institute of Art in which the site reviewer told students and faculty that it was possible for accreditation to be retroactively restored.¹ Please explain (a) why the site visitor conveyed this message to students and faculty, and (b) whether HLC was considering rescinding its action to place the Institutions on CCC-status at the time of the site visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the site visit, (b) the report that was produced by the site visitors and sent to HLC's Board, and/or (c) HLC deliberations regarding the Institutions accreditation status. The time frame for this request is April 1, 2018 to the present.
 14. Please provide a list of all site visits conducted by HLC to the Institutions from January 1, 2017, to the date of their closure. Describe each such visit. Also, identify each HLC

¹ HLC, *Site visitor meeting with students and faculty Art Institute of Chicago*, available at <https://www.youtube.com/watch?v=-Bn0qKMNqIM> (July 16, 2018).

- employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing each such site visit. The time frame for this request is December 1, 2016 to the present.
15. On March 9, 2018, Department officials had a conference call with Anthea Sweeney, Vice President for Legal and Governmental Affairs at HLC, to inquire about the nature of its CCC-status.² On the call, Ms. Sweeney told the Department that HLC viewed CCC-status to be the equivalent of a preaccredited status. Does HLC view CCC-status as being the equivalent of a preaccredited status? If not, why was that assertion made on the March 9, 2018 phone call? Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its communications with the Department regarding (a) CCC-status, (b) pre-accreditation, and/or (c) the Institutions. The time frame for this request is February 1, 2018 to the present.
 16. Has HLC ever placed any other institution on CCC-status? If so, describe the Board's decision to place such institutions on that status. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such decision and the public notice given therewith.
 17. INST.E.50.010 states that "Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal."³ However, INST.E.50.010 fails to provide details on whether candidacy status is the equivalent to preaccredited status or should be considered a loss of accreditation. Describe why INST.E.50.010 does not address the issue and provide the agency's definition of "candidacy status."
 18. INST.B.20.040 provides that "An institution shall apply for Commission approval of a proposed Change of Control, Structure or Organization transaction through processes outlined in this policy and must demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that approval of the proposed Change of Control, Structure or Organization is in the best interest of the Commission."⁴ Please describe how HLC defines "best interest of the Commission."

² The Department officials that participated in the call were Donna Mangold (Office of the General Counsel), Steve Finley (Office of the General Counsel), and Mike Frola (Federal Student Aid).

³ Higher Learning Commission, *Policy Book* at 136. (June 2018).

⁴ *Id.* at 79 and 161.

Please also describe how HLC ensures that this “best interest” standard does not result in arbitrary and capricious decision-making.

19. Please provide the results of HLC’s review of the concerns raised by the Department in the October 31, 2018 letter from Diane Jones and include any policy or procedural changes made in response to the results of the review. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC’s possession or control regarding or referencing (a) Exhibit 1 or (b) Diane Jones. The time frame for this request is March 1, 2018 to the present.
20. During the time period of the proposed change of control, or any time through January 20, 2018, did HLC discover any evidence that degree requirements, course requirements, syllabi, faculty locations of educational offerings, or other academically relevant conditions had changed at the institutions to such an extent that the Institutions accreditation would be jeopardized? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC’s possession or control regarding or referencing any such change. The time frame for this request is July 1, 2016 to the present.
21. In HLC’s letter of November 16, 2018, to the Institutes, HLC found full compliance but did not make a final accreditation decision due to “procedural error.” What was/were the/those error/errors? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC’s possession or control regarding or referencing HLC’s actions memorialized in Exhibit 3. The time frame for this request is July 1, 2017 to the present.

“Record” and/or “correspondence” as used in this information request means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “recorded information” also includes all traditional forms of records, regardless of physical form or characteristics.

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it

Dr. Barbara Gellman-Danley, President
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so the Department may assess your claim's validity. Please note no other privileges apply here. Finally, your record and data preservation obligations appear at Appendix A.

If you have any questions about this letter, please contact Herman Bounds, Director of Accreditation. He can be reached at (202) 453-6128 or Herman.Bounds@ed.gov. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lynn B. Mahaffie", with a long horizontal flourish extending to the right.

Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and
Innovation

EXHIBIT 1



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

October 31, 2018

By E-mail Transmission Only

Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, Illinois 60604

**Re: Art Institute of Colorado and the Illinois Institute of Art – Change of Control
Candidacy Status**

Dear Barbara:

The Department understands that the Higher Learning Commission (“HLC”) will consider the accreditation status of the Art Institute of Colorado (“AI Colorado”) and the Illinois Institute of Art (“AI Illinois”) (collectively, the “Art Institutes”) at its upcoming meeting in November. These two institutions were formerly owned by Education Management Corporation (“EDMC”) and were sold to Dream Center Education Holdings, Inc. (“DCEH”) in a transaction that closed on January 20, 2018. By action taken by its Board of Trustees (“Board”) during its meeting on November 2-3, 2017, HLC moved the Art Institutes to Change of Control Candidacy Status (“CCC-Status”) effective on the closing date of the transaction with DCEH. This decision was communicated to DCEH in a letter dated November 16, 2017 (“CCC-Status Letter” or “Ltr.”).

The Department is concerned that CCC-Status has caused disruption and confusion for students, graduates and the Department. This confusion was further exacerbated by information provided by an HLC site visitor during a meeting with students on July 16, 2018, in which the site visitor assured students that should accreditation be awarded, which he said was likely given all of the evidence he reviewed in preparation for and during the site visit, it would be given a “retroactive” effective date concurrent with the date of change of control.

It appears that this is the first time that HLC has placed an institution on CCC-Status. Even the Department did not understand until recently that HLC considered CCC-Status an adverse action that resulted in the withdrawal of accreditation for the Art Institutes. However, under

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Department regulations, an “adverse action” is a denial, withdrawal, suspension, revocation, or termination of accreditation or pre-accreditation, or a comparable action. 34 C.F.R. § 602.03. The Department’s regulations do not include an adverse action that would take an institution from accredited to non-accredited status and potentially back to accredited status within a period of time of less than one year and based on the results of a focused review. Once an agency takes a withdrawal action, short of rescinding that action (at which time the rescission would date back to the date of the action), the institution must undergo the full initial accreditation review process pursuant to the agency’s published standards, policies and processes. Absent rescission, an institution that has had its accreditation withdrawn for cause is Title IV ineligible for two years. 34 C.F.R. § 600.11(c).

The Department has several concerns regarding CCC-Status, and how it was implemented and communicated in regard to AI Illinois and AI Colorado. As noted above, the Department’s regulations define “adverse action” as “the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution.” See at 34 C.F.R. § 602.3(definitions). The HLC Policy Book (“Policy”) identifies “Accredited to Candidate Status” as an adverse action that is not a final action and is subject to appeal (INST.E.50.010). However, the CCC-Status Letter does not state that the change to CCC-Status is an adverse action, nor did it advise the Art Institutes or DCEH that it had a right to appeal. Rather, the CCC-Status Letter conveyed that the status constituted “conditions” upon which HLC would approve the change of ownership, and those conditions could be accepted or not. Ltr. at 4, 7. The Art Institutes apparently “accepted” the conditions so that the change of ownership would be approved, and as a result – seemingly inadvertently – acquiesced to a non-accredited status. There is no basis in the Department’s regulations for such a status. In addition, the CCC-Status Letter is in conflict with HLC’s policy regarding change of control status which lists the “conditions” of approval to include limitations on enrollment growth, new programs or the establishment of branch campuses. See INST.F.20.070. These conditions do not include forfeiture of accreditation. Subsequent communications between HLC and counsel for DCEH that have been shared with the Department, as well as our review of the videotaped conversation between the HLC site visitor and students at AI Illinois, only further muddied the situation.

The confusion about the status is not cleared up by a review of the related Policies. In INST.F.20.070, HLC states that “the Board may approve the change, thereby authorizing accreditation subsequent to the close of the transaction, or it may deny approval for the change.” This suggests that if HLC approves a change in control status, accreditation will continue beyond the close of the transaction. The policy goes on to state that upon approval of change of control,

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the Board may impose certain conditions upon the institution, such as limitations on new programs, enrollment growth, or the establishment of branch campuses. It does not list loss of accreditation as a possible "condition" of the change of control. Later, the policy states that "if the Board votes to approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction..." which similarly suggests that if the Board approves the change of control, accreditation continues, though is subject to further review and the application of the limitations described above. INST.F.20.070 also states that if the Board determines that the transaction does not meet its five requirements, it will not approve the transaction.

In addition, if the Board determines that a proposed change of ownership and control constitutes the creation of a new institution (the parameters of which are not defined), the institution is moved to CCC-Status. See INST.B.20.040 and INST.F.20.070. No such finding is reflected in the CCC-Status Letter. Further, INST.E.50.010 states that the Board may move an institution to CCC-Status only if it meets all of the Eligibility Requirements and conforms with Assumed Practices "but *no longer meets* all of the Criteria for Accreditation and Federal Compliance Requirements." The CCC-Status Letter does not indicate that the Art Institutes "no longer meet" all of the Criteria or Compliance Requirements. Instead, in regard to the basis upon which the Board based its action, the CCC-Status Letter indicates that approval factors were "met" or were "Met with Concerns." Ltr. at 4-6. Similarly, INST.F.20.080 provides that if the post-transaction evaluation determines that if the Eligibility Requirements are met, "but not the Criteria for Accreditation," the institution may be recommended "to be continued in status only as a candidate for accreditation." The situation is further confused by INST.B.20.040, which states that HLC's approval of a change in control is necessary prior to its consummation to *effectuate the continued accreditation of the institution*. Indeed, the CCC-Status Letter reads more like a probation or show cause notification, neither of which would have constituted a withdrawal, loss, or termination of accreditation.

Nor does CCC-Status comport with the requirements for withdrawal of accreditation set forth in INST.B.60.010, although the effect of CCC-Status appears to be the same. There has been no finding that the Art Institutes do not meet one or more Criteria or HLC's Federal Compliance Requirements, that they failed to conform with the Assumed Practices, or that they failed to meet the Obligations of Affiliation. In fact, as noted above, the CCC-Status Letter indicates that the approval factors were "met" or "Met with Concerns" and that the Art Institutes were required to provide additional documentation and complete a focused on-site review.

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When the Board takes an action, INST.D.40.010 requires the action letter to provide information about opportunities for institutional response. Here, the only information provided was for the Art Institutes to accept or reject the conditions. The CCC-Status Letter did not advise the institutions that the decision to impose CCC-Status could be appealed.

Only in INST.E.50.010, but not in its other policies regarding change of control review, does HLC define change of control candidacy as an adverse action, but it refers back to INST. B.20.040, where change of control status is the result of the Board's determination that the transaction effectively "builds a new institution" bypassing the Eligibility Process and initial status review by means of a comprehensive evaluation. However, INST.B.20.040 states that under such circumstances, the Board will not approve the change of control. That the Board approved the change of control suggests that it did not determine that the change of control resulted in the building of a new institution.

There is no provision in the Department's regulations for an adverse action that would revoke accreditation and at the same time award candidacy status, which the Department assumes is the equivalent of preaccreditation. Indeed, the CCC-Status Letter refers to CCC-Status as a "preaccreditation status." However, there is no adverse action that would automatically transition an accredited institution to a preaccredited institution rather than a non-accredited institution.

An adverse action that immediately removed accreditation status would require the agency to follow its normal due process requirements, including the imposition of its published wait-out period prior to considering a new application for Eligibility or accreditation. HLC's Eligibility Requirements (CRRT.A.10.010 -18) state that an institution may not have had its accreditation revoked within five years of the initiation of the Eligibility Process. Therefore, HLC could not take an adverse action (such as withdrawal of accreditation) at the time of change of control, and then propose to consider a new award of accreditation within a period of less than five years and without requiring the institution to submit a new application for accreditation. Doing so would violate the Department's regulations regarding due process and the consistent application of the agency's standards.

Having now seen the first example of HLC's application of CCC-Status, the Department has grave concerns as to whether the Policy itself, and as applied to the Art Institutes, is in compliance with the Department's requirements. As set forth in 34 C.F.R. § 602.25, the Department requires the agency's standards to be written clearly and applied consistently, which is not the case here since neither the Department, the HLC site visitor, nor apparently DCEH fully understood what CCC-Status meant. The policy appears to create a new accreditation

Barbara Gellman-Danley
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category that is not listed in the Department's regulations, and that creates an accreditation "no man's land." Neither the Department's regulations nor HLC Policy provide a basis upon which the Art Institutes could have been moved to an unaccredited status between the date of the approved change of control (January 20, 2018) and the date of the Board's decision.

Separate from this case, the Department would like to point out its concern about the statement in INST. B. 20.040 which suggests that change of control status will be granted only when such a change is in the best interest of the Commission. It is unclear to the Department how the Commission would determine what is or is not in its best interest, but the point of accreditation reviews and determinations is to do what is in the best interest of the student. Allowing a previously accredited institution to continue educating students for ten months, knowing that credits or degrees earned during that time would not be accredited absent a retroactive "re-accreditation," simply does not serve the students' or the Commission's best interests.

Sincerely,



Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of the Under
Secretary and the Assistant Secretary for
Postsecondary Education

EXHIBIT 2



HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

November 7, 2018

Diane Auer Jones
Principal Deputy Under Secretary Delegated to Perform the Duties of the Under Secretary
and the Assistant Secretary for Postsecondary Education
United States Department of Education
Office of the Under Secretary
400 Maryland Ave. SW
Washington, DC 20202

Dear Diane,

I write to acknowledge receipt of your correspondence of October 31, 2018 in which you raised concerns regarding a decision by the HLC Board of Trustees on November 16, 2017 to approve the extension of accreditation following a Change of Control transaction for Art Institute of Colorado and Illinois Institute of Art upon the parties' acceptance of certain conditions, including Change of Control Candidacy status. The Higher Learning Commission takes seriously the integrity of its policies as well as their alignment with federal regulations. We will review in detail the concerns you raised to determine if revisions are warranted in accordance with HLC's established policy on Revision of Accreditation Policy (PPAR.a.10.040).

Sincerely,

A handwritten signature in cursive script that reads "Barbara Gellman-Danley".

Barbara Gellman-Danley
President

HLC-DCEH-014387

EXHIBIT 3



HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

November 16, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC
7135 East Camelback Road
Phoenix, AZ 85251

Dear President Monday, President Pond, and Mr. Richardson:

This letter is formal notification of action taken by the Higher Learning Commission (“HLC” or “the Commission”) Board of Trustees (“the Board”) concerning Illinois Institute of Art (“IIA”) and the Art Institute of Colorado (“AIC”) (“the Institutes” or “the institutions,” collectively). During its meeting on November 2-3, 2017, the Board voted to approve the application for Change of Control, Structure, or Organization wherein the Dream Center Foundation (“DCF”), through Dream Center Education Holdings LLC (“DCEH” or “the buyers”) and related intermediaries, acquires certain assets currently held by Education Management Corporation (“EDMC”), including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below. In taking this action, the Board considered materials submitted to the Commission including: the Change of Control, Structure or Organization application, the Summary Report and its attachments, the additional information provided by the Institutes throughout the review process, and the Institutes’ responses to the Summary Report.

As noted under policy, the Commission considers five factors in determining whether to approve a requested Change of Control, Structure, or Organization. It is the applying institution’s burden, in its request and submission of related information, to demonstrate with clear and convincing evidence that the transaction meets these five factors and to resolve any concerns or ambiguities regarding the transaction and its impact on the institution and its ability to meet Commission

HLC-DCEH-014388

requirements. The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future.

The conditions set forth by the Board in its approval of the application subject to Change of Control Candidate for Accreditation are as follows:

The institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.

The institutions submit an interim report every 90 days following the date of the consummation of the transaction until their next comprehensive evaluations on the following topics:

- Current term enrollment at the institutions. This should include the number of full- and part-time students, as well as comparisons to planned enrollment numbers. The institutions should also provide revised enrollment projections based on enrollments at the time of submission;
- Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institutions;
- Information regarding any complaints received by DCF, DCEH or any of the institutions;
- Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, (“DCEM”), or any of the institutions;
- Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions;
- Information regarding reductions in faculty and/or staff at any of the institutions;
- Updated student retention and completion measures for each of the institutions;
- Copies of any information sent to the U.S. Department of Education (“USDE”), including any information sent in response to the USDE’s September 11, 2017 letter (or any updates to that letter); and
- An update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator.

The institutions submit separate Eligibility Filings no later than February 1, 2018, providing detailed documentation that each institution meets the Eligibility Requirements

and Assumed Practices, as well as a highly detailed plan with timelines, action steps, and personnel assignments to remedy issues related to Core Components 1.D, regarding commitment to the public good; 2.A, regarding integrity and ethical behavior; 2.B, regarding public disclosure and transparency; 2.C, regarding the autonomy of board governance; 4.A, regarding improving program outcomes; 5.A, regarding financial resources; and 5.C, regarding planning, with specific focus on enrollment and financial planning. The outcome of this process shall be reported to the HLC Board of Trustees at its spring 2018 meeting.

The institutions host a visit within six months of the transaction date, as required by HLC policy and federal regulation, focused on ascertaining the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.

The institutions host a focused visit no later than June 2019, to include a visit to the Dream Center Foundation and Dream Center Education Holdings, on the following topics:

- Core Component 1.D:
 - The institutions should provide evidence that the missions of the institutions demonstrate a commitment to public good. Specifically, that the institutions' operations align to the pursuit of the stated missions in terms of recruiting, marketing, advertising, and retention.
- Core Component 2.A:
 - The institutions should demonstrate that they possess effective policies and procedures for assuring integrity and transparency.
 - DCEH and the institutions should provide evidence that the parent company and the institutions are continuing to perform voluntarily the obligations of the Consent Agreement, as assured by DCEH to the Higher Learning Commission in writing.
- Core Component 2.B:
 - DCEH and the institutions must demonstrate that policies and procedures following the Consent Judgment have been fully implemented and are effective in ensuring the proper training and oversight of personnel.
- Core Component 2.C:
 - Evidence that the DCF, DCEH, DCEM and the Art Institutes organizations, as well as related corporations, demonstrate that they have organizational documents and have engaged in a pattern of behavior that indicates the respective boards of the institutions have been able to engage in appropriately autonomous oversight of their institutions.
- Core Component 4.A:
 - Evidence that the institutions have engaged in effective planning processes to address programs that have failed the USDE's gainful employment requirements (when those requirements were still applicable), as well as those that are "in the zone." The institutions should also provide any plans that have been implemented to improve program outcomes.

- Core Component 5.A:
 - Evidence that the institutions have increased enrollments to the levels set forth in the application for Change of Control, Structure, or Organization. This should include any revised budgetary projections and evidence of when the institutions intend to achieve balanced budgets.
- Core Component 5.C:
 - The institutions should provide any revised plans or projections that occur following consummation of the transaction.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action.

The Board will receive and review the Eligibility Filing, related staff comments, and the report of the first focused visit team to determine whether to continue the Change of Control Candidacy status. If the Eligibility Filing and focused evaluation does not provide clear, convincing and complete evidence of each institution meeting each Eligibility Requirement and of making substantial progress towards meeting the Criteria for Accreditation in the maximum period allotted for such Change of Control Candidacy as indicated in this letter, the Board may withdraw Change of Control Candidate for Accreditation status at its June 2018 meeting.

The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation.

Assuming acceptance of these conditions, the Institutes and buyers must provide written notice of the closing date within 24 hours after the transaction has closed. The Institutes are also obligated to notify the Commission prior to closing if any of the material terms of this transaction have changed or appear likely to change. By Commission policy the closing must take place within no more than thirty days from the date of the Board's approval. If there is any delay such that the transaction cannot close within this time frame, the Institutes must notify the Commission as soon as possible so alternate arrangements can be identified to ensure that the Board's approval remains in effect.

The Board based its action on the following findings made in regard to the Institutes:

In reference to the first, second, and fourth approval factors and, related to the continuity of the institutions accredited by the Commission and sufficiency of financial support for

the transaction, the institutions and the buyers have provided reasonable evidence that these factors have been met.

In reference to the third approval factor, the substantial likelihood that following consummation of the transaction the institutions will meet the Commission's Criteria for Accreditation, with specific reference to governance, mission, programs, disclosures, administration, policies and procedures, finances, and integrity, the institutions and the buyers have provided reasonable evidence that this factor is met, although the following Criteria for Accreditation are Met with Concerns:

- Criterion One, Core Component 1.D: "The institution's mission demonstrates commitment to the public good," for the following reasons:
 - Neither institution has demonstrated evidence that its underlying operations, in addition to its tax status, will be transformed to reflect a non-profit mission;
 - Neither institution has demonstrated significant planning required to undertake a mission that includes the responsibility of educating a potentially very different student population represented by the Dream Center clientele; and
 - The buyers have not provided evidence that the institutions' educational purposes will take primacy over contributing to a related or parent organization, which will be struggling in its initial years to improve the enrollment and financial wherewithal of a large number of institutions purchased from EDMC.
- Criterion Two, Core Component 2.A: "The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff," for the following reason:
 - Although each institution is making changes to procedures specifically identified in the November 2015 Consent Judgment, neither institution has yet established a long-term track record of integrity in its auxiliary functions.
- Criterion Two, Core Component 2.B: "The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships," for the following reasons:
 - Changes being made by the institutions to ensure transparency, particularly with students, are recent in nature and have yet to fully penetrate the complex organizational structure of which the institutions are a part; and
 - Given the replication of that operational structure and the continuity of personnel following the transaction, the potential for continuing challenges is of concern.
- Criterion Two, Core Component 2.C: "The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity," for the following reasons:
 - There remain questions about how the governance of DCEH, its related service provider Dream Center Education Management, and the Art Institutes will take place after the transaction and how that governance will affect the governance of the AIC and IIA, and the mere replication of the EDMC corporate structure with new non-profit corporations does not resolve the

- question of how these new corporations will function in the future to assure autonomy and governance in the best interest of the institutions;
- An apparent conflict of interest exists owing to an investment by the DCEH CEO of 10% in the purchase price for which limited documentation exists; and
 - No evidence was provided indicating that either institution's board had yet engaged in significant consideration of the role that typifies non-profit boards.
 - Criterion Four, Core Component 4.A: "The institution demonstrates responsibility for the quality of its educational programs," for the following reasons:
 - Neither institution has demonstrated that improvements have been made to academic programs identified since January 2017 by the USDE as having poor outcomes, or that such programs have been eliminated; and
 - The risk of harm to students admitted to such programs absent such improvement or elimination is of concern, regardless of the institutions' tax-status or whether they are subject to gainful employment regulations.
 - Criterion Five, Core Component 5.A: "The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future," for the following reasons:
 - Despite the adoption of certain cost-reducing and related measures, the impact of which are yet to be determined, the ability of each institution to sustain its resource base and improve enrollment beyond 2019 depends on the occurrence of several contingencies, most of which are assumptions tied to the institutions' change in tax status, and none of which are guaranteed;
 - The ability of the buyers to provide the cash flow infusions necessary to sustain the institutions over the next five years are also linked to assumptions related to the institutions' change in tax status and the long-term debt taken on by DCEH and DCF in addition to the debt acquired for the purchase price; and
 - Although the buyers are expected to have \$35 million in cash at closing (based on debt as noted above), these funds are intended to support multiple transactions within Argosy University, South University and the Art Institutes, and the potential need for and access to additional debt financing on the part of the buyers is of concern.
 - Criterion Five, Core Component 5.C: "The institution engages in systematic and integrated planning," for the following reasons:
 - Neither institution has demonstrated that the impacts of the transaction have been accounted for in their strategic planning; and
 - IIA's strategic planning process is still in the process of maturing.

In reference to the fifth approval factor, the experience of the buyers, administration, and board with higher education, the officers (CEO and CDO) of the buyers have some experience in higher education but do not have any experience as chief officers of a large system of non-profit institutions or with the specific challenges pertinent to EDMC institutions, including challenges related to marketing and recruitment policies, governance, administration, and student outcomes across institutions with many campuses and programs operating across the United States.

The Board action, if the conditions are accepted by the Institutes and the buyers, resulted in changes to the affiliation of the Institutes. These changes will be reflected on the Institutional Status and Requirements Report. Some of the information on that document, such as the dates of the last and next comprehensive evaluation visits, will be posted to the HLC website.

Commission policy COMM.A.10.010, Commission Public Notices and Statements, requires that HLC prepare a summary of actions to be sent to appropriate state and federal agencies and accrediting associations and published on its website within thirty days of any action. The summary will include HLC Board action regarding the Institutes. The Commission will also simultaneously inform the U.S. Department of Education of this action by copy of this letter. As further explained in policy, HLC may publish a Public Statement regarding this action and the transaction following the institutions' and the buyer's decision of whether to accept the conditions outlined above. Please note that any public announcement by the buyers about this action must include the information that any approval provided by the Commission is subject to the condition of the buyers accepting Change of Control candidacy for not less than six months up to a maximum of four years.

On behalf of the Board of Trustees, I thank you and your associates for your cooperation. If you have questions about any of the information in this letter, please contact Dr. Anthea Sweeney.

Sincerely,



Barbara Gellman-Danley
President

cc: Chair of the Board of Trustees, Illinois Institute of Art
Chair of the Board of Trustees, Art Institute of Colorado
Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, the Art Institute of Colorado
Diane Duffy, Interim Executive Director, Colorado Department of Higher Education
Stephanie Bernoteit, Senior Associate Director, Academic Affairs, Illinois Board of
Higher Education
Evaluation team members
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning
Commission
Karen Peterson Solinski, Vice President for Legal and Governmental Affairs, Higher
Learning Commission
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Herman Bounds, Director, Accreditation Group, U.S. Department of Education

EXHIBIT 4



HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

**Public Disclosure:
Illinois Institute of Art and
Art Institute of Colorado
From “Accredited” to “Candidate”
Effective: January 20, 2018**

The Illinois Institute of Art located in Chicago, Illinois, and the Art Institute of Colorado located in Denver, Colorado, have transitioned to being a candidate for accreditation after previously being accredited. The Higher Learning Commission Board of Trustees voted to impose “Change of Control-Candidacy” on the Institutes as of the January 20 close of their sale by Education Management Corp. to the Dream Center Foundation through Dream Center Education Holdings.

This new status also applies to the Illinois Institute of Art campus in Schaumburg and its Art Institute of Michigan campus in Novi, Michigan.

In spring 2017 EDMC requested approval of a Change of Control seeking the extension of the accreditation of these institutions after their proposed sale to the Dream Center Foundation. During its review process of the Change of Control, HLC evaluated the potential for the institutions to continue to ensure a quality education to students after the change of ownership took place. The period of Change of Control-Candidacy status lasts from a minimum of six months to a maximum of four years. During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards for candidacy.

What This Means for Students

Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC and may not be accepted in transfer to other colleges and universities or recognized by prospective employers. Institute courses completed and degrees earning prior to this January 20, 2018, change of status remain accredited. In most cases, other institutions of higher education will accept those credits in transfer or for admission to a higher degree program as they were earned during an HLC accreditation period.

All colleges and universities define their own transfer and admission policies. Students should contact any institution they plan to attend in the future so they are knowledgeable about the admission and transfer policies for that institution.

Next Steps

HLC requires that the Institutes provide proper advisement and accommodations to students in light of this action, which may include, if necessary, assisting students with financial accommodations or transfer arrangements if requested.

Dream Center Education Holdings and Dream Center Foundation are required to submit a report to HLC every 90 days detailing quarterly financials to assess adequate operating resources at each entity and both Institutes.

The Institutes will each submit Eligibility Filings no later than March 1, 2018 providing documentation that each institution meets the HLC Eligibility Requirements and Assumed Practices. The Institutes will also host a campus visit within six months of the transaction date as required by HLC policy and regulation. The HLC Board will consider reinstatement of Accredited status at a future meeting.

About the Higher Learning Commission

The Higher Learning Commission accredits approximately 1,000 colleges and universities that have a home base in one of 19 states that stretch from West Virginia to Arizona. HLC is a private, nonprofit accrediting agency. It is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation. Questions? Contact info@hlcommission.org or call 312.263.0456.

EXHIBIT 5



KANSAS OFFICE	MISSOURI OFFICE
5250 W. 116 th PLACE	1100 WALNUT STREET
SUITE 400	SUITE 2900
LEAWOOD, KS 66211	KANSAS CITY, MO 64106
TEL 913.387.1600	TEL 816.292.7600
FAX 913.928.6739	FAX 816.292.7601

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission’s proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions

EXHIBIT 6



HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
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Fax: 312.263.7462 | hlcommission.org

February 7, 2018

VIA ELECTRONIC MAIL

Dr. David Harpool and Ronald L. Holt
Rouse Frets Gentile Rhodes, LLC
1100 Walnut St.
Suite 2900
Kansas City, MO 64106

Dear Dr. Harpool and Mr. Holt:

I am writing in response to your letter of February 2, 2018, to confirm that the Art Institute of Colorado ("AIC") and Illinois Institute of Art ("IIA") are in Change of Control Candidate for Accreditation status with the Higher Learning Commission as of January 20, 2018. Your letter reaffirms their voluntary consent to such status as earlier indicated in a letter from Presidents Josh Pond of IIA and Elden Monday of AIC on January 4, 2018. As such, both institutions are eligible to seek accredited status following the requirements outlined in the November 16, 2017 Action Letter, as modified by the January 12, 2018 Action Letter, which confirmed again that approval of the extension of status was subject to a Change of Control Candidacy and clarified the schedule for the filing of an Eligibility Filing to confirm the institutions' compliance with the Eligibility Requirements and the schedule for subsequent focused evaluations.

None of the terms outlined in these letters have changed or been modified based on any language in the Public Disclosure Notice ("PDN"). The institutions are not in pre-candidacy status, as your letter indicates; the Commission has no such status. As noted above, the institutions remain eligible to apply for accredited status based on the terms outlined in the November 16, 2017 Action Letter. I would note that your clients had a lengthy opportunity (early November 2017 to early January 2018) to review the November Action Letter, to determine the implications for their institutions prior to filing their consent on January 4, 2018, and to ask questions to their HLC staff liaison if anything in the November action was unclear.

While the Commission believes that the Public Disclosure Notice as previously published, accurately represented the terms of the November 16, 2017 Action Letter, Commission staff has modified the PDN on the HLC website to remove certain procedural language that was questioned in your letter of protest. I trust that these modifications will allay any concerns that you have that the PDN modified in some way the terms of the November 16, 2017 letter to which your clients specifically consented.

Thank you. If you have any further questions, please contact Karen Peterson, Executive Vice President for Legal and Governmental Affairs.

HLC-DCEH-014399

Dr. Harpool and Mr. Holt, February 7, 2018 2

Sincerely,

A handwritten signature in cursive script that reads "Barbara Gellman-Danley".

Barbara Gellman-Danley
President

Cc: Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
Karen Peterson, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission

EXHIBIT 7



**Rouse Frets
Gentile Rhodes, LLC**

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5250 W. 116 th PLACE	1100 WALNUT STREET
SUITE 400	SUITE 2900
LEAWOOD, KS 66211	KANSAS CITY, MO 64106
TEL 913.387.1600	TEL 816.292.7600
FAX 913.928.6739	FAX 816.292.7601

February 23, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
Bgellman-danley@hlcommission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley,

We have discussed your letter of response and the proposed Public Notice Disclosure with our clients. To ensure that we correctly understand your response and the status of our client schools (Illinois Institute of Art and the Art Institute of Colorado), we are confirming that:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in “preaccreditation status,” a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution. *See* 34 C.F.R. §§ 600.2 & 600.4 (a)(5)(i). (We and our clients, in determining that we could accept the conditions of the November 16, 2017 letter, as modified by the Commission’s January 12, 2018 letter, and could continue to serve our students and meet their expectations, relied in good faith on this understanding.)
2. Both institutions remain accredited, in the status of Change of Control Candidate for Accreditation, per their change of ownership, and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.
3. Both institutions will receive an objective review for continued accreditation, with team members who have the requisite skill and experience to render an unbiased decision.
4. Both institutions will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.

Please confirm that our understandings, as stated above, are correct. It is our clients’ desire to avoid pursuit of an appeal and possible litigation, a goal that we trust the Commission shares, and the foregoing understandings are essential to that objective.

ATTORNEYS AT LAW
WWW.ROUSEFRETTS.COM

HLC-DCEH-014401

Higher Learning Commission
Page 2
February 23, 2018

Very truly yours,

ROUSE FRETS GENTILE RHODES, LLC

_____/s/_____
Ronald L. Holt

_____/s/_____
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc:

Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
brichardson@dcedh.org

Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Michael.frola@ed.gov

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
asweeney@hlcommission.org

Karen Solinski, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission
ksolinski@hlcommission.org

Appendix A

RECORD PRESERVATION REQUIREMENTS

This inquiry requires preservation of all information from your organization's computer systems, removable electronic media, filing systems, and other locations relating to the matters that are the subject of the Notice of Inquiry. You should immediately preserve all data and information about the data (i.e., backup activity logs and document retention policies) relating to records maintained in the ordinary course of business and that are covered by the Notice of Inquiry. Also, you should preserve information available on the following platforms, whether in your possession or the possession of a third party, such as an employee or outside contractor: databases, networks, computer systems, including legacy systems (hardware and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges and other storage media, laptops, personal computers, internet data, personal digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail). You should also preserve all hard copies of records regardless of location.

The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, you must take every reasonable step to preserve relevant records. "Reasonable steps" with respect to these records include:

- Notifying in writing all potential custodians and IT personnel who may have relevant records of their preservation obligations under this investigation.
- Discontinuing all data and document destruction policies.
- Preserving all metadata.
- Preserving relevant records and/or hardware unless an exact replica of the file (a mirror image) is made.
- Preserving passwords, decryption procedures (and accompany software), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software.
- Maintaining all other pertinent information and tools needed to access, review, and reconstruct necessary to access, view, and/or reconstruct all requested or potentially relevant electronic data.

You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information exist, with all metadata. This includes preserving:

- Active data (i.e., data immediately and easily accessible today).
- Archived/journaled data (i.e., data residing on backup tapes or other storage media).
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques).
- Legacy data (i.e., data created on old or obsolete hardware or software).

Exhibit 10

Date Transmitted: May 3, 2018

From: Michael Frola

Subject: *U.S. Department of Education Office of Federal Student Aid Interim Decision on
Change of Ownership and Conversion to Nonprofit status OPE ID 020789000*



May 3, 2018

Sent via email and by overnight mail

Mr. Elden R. Monday
Interim President
The Art Institute of Colorado
1200 Lincoln Street
Denver, CO 80203-2172

**RE: Interim Decision on Change of Ownership and Conversion to Nonprofit status
OPE ID: 02078900**

Dear Mr. Monday:

On February 8, 2018, the Multi-Regional and Foreign School Participation Division (“MRFSPD”) sent a letter notifying you that the U.S. Department of Education (“Department”) had completed its preliminary review of the application of The Art Institute of Colorado (“Art Institute”) for approval of a change in ownership resulting in a change of control.

In that letter, the MRFSPD notified you that on the basis of that review, the Department determined that the application was materially complete, and had granted the Art Institute Temporary Provisional Certification for a period ending on the last day of the month following the month in which the change of ownership took place, which was February 28, 2018.

The Department requested the Art Institute to review and sign two copies of the Temporary Program Participation Agreement (“PPA”) and return both signed copies. The Art Institute returned the signed Temporary PPAs, after which, on February 20, 2018, the Department signed the Temporary PPAs on behalf of the Secretary of Education and sent one fully executed copy to the institution.

In the February 20, 2018 letter, the Department notified the Art Institute that the temporary PPA would continue on a month-to-month basis until the Department made a determination on the application if, prior to the stated expiration date of February 28, 2018, the institution submitted to the Department the following documents, among other things: an audited "same-day" balance sheet, prepared in accordance with Generally Accepted Accounting Principles (“GAAP”) and audited in accordance with Generally Accepted Government Accounting Standards (“GAGAS”), which showed the financial condition of the institution (the resulting entity) as of the date of the change in ownership; approval of the change in ownership by the institution's accrediting agency, the Higher Learning Commission (“HLC”); approval of the change in ownership by the institution's state licensing agency; and a copy of the institution’s default management plan.

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Multi-Regional & Foreign Schools Participation Division
830 First Street NE • Washington, DC • 20202
StudentAid.gov

The Department notified the Art Institute in the letter that if this documentation was not provided by the expiration date of the Temporary PPA, February 28, 2018, the Temporary PPA would expire on that date without further notice.

The Art Institute timely submitted its “same-day” balance sheet, the Colorado Commission on Higher Education’s February 21, 2018 approval of the change in ownership, and its Default Management Plan. With regard to accreditation approval, however, the Department has learned that HLC transitioned the Art Institute from being accredited to being a candidate for accreditation effective January 20, 2018. In particular, HLC imposed “Change of Control-Candidacy” status on the institution as of the January 20, 2018 close of its sale by Education Management Corporation (“EDMC”) to the Dream Center Foundation (“DCF”) through Dream Center Education Holdings (“DCEH”). According to HLC, the period of Change of Control-Candidacy status can last from a minimum of six months to a maximum of four years. The provisions of 34 C.F.R. 600.5(a)(6) require a proprietary institution of higher education to be fully accredited to qualify as an eligible institution for purposes of the Title IV, HEA programs, and do not allow for pre-accredited (or candidacy) status. The provisions of 34 C.F.R. 600.4(a)(5)(i) do, however, allow a private nonprofit institution to qualify as an eligible Title IV institution with preaccredited (candidacy) status. Due to this accreditation status, the Art Institute no longer qualifies as an eligible institution to participate in the Title IV, HEA programs as a for-profit institution.

To avoid the lapse of eligibility, and given the pending application for the change of ownership that includes a requested conversion to non-profit status, the Department is granting the institution temporary interim non-profit status during the review of the pending change of ownership application, to the Art Institute, effective January 20, 2018. The Department will continue the Temporary PPA on a month to month basis until the Department makes a final determination on the application. Although the Art Institute has not provided approval of the change in ownership by HLC, the Department understands that the matter is proceeding in accordance with HLC’s normal process.

The Art Institute is reminded that, as set forth in the Department’s September 12, 2017 Preacquisition review letter sent to DCFH, unless and until the conversion to nonprofit institution status is fully and finally approved by the Department, the Art Institute must continue to report its Title IV revenue percentage (90/10 percentage), as well as its gainful employment data for its educational programs.

In the February 20, 2018 letter transmitting the Temporary PPA, the Department notified the Art Institute that the Eligibility and Certification Approval Report (“ECAR”) under which the institution had been operating prior to the change in ownership remained in effect with respect to approval of locations, educational programs, and the Title IV, HEA programs. The ECAR identified the institution as a proprietary institution of higher education. The Department will not be issuing a new ECAR reflecting the temporary designation of non-profit status. This letter will serve as evidence of the Art Institute’s temporary conditional approval as a private non-profit institution.

If you have any questions, please contact Tara Sikora at Tara.Sikora@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Frola". The signature is written in a cursive style with a large initial "M".

Michael Frola
Division Director
Multi-Regional and Foreign School Participation Division

cc: Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
(email: brichardson@dcedh.org)
Shelly Murphy, Chief Officer Regulatory and Government Affairs, Dream Center
Education Holdings, LLC (email: smurphy@dcedh.org)

Exhibit 11

Date Transmitted: May 3, 2018

From: Michael Frola

Subject: *U.S. Department of Education Office of Federal Student Aid Interim Decision on Change of Ownership and Conversion to Nonprofit status OPE ID 01258400*



May 3, 2018

Sent via email and by overnight mail

Mr. David Ray
Interim President
The Illinois Institute of Art
350 North Orleans Street, Suite 136-L
Chicago, IL 60654-1593

**RE: Interim Decision on Change of Ownership and Conversion to Nonprofit status
OPE ID: 01258400**

Dear Mr. Ray:

On February 8, 2018, the Multi-Regional and Foreign School Participation Division (“MRFSPD”) sent a letter notifying you that the U.S. Department of Education (“Department”) had completed its preliminary review of the application of The Illinois Institute of Art (“Art Institute”) for approval of a change in ownership resulting in a change of control.

In that letter, the MRFSPD notified you that on the basis of that review, the Department determined that the application was materially complete, and had granted the Art Institute Temporary Provisional Certification for a period ending on the last day of the month following the month in which the change of ownership took place, which was February 28, 2018.

The Department requested the Art Institute to review and sign two copies of the Temporary Program Participation Agreement (“PPA”) and return both signed copies. The Art Institute returned the signed Temporary PPAs, after which, on February 20, 2018, the Department signed the Temporary PPAs on behalf of the Secretary of Education and sent one fully executed copy to the institution.

In the February 20, 2018 letter, the Department notified the Art Institute that the temporary PPA would continue on a month-to-month basis until the Department made a determination on the application if, prior to the stated expiration date of February 28, 2018, the institution submitted to the Department the following documents, among other things: an audited "same-day" balance sheet, prepared in accordance with Generally Accepted Accounting Principles (“GAAP”) and audited in accordance with Generally Accepted Government Accounting Standards (“GAGAS”), which showed the financial condition of the institution (the resulting entity) as of the date of the change in ownership; approval of the change in ownership by the institution's accrediting agency, the Higher Learning Commission (“HLC”); approval of the change in ownership by the institution's state licensing agency; and a copy of the institution's default management plan.

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Multi-Regional & Foreign Schools Participation Division
830 First Street NE • Washington, DC • 20202
StudentAid.gov

The Department notified the Art Institute in the letter that if this documentation was not provided by the expiration date of the Temporary PPA, February 28, 2018, the Temporary PPA would expire on that date without further notice.

The Art Institute timely submitted its “same-day” balance sheet, the Illinois Board of Higher Education’s March 2, 2018 acknowledgement of the change in ownership, and its Default Management Plan. With regard to accreditation approval, however, the Department has learned that HLC transitioned the Art Institute from being accredited to being a candidate for accreditation effective January 20, 2018. In particular, HLC imposed “Change of Control-Candidacy” status on the institution as of the January 20, 2018 close of its sale by Education Management Corporation (“EDMC”) to the Dream Center Foundation (“DCF”) through Dream Center Education Holdings (“DCEH”). According to HLC, the period of Change of Control-Candidacy status can last from a minimum of six months to a maximum of four years. The provisions of 34 C.F.R. 600.5(a)(6) require a proprietary institution of higher education to be fully accredited to qualify as an eligible institution for purposes of the Title IV, HEA programs, and do not allow for pre-accredited (or candidacy) status. The provisions of 34 C.F.R. 600.4(a)(5)(i) do, however, allow a private nonprofit institution to qualify as an eligible Title IV institution with preaccredited (candidacy) status. Due to this accreditation status, the Art Institute no longer qualifies as an eligible institution to participate in the Title IV, HEA programs as a for-profit institution.

To avoid the lapse of eligibility, and given the pending application for the change of ownership that includes a requested conversion to non-profit status, the Department is granting the institution temporary interim non-profit status during the review of the pending change of ownership application, to the Art Institute, effective January 20, 2018. The Department will continue the Temporary PPA on a month to month basis until the Department makes a final determination on the application. Although the Art Institute has not provided approval of the change in ownership by HLC, the Department understands that the matter is proceeding in accordance with HLC’s normal process.

The Art Institute is reminded that, as set forth in the Department’s September 12, 2017 Preacquisition review letter sent to DCFH, unless and until the conversion to nonprofit institution status is fully and finally approved by the Department, the Art Institute must continue to report its Title IV revenue percentage (90/10 percentage), as well as its gainful employment data for its educational programs.

In the February 20, 2018 letter transmitting the Temporary PPA, the Department notified the Art Institute that the Eligibility and Certification Approval Report (“ECAR”) under which the institution had been operating prior to the change in ownership remained in effect with respect to approval of locations, educational programs, and the Title IV, HEA programs. The ECAR identified the institution as a proprietary institution of higher education. The Department will not be issuing a new ECAR reflecting the temporary designation of non-profit status. This letter will serve as evidence of the Art Institute’s temporary conditional approval as a private non-profit institution.

If you have any questions, please contact Tara Sikora at Tara.Sikora@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Michael Frola". The signature is written in a cursive style with a large initial "M".

Michael Frola
Division Director
Multi-Regional and Foreign School Participation Division

cc: Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
(email: brichardson@dcedh.org)
Shelly Murphy, Chief Officer Regulatory and Government Affairs, Dream Center
Education Holdings, LLC (email: smurphy@dcedh.org)

Exhibit 12

Date Transmitted: Feb. 23, 2018

From: Michael Frola

Subject: *Dream Center*

Re: Dream Center

Anthea Sweeney

Mon 3/5/2018 7:33 AM

To: Frola, Michael [REDACTED];

Cc: Barbara Gellman-Danley [REDACTED]; Eric Martin [REDACTED];

Importance: High

Good Morning Mr. Frola,

Unfortunately, due to unforeseen circumstances, the phone call you arranged for this afternoon at 1:30 p.m. Central will need to be rescheduled. I will reach out to you with some options for an alternative time soon. So sorry for the inconvenience.

Thank you.

Anthea M. Sweeney, Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Frola, Michael [REDACTED] >
Sent: Monday, February 26, 2018 6:34 AM
To: Karen L. Peterson
Cc: Anthea Sweeney
Subject: Re: Dream Center

I'll set something up this afternoon. Thanks, Mike

Sent from my iPhone

On Feb 24, 2018, at 2:01 PM, Karen L. Peterson [REDACTED] wrote:

Hi Mike,

Let's schedule some time on Monday to talk. I am copying my colleague, Anthea Sweeney, on the e-mail as she is the liaison at HLC for the two institutions, and I would like her on the call.

Thanks so much.

Karen

From: Frola, Michael [REDACTED]
Sent: Friday, February 23, 2018 7:49 AM
To: Karen L. Peterson
Subject: Dream Center

Hi Karen,
Do you have time today for a quick call? The candidacy status that HLC has Dream Center on following the CIO could be problematic for the schools title IV eligibility.
Thanks,
Mike

Michael Frola
Director
Multi-Regional and Foreign School Participation Division
Office: [REDACTED]
[REDACTED]
StudentAid.gov
<image001.png>

The information contained in this communication is confidential and intended only for the use of the recipient named above, and may be legally privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please resend it to the sender and delete the original message and copy of it from your computer system. Opinions, conclusions and other information in this message that do not relate to our official business should be understood as neither given nor endorsed by the organization.

Exhibit 13

Date Transmitted: May 28, 2019

From: U.S. Department of Education

Subject: *Responses to Senator Durbin, Questions for the Record*

Question. a. On November 16, 2017, the Higher Learning Commission (HLC) withdrew accreditation from the Illinois Institute of Art and Art Institute of Colorado campuses of Dream Center Education Holdings (DCEH)—transitioning them to “candidates for accreditation”—effective January 20, 2018. DCEH continued to represent these campuses as accredited by HLC to students. On August 2, 2018, David Halperin of the Republic Report published a report that at a meeting at Department headquarters a group of Department staff, led by Diane Auer Jones, told a delegation from DCEH, including CEO Brent Richardson, to publicly represent that the Illinois Institute of Art and Art Institute of Colorado continued to be accredited.

On August 30, 2018, I led a group of Senators in writing to you about these allegations. The Department responded on December 4, 2018 in a letter signed by Assistant Secretary for Legislation and Congressional Affairs Peter Oppenheim. In its response, the Department stated that, prior to the August 2 report, “only two meetings between Department personnel and DCEH representatives occurred in regard to DCEH and the impending closures of many of its campuses”—one on June 14, 2018 and the other on July 18, 2018.

b. Was the topic of DCEH’s HLC accreditation status discussed at either the June 14, 2018, or July 18, 2018, meetings? If so, please describe the nature of those discussions and any requests made by DCEH participants of the Department related to its HLC accreditation status, including any request for guidance or Department intervention with HLC.

Answer. a. On November 16, 2017, the Higher Learning Commission (HLC) decided to put the Illinois Institute of Art and Art Institute of Colorado campuses of Dream Center Education Holdings (DCEH) on Change of Control Candidacy Status” (“CCC-Status”) effective on January 20, 2018. According to HLC’s standards and policies, as well as the letter that HLC sent to the Department in November 2017, the agency views CCC-Status as the equivalent of preaccredited status. Institutions that are in preaccredited status are eligible to participate in Federal student aid programs. HLC knew that the institutions were participating in Federal student aid programs and did not notify the Department that they had taken an adverse action against the institutions, which would have disqualified these institutions from participating in Federal student aid programs. It was only in the case of the Illinois Institute of Art and Art Institute of Colorado that HLC used a novel interpretation of preaccreditation as a non-accredited status, but this interpretation is in violation of HLC’s own policies and Department regulations. Therefore, the Department must emphasize that is not true that the campuses were not accredited during this period.

Nevertheless, the confusion about the Art Institutes’ accreditation status caused the Department to closely review HLC’s policies and procedures about its CCC-Status. During the course of this review, the Department also watched a video of a meeting with HLC site visitors, faculty and students at the Chicago campus. In that video the HLC site visitors referred to CCC-Status as some sort of technical interim phase as a result of the change of ownership, similar to a probation or show cause. Having reviewed HLC’s policies and procedures, its communications with the Art Institutes and the site visit video, the Department is concerned that HLC’s CCC-Status is in violation of HLC’s own policies as well as the Department’s recognition criteria because HLC has used the status to convert two accredited schools to non-accredited status solely as a result of a change in ownership without putting them on probation or show cause, or otherwise affording them the due process protections of an actual adverse action.

While HLC has every right to revoke accreditation, the agency did not follow the appropriate procedures to do so for the Illinois Institute of Art and Art Institute of Colorado. There is no provision in the Department's regulations for an adverse action that would revoke accreditation and at the same time award candidacy status. Indeed, the letter advising the Art Institutes of their CCC-Status refers to the status as a "preaccreditation status." However, there is no adverse action that would automatically transition an accredited institution to a preaccredited institution rather than a non-accredited institution.

b. During the June 14, 2018 meeting, DCEH asked a question about the effective date of full accreditation if HLC made a positive decision following the upcoming site visit. Ms. Jones explained that HLC would determine the effective date, and that DCEH should review the agency's policies regarding retroactive accreditation to determine what that date might be. The Department also instructed DCEH to notify HLC immediately that they had decided to teach-out a number of campuses.

Although a question about the institutions' current accreditation status was not asked during the June 14th meeting, the Department believed that the campuses were in an accredited status at that time, or the Department would not have allowed the institutions to participate in title IV programs. In the November 2017 letter from HLC to the Department, CCC-status was described as a preaccredited status. According to the Department's regulations, preaccreditation is an accredited status. The Department believed then, and continues to believe, that these campuses were in accredited status until their date of closure.

Following the June 14th meeting, Ms. Jones expressed to Department staff her concern about DCEH's ability to manage a teach-out of this magnitude and complexity and volunteered to contact each of the involved accreditors, except ACICS, to discuss the teach-out and to see if the accreditors would be willing to work together to review the teach-out plan and share regular updates with the Department about that status of the teach-outs. Ms. Jones did not reach out to ACICS because during this time she was involved in the review of ACICS's Part II submission and did not believe that she should be in communication with ACICS. The other involved accreditors (WASC, Middle States, SACSOC, HLC and Northwest Commission) agreed that it would be best to work together to review and approve a "master" teach-out plan that was satisfactory to everyone. Ms. Jones then notified DCEH that the accreditors would be working together to review teach-out plans and provide guidance as a group. Once the teach-out began, Ms. Jones held bi-weekly calls with the accreditors (excluding ACICS) to share information and hold DCEH accountable for providing information or taking actions requested by accreditors. These calls were not to intervene on DCEH's behalf. Instead, they were to make sure that DCEH was meeting accreditor requirements and to reiterate to DCEH that they needed to follow accreditor instructions.

On July 10, 2017, Ms. Jones became aware of the notification that HLC had posted on its website regarding the accreditation status of these institutions. This was the first time Ms. Jones had seen any reference to CCC-Status being a non-accredited status; however, in its web notification, HLC referred to CCC-status as being "recognized" status and indicated that the institution has met the requirements for candidacy. Candidacy status, also called preaccreditation,

is an accredited status under Department regulations. There is no such thing as a non-accredited, recognized status.

On July 17, 2017, during a call with accreditors, HLC notified Ms. Jones that these institutions had misrepresented their accreditation status on their websites. Several accreditors on that call provided information to Ms. Jones about other issues that DCEH had to address. Ms. Jones typed up that list of action items for DCEH, which included the directive to accurately reflect the accreditation status of the institutions.

On July 18, 2018, during the meeting with DCEH, Ms. Jones told DCEH employees that they needed to update their websites to accurately reflect their accreditation status using the language provided by HLC. Ms. Jones also provided DCEH with a written copy of the list she made based on the accreditor call the previous day. She asked DCEH to provide a response within one week to prove that they had taken corrective action for each item on the list. When Ms. Jones followed up with DCEH to see if they had taken corrective action, DCEH said that the list she had provided was not the bulleted list discussed at the meeting on July 18, 2018. Ms. Jones then forwarded DCEH an electronic copy of the bulleted list. Subsequently, Ms. Jones followed up with HLC to be sure that DCEH had corrected their website to HLC's satisfaction. HLC confirmed that the correction had been made.

Question. The Department's qualification that these meetings were related to the "impending closures" of DCEH campuses, raises additional questions.

a. Please provide the date of all meetings between the Department and DCEH officials which occurred between November 16, 2017 and August 2, 2018. Please provide the stated purpose of any meetings and a list of individuals present.

b. Please provide the date of all meetings between the Department and DCEH officials which occurred between November 16, 2017 and August 2, 2018 at which DCEH's HLC accreditation status was discussed. Please provide a list of individuals present. Please describe the nature of those discussions and any requests made by DCEH participants of the Department related to its HLC accreditation status, including any request for guidance or Department intervention with HLC.

Answer. a. Due to the complexity of the request and competing priorities, and in some instances, inability to analyze and validate data within the requested timeframe, Department officials were unable to draft a response to accommodate the Senate deadline. Thus, the Department was unable to provide a response for insertion into the official hearing record at this time. The Department regrets the inconvenience and commits to providing a response to the Committee as soon as possible. Department staff will regularly provide updates to Congressional staff regarding expected delivery of this response.

b. As stated above, on July 18, 2018 the Department met with DCEH officials to continue ongoing discussions about closing the institutions and to provide instructions to DCEH. Diane Jones also notified DCEH in this meeting that they would be required to change their website to

represent their accreditation status to students, as required by HLC. DCEH did not request that the Department intervene on their behalf to HLC in the meeting.

The following individuals attended the meeting:

- Diane Jones (OUS)
- A. Wayne Johnson (FSA)
- Justin Riemer (OGC)
- Brent Richardson (DCEH)
- Shelly Murphy (DCEH)

COMMUNICATIONS AND DOCUMENTATION REGARDING DCEH

Question. Please provide all documents and communications between DCEH and any Department staff or official, including Ms. Jones, related to the November 16, 2017, HLC decision or DCEH's HLC accreditation status.

Answer. Due to the complexity of the request and competing priorities, and in some instances, inability to analyze and validate data within the requested timeframe, Department officials were unable to draft a response to accommodate the Senate deadline. Thus, the Department was unable to provide a response for insertion into the official hearing record at this time. The Department regrets the inconvenience and commits to providing a response to the Committee as soon as possible. Department staff will regularly provide updates to Congressional staff regarding expected delivery of this response.

HIGHER LEARNING COMMISSION ACTIONS AND DCEH CHARACTERIZATION OF ACCREDITATION STATUS

Question. In the Department's response to Question 1 of the August letter, it states that "it was not until a July 17, 2018, conversation with [the Higher Learning Commission (HLC)] that Ms. Jones learned that DCEH had incorrectly described its accreditation status to students." On June 26, 2018, I sent a letter to HLC President Barbara Gellman-Danley about media reports that DCEH was misrepresenting the accreditation status of its Illinois Institute of Art and Art Institute of Colorado campuses after the schools lost HLC accreditation on January 20, 2018. I sent a copy of that letter to Julian Schmoke, then the Department's Chief Enforcement Officer, through the Office of Legislation and Congressional Affairs (OLCA). Ms. Jones was at the Department at that time.

a. Did OLCA provide a copy of that letter to Mr. Schmoke? If so, please provide the date on which it was provided to Mr. Schmoke.

b. Did OLCA provide a copy of that letter to any other office or Department official, including the Office of the Secretary or Ms. Jones? If so, please provide a list of individuals and the dates on which it was provided.

c. Was Ms. Jones aware of HLC's decision, effective January 20, 2018, to remove the accreditation of the Illinois Institute of Art and Art Institute of Colorado campuses prior to July 17, 2018? If so, when and through what method did Ms. Jones learn of HLC's action?

d. Were other Department officials aware of HLC's decision, effective January 20, 2018, to remove the accreditation of the Illinois Institute of Art and Art Institute of Colorado campuses prior to July 17, 2018? If so, please provide a list of individuals and their positions? When and through what method did these individuals learn of HLC's action?

Answer. a. The letter was forwarded by email by a staff member in OLCA to Julian Schmoke on June 26, 2018.

b. The letter was received by a staff member in OLCA and was forwarded to the following individuals on June 26, 2018 by email:

- Lynn Mahaffie
- Kathleen Smith
- Chris Greene
- Herman Bounds
- Christine Isett
- Todd May
- Peter Oppenheim
- Jenny Prescott
- Molly Peterson

Diane Jones did not receive a copy of the letter.

c. As stated above, the Illinois Institute of Art and the Art Institute of Colorado were in the equivalent of a preaccredited status between January 20, 2019 and the date of closure of the campuses. HLC's CCC-Status is the equivalent of a preaccredited status under the Department's regulations, which is an accredited status.

On July 10, 2017, Shelly Murphy of DCEH sent Ms. Jones an email that included information HLC had posted about the two institutions on the HLC's website. That was the first time Ms. Jones understood that HLC was treating CCC-Status as a non-accredited status rather than as a preaccredited status. Ms. Jones had no knowledge that HLC considered CCC-Status to be a non-accredited status until July 10, 2018, although even then HLC's explanation of CCC-Status was unclear. During a call with accreditors on July 17, 2018, Ms. Jones learned for the first time that the institution's websites inaccurately described their accreditation status. Ms. Jones notified DCEH in a meeting on July 18th that they must correct their website to reflect HLC's language about the institution's accreditation.

d. Due to the complexity of the request and competing priorities, and in some instances, inability to analyze and validate data within the requested timeframe, Department officials were unable to draft a response to accommodate the Senate deadline. Thus, the Department was unable to provide a response for insertion into the official hearing record at this time. The Department regrets the inconvenience and commits to providing a response to the Committee as soon as

possible. Department staff will regularly provide updates to Congressional staff regarding expected delivery of this response.

DEPARTMENT DIRECTION TO DCEH TO ACCURATELY REPRESENT ACCREDITATION STATUS

Question. The Department's response to Question 1 further states that on July 18, 2018, Ms. Jones "advised representatives of DCEH (at the meeting and in writing) that they must provide students with accurate information about their institution's accreditation status...". Please provide a copy of the written direction from Ms. Jones to DCEH to which the Department is referring.

Answer. Enclosed in this response is an email, with an attachment of the list, sent from Diane Jones to Shelly Murphy of DCEH via email on August 2, 2018. Ms. Jones handed a printed copy of the list to Ms. Murphy on July 18, 2018, and later when Ms. Murphy said that she had been given the wrong document, Ms. Jones emailed a copy to her.

<image003.png>

SETTLEMENT ADMINISTRATOR FINDING OF MISREPRESENTATION BY DCEH

Question. Regardless of what role, if any, the Department may have played in the misrepresentation, it has failed to meet its legal responsibility to provide the borrower defense discharges to which Illinois Institute of Art and Colorado Art Institute students are entitled under the Higher Education Act based on DCEH's misrepresentation. In its December 4 response, the Department reported that it has not opened an investigation into the misrepresentation despite acknowledging that it occurred. As apparent justification, the Department noted that a review of online videos from July informational meetings held for students at the closing Illinois Institute of Art campus "clearly show that the students had, at some point prior to the meetings, learned that the school was not in accredited status." In other words, because a video shows that some small number of students eventually learned the truth about their school's accreditation, the Department believes no action against DCEH or relief for students is necessary based on the misrepresentation. By clinging to this outrageous and legally dubious position, the Department is failing to uphold its responsibility to enforce federal Title IV laws and regulations and ignoring the harm done to students by DCEH's misrepresentations.

HLC recognized the harm to students of not knowing that their campuses were no longer accredited. In its public disclosure announcing that its removal of accreditation had taken effect, HLC noted that students should know that "their courses or degrees are not accredited by HLC and it is possible that they will not be accepted in transfer to other colleges and universities or recognized by prospective employers." In other words, students could be taking on debt to attend worthless courses or get a worthless degree.

A 2015 settlement between Education Management Corporation and 39 state attorneys general and the District of Columbia established a Settlement Administrator to enforce the terms of the settlement—which became binding on DCEH as part of its acquisition of EDMC schools. In

February, Settlement Administrator Thomas Perrelli released his Third Annual Report which found that DCEH violated the settlement as a result of its “failure to advise students that certain schools had lost their accreditation.” Mr. Perrelli found that “DCEH did not inform Illinois Institute of Art or Art Institute of Colorado students or prospective students that it had lost accreditation” despite being “obligated” by HLC to do so. Instead, Mr. Perrelli found that DCEH “revised the accreditation statement on its website to expressly claim that the schools “remain accredited as a candidate school” which was “inaccurate and misleading.”

During the time DCEH failed to disclose its loss of accreditation status to students and made express misrepresentations, “students stayed in the unaccredited schools” and “registered for additional terms and incurred additional debts, for credits that were significantly less likely to transfer to other schools and towards a degree that was to have limited value.” Mr. Perrelli found that these problems were “exacerbated dramatically when DCEH announced in July that it would be closing those schools, leaving many of those students dependent on the transferability of their credits to further their education.” He concludes that DCEH’s eventual correction of its misleading statements “did not resolve” the harm students had experienced.

a. Please respond to Mr. Perrelli’s findings related to DCEH’s misrepresentation of its accreditation status and failure to disclose its loss of accreditation to students.

b. In the aftermath of Mr. Perrelli’s findings and the subsequent misconduct by DCEH related to missing student stipends and the precipitous closure of Argosy and its other institutions, will the Department open an investigation into the accreditation misrepresentation at Illinois Institute of Art and Art Institute of Colorado?

Answer. a. As stated above, the Illinois Institute of Art and the Art Institute of Colorado were in the equivalent of a preaccredited status between January 20, 2019 and the date of closure of the campuses. HLC’s CCC-Status is the equivalent of a preaccredited status under the Department’s regulations.

b. The Department has asked HLC to review its standards since the Department believes that HLC’s standards do not support a determination that these campuses were in non-accredited status. The Department believes HLC was out of compliance with Department regulations in attempting to move an accredited institution to preaccredited status, and then making an accreditation decision based on a focused site visit. Moreover, HLC’s policies require that an institution which loses accreditation to sit out for five years. Therefore, it is not possible that CCC-Status is a nonaccredited status.

Exhibit 14

Date Transmitted: June 27, 2018

From: Diane Jones

Subject: *Re: Art Institutes*

Re: Art Institutes

Anthea Sweeney

Wed 6/27/2018 9:22 PM

To: Jones, Diane [REDACTED];

Cc: Barbara Gellman-Danley [REDACTED];

Thanks. I am available anytime tonight or between 6.00 a.m. and 7.30 a.m. Central tomorrow. I will watch for your call. Our Board meeting begins at 8.00 a.m. Central. Same cell number [REDACTED]. Thank you.

Anthea

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From: Jones, Diane
Sent: Wednesday, June 27, 7:51 PM
Subject: RE: Art Institutes
To: Anthea Sweeney
Cc: Barbara Gellman-Danley

Hi Anthea,

I am finally back in the office – lots of detours along the way....sorry about that. If you are available and wish to chat tonight, I am happy to speak now, and if not, when might be a good time to call you tomorrow?

Diane

From: Anthea Sweeney [mailto:[REDACTED]]
Sent: Wednesday, June 27, 2018 4:45 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Re: Art Institutes

Dr. Jones,

Thanks so much for your message. I will wait for your call. I just also got off the phone with both Beth Daggett and Herman Bounds, who called me together and indicated (similarly) that the memo is not applicable in this particular situation.

They have advised that HLC should be mindful of current federal regulations on ensuring consistency in decisionmaking (34 CFR 602.18) and that the cleanest way to do this is to look at our reconsideration policy, which is a policy that already exists and is available already to all institutions.

I am free and stand ready to speak with you at your convenience at [REDACTED].

Thank you,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604

Main Tel.: [REDACTED]

Direct Line: [REDACTED]

Fax: [REDACTED]

From: Jones, Diane [REDACTED]

Sent: Wednesday, June 27, 2018 3:32 PM

To: Anthea Sweeney

Cc: Barbara Gellman-Danley

Subject: Re: Art Institutes

Hi Anthea,

I am on my way back from meetings and will call you as soon as I get back. The guidance document was issued in error and we will be releasing corrected guidance. We've actually been working on a document to rescind that guidance and we were planning to issue it this week. I'm disappointed that it got sent to you since it is known that we are retracting that policy because it creates a catch 22 for students who enroll in programs that won't issue accreditation until the first class graduates. That accreditation should apply to the students enrolled in the cohort that led to accreditation.

The main point is that we want students who are graduating to be able to graduate from an accredited program since it was accredited when they enrolled and during their enrollment. It would be limited to students in the teach out plan as well as those who are transferring credits earned at AI until this point or who are transitioning to the accredited on-line campus. AI would not be allowed to enroll new students and the teach out would be carefully monitored, but the goal is to make students whole and close the school.

I'll call you ASAP.

Diane

Sent from my iPhone

On Jun 27, 2018, at 3:47 PM, Anthea Sweeney [REDACTED] wrote:

Dear Under-Secretary Jones,

I write urgently to follow up on my voicemail earlier this afternoon. I understand from President Gellman-Danley that the Art Institutes have reached out to your office seeking support for a confidential proposal which they presented to HLC this week, in lieu of proceeding with HLC's established processes, to seek reinstatement of accreditation.

The proposal in short indicates that with agreement by HLC to nullify its Board's previous action, which was based on evaluation and evidence, to move the Institutes from Accredited to Candidate status after approving their transaction with the Dream Center, they would cease enrolling students and teach-out currently enrolled students through 12/31/2018, except for those students who transfer to their online Division which is accredited by Middle States. Such an action would involve our Board deeming the Institutes "accredited" retroactive to the date of action (January 20, 2018).

Yesterday we listened and clarified the salient points of the proposal. We were already scheduled to provide our Board an update this week and committed only to proceeding with that update. We also received guidance (attached) from our analyst at the U.S. Department of Education, Beth Daggett, regarding retroactive actions by accreditors, as authored by Herman Bounds. We would greatly appreciate having clarity from the Department for purposes of our Board update as to how any decision they may make at a later date will be viewed by the Department.

I am available by cell at [REDACTED] and look forward to speaking with you.

Best Wishes,

Anthea M. Sweeney

Vice President for Legal and Governmental Affairs

Higher Learning Commission

230 South LaSalle Street, Suite 7-500

Chicago, IL 60604

Exhibit 15

Date Transmitted: Oct. 3, 2017

From: Higher Learning Commission

Subject: *Summary Report to the Board of Trustees for Change of Control, Structure, or Organization*



HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

October 3, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Randall Barton, Executive Chairman
Dream Center Education Holdings LLC
7135 E. Camelback Road, Suite F 240
Scottsdale, AZ 85251

Dear President Monday, President Pond, and Chairman Barton:

Enclosed is the *Staff Summary Report* and accompanying *Fact-finding Visit Report* for the Change of Control, Structure, or Organization review, as requested by the Art Institute of Colorado and Illinois Institute of Art (“the institutions”, collectively). Under Higher Learning Commission (“HLC” or “the Commission”) policy, the institutions should review the Report and prepare a written response, which should also clearly identify any errors of fact contained in the Report. This response should be submitted to HLC no later than **October 17, 2017**. A lack of response shall be interpreted as the institutions concurring with the findings presented in the Report.

Additionally, HLC must receive a copy of the response to the U.S. Department of Education’s Preacquisition Review Letter, dated September 12, 2017. The response and any supporting materials must be received by the Commission no later than close of business on **Monday, October 9, 2017**. If this information is not provided by this deadline, the HLC Board of Trustees will not be able to review this case at its November 2017 meeting. As a reminder, all information must be submitted electronically to the Commission to www.hightail.com/u/hlc-lga.

The Commission’s Board of Trustees (“the Board”) makes the decision of whether to approve the extension of accreditation after the proposed transaction takes place. The institutions’ application for Change of Control, Structure, or Organization is currently on the Board’s agenda for the November 2017 meeting, pending receipt of the response to the U.S. Department of Education. The Board will

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President Monday, President Pond, and Chairman Barton, October 3, 2017 2

receive the following information in preparation for its decision: the *Staff Summary Report*, the institutions' response to the Report (if any), and the joint application for Change of Control, Structure, or Organization. The institutions' historical files with the Commission, including: any previous team reports, institutional responses, action letters, and other related documents, will also be made available to the Board.

Please note that under Commission policy, the *Staff Summary Report* does not contain a recommendation to the Board. The Board has the following decision options available, as it does with all applications for Change of Control, Structure, or Organization: to approve the extension of accreditation following the consummation of the transaction; to approve the extension of accreditation subject to certain conditions, as determined necessary by the Board; to deny the extension of accreditation following the transaction; or to approve the extension of accreditation following the transaction subject to a period of candidacy. The institutions should take the Board's options into consideration when preparing a response.

Thank you for your cooperation throughout this process. If you have additional questions, please contact Dr. Anthea Sweeney.

Sincerely,



Robert Rucker
Research and Advocacy Coordinator for Legal and Governmental Affairs

Enc: Staff Summary Report
Fact-finding Visit Report

Cc: Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, The Art Institute of Colorado
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
Karen Peterson Solinski, Executive Vice President for Legal and Governmental Affairs,
Higher Learning Commission

**SUMMARY REPORT TO THE BOARD OF TRUSTEES FOR
CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION**

AS REQUESTED BY

-
**Art Institute of Colorado
Illinois Institute of Art**

**Of
EDUCATION MANAGEMENT CORPORATION**

Date: October 1, 2017

Explanation

Involved Parties

Party One: Education Management Corporation, Pittsburgh, PA (EDMC)

Education Management Corporation is a publicly-traded for-profit corporation that has been in existence for more than forty years. Until recently it was traded on the NASDAQ stock exchange. Its largest institutional shareholder is Providence Equity Partners, LLC. EDMC currently reports 101 locations in 31 states of the United States. Directly and through various intermediate subsidiary entities EDMC owns several “families” of institution: Argosy University; South University; the Art Institutes; and Brown Mackie Colleges (closing soon). The Art Institutes includes approximately 45 locations, of which HLC accredits five under the two institutional accreditations identified below. All of the regional accreditors, with the exception of AACJC, currently accredit at least one EDMC institution. Directly and through its intermediate subsidiary entities EDMC provides certain services to its institutions that include, but are not limited to, human resources, regulatory, legal, facilities management, technology, and various student-facing services.

Party Two: Art Institute of Colorado, Denver, CO (AIC)

Art Institute of Colorado is a Bachelor’s-level institution of higher education accredited by the Higher Learning Commission (HLC or the Commission) owned by EDMC, which, as noted above, is a publicly traded corporation. As reported in AIC’s most recent annual update to HLC, AIC offers five Associate’s degrees and 16 Bachelor’s degrees in fields related to art and design and culinary arts. AIC’s reported enrollment to HLC in its most recent Annual Update was 811 students of which approximately 500 were full-time undergraduate students.

AIC has a main campus in Denver and has no other locations. It is not approved by HLC to offer distance or correspondence education.

The College was first accredited by HLC in 2008. Its most recent comprehensive evaluation took place in 2012-13, at which time its accreditation was reaffirmed. It was also placed on Notice because of concerns related to student success, including: retention and attrition, institutional review of data related to student success, faculty workload and development, enrollment management, and evidence-based planning. It was removed from Notice in 2015 because it demonstrated appropriate improvements and was no longer deemed at risk of being out of compliance with the Criteria for Accreditation. It then hosted a mid-cycle review in 2016-17 on the Standard Pathway that resulted in a recommendation for a focused evaluation on its declining enrollment and revenues. AIC will host its next comprehensive evaluation in 2022-23 at which time HLC will evaluate it for reaffirmation of accreditation.

Party Three: Illinois Institute of Art, Chicago, IL (IIA)

Illinois Institute of Art is a Bachelor's-level institution of higher education accredited by HLC that is also owned by EDMC, which, as noted above, is a publicly traded corporation. As reported in IIA's most recent annual update to HLC, IIA offers eight Associate's degrees and 15 Bachelor's degrees in fields related to art and design and culinary arts. IIA's reported enrollment to HLC in its most recent Annual Update was 2,289 students of which approximately 1,400 were full-time undergraduate students.

IIA has a main campus in Chicago; it also has campuses in Schaumburg, Illinois; Novi, Michigan; and Cincinnati, Ohio. It has an additional location in Tinley Park, Illinois. It is not approved by HLC to offer distance or correspondence education.

The College became accredited by HLC in 2004; its accreditation was reaffirmed in 2008. It is on the Standard Pathway. In 2015, it was placed on Notice after a comprehensive evaluation because of concerns related to related to integrity, student support services, strategic planning, and institutional improvement. In May 2017, it hosted a Notice focused evaluation team to determine whether IIA had demonstrated appropriate improvements to support removing the institution from Notice. Following the visit, the focused evaluation team has recommended such removal, and the Commission's Board of Trustees is considering the recommendation. IIA will host its next comprehensive evaluation in 2018-19, at which time it will be evaluated for reaffirmation of accreditation.

Party Four: Dream Center and Dream Center Foundation, Los Angeles, CA (DCF or the buyers)

The Dream Center Foundation is a 501(c)(3) California non-profit organized formally in 2008 that supports the faith-based mission of the Dream Center, founded by Pastors Tommy and Matthew Barnett in California, which serves homeless, veteran and other at-risk populations in the Los Angeles area. Pastor Tommy Barnett is currently Chancellor of Southeastern University and pastor of an Assemblies of God church, the Dream City Church, in the Phoenix area; Pastor Matthew Barnett, his son, began his mission work in the Los Angeles area and launched the first Dream Center there in 1994. Some years later

the Dream Center organization acquired the former Queen of Angels hospital complex in downtown Los Angeles near Echo Park and expanded its work. Currently on the former hospital property, the Dream Center operates an extensive residential complex serving not only homeless and veteran populations, but also victims of domestic abuse, human trafficking, and previous substance abuse. It also operates an extensive food network that distributes food on a daily basis to impoverished populations throughout the greater Los Angeles area. Also at the Los Angeles Dream Center, the organization runs training programs for leaders of churches and others from across the United States who want to learn how to initiate a similar Dream Center in their own communities. Such Dream Centers in major urban centers across the country, while separate organizations from the Dream Center in Los Angeles, maintain an affiliation with the organization in Los Angeles. While the Dream Center has a clear statement of faith identified on its website that connects it to the key-teachings of the Assemblies of God faith, the Dream Center Foundation emphasizes that it is a secular foundation. DCF does not currently own or operate any institutions of higher education. DCF's Managing Director is Mr. Randall Barton.

Party Five: Dream Center Education Holdings, Scottsdale, AZ (DCEH or, together with DCF, the buyers); Dream Center Education Management (DCEM)

Dream Center Education Holdings is a non-profit Arizona Limited Liability Corporation organized in January 2017 whose sole member is DCF. DCEH was formed to facilitate this transaction and, with its related corporations, to replicate the corporate structure of EDMC, wherein EDMC was the ultimate parent of several entities that owned the assets of the educational institutions and provided certain operational assistance to them. DCEH's initial Board of Managers was comprised of Pastor Matthew Barnett, Mr. Randall Barton, and Mr. Brent Richardson, former Executive Chairman of Grand Canyon Education and former President of Grand Canyon University. DCEH is the sole member of additional Arizona nonprofit Limited Liability Corporations that will hold the assets of each of the institutions currently owned by EDMC: Art Institutes International, LLC; Dream Center South University, LLC; and Dream Center Argosy University LLC.

Dream Center Education Management is a non-profit Arizona Limited Liability Corporation organized in January 2017 whose sole member is the Dream Center Education Holdings. DCEM was formed to take over the activities of Education Management II (EMII), again replicating the corporate structure of EDMC, wherein EMII, along with EDMC, provided certain services to the institutions and related corporations within the corporate structure. (See Core Component 5.A for an explication of services offered by each entity.) DCEM's initial Board of Managers was comprised of Pastor Matthew Barnett, Mr. Brent Richardson, former Executive Chairman of Grand Canyon Education and now Chief Executive Officer of DCEH, and Mr. Randall Barton, Co-Chairman of DCEH.

Najafi Companies in Phoenix, Arizona invests internally-generated capital, and not through an investment fund, in the leisure, hospitality, consumer products, education and related markets. Najafi Companies will provide financing for the transaction to DCF, which is the borrower in this transaction.

Proposed Transaction

Overview

Through this transaction, the sellers, EDMC and multiple related corporations, will sell certain assets to the buyers, DCEH with DCF as its representative and four related Arizona non-profit LLCs. These assets include merchandise, supplies, equipment, leasehold improvements, intellectual property, books and records, good-will, and related assets. Assets excluded from this deal include cash and cash equivalents, bank accounts, tax refunds, insurance policies, and related assets. Buyers will assume certain liabilities including trade payables, certain leases, certain purchase orders, certain liabilities related to Closing Net Working Capital and certain liabilities related to unearned or deferred revenues. It is important to note that liabilities related to the Consent Judgment agreed to by EDMC are excluded and are not transferred to buyers.

The parties concluded an Asset Purchase Agreement that lays out the details of, and consideration for, the transaction. The purchase price for the assets will be \$60 million¹ with certain adjustments as laid in the Asset Purchase Agreement, which includes \$50 million as adjusted to be paid in cash at closing and an additional \$10 million in deferred payments of \$5 million paid six months and one year after closing from institutional operating revenues.² The principal adjustment will be related to Net Working Capital, which may adjust the purchase price up or down depending on how much is available at or prior to closing. The Asset Purchase Agreement also outlines some additional provisions related to the purchase in the event that the Middle States Commission on Higher Education or the Higher Learning Commission does not approve the continuation of accreditation after the transaction. Finally, the Asset Purchase Agreement indicates that immediately after the transaction sellers will pay off the current and future amounts owed under the Settlement Agreement entered into by the United States and various states.

The transaction will be financed by ED Holding, which is a Delaware limited liability corporation associated with Najafi Companies. The financing is subject to interest at the greater of 8% or at the Adjusted Libor Rate and has a term of approximately 23 years. The borrower is DCF with DCEH, DCEM, Dream Center Argosy, Dream Center South and Art Institutes International, as guarantors. Financing is subject to a Promissory Note, Credit Facility, Security, and Continuing Guaranty documents. In particular, the Credit Agreement notes that the borrowers need to establish a working capital line of credit as a condition precedent³ and that

¹ The buyers reported to HLC that the original purchase price was \$100 million, but that amount was adjusted down during the due diligence period.

² In August 2017 during the HLC Fact-finding Visit, buyers advised the HLC team that the buyers would be providing approximately \$25 million in cash at closing, and the remaining \$25 million would be paid from the Net Working Capital Adjustment; these figures were confirmed in the most recent response received September 21, 2017.

³ In this response the buyers also included a form credit agreement and related documents that would govern the terms of the line of credit in conjunction with the U.S. National Bank Association as the administrative agent. However, it remained unclear which banks had provided a commitment for the line of credit. The buyers indicated that the line of credit would be finalized at the closing.

there are certain affirmative and negative covenants associated with the financing including the provision of certain accreditation, financial and related reports to the lender, right to observe the borrower's board meetings, and related requirements. There do not appear to be any covenants related to enrollment at the colleges or other similar requirements that are often identified in such agreements with institutions of higher education. The loan is collateralized by one unit of membership in DCEH and all income, interest, distributions, property, and related assets of these corporations.

In addition, the Richardson Family Trust will be providing up to 10% of the loan on the same terms as the Najafi Companies. However, the buyers have indicated that there will be no direct loan arrangement or agreement between DCEH or DCF and the Richardson Family Trust. There are no written documents governing the participation of the Richardson Family Trust, and any arrangements are based solely on an oral understanding between the Richardsons and Mr. Najafi.

The transaction is contingent on various conditions precedent. These conditions include all pre-closing regulatory consents by accrediting and state agencies and by the U. S. Department of Education, among other considerations.

History Leading to the Transaction

EDMC conducted an initial public offering in 1996 that successfully generated \$45 million for the company's owners. In 2006 a group of investors decided to take the company private again. The transaction was financed by cash, debt financing, and equity contributions totaling \$1.3 billion. The debt financing consisted of \$1.185 billion in term loans and publicly traded notes of \$760 million in the aggregate. The debt was placed with Education Management LLC so that neither the parent corporation nor the educational subsidiaries held any of the debt. The entire transaction was reported by the independent auditors (Consolidated Financial Statements of EDMC June 1, 2006 to June 30, 2006) at \$3,669,078,000. HLC reviewed the privatization as a Change of Control under its policy at that time.

In December 2006, HLC conducted a focused evaluation to the corporate headquarters in Pittsburgh in which other regional accrediting agency representatives participated. The team reported that the investors had indicated the timeframe for their investment was a minimum of four years, but more likely five to seven years; these statements reflected provisions in the Shareholders' Agreement. The team concluded that, while the transaction did not have a material impact on the governance, mission or educational programs of the institutions accredited by HLC, the highly leveraged nature of the company, the issues with the U.S. Department of Education related to the leverage (as described below), and the short-term horizon for the investment merited a watchful eye.

The aim of other similar "going private" transactions among large higher education corporations in recent years had been to take the company private, generating significant transaction fees for the investment bankers involved in the transaction and significant debt on the books of the company, but later to eliminate the debt by going public once again. Transactions structured in this way have become increasingly rare because of the down-turn (until recently) in for-profit higher education stock and the impossibility of predicting when the market might be profitable

enough to take the company public again after this period of private investment, thus generating sufficient proceeds to pay off the debt.

In October 2009, EDMC became partially publicly traded again when it sold shares of its common stock to the public in an initial public offering, thereby reducing, but not eliminating, the percentages of stock owned by the equity investors in the “going-private” transaction and reducing some of the outstanding debt. While HLC’s Change of Control, Structure or Organization policy did not require an approval for the initial offering because not more than 25% of the total outstanding shares of stock would change hands, HLC did require an evaluation in early 2014 to evaluate the company’s plan for follow-on offerings. While HLC subsequently approved the continuation of accreditation, subject to various reporting requirements, after these follow-on offerings, the company informed HLC that it would not be proceeding with them because of market conditions at the time.

Subsequently, EDMC was the subject of several investigations and legal actions. Attorneys General in several states initiated investigations related to admissions and recruiting activities; an investigation in Colorado resulted in a consent judgment, and EDMC paid \$3.4 million without admitting any liability. EDMC was a defendant in multiple *Qui Tam* actions under the federal False Claims Act also relating to recruiting practices and particularly violations of the federal ban on incentive compensation. In November 2015, EDMC agreed to a global settlement that settled the *Qui Tam* suits, consumer fraud investigations by a consortium of 40 state attorneys general, and an investigation by the U.S. Department of Justice. EDMC agreed to pay \$95.5 million to be distributed among the various agencies, plaintiffs and claimants; to change its admissions and recruiting practices; and to forgive \$102 million in private student loan debt. (See Eligibility Requirement #16 for an explanation of this settlement with regard to revised practices.) It also agreed to independent monitoring of its activities in this regard by a special administrator appointed by the court until the end of 2018. This global settlement generally ended the lengthy investigations and actions against EDMC across the country.

During this time period EDMC also underwent significant internal business disruptions. In the fall of 2014, it voluntarily agreed to delisting from the NASDAQ after an investigation by the Securities and Exchange Commission related to the timeliness of its reports. During the three years preceding the delisting its losses totaled nearly \$2.3 billion, and most of its operating income was going to pay debt. In January 2015 its credit rating from Moody’s dropped it to junk bond status. As a result of its financial situation after 2006 it was on Heightened Cash Monitoring I⁴ with the U.S. Department of Education, and its letter of credit was approximately

⁴ In general, under the Advance Payment Method, institutions may submit a request to the U.S. Department of Education for Pell Grant, Direct Loan and Campus-Based program funds at any time — prior to or after disbursing aid to eligible students and parents. Under Heightened Cash Monitoring I, however, a school first makes disbursements to eligible students from institutional funds and submits disbursement records to the Department. Then it draws down Federal Student Aid funds to cover those disbursements in the same way as a school on the Advance Payment Method. A school placed on HCM2 no longer receives funds under the Advance Payment Method. After a school on HCM2 makes disbursements to students from its own institutional funds, a Reimbursement Payment Request must be submitted for those funds to the Department.

\$350 million. Several articles in the financial media speculated on the likelihood that the company would declare bankruptcy.

In fall of 2014 the Chief Executive Officer of EDMC met with HLC staff to discuss developing arrangements to restructure approximately \$1.5 billion of the company's outstanding debt. The transaction had the following components:

- Approximately \$1.5 billion of EDMC's funded debt would be exchanged for a combination of i) non-voting, convertible preferred stock of EDMC, ii) certain warrants, which would be exercisable into common equity of EDMC in Step 2, as described below; and iii) approximately \$400 million in new debt ("Step 1"). Step 1 was completed on January 5, 2015 after EDMC had reached agreement with most of its creditors.
- Following receipt of appropriate regulatory approvals, certain of the aforementioned non-voting shares would be mandatorily or voluntarily converted at the election of the owner to ordinary common shares in EDMC with ordinary common voting rights, which would result in i) the transfer of voting control of EDMC to holders of said non-voting preferred stock and ii) ownership by existing creditors of substantially all of the common equity interests of EDMC ("Step 2"). Step 2 was planned to take place in 2015 subsequent to the corporation receiving approval from state higher education agencies and accreditors.

The transaction constituted a change under HLC's Change of Control, Structure and Organization policy. After appropriate review HLC approved the extension of accreditation after the transaction in spring of 2015 subject to various reporting requirements. Both institutions were also under review during this time as outlined on page one of this report.

In early 2017, EDMC representatives approached HLC about the transaction under review in this report.

State/Federal Review of the Proposed Transaction

EDMC presented evidence to HLC that it notified various state agencies of the impending transaction and sought approval in those few states where pre-transaction approval is required. Specifically, with regard to the two institutions accredited by HLC, it has notified Colorado, Illinois, Michigan, and Ohio. EDMC must present written evidence that it has completed the process of pre-closing notifications and received approvals from those states that provide pre-transaction approval or that the state has acknowledged receipt of appropriate documentation and confirmed that no pre-transaction approvals are required. HLC will not provide its approval until this documentation is required. Similarly, EDMC has presented evidence that it has notified appropriate specialized accreditors.

Following its regular practice, HLC notified state higher education agencies about the proposed transaction and the procedure for reviewing the transaction; HLC also provided the opportunity to alert HLC about any concerns. Some states did identify various concerns about consumer

practices related to EDMC.

EDMC also reported that it has filed a pre-acquisition review filing with the U.S. Department of Education (“the Department”). On September 12, 2017, the Department issued its pre-acquisition review letter. In the letter, it confirmed the likelihood that Title IV would be extended to the institutions after they converted to non-profit status as a result of acquisition by the DCEH and that the institutions appeared to meet the Department’s definition of non-profit. However, the Department laid out several conditions related to its approval, and additional information that would need to be submitted post-closing. The Department indicated that the institutions would need to demonstrate that the institutions’ net income does not benefit any party other than the institutions and that the consideration for the purchase does not exceed the fair market value of the assets. The Department also requested confirmation that the compensation for executives and key personnel meets fair value expectations. Other conditions included evidence of prompt payment of the settlement amounts and the provision by buyers of a letter of credit in the amount of 10% of the amount of Title IV in the preceding fiscal year during the time of the Temporary and Provisional Program Participation Agreements issued by the Department during the time period after the closing.⁵

EDMC and the buyers have appropriately reported this transaction to other accrediting agencies. At the time of the writing of this report the Western Association of Colleges and Schools (Argosy University), the Southern Association of Colleges and Schools (South University and some Art Institutes), and the Northwest Association (one Art Institute) had provided appropriate approvals such that buyers could proceed to closing. Approval was still pending from the Middle States Commission on Higher Education. EDMC has limited associations with specialized or professional accreditors, and the institutions accredited by HLC do not have such recognition.

Commission Review of the Transaction

In May 2017, HLC conducted an Intake Meeting related to its Change of Control, Structure or Organization process at the offices of EDMC in Chandler, Arizona and at the Dream Center facility in Los Angeles. Representatives of some other regional accrediting agencies joined this Intake Meeting. During the Intake Meeting, the HLC and other representatives met and interviewed Pastor Barnett, Mr. Barton, Mr. Richardson, and Mr. Najafi and other personnel associated with EDMC or the Dream Center. In August 2017, HLC conducted a Fact-finding Visit to the corporate headquarters of EDMC in Pittsburgh, PA during which the Fact-finding Team met with representatives of DCEH (Mr. Barton and Mr. Richardson), EDMC management, and of the two institutions accredited by HLC. Sub-teams of the Fact-finding Team subsequently met with other corporate or institutional personnel and students.

HLC staff members worked with peer reviewers to develop a Fact-finding Visit Report and Summary Report. The Fact-finding Visit Report is in Appendix A of this document.

⁵ It is not clear that these conditions would be acceptable to the buyers as they indicated to the Fact-finding Team that they anticipated no conditions from the Department and that certain conditions such as an LOC might result in their not proceeding with the transaction.

Analysis of the Approval Factors

1. Extension of the mission, educational programs, student body, and faculty that were in place when the Commission last conducted an on-site evaluation of the affiliated institution:

• *Mission:*

The current mission of AIC is focused on the provision of higher education programs in culinary, art and design, and technology that lead to career opportunities. IIA has a similar mission with a focus on acquiring the skills and knowledge appropriate for a career in creative and applied arts. Neither institution is planning a change of mission related to this transaction nor would it appear that there will be a de facto change in mission based on the plans of the buyers. The buyers intend to continue to maintain the missions and related activities of these institutions. (However, see Core Component 1.D for additional considerations regarding Mission.)

• *Educational Programs:*

As noted in the initial sections of this report, both AIC and IIA currently offer Diplomas, Associate's, and Bachelor's degrees in areas related to culinary arts, fashion and design, and media. These programs are intended to prepare students for careers in these areas. In the Application for Change of Control, AIC noted that it will be considering future program additions based on its internal planning. IIA provided a similar response. During the Fact-finding Visit, buyers discussed generally considering program expansion at some facilities taking into account market demand and institutional appropriateness for expansion but noted no specific plans as yet.

• *Student Body:*

AIC reports that it enrolls about 800 students at a single campus whereas IIA enrolls about 2200 students across four campuses in three states. Both institutions have struggled with enrollment issues in the past few years. Both, however, report anticipated enrollment growth in the next few years. For example, IIA Chicago campus hopes to grow its enrollment from approximately 870 students in FY18 to 1480 students in FY22. AIC has more modest plans hoping to expand its enrollment during the same time period from 600 to 681 students. The buyers indicated that they anticipated some bump-up in enrollment at these institutions because of the change to nonprofit status. In addition, buyers noted that they expected some enrollment uptake related to the association with the Dream Center either from Dream Center personnel or Dream Center clients enrolling in these programs. Again, no specific market research had been done to support such claims nor had there as yet been any work done to lay out pathways for Dream Center personnel or clients to migrate to any of these institutions. Without these pathways having been laid out and without any significant environmental scanning, the enrollment projections, particularly at Chicago, seem unreasonably optimistic. In addition, as noted in several places in this report, there are concerns about to what extent individuals currently served by the Dream Center could benefit from these programs and what institutional changes might be required to serve them appropriately.

•**Faculty:**

AIC employs approximately 23 full-time and 82 part-time faculty at its campus. IIA employs approximately 45 full-time and 180 part-time faculty across its campuses. These individuals are at-will employees not subject to tenure and not unionized. The parties anticipate no changes in these numbers directly related to the transaction. Human resource personnel will be providing institutional employees with appropriate benefit and other related information prior to the closing, at which time all the employees at these institutions will have a new employer. Conditions of employment, benefits and salary will remain the same. Of course, if these institutions have operational deficits or do not meet enrollment targets to ensure that they at least break-even, the buyers may need to re-examine faculty populations.

Therefore, the evidence available to HLC indicates that the mission, educational programs, student body, and faculty that were in place when HLC last conducted an on-site evaluation of these institutions are likely to remain in place after the proposed transaction.

2. The ongoing continuation and maintenance of the institution historically affiliated with the Commission with regard to its mission, objectives, outreach, scope, structure and related factors:

As previously noted, there are no plans to change the respective missions or objectives of these institutions. They each have their own Boards of Trustees and management, and the pattern of interaction with an intermediate and ultimate parent corporation is likely to continue for the near future. In the short term, these factors are likely to remain unchanged. While the buyers appear to be holding the status quo consistent for the near term, in the longer term, they will need to make changes to contain spending and create efficiencies if they are going to move the overall operation out of pattern of enrollment decreases and operational losses.

With regard to marketing to students, there do not appear to be any significant changes to strategy or positioning any time soon. The buyers note that they will continue to use online and offline media, direct communications, and related strategies. The buyers have not indicated any particular interest in changing these plans in the immediate future. In a letter to HLC dated September 19, 2017, the buyers have confirmed their willingness to continue to abide by the terms of the consent decree. It is important to note that the marketing and recruiting practices at EDMC changed significantly after the Consent Judgment. It is not clear to what extent the pressure to expand enrollment at some campuses that have had enrollment challenges and the need to restore the overall operations to fiscal viability may impact the buyers' willingness long term to continue these improvements in recruiting and admissions practices.

Longer term, the positioning of these institutions also remains less clear. On several occasions during the Fact-finding Visit, the Fact-finding Team discussed with the buyers the high tuition at these institutions, the pattern of debt students often take on to complete these programs, and the value to students given that steady high-paying jobs in some of these fields may not be readily available to graduates. The team also discussed challenges with market saturation related to these programs, particularly in the Chicago marketplace. The team noted a number of Art Institute

operations that have had declining enrollments for several years. While buyers acknowledged these challenges it was not clear that they had engaged in a careful review of the viability of each Art Institute operation, nor did they appear to have a plan to discontinue operations at some campuses if such action were necessary to ensure that the remaining Art Institutes would become more efficient and cost-effective as a result. Buyers intend for the near term to replicate the complicated EDMC corporate structure developed for a publicly-traded for-profit institution with significant tax and legal challenges. However, maintaining this structure and its cost, as well as trying to reach enrollment targets that may have limited basis in reality, may put more pressure on recruiting and admissions in ways that have had undesirable outcomes in the past in this corporate entity. If the HLC Board of Trustees continues the accreditation of these institutions after the closing of the transaction, it should attach monitoring designed to review on a regular basis marketing and admissions practices as well as corporate planning to assure that these institutions have reasonable enrollment targets that they can achieve and that they can continue to assure ethical and responsible approaches to recruiting and admissions.

The evidence available to the Commission indicates that these three institutions will continue to maintain the mission, objectives, outreach, scope, and structure of the institutions historically affiliated with the Commission. However, it should be noted that it is not clear that the parties have given the issue of growth and institutional viability for the long term sufficient consideration.

3. Substantial likelihood that the institution, including the revised governance and management structure of the institution, will continue to meet the Commission's Eligibility Requirements and Criteria for Accreditation:

Assessment of Compliance with Eligibility Requirements⁶ after the Transaction

1. Jurisdiction of the Commission

The institution falls within the Commission's jurisdiction as defined in the Commission's Bylaws (Article III). The Commission extends accreditation and candidacy for accreditation to higher education institutions that are 1) incorporated in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, or operating under federal authority within these states, and 2) have substantial presence, as defined in Commission policy, within these states.

After the transaction, this eligibility requirement will be MET. Both the AIC and IIA are currently accredited by HLC and satisfy HLC's jurisdictional requirement. DCEH operates as a non-profit LLC chartered in the state of Arizona. Following consummation of the transaction, each institution is anticipated to become an Arizona non-profit limited liability corporation with substantial presence in their current states of Colorado and Illinois, in addition to the states where their branch campuses may be located.

⁶ Unlike the Criteria for Accreditation, HLC policy provides only that Eligibility Requirements are either "MET" or "NOT MET." For this reason, there is not always an exact correspondence between findings on Eligibility Requirements and related Core Components within the Criteria.

2. Legal Status

The institution is appropriately authorized in each of the states, sovereign nations, or jurisdictions in which it operates to award degrees, offer educational programs, or conduct activities as an institution of higher education. At least one of these jurisdictions must be in the HLC region.

After the transaction, this eligibility requirement will be MET. Both the AIC and IIA currently hold legal authorization to award degrees, offer educational programs and otherwise conduct activities as institutions of higher education. AIC derives its authority from the Colorado Department of Higher Education (CDHE), Commission on Higher Education, while IIA is authorized by the Illinois Board of Higher Education. Nothing in the record suggests that this will change after the transaction closes. IBHE will determine at its meeting on December 12, 2017 whether it approves the parties' application. CDHE will be notified post-closing, as applicable.

3. Governing Board

The institution has an independent governing board that possesses and exercises the necessary legal power to establish and review the basic policies that govern the institution.

After the transaction, this Eligibility Requirement will be MET, as AIC and IIA each have governing boards that possess the necessary legal power to provide oversight over the respective institutions. However, there remain some concerns related to governance best discussed under Criterion Two, Core Component 2.C (met with concerns) and Criterion Five, Core Component 5.B (met with concerns).

4. Stability

The institution demonstrates a history of stable operations and consistent control during the two years preceding the submission of the [Change of Control Application].

After the transaction, this eligibility requirement will be NOT MET. AIC and IIA have both been consistently controlled by the same entities, namely Art Institutes International LLC and ultimately, EDMC for at least two years prior to the submission of the change of control application currently under review. However, due to financial challenges associated with declining enrollments at tuition-dependent institutions, IIA has not maintained stable operations over the last two years. In 2015, it initiated teach-outs for three of its five campuses. The teach-out of one of its branch campuses (Art Institute of Michigan - Troy, MI) concluded in December 2016, while teach-outs of two other branch campuses (Art Institute of Ohio – Cincinnati, OH and IIA – Tinley Park, IL) are planned to conclude in December 2017. Following the transaction, both AIC and IIA anticipate that conversion to non-profit status will provide for increased enrollments as well as the ability to apply for certain types of grants which will further strengthen the financial status of the institutions. However, there is no evidence to suggest that following the transaction, an immediate increase in enrollments will be sufficient to overcome the need for these drastic cost-saving measures.

5. Mission Statement

The institution has a statement of mission approved by its governing board and appropriate for a degree-granting institution of higher education. The mission defines the nature and purpose of the higher learning provided by the institution and the students for whom it is intended.

Following the transaction, this Eligibility Requirement will be MET. However, there are significant concerns to be addressed. The institutions each have a Board-approved statement of mission appropriate for degree-granting institutions of higher education. The mission of AIC is “to provide higher education programs leading to professional opportunities in the fields of culinary arts, art and design, and technology, which prepare graduates for job entry and career advancement.” The mission statement of IIA is to “inspire the passion, creativity and innovation essential for students pursuing the skills and knowledge for a career in the creative and applied arts.” According to the change of control application, following the transaction, the missions of the respective institutions are expected to remain completely unchanged. DCEH’s mission (to provide “accessible, affordable, relevant and purposeful” educational opportunities) easily and seamlessly assimilates the missions of each of the aforementioned institutions. This issue raised by these facts is elaborated upon under Criterion One, Core Component 1.D (met with concerns).

6. Educational Programs

The institution has educational programs that are appropriate for an institution of higher education. The Commission may decline to evaluate an institution for status with the Commission if the institution’s mission or educational programs fall outside areas in which the Commission has demonstrated expertise or lacks appropriate standards for meaningful review.

In appropriate proportion, the institution’s programs are degree granting and involve coursework provided by the institution, establishing the institution’s commitment to degree-granting higher education.

The institution has clearly articulated learning goals for its academic programs and has strategies for assessment in place.

The institution:

- maintains a minimum requirement for general education for all of its undergraduate programs whether through a traditional practice of distributed curricula (15 semester credits for AAS degrees, 24 for AS or AA degrees, and 30 for bachelor’s degrees) or through integrated, embedded, interdisciplinary, or other accepted models that demonstrate a minimum requirement equivalent to the distributed model. Any exceptions are explained and justified.***
- has a program of general education that is grounded in a philosophy or framework developed by the institution or adopted from an established framework. It imparts common knowledge and intellectual concepts to students and develops skills and attitudes that the institution believes every college-educated person should possess. The institution clearly and publicly articulates the purposes, content and intended learning outcomes of its general education program.***

- *conforms to commonly accepted minimum program length: 60 semester credits for associate's degrees, 120 semester credits for bachelor's degrees, and 30 semester credits beyond the bachelor's for master's degrees. Any exception to these minima must be explained and justified.*
- *meets the federal requirements for credit ascription described in the Commission's Federal Compliance Program.*

Following the transaction, this eligibility requirement will be MET. However, there are significant concerns related to certain programs at each institution. AIC and IIA both offer academic programs in disciplines generally appropriate to higher education. Although the institutions anticipate adding new programs in the long term, both institutions have represented that no changes to academic programs will be made in the short term. Nevertheless, there are concerns related to the success of graduates, more appropriately discussed under Criterion Four, Core Component 4.A (met with concerns).

7. Information to the Public

The institution makes public its statements of mission, vision, and values; full descriptions of its program requirements; its requirements for admission both to the institution and to particular programs or majors; its policies on acceptance of transfer credit, including how credit is applied to degree requirements; clear and accurate information on all student costs, including tuition, fees, training and incidentals, and its policy on refunds; its policies regarding good standing, probation, and dismissal; all residency requirements; and grievance and complaint procedures.

The institution portrays clearly and accurately to the public its accreditation status with national, specialized, and professional accreditation agencies as well as with the Higher Learning Commission, including a clear distinction between Candidate or Accredited status and an intention to seek status.

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA have been making changes designed specifically to respond to opportunities to improve transparency described in the recent Consent Judgment. However, there remain issues outstanding discussed under Criterion Two, Core Component 2.B (met with concerns).

8. Financial Capacity

The institution has the financial base to support its operations and sustain them in the future. It demonstrates a record of responsible fiscal management, including appropriate debt levels.

The institution:

- *has a prepared budget for the current year and the capacity to compare it with budgets and actual results of previous years; and*
- *undergoes external financial audit by a certified public accountant or a public audit agency. For private institutions the audit is annual; for public institutions it is at least every two years.*

(Institutions under federal control are exempted provided that they have other reliable information to document the institution's fiscal resources and management.)

Following the transaction, this eligibility requirement will be MET. If the assumptions underlying the *pro forma* statements provided by the institutions are correct, they may well become financially self-sufficient as of 2019. However, there is still a significant amount of uncertainty which is detailed under Core Component 5.A (met with concerns).

9. Administration

The institution has a Chief Executive Officer appointed by its governing board.

The institution has governance and administrative structures that enable it to carry out its operations.

Following the transaction, this eligibility requirement will be MET. According to evidence provided, both AIC and IIA are led by Chief Executive Officers. AIC's president Barbara O'Reilly, however, was appointed as interim president by EDMC, rather than the institution's governing board following the sudden departure of former president James Caldwell from that position in July 2017, and she has recently departed. The AIC Board is currently considering firms to assist with a search for the permanent president. Each institution appears to otherwise possess the governance and administrative structures necessary to carry out current operations. Yet there remain issues for concern discussed under Criterion Five, Core Component 5.B (met with concerns).

10. Faculty and Other Academic Personnel

The institution employs faculty and other academic personnel appropriately qualified and sufficient in number to support its academic programs.

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA employ qualified faculty and academic personnel in sufficient numbers with no issues being raised in recent HLC reviews or evaluations. The transaction will have no material impact on these personnel.

11. Learning Resources

The institution owns or has secured access to the learning resources and support services necessary to support the learning expected of its students (research laboratories, libraries, performance spaces, clinical practice sites, museum collections, etc.).

Following the transaction, this eligibility requirement will be MET. AIC and IIA maintain learning resources and support services for their students. No issues were raised for AIC in recent HLC reviews or evaluations in this area, and while it was a basis for IIA's Notice, the underlying reasons, now appear to have been resolved. The transaction will have no material impact on these resources. Given the needs of the contemplated student populations, however, the institutions may well need to reevaluate the adequacy of current student support services following the transaction.

12. Student Support Services

The institution makes available to its student support services appropriate for its mission, such as advising, academic records, financial aid, and placement.

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA maintain student support services, including advising, academic records, financial aid and placement with no issues raised in recent HLC reviews or evaluations. Although the transaction is expected to have no material impact on these personnel, given the needs of the contemplated student populations, the institutions will need to reevaluate the adequacy of current student support services.

13. Planning

The institution demonstrates that it engages in planning with regard to its current and future business and academic operations.

Following the transaction, the eligibility requirement will be NOT MET. Neither the Board of AIC nor that of IIA had the opportunity to integrate consideration of the contemplated transaction into their strategic planning processes. As a result, neither institution's Strategic Plan contemplates the transaction. When pressed about the extent of due diligence that was conducted at the Board level, Board members for each institution reported little more than "researching online" as their primary method of learning more about the prospective buyers. Moreover, there appeared to be little interest at the Board level in the details of how the transaction would work beyond consummation. For example, Board members appeared satisfied to learn about the terms of the Service Level agreement with DCEM as an "item of information" after the fact, despite the fact that said agreement could have significant financial impacts on their respective institutions for areas related to academic operations, educational services, enrollment services, financial aid processing, IT support, student accounting and recovery/collection services. In addition, beyond the formal announcement in January 2017, the President at IIA indicated the lack of opportunity to learn details about the future vision around the transaction until the HLC Fact-finding visit which occurred in late August 2017. While the existence of a non-disclosure agreement is offered by DCEH as the explanation for this lack of engagement with institutional constituents, the argument is weak given that communication between the prospective buyers and the institutions was only restricted if EDMC personnel were not present; it was not prohibited as a general matter. Finally, the members of the Board of DCEH have only recently been identified and there is little evidence to support their having engaged in any significant planning with regard to the immediate aftermath of the transaction if approved. DCEH representatives indicated that the new Board would not be engaged, even provisionally, until after the transaction closed. This issue is flagged again under Criterion Five, Core Component 5.C (not met).

14. Policies and Procedures

The institution has appropriate policies and procedures for its students, administrators, faculty, and staff.

Following the transaction, this eligibility requirement will be MET. Both institutions appear to have policies and procedures in place for their students, administrators, faculty and staff. The

appropriateness of such procedures, particularly those applying to students is fair to say a work in progress. These concerns are elaborated upon under Criterion Two, Core Component 2.A (met with concerns).

15. Current Activity

The institution has students enrolled in its degree programs. (To be granted initial accreditation, an institution must have graduated students from at least one-degree program.)

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA have students currently enrolled in HLC-accredited degree programs. While enrollment has been declining and various EDMC subsidiaries have had to initiate teach-outs due to failing finances, EDMC has been clear that campuses in teach-out are excluded from the contemplated transaction. Therefore, this requirement will continue to be met after the transaction.

16. Integrity of Business and Academic Operations

The institution has no record of inappropriate, unethical, and untruthful dealings with its students, with the business community, or with agencies of government. The institution complies with all legal requirements (in addition to authorization of academic programs) wherever it does business.

Following the transaction, this eligibility requirement will be NOT MET. It would not be a true statement to set forth that neither EDMC nor its subsidiaries have had any record of inappropriate, unethical or untruthful dealings with students. A multistate investigation initiated in January 2014 by attorneys general in 39 states plus the District of Columbia ultimately resulted, on November 16, 2015, in a Consent Judgment requiring EDMC to significantly reform its recruitment and enrollment practices, including mandating additional disclosures to students, prohibiting enrollment in unaccredited programs and extending the period when new students could withdraw with no financial obligation. The parent corporation was also required to forgive \$102.8 million in outstanding loan debt held by more than 80,000 former students nationwide and submit to the independent monitoring of a Settlement Administrator for a period of three (3) years. Beyond the period of independent monitoring, except for certain aspects of the Consent Judgment, EDMC will not be relieved of its obligations under the Consent Judgment until twenty (20) years from its Effective Date. Several of EDMC's subsidiaries, including Art Institute of Colorado and IIA, were required to significantly transform certain aspects of their internal operations as a result of this Consent Judgment. Among the requirements, published by the Iowa Attorney General who led the investigation, are the following:

- Not make misrepresentations concerning accreditation, selectivity, graduation rates, placement rates, transferability of credit, financial aid, veterans' benefits, and licensure requirements. EDMC shall not engage in deceptive or abusive recruiting practices and shall record online chats and telephone calls with prospective students.
- Provide a single-page disclosure to each prospective student that includes the student's anticipated total cost, median debt for those who complete the program, the default rate for those enrolled in the same program, warning about the unlikelihood that credits from some EDMC schools will transfer to other institutions, the median earnings for those who complete the program, and the job placement rate.

- Require every prospective student utilizing federal student loans or financial aid to submit information to the interactive Electronic Financial Impact Platform (EFIP) in order to obtain a personalized picture of the student's projected education program costs, estimated debt burden and expected post-graduate income.
- Reform its job placement rate calculations and disclosures to provide more accurate information about students' likelihood of obtaining sustainable employment in their chosen career.
- Not enroll students in programs that do not lead to state licensure when required for employment or that, due to lack of accreditation, will not prepare graduates for jobs in their field.
- Require incoming undergraduate students with fewer than 24 credits to complete an orientation program prior to their first class.
- Permit incoming undergraduate students at ground campuses to withdraw within seven days of the beginning of the term or first day of class (whichever is later) without incurring any cost.
- Permit incoming undergraduate students in online programs with fewer than 24 online credits to withdraw within 21 days of the beginning of the term without incurring any cost.
- Require that its lead vendors, which are companies that place website or pop-up ads urging consumers to consider new educational or career opportunities, agree to certain compliance standards. Lead vendors shall be prohibited from making misrepresentations about federal financing, including describing loans as grants or "free money;" sharing student information without their consent; or implying that educational opportunities are, in fact, employment opportunities.⁷

In addition, in a related settlement, EDMC agreed to pay a \$95 million to resolve a separate federal whistleblower lawsuit under the False Claims Act. The U.S. Department of Justice on behalf of the Department of Education alleged in that case that EDMC illegally paid incentive-based compensation to its admissions recruiters tied to the number of students they recruit. While the parent corporation, EDMC has not admitted, and does not admit, any of the conduct alleged in this section, it would not be a true statement to set forth that neither it nor its subsidiaries have any record of inappropriate, unethical or untruthful dealings with students.

At HLC's request, the Co-Chairman of DCEH has submitted a letter confirming the buyers' intent to comply with the provisions of the multi-state Attorney General's Consent Judgment in accordance with the provisions of the Consent Judgment. The transaction has consistently been described in common parlance by EDMC as a "lift and shift" arrangement in which EDMC employees continue in their previous roles within the new organizational structure for an undisclosed period. Given this "lift and shift" HLC will need a meaningful mechanism to ensure that the requirements of the Consent Judgment, many of which are designed to protect students, are adhered to at least through the twentieth anniversary of the effective date of the Consent Judgment, as stated in the Section VII, paragraph 124 of the Consent Judgment; while the Co-Chairman's statement is a helpful start in making this assurance HLC would need additional mechanisms to assure students are protected for the future.

⁷ Available online at: <https://www.iowaattorneygeneral.gov/newsroom/edmc-to-change-practices-forgive-loans-through-agreement-with-miller-and-state-attorneys-general/>

17. Consistency of Description Among Agencies

The institution describes itself consistently to all accrediting and governmental agencies with regard to its mission, programs, governance, and finances.

Following the transaction, this eligibility requirement will be MET. There is no evidence present to support that AIC or IIA have described themselves other than consistently to all accrediting and governmental agencies with regard to their respective missions, programs, governance, or finances.

18. Accreditation Record

The institution has not had its accreditation revoked and has not voluntarily withdrawn under a show-cause order or been under a sanction with another accrediting agency recognized by CHEA or USDE within the five years preceding the initiation of the Eligibility Process.

Following the transaction, this eligibility requirement will be NOT MET. While neither institution has had its accreditation revoked, nor have they withdrawn under a show-cause order, as of this writing, IIA remains on Notice. The Institute was placed on Notice after it hosted its Year 4 comprehensive evaluation in 2015, during which a team of peer reviewers recommended that the Institute be placed on Notice based on findings related to Criteria Two, Three, and Five. IIA hosted a focused visit in Spring 2017 during which the team found it had made sufficient progress in resolving the underlying causes giving rise to the Notice sanction. The team has recommended that Notice be removed while suggesting that continued monitoring on finances (Core Component 5.A) is appropriate. While HLC Staff has concurred in the recommendation, HLC remains concerned that there is no opportunity for an intervening track record of good standing prior to the consideration of a transaction of this nature. As of this writing, the Board has yet to take final action to remove IIA from Notice; it will consider whether to remove the sanction in the same meeting when it will consider approving the proposed transaction because the applicants have offered an argument that the proposed transaction is designed to resolve one or more issues the institution under sanction must address: in this case, finances. Commission staff believes the HLC Board must not only decide whether the argument offered is a compelling one, but whether the risk of harm to prospective students, particularly the populations contemplated by this transaction, absent an intervening track record of good standing, is too great.

19. Good Faith and Planning to Achieve Accreditation

The board has authorized the institution to seek affiliation with the Commission and indicated its intention, if affiliated with the Commission, to accept the Obligations of Affiliation.

The institution has a realistic plan for achieving accreditation with the Commission within the period of time set by Commission policy.

- ***If the institution offers programs that require specialized accreditation or recognition in order for its students to be certified or sit for licensing examinations, it either has the appropriate accreditation or discloses publicly and clearly the consequences of the lack thereof. The institution always makes clear to students the distinction between regional and specialized or***

program accreditation and the relationships between licensure and the various types of accreditation.

- ***If the institution is predominantly or solely a single-purpose institution in fields that require licensure for practice, it demonstrates that it is also accredited by or is actively in the process of applying to a recognized specialized accrediting agency for each field, if such agency exists.***

Following the transaction, this eligibility requirement will be MET. The Boards of both AIC and IIA have authorized the submission of the Change of Control application for HLC consideration and signaled their intent to have the respective institutions continue to meet HLC's Obligations of Affiliation, Criteria for Accreditation and other requirements following consummation of the transaction.

The Chairman of DCEH has provided a letter indicating the buyers' intent to continue voluntarily complying with the terms of the Consent Judgment according to its terms. While his verbal indication at the Fact-Finding visit was for a commitment through 2018 (the end of the independent monitoring period for the Settlement Administrator), it is clear HLC will need to assign significant monitoring to assure that students' interests are adequately protected as discussed with regard to Eligibility Requirement #16.

Lastly, the fact that virtually no information was shared with the institutions' leadership for an extended period following the initial announcement, based it is said, on a non-disclosure agreement that would have enabled such communication so long as EDMC personnel was present, constitutes a lapse in transparency, a key tenet of good faith and a prerequisite for strategic planning, as discussed with regard to Eligibility Requirement #4.

Summary. While the evidence available to the Commission indicates that the majority of the Eligibility Requirements will continue to be MET after the transaction, some are clearly NOT MET: Stability (#4); Planning (#13); Integrity (#16); and Accreditation Record (#18). While some of the issues relating to these conclusions may be remedied by the Change of Control, others, particularly the issues surrounding integrity, will still apply. If the Board approves the extension of accreditation after the Change of Control, the six-month focused evaluation should look carefully at these issues. In addition, DCEH should identify mechanisms for assuring on a long-term basis the integrity of its approaches to students, and HLC should continue to monitor its practice in this regard into the future after the six-month focused evaluation.

Assessment of Compliance with the Criteria for Accreditation after the Transaction

Criterion One. Mission

The institution's mission is clear and articulated publicly; it guides the institution's operations.

Core Components

1.A. The institution's mission is broadly understood within the institution and guides its operations.

Both AIC and IIA's missions are broadly understood, with no issues being raised in recent HLC reviews or evaluations. According to the parties, the transaction will have no material impact on the respective missions.

1.B. The mission is articulated publicly.

Both AIC and IIA publish their current missions, with no issues being raised in recent HLC reviews or evaluations. The transaction will have no material impact on this practice.

1.C. The institution understands the relationship between its mission and the diversity of society.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact here.

1.D. The institution's mission demonstrates commitment to the public good.

Post-closing, this Core Component will be MET WITH CONCERNS after the transaction. The parties have provided evidence that upon consummation of the transaction the institutions will become non-profit corporations with secular educational missions that are identical to their current ones. Although each institution currently has a Board-approved mission, there is little to no evidence that either institution has undertaken any deep consideration of how their mission and underlying operations might be reimagined to account for the transaction currently under contemplation, or more importantly, the new contingent of students they intend to serve.

Mere conversion to non-profit tax status does not demonstrate a commitment to the public good. What is clear is the institutions will derive the benefits of non-profit ownership, while accessing a readily available conduit of prospective students represented by the DCF's current clientele and volunteers. The Dream Center itself functions based on a faith-based mission which it uses, laudably, to reach and serve its clients - individuals struggling to overcome traumatic life circumstances, including poverty, homelessness, human trafficking, domestic violence and drug addiction. Current clients benefit from the Dream Center's services, which include homeless shelters, job training and foster youth programs, while having their very basic needs met: food, clothing, shelter, healthcare, and educational opportunities from pre-school through GED completion.

It is the intention of the parties that these individuals will constitute a new, ready-made pool of prospective student pool following the transaction, alleviating long-standing enrollment problems for the Institutes, while the latter secure a tax status that avoids the high scrutiny ("headwinds" and "under siege" were common terms at the Fact-Finding visit) that comes with membership in the for-profit sector. Over time, the parties aspire to offer college-level academic programs on-site and/or online at Dream Centers worldwide. Yet, the institutions have not provided any evidence indicating how their mission or their operations will be modified, if at all, to account for the fact that following the transaction, they will be undertaking to offer educational programs to especially vulnerable populations conveniently supplied to them through their new corporate parent. Beyond a statement of intent, they have not provided evidence that risky academic programs with poor outcomes, identified since January 2017, are currently being discontinued or currently being improved. No evidence of strategic planning for the responsibilities of non-profit status, beyond the acknowledgement of the potential benefits of non-profit status, is evident.

Also, as previously noted with regard to integrity in admissions, recruiting and related student issues, there remain questions about how DCEH will ensure behavior marked by appropriate integrity and commitment to the public good in its approach to student recruiting and admissions,

particularly after 2018 and with the populations served by the Dream Center when the processes are no longer directly monitored by the Administrator agreed to by EDMC in the Consent Judgment.

Criterion One Summary

Criterion One and all its Core Components will be Met after the transaction, except for Core Component 1.D which will be Met with Concerns. The six-month focused evaluation team should carefully at these issues, if the Board approves the extension of accreditation after the transaction. The Board may also consider additional monitoring in this area after the six-month focused evaluation takes place.

Criterion Two. Integrity: Ethical and Responsible Conduct

The institution acts with integrity; its conduct is ethical and responsible.

Core Components

2.A. The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows fair and ethical policies and processes for its governing board, administration, faculty, and staff.

This Core Component will be MET WITH CONCERNS after the transaction. While the transaction is not expected to have a material impact on the policies and procedures of either AIC nor IIA, given a significant change will occur in terms of the student population to be served by these institutions and given the questions that have been raised by the Consent Judgment about several questionable procedures that have been institutionalized over an extended period, substantial doubt remains about whether the institutions' procedures are appropriate as they currently exist. HLC acknowledges that the institutions are in the process of making changes to improve transparency and fairness in communications, including training administrators and staff, but a track record of sustaining appropriate policies and procedures has not yet been well established. The Chairman of DCEH has submitted a letter indicating that the company intends to perform voluntarily any obligations of the Consent Judgment according to its terms. At the Fact-Finding visit, he verbally indicated this voluntary compliance would extend through 2018. In the first Annual Report of the Settlement Administrator under the Consent Judgment, EDMC's compliance efforts were described as a "work in progress" given that many of the key requirements were only recently coming into effect. In addition, despite what the Settlement Administrator recognized as proper guidance and training, more time would be needed for the transformation of practices to penetrate the entire organization. This will still be relevant given the substantial numbers of EDMC employees who will become DCEH employees in what has repeatedly been termed a "lift and shift" approach.

2.B. The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships.

Following the transaction, this Core Component will be MET WITH CONCERNS after the transaction. The basic information about the institution provided by AIC and IIA appears to be

accurate and complete, and this information is likely to continue to be accurate and complete. Of greater concern, however, is the information provided to students in the recruiting and admissions process that has been a focus in the settlement. The Chairman of DCEH has submitted a letter indicating that the company intends to perform voluntarily any obligations of the Consent Judgment according to its terms. At the Fact-Finding visit, Mr. Barton verbally indicated this voluntary compliance would extend through 2018, whereas the term in the Consent Judgment, except for certain provisions, is 20 years from its effective date. In the first Annual Report of the Settlement Administrator under the Consent Judgment, dated September 30, 2016, EDMC's compliance efforts were described as a "work in progress" given that many of the key requirements were only recently coming into effect and evidence was nascent. In addition, despite what the Settlement Administrator recognized as appropriate guidance and training, the report noted more time would be needed for the transformation of practices to penetrate the entire organization. This suggests that notwithstanding IIA's progress in this area more generally (see the focused visit team's recommendation for removal of Notice), HLC may need to follow-up periodically after the expiration of the Settlement Administrator's term if good practices fail to take hold.

2.C. The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.

This Core Component will be MET WITH CONCERNS after the transaction. As previously outlined in this report, after the closing of the transaction IIA and AIC will each become Arizona non-profit limited liability corporations. Because they are new corporations, they have new foundational documents including Articles of Organization and Bylaws that outline the work of the Board. The Articles of Organization for both entities were filed with the State of Arizona in April of 2017. As stated in the Articles, the sole member of each limited liability corporation is the Art Institutes International, another Arizona limited liability corporation. The initial Board of Managers of IIA and AIC was identified in the Articles as Mr. Barton, Managing Director of DCF and Chief Development Officer and Co-Chairman of DCEH; Mr. Richardson, Chief Executive Officer and Co-Chairman of DCEH; and Pastor Matthew Barnett, President of DCF. In general, the structure of these corporations replicates the existing structures of the Art Institutes in the EDMC corporate arrangements.

While it is clear that there are new non-profit corporations for the two colleges, the intended structure of the Art Institutes International is less clear. The buyers have stated their intent for the Art Institutes to be a non-profit Arizona limited liability corporation. However, a search of corporation records in Arizona does not document a new or revised Arizona non-profit limited liability corporation related to the Arts Institutes International, the name stated in the documentation provided to HLC. The existing Art Institutes International, LLC and Art Institutes International II, LLC are both listed in Arizona corporation records as foreign corporations with a domicile in Pennsylvania; also is it not clear that this intermediate company as presently constituted is non-profit. The buyers have indicated that DCEH will be the sole member of the Arts Institutes International once it becomes an Arizona nonprofit LLC. However, the Fact-finding Visit team was unable to document this arrangement in Arizona corporate records. DCEH will need to provide documentation that appropriate filings have taken place to ensure that Art (or Arts) Institutes International, LLC, is recognized in Arizona as non-

profit and provide the Bylaws and Operating Agreements supporting this organization. DCEH will also need to provide a thorough explanation of the role of the Art Institutional International, LLC in its role as the sole member of the accredited colleges and through what structures or personnel it will exercise this role.

As previously noted, DCEH is a new Arizona non-profit limited liability corporation. DCEH holds the right of appointment to the Board of Managers of the Arts Institutes International and employs a number of people who provide services to the individual institutions as well as is the sole member of DCEM, a related corporation that also provides certain shared services to institutions. DCEH's Board of Managers/Directors includes the Chief Executive, Chief Development, Chief Financial, Chief Marketing, and Chief Operations Officers as well as the General Counsel. The Board of Managers also includes the Presidents of the Art Institutes, South University and Argosy University. Its Board of Trustees/Directors includes Mr. Barton, Mr. Richardson, and Pastor Matthew Barnett as well as several independent Trustees who appear to have no business or familial relationship with the initial Board of Managers or anyone else in the corporate structure. However, the intersection between the two Boards is not clear based on the documentation provided to the Commission to date. The parties will need to ensure that the Commission has a clear explanation of the role of the Board of Managers/Directors and the Board of Trustees/Directors.

As noted in the overview of the transaction, the Najafi companies have asked Mr. Richardson to provide 10% of the purchase price through the Richardson Family Trust. This participation in the financing has been arranged between Mr. Najafi and Mr. Richardson, and there is no written documentation for this arrangement, according to the two principals. The parties affirm that Mr. Richardson has no direct or indirect direct loan arrangement with DCEH. However, an investment or buy-in by the Chief Executive Officer seems to be an unusual expectation for what the parties have described as a credit, not an investment or equity, arrangement. However, the September 21, 2017 response indicates that Mr. Richardson will recuse himself from any DCEH Board discussions about the credit arrangements with Najafi or ED Holdings following DCEH's conflict of interest policy. Nevertheless these undocumented arrangements suggest an appearance of conflict of interest, no matter how carefully they may be handled in actuality, and the lack of written documentation gives rise to a concern about whether there may be other undocumented aspects of this transaction.

The proposed Bylaws of the new IIA, LLC and AIC, LLC are substantially similar to the existing Bylaws. The Bylaws provide for a Board of Trustees of not less than six and not more than nine trustees who are elected to three year terms up to a maximum of four consecutive terms. The Trustees are ultimately selected by the member, the Art Institutes International. Two-thirds of the Trustees are Public Trustees, which the Bylaws define as a member "who does not, either directly or through a familial relationship, have any employment, contractual or financial interest in IIA or AIC, as appropriate, or any affiliate company of DCEH, LLC," which would presumably include anyone with a relationship with any of the institutions or intermediate holding companies in the DECH structure or with the DCF. The identified powers of the Trustees are clearly stated in the Bylaws. The Trustees have the authority to engage the

President, approve educational programs, review and approve institutional policy, and recommend to the member (i.e., Art Institutes International) potential candidates to fill a Public Trustee vacancy on the Board. In consultation with DCEH, the Board will also approve a budget, set tuition and fees, and maintain and update a strategic plan. The Public Trustees, except for any attritions as a result of regular term limits or expirations, will generally remain in place after the closing. New non-Public Trustees have been selected to replace the Trustees previously appointed by EDMC through the Art Institutes International. The Boards have a Code of Conduct and Conflict of Interest policies to help ensure ethical decisions that are free of conflict of interest. As previously noted, both IIA and AIC have had evaluations in the past year, and there were no substantial concerns about the current governance structure, and these new proposed arrangements generally replicate previous arrangements. After the transaction, it appears that the Board will continue to fulfill the responsibilities the Commission expects of a board and will have sufficient input from its Public Trustees to constitute a public voice.

However, it is important to note some concerns. The Fact-finding Team interviewed both the Board of IIA and of AIC. In general, the team found a Board of dedicated and knowledgeable individuals who were very interested in the welfare of the colleges. However, as of the date of the Fact-finding visit, representatives of DCEH had not had a detailed conversation about the future of each of these colleges with its respective board. The buyers indicated that confidentiality provisions in the Asset Purchase Agreement would preclude such conversations. However, the Fact-finding Team notes the provisions of the Confidentiality Agreement place conditions on such conversations but do not prohibit them all together. In addition, at the time of the Fact-finding Visit, the Board of each college had not formally approved any of the services agreements, particularly as to the charges that the college would accrue. In the September 21, 2017, response the buyers documented that the services agreements between the Art Institutes International LLC and DCEH as to certain centralized services and DCEM as to other services had been approved by each Board, at least relative to the expenses, if any, the colleges would accrue by their participation in the agreements. Neither Board had grappled with its new role as the Board of non-profit institution wherein the Board typically plays a key role in fundraising, connection with the community, and public service related to the college. In addition, while it is clear that these Boards have participated substantially in planning as per their authority under the Bylaws, such planning will need to be updated so that it is in concert with the plans of the buyers; as of the Fact-finding Visit it was not clear when the buyers would engage with the Trustees of each board in activities to update the strategic plan, outline new fund-raising or community initiatives, or agree on a vision for the future.

Finally, the structure of DCEM is not clear. DCEM was formed in January 2017 as another Arizona non-profit limited liability corporation with the same members as DCEH. However, the September 21, 2017 response from the parties contained organizational and managing documents for New Education Management Corporation, which is a Delaware LLC. The parties have not submitted the appropriate documents for DCEM.

In general, it appears that the two institutions accredited by HLC will continue to demonstrate sufficient autonomy, as required by this Core Component. However, these institutions are part

of a larger constellation of corporate arrangements about which some of the governing details remain unclear. With its institutional response to this report, the buyers need to submit the Operating Agreements for Arts Institutes International and DCEM, as well as clear and complete explanation of how corporate governance will take place and the intersections between that corporation and the other corporations in the constellation of corporations. The buyers have repeatedly noted their intent in these new arrangements to preserve the complex EDMC structures; however, the long-term wisdom of maintaining them in a non-profit structure without the attendant tax and related considerations is unclear.

If the Board of the Commission approves the extension of accreditation after the transaction, the six-month focused evaluation should review again all the Operating Agreements, Bylaws, Corporate Minutes and related documents for each organization noted above to ensure that each entity is observing appropriate boundaries to allow the accredited colleges to make autonomous decisions in the best interest of the colleges they govern.

2.D. The institution is committed to freedom of expression and the pursuit of truth in teaching and learning.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

2.E. The institution's policies and procedures call for responsible acquisition, discovery and application of knowledge by its faculty, students, and staff.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

Criterion Two Summary

Criterion Two and its Core Components will be Met with Concerns after the transaction, except for Core Components 2.D and 2.E which will be Met. In particular, Core Components 2.A, 2.B and 2.C. will be Met with Concerns, and the Commission's Board of Trustees should require monitoring in this area if the Board approves the extension of accreditation after the transaction. In addition, the parties should note some additional information relative to Core Component 2.C that should be submitted with the institutional response to this report.

Criterion Three. Teaching and Learning: Quality, Resources, and Support

The institution provides high quality education, wherever and however its offerings are delivered.

Core Components

3.A. The institution's degree programs are appropriate to higher education.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

3.B. The institution demonstrates that the exercise of intellectual inquiry and the acquisition, applic

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

3.C. The institution has the faculty and staff needed for effective, high-quality programs and student services.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have some material impact on this Core Component given the falling enrollments and the need to eliminate redundancy. However, these adjustments are not expected to result in insufficient staff.

3.D. The institution provides support for student learning and effective teaching.

AIC had no issues raised in recent HLC reviews or evaluations related to this Core Component. Although it formed a basis for IIA to be placed on Notice, the recent focused visit to review the sanction revealed the institution is no longer at risk of non-compliance on this basis. The transaction will have no material impact on the institutions' practices in this area.

3.E. The institution fulfills the claims it makes for an enriched educational environment.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

Criterion Three Summary

Criterion Three and all its Core Components will be Met after the transaction.

Criterion Four. Teaching and Learning: Evaluation and Improvement

The institution demonstrates responsibility for the quality of its educational programs, learning environments, and support services, and it evaluates their effectiveness for student learning through processes designed to promote continuous improvement.

Core Components

4.A. The institution demonstrates responsibility for the quality of its educational programs.

This Core Component will be MET WITH CONCERNS after the transaction. Academic programs with poor outcomes, particularly those that have failed the U.S. Department of Education's gainful employment requirements under EDMC's management will either need to be eliminated, or improved if they are to be continued following the transaction under DCEH's management, especially given the less stringent gainful employment requirements applied to

non-profit institutions. The fact that the U.S. Department has not extended gainful employment after the institutions move to non-profit status does not remove the responsibility of DCEH and the institutions to ensure that programs ostensibly designed to lead to careers, in fact, do lead to careers.

The following programs at AIC were reported in January 2017⁸ as having failed the U.S. Department of Education's gainful employment requirements:

- Baking & Pasty Arts/Baker/Pastry Chef (2 yr. Associate's degree);
- Culinary Arts/Chef Training (2 yr. Associate's degree);
- Industrial and Product Design (3 yr. Bachelor's degree);
- Commercial Photography (2 yr. Associate's and 3 yr. Bachelor's degrees);
- Interior Design (3 yr. Bachelor's degree);
- Cinematography and Film/Video Production (2 yr. Associate's and 3 yr. Bachelor's degrees); and
- Intermedia/Multimedia (3 yr. Bachelor's degree).

The expected earnings for these degrees ranged from approximately \$15,500 (for the Associate's degree in Commercial Photography) to \$33,500 (for the Bachelor's degree in Industrial and Product Design).

The following programs at IIA were also reported as having failed the gainful employment requirements:

- Animation, Interactive Technology, Video Graphics and Special Effects (3 yr. Bachelor's degree);
- Culinary Arts/Chef Training (2 yr. Associate's degree);
- Commercial Photography (3 yr. Bachelor's degree);
- Fashion/Apparel Design (3 yrs. Bachelor's degree);
- Graphic Design (2 yr. Associate's degree);
- Cinematography and Film/Video Production (3 yr. Bachelor's degree);
- Intermedia/Multimedia (3 yr. Bachelor's degree); and
- Fashion Merchandising (2 yr. Associate's degree).

The expected earnings for these degrees ranged from approximately \$20,200 (for the Associate's degree in Graphic Design) to \$26,800 (for the Bachelor's degree in Animation, Interactive Technology, Video Graphics, and Special Effects).

While HLC staff is cognizant of the common expectation that new graduates in creative disciplines will work hard to "break in" to the field, the fact remains that what the rules contemplate, given the range of expected earnings, are entry-level positions. Evidence of academic planning at the institutional level to either improve outcomes for, or eliminate, such programs remains to be seen. The potential that vulnerable student populations with low to no

⁸ Available online at: <http://www.chronicle.com/article/Here-Are-the-Programs-That/238851>

information and a high affinity for Dream Center-related institutions will be exposed to risky educational programs continues to exist.

According to the application, DCEH intends to promptly work with campus administrations to determine whether improvements to these programs can be made and, if so, how to facilitate such changes. If changes are not appropriate, DCEH has indicated it will work with the campuses to determine if any of these programs that are failing or “in the zone” should be discontinued.

4.B. The institution demonstrates a commitment to educational achievement and improvement through ongoing assessment of student learning.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

4.C. The institution demonstrates a commitment to educational improvement through ongoing attention to retention, persistence, and completion rates in its degree and certificate programs.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

Criterion Four Summary

Criterion Four and its Core Components will be Met after the transaction, except for one Core Component 4.A., which will be Met with Concerns. The Commission’s Board of Trustees should require monitoring in this area at the six-month focused evaluation or thereafter if the Board approves the extension of accreditation after the transaction.

Criterion Five. Resources, Planning, and Institutional Effectiveness

The institution’s resources, structures, and processes are sufficient to fulfill its mission, improve the quality of its educational offerings, and respond to future challenges and opportunities. The institution plans for the future.

Core Components

5.A. The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future.

This Core Component will be MET WITH CONCERNS after the transaction. The financial picture of both IIA and AIC as shown in the *pro forma* financial statements provided in the application and in the additional materials provided in September 2017, depends on several favorable factors that might accrue to the institutions after transaction. That is, the institutions may well experience increased reputational strength, more access to high school recruitment opportunities, establishment of a fundraising development function, tax reductions from the non-profit status, and overhead cost savings from downsizing of previous for-profit ownership. It is

not altogether clear if and when all these factors might take effect within the next five years, as projected. No substantive evidence was provided in connection with the viability of each of these factors. Certainly, IIA and AIC would have a chance to recover from the headwinds they have faced under the ownership of EDMC after the transaction. If all assumptions made in the *pro forma* financial statements are accurate, they likely will become self-supporting financially after 2019. It is also significant to note that prior to that, these institutions will require cash flow infusion(s) from DCF/DCEH. Of course, if some or all of the assumptions turn out to have been overly optimistic, financial difficulties will continue beyond 2019.

The ability for DCF/DCEH to provide any working capital infusion to IIA and AIC in the next five years depends largely on the same assumptions built into the IIA and IAC's projected financial statements. At the time of closing, DCF/DCEH is projected to have about \$78 million in cash. However, these funds are intended to support multiple transactions within the Argosy University, South University, and the Art Institutes. If the favorable assumptions for the Art Institute schools turn out to be optimistic (as well as the *pro forma* assumptions of the other institutions), the \$78 million cash will most likely be consumed faster than projected. (It is not clear how DCEH's resource allocation processes will ensure that AIC and IIA educational purposes will be maintained given the potential for elective resource allocations to other institutions subject to the overall transaction with EDMC.) Under those circumstances, DCF/DCEH will have to resort to additional debt financing to meet their financial needs. Since DCF/DCEH is already moderately leveraged at the outset, financial institutions will likely be less willing to provide additional lending opportunities.

Further, as a condition precedent to the transaction between DCF and Ed Holdings, LLC, DCF is required to secure a line of credit. According to information from DCF provided in September 2017, DCF has engaged in negotiations with an investment banker who has identified potential lenders and with direct lenders to provide a credit line. To date, there is no documentation to support a finding that the line of credit has been secured.

As mentioned elsewhere in this report, it is anticipated that IIA and AIC will continue to operate under the same mission with no current plans to modify any mission of the acquired institutions. Likewise, institutional structures after the transaction will remain in place. That is, the governing board, administration, faculty, and staff will remain in place. Therefore, the evidence suggests that the institutions will continue to have qualified and trained human resources sufficient to support institutional operations.

As mentioned in this report, IIA has a main campus in Chicago. IIA also has locations in Schaumburg, Illinois; and Novi, Michigan. and Cincinnati, Ohio. (DCF's application indicates that the Cincinnati location will be closed after the transaction.) AIC has its main location in Denver, CO, with no additional locations. DCF will assume the leasing arrangements for the campus locations allowing for continued campus operations, although DCF indicated the current terms for said leases will be reviewed and potentially renegotiated.

With respect to institutional support services AIC and IAA now receive from EDMC, DCEH intends to carry on with many of those services under two categories: "central services" and "shared services." In that regard, DCEH will provide centralized services, such as faculty

management, faculty support, curriculum design, human resources, and other general services to all the schools and universities acquired. Current EDMC service leaders will be retained from EDMC, including the CFO and Chief Marketing Officer. However, DCEH also intends that each acquired institution would have certain local resources staff. (This is somewhat of a departure from the current EDMC model for some services.) At the system level (DCEH), there would also exist a centralized resources functions to handle common issues among the various institutions, etc.

Shared services will be handled through another limited liability company under DCEH. Dream Center Education Management (DCEM), which is a new LLC with DCEH as the sole member. Shared Services will operate like a third-party outsourcing services firm—designed to provide efficient and quality service to each institution. Service prices will be negotiated between DCEM and institutional administrators and trustees at what was described as “arms-length.” DCEH will retain approximately 60% of the EDMC staff due to the closing of the Brown Mackie College system. DCEH envisions saving money through these two service models while leaving “sufficient autonomy” for each institution to directly interact with students. Neither board of AIC and IIA have ever approved of the EDMC shared services arrangements. However, it appears both institutional boards have approved the pricing structure relative to these arrangements, but not the agreements themselves as the institutions are not a direct party to the contract between DCEH or DCEM and the Art Institutes International through these services will be provided. While there are documents indicating types of services, price listing, and proposed service metrics, the team is not able to fully assess the viability of both models.

In summary, it is understandable that from a strategic point of view, the proposed transaction seems to be the institutions’ best option at the moment. In that regard, IIA and AIC may be able to recover from their downward operational spirals after the transaction if the key assumptions discussed above are borne out. If not, there will be considerable uncertainty in their financial future.

5.B. The institution’s governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.

This Core Component will be MET after the transaction. IIA and AIC each have an administrative structure that supports the College. Both Colleges have a Campus or Institutional President; Vice President for Academic Affairs or Provost, as appropriate; Director or Dean of Student Affairs or Services, as appropriate; and related administrative officials. Each institution will preserve its existing administrative personnel, structures, and functions.⁹ The governing arrangements provide for oversight by a board that appoints the President and delegates appropriate authority to the President to operate the College and to appoint an administrative team to assist in those operations. Recent evaluation teams have reviewed the governance and administrative structure of the Colleges and found them to be reasonable and effective. However, as with Core Component 2.C, the Fact-finding Team remains cautious about the corporate structure beyond the boundaries of the Colleges and the impact of this structure on effective governance.

⁹ Note that at the time of the Fact-finding Visit there was an interim appointment for the campus presidency of AIC, and this person exited the position shortly after the visit.

In particular, as explained under Core Component 5.A, each college currently relies on the EDMC structure to provide various supporting services, and this arrangement will be continued by services provided in the future by DCEH and DCEM pursuant to agreements between each of these entities and the Arts Institutes International. While these services are appropriate and provide extended resources to the Colleges, there are certain questions about these arrangements in terms of administration and governance. The compensation for such services between DCEH and the Arts Institutes, as stated in the Agreement, is based on an allocation methodology that will be determined in the future. The agreement indicates that the methodology will be subject to negotiation although it is not clear that such services will be provided at an established fair market value. Both the agreement between the Art Institutes and DCEM or DCEH provides that the services are on a non-exclusive basis. For the services provided by DCEM the compensation will be outlined in various Service Level Agreements. In the September 21, 2017 response the parties have provided a chart of the cost of each shared service to the Colleges. The Boards of each institution have approved chart of the shared services although they are not a signatory to the agreements between the Art Institutes and DCEH or DCEM.¹⁰

DCEH is in the process of completing its administrative structures. Mr. Barton as Chief Development Officer and Mr. Richardson as Chief Executive Officer will be providing the primary vision and oversight, respectively, of the DCEH. Both individuals have stated that they will not be working pursuant to an employment contract and will be paid \$1 per year. While these arrangements would not appear to be a hardship for either individual, the lack of a contract is unusual at this level and raises a variety of concerns about dedication to the considerable workload or the possibility that either one might depart suddenly.

As previously noted, DCEH has filled out its Board of Managers/Directors and its Board of Trustees/Directors although the relationship between those two bodies needs some additional explanation. Mr. Barton and Mr. Richardson noted at the Fact-finding Visit that these bodies have not met even provisionally and will not meet until after the closing so they will not have approved any of the proposed documents or structures as they are being developed.

DECH has agreed to hire most of the existing EDMC and Art Institutes personnel other than at the senior executive level. As previously noted in this report, this arrangement was described at various times during the Fact-finding Visit as “lift and shift.”¹¹ There is a large number of personnel from EDMC making this shift, and the Fact-finding Team notes that the complexity and cost of maintaining this large, diffuse structure seem better suited to a large, publicly-traded for-profit institution than a large non-profit network or system of colleges, which seems to be the direction in which this entity will evolve. In addition, Mr. Barton and Mr. Richardson are located in the Phoenix-LA area, further complicating the management of DCEH personnel, many of

¹⁰ Because the initial Board of Managers of DCEH, the Art Institutes International, LLC, and presumably DCEM are the same or significantly overlapping, it is not clear whether the Colleges’ interests were appropriately protected in the discussions finalizing the agreements, even though the institutions are clearly third-party beneficiaries of these agreements. Nevertheless, the non-exclusivity and other arrangements provide some protection for these Colleges.

¹¹ Of course, as a legal matter, the current EDMC and Art Institutes employees will have new employers immediately after the closing and will be subject to new terms of employment and benefit packages. As a practical matter, the buyers have agreed to continue the same terms and benefits, but the Fact-finding Team was concerned that senior human resources personnel at EDMC seemed to have a limited understanding of the documentation and personnel engagement, though routine, that is necessary related to such a transaction and the transition in employers.

whom are located in the Pittsburgh area. It seems likely that over time management will consolidate services in the Chandler area where EDMC already maintains a large facility that is being assumed by DCEH and that could be expanded. In addition, Mr. Barton and Mr. Richardson have noted their interest in moving some services back to the individual institutions resulting, perhaps, in a more streamlined operation. However, it is not clear whether these ideas have reached a planning stage and what evidence and evaluation DCEH will rely on in making this determination.

It is important to note that there remains considerable suspicion in the public arena about the possibility of other as yet undisclosed arrangements benefiting parties who are not directly identified in any of the supporting or foundational documents. The Fact-finding Visit Team asked for assurance that there were no other arrangements, written or unwritten, and with one entity in particular, and Mr. Barton provided this assurance in writing on behalf of DCEH.

If the Board of the Commission approves the extension of the accreditation of these two institutions after the transaction, the six-month focused and other later evaluation teams should review the efficacy of these new structures and arrangements after their implementation to determine whether they provide good service and are effective in ensuring the well-being of the Colleges and review DCEH's planning for subsequent consolidation, if it determines to move in that direction.

5.C. The institution engages in systematic and integrated planning.

This Core Component will be MET WITH CONCERNS after the transaction. While each of AIC and IIA now have functioning strategic plans, the latter's efforts only recently developed from an annual operational plan to a multi-year strategic plan. In addition, neither institution's strategic plans contemplate the transaction due to a significant lack of communication over an extended period. As a result, the impacts of the transaction under consideration have not yet fully taken into account any potential linkages from assessment, or budgeting, and the institutions have yet to articulate what if any measures will be taken if even their conservative *pro forma* statements fail to pan out.

5.D. The institution works systematically to improve its performance.

This Core Component will be MET after the transaction. AIC had no issues raised in recent HLC reviews or evaluations related to this Core Component. IIA, while it as cited on this Core Component back in 2015, has since resolved issues sufficiently to receive a removal of notice recommendation from the visiting team. The transaction will have no material impact on the institutions' practices in these areas.

Criterion Five Summary

Criterion Five and its Core Components will be MET after the transaction, except for Core Components 5.A and 5.C, which will be MET WITH CONCERNS based on the financial risk attendant to the transaction and the lack of integration of the buyers' plans with the institutional

plans. The Commission's Board of Trustees should require monitoring in these areas if the Board approves the extension of accreditation after the transaction.

4. Sufficiency of financial support for the transaction.

DCF's most recent net acquisition price to be paid to EDMC is \$26.3 million (\$50 million purchase price, less the assumed \$23.7 million working capital adjustment due from EDMC). In accordance with the *pro forma* consolidated statement of activities, DCF will realize \$120.2 million purchase gain upon the close of the transaction, representing the difference between the fair market values of the assets acquired and the purchase price. To finance the acquisition, DCF borrowed \$105 million in long-term debt, leaving \$78.7 million cash balance at the end of close date. This level of debt financing is aimed at maintaining a liquidity position for the organization's working capital needs and for payment of the \$10.5 million deferred settlement due to EDMC within a year.

If the student enrollment projections materialize in subsequent years, DCF is expected to generate sufficient cash flow from operations and positive changes in working capital in the future. In accordance with the *pro forma* financial statement, DCF anticipates maintaining acid test and current ratios above 1.0 throughout the projected period with cash never falling below \$50 million. In addition, DCF's net assets are projected to increase from the \$139.1 million at transaction closing to \$164.4 million on June 30, 2018; \$191.2 million on June 30, 2019; and \$238.6 million on June 30, 2020. The operations of DCEH are projected to result in increase in net assets of 129.6 million, 26.5 million, and 46.8 million in FY2018-2020, respectively. These financial projections are based on several key assumptions:

- New students will increase due to reputational improvement from becoming not-for-profit.
- Removal of probationary status from the Department of Education.
- New advertising and high school outreach.
- Expanded access to scholarships and state grants due to not-for-profit status.
- The ability to build a development function to raise funds and scholarships.
- DCF/DCEH will realize cost savings in payroll, bad debts, property and excise taxes, facilities-related expenses, and outside services (compared to levels required under the previous for-profit ownership structure).
- The upward changes in enrollment and the cost savings will be in full effect two years after the transaction.

If these assumptions are too optimistic (which may well be the case in a transaction of this size and scope and with the additional assumptions that reputational improvement and access to scholarship monies provided to students attending nonprofit institutions will be achieved immediately), there will be significant pressures for DCF to seek additional financial resources to cover its working capital and capital expenditures. Since DCF's debt-to-equity ratio is already high (2.72 on September 1, 2017; 2.37 on June 30, 2018; and 2.01 on June 30, 2019), it is anticipated that there will be challenges in obtaining additional debt financing. (Another possibility is equity financing from major donor. However, this option may not be possible either.)

Both IIA and AIC have experienced considerable headwinds due to regulatory difficulties of current parent EDMC, affordability, negative press, competitive pressures facing proprietary education, and the impact from EDMC's financial situation. Both institutions will likely require financial assistance to execute their strategic plans in the short term. As shown from the *pro forma* financial statement of AIC, that institution will experience a decrease in cash of (\$828,000) in 2018 and (\$399,000) in 2019. The September 2017 update to HLC actually increased the cash deficit to (\$1,100,000) in 2018. The composite financial ratios will hit 1.62 in 2018 and 1.57 in 2019.

As shown in the projected financial statement updated after the fact-finding visit, the IIA will suffer a combined decrease in net assets (losses from operations) of (\$2,558,000) in 2018 and (177,000) in 2019. Because of these operating losses, IIA will experience a decrease in cash flow of (9,104,000) in 2018 and (155,000) in 2019. The composite financial score for the IIA will hit 1.51 in 2018 and 1.87 in 2019.

In 2020-2022, the institutions are projected to show positive changes in net assets—assuming improvement initiatives in their business plans come to fruition, including, among others:

- A more deliberate, targeted approach to marketing and recruitment, and a reduction in the pay-per-lead (PPL) channel of applications;
- Implementation of the “College Bound” program, which affords students the opportunity to take courses free of charge and experience life as a student without financial risk; and
- Implementation of a scholarship program (The Art Grant) aimed at reducing student educational costs by 15% for associate degree-seeking students and 20% for bachelor degree-seeking students.

Incorporating the favorable outcome from these improvement initiatives, and relying on the “reputational strength” and the high school recruitment opportunities post transaction, the enrollment growth assumption for new students for AIC is 0.9% in FY2018, 5% in FY2019, and FY2020, and 3% in FY2021 and FY2022.

The enrollment growth assumption for IIA is projected to be flat in FY2018, 9.3% in FY2019, 13% in FY2020, 5% in FY2021, and 3% in FY2022. For AI Schaumburg, the assumption for the growth rate is 3.5% in FY2018, 20% in FY2019, 6% in FY2020 and FY2021, and 3% in FY2022. For the AI Detroit campus, the assumption for the growth rate is 9.5% in FY2018, 5% in FY2019 and FY2020, and 3% in FY2021 and FY2022.

Although the reputational strength and high school recruitment opportunities might increase new students and overall SSB, a number of the assumed growth rates appear to be optimistic and also appear to occur more quickly than common experiences in higher education would seem to bear out. The fact that the updated projected financial results (provided in September 2017) for all the institutions were revised mostly downward when compared with the *pro forma* figures contained in the original application, there are strong indications that the projected financial revenues are susceptible to overestimation and overstatement. If these assumptions turn out to be too

optimistic, the institutions will need one or more financial infusions from DCF and DCEH in the years to come in order to maintain operations.

5. Previous experience in higher education, qualifications, and resources of the new owners, Board members or other individuals who play a key role in the institution or related entities subsequent to the transaction.

Neither DCF nor DCEH has any experience owning a college or providing services for other colleges. DCEH was recently formed by the DCF and related parties to facilitate the asset purchase of EDMC. DCEH has recently completed the process of selecting its Board of Managers/Directors and the Board of Trustees/Directors. Included in the Board of Managers/Directors are the Presidents of Argosy, the Arts Institute International, and South as well as various C-suite executives. Most of these above individuals were previously employed by EDMC and therefore have previous experience managing a large complex higher education operation. Nevertheless it is important to note that most of them appear to have limited experience with non-profit higher education, and their previous higher education experience is with a large for-profit entity. Nevertheless it may be reasonable for DCEH to retain these individuals because they understand how to manage this particular enterprise that, while now non-profit, largely replicates EDMC structures. The Board of Trustees/Directors includes appropriate individuals with backgrounds in both public non-profit higher education as well as for-profit higher education and public members who have strong community service credentials and previous service on the boards of various entities including non-profit higher education institutions. DCEH appears to have appropriate oversight at the Board level from competent individuals with knowledge about higher education.

The principal officers and co-chairmen of DCEH, Mr. Barton and Mr. Richardson, also have experience in higher education. Mr. Barton is a tax attorney who has been a Foundation Executive and Vice President for Northwest University and a senior executive with AG Financial, which provides financing solutions for non-profits including colleges and universities. Mr. Richardson is former President and Executive Chairman of Grand Canyon University. However, their biographical information does not include a presidency or chief executive officer position with a large non-profit university. So their preparation for this particular situation seems limited.

The Boards of AIC and IIA will remain as presently constituted with the addition of representatives of DCEH. The members of these Boards are knowledgeable about their institutions and have appropriate backgrounds in business, education, and related fields. The current administration of each of these institutions will also remain in place. Again, these individuals appear to have appropriate higher education credentials for their positions and responsibilities.

In general, the transaction ensures that there are competent individuals with higher education experience at all levels after the closing. However, it is important to note again that neither DCF nor DCEH have owned a college previously and that officers of DCEH who have the vision for this transaction have no senior executive experience operating a non-profit college or providing services to other colleges.

Summary

This transaction may very well save these Colleges that might otherwise be facing a very uncertain future given the significant current financial challenges at EDMC. DCF and DCEH will be operating these institutions as non-profit, and they will therefore be exiting the challenging environment of for-profit higher education currently in the U.S. DCF and DCEH have indicated their commitment at least through 2018 to maintaining improvements in admissions and recruiting that resulted from the Consent Judgment. They have also articulated some nascent plans for improving efficiencies and streamlining operations.

There is evidence of reasonable continuity after the transaction in both the internal factors (mission, educational programs, faculty and enrollment) and the external factors (outreach, public positioning, and related factors and compliance with the Commission's standards, as summarized below.

However, there are also significant challenges. Neither DCF nor DCEH has ever operated a college much less a large complex network of multiple colleges with different missions. In replicating the EDMC structure, which has a significant record of financial, enrollment, and integrity challenges, they may very well not be positioning themselves or the colleges for success. The corporations will be taking on a significant level of debt to support operations until each college can at least be self-supporting; however, the assumptions about enrollment growth at some of the EDMC institutions may be overly optimistic in a current environment where even strong non-profit institutions have struggled to maintain enrollments. The idea that the reputational issues currently attached to these colleges while owned by EDMC will be improved quickly by becoming non-profit seems simplistic; it may very well take several years before prospective students and the public no longer associate these institutions with some of the problems of the past. Some of the EDMC programs have failed gainful employment standards, and, while these standards will not be applicable to these institutions when they are non-profit, the underlying problem of offering high-tuition career programs that do not seem to lead to successful student outcomes remains. In short, while the proposed arrangements offered by these buyers present an opportunity to save these colleges, they also present some risk of not being successful in meeting the goal of offering good quality programs with strong outcomes for students from a solid operational and financial base.

While it is reasonable to conclude that the two institutions will continue to meet the Eligibility Requirements and Criteria for Accreditation, there are specific issues as identified below:

Eligibility Requirements. Evidence currently available to the Commission does NOT indicate that AIC and IIA will continue to meet all the Eligibility Requirements after the transaction.

This report notes significant questions about Eligibility Requirements #3 (Governing Board), #5 (Mission), #6 (Educational Programs), #7 (Information to the Public), #8 (Finances), #9 (Administration), and #14 (Policies and Procedures). In addition, Eligibility Requirements #4 (Stability), #13 (Planning), #16 (Integrity of Operations), and #18 (Accreditation Record) are **Not Met**. As noted, many of these issues may be remedied through and after the transaction, but

the Commission will need to monitor the situation carefully to be sure they are remedied.

Should the Board of HLC choose to approve the continuation of accreditation after this transaction, it should structure monitoring containing specific directives both at the six-month focused evaluation and through other approaches designed to meaningfully review these areas and ensure that students' interests are adequately protected.

Criteria for Accreditation. Evidence available to the Commission indicates that AIC and IIA will meet the Criteria for Accreditation after the transaction. However, this report identifies the following Core Components as MET WITH CONCERNS:

- **Core Component 1.D**, "The institution's mission demonstrates commitment to the public good;"
- **Core Component 2.A**, "The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows fair and ethical policies and processes for its governing board, administration, faculty, and staff;"
- **Core Component 2.B**, "The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships;"
- **Core Component 2.C**, "The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity;"
- **Core Component 4.A**, "The institution demonstrates responsibility for the quality of its educational programs;"
- **Core Component 5.A**, "The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future;"
- **Core Component 5.C**, "The institution engages in systematic and integrated planning."

Should the Board of the Higher Learning Commission choose to approve the continuation of accreditation after this transaction, it should structure monitoring containing specific directives designed to meaningfully review these areas and ensure that students' interests are adequately protected.

ATTACHMENT: Appendix A: Fact-finding Visit Report

Report of a Fact-Finding Visit to Education Management Corporation

August 24-25, 2017

Fact Finding Team

HLC Peer Reviewers

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Overview

The fact-finding visit to the Education Management Corporation (EDMC) was a component of the HLC change of control, structure, or organization (“change of control”) process, initiated by EDMC’s March 2017 announcement of its intent to enter into an asset purchase agreement for the acquisition of its 31 Art Schools, along with South University and Argosy University by the Dream Center Foundation (DCF), a non-profit religious organization associated with the Pentecostal Church. The Higher Learning Commission accredits two of the Art Schools, Art Institute of Colorado (AIC) and Illinois Institute of Art (ILIA). The proposed transaction would convert EDMC systems from for-profit to nonprofit status. HLC sent a fact-finding team to conduct a series of onsite interviews with the respective parties August 24 and 25, 2017 at EDMC corporate headquarters in Pittsburgh, PA. The team was presented with updated documentation on site. Since no opportunity to review the materials on site existed, the team posed questions based on its preparation and asked the parties to highlight which aspects of the new documentation they wished particularly to bring to the team’s attention during the course of the interviews. The interview topics focused on the following elements aligned with the Higher Learning Commission change of control approval factors: mission alignment, commitment to students and other stakeholders, transaction transparency, financial stability and future directions, governance, impact on campus structures and operations, stakeholder interaction, and integrity issues.

The following sections record the substance of each set of interviews. Each section includes identification of the participants, areas of interest relative to the approval factors, questions guiding the conversations, information provided by the participants, and peer reviewer observations.

Fact-Finding Visit: Day One

Meeting with Presidents and Senior Leadership of Art Institute of Colorado and Illinois Institute of Art

Participants Present (in person and via conference call): President, Illinois Institute of Art, Interim President, Art Institute of Colorado, Provost, Illinois Art Institute, Vice President and Dean of Academic Affairs, Art Institute of Colorado, Regional Financial Directors

Areas of Focus: transaction process, current and contemplated changes to campus structure and operations, interaction with the Dream Center, mission alignment

Questions Guiding the Conversation

What has been your interaction with the prospective buyers or their representatives? Has the proposed transaction been transparent to campus stakeholders?

How does the mission of the Art Institutes (AIs) align with the Dream Center mission?

What is the impact of the proposed transaction on current and future financial planning? Academic planning?

What are the positive gains and challenges that will result from the completed transaction?

Interview Notes

The conversation with senior leadership included the Presidents, campus Chief Academic Officers and regional financial directors. The years of EDMC service among the seven leaders varied from 17 years to a few months. Both presidents have held senior leadership positions within the EDMC across several AI institutions and all academic leaders had prior higher education experience. The AIC Interim President had been with EDMC for three years, serving as interim president for various institutions most recently in Florida and in California before assuming the AIC position 4-5 weeks prior to the fact-finding visit. The ILIA President had served EDMC for almost 17 years, previously as President of Art Institute of San Antonio and Associate Vice President for start-up operations at EDMC before joining Illinois Institute of Art as its president. Within the EDMC organizational structure, the two institutions (AIC and IIA) are within a region with oversight for financial planning provided by regional directors.

Following an overview of the Change of Control review process and a summary of HLC's prior initial interaction meeting with Dream Center in Phoenix and Los Angeles earlier in the summer, the fact-finding team explored with the presidents the topic of transaction transparency. The team probed what previous interactions the institutional presidents had had with the prospective buyers, Dream Center, or their representatives and what, if any, due diligence was conducted at the institutional level in contemplation of the transaction. The team learned that prior to the time of the fact-finding visit, the institutional presidents had had no contact with the prospective buyers. The President of Illinois Institute of Art indicated that that day was the first opportunity he had to meet, interact with or learn about any of the ideas or goals held by the prospective buyers. This led to questions about how financial planning at the institutional level is progressing and whether it is now taking into account the contemplated transaction.

The team learned that individual accounting systems did not exist at the institutions. Spending and expenditures were centralized. ILIA Chicago is projecting a \$2.5 million loss in revenue in terms of the revenue side of EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization). The institution is adopting some cost-saving measures, such as taking a more traditional approach to marketing rather than using third party vendors. The institution's leadership believes more people will be able to attend school with \$0 monthly payment as a result of freezing tuition, reduction of the Expected Family Contribution (EFC) and offering need-based grants in the form of a tuition discount. Both institutions indicated that the Boards "might" be supportive of lower tuition as well as committed to non-profit fundraising. While they don't anticipate making dramatic changes to marketing, they believed access would improve with these measures and disassociation with the EDMC brand. The leadership was not able to articulate how long it would take to realize positive gains under new ownership or with new branding and marketing.

The presidents stated that the mission of AI institutions aligned with the Dream Center's mission. Although the differences in constituencies served were not directly addressed, they did state that the relationship of the missions was viewed as complementary. In addition, the governing boards of the institutions had been told there would be no changes in the institutional missions after the transaction.

Conference Call with Illinois Institute of Art Board

Participants via Conference Call: Board chair, 6 Board members

Areas of Focus: transaction transparency, mission alignment post transition, current board duties and responsibilities, overview of the transaction, future plans for ILIA

Questions Guiding the Conversation

What are the Board's role and function?

What is the Board's knowledge of the transaction? When and how were they informed of the proposed transaction? What changes will occur for ILIA during and as a result of the transaction?

What is the Board's role in review and approval of the shared service agreement?

Interview Notes and Observations

The Board provided an overview of the ways it provides oversight over the institution, its core academic operations, and finances, as well as its role in supervising and reviewing the president. The Board described a defined process for self-evaluation and annual review. There are no standing committees; the Board generally operates as a Committee of the Whole, except to the extent there are ad hoc committees; such as a compensation committee responsible for addressing compensation for the campus president. The Board feels it has complete autonomy to make decisions.

The Board Chair stated that he was confidentially informed that EDMC was exploring options with potential buyers in late 2016. The formal announcement to the Illinois Institute of Art Board about the transaction occurred in January 2017 and included a 20-minute meeting with representatives from EDMC and DCF. The Board was shown a PowerPoint presentation outlining DCF's background and the proposed transaction. In responses to further questions regarding the history of interactions concerning the transaction, the team learned the Board's due diligence consisted largely of "doing research online." The Board articulated general agreement in principle with the idea of alignment between the institutions' mission and that of the Dream Center, but did not appear to have detailed information beyond what was publicly available.

The Board is not expecting a capital infusion as a result of the transaction. However, they feel there will be an increase in enrollment as a result of the transaction. They also believe the image of the institution will be enhanced. The Board did articulate that it only foresaw positive outcomes for enrollment and thereby for finances were the transaction to be completed. When pressed about its role in reviewing financial pro formas and how involved it was in the review of revenues, expenses, change in net assets, the Board assured the team that it was very involved.

When asked about the impact of the prospective Shared Services Agreement (SSA) on the institution, the Board indicated it did not review and did not expect to review the SSA. Board members indicated that they were advised that the proposed transition is supposed to be a "turn-key" operation and all the shared service contracts with EDMC will continue. Board members were not aware that DCF might shift some of the shared service responsibilities to local institutions, including public relations or marketing. However, they were informed that Dream Center Education Holdings (DCEH) would continue to provide

central service such as information technology, accounting, legal, and compliance. Board members felt comfortable with the shared service and central service arrangement with DCEH. The Board indicated that they have no reason to review, discuss, or approve the shared services agreement in a Board meeting. They anticipated that it would be treated as an information item with the agreement and service quality negotiated by the campus president with the “corporate office.” The Board did not view the agreement and evaluation of services as a key item prompting in-depth review and approval.

Conference Call with Art Institute of Colorado Board

Participants via Conference Call: Board Chair, 5 Board members

Areas of Focus: transaction transparency, mission alignment post transition, current board duties and responsibilities, overview of the transaction, future plans for AIC

Questions Guiding the Conversation

What are the Board’s role and function?

What is the Board’s knowledge of the transaction? When and how were they informed of the proposed transaction? What changes will occur for AIC during and as a result of the transaction?

Interview Notes and Observations

The Board has its own charter, independent of EDMC, and evaluates the academic and economic performance of AIC. The team noted that of the 6 individuals who were Board members for AIC, two were EDMC representatives, four were non-EDMC affiliated, and one individual had participated in the earlier call as a member of the IIIA Board, indicating overlap in the governance structure of the institutions. The Board described its mechanisms for institutional oversight, including four fixed meetings a year, supplemented by a 5-8 ad hoc meetings. The Board Chair described with some detail the Boards’ role in strategic planning, reviewing and approving the budget, and engaging with the president.

Questions turned to the recent change in leadership at AIC. The Board Chair indicated that the previous president’s exit was rather precipitous and that the interim president had been appointed by EDMC on short notice. The Board retained a search firm in July 2017 and planned to launch a search for a permanent president. The target hiring date is still uncertain dependent on the schedule of candidate interviews.

The Board chair stated that the Art Institutes (AIs) System Coordinating Board handles the shared services agreement with EDMC. Thus, the AI system and the campus president negotiate the agreement. As with the Illinois Institute of Art Board, this Board does not review, discuss, or review the shared services agreement.

When asked about their history of interactions with the prospective buyers, Dream Center or their representatives, they indicated learning about the proposed transaction at a very high level. The Board has had no contact with DCF leadership. The Board chair indicated that he was informed of a potential transaction in late December 2016. The official announcement of a potential transaction was made at the January 19, 2017, Board meeting. This meeting was lasted approximately 20 minutes and did not provide much detail, including the name of the purchaser. The Board members appeared to be comfortable with a substantial amount of uncertainty regarding details. Board members have the impression that no major changes will occur during the transition from EDMC to DCF.

The Board characterized the transaction largely as an opportunity to gain tax-exempt status, which they

overwhelmingly view as a benefit in the current regulatory environment. Although additional resources may be coming, it is not a major expectation of the Board. They believe the main advantages will come from enhanced educational programs because of the non-profit status.

Meeting with Dream Center Education Holdings, LLC Key Leadership

Participants: DCEH President, DCEH Board Chair, DCEH Chief Financial Officer

Areas of Focus: overview of transaction, current transaction status (including accreditation and US Department of Education approvals), mission, financial resources, organizational structure post-transaction, long-term planning, interaction of the Dream Center with the institutions, ethical considerations

Questions Guiding the Conversation

What is the status of DCEH's responses to Western Association of Schools and College's (WASC) concerns underlying the accreditation agency's conditional approval of the transaction?

How does the leadership propose to address perceived and actual conflicts of interest? What are the specific conflict management strategies used to address the concerns raised by the HLC team? Are there other areas or relationships that could be perceived as potential conflicts? How will these be managed?

What are the assumptions and analytical models underlying the financial projections for DCEH?

What are DCEH's strategies for allocation of central service and shared service functions?

What are the strategies to address the financial deficits and varying financial solvency of the institutions being purchased?

What synergetic effect between the Dream Center and the institutions will be realized as a result of the transaction? What are the major priorities for the future?

Interview Notes

The team met with Dream Center Education Holdings (DCEH), LLC, key leadership -- President, Board Chair and Chief Financial Officer. The team elected to speak with the President and Board Chair at length first, before having the Chief Financial Officer join the conversation. The DCEH president confirmed that he has now entered into a contract, approved by the DCEH Board, to serve as President. The DCEH leadership team has not had much contact with leadership from the institutions. The Board Chair explained that under the current contract, the DCEH leadership team is prohibited from visiting with institutional leadership without being accompanied by EDMC representatives. Therefore, there have been very few interactions with the institutional administrators, faculty, or staff.

The Board chair presented a supplementary report to the Change of Control application updating several changes, including the deferral of Middle Schools Commission on Higher Education (MSCHE) decision until November 2017 for additional information, the finalization of loan agreement between DCF and the Najafi organization, selection of additional board members for DCEH, deferral of the time for the closing pending regulatory approval, changes of AIC and ILIA's bylaws, and the most recent version of the Transition Service Agreement (TSA) and the Shared Service Agreement.

The team probed for more information regarding WASC's conditional approval of the transaction and Dream Center's response to the Southern Association of Colleges and Schools (SACS) concerns. The Board Chair indicated that the Dream Center has submitted responses to the concerns raised by WASC and SACS. A copy of the response letter will be sent to HLC for reference. It was at this time that the team learned that the online division is part of AI Pittsburgh which might have implications for how the transaction proceeds in light of the action of Middle States (MSCHE) to reject the transaction for

insufficient information and evidence at its June 22, 2017 meeting.

The Board chair reiterated what he perceives as an approval by SACS COC of the transaction with certain required conditions subsequent to closing. He indicated that the Department of Education had requested additional information related to, among other things, the financing and structure of the transaction. The team requested that this information along with the institution's response to the items be provided. The Chair noted that the value of the transaction had been further reduced due to an adjustment for working capital.

The team inquired about potential conflict of interest issues. The chair indicated that members of DCEH signed conflict of interest forms. The team had previously learned that the DCEH president had been invited to invest in the potential transaction. While no final agreement has been reached in connection with a potential investment, the President indicated that he still plans to fund up to 10% of the transaction, for which he would probably use a separate, pre-existing LLC. When pressed to identify the members of said LLC, he indicated himself, his brother and a brother-in-law. It appeared to the team that the president did not perceive this as a conflict of interest for which a management plan may be required. In exploring other parties who might be engaged in the potential transaction, the DCEH chair indicated that that the transaction would not benefit Significant Systems or any related entities. A letter to that effect will be sent to HLC.

The DCEH leadership indicated they have agreed to voluntarily comply with the good practices indicated by the Consent Agreement even if they might be cumbersome. (The Administrator continues to monitor through the end of 2018.) The team requested a written commitment on this topic be sent to HLC.

The team learned that a "Board-in-Waiting" for DCEH had been identified and all members have signed Conflict of Interest documents. However, the Board has not met prior to the transaction's completion to engage in any planning. The team followed up on the apparent lack of engagement between the prospective buyers and the institutions. The Chair stated that non-disclosure agreements made any prior interaction impossible. Upon further follow-up, the team learned that in reality, the disclosures were really only prohibited where no EDMC representative was present.

The board chair stated that DCEH's services to all acquired institutions would consist of "central services" and "shared services." The DCEH central services was established to provide more efficient centralized services, such as faculty management, faculty support, curriculum design, human resources, and other general services to all the acquired schools and universities. During the transition period, four of the central administrators will be hired from EDMC, including the CFO and Chief Marketing Officer. As a strategy to improve the efficiency of the central services, the DCEH leadership team indicated that they would be "tightening the ship" by renegotiating many of the contracts EDMC entered into to cut costs. Insurance policies and property management were mentioned as potential areas for savings. In addition, they believe the discontinuance of the huge current EDMC corporate overhead cost will realize substantial savings. When asked if DCEH had been working with the schools to align strategies to improve operations, the Chair indicated there had not been much contact with the schools' administration, faculty or staff due to a prohibition stated in the current negotiations.

The goal of the shared service model is to save money and yet leave sufficient autonomy for each institution to directly interact with students. Organizationally, shared services would be handled through a separate limited liability company under DCEH. Dream Center Education Management (DCEM) is a new LLC with DCEH as the sole member. Shared Services will operate similarly to a third-party outsourcing service firm, designed to provide efficient and quality service to each institution. Service prices would be negotiated between DCEM and institutional administrators and trustees at "arms-length." Explicit agreement and contract prices are required by WASC as part of its conditional approval of the

transaction. The team learned that EDMC has contracted 60% of the original shared services and anticipates pushing student-focused services back to the schools following the transaction.

The DCEH Chief Financial Officer joined the meeting to respond to the team's questions regarding the financial pro formas provided in the application. He stated his current employment status with DCEH as follows: although he is paid by EDMC and functions as an employee "on loan," he works for DCEH and is "sequestered" from any EDMC information. Pressed as to how the figures in the financial pro formas were derived and what assumption underpinned the pro formas, the CFO indicated modest growth assumptions were made based on the institutions' current tax status; in addition they anticipated re-branding, re-marketing, potentially adding additional programs which are currently in the works, increasing enrollments using DCF networks, and improving rational rates. The latter would only be implemented in the long-term and are not reflected in the pro formas. The DCEH CFO commented that the AI CFO worked with regional finance directors to develop pro forma figures. It was not clear to the CFO what budget assumptions were used. The team requested a copy of the budget assumptions supporting the pro forma financial statements, as revised, to reflect recent operating results.

The pro forma financial statements projected a negative cash flow problem (operational deficits and cash shortages in some years) that will require working capital infusion(s) from DCF. The team probed how the Dream Center Foundation would address these shortfalls, given their financial resources. The response was that 10 of 31 Art Institutes are not profitable and that the buyers entered with their eyes wide open. The DCEH leadership team indicated that the institutions acquired by DCEH are schools that currently have profits or can be turned into profits in the future. A process was described whereby centralizing finances, the new owners could essentially allocate profits from currently profitable schools to support operational deficits and cash shortage of currently unprofitable institutions. The plan is to help weak schools at least break even. The chair emphasized the role of leadership at both high- performing and low-performing institutions is critical. The major priorities for the future are "turning around" the institutions, development and fundraising. There is a desire to revisit marketing systems and to reduce cost per lead while finding better leads to improve enrollment. Future plans include fundraising, investing some tuition money in good causes (a strategy that resonates with today's students) and getting grants to feed into the whole enterprise. DCEH expects that reducing costs will attract students and a 2-3 year lead-time will be needed for a positive turnaround.

The chair stated that there would be a synergetic effect from the proposed transaction. For example, DCF has many interns and staff volunteers who will have access to higher education opportunities within their own organization; DCF will have a platform to showcase higher education with humanistic values, i.e., education that values people; the not-for-profit status will allow DCF to raise scholarship money to reduce the cost of education to some AI students; and AI will also have an opportunity to apply for research grants to enhance quality of its educational programs. The president pointed out that Grand Canyon University, as a Christian University, illustrates the potential synergy of instilling Christian values into higher education. He believed that his GCU experiences would help to bring such synergy from the missions of DCF and the acquired higher education institutions.

Meeting with EDMC Leadership Personnel

Participants: Senior Vice President and Chief Marketing Officer, Art Institutes; Vice President Human Resources, Art Institutes, Chad Garrett, Vice President Operations, Services and Support, EDMC.

Areas of Focus: functional aspects of the transaction and transition, current and future management structure, anticipated operations in Pittsburgh post-transition

Questions Guiding the Conversation

How will current EDMC operations supporting the institutions be configured post transaction? What are the transition strategies?

Interview Notes

The team met with EDMC personnel representing various areas within Centralized Services; including the Senior Vice President and Chief Marketing Officer, Art Institutes, the VP for Human Resources, Art Institutes, and the VP of Operations, Services and Support, and discussed a number of administrative non-student facing functions. The team learned more about the reporting structures within EDMC's centralized and shared services systems.

The shared service system has approximately 350 employees providing common services to EDMC institutions, including student accounts, financial aid, academic support services, and military certification. The cost of these services is charged back to individual institutions. The level of service is constantly evaluated to balance between cost and student experience. The service cost is intended to reflect the reduction in overhead cost and is annually reviewed and negotiated. Representatives of the shared service system converse constantly with the institutions to determine services needed and what services are affordable. The current shared services system was created 3-4 years ago to meet the goal of cutting down the overhead cost of each institution.

The EDMC leadership team does not anticipate any major changes in shared services as a result of the potential transaction. There was a staff reduction in June 2017 that was dictated by a contraction in business need. However, there appears to be a fair amount of built-in redundancy at multiple levels, particularly human resources. The team asked what was anticipated to occur after the transaction. The VP for Human Resources, Art Institutes attempted to describe what she termed a "lift and shift" in which the personnel would simply be shifted into the new organizational structure. In this model, she stated that current employees would just need to fill out a new W4 and new appointment form to retain their employment. When pressed however, it became clearer that not all positions would or could be retained in the long-term.

The Senior VP and Chief Marketing Officer of Art Institutes described excitement regarding the different messaging that can be designed and communicated. The marketing employees feel that although the campus will remain pretty much the same, the message will be different. Marketing compliance will be an important aspect of any campaign or information distribution.

Meeting with Institutional Presidents and Chief Academic Officers

Participants: President, Illinois Institute of Art, Interim President, Art Institute of Colorado, Provost, Illinois Art Institute, Vice President and Dean of Academic Affairs, Art Institute of Colorado

Areas of Focus: strategic planning, financial projections, ethics

Questions Guiding the Conversation

What is the projected impact transaction on the institutions' strategic plans?

Is the current strategic plan reflected in the proforma financial statements contained in the application?

Does AI have the right culture to function under the not-for-profit umbrella?

Interview Notes

The ILIA president outlined future plans indicating that the current Strategic Plan was finished in October 2016, long before anyone at the institutions knew a transaction was being contemplated. An announcement regarding the proposed transaction was made in early 2017. Both the ILIA and AIC presidents indicated that their initial contact with Dream Center Foundation representatives was at this fact-finding visit.

Both presidents indicated that despite lack of prior contact with DCF representatives, the leadership at their institutions has been talking about or contemplating possible strategic impact of the transaction on the institution. The ILIA president reflected at length regarding the “headwinds” represented by increasing regulation targeting the for-profit sector, the deteriorating morale at the institution and how he believed the vicious cycle resulting from those factors contributed to low enrollment. The transaction and the resulting non-profit status is viewed as offering more fund-raising opportunities, expanded high school recruitment access, and more opportunities for AI students to find internships and employment through the Dream Center network. The AIC president stressed an increased role of data analytics to help enhance institutional effectiveness and ultimately improve community engagement.

The team explored with the presidents their knowledge of and involvement in the development of the *pro forma* financial statements submitted with application. The ILIA president indicated that he had seen a draft of the application but was not familiar with the details of the financial statement. He noted that to his knowledge, the current strategic plan is not reflected in the pro-forma financial statements. Although the plan is more ambitious, in his opinion, it is possible to achieve the results of the *pro forma* statements. Possible cost savings could come from the reduction of debt service cost and bad debt expense as well as increased enrollments resulting from disassociation with the negative publicity surrounding EDMC. Both presidents expressed optimism for the financial future of their institutions.

The ethical culture required within non-profit organizations was explored. The depth of the ethical issues that plagued EDMC was discussed in the context of transitioning from a for-profit entity to the culture required to function under the not-for-profit umbrella. Both presidents indicated that this “culture-shift” has already occurred in several ways including marketing and recruitment that is not misleading, provision of ethical training activities for employees, particularly in financial aid and admissions, and termination actions.

Fact-Finding Visit – Day Two

Tour of EDMC Administrative Facility

Areas of Focus: operational response to recent Consent Agreement, anticipated changes as a result of the proposed transaction

Interview Notes and Observations

The team toured the EDMC’s facility in the “Strip District” section of Philadelphia and interviewed in an impromptu manner various staff members encountered during the tour. Although most of the information shared was expositive in nature, the team in particular was interested in learning what if anything had changed in day-to-day operations either as a result of the recent Consent Agreement or in anticipation of the transaction.

The team was able to verify that calls with students were being monitored for quality control. For

example, a Senior Director gave examples of violations relating to “failing to disclose that a call was being recorded” and described that if the keyword “recorded” was not detected, the violation would be coded according to a pre-established scorecard. However, certain aspects of this monitoring raised more questions. Another employee described her role in monitoring calls, administering tests as part of training employees who conducted calls, and assigning consequences for calls that, based on their scores, violated pre-defined protocols. However, this individual could not provide examples of specific impermissible conduct that would result in one score or another. She could only confirm that a particular score would result in a particular consequence. It appeared that this individual had very limited information in order to perform her role in a holistic fashion. In addition, she could not identify what if anything had changed with respect to interactions with students in recent months or whether such changes were tied to the Consent Agreement.

The team also observed and heard from employees in Information Technology and Marketing. The team learned that the corporation was in the process of renegotiating its leased space, not only to extend the term of the lease but also to reduce the leased space, which appeared more than ample for the number of individuals observed using the space.

Conference Call with Student Services and Career Services Personnel from AIC and ILIA

Participants: Director of Student Services, Art Institute of Michigan; Director of Student Services, Art Institute of Colorado, Director of Career Services, Illinois Art Institute

Areas of Focus: institutional policies, procedures and processes related to student services

Questions Guiding the Conversation

What are the current student support services provided?

What will be the impact of the potential transaction on students?

Interview Notes

The team interviewed representatives who work within Student Services providing support on their individual campuses. Students appear to be supported through a number of programs and strategies designed to improve retention and institutional effectiveness. The representatives described conducting Town Halls, providing mentoring, administering Noel Levitz surveys, in addition to attending to students’ at risk status.

Student Services personnel described themselves as problem-solvers, fielding questions about a wide range of issues affecting students’ day-to-day experience at the institutions. They have primary responsibility to be the on-site student advocate. They described having weekly meetings with corporate specialists and having resources available to them if they were out of their depth. They also expressed confidence that additional resources would be provided if needed to do their jobs after the proposed transaction.

Career services personnel indicated that students had a choice whether or not to use the services. When asked whether the transaction would make the job easier, the representatives echoed the sentiment expressed earlier by the President and others, that conversion to non-profit status would make a significant difference because it would provide students and alumni with “more avenues to pursue” for employment. Compared to the status quo, they indicated that the potential transaction would enhance community interaction, increase internships and scholarships, and provide financial stability to grow enrollment, stabilize educational costs and possibly add new resources.

Conference Call with Current Students

Participants: Cross-section of students (13) representing diverse programs in Media Arts, Visual Effects, Graphic Design, and Fashion Design.

Areas of Focus: student experience at AI

Questions Guiding the Conversation

How would they describe their learning experience at AI?

How well does AI prepare them for their choice of job prospects after graduation?

What role did AI's for-profit status play in their decision to attend?

How do they perceive the relationship of tuition costs to the value of their education?

Interview Notes

When asked whether the institute's status as a for-profit had played any role in their decision to attend the institution, the resounding answer was "no." When asked what recommendations they would have to improve their institutions, the team received indications that the institution should re-examine tuition for on-ground versus online programming; consider offering general education online and other courses on-ground; re-evaluate independent study online which appears to be viewed as too expensive. The team inquired about tuition costs relative to the value proposition of their education. Students indicated that AI tuition is relatively expensive, or somewhat over-priced, but that it may be worth the costs considering job prospects for graduates. The students' confidence in future career prospects was generally high, not just as a function of helpfulness of Career Services, but because of a high sense of self-efficacy and resourcefulness among the students which the team was particularly impressed by.

Final Meeting with EDMC and DCEH Leadership

Participants: DCEH President, DCEH Chief Financial Officer, EDMC Legal Counsel, Interim President, Art Institute of Colorado, President, Illinois Institute of Art, EDMC Associate Vice President for Regional Accreditation

Areas of Focus: clarification of information from the interviews, identification of additional documentation to be submitted

Interview Notes

The team thanked the group for its hospitality and verbally requested additional documentation as a result of the interviews or was offered by the various parties during the course of the visit. These requests are confirmed in a written letter dated September 12, 2017 to both presidents that is included in the record.

Exhibit 16

Date Transmitted: Nov. 16, 2017

From: Higher Learning Commission

Subject: *Notification of Pre-approval Subject to Change in Control Candidacy Status*



HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

November 16, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC
7135 East Camelback Road
Phoenix, AZ 85251

Dear President Monday, President Pond, and Mr. Richardson:

This letter is formal notification of action taken by the Higher Learning Commission (“HLC” or “the Commission”) Board of Trustees (“the Board”) concerning Illinois Institute of Art (“IIA”) and the Art Institute of Colorado (“AIC”) (“the Institutes” or “the institutions,” collectively). During its meeting on November 2-3, 2017, the Board voted to approve the application for Change of Control, Structure, or Organization wherein the Dream Center Foundation (“DCF”), through Dream Center Education Holdings LLC (“DCEH” or “the buyers”) and related intermediaries, acquires certain assets currently held by Education Management Corporation (“EDMC”), including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below. In taking this action, the Board considered materials submitted to the Commission including: the Change of Control, Structure or Organization application, the Summary Report and its attachments, the additional information provided by the Institutes throughout the review process, and the Institutes’ responses to the Summary Report.

As noted under policy, the Commission considers five factors in determining whether to approve a requested Change of Control, Structure, or Organization. It is the applying institution’s burden, in its request and submission of related information, to demonstrate with clear and convincing evidence that the transaction meets these five factors and to resolve any concerns or ambiguities regarding the transaction and its impact on the institution and its ability to meet Commission

HLC-OPE 7726

requirements. The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future.

The conditions set forth by the Board in its approval of the application subject to Change of Control Candidate for Accreditation are as follows:

The institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.

The institutions submit an interim report every 90 days following the date of the consummation of the transaction until their next comprehensive evaluations on the following topics:

- Current term enrollment at the institutions. This should include the number of full- and part-time students, as well as comparisons to planned enrollment numbers. The institutions should also provide revised enrollment projections based on enrollments at the time of submission;
- Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institutions;
- Information regarding any complaints received by DCF, DCEH or any of the institutions;
- Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, (“DCEM”), or any of the institutions;
- Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions;
- Information regarding reductions in faculty and/or staff at any of the institutions;
- Updated student retention and completion measures for each of the institutions;
- Copies of any information sent to the U.S. Department of Education (“USDE”), including any information sent in response to the USDE’s September 11, 2017 letter (or any updates to that letter); and
- An update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator.

The institutions submit separate Eligibility Filings no later than February 1, 2018, providing detailed documentation that each institution meets the Eligibility Requirements

and Assumed Practices, as well as a highly detailed plan with timelines, action steps, and personnel assignments to remedy issues related to Core Components 1.D, regarding commitment to the public good; 2.A, regarding integrity and ethical behavior; 2.B, regarding public disclosure and transparency; 2.C, regarding the autonomy of board governance; 4.A, regarding improving program outcomes; 5.A, regarding financial resources; and 5.C, regarding planning, with specific focus on enrollment and financial planning. The outcome of this process shall be reported to the HLC Board of Trustees at its spring 2018 meeting.

The institutions host a visit within six months of the transaction date, as required by HLC policy and federal regulation, focused on ascertaining the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.

The institutions host a focused visit no later than June 2019, to include a visit to the Dream Center Foundation and Dream Center Education Holdings, on the following topics:

- Core Component 1.D:
 - The institutions should provide evidence that the missions of the institutions demonstrate a commitment to public good. Specifically, that the institutions' operations align to the pursuit of the stated missions in terms of recruiting, marketing, advertising, and retention.
- Core Component 2.A:
 - The institutions should demonstrate that they possess effective policies and procedures for assuring integrity and transparency.
 - DCEH and the institutions should provide evidence that the parent company and the institutions are continuing to perform voluntarily the obligations of the Consent Agreement, as assured by DCEH to the Higher Learning Commission in writing.
- Core Component 2.B:
 - DCEH and the institutions must demonstrate that policies and procedures following the Consent Judgment have been fully implemented and are effective in ensuring the proper training and oversight of personnel.
- Core Component 2.C:
 - Evidence that the DCF, DCEH, DCEM and the Art Institutes organizations, as well as related corporations, demonstrate that they have organizational documents and have engaged in a pattern of behavior that indicates the respective boards of the institutions have been able to engage in appropriately autonomous oversight of their institutions.
- Core Component 4.A:
 - Evidence that the institutions have engaged in effective planning processes to address programs that have failed the USDE's gainful employment requirements (when those requirements were still applicable), as well as those that are "in the zone." The institutions should also provide any plans that have been implemented to improve program outcomes.

- Core Component 5.A:
 - Evidence that the institutions have increased enrollments to the levels set forth in the application for Change of Control, Structure, or Organization. This should include any revised budgetary projections and evidence of when the institutions intend to achieve balanced budgets.
- Core Component 5.C:
 - The institutions should provide any revised plans or projections that occur following consummation of the transaction.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action.

The Board will receive and review the Eligibility Filing, related staff comments, and the report of the first focused visit team to determine whether to continue the Change of Control Candidacy status. If the Eligibility Filing and focused evaluation does not provide clear, convincing and complete evidence of each institution meeting each Eligibility Requirement and of making substantial progress towards meeting the Criteria for Accreditation in the maximum period allotted for such Change of Control Candidacy as indicated in this letter, the Board may withdraw Change of Control Candidate for Accreditation status at its June 2018 meeting.

The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation.

Assuming acceptance of these conditions, the Institutes and buyers must provide written notice of the closing date within 24 hours after the transaction has closed. The Institutes are also obligated to notify the Commission prior to closing if any of the material terms of this transaction have changed or appear likely to change. By Commission policy the closing must take place within no more than thirty days from the date of the Board's approval. If there is any delay such that the transaction cannot close within this time frame, the Institutes must notify the Commission as soon as possible so alternate arrangements can be identified to ensure that the Board's approval remains in effect.

The Board based its action on the following findings made in regard to the Institutes:

In reference to the first, second, and fourth approval factors and, related to the continuity of the institutions accredited by the Commission and sufficiency of financial support for

the transaction, the institutions and the buyers have provided reasonable evidence that these factors have been met.

In reference to the third approval factor, the substantial likelihood that following consummation of the transaction the institutions will meet the Commission's Criteria for Accreditation, with specific reference to governance, mission, programs, disclosures, administration, policies and procedures, finances, and integrity, the institutions and the buyers have provided reasonable evidence that this factor is met, although the following Criteria for Accreditation are Met with Concerns:

- Criterion One, Core Component 1.D: "The institution's mission demonstrates commitment to the public good," for the following reasons:
 - Neither institution has demonstrated evidence that its underlying operations, in addition to its tax status, will be transformed to reflect a non-profit mission;
 - Neither institution has demonstrated significant planning required to undertake a mission that includes the responsibility of educating a potentially very different student population represented by the Dream Center clientele; and
 - The buyers have not provided evidence that the institutions' educational purposes will take primacy over contributing to a related or parent organization, which will be struggling in its initial years to improve the enrollment and financial wherewithal of a large number of institutions purchased from EDMC.
- Criterion Two, Core Component 2.A: "The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff," for the following reason:
 - Although each institution is making changes to procedures specifically identified in the November 2015 Consent Judgment, neither institution has yet established a long-term track record of integrity in its auxiliary functions.
- Criterion Two, Core Component 2.B: "The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships," for the following reasons:
 - Changes being made by the institutions to ensure transparency, particularly with students, are recent in nature and have yet to fully penetrate the complex organizational structure of which the institutions are a part; and
 - Given the replication of that operational structure and the continuity of personnel following the transaction, the potential for continuing challenges is of concern.
- Criterion Two, Core Component 2.C: "The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity," for the following reasons:
 - There remain questions about how the governance of DCEH, its related service provider Dream Center Education Management, and the Art Institutes will take place after the transaction and how that governance will affect the governance of the AIC and IIA, and the mere replication of the EDMC corporate structure with new non-profit corporations does not resolve the

- question of how these new corporations will function in the future to assure autonomy and governance in the best interest of the institutions;
- An apparent conflict of interest exists owing to an investment by the DCEH CEO of 10% in the purchase price for which limited documentation exists; and
 - No evidence was provided indicating that either institution’s board had yet engaged in significant consideration of the role that typifies non-profit boards.
 - Criterion Four, Core Component 4.A: “The institution demonstrates responsibility for the quality of its educational programs,” for the following reasons:
 - Neither institution has demonstrated that improvements have been made to academic programs identified since January 2017 by the USDE as having poor outcomes, or that such programs have been eliminated; and
 - The risk of harm to students admitted to such programs absent such improvement or elimination is of concern, regardless of the institutions’ tax-status or whether they are subject to gainful employment regulations.
 - Criterion Five, Core Component 5.A: “The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future,” for the following reasons:
 - Despite the adoption of certain cost-reducing and related measures, the impact of which are yet to be determined, the ability of each institution to sustain its resource base and improve enrollment beyond 2019 depends on the occurrence of several contingencies, most of which are assumptions tied to the institutions’ change in tax status, and none of which are guaranteed;
 - The ability of the buyers to provide the cash flow infusions necessary to sustain the institutions over the next five years are also linked to assumptions related to the institutions’ change in tax status and the long-term debt taken on by DCEH and DCF in addition to the debt acquired for the purchase price; and
 - Although the buyers are expected to have \$35 million in cash at closing (based on debt as noted above), these funds are intended to support multiple transactions within Argosy University, South University and the Art Institutes, and the potential need for and access to additional debt financing on the part of the buyers is of concern.
 - Criterion Five, Core Component 5.C: “The institution engages in systematic and integrated planning,” for the following reasons:
 - Neither institution has demonstrated that the impacts of the transaction have been accounted for in their strategic planning; and
 - IIA’s strategic planning process is still in the process of maturing.

In reference to the fifth approval factor, the experience of the buyers, administration, and board with higher education, the officers (CEO and CDO) of the buyers have some experience in higher education but do not have any experience as chief officers of a large system of non-profit institutions or with the specific challenges pertinent to EDMC institutions, including challenges related to marketing and recruitment policies, governance, administration, and student outcomes across institutions with many campuses and programs operating across the United States.

The Board action, if the conditions are accepted by the Institutes and the buyers, resulted in changes to the affiliation of the Institutes. These changes will be reflected on the Institutional Status and Requirements Report. Some of the information on that document, such as the dates of the last and next comprehensive evaluation visits, will be posted to the HLC website.

Commission policy COMM.A.10.010, Commission Public Notices and Statements, requires that HLC prepare a summary of actions to be sent to appropriate state and federal agencies and accrediting associations and published on its website within thirty days of any action. The summary will include HLC Board action regarding the Institutes. The Commission will also simultaneously inform the U.S. Department of Education of this action by copy of this letter. As further explained in policy, HLC may publish a Public Statement regarding this action and the transaction following the institutions' and the buyer's decision of whether to accept the conditions outlined above. Please note that any public announcement by the buyers about this action must include the information that any approval provided by the Commission is subject to the condition of the buyers accepting Change of Control candidacy for not less than six months up to a maximum of four years.

On behalf of the Board of Trustees, I thank you and your associates for your cooperation. If you have questions about any of the information in this letter, please contact Dr. Anthea Sweeney.

Sincerely,



Barbara Gellman-Danley
President

cc: Chair of the Board of Trustees, Illinois Institute of Art
Chair of the Board of Trustees, Art Institute of Colorado
Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, the Art Institute of Colorado
Diane Duffy, Interim Executive Director, Colorado Department of Higher Education
Stephanie Bernoteit, Senior Associate Director, Academic Affairs, Illinois Board of
Higher Education
Evaluation team members
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning
Commission
Karen Peterson Solinski, Vice President for Legal and Governmental Affairs, Higher
Learning Commission
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Herman Bounds, Director, Accreditation Group, U.S. Department of Education

Exhibit 17

Date Transmitted: Nov. 29, 2017

From: Josh Pond

Subject: *Re: HLC Action Letter for EDMC Institutions*

November 29, 2017

Barbara Gellman-Danley, President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

Dear President Gellman-Danley,

The Art Institute of Colorado (AiC), Illinois Institute of Art (ILIA), and Dream Center Education Holdings, LLC (DCEH) jointly acknowledge receipt of conditional HLC approval of the two applications for Change of Control, Structure, or Organization. Per the approval letter, AiC and ILIA will proceed with completion of the transaction and change of institutional ownership from Education Management Corporation (EDMC) to the Dream Center Foundation (DCF). We will advise the Commission immediately upon the close of the transaction.

With regard to the specific conditions articulated with the November 16 letter, we respond as follows:

- We understand that both AiC and ILIA will undergo a period of candidacy beginning with the close of the transaction.
- We understand that the two institutions must complete separate Eligibility Filings accompanied by an action plan pertaining to Core Components 1.D, 2.A, 2.B, 2.C, 4.A, 5.A, and 5.C. Respectfully, we ask that the submission deadline for the Eligibility Filings be extended from February 1, 2018 to March 1, 2018. The extension will allow sufficient time for the institutions to closely review each of the Eligibility Requirements in consideration of a change of ownership and legal status, which has not yet occurred. The extension will also provide the time needed for the institutions to simultaneously develop the requested action plan.
- We understand that the two institutions will be required to submit an interim report every 90 days to include the specified data and documentation. We understand the financial and complaint, dispute and settlement information to be included in such interim reports shall be that which applies to the two HLC institutions (AiC and ILIA). Respectfully, we request that the interim report be submitted as single report to be jointly prepared by the two institutions. A combined report will include the requested data and information for the two HLC institutions (AiC and ILIA), as well as include any data and information pertaining to DCF and DCEH, where required.
- We understand that AiC and ILIA will each host a site visit within six months of the close of the transaction. We further understand that both institutions will host a site visit by June 2019 to include visits to DCF and DCEH facilities.
- While the November 17 letter stipulates closure of the transaction within 30 days of the conditional approval (i.e., by December 2 or 3), in accordance with the email request sent to HLC by The Illinois

Institute of Art's Institutional President, Josh Pond on November 29, we respectfully ask that the deadline for the close of the transaction be extended to January 15. As detailed in Mr. Pond's email, extension of the transaction deadline will allow DCF to better coordinate the purchase of the two HLC institutions with the timeline of the purchase of other non-HLC institutions, which, due to requirements imposed on those institutions by the Pennsylvania Department of Education, cannot be transferred until the second week of January. Requiring separate closings for these acquisitions will result in significant expense to DCEH, as the U.S. Department of Education has stated it will require an opening day balance sheet audit of DCEH for any subsequent closings of its acquisition of the post-secondary institutions owned by EDMC. In addition, an extension will allow time for receipt of formal approval of the transaction from the Illinois Board of Higher Education, which meets on December 12 (the IBHE staff has recommended approval), and for AiC, ILIA and DCF to discuss the conditions to approval with HLC, as set forth in this letter.

- In order for HLC to be assured of continuing compliance with the Consent Judgment, we will promptly deliver to HLC all periodic reports received by DCF and DCEH from the Settlement Administrator, who is acting as an independent third party agent on behalf of 39 states and the District of Columbia charged with the duty of overseeing and ensuring compliance of EDMC and now DCEH with the terms of the Consent Judgment. We do not believe any further reports would be any more meaningful, as the Settlement Administrator is acting as an expert independent third party agent.

AiC, ILIA, and DCF appreciate the review and conditional HLC approval of the institutional applications for Change of Control, Structure, or Organization. Thank you for the guidance and support provided throughout this process.

Sincerely,



Elden Monday, Interim President
The Art Institute of Colorado



Josh Pond, Institutional President
The Illinois Institute of Art

Brent Richardson, Chief Executive Officer
Dream Center Education Holdings, LLC

Exhibit 18

Date Transmitted: Jan. 3, 2018

From: Josh Pond

Subject: *Important Notification: Formal Letter Required*

Re: Important Notification: Formal Letter Required

Anthea Sweeney

Fri 1/5/2018 12:39 PM

To: Pond, Josh [REDACTED];

Cc: Monday, Elden [REDACTED]; Karen Solinski [REDACTED];

President Pond,

I write to acknowledge receipt and thank you for your email and letter. I have forwarded the same to our president as well. We will be in touch with next steps soon.

Best,

Anthea M. Sweeney, Ed.D.
Vice President for Accreditation Relations and Eligibility
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Pond, Josh [REDACTED]
Sent: Friday, January 5, 2018 12:27 PM
To: Anthea Sweeney
Cc: Monday, Elden; Karen Solinski
Subject: Re: Important Notification: Formal Letter Required

Dr. Sweeney,

Please find the attached response.

Regards,

Josh Pond
Institutional President

The Illinois Institute of Art
350 N Orleans St.
Suite 136
Chicago, IL 60654

From: Anthea Sweeney [REDACTED]
Date: Wednesday, January 3, 2018 at 3:04 PM
To: Josh Pond [REDACTED]
Cc: "Monday, Elden" [REDACTED]
Subject: Important Notification: Formal Letter Required

Good Afternoon President Pond,

I am writing to inform you that HLC staff conferred internally regarding the response to the action letter received via email on November 29, 2017. Because we have since received requested modifications related to certain conditions of the HLC Board's recent approval, requests that go beyond merely technical modifications to substantive changes, and because HLC staff have no authority to respond to those requests, we will need to communicate with the HLC Board so it can make a determination of its own on whether and how to address the parties' concerns.

However, as a prerequisite, we will require a formal letter from the institutions, cosigned by DCEH, providing a formal indication of whether the parties accept the **Change of Control candidacy status** indicated in the HLC Board's action letter of November 16, 2017, before we can determine how best to proceed with communicating with our Board concerning the requested modifications. We anticipate the HLC Board will want to know whether there has, at least, been a clear and formal statement of acceptance by the parties of Change of Control candidacy status for the institutions prior to considering the aforementioned requests. That statement is notably absent from the letter we received on November 29, 2017. (Only a minimal statement acknowledging the existence of that particular condition, among others, has been set forth.)

The sooner we receive a formal indication that Change of Control candidacy status is accepted by both ILIA and Art Institute of Colorado, cosigned by both institutional presidents and DCEH, the sooner HLC Staff can determine how best to proceed with the HLC Board. Karen Solinski is in contact separately with internal counsel at DCEH; her message is essentially the same. Please feel free to address the requested letter to President Barbara Gellman-Danley and transmit the letter to me at this email address as soon as possible and no later than close of business on Friday January 5. There is some potential for Board consideration in January, so time is of the essence. Thank you.

Best Wishes,

Anthea M. Sweeney, Ed.D.
Vice President for Accreditation Relations and Eligibility



Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

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Exhibit 19

Date Transmitted: Jan. 4, 2018

From: Brent Richardson, et al.

Subject: *Accepting Change of Control Candidacy Status*

Ai The Illinois Institute of Art®—Chicago

January 4, 2018

Barbara Gellman-Danley, President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

Dear President Gellman-Danley,

The Art Institute of Colorado (AiC), The Illinois Institute of Art (ILIA), and Dream Center Education Holdings, LLC (DCEH) jointly acknowledge receipt of conditional HLC approval of the two applications for Change of Control, Structure, or Organization. AiC and ILiA agree to accept Change of Control candidacy status set forth in the Higher Learning Commission's approval letter dated November 16, 2017, and, as indicated in our November 29, 2017 letter, the institutions also accept the conditions stated in the November 16, 2017 letter, as modified by non-substantive revisions set forth in Karen Solinski's email to Ron Holt on December 22, 2017 (we understand that details concerning implementation of third-party monitoring in 2019 can be provided later).

We confirm that the terms of the transaction, through which ownership of AiC and ILiA will be transferred to subsidiaries of DCEH, remain unchanged from the terms set forth in the parties Amended and Restated Asset Purchase Agreement entered February 24, 2017, as amended by the Second Amendment dated October 13, 2017, copies of which have been previously furnished to HLC. As we have previously shared with Ms. Solinski, the parties were not able to carry out the closing of the transaction within 30 days of receipt of the HLC approval letter, due to pending state agency approvals for AiC and ILiA and for other institutions involved in the transaction. DCEH plans to effectuate the transfer no later than January 15, 2018.

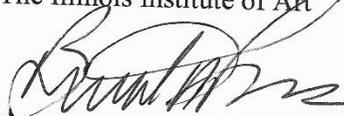
Sincerely yours,



Elden Monday, Interim President
The Art Institute of Colorado



Josh Pond, Institutional President
The Illinois Institute of Art



Brent Richardson, Chief Executive Officer
Dream Center Education Holdings, LLC



cc: Karen Solinski
Anthea Sweeney

Exhibit 20

Date Transmitted: Jan. 12, 2018

From: Higher Learning Commission

Subject: *Notification of HLC Board Action*

January 12, 2018

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC
7135 East Camelback Road
Phoenix, AZ 85251

Dear President Monday, President Pond, and Mr. Richardson:

This letter is formal notification of action taken by the Higher Learning Commission (“HLC” or “the Commission”) Board of Trustees (“the Board”) concerning Illinois Institute of Art (“IIA”) and the Art Institute of Colorado (“AIC”) (“the Institutes” or “the institutions,” collectively). Through action taken via mail ballot on January 9, 2018, the Board voted to reaffirm the extension of status related to its approval of the institutions’ application for Change of Control, Structure, or Organization wherein the Dream Center Foundation (“DCF”), through Dream Center Education Holdings LLC (“DCEH” or “the buyers”) and related intermediaries, acquires certain assets currently held by Education Management Corporation (“EDMC”), including the assets of the Institutes.

In taking this action, the institutions are subject to the same terms and requirements outlined in the Board’s original action letter issued in November 2017, with the sole exception of the following non-substantive modification:

The institutions submit an interim report every 90 days following the date of the consummation of the transaction until their next comprehensive evaluations on the following topics:

- ...
- Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institutions **will be provided within 45 days of the close of the quarter” (added emphasis highlights the modification).**

In addition, it should be noted that any required reporting will include Dream Center Education Holdings and Dream Center Education Management but will not include any specific institutions accredited by other institutional accreditors.

As you know, this approval is specifically subject to a Change of Control Candidacy, which is effective immediately upon the closing of the transaction. Commission policy INST.B.30.020, Obligations of Affiliation, states that an institution “portrays its accreditation status with the Commission clearly to the public.” Under this policy, the Commission anticipates that the institutions have properly notified their students of the acceptance of the Board’s condition of Change of Control Candidacy and have clearly stated its impact on current and prospective students once the transaction closes. Similarly, the Commission expects that the institutions have also provided proper advisement and accommodations to students in light of this action, which may include, if necessary, assisting students with financial accommodations or transfer if they so request. I ask that you please provide copies of all disclosures and notifications related to the institutions’ acceptance of Change of Control Candidacy to the HLC Staff Liaison for the institutions, Dr. Anthea Sweeney.

Please send the Commission written notice of the closing date within 24 hours after the transaction has closed. Once confirmation of the transaction closing is received, the institutions will enter Change of Control Candidacy status, which will be effective on the date of the close of the transaction, and the Commission will issue a Public Disclosure Notice and provide copies of this action letter to the various external entities identified on this letter. As a reminder, any public announcement by the buyers about this action must include the information that any approval provided by the Commission was subject to the condition of the buyers accepting Change of Control Candidacy status for not less than six months up to a maximum of four years, and that the buyers have accepted the condition.

You are also obligated to notify the Commission prior to closing if any of the material terms of this transaction have changed or appear likely to change. By Commission policy the closing must take place within no more than thirty days from the date of the Board’s approval. If there is any delay such that the transaction cannot close within this time frame, you must notify the Commission as soon as possible.

Commission policy COMM.A.10.010, Commission Public Notices and Statements, requires that HLC prepare a summary of actions to be sent to appropriate state and federal agencies and accrediting associations and published on its website within thirty days of any action. The summary will include HLC Board action regarding the Institutes.

On behalf of the Board of Trustees, I thank you and your associates for your cooperation. Please contact Dr. Sweeney if you have questions about any of the information in this letter.

Sincerely,



Barbara Gellman-Danley
President

cc: Chair of the Board of Trustees, Illinois Institute of Art
Chair of the Board of Trustees, Art Institute of Colorado
Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, the Art Institute of Colorado
Diane Duffy, Interim Executive Director, Colorado Department of Higher Education
Stephanie Bernoteit, Senior Associate Director, Academic Affairs, Illinois Board of
Higher Education
Evaluation team members
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning
Commission
Karen Peterson Solinski, Vice President for Legal and Governmental Affairs, Higher
Learning Commission
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Herman Bounds, Director, Accreditation Group, U.S. Department of Education

Exhibit 21

Date Transmitted: Jan. 20, 2018

From: Josh Pond

Subject: *Re: Illinois Institute of Art and Art Institute of Colorado transaction closing*

Monday, January 22, 2018 at 9:59:04 AM Central Standard Time

Subject: Re: Illinois Institute of Art and Art Institute of Colorado transaction closing
Date: Saturday, January 20, 2018 at 11:26:47 AM Central Standard Time
From: Pond, Josh [REDACTED]@aai.edu>
To: Anthea Sweeney [REDACTED]@hlcommission.org>
CC: Monday, Elden [REDACTED]@aai.edu>, Robert Rucker [REDACTED]@hlcommission.org>

Dr. Sweeney,

Please be advised that the transaction between Education Management Corporation and Dream Center Education Holdings including The Illinois Institute of Art and The Art Institute of Colorado has closed.

Regards,
Josh Pond
Institutional President
The Illinois Institute of Art
350 N Orleans St.
Suite 136
Chicago, IL 60654

From: Anthea Sweeney [REDACTED]@hlcommission.org>
Date: Thursday, January 18, 2018 at 2:42 PM
To: Josh Pond [REDACTED]@aai.edu>
Cc: "Monday, Elden" [REDACTED]y@edmc.edu>, Robert Rucker [REDACTED]@hlcommission.org>
Subject: Re: Illinois Institute of Art and Art Institute of Colorado transaction closing

President Pond,

Thanks for the update. We'll expect to receive written confirmation from you again once it has in fact closed.

Best Wishes,

Anthea M. Sweeney, Ed.D.
Vice President for Accreditation Relations and Eligibility
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax [REDACTED]

From: Pond, Josh [REDACTED]@aai.edu>
Sent: Thursday, January 18, 2018 2:01 PM
To: Anthea Sweeney
Cc: Monday, Elden; Robert Rucker
Subject: Illinois Institute of Art and Art Institute of Colorado transaction closing

Dr. Sweeney,

Please be advised that the transaction between Education Management Corporation and Dream Center Education Holdings to include The Illinois Institute of Art and The Art Institute of Colorado will close at 12:00am on January 20, 2018.

Regards,

Josh Pond
Institutional President
The Illinois Institute of Art
350 N Orleans St.
Suite 136
Chicago, IL 60654

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Exhibit 22

Date Transmitted: Feb. 2, 2018

From: Ronald L. Holt and David Harpool

Subject: *Re: The Art Institute of Colorado and the Illinois Art Institute*

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions

Exhibit 23

Date Transmitted: Sept. 13, 2018

From: Diane Jones

Subject: *Re: Student Scholarships*

From: Jones, Diane <Diane.Jones@ed.gov>
Sent: Thursday, September 13, 2018 10:03 PM
To: Murphy, Shelly M. <smurphy@dcedh.org>
Cc: Finley, Steve <Steve.Finley@ed.gov>; Riemer, Jeffrey (Justin) <Jeffrey.Riemer@ed.gov>; Mangold, Donna <Donna.Mangold@ed.gov>; Frola, Michael <Michael.Frola@ed.gov>; Richardson, Brent D. <brichardson@dcedh.org>
Subject: Re: Student Scholarships

It appears that your campus in Philly thinks otherwise. They told Middle States that we gave permission to pay students directly, which we did not. We said you did not need to take back money given to students prior to the agreement, but the campus told MS that we approved that for all transfers.

These mistakes are unacceptable and jeopardize not only the agreement with us but your accreditation because they demonstrate a lack of administrative capacity. This is the very o phlegm that Middle States expresses concern about during the last visit - that what we were being told and what the campus was being told is different. That simply cannot happen. I am worried that you don't understand how strict accreditation standards are. Also, I can't find the two-week update report in my email, so if you sent it, could you tell me when so I can search by date?

Diane

Sent from my iPhone

On Sep 11, 2018, at 9:16 PM, Murphy, Shelly M. <smurphy@dcedh.org> wrote:

Hi Diane,

That is our current process. No funds are being paid to the students directly, only to the transfer partner upon enrollment.

Shelly Murphy
Chief Officer Government and Legislative Affairs
Dream Center Education Holdings, LLC
Smurphy@dcedh.org
Cell: 480-650-4249

On Sep 11, 2018, at 6:13 PM, Jones, Diane <Diane.Jones@ed.gov> wrote:

Hi Shelly and Brent,
I want to remind you that the scholarships must be paid directly to the institution that accepts your students in transfer, not the student. We discussed this when we met with you a few weeks ago and want to remind you of this. It is absolutely imperative that the scholarships be paid directly to the accepting institution and those payments must be made promptly so that the school receives it as soon as they can provide you with proof of enrollment.

Thanks,
Diane

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Exhibit 24

Date Transmitted: Mar. 20, 2020

From: President Gellman-Danley

Subject: *Letter to Lynn Mahaffie*



March 20, 2020

VIA ELECTRONIC MAIL

Dr. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Lynn.mahaffie@ed.gov

Dear Dr. Mahaffie:

This letter is in response to your letter dated January 31, 2020, in which the U.S. Department of Education (the “Department”) notified the Higher Learning Commission (“HLC” or the “Commission”) that it conducted a review related to the accreditation statuses of the Art Institute of Colorado and the Illinois Institute of Art (collectively, the “Institutes”) and, pursuant to 34 C.F.R. § 602.33(c), had found HLC in “noncompliance” with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f), and with HLC’s “Accredited to Candidate Status” policy INST.E.50.010, which no longer is in effect. The Department initially provided HLC with 30 days to respond to these findings¹ and requested that HLC provide a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future, and

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

As described herein, HLC firmly disputes the Department’s allegations of noncompliance and respectfully requests, for the reasons stated below, that the Department close this inquiry with no further action.

¹ HLC originally requested a 30-day extension of time; the Department granted an eight-day extension. HLC understands from discussions with Department officials that only an eight-day extension was permissible, given the Department’s concern relating to the “upcoming” NACIQI meeting—sometime in July—at which this issue may be considered. Upon a subsequent request by HLC for an additional two-week extension, necessitated by HLC’s understanding that a third-party complaint was filed in federal court by the Dream Center Foundation (“DCF”) against HLC in *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.), the Department granted HLC until March 23, 2020 to respond to these findings. *See also* footnote 82.

I. THE DEPARTMENT’S PROCEDURAL DEFICIENCIES HAVE MATERIAL CONSEQUENCES FOR HLC AND MUST FIRST BE CURED

As a preliminary matter, the Department’s actions fail to conform with the procedures expressly and plainly outlined in its regulations, resulting in procedural errors that materially, and negatively, hinder HLC’s ability to meaningfully respond to the January 31, 2020 letter. To explain, as cited by the Department in the third footnote of its January 31, 2020 letter, federal regulations direct the Department, upon determination that “one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria,” to prepare a “written draft analysis” that “includes a recommendation regarding what action to take with respect to recognition.” The Department is then directed to send this draft analysis to the agency with “any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation to the agency.”² The accrediting agency is then provided an opportunity to respond in writing to the draft analysis and proposed recognition recommendation.³

The Department’s January 31, 2020 letter (hereinafter, the “Draft Analysis”) identifies areas of alleged noncompliance, but critically, does *not* provide HLC with a specific recognition recommendation. Furthermore, the Department has failed to provide HLC with all supporting documentation relevant to its Draft Analysis. These procedural deficiencies are addressed, in turn.

As the Department is aware, HLC accredits institutions of higher education in 19 states, including Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming. As of February 28, 2020, HLC has granted accredited status to 973 colleges and universities and preaccredited status to seven institutions. Institutions accredited by HLC range from some of the country’s most recognized premier research universities to a number of mission-based for-profit institutions, as well as large and small private non-profit and for-profit institutions. Other HLC-accredited institutions include a wide range of community colleges, public institutions within state university systems, tribal colleges, HBCUs, and faith-based institutions. The total student population of the institutions accredited by HLC numbers well over 5 million students, including over 375,000 students at for-profit institutions.

Given the wide range of potential consequences to HLC and its membership under the cited regulations—ranging from compliance reporting to recognition revocation—HLC must be provided notice of what recognition recommendations are under consideration, if any.⁴ As recognized by the regulations, in requiring the Department to provide such notice, this information is not superficial, but of material consequence.⁵ Indeed, such information provides

² 34 C.F.R. § 602.33(c)(1) (emphasis added).

³ 34 C.F.R. § 602.33(c)(2), (c)(3).

⁴ Indeed, under the Administrative Procedure Act, the Department is prohibited from taking action, “without observance of procedure required by law.” 5 U.S.C. § 706.

⁵ See Proposed Rule, *Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary’s Recognition of Accrediting Agencies*, 74 FR 39515 (Aug. 6, 2009) (codified at 34 C.F.R. § 602.33)

necessary context as to the extent of the Department’s concerns and the possible consequences facing HLC, as well as the nearly 1,000 member-institutions and over 5 million students who could be affected by the Department’s intended action. It is not only in violation of federal regulations, but antithetical to the principles of due process, to require HLC to respond to the Draft Analysis without any notice of what action the Department is considering taking against it.⁶

To the second procedural deficiency, the Department has not provided to HLC “all supporting documentation” with its Draft Analysis as required by the regulations.⁷ As part of its inquiry, and as noted in the Draft Analysis, the Department interviewed Mr. Ron Holt, outside legal counsel for the Institutes and Dream Center Education Holdings, their parent company; as well as Ms. Karen Peterson Solinski, former Executive Vice President of Legal and Governmental Affairs at HLC. The Department referenced statements, issues, and emails involving Mr. Holt and Ms. Solinski multiple times in its Draft Analysis and the accompanying materials. While the Department provided HLC with the transcript of its interview with Mr. Holt,⁸ it failed to provide the transcript of its interview with Ms. Solinski. Presumably, any such interview would have addressed the issues, discussions, and emails referenced in multiple places throughout the Department’s Draft Analysis. In failing to provide “all supporting documentation,” including this transcript, the Department’s review under 34 C.F.R. § 602.33 fails to provide yet another fundamental and consequential component of due process and denies HLC the opportunity to know the facts that underlie the Department’s findings.

For these reasons, if the Department intends to proceed with any action that may affect HLC’s recognition status or result in compliance reports, the Department must first cure these deficiencies and follow the unambiguous letter of the regulations. To do so, the Department must reissue its Draft Analysis, including both its specific recommendation and the transcript from Ms. Solinski’s interview—as well as any other relevant information the Department failed to provide—and thereafter allow HLC at least 30 days to respond.

Despite these procedural deficiencies, and in the spirit of cooperation and transparency with the Department, as well as out of concern that any failure to do so will unfairly prejudice HLC in this process, HLC responds to, and wholly disputes, the concerns raised in the Draft Analysis, which cannot stand unrefuted. HLC’s response to the substantive issues raised by the Department should not be construed as a waiver of any procedural arguments. In the event the Department

(stating that, in response to concerns by non-federal negotiators in negotiated rulemaking that “the Department not act arbitrarily and provide adequate notice to and communication with the agency when conducting a review during an agency’s period of recognition...”, the Department added language to then-proposed 34 C.F.R. § 602.33 “to reflect the consultation between Department staff and the agency, and the provision to the agency of the documentation concerning the inquiry”).

⁶ HLC acknowledges that new regulations scheduled to take effect July 1, 2020 will no longer require the Department to provide a recognition recommendation with its Draft Analysis. *See* Final Rules, *The Secretary’s Recognition of Accrediting Agencies*, 84 Fed. Reg. 58928 (Nov. 1, 2019) (to be codified at 34 C.F.R. § 602.33). It is questionable whether failing to provide an accrediting agency with notice of the potential action being considered against it comports with the principles and legal requirements of due process; nonetheless, this new approach is not applicable to the Draft Analysis in question, which clearly predates the effective date of the new regulations.

⁷ *See* 34 C.F.R. § 602.33(c)(2).

⁸ *See* Draft Analysis, Exhibit 2.

reissues the Draft Analysis, HLC reserves the right to submit a written response in accordance with 34 C.F.R. § 602.33(c)(3).⁹

II. RELEVANT HISTORY

As you are aware, the Institutes in question have a troubled history, yet showed signs of meaningful progress over time. The Illinois Institute of Art was first accredited by HLC in 2004, and the Art Institute of Colorado in 2008. At the time, the Institutes were owned by The Art Institutes International II, LLC (the “Art Institutes System”), a wholly-owned subsidiary of Education Management Corporation (“EDMC”), a for-profit company that, at one time, operated over 50 post-secondary educational institutions. The Illinois Institute of Art joined the Art Institutes System in 1995; the Art Institute of Colorado had joined decades earlier, in 1975.¹⁰ Neither of the Institutes had a seamless accreditation history with HLC, but both demonstrated continued improvement in support of their ongoing accreditation during that time, as demonstrated by various interim reports, among other things.

For example, following interim report requirements as part of its initial grant of accreditation in 2009, and then again in 2010 related to concerns over enrollment, the Art Institute of Colorado was put on the public sanction of Notice in June 2013 related to concerns over faculty workload, limited capacity to assess institutional effectiveness, and limited results in implementing a faculty development system. As a result of these challenges, the Board determined that the Art Institute of Colorado was at risk of non-compliance with Criteria Three, Four and Five of the HLC Criteria for Accreditation. In response, it made sufficient progress in these areas to have this sanction removed in February 2015.

Similarly, the Illinois Institute of Art’s initial accreditation required monitoring in the form of focused visits on assessment of student learning, financial organization, and workload impact. In addition, due to enrollment concerns, HLC also required interim reports between 2010 and 2015. Following its comprehensive evaluation, HLC ultimately imposed the sanction of Notice in

⁹ By letter dated October 24, 2019, the Department requested certain information from HLC. HLC responded in writing on November 13, 2019 and provided numerous documents to the Department. HLC-OPE 1-15429 were provided for the Department's review via separate link and password to Dr. Mahaffie and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department. The Department then requested additional information, which HLC provided in writing on January 13, 2020. HLC also supplemented its production to the Department at that time, with links provided to [HLC-OPE 15430-15433](#); [HLC-OPE 15434](#); and [HLC-OPE 15435-15440](#). This response to the Department’s Draft Analysis incorporates all responses and documents previously provided to the Department about this matter. Documents previously provided to the Department that are cited to in this response have also been hyperlinked herein for the Department's convenience. Additionally, HLC supplements its production with [HLC-PET 1-2](#); [HLC-PET 3-9](#); [HLC-PET 10-34](#); [HLC-PET 35](#); and [HLC-SUPP 1-8](#). [HLC-PET 1-2](#) is an April 13, 2017 communication from the Department to HLC regarding HLC's petition for continued recognition, and [HLC-PET 3-9](#) and [HLC-PET 10-34](#) had been provided to the Department on June 8, 2017 pursuant to HLC's petition for continued recognition. [HLC-PET 35](#) is the Department's May 9, 2018 letter informing HLC that HLC's federal recognition has been renewed for a five-year period. [HLC-SUPP 1-8](#) is a document containing relevant HLC procedures that had not been previously provided to the Department. The HLC-PET and HLC-SUPP documents have been hyperlinked in this response and are available for download through that link. The password to access the linked documents has been provided to Dr. Mahaffie and Mr. Bounds via email.

¹⁰ The Art Institute of Colorado and the Illinois Institute of Art were the only institutions in the Art Institutes System that were accredited by HLC.

November 2015. This sanction related to HLC's concerns over the integrity of its student disclosures, student support, institutional resources, strategic planning, and institutional improvement. Despite these concerns, the Illinois Institute of Art demonstrated sufficient progress by November 2017, thereby resulting in the removal of the sanction (with some noted concerns from the Board).

Undeniably, the Institutes both had imperfect accreditation histories, and in the time immediately preceding their change of control application, had been facing declining enrollment and financial concerns, particularly as related to their parent company. Indeed, EDMC had been facing ongoing financial issues and significant litigation, including an investigation by the attorneys general of 39 states and the District of Columbia that resulted in a Consent Judgment against EDMC in 2015.¹¹ As a result, EDMC's subsidiaries, including the Institutes, were required to significantly transform certain aspects of their internal operations. Notably, it was these "financial and reputational burdens" which, according to the Institutes themselves, served as the impetus for EDMC to seek a non-profit buyer for the Art Institutes System, as well as the other for-profit higher education systems then-owned by EDMC.¹² It was ultimately this intended sale which led to the Institutes' change of control application now in question.

The Institutes' Change of Control Application

On May 1, 2017, the Institutes submitted a change of control application to HLC. This application informed HLC that EDMC had entered into an asset purchase agreement on February 24, 2017 for the purpose of the Dream Center Foundation ("DCF") acquiring the Institutes and other EDMC-owned institutions. An EDMC representative had previously met with Dr. Anthea Sweeney, who was HLC's liaison to the Institutes at the time, to discuss this proposed transaction in a preliminary fashion. Dr. Sweeney directed EDMC to file a joint change of control application on behalf of the Institutes by May 1, 2017.

¹¹ The Consent Judgment required EDMC to significantly reform its recruitment and enrollment practices, including mandating additional disclosures to students, prohibiting enrollment in unaccredited programs, and extending the period when new students could withdraw with no financial obligation. EDMC was also required to forgive \$102.8 million in outstanding loan debt held by more than 80,000 former students nationwide and submit to the independent monitoring of a former U.S. Associate Attorney General for a period of three years. See New York State Office of the Attorney General, Press Release Archives, *A.G. Schneiderman Announces \$102.8 Million Settlement with EDMC to Forgive Student Loans and Reform Recruiting and Enrollment Practices* (Nov. 16, 2015), <https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-1028-million-settlement-edmc-forgive-student-loans-and>; Iowa Dep't of Justice, Office of the Attorney General, *EDMC to Change Practices, Forgive Loans through Agreement with Miller and State Attorneys General* (Nov. 16, 2015), <https://www.iowaattorneygeneral.gov/newsroom/edmc-to-change-practices-forgive-loans-through-agreement-with-miller-and-state-attorneys-general>; Office of the Attorney General of the State of Ohio, *Attorney General DeWine Announces \$10.6 Million in Ohio Student Loans to be Forgiven as Part of Multistate Settlement with For-Profit College Provider* (Nov. 16, 2015), [https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-\\$10-6-Million-in](https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-$10-6-Million-in); Maryland Office of the Attorney General, *AG Frosh: \$1.4 Million in Loans Forgiven For Nearly 1,000 Maryland Students* (Nov. 16, 2015), <http://www.marylandattorneygeneral.gov/Press/2015/111615.pdf>.

¹² The quoted language was in the Institutes' change of control application, which was previously produced to the Department as HLC-OPE 2865-5206 (at HLC-OPE 2867). That application is not linked again here due to the size of the document.

As the Department is aware, HLC requires institutions to submit a change of control application for the purposes of ensuring that, in layman's terms, the proposed change will not negatively impact students, and that the institution, under new governance and a new corporate structure, will be administratively and financially capable of continuing to meet HLC's Criteria for Accreditation. HLC does not approve the actual transaction, but rather approves a change of control application based on, among other factors, whether there is a substantial likelihood that the institution will remain in compliance with HLC's Criteria for Accreditation and Eligibility Requirements post-transaction. At that time, institutions that proceeded with a change of control without HLC approval were subject to withdrawal of accreditation.

The then-effective HLC policy governing this process, INST.B.20.040, "Change of Control, Structure or Organization," required that an institution undergoing a change of control "demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that the approval... is in the best interest of the Commission."¹³ INST.B.20.040 also permitted the HLC Board to approve a change of control "subject to conditions on the institution or its accreditation." Relatedly, then-applicable HLC policy INST.F.20.070, "Processes for Seeking Approval of a Change of Control," articulated the precise evaluative framework the Board would apply in considering a change of control application.¹⁴

The application for a change of control proposed that Dream Center Education Holdings ("DCEH"), a non-profit company of DCF, and of which DCF was the sole member, would purchase the Institutes from their existing corporate parent EDMC. According to the Institutes' application, the intent of this transaction was for the Institutes to "become 501(c)(3) tax exempt non-profit institutions," "provide missing reputational and financial stability," and "help [the Illinois Institute of Art] to resolve all of the issues that led to the Commission placing it on Notice on November 12, 2015."¹⁵

As part of its review of the proposed transaction, HLC conducted a site visit in August 2017. Thereafter, EDMC presented to HLC a letter addressed to EDMC from the Department dated September 12, 2017 that provided that the Department had preliminarily concluded that, "it does not see any impediment to... its request for non-profit institution status."¹⁶ Based on this letter, HLC concluded that the Department "confirmed the likelihood that Title IV would be extended to the institutions after they converted to non-profit status as a result of acquisition by the DCEH and that the institutions appeared to meet the Department's definition of non-profit."¹⁷

On October 3, 2017, HLC provided the Institutes with a Staff Summary Report and Fact Finding Visit Report.¹⁸ This report noted HLC's numerous concerns with the Institutes' ability to comply with HLC's Eligibility Requirements and Criteria for Accreditation after the transaction. In

¹³ [HLC-OPE 15239-15242](#)

¹⁴ [HLC-OPE 15268-15275](#)

¹⁵ See footnote 12.

¹⁶ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039); see also [HLC-OPE 7081-7106](#)

¹⁷ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039)

¹⁸ [HLC-OPE 7030-7080](#)

particular, HLC found that there was substantial likelihood based on available evidence that, due to financial challenges associated with declining enrollment, the HLC Eligibility Requirement of *stability* would not be met after the proposed transaction.¹⁹ Further, HLC determined that, due to EDMC's record of "inappropriate, unethical or untruthful dealings with students," as indicated by the multi-state attorneys general investigation, the Eligibility Requirement of *integrity of business and academic operations* also would not be met; likewise, the Eligibility Requirement of *planning* with regard to current and former business and academic operations would also not be met.²⁰ Although HLC noted that the Institutes had made sufficient progress in resolving the underlying causes giving rise to the sanctions of Notice, ultimately the Eligibility Requirement related to the *accreditation record* would also not be met.²¹ Finally, HLC found that certain Core Components of the HLC Criteria for Accreditation would be met with concerns: Core Components 1.D (focus on public good); 2.A (policies and procedures ensure integrity); 2.B (clear communications with students and prospective students); 2.C (clarity of governing board structure); 4.A (educational quality based on student outcomes); 5.A (financial resources); and 5.C (institutional planning).²²

Despite these failings and concerns, HLC found there was a substantial likelihood that numerous other Eligibility Requirements and Core Components would be met after the transaction. In particular, HLC found that the Institutes employed sufficient qualified faculty and academic personnel and had sufficient learning resources and support services for students and therefore, anticipated this would remain the case after the transaction.

Conditional Approval of Change of Control Application Offered to Institutes (November 2017)

On November 2-3, 2017, the HLC Board approved the Institutes' change of control application *with conditions*, one of which was that the Institutes "undergo a period of candidacy known as Change of Control Candidacy." The Board's approval was aligned with HLC policies and procedures. As noted above, INST.B.20.040 provided that the Board may approve a change of control application "subject to conditions on the institution or its accreditation." The Board could, as it did here, condition its approval upon the Institutes' acceptance of a period of candidacy during which they would address several deficiencies that gave rise to HLC's concern for the Institutes' ability to meet various HLC requirements after the transaction closed. The then-effective procedures for INST.B.20.040 provided that an approval *with conditions* was not appealable.²³

In contrast, the procedures provided for an appeal of decisions where, in appropriate cases as an alternative to denial, candidacy was imposed *because the proposed transaction forms a new institution requiring a period of candidacy*. While then-effective INST.E.50.010 permitted the Board to move an institution from accredited status to candidate status subsequent to the close of a change of control, this policy was not applicable when an institution undergoing a change of control voluntarily agreed to accept the condition of candidacy status, as was the case here.

¹⁹ *Id.* (at HLC-OPE 7043)

²⁰ *Id.* (at HLC-OPE 7047-7048)

²¹ *Id.* (at HLC-OPE 7050)

²² *Id.* (at HLC-OPE 7051-7065)

²³ [HLC-SUPP 1-8](#)

The Board's approval was officially communicated to the Institutes in a joint action letter dated November 16, 2017 (the "Joint Action Letter").²⁴ In this letter, HLC explained that the Board "found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for "preaccreditation status" identified as "Change of Control Candidate for Accreditation[.]"²⁵ The conditions set forth by the Board included that the Institutes:

- (1) undergo a period of candidacy known as a Change of Control Candidacy;
- (2) submit an interim report every 90 days;
- (3) submit Eligibility Filings no later than February 1, 2018;
- (4) host a focused visit within six months of the transaction date; and
- (5) host a second focused site visit no later than June 2019.²⁶

The Institutes were notified that "[i]f at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall *reinstate accreditation* and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation..."²⁷ The Institutes were given 14 days to accept the conditions in writing, or the approval would become null and void, meaning the application would be deemed denied. A denied application does not alter an institution's accredited status. If the conditions were accepted, the Institutes were also required to close the transaction within 30 days from the date of the Board's approval as is consistent with federal regulations, or to notify HLC as soon as possible so alternative arrangements could be identified to ensure the Board's approval remained in effect.

Over the next several weeks, the Institutes and HLC discussed the conditions in the Joint Action Letter. On November 29, 2017, the Institutes jointly wrote to HLC, stating "We understand that both [the Art Institute of Colorado] and [Illinois Institute of Art] will undergo a period of candidacy beginning with the close of the transaction." Further, the Institutes requested that: (a) the deadline for the Eligibility Filings be extended from February 1, 2018 to March 1, 2018; (b) the interim report be allowed to be submitted as a single joint report; and (c) that the transaction closure deadline be extended to January 15.²⁸ This letter also provided—with reference to the required interim reports and the Consent Judgment—that all periodic reports from the Settlement Administrator would be delivered, but that the Institutes "d[id] not believe any further reports would be any more meaningful." In the Joint Action Letter, HLC had set forth the condition that the interim reports were to include "[a]n update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent

²⁴ [HLC-OPE 7726-7732](#)

²⁵ *Id.* (emphasis added)

²⁶ In setting forth this schedule, the Board staggered the deliverables to allow the Institutes to demonstrate compliance in a reasonable time and manner, rather than setting an arbitrary deadline by which they would have to show compliance all at once.

²⁷ *Id.* (emphasis added)

²⁸ See [HLC-OPE 7740-7741](#); see also [HLC-OPE 7738-7739](#) (email sent earlier that same day requesting an extension of the date by which the closing may occur)

third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator."²⁹

On December 1, 2017, then Executive Vice President for Legal and Governmental Affairs at HLC, Karen Solinski, spoke with EDMC's general counsel, DCEH's general counsel, and DCEH's outside counsel, Ron Holt, regarding these requests for changes to the conditions. Mr. Holt emailed Ms. Solinski that evening, summarizing that they had spoken about the transaction closing and stating that the letter sent "concerning the conditions set forth in HLC's November 16 letter... largely provides our understanding of the conditions."³⁰ Thereafter, Mr. Holt and Ms. Solinski exchanged emails regarding what financial information DCEH and DCF would need to include in the interim reports, including discussion over what financial information must be provided for the Institutes' parent and related entities in relation to the condition concerning monitoring of compliance under the Consent Judgment.³¹ DCF and DCEH requested that HLC accept the determination of the Settlement Administrator, then-expected in early 2019, and not require any additional third-party monitoring or audit processes.

HLC staff agreed to the Institutes' request for the non-substantive modification to the requirement of the interim reports such that quarterly financials would be provided within 45 days of the close of the quarter (rather than in each interim report provided every 90 days), but made clear that the requested modifications that were substantive in nature would require Board approval.³² In none of these discussions occurring between November 27 and December 22, 2017 did the Institutes request a modification to the condition of candidacy. The Institutes also did not raise any questions or concerns about the timeline for reinstatement of accreditation which, as outlined in the Joint Action Letter, would follow a series of successful focused site visits.

By letter received January 3, 2018, Brent Richardson, CEO for DCEH, acknowledged that HLC staff were able to make the non-substantive modification to the conditions, and requested once more that DCEH be excused from the condition of continued compliance with the Consent Judgment beyond the conclusion of the work of the Settlement Administrator.³³ This letter raised no concerns, questions, or requests related to the condition of candidacy or the reinstatement of accreditation. Subsequently, Dr. Sweeney emailed the Institutes reminding them that because they were requesting substantive modifications to some of the conditions, these requests would need to be brought to the Board for further consideration.³⁴ Dr. Sweeney also asked for a more formal indication as to whether the parties had *accepted* the Change of Control candidacy status.

²⁹ [HLC-OPE 7726-7732](#) (at HLC-OPE 7727)

³⁰ [HLC-OPE 7742-7761](#)

³¹ [HLC-OPE 7742-7761](#); [HLC-OPE 7742-7761](#)

³² [HLC-OPE 7742-7761](#)

³³ [HLC-OPE 7762](#)

³⁴ [HLC-OPE 15285-15287](#); *see also*, [HLC-OPE 7742-7761](#) (reminder sent on December 22, 2017)

Conditional Approval of Change of Control Accepted by Institutes (January 2018)

By letter dated January 4, 2018, the Institutes and DCEH formally accepted the Board's conditions for approval of the change of control application³⁵ In this letter, the Institutes and DCEH noted that they accepted the conditions from the Joint Action Letter, as modified by the non-substantive revision set forth in the December 22, 2017 email between Ms. Solinski and Mr. Holt, and reiterated that the transfer had not closed within 30 days of the action letter. Despite previous discussions in which the Institutes had requested substantive modifications to some of the conditions (but not the condition of candidacy), the Institutes and DCEH decided not to pursue any of these requested modifications that required Board action, including not pursuing a modification to the condition of an audit process conducted by an independent third-party following the conclusion of the work of the Settlement Administrator under the Consent Judgment. This letter provided that the "details concerning implementation of third-party monitoring in 2019 can be provided later." The letter explicitly stated the Institutes "agree to accept Change of Control candidacy status set forth in the Higher Learning Commission's approval letter dated November 16, 2017," and provided that DCEH planned to close the transaction with EDMC no later than January 15, 2018.

As memorialized in an action letter dated January 12, 2018, the Board approved the Institutes' request for a later closing date, approved the requested non-substantive modification to the interim report condition, and again reiterated that the approval was subject to the condition of candidacy.³⁶ Specifically, the letter provided, "As you know, this approval is specifically subject to a Change of Control Candidacy, which is effective immediately upon the closing of the transaction." The letter further reiterated the significance of candidacy, stating,

Once confirmation of the transaction closing is received, the institutions will enter Change of Control Candidacy status, which will be effective on the date of the close of the transaction, and the Commission will issue a Public Disclosure Notice and provide copies of this action letter to the various external entities identified on this letter. As a reminder, any public announcement by the buyers about this action must include the information that any approval provided by the Commission was subject to the condition of the buyers accepting Change of Control Candidacy status for not less than six months up to a maximum of four years, and that the buyers have accepted the condition.

HLC also reminded the Institutes of the Obligations of Affiliation under INST.B.30.020 which require that an institution "portrays its accreditation status with the Commission clearly to the public." HLC informed the Institutes that they expected the Institutes "have properly notified their students of the acceptance of the Board's condition of Change of Control Candidacy and have clearly stated its impact on current and prospective students once the transaction closes."

³⁵ [HLC-OPE 7763-7764](#)

³⁶ [HLC-OPE 7769-7771](#)

HLC was informed on January 20, 2018 that the transaction between EDMC and DCEH had closed.³⁷ Upon closing, the Institutes' candidacy status became effective immediately. HLC issued a Public Disclosure Notice as of that date stating that the Institutes “have transitioned to being a candidate for accreditation after previously being accredited.”³⁸ Following the consummation of the transaction, HLC reminded the Institutes of their obligation to update their websites to show their preaccreditation status.³⁹

The Institutes Inquire about Condition of Candidacy (February 2018)

On February 2, 2018, attorneys Mr. Holt and Dr. David Harpool, outside counsel for the Institutes and DCEH, wrote to HLC that they “were shocked that the Commission placed the Institutions in candidacy status,” that they understood the Institutes to now be in a “pre-candidacy” status, and stated they were requesting an appeal.⁴⁰ HLC took prompt action that same day to update the Public Disclosure Notice which was designed to provide information about the process by which the accreditation could be reinstated in response to concerns raised in this letter about procedural language.⁴¹ HLC also responded to the letter on February 7, 2018 by reminding counsel that the Institutes voluntarily consented to candidacy status as outlined in the action letters related to HLC’s decision regarding the Institutes’ change of control application.⁴² HLC also explained that the Commission has no such status known as “pre-candidacy” status.

On February 23, 2018, Mr. Holt and Dr. Harpool again wrote to HLC.⁴³ In this letter, they wrote that, in determining whether they “could accept the conditions of the November 16, 2017 letter,” they had relied in good faith on an understanding that the Institutes would remain eligible for Title IV based on the Commission’s reference in the November 16, 2017 letter “to the institutions as being in ‘preaccreditation status.’” Mr. Holt and Dr. Harpool, expressing familiarity with the term, wrote that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.” They wrote to “confir[m]” from HLC that the Institutes: (1) were eligible for Title IV; (2) “remain accredited, in the status of Change of Control Candidate for Accreditation”; (3) “will receive an objective review for continued accreditation”; and (4) “will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.” They further stated that they hoped to avoid an appeal and possible litigation. This correspondence was subsequently referred to HLC's external

³⁷ [HLC-OPE 7776-7777](#); HLC was under the impression that the transaction had closed that day. HLC later learned that the transaction closed on January 19, 2018.

³⁸ [HLC-OPE 7780-7781](#); *see also* [HLC-OPE 7778-7779](#) (Public Disclosure Notice updated on February 2, 2018 to remove certain procedural language)

³⁹ [HLC-OPE 15292-15296](#)

⁴⁰ [HLC-OPE 7782-7783](#); Pursuant to HLC policy, there was also no appeal right for an application approved with conditions, as this was not an adverse action.

⁴¹ [HLC-OPE 7778-7779 \(February 2, 2018 update to the January 20, 2018 Public Disclosure Notice\)](#); *see also* footnote 38.

⁴² [HLC-OPE 7784-7785](#)

⁴³ [HLC-OPE 7786-7787](#)

counsel to respond.⁴⁴ This letter confirmed that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status at the time they were determining whether to accept the conditions from November 16, 2017 through January 4, 2018.

HLC Granted the Institutes an Opportunity to Appeal (May 2018)

Over the coming months, the Institutes and HLC continued to communicate on a regular basis regarding all manner of normal accreditation activities, from the submission of required Eligibility Filings and interim reports to routine updates on personnel changes at each Institute. Then, on May 21, 2018, counsel for the Institutes submitted a letter of intent to appeal and requested instructions for filing such appeal related to their candidacy status.⁴⁵

On May 30, 2018, HLC granted the request for an appeal.⁴⁶ The Institutional Appeals procedure, which at all times is published on HLC's website and, among other navigation methods, retrievable by keyword search, was sent to the Institutes that day. It provides that an institution “may submit the appellate document electronically but must also submit two copies of the entire submission in paper form.”⁴⁷ HLC provided the Institutes with this opportunity to appeal outside of the terms of the applicable policy for a number of reasons, the most important of which was DCEH’s insistence that it would not have accepted the candidacy condition if it had known that the Institutes would be on a preaccredited status rather than an accredited status. Though there was no objective basis for confusion from the clearly articulated Joint Action Letter and the documented conversations between HLC staff and the Institutes, DCEH, and their counsel—which included DCEH’s and the Institutes’ counsel’s explicit acknowledgment that they understood candidacy to be a preaccreditation status—HLC was concerned that the only potential source for confusion may have been due to undocumented communications with a now former employee.

Specifically, given Ms. Solinski’s prior involvement in the matter and her recent departure, HLC was not in a position at that time to be precisely confident as to what she had said to DCEH and whether any *oral* communications between Ms. Solinski and DCEH may have resulted in confusion.⁴⁸ Thus, in an abundance of caution and to ensure adequate due process was afforded to the Institutes in this unique circumstance, HLC permitted the Institutes to appeal.

On May 25, 2018, Dr. Sweeney informed peer reviewers, who were at that point finalizing their reports as a result of their review of the respective Institutes' Eligibility Filings, that review activities were being suspended due to the receipt of the May 21, 2018 letter of intent to appeal.

⁴⁴ HLC’s outside counsel, Mary Kohart, later reached out to Mr. Holt offering to discuss the issues raised in this letter. Mr. Holt did not return her call.

⁴⁵ [HLC-OPE 12264-12266](#)

⁴⁶ See [HLC-OPE 12267-12268](#)

⁴⁷ [HLC-OPE 15252-15264](#)

⁴⁸ See, e.g., [HLC-OPE 15312-15315](#) (explaining to the Department that DCEH and the Institutes were now stating that they were misled about their accreditation status and that the full record of Ms. Solinski’s communications with DCEH was unknown)

HLC's May 30, 2018 letter communicated to counsel for DCEH that the Institutes must submit an "Appellate Document . . . as soon as possible."⁴⁹ HLC provided that, in the interim, it would suspend certain review activities, but that the focused site visit required under 34 C.F.R. § 602.24(b) would go forward.⁵⁰

Thereafter, in full anticipation of an appeal, Dr. Sweeney met with various other HLC staff to discuss related topics, including to ensure the post-change of control focused visits would move forward as required under HLC policy and federal regulations, despite the suspension of the other deliverables of the Joint Action Letter, and to discuss the members of a would-be Appeals Panel to hear the Institutes' appeal. Standard practice was to review the then-current members of the Appeals Body and consider how the Appeals Panel would be constituted. Because there were no individuals on the Appeals Body from a similar institution at the time, HLC took initial action to identify a person to serve that role and review HLC policy to ensure that it permitted President Dr. Gellman-Danley to add a representative to the Appeals Panel to meet the need. These steps demonstrate HLC's reliance that an appeal would be forthcoming and its steps to prepare for such action as it awaited the Appellate Document.

The Institutes Request "Retroactive" Accreditation (June 2018)

On June 20, 2018—twenty days following HLC's offer for an appeal opportunity—legal counsel for DCEH requested a meeting with HLC to "discuss the matters raised in [its] May 21, 2018 letter," which HLC had already responded to by laying out the steps by which an appeal could be brought. In response, Dr. Sweeney provided Mr. Harpool with options for call times on either June 25 or June 26.

Rather than scheduling a call with Dr. Sweeney, Dr. Harpool set forth a proposal by email dated June 24, 2018 for HLC to grant the Institutes accreditation "from the time of the Schools respective initial accreditation through [December 31, 2018]," and in return, the Institutes would cease to admit any new students and provide a three-option teach-out plan.⁵¹ Dr. Sweeney requested that the parties proceed with a call.

During the call, held on June 26, 2018, two days before HLC's June Board meeting, Dr. Sweeney, Dr. Gellman-Danley, and outside counsel for HLC, Ms. Mary Kohart, explained that this request was untimely for consideration by the Board, and while the Board would be updated as to the Institutes' request, it would not consider any action related to the Institutes (including their request for what would essentially be "retroactive" accreditation) at the upcoming Board meeting. It was also explained that HLC could not make any commitments about responding to their request. HLC policy did not permit retroactive accreditation for the Institutes. This was consistent with the Department's position that retroactive accreditation was prohibited. Notably,

⁴⁹ [HLC-OPE 12267-12268](#)

⁵⁰ HLC consulted with the Department as to whether this visit could be waived, and the Department confirmed it could not. See [HLC-OPE 15312-15315](#)

⁵¹ See [HLC-OPE 15322-15324](#)

HLC sought guidance on this issue from the Department, which confirmed to HLC that same day that retroactive accreditation was prohibited.⁵²

The following day, on June 27, 2018—as HLC *later* discovered in December 2019—Mr. Chris Richardson, DCEH’s General Counsel, attempted to send the Institutes’ Appellate Document via email. Mr. Richardson’s email was intended to be addressed to Dr. Barbara Gellman-Danley, HLC President, with copies to Dr. Sweeney and outside counsel for HLC, Ms. Kohart. Notably, the word “commission” in the domain name of the email addresses for both Dr. Gellman-Danley and Dr. Sweeney was misspelled (“hlcomission” with one "M," rather than “hlcommission”). Further, the copy that was directed to Ms. Kohart went to her spam account, perhaps because the sender’s domain name, “lopescapital,” was not a familiar sender or associated with a known entity, such as DCEH. For these reasons, Mr. Richardson’s email was not discovered by HLC or its outside counsel until December 2019, after the Department itself brought the existence of this letter to HLC’s attention.⁵³

The Appellate Document itself only indicated that the Institutes’ appeal was sent via email. HLC has no evidence to suggest that a hard copy was ever sent to or received by HLC, as required by the Institutional Appeals procedure provided to the Institutes and at all times publicly available on the HLC website. DCEH and the Institutes did not, at any time subsequent to its transmission, make any inquiries to HLC about receipt of this document or the status of the Institutes’ appeal. Moreover, as further detailed below, DCEH’s and the Institutes’ communication and conduct thereafter did not put HLC on any notice that an appeal had been submitted.

Preparations for the Institutes’ Closure (July - November 2018)

Despite having just attempted to submit its requested appeal, less than a week later on July 3, 2018, DCEH publicly announced the closures of the Institutes. At this time, it also announced the closure of 16 other Art Institute campuses, nine Argosy University campuses and three South University campuses (none of which were HLC-accredited institutions).⁵⁴ HLC updated its Public Disclosure Notice for the Institutes on July 7, 2018 to provide that it had come to HLC’s attention that DCEH intended to cease enrollment at various locations, including the Institutes.⁵⁵ HLC provided information to students in this updated disclosure with links to information on teach-outs and closed school discharge. Thereafter, HLC communicated with the Institutes on

⁵² See [HLC-OPE 15325-15327](#) (June 6, 2017 Memorandum from Herman Bounds, Director, Accreditation Group, Department of Education); [HLC-OPE 15325-15327](#) (June 26, 2018 Email from Elizabeth Daggett, analyst at the Department). Subsequently, on June 27, 2018, Diane Auer Jones, Principal Deputy Undersecretary at the Department, stated by both phone and email that the Department would be issuing "corrected guidance" on the issue of retroactive accreditation and that the 2017 memorandum would be retracted. That same day, Mr. Bounds provided that the 2017 guidance was not applicable to the situation with the Institutes. On July 3, 2018, Dr. Jones informed Dr. Sweeney that the Department would be willing to provide a written letter stating that retroactive accreditation of the Institutes would not jeopardize HLC’s recognition. HLC did not, at any time, make any assurances to the Department or to DCEH that it would retroactively accredit the Institutes. See [HLC-OPE 15333-15335](#). Indeed, retroactive accreditation for the Institutes was not possible under HLC’s policies.

⁵³ See [HLC-OPE 15430-15433](#), [15434](#)

⁵⁴ The News & Observer, *For-profit school operator closing 30 campuses, including 3 in NC* (July 2, 2018) <https://www.newsobserver.com/news/local/article214193329.html>.

⁵⁵ [HLC-OPE 12258-12260](#)

July 12, 2018, regarding certain critical but missing information required for their respective Teach-Out Plans to be approved. In this letter, HLC again noted its continuing concerns about the Institutes' disclosures published on their website between January 20, 2018 and June 12, 2018, and about other communications to students regarding accreditation status.⁵⁶ HLC reminded the Institutes that peer reviewer-led focused visits would be conducted on July 16 and 17, 2018, as these were not waivable under federal law. Finally, HLC also notified the Institutes that the peer reviewers had been apprised of the recent closure announcement. This communication was subsequently provided by HLC to the Department via email on July 17, 2018.⁵⁷

Following the focused site visits, HLC's peer reviewers recommended withdrawal of candidacy for the Art Institute of Colorado and reinstatement of accreditation for the Illinois Institute of Art. In each case, the relevant Institute had an opportunity to provide, and did provide, an institutional response. On October 9, 2018, HLC approved the Institutes' Teach-Out Plans and Teach-Out Agreements so that the Institutes could implement their respective plans in advance of the anticipated closures.

On November 1, 2018, the Board continued each Institute's candidacy until the planned closure date. This action was memorialized in writing to each Institute on November 7, 2018, and HLC issued the required Public Disclosure Notices.⁵⁸

Between November 20-21, 2018, each Institute wrote a letter to HLC stating its intent to appeal HLC's "January 20, 2018 action" (the effective date of the application approval, with the condition of candidacy) and the November 1, 2018 action (extension of candidacy).⁵⁹ Curiously, neither letter mentioned that the Institutes had already attempted to submit (to the wrong email address) an appeal more than five months earlier, nor alleged that HLC failed to respond to that appeal. Instead, each letter reads as the first and only appeal related to the respective Institute's candidacy status.

When HLC responded eight days later (following the Thanksgiving holiday) on November 28, 2018, HLC recounted that the Institutes requested to appeal six months prior, on May 21, 2018. HLC explained that it had no obligation to provide the appeal at that time, but nevertheless did so, despite the "Institute[s] never fil[ing] any appeal." Based on what it knew at the time, and its reasonable belief that the parties had allowed the earlier opportunity to lapse, HLC concluded that the untimely attempt to appeal the approval of the change of control application with the condition of candidacy was not appropriate.⁶⁰ HLC also informed the Institutes that continuation of candidacy was not an "adverse action" and therefore not appealable.

⁵⁶ [HLC-OPE 12562-12580](#)

⁵⁷ See [HLC-OPE 15347-15353](#)

⁵⁸ See [HLC-OPE 15180-15186](#), [15168-15171](#), [15172-15179](#)

⁵⁹ See [HLC-OPE 15187-15189](#), [15190-15191](#)

⁶⁰ See [HLC-OPE 15192-15194](#), [15195-15198](#)

On January 8, 2019, DCEH informed HLC that the Institutes closed on December 28, 2018 and that they “forego their membership with the Commission.”⁶¹ Accordingly, HLC issued the required Public Disclosure Notice to this effect.⁶²

Department Inquiries about the Institutes’ Candidacy Status and Closure

The Department began expressing to HLC its interest in the Institutes’ accreditation status many months after the Department was previously made aware of HLC’s approval of the change of control application with the condition of candidacy. Indeed, HLC’s November 16, 2017 Joint Action Letter was sent to both Michael Frola, Director of Multi-Regional and Foreign School Participation Division at the Department, and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department, as was the January 12, 2018 letter,⁶³ which incorporated the earlier letter and made one non-substantive modification regarding the interim report requirement. Neither Mr. Frola, Mr. Bounds, nor any other Department official ever raised concerns about HLC’s compliance with federal regulations or the condition of candidacy in the context of change of control at those times.

Even after the transaction between EDMC and DCEH closed and DCEH began raising concerns about preaccreditation status, the Department still waited to raise any questions about the Institutes’ accreditation status for some time. Mr. Frola was copied on various communications and received copies of relevant materials from DCEH relating to accreditation status in early February, yet neither he nor any other Department official raised concerns at that time.⁶⁴ Mr. Frola was again copied on the electronic transmission of a letter sent by legal counsel for DCEH and the Institutes, this time DCEH’s February 23, 2018 letter in which Mr. Holt and Dr. Harpool stated that, in determining that the Institutes would accept the conditions of the change of control application approval, they relied on their understanding of the Institutes “as being in ‘preaccreditation status,’ a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁶⁵ In this letter, DCEH requested that HLC confirm that the Institutes “remain eligible for Title IV.” That same day, Mr. Frola emailed Ms. Solinski, stating “the candidacy status that HLC has Dream Center on following the [change of

⁶¹ See [HLC-OPE 15204-15205](#)

⁶² See [HLC-OPE 15206](#)

⁶³ This letter was sent to Mr. Frola and Mr. Bounds on January 23, 2018, after the close of the transaction on January 20, 2018, consistent with common practice.

⁶⁴ Mr. Frola was copied on an email sent by legal counsel for DCEH and the Institutes, which attached their February 2, 2018 letter in which DCEH and the Institutes first raised concerns about candidacy. [HLC-OPE 15297](#); [HLC-OPE 7782-7783](#). Mr. Frola then, by email to Ms. Solinski, requested a copy of the draft Public Disclosure Letter referenced in the underlying letter; unfortunately, HLC cannot verify that Ms. Solinski responded. However, Mr. Frola was sent a copy of HLC’s February 7, 2018 response, which explained that, as detailed in the Joint Action Letter, the Institutes were on Change of Control Candidate for Accreditation status and would be eligible to seek accredited status. This response also explained that the Public Disclosure Notice, which stated that the Institutes “transitioned to being a candidate for accreditation after previously being accredited” and that courses or degrees earned at the Institutes during the candidacy period were not accredited by HLC, was available on HLC’s website at the time. [HLC-OPE 7784-7785](#); [HLC-OPE 7778-7779](#)

⁶⁵ [HLC-OPE 7786-7787](#)

control] could be problematic for the schools [sic] title IV eligibility."⁶⁶ Dr. Sweeney arranged a call with Mr. Frola in response.⁶⁷ On March 9, 2018, Dr. Sweeney and Mr. Frola spoke by phone, along with other representatives from HLC and the Department. On this call, Mr. Frola asked Dr. Sweeney whether candidacy was an accreditation status. Dr. Sweeney informed him that candidacy was a preaccreditation status. Mr. Frola then asked whether the HLC Board had made an independent determination that the Institutes were non-profit institutions. Dr. Sweeney informed Mr. Frola that, as the Department was certainly aware, HLC had not made any independent determination as to the Institutes' tax status or any independent determination as to the Institutes' eligibility for Title IV funding, as those determinations were in the rightful purview of the IRS and the Department, respectively.

HLC heard nothing more from the Department about the Institutes generally, much less about any issues pertaining to their accreditation status or Title IV eligibility, until May 22, 2018.⁶⁸ At this time, having received a letter of intent to appeal from the Institutes on May 21, 2018, Dr. Sweeney called Mr. Frola to follow up on their earlier conversation on March 9, 2018, and he informed her that the Department had issued Temporary Program Participation Agreements on a month-to-month basis as of February 20, 2018 and had granted the Institutes temporary interim non-profit status on May 3, 2018. Dr. Sweeney followed-up by email and requested copies of the temporary approvals.⁶⁹ Mr. Frola provided the copies as requested, but did not raise any concerns about the Institutes' accreditation status, their Title IV eligibility, or the propriety of HLC's approval of the change of control application with the condition of candidacy in either his call with Dr. Sweeney or his subsequent email.

On May 30, 2018, and in response to the pending letter of intent to appeal from DCEH on behalf of the Institutes, Dr. Sweeney reached out to Ms. Elizabeth Daggett, an analyst at the Department, to confirm whether an evaluation required to occur within six months following a change of control under the change of control regulations could be suspended pending the Institutes' appeal of an aspect of HLC's approval of the change of control application.⁷⁰ Dr. Sweeney informed Ms. Daggett that the Institutes were now alleging they did not understand that candidacy indicated that they would no longer be accredited, despite their acknowledgment of candidacy as a preaccreditation status. Ms. Daggett thanked Dr. Sweeney for the information and confirmed that this type of visit could not be waived. She did not indicate that any action taken by HLC was contrary to regulations or that the Department had any concerns with the Institutes' accreditation status.

Despite further communications with the Department in June, July and August 2018, at no time until October 31, 2018 did any Department official so much as indicate to HLC that it took issue with HLC's approval of the change of control application with the condition of candidacy. Indeed, on June 27, 2018, the Principal Deputy Undersecretary at the Department, Dr. Diane

⁶⁶ [HLC-OPE 15298-15299](#)

⁶⁷ [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#). The call was slightly delayed due to Ms. Solinski's departure from HLC.

⁶⁸ On May 9, 2018, the Department communicated to HLC that it had granted it a five-year period of recognition. [HLC-PET 35](#).

⁶⁹ [HLC-OPE 15302-15311](#)

⁷⁰ [HLC-OPE 15312-15315](#)

Auer Jones, called Dr. Gellman-Danley to discuss the possibility of retroactive accreditation. At no point in the conversations about retroactive accreditation around this time did any Department official raise concerns about HLC's compliance with federal regulations or its own policies in taking its November 16, 2017 action.

Indeed, an analysis of the various communications with officials at the Department around this time is illustrative. On June 27, 2018, Dr. Jones left a voicemail with Dr. Gellman-Danley in which she raised the idea of retroactive accreditation as an option for the Institutes.⁷¹ Dr. Sweeney responded on Dr. Gellman-Danley's behalf and wrote to Dr. Jones, indicating that she understood that the Institutes had sought "support for a confidential proposal...presented to HLC...in lieu of proceeding with HLC's established processes, to seek reinstatement of accreditation."⁷² At Dr. Gellman-Danley's request, Dr. Sweeney asked to arrange a call with Dr. Jones to "seek clarity" on the Department's position regarding retroactive accreditation. Dr. Jones responded by email and stated that the Department would be retracting its 2017 memorandum, in which it took the position that retroactive accreditation was inconsistent with regulation, and that it would instead be issuing "corrected guidance."⁷³ However, in a call Dr. Sweeney had with Ms. Daggett and Mr. Bounds that same day, the Department indicated that, even if retroactive accreditation were permitted by the Department, HLC should "be mindful of current federal regulations on ensuring consistency in decisionmaking." Dr. Sweeney understood the Department to be indicating that any future action taken by HLC with respect to the Institutes should be consistent with current HLC policy and HLC's other decisionmaking.

Later that evening, Dr. Jones called Dr. Sweeney and again shared that the Department would soon be issuing additional guidance on the issue of retroactive accreditation. While she asked that HLC work with her exclusively at the Department regarding the Institutes, at no time did Dr. Jones indicate that she believed HLC had acted contrary to regulations or its own policy. Dr. Sweeney and Dr. Jones again emailed regarding the issue of retroactive accreditation on July 3, 2018,⁷⁴ but no assurances were ever made by HLC that it would, indeed, retroactively accredit the Institutes. In fact, such action was not permitted under HLC policies. The July 3 email stated that the Board "can consider an earlier reinstatement of accreditation than initially contemplated in its original action letter" (which had provided that reinstatement would occur after the second focused evaluation if the Institutes then met the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns). While Dr. Sweeney asked for written assurance that reinstating the Institutes' accreditation effective as of January 19, 2018 would not jeopardize HLC's recognition (due to fact it was not permitted by HLC policy and, at the time,

⁷¹ Dr. Sweeney had, while speaking with Ms. Daggett about an unrelated issue on June 26, 2018, inquired about the Department's position on retroactive accreditation. This question was a result of the June 24, 2018 email from Dr. Harpool that HLC had read to effectively request that the Institutes be retroactively accredited, as well as the June 26, 2018 call with DCEH's and the Institutes' representatives. Ms. Daggett had provided Dr. Sweeney with the memorandum authored by Mr. Bounds stating that the Department prohibited retroactive accreditation. See [HLC-OPE 15325-15327](#); [HLC-OPE 15322-15324](#)

⁷² [HLC-OPE 15331-15332](#)

⁷³ The Department issued new guidance permitting retroactive accreditation on July 25, 2018, which effectively superseded the 2017 memorandum. [HLC-15354-15355](#)

⁷⁴ [HLC-OPE 15333-15335](#)

prohibited by the Department), Dr. Sweeney made no assurances about whether accreditation would be reinstated or, if it were, made effective retroactively.

Following the announced closures of the Institutes, the Department and HLC communicated regarding HLC's concerns about the Institutes' Teach-Out Plans as well as their disclosures to students regarding their accreditation status.⁷⁵ Dr. Jones also emailed Dr. Sweeney on July 29, 2018 with questions about the transferability of credits and whether HLC requires transcripts "to be marked in such a way to indicate the campus's accreditation status for each semester."⁷⁶ Dr. Sweeney responded the next day and informed Dr. Jones that HLC had no requirements for what must appear on a transcript, but that, to support those students who earned credits or graduated prior to January 20, 2018, the Institutes could provide a letter making clear that those credits were indeed accredited if that status was not clear from the face of their transcripts. Specifically, Dr. Sweeney wrote:

Students who graduated from the Institutes prior to January 20, 2018 (the effective date of Change of Control candidacy) graduated from accredited institutions. If that is not already clear on their transcripts, the Institutes (or later, the entity with ongoing responsibility for student records) should accompany all transcripts with an official letter or notation that makes this fact clear.⁷⁷

Dr. Sweeney explained that because of the "complexity of this case and the ways things evolved," it was likely that other institutions would make the default assumption that either the Institutes were never accredited or were always accredited. Dr. Sweeney further explained that an additional explanation (such as the one described above) may be necessary due to the level of nuance around when the Institutes became preaccredited. Dr. Jones thanked Dr. Sweeney for the information and wrote, "I'll add this to my list of things to follow up on."⁷⁸

Dr. Sweeney emailed Dr. Jones again on August 23, 2018, noting that HLC had "continuing concerns about the information being provided to students" by the Institutes.⁷⁹ Dr. Jones thanked Dr. Sweeney "for the update," and asked for information related to the Institutes' site visits. Dr. Sweeney informed Dr. Jones that the site teams had recommended reinstatement of accreditation for the Illinois Institute of Art, but withdrawal of candidacy for the Art Institute of Colorado, and that the Board would decide each issue in the fall. Dr. Jones again thanked Dr. Sweeney for the information but did not provide any indication that she was concerned about the Institutes' status, either from the effective date of candidacy or going forward through closure.⁸⁰

Nearly two months later, on October 31, 2018, Dr. Jones wrote to HLC stating that the Department had concerns with HLC's compliance with federal regulations related to its actions

⁷⁵ [HLC-OPE 15343-15346](#)

⁷⁶ [HLC-OPE 15347-15353](#)

⁷⁷ [HLC-OPE 15347-15353](#) (at HLC-OPE 1538) (emphasis in original)

⁷⁸ *See id.* (at HLC-OPE 15347-15349)

⁷⁹ [HLC-OPE 15356-15358](#)

⁸⁰ On October 15, 2018, Dr. Jones informed Dr. Sweeney and Dr. Gellman-Danley that she was concerned about statements made by a peer reviewer during the site visit at the Illinois Institute of Art. Dr. Jones expressed concern that students may decide not to transfer schools based on the peer reviewer's statement that accreditation would be retroactive if it were restored. *See* [HLC-OPE 15359-15360](#).

concerning the Institutes. This was the first time HLC was given any notice from the Department of such concerns. Dr. Jones and Dr. Gellman-Danley had also spoken by phone two days prior, on October 29, 2018, at Dr. Jones' request. During the October 29 call, Dr. Jones had again informed HLC that a decision by HLC to retroactively accredit the Institutes would not be negatively viewed by the Department, as she had also previously stated in July 2018, and informed Dr. Gellman-Danley that she had identified a way for the HLC Board to effectuate such retroactive accreditation and would issue a letter indicating as such. On the evening of October 31, 2018, following receipt of the October 31 letter, Dr. Jones, Dr. Gellman-Danley, and Dr. Sweeney spoke by phone. On that call, Dr. Jones suggested that HLC could consider rescinding its November 2017 Joint Action Letter and instead place the Institutes on a sanction or issue a Show-Cause Order. Dr. Gellman-Danley and Dr. Sweeney told Dr. Jones that the HLC Board would evaluate each Institute based on the evidence available and in accordance with the HLC policies. Dr. Jones and Dr. Gellman-Danley spoke again later that night. Dr. Jones advised that HLC should simply submit a brief response to her stating that HLC will review its policies.⁸¹ HLC did so on November 7, 2018.

With the exception of Dr. Jones' testimony before the Subcommittee on Economic and Consumer Policy of the House Committee on Oversight in May 2019 (which HLC learned of independently), HLC did not hear from the Department regarding any compliance issue related to HLC's application of its policies and procedures to the Institutes' change of control application, including its response to the October 31, 2018 letter, until October 24, 2019.⁸² As the Department is aware, at that time it requested certain information and documents from HLC, which were provided on November 13, 2019, and later supplemented upon the Department's request on January 13, 2020.

On November 8, 2019, the Department issued a press release announcing that it would cancel the loans of students who attended the Institutes between January 20, 2018 and December 31, 2018.⁸³ In this press release, the Department wrote,

The decision to cancel student loans and restore Pell Grant eligibility comes because students were harmed by the Higher Learning Commission's

⁸¹ In fact, Dr. Jones initially told HLC that the Department would retract the October 31, 2018 letter. She then stated that the letter could not be retracted, but that HLC should only provide a short response regarding its policy review.

⁸² On October 22, 2019, former students of the Institutes filed a lawsuit against the Department alleging that the Department improperly distributed Title IV funds (*Infusino v. DeVos*, 1:19-CV-03162 (D.D.C.)). The Department announced on November 8, 2019, that it would cancel the loans of more than 1,500 students who attended the Institutes. To note, former students of the Institutes also filed a lawsuit on December 6, 2018 against the Illinois Institute of Art, DCF, and DCEH pleading claims under the Illinois Consumer Fraud and Deceptive Practices Act for misrepresentations of material fact, omissions of material fact, and unfairness related to the Institutes' disclosures of their accreditation status, as well as claims for negligent misrepresentation and fraudulent concealment (*Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)) DCF's motion to dismiss the second amended complaint was denied on January 6, 2020. On February 28, 2020, DCF filed a third-party complaint against HLC in the *Dunagan* suit. This complaint specifically references the Department's present "investigation" of HLC.

⁸³ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

classification of the institutions in a newly developed and improperly defined accreditation status after January 20, 2018. The Department is concerned that the Art Institute of Colorado and the Illinois Institute of Art were actually fully accredited from January 20, 2018, until their closings at the end of the year. Because HLC has required these two schools to note on student transcripts that credits and degrees earned during this period are from a non-accredited institution, students have been harmed as they seek transfer credit and employment elsewhere.

The Department stated that HLC had imposed a requirement on the Institutes to alter students' transcripts to indicate that credits earned after January 20, 2018 were unaccredited. To HLC's knowledge, no representative of HLC ever spoke or emailed with any representative for the Institutes, DCEH, or DCF regarding any such notations on student transcripts. As provided above, Dr. Sweeney emailed Dr. Jones on July 30, 2018, regarding measures the Institutes could take—but were not required to take—to assist students who had earned credits at the Institutes while they were accredited. Specifically, this option was to help ensure that the accreditation status of the Institutes prior to January 20, 2018 was made clear to the institutions to which those students sought to transfer. Nowhere in that communication did Dr. Sweeney tell Dr. Jones that the Institutes were required to indicate on transcripts that credits earned after January 20, 2018 were from nonaccredited institutions. The Department did not have further communications with HLC about transcript notations until the issuance of the Draft Analysis, and HLC has entirely no idea as to what communications or actions the Department is referring in this press release.

III. SUBSTANTIVE RESPONSE TO FINDINGS OF NONCOMPLIANCE

At all times, HLC has complied with the required standards and required operating policies, as provided for at 34 C.F.R. §§ 602.16 – 602.28, as well as its own policies. As such, HLC respectfully disagrees with the Department's findings of noncompliance. In response to the Institutes' change of control application, HLC: (a) provided due process as required under § 602.25, (b) complied with its own policies and procedures, and (c) acted with consistency in decision-making as required by § 602.18.

As a preliminary and important matter—and in accordance with its regular process for policy review—HLC revised various relevant policies and procedures related to the change of control process. Among other things, this effort will enhance due process and ensure that a scenario such as this will not occur again. Specifically, Policy INST.E.50.010—with which the Department asserts HLC was non-compliant, but, as explained below was not applicable here—has been eliminated. Correspondingly, and again, while not applicable here, HLC also has removed from its policies the option of approving a change of control where the Board “determines that the transaction forms a new institution requiring a period of time in Candidacy” (which did not occur here). Likewise, HLC will no longer approve a change of control application with the *condition* of candidacy (as occurred here) and has made clear in its revised procedures that no condition would alter an institution's accreditation status. These revisions also align with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020, which will prohibit an accreditor from moving an institution from accredited to preaccredited status.

While HLC complied with its own policies and then-applicable federal regulations at all times during the approval of the Institutes' change of control application, as explained below, these revisions to HLC policies and procedures already address all of the Department's concerns.

a. HLC Did Not Violate Due Process Requirements (§§ 602.25(a), (d), (e), and (f))

The Department requires that an accrediting agency “demonstrate that the procedures it uses throughout the accrediting process satisfy due process.”⁸⁴ The regulation then identifies the ways in which an accrediting agency meets this standard: provision of adequate written specification of accreditation and preaccreditation requirements; provision of reasonable time for compliance with agency requests; written specification of deficiencies; sufficient opportunity for a written response prior to adverse action; notification in writing of any adverse action; an opportunity to appeal adverse action; a written decision regarding such an appeal; and an opportunity to review new financial information prior to a final adverse action decision.

The Draft Analysis contends that HLC violated due process by failing to provide clear standards regarding accreditation, and, in relation to an alleged adverse action, failing to provide the opportunity for a written response, notification of such adverse action in writing, and an opportunity to appeal. These contentions are both erroneous and not grounded in the facts of this matter. As explained below, due process is precisely what HLC provided to the Institutes upon receipt of their change of control application and throughout the entire process of working with them following the Board's decision concerning their change of control application.

As a general matter, due process requires notice and an opportunity to respond.⁸⁵ Both critical elements were provided here. The documented communications between HLC and the Institutes in November and December of 2017, as well as in January of 2018, make clear that the parties entered into an agreement with clear notice and sufficient information to make an informed decision. By virtue of the Joint Action Letter explicitly stating that (1) acceptance of candidacy status was a condition of the approval, (2) candidacy is a preaccreditation status, and (3) accreditation would be reinstated after the second focused evaluation if accreditation criteria were met, DCEH and the Institutes *should reasonably have known* that the condition they were contemplating whether to accept—and ultimately did accept—was a period of time during which the Institutes would hold preaccreditation status.

Moreover, and fatal to any assertion that the Institutes were not informed of the impact of this condition at the time, Mr. Holt and Dr. Harpool's February 23, 2018 letter specifically provided that they understood that the Institutes would be placed on a “preaccreditation status” *prior* to the Institutes' acceptance of the condition. As noted above, this letter documented that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status during the time from November 16, 2017 through January 4, 2018 in which they were determining whether to accept the conditions. Critically, as noted in the letter, Mr. Holt and Dr.

⁸⁴ 34 C.F.R. § 602.25

⁸⁵ *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) (“The essential elements of due process are notice and an opportunity to respond”) (citing *Cleveland Board of Education v. Longermill*, 470 U.S. 532, 546 (1985)).

Harpool noted that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁸⁶

Further, the ongoing communications between HLC and DCEH from the extended time of the Board’s notice of the condition of candidacy on November 16, 2017 through the Institutes’ and DCEH’s explicit acceptance of that condition on January 4, 2018 demonstrate that DCEH and the Institutes had more than sufficient opportunity to respond to and raise any questions or concerns about this condition. Indeed, the Institutes and HLC engaged in an interactive process regarding minor modifications to the original conditions based upon the requests of counsel for the Institutes and DCEH. The back-and-forth during this time period clearly reflects that DCEH was given ample opportunity to respond, as they repeatedly, and successfully, availed themselves of that right throughout this timeframe.

In addition to the period between the Joint Action Letter and the Institutes’ acceptance of the conditions of the change of control, the Institutes were given yet another opportunity to respond when, on May 30, 2018, they were given explicit information as to how to appeal their candidacy status, despite no requirement that HLC provide such an appeal. Simply put, the evidence is clear that HLC provided due process, including the opportunity to appeal the candidacy status, and therefore unequivocally complied with the four provisions of 34 C.F.R. § 602.25 identified by the Department in its Draft Analysis.

Compliance with 34 C.F.R. § 602.25(a) (clear standards)

An accrediting agency satisfies due process when it has “adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.”⁸⁷ In its Draft Analysis, the Department finds that this requirement was not met because the Joint Action Letter did “not include clear statements that accreditation was being withdrawn” and “cloaked [HLC’s] action within the vague and ambiguous term ‘Change of Control Candidacy’ status,” a term which the Department states can only be understood through “reference to multiple sections of HLC Policy.” Respectfully, HLC disagrees.

As detailed in Section II above, the November 16, 2017 Joint Action Letter explicitly stated the following:

- “[T]he Board voted to approve the application for Change of Control, Structure, or Organization . . . however, this approval is subject to the requirement of Change of Control Candidacy Status.”
- “The Board . . . found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for *pre-accreditation status* identified as ‘Change of Control Candidate for Accreditation’ . . .”
- “The conditions set forth . . . are . . . [that] [t]he institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the

⁸⁶ [HLC-OPE 7786-7787](#). Any question about the Institutes’ Title IV eligibility at the time turned on whether the Department, in accordance with the Higher Education Act, 20 U.S.C. 1001 et seq., considered the Institutes as maintaining their for-profit status, or whether their application for non-profit status had been accepted.

⁸⁷ 34 C.F.R. § 602.25(a)

close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.”

- “*If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation . . .*”⁸⁸

There is no need for highly-specialized knowledge of accreditation to know that a term with the prefix “pre” is distinguishable from a term without any such prefix, or to know the meaning of the term “reinstate.” Clearly, “preaccreditation” has a meaning distinct from “accreditation,” even just under the plain meaning of the term. Furthermore, accreditation could only be “reinstate[d]” if the Institutes had not been accredited for some period of time. A plain reading of the Joint Action Letter—not even considering HLC’s policies and procedures, which provide additional context—makes clear that candidacy is a preaccreditation status, and that the Institutes would thus be on a preaccreditation status until such time that they demonstrated to the Board that they met the Criteria for Accreditation, at which time accreditation would be reinstated. There is no need for highly-specialized knowledge of accreditation to recognize this distinction.

Likewise, the Department’s finding that the use of the terms (1) “Change of Control, Structure, or Organization”; (2) “Change of Control Candidacy Status”; (3) “Change of Control Candidate for Accreditation”; and (4) “Change of Control Candidacy” . . . “obfuscat[ed] the true nature and meaning of candidacy status” is not supported by a plain reading of the Joint Action Letter. The first term, “Change of Control, Structure, or Organization,” references the organizational changes, which are within the control of an institution, that trigger the application requirement. The plain meaning of the second, third and fourth terms are variations of terms that are clearly synonymous. Ultimately, these terms all clearly explain that there is a difference between (A) “accreditation,” and (B) “candidate for accreditation,” or “candidacy,” or “candidacy status.”

For example, in written communication with HLC, the following acknowledgements of this concept were stated by the Institutes and/or DCEH’s representatives themselves:

- “We understand that both [Institutes] will undergo a period of candidacy beginning with the close of the transaction” (November 29, 2017 letter)⁸⁹
- “[The Institutes] agree to accept Change of Control candidacy status” (January 4, 2018 letter)⁹⁰

As such, it is clear that the Institutes and DCEH *themselves* used the terms “candidacy” and “candidacy status” interchangeably. When put in context of the ongoing communications between DCEH, the Institutes, and HLC, it is clear that the use of the terms “candidacy status,” “candidacy,” and “candidate for accreditation” did not cause any now-alleged confusion on the part of DCEH and the Institutes. Moreover, if the Institutes were confused upon receipt of the Joint Action Letter, they could have raised questions or asked for clarification about these terms

⁸⁸ [HLC-OPE 7726-7732](#) (emphasis added).

⁸⁹ [HLC-OPE 7740-7741](#)

⁹⁰ [HLC-OPE 7763-7764](#)

during any of their subsequent conversations with HLC. They never did so, despite raising questions about many other matters. Again, it does not take any highly-specialized knowledge to understand that candidacy status, candidacy, and candidate for accreditation are synonymous terms indicating a preaccreditation status.

Despite the fact that this particular concept does not require a significant level of sophistication, HLC recognizes that accreditation standards are somewhat specialized. As held by the Eighth Circuit Court of Appeals, accreditors' standards "are not guides for the layman but for professionals in the field of education."⁹¹ For this reason, HLC reasonably expects any institution accredited by HLC to become familiar with HLC policies generally, and in particular, with those that apply in an immediately relevant circumstance such as a change of control. These policies are readily available on HLC's website for precisely this reason, and an institution's staff liaison is always available to answer questions related to HLC policy. Thus, it is a reasonable expectation that the Institutes would be familiar with HLC policy and reasonably be in a position to understand the Joint Action Letter. The Department's finding that a full understanding of the term "candidacy" would have required the Institutes to read HLC policies does not support the conclusion that HLC did not have adequate written standards.

Ultimately, DCEH and the Institutes would have been aware upon simply reading the Joint Action Letter that candidacy was a "preaccreditation" status and that, assuming they accepted the conditions, upon their decision to consummate the transaction, they would no longer be "accredited," as accreditation would later be "reinstated." If for any reason these terms were confusing to the Institutes or their legal counsel, they could have reviewed HLC policy or asked their liaison or any other HLC staff member questions at any time between the receipt of the Joint Action Letter and their acceptance of the conditions, a period that ultimately spanned over 45 days. Whether or not the Institutes had *actual knowledge* of the meaning of the term does not determine whether or not HLC complied with § 602.25(a). HLC's policies and the Joint Action Letter provided adequate written specification and clear standards such that the Institutes *reasonably should have known* that the condition of candidacy was a preaccreditation status prior to the time they accepted such condition of candidacy.

Compliance with 34 C.F.R. § 602.25(d), (e), and (f) (due process)

As a preliminary matter, 34 C.F.R. § 602.25(d), (e), and (f), which all address how an accrediting agency demonstrates it has satisfied due process in relation to an adverse action, are not applicable because no adverse action was taken here. At issue was approval of the Institutes' change of control application with conditions—an inherently *non-adverse* action—as was permitted under HLC policies and procedures in effect at the time. The Institutes discussed with HLC several of the conditions (although not the candidacy condition), and ultimately agreed to the condition of candidacy without objection. There was no adverse action triggering the requirement that the Institutes be afforded the due process rights provided for in subsections (d), (e), and (f), and therefore these provisions are entirely inapplicable.

⁹¹ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987).

However, assuming *in arguendo* that the agreed-to condition of candidacy did constitute an “adverse action,” HLC still afforded adequate due process to the Institutes. In the end, HLC unquestionably complied with both the letter and the spirit of each of the cited subsections of the regulation. To explain, 34 C.F.R. § 602.25(d) provides that an accrediting agency satisfies due process when it provides “sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.” The clear intent of the provision is that an institution must have an opportunity for meaningful communication with their accreditor. This intent was fulfilled through ongoing and documented communication between HLC and the Institutes both following the November 2017 Board action, which was not effective absent their acceptance of explicit conditions, and prior to the January 2018 Board action, which clearly reiterated the conditions would take effect only upon the parties' consummation of the transaction.

Indeed, as detailed in Section II above, the Institutes initially requested multiple changes, but subsequently withdrew all their requests except for a single non-substantive modification, which was granted. Upon learning of HLC's determination that other requested modifications were substantive and would require Board approval, the Institutes decided not to pursue those modifications and instead accepted all conditions. They had ample opportunity to speak with HLC about their concerns. They engaged in substantive communications with HLC regarding the approval of the change of control application. The Institutes' choice not to provide written feedback regarding the condition of candidacy status does not mean that they were deprived of due process; rather, due process was afforded to them, and they did not seek to question, oppose, or even inquire further about the condition of candidacy. Instead, the Institutes explicitly agreed to it. Because meaningful discussions occurred regarding the Board's approval with conditions, and because an opportunity to accept such conditions after due consideration was provided to the Institutes, and further, because the Institutes' subsequent written acceptance of the conditions satisfied 34 C.F.R. § 602.25(d), HLC complied with the regulation.

HLC's compliance with subsection (e) is also apparent. Specifically, 34 C.F.R. § 602.25(e) provides that an accrediting agency satisfies due process when it “[n]otifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.” Even if the Board's action qualifies as an adverse action (and HLC contends it does not), § 602.25(e) was satisfied. The Joint Action Letter made clear that the Institutes would have the preaccreditation status of candidacy; thus, the Institutes were notified in writing of the action. The Joint Action Letter describes why the Institutes were not eligible for continued accreditation if the change of control were to go forward, but did meet the requirements for candidacy. The letter sent January 12, 2018 following the Institutes' acceptance of candidacy—which incorporated the Joint Action Letter and the Board's rationale by reference—also again stated that the candidacy would be effective upon close of the transaction. As such, the requirement that the “notice describe the basis for the action” was satisfied.

The same is true with respect to subsection (f). This regulation, 34 C.F.R. § 602.25(f), states that an accrediting agency satisfies due process when it “[p]rovides 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.” Again, if the candidacy condition had been an adverse action,

§ 602.25 was satisfied. Indisputably, the Institutes were granted the right to appeal on May 30, 2018. At this time, HLC communicated to outside legal counsel for DCEH and the Institutes that an Appellate Document should be submitted as soon as possible. Three weeks later, on June 20, DCEH's outside legal counsel requested a meeting with HLC. Thereafter he submitted requests for what was essentially retroactive accreditation to HLC by email on June 24, not an appeal of the candidacy condition. A telephone meeting was promptly held on June 26 regarding DCEH's requests, at which DCEH made no mention of their desire for an appeal.

On June 27, four weeks after HLC provided information about the appeal process, DCEH, through its General Counsel using an unfamiliar email address, attempted to submit an Appellate Document via email to HLC President Dr. Gellman-Danley, but used *an incorrect email address*. This email was also sent to Dr. Sweeney *at an incorrect email address* and to outside counsel for HLC, Ms. Kohart. Likely given that the email was not from the Institutes or DCEH, but rather an unfamiliar domain, the email went to Ms. Kohart's spam folder. As a result, HLC never received the Appellate Document.

Six days after DCEH, on behalf of the Institutes, incorrectly attempted to submit the Appellate Document electronically, and failed to submit it in paper form as required under the Institutional Appeals procedure, DCEH announced the closures of the Institutes. DCEH and the Institutes never followed-up with HLC regarding their attempted appeal submission; no hard copies of the Appellate Document were ever submitted; no confirmation of receipt from HLC was ever received; and no inquiries were ever made about the status of the appeal. Moreover, when a subsequent and untimely appeal was requested by DCEH on behalf of the Institutes six months later in November 2018, no reference was made to the Institutes' earlier Appellate Document. Even if DCEH made a good faith pursuit of an appeal on June 27, 2018, DCEH clearly abandoned any intent to pursue that appeal. As such, and because it was DCEH's decision not to pursue their appeal, it cannot be said that HLC deprived DCEH of due process.

Ultimately, while HLC disputes that it was required to allow an appeal in these circumstances, an appeal was nevertheless provided. It was DCEH's decision not to pursue the appeal it was afforded. The requirements of 34 C.F.R. § 602.25(f) were thus met. Furthermore, this provision of an appeal remedied any purported due process harm resulting from the alleged failure to comply with any other subsection of 34 C.F.R. § 602.25. The principles of due process mandate that an accreditor provide notice and an opportunity to respond.⁹² Due process does not require the accreditor to handhold a party in availing themselves of that opportunity. The letter and spirit of the regulations were met by the provision of adequate due process here, and HLC was in compliance with the relevant regulations.

b. HLC Has Complied with Its Own Policies and Procedures

While the Draft Analysis alleges that the Joint Action Letter was an "adverse action" under HLC Policy INST.E.50.010, HLC respectfully disagrees. HLC policy, particularly INST.B.20.040 and its related procedures, permits the Board to approve a change of control *with or without*

⁹² *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) ("The essential elements of due process are notice and an opportunity to respond").

conditions. This conditional approval was a separate decision from a decision under INST.E.50.010 to move an institution to candidacy *because the transaction forms a new institution* (as an alternative to denial). Because the Institutes agreed to the condition of candidacy here, INST.E.50.010 was not even invoked.

At no point in approving the Institutes' change of control application was HLC acting under INST.E.50.010, and thus at no point could it be noncompliant with that policy. HLC's position here is not merely a disagreement with the Department. Rather, HLC's position must supersede the Department's finding. Courts have been clear that an accrediting agency's interpretation of its own rules should be given deference. It is important that the Department permit HLC to exercise discretion in implementing its own policies and procedures. As written by a Michigan district court and affirmed by the U.S. Court of Appeals for the Sixth Circuit, "Accrediting procedures are guides that, if construed . . . too strictly, would strip the accrediting bodies of the discretion they need to assess the unique circumstances presented by different schools."⁹³ The Department's interpretation of HLC's policy and procedure does not afford HLC the discretion and deference to which it is legally entitled. As such, the Department's findings that HLC invoked its authority under INST.E.50.010 to "move" the Institutes to candidacy, that the Joint Action Letter was an adverse action under INST.E.50.010, and that HLC violated the Institutes' due process rights under INST.E.50.010 cannot stand.

Even if, *in arguendo*, HLC did not comply with its own policies, such noncompliance does not violate due process unless it "resulted in any fundamental unfairness arising out of the process employed."⁹⁴ Technicalities of noncompliance that do not have a consequential impact do not result in due process deprivations. Indeed, courts have held in analyzing accreditation decisions that the principles of fairness are "flexible and involve weighing the 'nature of the controversy and the competing interests of the parties' on a case by case basis."⁹⁵ Where either process results in the same outcome, the process employed is not fundamentally unfair.⁹⁶

HLC's decision to use the option of change of control candidacy as a condition to be accepted by the Institutes, rather than moving the Institutes to change of control candidacy pursuant to INST.E.50.010, was not fundamentally unfair, because the outcome would have been no different if HLC, instead of securing an agreed-to condition for candidacy, had moved the Institutes to candidacy status under INST.E.50.010. If HLC had moved the Institutes to candidacy status, the Institutes would have been provided an opportunity to appeal, as they were ultimately allowed under the process employed here.

Therefore, the decision not to utilize INST.E.50.010 was not fundamentally unfair, and any alleged noncompliance with HLC policies and procedures does not violate due process.

⁹³ *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

⁹⁴ *Lincoln Mem'l Univ. Duncan Sch. of Law v. Am. Bar Ass'n*, No. 3:11-CV-608, 2012 WL 1108125, at *5 (E.D. Tenn. Apr. 2, 2012).

⁹⁵ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987); *Marlboro Corp. v. Association of Indep. Colleges*, 556 F.2d 78, 81 (1st Cir.1977).

⁹⁶ *See Med. Inst. of Minnesota*, 817 F.2d 1315 ("MIM has made no showing that the outcome of the hearing would have been different had cross-examination been allowed.").

The Department also found that INST.E.50.010 conflicted with 34 C.F.R. § 600.11(c), stating in its Draft Analysis:

Finally, 34 C.F.R. § 600.11(c) prohibits an institution from being considered for accreditation “for 24 months after it has had its accreditation or pre-accreditation withdrawn, revoked, or otherwise terminated for cause, unless the accreditation agency ... rescinds that action.” This regulation also prohibits agencies from moving an institution from accredited to pre-accredited status. In contrast, INST.E.50.010 allowed the Board to take an institution from accredited to candidacy status, defines such an action as an adverse action, and allows for apparent reinstatement within 6 to 18 months, contrary to the requirements of 34 C.F.R. §600.11(c). Accreditor policies that promise accreditation to institutions on terms that would not allow the institutions to meet the Department’s eligibility requirements are counterproductive at best. An accreditor applying such a policy should at a minimum inform the institution of any such obvious inconsistency between its provision of accreditation to the institution and the institution’s subsequent ability to use that accreditation to meet Departmental eligibility requirements. HLC did not do so here.

HLC disagrees with the Department’s interpretation, and proffers that it had, despite no requirement for doing so, informed the Institutes that their eligibility for Title IV while on a preaccredited status was dependent on the Department’s determination that the Institutes were non-profit.

Indeed, part 600 of Title 34 of the Code of Federal Regulation concerns *institutional* eligibility for Title IV funds—this part does not impose requirements on accrediting agencies. Title IV eligibility is a separate and distinct matter from accreditation. As such, 34 C.F.R. § 600.11(c) does not, as the Department states without support, “prohibit[] agencies from moving an institution from accredited to pre-accredited status.” Rather, this regulation provides that after *accreditation or preaccreditation* are *withdrawn, revoked or terminated for cause*, the Department cannot find the institution eligible for Title IV purposes for a period of 24 months. This prohibition on the Department’s authority related to Title IV eligibility, while related to accreditation status, has nothing to do with the underlying accreditation decision, and places no requirements or prohibitions on an accrediting agency in terms of its own decision-making.

While the new 34 C.F.R. § 602.23(f)(1)(iv) will generally prohibit an accreditor from moving an institution from an accredited to preaccredited status, this new provision does not go into effect until July 1, 2020 and is not applicable to events that predate that effective date. Moreover, as previously discussed, HLC has revised its policies and procedures to align with this new regulation. Because 34 C.F.R. § 600.11(c) does not impose any requirements on accreditors, and because, under the Department of Education Organization Act⁹⁷ the Secretary does not have authority over accreditors except as provided by law, the Department’s finding here is simply erroneous.

⁹⁷ 20 U.S.C. § 3403(b)

Even if, *in arguendo*, Part 600 of Title 34 was applicable to accrediting agencies (which it is not), and § 600.11(c) somehow prohibits an accrediting agency from reinstating accreditation for 24 months after accreditation or preaccreditation are withdrawn, revoked, or terminated for cause (which it does not), the Department misunderstands how the instant scenario would relate to such an impermissible interpretation of the regulation. The Institutes voluntarily accepted a condition of a period of candidacy; HLC did not "withdraw[], revoke[], or otherwise terminate[]" the Institutes' accreditation. As such, INST.E.50.010 did not conflict with federal regulations, even if understood in this manner.

Nevertheless, HLC shares the concerns of the Department, echoed by former students of the Institutes in litigation against the Department⁹⁸ and DCEH,⁹⁹ that the Institutes were not eligible for Title IV funding at some period of time. However, HLC did not become aware until March 9, 2018 that the Institutes had not yet been determined to be non-profit by the IRS or that the Department had not yet made a determination about the Institutes' eligibility under Title IV. As HLC made clear to Mr. Frola on March 9, 2018, and as the Department should be well-aware, HLC does not make *any* determinations about whether an institution is non-profit under IRS regulations or whether an Institution is eligible for Title IV under Department regulations. HLC does not have the authority to do so. Such determinations are exclusively within the purview of the IRS and the Department, respectively. Indeed, HLC was not informed until May 22, 2018, the day after the agency received the Institutes' letter of intent to appeal, when Dr. Sweeney called and spoke with Mr. Frola, that the Department had granted the Institutes monthly Temporary Program Participation Agreements effective February 20, 2020 and temporary interim non-profit status on May 3, 2018.

However, the Department's determinations as to the Institutes' Title IV eligibility are irrelevant as to whether HLC policy, or even HLC's actions, comported with federal regulations. While the Draft Analysis concludes that an accreditor should inform an institution of any "obvious inconsistency between its provision of accreditation to the institution and the institution's subsequent ability to use that accreditation to meet Departmental eligibility requirements," it is not the responsibility of the accreditor to ensure an institution is eligible for financial aid, whether as a non-profit institution (eligible if accredited or preaccredited) or a for-profit institution (only eligible if accredited).¹⁰⁰ Moreover, Dr. Sweeney, as liaison to the Institutes, did make clear to Illinois Institute of Art President Josh Pond, during a phone call on January 26, 2018, that any disclosure language regarding preaccreditation and Title IV eligibility must take into account whether the Department had made a final determination that the Institutes were non-profit entities. As such, even if INST.E.50.010 did conflict with federal eligibility requirements, which it does not, HLC did exactly what the Department suggests here that HLC should have done.

Finally, and as mentioned previously, HLC has rescinded INST.E.50.010—as acknowledged by the Department in a mere footnote of the Draft Analysis. As such, any findings by the

⁹⁸ *Infusino v. Devos*, No. 1:19-CV-03162 (D.D.C.)

⁹⁹ *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)

¹⁰⁰ Compare 34 C.F.R. § 600.4 (a private or public nonprofit institution of higher education can be accredited or preaccredited for purposes of Title IV eligibility) with 34 C.F.R. § 600.5 (a propriety (for-profit) institution of higher education must be accredited for purposes of Title IV eligibility).

Department related to HLC's alleged noncompliance with INST.E.50.010 and the policy's alleged conflict with Department regulations are no longer applicable.

c. HLC has Acted with Consistency in Decision-Making

34 C.F.R. § 602.18 requires that the agency “consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program... is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency.” In relevant part, the regulations provide that an agency demonstrates it has met this standard where it “[b]ases decisions regarding accreditation and preaccreditation on the agency's published standards.” 34 C.F.R. § 602.18(c). HLC respectfully disagrees with the Department's finding that it was in noncompliance with § 602.18(c), as its decisions were based on its published standards.

As explained in Section III(b), HLC did not act under INST.E.50.010 when it offered the Institutes an approval of the change of control application with the condition of candidacy. Rather, it was acting under INST.B.20.040 and corresponding procedures, which at the time permitted approval based on the condition of candidacy. Again, HLC is entitled to deference from the Department in interpreting and applying its own policies and procedures.¹⁰¹ HLC's determination that it was acting under INST.B.20.040, not INST.E.50.010, in this matter is within the proper scope of its discretion, not the Department's. At the time, an approval with the condition of candidacy was permissible under HLC's published standards, and as such, HLC has demonstrated it met 34 C.F.R. § 602.18.

Moreover, the purpose behind 34 C.F.R. § 602.18, generally, is to ensure consistency in decision-making. While an approval with the condition of candidacy is not common, it is consistent with past practice. In 2014, Everest College Phoenix (“ECP”), an institution that at the time had been accredited by HLC since 1997, and was then-owned by Corinthian Colleges, Inc. (“CCI”), submitted a change of control application after CCI announced a deal that allowed for ECP and 55 other campuses to be sold to Educational Credit Management Corporation (“ECMC”) and run by an ECMC subsidiary, Zenith Education Group (“Zenith”). The HLC Board, concerned about the ability of ECP to meet accreditation standards under new ownership, approved the change of control with conditions, including the condition of candidacy. This offer was communicated through a March 6, 2015 action letter substantially similar to the action letter provided to the Institutes.¹⁰² In relevant part, that action letter stated:

- "The Board approved the application but subject to several conditions. First, the Board required that the College undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction transferring the College and certain CCI assets to Zenith. The period of the Change of Control candidacy

¹⁰¹ See, e.g., *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

¹⁰² See [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to HLC's June 8, 2017 petition for continued recognition).

may be as short as six months but shall not exceed the maximum period of four years for candidacy."

- "If, at the time of either evaluation the institution is able to demonstrate to the subsequent satisfaction of the Board that it meets the Eligibility Requirements and Criteria for Accreditation, the Board shall *reinstate* accreditation."¹⁰³

The condition was accepted by ECP and, at the institution's request, HLC set the candidacy date for the end of the term.¹⁰⁴ However, shortly thereafter and prior to the effective date of candidacy, the deal between CCI and ECMC collapsed, CCI filed for bankruptcy, ECP closed its campuses and online operations, and ECP voluntarily resigned from HLC. As such, the change of control candidacy status never became effective.

A review of the ECP matter is important not only because it demonstrates that HLC's approval of the Institutes' change of control application with the condition of candidacy is aligned with past practice and demonstrative of consistency in decision-making, but also because the Department previously requested files related to the ECP transaction and was aware of this option and its application.

A brief history may be helpful: HLC was to file a petition for recognition in Summer 2017. HLC had provided exhaustive responses to memoranda from the Department on June 3, 2013, and December 15, 2016. On April 13, 2017, shortly after HLC submitted its response to the second memorandum, the Department sent a letter requesting additional information that HLC was to include with its petition for recognition.¹⁰⁵ The Department stated it needed this information in order "to conduct a thorough analysis of HLC in preparation for the review of its recognition." The Department specifically requested a narrative with supporting documents relating to HLC's accreditation of ECP. Such a narrative, along with supporting documents including the action letter sent to ECP informing ECP that HLC would approve the change of control application with the condition of candidacy, and ECP's initial response accepting this condition, was provided to the Department as Exhibit I.6 to the petition for continued recognition submitted by HLC on June 8, 2017.¹⁰⁶

As detailed in Section IV, the Department did not at any time indicate to HLC that it had concerns with HLC's regulatory compliance related to the ECP change of control application, or the approval of that application with the condition of candidacy. In fact, a five-year period of recognition was granted to HLC by the Department on May 9, 2018.¹⁰⁷ As such, HLC could not be aware that the Department would later take a position that it was impermissible for an accreditor to approve a change of control application with the condition of candidacy. To the contrary, because the Department received this information pursuant to its "responsibility to conduct a thorough analysis," prior to HLC receiving the full five-year recognition without any additional reporting requirements, it would be most logical for HLC to understand that the

¹⁰³ *Id.* (emphasis added).

¹⁰⁴ *See id.*

¹⁰⁵ [HLC-PET 1-2 \(April 13, 2017 letter from the Department requesting additional information\)](#)

¹⁰⁶ [HLC-PET 3-9](#) (June 8, 2017 cover letter from HLC to Mr. Bounds to petition for continued recognition); [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to petition for continued recognition)

¹⁰⁷ [HLC-PET 35](#)

Department reviewed the requested ECP materials and approved of the manner in which HLC approved the change of control.¹⁰⁸ Ultimately, when HLC approved the Institutes' change of control application with the condition of candidacy in the same manner, this action was consistent with decision-making previously approved by the Department. For this additional reason, this finding cannot stand.

IV. THE DEPARTMENT'S FINDINGS OF NONCOMPLIANCE ARE ARBITRARY AND CAPRICIOUS

The Department cannot take action that is “arbitrary, capricious, [or] an abuse of discretion.”¹⁰⁹ This targeted inquiry into HLC's approval of the Institutes' change of control application with the condition of candidacy is arbitrary and capricious, and any recommendation to take action impacting HLC's recognition status as a result of this inquiry would be as well.

Most significantly, the Department has acted in an arbitrary and capricious manner by identifying the Institutes' candidacy status as problematic when it did not do so in a nearly identical case for Everest College Phoenix (“ECP”), despite having been provided meaningful and fulsome detail about that prior circumstance. Unquestionably, the Department is required to treat like cases alike—this is a fundamental norm for agencies.¹¹⁰ As stated eloquently by the D.C. Circuit Court of Appeals, “[i]t is axiomatic that an agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so.”¹¹¹ The Department has no such legitimate reason here for distinguishing between its review of these two situations.

As detailed in Section III above, the Department specifically requested information about the ECP change of control application and HLC's related approval. In response, HLC provided all documents relevant to that application and approval for the Department's review. Presumably, the Department indeed read these materials, which included the action letter sent by HLC to ECP that explained HLC was offering an approval of the change of control application with conditions, including the condition of candidacy, with an opportunity for later reinstatement of accreditation. Again, the Department did not raise any concerns about the ECP transaction at any time, despite receiving all relevant materials about that change of control application.

¹⁰⁸ Notably, in footnote 15 of the Draft Analysis, the Department accused HLC of “us[ing] a punitive provision under its policies that it had never previously used after receiving a letter from five Members of Congress.” Not only was HLC's approval of the change of control application with the condition of candidacy not punitive, it had also, as detailed herein, been previously used. HLC was not, as the Department asserts, “undu[ly] influence[d]” by certain elected officials. Rather, HLC evaluated the Institutes' change of control application, and their respective ability to meet the Criteria for Accreditation after the transaction, using an evidence-based approach and a fair process that allowed for due process, consistent with past action, its own policies, and federal regulations.

¹⁰⁹ 5 U.S.C. § 706(2)(A)

¹¹⁰ *Westar Energy, Inc. v. Federal Energy Regulatory Com'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) (“fundamental norm of administrative procedure requires an agency to treat like cases alike.”).

¹¹¹ *Kreis v. Sec'y of Air Force*, 406 F.3d 684, 687 (D.C. Cir. 2005) (internal quotations omitted) (emphasis added).

The Department's findings that HLC was noncompliant with federal regulations and its own policy in the Institutes' matter is "an unexplained departure from its precedent"¹¹² and therefore arbitrary and capricious. For this reason alone, this finding also cannot stand.

Moreover, the unreasonable length of time between the action at issue and the Department's review of that action is, in and of itself, arbitrary and capricious, and antithetical to the requirement that agency action not be unreasonably delayed.¹¹³ This transaction was first brought to the Department's attention on November 16, 2017, when the Joint Action Letter to the Institutes was also sent to Mr. Frola and Mr. Bounds at the Department. During the period beginning early March 2018 and ending on May 21, 2018, HLC had communication with the Department regarding the Institutes' accreditation status. During this time, the Department granted a five-year recognition to HLC.

However, the Department did not inform HLC of the now-articulated concerns relating to this matter until Dr. Jones wrote to HLC on October 31, 2018, despite the Department's knowledge of this action since November 16, 2017.¹¹⁴ In that exchange, Dr. Jones told Dr. Gellman-Danley to simply submit a brief response to her letter stating that HLC will review its policies. HLC did so on November 7, 2018 and, receiving no reply to that response other than a prompt acknowledgment of receipt, believed in good faith that nothing further was required from the Department on this issue. Consistent with this commitment and HLC's philosophy of continuous improvement, however, HLC took action to immediately begin reviewing the relevant policies and procedures. As previously explained, HLC ultimately rescinded INST.E.50.010 in November 2019, following its regular policy revision process which includes seeking stakeholder input.

Notably, HLC was not told that its November 7, 2018 response was insufficient or that the Department had ongoing concerns with its accreditation actions until October 24, 2019—707 days after the Joint Action Letter was sent; 642 days after the EDMC/DCEH transaction closed and the Institutes' candidacy status became effective; and 353 days following its response. And, of course, the Draft Analysis raising concerns with this candidacy status was not sent until over two full years after the effective date of candidacy. The Department's action in raising this concern years after the alleged non-compliance is entirely arbitrary and capricious.

V. HLC'S RESPONSE TO THE DEPARTMENT'S REQUESTS FOR A NARRATIVE RESPONSE AND A DETAILED PLAN

The Department has requested: (1) "a narrative, including any supporting documentation, on steps it has or will take to prevent due process failures in the future" and (2)

¹¹² *See id.*

¹¹³ *See* 5 U.S.C. § 706(1)

¹¹⁴ HLC notes that Mr. Frola raised a concern that candidacy status could affect the Institutes' Title IV eligibility on February 23, 2018 and made inquiries about whether HLC had made determinations about the Institutes' non-profit status during a March 9, 2018 call. Despite these inquiries, he did not raise any concerns about the legitimacy of HLC's policy or application thereof in this circumstance. *See* [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#).

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

Due Process Narrative

HLC has, throughout this response, provided the requested narrative regarding steps it has or will take to prevent due process failures. HLC engages at all times in a process of analyzing its policies, procedures, and practices, and its Board makes necessary revisions to policies and procedures to conform with best practices, to respond to emerging issues, and in pursuit of continual improvement. HLC staff and its Board think critically about what has worked well, and what has resulted in less-than-ideal outcomes, related to its accreditation practices. HLC strongly believes that the institutions it accredits are entitled to due process, just as it believes the students who attend those institutions are entitled to a high-quality education and transparent disclosures about accreditation and any concerns therein. As such, both as part of its general commitment to continuous improvement and in response to the harm to students as a result of the Institutes' failure to appropriately disclose to students the Institutes' preaccreditation status (which the Institutes attribute to purported confusion), and EDMC's and DCEH's determination to close the transaction once the semester had already begun, HLC has taken steps to ensure the scenario is not repeated in the future.

Most notably, and as recognized by the Department, INST.E.50.010 has been withdrawn. As such, there no longer is an HLC policy permitting an institution to be "moved" from accreditation to candidacy. This policy change also aligns with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020. On February 27, 2020, HLC submitted revisions to two additional Change of Control-related policies (INST.F.20.070 and INST.F.20.080) to Ms. Daggett for advance review. HLC received an acknowledgement with a commitment to providing feedback no later than April 29, 2020. HLC is also in the process of revising the procedures relevant to a change of control application and approval, to align with other change of control policy changes adopted in 2019, and to otherwise clarify the procedures for HLC's membership.

Moreover, the Board undertook an independent analysis of what transpired with respect to the Institutes' change of control application, the approval of the change of control application with the condition of candidacy, the mid-semester closure of the transaction by EDMC and DCF, the Institutes' inadequate disclosures to their students, and the Institutes' eventual closure. In recognition of the new § 602.23(f)(1) (which would not have necessarily applied in this scenario, as candidacy was a voluntary condition) and of the harm to students caused by the Institutes' disclosures about its status, the Board will no longer approve a change of control application with the condition of candidacy. HLC has revised its procedures to provide that any conditions that may accompany a change of control application approval will not include conditions that could alter an institution's accreditation status.

While HLC provided more than meaningful due process in the circumstance in question, these changes reflect HLC's enduring commitment to due process. Further, this effort will certainly continue to align HLC policies, procedures, and practice with the Department's compliance expectations, particularly as defined by new regulations scheduled to take effect July 1, 2020.

With this effort already nearly complete, HLC has more than fully responded to the Department's compliance concerns.

A Detailed Plan

As an initial matter, and as the Department is certainly aware, HLC has no authority over an institution's transcripts or an institution's decision to accept transfer credit. HLC certainly shares the Department's concern for the students who attended the Institutes who, now after their closure, may have trouble transferring credits earned at the Institutes. Once HLC is made aware of the details of "any effort to correct the academic transcripts of those students" or of the details around "any effort" to help those students that is being undertaken by the now-closed Institutes, DCEH, DCF, or the Department, it will happily consider how it may reasonably assist. Without knowing the details of these efforts, however, HLC cannot provide a detailed plan to the Department in this regard.

To a related issue, this request inadvertently gives the impression that the Department is requiring, as an end result, that HLC "retroactively" accredit the Institutes. Specifically, the request asks that the transcripts of students attending on or after January 20, 2018 "show that the students earned credits and credentials from an accredited institution." HLC presumes this was unintentional, as the Department is certainly aware that it cannot direct an accreditor to make specific accreditation decisions about specific schools. Indeed, the Department of Education Organization Act limits the Secretary's authority over accrediting agencies. *See* 20 U.S.C. § 3403(b). In fact, in *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, the D.C. District Court held,

*[w]hile the Secretary has the authority to decide whether a particular accreditor's standards warrant approval as a reliable indicator of educational quality, 20 U.S.C. § 1099b(a), the Department itself is barred from interfering in an accrediting agency's assessment regarding individual schools. 20 U.S.C. § 3403(b).*¹¹⁵

Likewise, the Administrative Procedures Act also dictates that courts set aside agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."¹¹⁶ As such, any determination regarding whether the Institutes met the Criteria for Accreditation following their change of control must rest with HLC. To the extent that the Department's primary goal would be to obtain action from HLC that would result in "retroactive accreditation," the use of its oversight authority to secure such action is not supported by law.

However, HLC deeply shares in the Department's concern for the students negatively impacted by DCF's and DCEH's actions and stands ready to work with the Department to assist those students as they work to pursue their educational and professional goals. While each college and university across the country adopts its own credit transfer policies and may, or may not, choose to accept credits obtained at a preaccredited institution, HLC is in a unique position to provide

¹¹⁵ *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, 980 F. Supp. 53, 63 (D.D.C. 1997), *aff'd*, 168 F.3d 1362 (D.C. Cir. 1999), *opinion amended on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999).

¹¹⁶ 5 U.S.C. § 706.

meaningful support to impacted students as it relates to the transferability of their credits. As part of the Institutes' closure process, they established an online resource for students seeking to continue their educations; one of the resources includes a list of potential alternative schools for displaced students. Fourteen of the potential alternative schools are accredited by HLC. As such, HLC is able to reach out to those schools, and to the extent applicable, other schools accredited by HLC, in an effort to remind institutions that they are able to accept credits from preaccredited institutions, to help make more obtainable enrollment and credit acceptance for these students. Upon the agreement of the Department that the crux of the present matter is related to concern over impacted students' ability to transfer their credits, HLC is willing to distribute a letter reminding its member institutions that they are not prohibited from accepting credits from these schools and encouraging each school to consider immediate recruiting efforts to students impacted by the Institutes' closure, and/or inform member institutions that the Institutes' candidacy status was not related to the quality of instruction. HLC is more than willing to work collaboratively with the Department to find other ways to help these students, provided any such action is aligned with HLC policy and Department regulations.

VI. CONCLUSION

The Department's actions in this matter—while presumably well-intentioned and driven by the desire to support students, particularly the vulnerable students whose lives were negatively impacted by the Institutes' abrupt closure and whose choices were dramatically limited by DCF's and DCEH's inaccurate disclosures—have strayed from the fundamental principles of procedural and substantive due process to which it owes its regulated stakeholders. Inexplicably, the Department asks HLC to explain what steps it will take to prevent alleged “due process failures in the future,” but fails to recognize that the policy it contends was not followed is no longer in effect. Thus, it is impossible for the complained of action to reoccur under current HLC policy and procedures.

With respect to the aggrieved students, it is DCF, DCEH's and the Institutes' actions and omissions—not HLC's—that have left students displaced and in need of immediate and jointly coordinated support by the regulatory authorities and accreditors who are best-positioned to provide meaningful assistance. The Department's November 8, 2019 press release¹¹⁷ alleging that HLC harmed students based on its transcript requirements is without any evidentiary support. Dr. Sweeney provided Dr. Jones with a clear statement that HLC does not impose any requirements regarding transcripts. She also explained that the Institutes could provide a notation on, or documentation accompanying, the transcripts of students who graduated prior to January 20, 2018, explaining that the Institutes had been accredited. This suggestion was clearly made in the spirit of helping those students who obtained credits from the Institutes while they were accredited. To say HLC required that the transcripts contain notations that the credits earned are *unaccredited*, rather than Dr. Sweeney's actual suggestion about *accredited* credits, is inaccurate.¹¹⁸ Moreover, the Department ignores and minimizes DCF's and DCEH's repeated

¹¹⁷ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

¹¹⁸ See [HLC-OPE 15347-15353](#)

attempts to exploit HLC's policies, procedures and good faith communications for its own objectives, including solving its own significant financial challenges, at students' expense.

Nevertheless, HLC remains sensitive to the students' plight and is eager to assist with any ongoing effort the Department is prepared to describe. HLC stands ready and willing to respond by working *alongside* the Department in a coordinated way in responding to student needs. Yet, this current exercise of identifying hollow policy and procedural "failings," and demanding vague and undefined action from HLC in a manner that exceeds the Department's authority in numerous ways, does nothing to further that goal.

To be clear, HLC's actions in this matter were firmly rooted in then-applicable policies and procedures that were aligned with federal regulations and consistently applied. HLC's response to the change of control application was not unprecedented, but remarkably, followed the exact same process that had been previously offered to the Department in full detail, which at that time drew no concern. Due process, notice of applicable policies, and a meaningful opportunity to respond to the conditional approval were all provided to the Institutes.

Finally, despite HLC's strong demonstration that it complied with both federal regulations and sound and clearly articulated policies, HLC has timely made meaningful changes to address the results of its Board's independent analysis, while simultaneously ensuring that the Department's noncompliance concerns will never arise in the future. To that end, and for the reasons stated above, the Department must promptly close this inquiry with no further action.

Sincerely,



Barbara Gellman-Danley, PhD
President

CC (via email): Herman Bounds, Director of Accreditation, U.S. Department of Education
Anthea Sweeney, Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Marla Morgen, Associate Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Julie Miceli, Partner, Husch Blackwell
Jed Brinton, Deputy General Counsel, U.S. Department of Education

Exhibit 25

Date Transmitted: June 30, 2020

From: Annmarie Weisman

Subject: *Letter to President Gellman-Danley*



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

June 30, 2020

VIA EMAIL

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604

Dr. Gellman-Danley:

The U.S. Department of Education (Department) is in receipt of the Higher Learning Commission (herein referred to as “HLC” or “the Agency”) response to the Department’s draft staff analysis, as authorized under 34 C.F.R. § 602.33(c), pertaining to the HLC Board’s decision to move the Art Institute of Colorado (OPEID: 02078900)¹ and the Illinois Institute of Art (OPEID: 01258400)² (collectively the “Institutions”) to “Change of Control Candidate for Accreditation” status.

On October 24, 2019, and pursuant to its authority under 34 C.F.R. § 602.33, the Department sent HLC a letter requiring it to submit information and documentation regarding its review of the change of control application from the Institutions. HLC provided its response to the letter on November 13, 2019, which included a narrative as well as exhibits. The Department requested additional information and documentation on December 19, 2019, and HLC submitted its response on January 13, 2020.

The Department sent HLC two letters dated January 31, 2020,³ and May 1, 2020,⁴ which collectively constitute the draft staff analysis. HLC responded to the draft staff analysis with two letters dated March 20, 2020,⁵ and June 1, 2020,⁶ which collectively constitute its response. On June 17, 2020, the Department notified HLC in a letter that the draft staff analysis will be finalized for presentation to the National Advisory Committee on Institutional Quality and Integrity (NACIQI), pursuant to 34 C.F.R. § 602.33(e)(1).⁷

The regulation at 34 C.F.R. § 602.33(e)(2) requires the Department to publish a notice in the Federal Register that the Department staff have concluded that HLC has not demonstrated compliance, and if practicable, an invitation to the public to comment on the agency's

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The Department of Education’s mission is to promote student achievement and preparation for global Competitiveness by fostering educational excellence and ensuring equal access.

HLC-DCEH-014614

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compliance with the criteria in question. The Department published this notice in the Federal Register on June 25, 2020.⁸ Because the Department has provided HLC with several extensions to respond to our analysis, the Department has concluded that it is no longer practicable to provide for public comment.⁹ The Department will, of course, allow for members of the public to comment during the NACIQI meeting.

During our review, the Department conducted interviews with individuals involved in the transaction and reviewed documents provided by HLC, other documents pertaining to the inquiry, and HLC's responses to our draft analysis. Based on our review of the facts and pursuant to 34 C.F.R. § 602.33(e), the Department finds that HLC was not compliant with its own policy under INST.E.50.010;¹⁰ 34 C.F.R. § 602.18(c) (pertaining to consistency in decision making);¹¹ and 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f) (due process)¹² in moving the Institutions to Change of Control Candidate for accreditation status. This letter constitutes the Department's final staff analysis pursuant to 34 C.F.R. § 602.33(e).

I. Noncompliance with the HLC Policy INST.E.50.010 and Department Regulations Pertaining to Consistency in Decision-Making under 34 C.F.R. § 602.18(c)

On May 1, 2017, the Institutions, through the purchasing entity, Dream Center Educational Holdings (DCEH), submitted an Application for Change of Control, Structure, or Organization to HLC under INST.B.20.040¹³ and INST.F.20.070.¹⁴ After conducting an extensive review of the application, including several site visits, HLC sent a letter to the Presidents of the Institutions and the CEO of DCEH on November 16, 2017 ("the November 16, 2017 letter").¹⁵ The November 16, 2017 letter states that the HLC Board "voted to approve the application for Change of Control, Structure, or Organization ... however, this approval is subject to change of control candidacy status."¹⁶

The letter does not explicitly provide notice that, rather than approving or denying the application under INST.B.20.040 as the applicant expected, the Board decided to invoke its authority under INST.E.50.010 to move the Institutions to "candidacy" status.¹⁷ Additionally, the letter does not explicitly state that the Institutions must give up their accredited status as a condition of the HLC approving the sale of the Institutions.¹⁸

The policy described in INST.E.50.010 provided the Board with the authority to move an institution from an accredited status to candidacy status "subsequent to the close of a Change of Control, Structure or Organization," if certain conditions are met, and the Board finds that "all of the Criteria for Accreditation and Federal Compliance Requirements" are no longer met without issue.¹⁹ However, INST.E.50.010 clearly states that "moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal."²⁰

The November 16, 2017 letter does not provide any notice to the Institutions of its right to appeal the requirement that accreditation be forfeited. As set forth in greater detail below, this failure to provide timely notice of the right to appeal provided evidence to support Institutions' assumption

that accreditation was not being withdrawn as a condition of the sale being approved at the time the transaction closed.

HLC now contends that the Board did not need to advise the Institutions of the right to appeal because it did not “act” in approving the Institutions’ application. HLC also contends that the Institutions voluntarily consummated the transaction, and therefore INST.B.20.040 and not INST.E.50.010 governed the transaction, thus absolving HLC of its duty to allow for an appeal as required by INST.E.50.010. The Department disagrees.

First, Department regulations require accreditors to approve or disapprove substantive changes by an accredited institution, including changes in ownership.²¹ The Institutions were, at the time of the transaction, fully accredited by HLC. The Agency’s approval of the sale, subject to certain conditions including loss of accreditation, clearly was an “action” within the meaning of the regulations. Second, conditioning the sale transaction upon the withdrawal of accreditation is clearly an “adverse action” as defined within the context of INST.E.50.010. Although INST.B.20.040 permits the Board to approve a transaction with conditions, it does not contemplate the idea of conditioning the approval of a transaction with conditions that would otherwise constitute an adverse action. As a result, the timely provision of a notice of a right to appeal was required.²²

HLC also contends that the “then-applicable HLC policy INST.F.20.070, ‘Processes for Seeking Approval of a Change of Control,’ articulated the precise evaluative framework the Board would apply in considering a change of control application.”²³ However, HLC does not provide analysis on how this policy was followed in this situation. Rather, INST.F.20.070 provides that “the Board may approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction, or it may deny approval for the change” and that “the Board may approve the change subject to certain conditions. Such conditions may include, but *are not limited to*, limitations on new educational programs, student enrollment growth, development of new campuses or sites, etc.”²⁴

HLC’s argument, apparently, is that it exercised its authority to use conditions not enumerated in INST.F.20.070, as it conditioned the transaction with a requirement that the Institutions’ accreditation be converted into candidacy status. However, INST.F.20.070 does not contemplate such a condition, as it explicitly states “If the Board votes to approve the change with or without conditions, *thereby authorizing accreditation for the institution subsequent to the close of the transaction*, the Commission will conduct a focused or other evaluation to the institution within six months of the consummation of the transaction.”²⁵

INST.F.20.070 also provides that the Board could find that if the Change of Control, Structure or Organization constitutes “the creation of a new institution such that it should be required to go through a period of time in candidacy or an initial status evaluation.”²⁶ However, the November 16, 2017 letter does not advise the Institutions that the change of control that they were undertaking would be deemed to have created a “new institution,” and HLC has affirmatively stated that this did not occur in this situation.²⁷ Therefore, HLC’s own policy under

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INST.F.20.070 seemingly prohibits the imposition of candidacy status, unless the Board finds that the transaction has created a new institution, which they did not.

The Department does not understand HLC's justification of its actions under INST.B.20.040 or, alternatively, INST.F.20.070 in creating the conditional criteria in the November 17, 2016 letter. INST.E.50.010 is the only policy that explicitly provides for the Board to move a fully accredited institution to candidacy status subsequent to the close of a Change of Control, Structure or Organization transaction. That policy clearly states that such an action is an adverse action. As per 34 C.F.R. § 602.25(f), accrediting agencies must provide institutions with notice of the opportunity to appeal an adverse action prior to it becoming final. The November 17, 2016 letter and all subsequent communication sent by HLC prior to the effective date of the candidacy to the Institutions failed to provide such notice.

HLC also continues to argue that it was not required to provide the Institutions the opportunity to appeal, because the Institutions consented to imposition of candidacy status. The Department is not persuaded by this assertion. The imposition of the condition to withdraw accreditation as part of the sale transaction was not openly discussed with the applicant, nor was it required in any of the other transactions involving four other accreditors that had to approve the sale of the over 30 other institutions that were part of the overall transaction. The Agency chose not to advise the Institutions of the opportunity to appeal, which plainly violates INST.E.50.010. Therefore, the Department concludes that HLC did not follow its published policy under INST.E.50.010 when it acted to place the Institutions into candidacy status without providing for an opportunity to appeal. This, in turn, means that HLC's actions were not in compliance with 34 C.F.R. § 602.18(c), as it failed to base its decision on HLC's published standards.

The Agency also proffers the idea that the Department finding regarding compliance under 34 C.F.R. § 602.18(c) is unjustified because HLC previously applied this status to another transaction without objection by the Department. Specifically, it claims that the Department must have reviewed and acquiesced to HLC's prior use of Change of Control Candidacy status with Everest College Phoenix in 2014, because that transaction should have been part of the Department review of its recognition during its previous recognition cycle.²⁸ However, as HLC acknowledges, the proposed transaction in that case was abandoned and "the change of control candidacy status never became effective."²⁹ The Department could have reviewed that transaction, but it did not have reason to specifically question the legitimacy of HLC's actions in the specific incident given that it never became effective, was not appealed, and was not subject to a complaint submitted by the institution or an outside party. The Department, like all federal agencies, must prioritize its oversight and compliance activities; we cannot scrutinize every accreditation action. Arguing here that the Department's lack of intervention in an unrelated matter constitutes some precedent applicable to this matter is specious.

HLC has since repealed INST.E.50.010 and "has removed from its policies the option of approving a change of control where the Board "determines that the transaction forms a new institution requiring a period of time in Candidacy" (which did not occur here)."³⁰ HLC notes that this change was also made because Department regulations that become effective on July 1,

2020, do not allow accreditors to engage in such behavior.³¹ While the Department is pleased that HLC corrected its deficient policies, such actions do not materially cure past non-compliance, nor is the Department required to presume future compliance.

HLC also contends that it is required to receive deference in interpreting its own policies and that the Department's inquiry and finding of noncompliance offends its autonomy as an accreditation agency.³² At no point has the Department indicated that HLC lacked the authority to decide how to address the Institutions' application for Change of Control, Structure or Organization. However, when an accreditation agency takes an action that is the equivariant of an adverse action, the Department has a vested interest in ensuring that each agency follows its own rules and the Department's due process regulations. This ensures that institutions are able to contest and appeal an adverse action before it is finalized. Here, HLC "approved" the Institutions' change of control application with conditions, with one of the conditions being a classification that its own policies deem to be an adverse action.³³

HLC also argues, in the alternative, that even if it did not follow its own policies, its actions would have resulted in nonmaterial technical noncompliance, as the Institutions were ultimately afforded the right to appeal.³⁴ The proper procedure would have required the Institutions be advised of the right to an appeal BEFORE having to announce the loss of accreditation. Instead, the Agency compelled the Institutions to post on its websites a notice announcing the immediate loss of accreditation, creating understandable distress among students and faculty, all of whom had begun a new semester believing accreditation was intact. Months later, following harm to the Institutions and their students, the Agency grudgingly agreed to offer an appeal opportunity. As stated earlier, revoking accreditation has an immediate and material impact on institutions of higher education, which is why Department regulations do not allow such an action to be final without prior opportunity to appeal. The Institutions suffered immediate and irrevocable harm at the hand of HLC that may have contributed, in part, to their ultimate demise.

Lastly, the Department is unclear as to why HLC's response to our inquiry has spent considerable time and attention focused on the merits of the Institution's application for Change of Control, Structure or Organization.³⁵ Indeed, HLC lays out a significant argument as to why it should not have allowed the Change of Control, Structure or Organization transaction to proceed.³⁶ The Department's inquiry has not focused on the merits of the application, because accreditation agencies (not the Department) have this exclusive authority to weigh these factors when making accreditation decisions. Rather, the Department's entire inquiry has focused on procedural deficiencies in the Board's actions. If the Institutions were as troubled as HLC contends, it could have, and perhaps should have, simply denied the request.

II. Failure to Provide Due Process under 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f)

The Institutions have asserted in documents provided to the Department by HLC that HLC misled them regarding the true nature of Change of Control Candidacy status. To assess the legitimacy of these assertions, the Department conducted an extensive review of the

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communications between HLC and the Institutions regarding this status and considered HLC's response to our draft staff analysis. The Department finds that HLC's communication with the Institutions, at best, obfuscated the true nature of change of control candidacy status—namely that such status required an institution to give up or otherwise lose accreditation. The excerpts and analysis detailed below regarding the communications between HLC and the Institutions illustrate this obfuscation.

On October 3, 2017, HLC sent the presidents of the Institutions and the Executive Chairman of DCEH a letter with the Staff Summary Report and Fact-finding Visit Report for the Change of Control Structure, or Organization. In the letter, HLC described the following options the Board may take in response to the Institutions' applications for Change of Control Candidacy status: "(1) to approve the extension of accreditation following the consummation of the transaction; (2) to approve the extension of accreditation subject to certain conditions, as determined necessary by the Board; (3) to deny the extension of accreditation following the transaction; or (4) to approve the extension of accreditation following the transaction subject to a period of candidacy."³⁷

The fourth item in the list above is the option that HLC ultimately decided to use when processing the Institutions' applications; however, the letter describes that option as an "[approval of] the extension of accreditation," which suggests that using that option would keep accreditation intact, rather than withdrawing accreditation, while HLC evaluated the actual performance of the new owners following the closing of the proposed transaction.³⁸

The Board met November 2 - 3, 2017, and then sent the November 16, 2017 letter to the Institutions. HLC contends that this letter describes the terms and conditions for the Institutions' voluntary forfeiture of accreditation. Relevant excerpts from the letter are listed below to provide context:³⁹

During its meeting on November 2 - 3, 2017, the Board voted to approve the application [emphasis added] for Change of Control, Structure, or Organization wherein the Dream Center Foundation, through Dream Center Education Holdings LLC and related intermediaries, acquires certain assets currently held by Education Management Corporation, including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below . . .

The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance [emphasis added] with the Eligibility Requirements to be considered for pre-accreditation status identified as "Change of Control Candidate for Accreditation," during which time each Institute can rebuild its full compliance [emphasis added] with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each

Institute is likely to be operationally and academically successful in the future . . .

The institutions undergo a period of candidacy [emphasis added] known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months [emphasis added] but shall not exceed the maximum period of four years.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway [emphasis added] and identify the date of the next comprehensive evaluation, which shall be no more than five years from the date of this action.

In the course of the review, Assistant Secretary for Postsecondary Education, Robert King, and Department staff conducted an interview with Mr. Ron Holt, Esq., outside council for DCEH, on December 9, 2019, and with Dr. Karen Peterson Solinski, former Executive Vice President at HLC, who oversaw the Education Management Corporation (EDMC) and DCEH transaction for HLC during her employment, on December 23, 2019. Mr. Holt advised the Department that while representing DCEH in the larger transaction involving over 40 schools and five separate accreditors, his experience with HLC was remarkably unique. Mr. Holt told the Department that until HLC published the public disclosure on January 20, 2018, advising students that accreditation had been lost, he did not believe that the approval of the sale transaction required giving up accreditation of the two institutions involved. Further, Mr. Holt stated that if DCEH understood that the schools would lose accreditation as a condition of the sale, DCEH would not have completed the transaction.^{40, 41}

Ms. Solinski told Department staff that she believed both institutions would remain accredited during the six-month period beginning on the date of the transaction. She believed that HLC would begin monitoring the Institutions closely after the transaction to ascertain whether or not they were implementing the various requirements HLC had set forth as expectations in the letter approving the transaction. She stated in a written email to Department staff:⁴²

that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions ... The purpose of the Change of Control Candidacy was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC criteria for Accreditation and other policies of the Commission going forward...

HLC has contended that the Department has not provided HLC with all supporting documentation used in writing the draft analysis.⁴³ Specially, HLC contended that the Department must provide HLC with a transcript of a December 23, 2019 interview between

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Robert King, Assistant Secretary for Postsecondary Education, and Ms. Karen Solinski. The Department did not create a transcript, nor did it record that interview. However, the Department did not rely on what was said orally in that interview. Instead, we relied exclusively on Ms. Solinski's December 26, 2019 email, which the Department provided to HLC as Exhibit 4 in the January 31, 2019 letter.⁴⁴

The Department communicated the aforementioned information to HLC in a letter we sent on May 1, 2020. However, HLC responded by stating that "It is perplexing that the Department would prepare a "Substantially Verbatim Transcript of Phone Call" that occurred on December 9, 2019 between Mr. King and Ron Holt, outside counsel for DCEH, about these same topics and then not prepare a similar transcript for its *subsequent* phone call with Ms. Solinski just 14 days later. Still, even if the Department failed to record or transcribe Ms. Solinski's interview, it certainly should have notes of the interview. Indeed, it is common practice for persons to take notes contemporaneously with or shortly following a call to record the substance of a conversation. HLC is entitled to any such notes or other documentation, as they would constitute supporting documentation under the regulation."⁴⁵

The regulation at 34 C.F.R. § 602.33(c) requires the Department to send agencies under review a "draft analysis including any identified areas of non-compliance, and a proposed recognition recommendation, and all supporting documentation to the agency."⁴⁶ The Department is supporting its decisions in the draft staff analysis using the aforementioned email that Ms. Solinski sent. We are not relying on any other documentation and therefore are not required to provide other documents to HLC for examination. The interview was conducted two days before the Christmas holiday, which is why administrative Department employees were not present to take substantially verbatim notes of what transpired. Knowing this, staff emailed Ms. Solinski after the phone conversation to ensure that we had a correct understanding of her recollection of the events that transpired.

HLC further stated that "Due to the Department's failure to adequately provide HLC with the supporting documentation to which it is entitled, and that is necessary for it to meaningfully and fully respond to the Draft Analysis, HLC filed a Freedom of Information Act ("FOIA") request on May 21, 2020 (attached hereto as Exhibit B). As such, and as a means of curing any such procedural deficiency, HLC reserves the right to amend its Written Response with any information it learns through the Department's response to this FOIA request."⁴⁷

The regulation at 34 C.F.R. § 602.33 does not confer HLC any right or privilege to "reserve the right to amend its Written Response with any information it learns through the Department's response to this FOIA request."⁴⁸ Accordingly, no privilege will be granted because the Department has already provided HLC with all of the supporting documentation it used in conducting this inquiry.

Several additional factors compounded HLC's failure to provide clear, accurate information regarding the putative loss of accreditation:

- i. Nowhere in the November 16, 2017 letter does HLC explicitly state that accreditation must be forfeited or lost if the transaction is completed.
- ii. Within the site visit report dated October 3, 2017, and the letter from the HLC Board dated November 16, 2017, extensive commentary was included regarding the capabilities of DCEH to meet the financial needs of the Institutions. The report referenced specific revenue projections, a pro forma financial statement, and an array of strategies to increase enrollment by improving the reputation of the Institutions, engaging in new advertising, expanding access to scholarships and state grants, achieving not for profit status, expanding development efforts to raise funds for scholarship programs, and “implementing cost savings in payroll, bad debts, property and excise taxes, facilities related expenses and outside services.”

Nowhere in the report or in the letter from the Board did HLC mention that, if the Institutions lost access to Title IV funding as a result of the transaction, it could create a critical financial obstacle that would need to be overcome for the Institutions to remain financially viable. In the absence of such an observation or other clear statements to the contrary, it was reasonable that DCEH would not be aware that HLC was removing accreditation.

- iii. Shortly after the publication of the formal Disclosure describing the loss of accreditation, Mr. Ron Holt and Dr. David Harpool, Counsel for DCEH, sent a letter to HLC on February 2, 2018, in which he stated: “... we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the institutions for one year ... as the Commission has done for dozens of other institutions going through a Change of Control ...”⁴⁹

Mr. Holt wrote a letter to HLC dated February 23, 2018, in which he sought confirmation from HLC that the following statements were accurate:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in ‘pre-accreditation status,’ a term of art that is defined in federal regulations...
2. Both institutions remain accredited, in the status of change of Control Candidate for Accreditation ... and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.

In response to Mr. Holt letter, Ms. Karen Peterson Solinski, former Executive Vice President at HLC, sent an email dated February 24, 2018, acknowledging receipt and advised DCEH that HLC was “reviewing it and will be in touch early next week.” Ms. Solinski’s employment with HLC ended shortly thereafter. In the November 13, 2019 HLC response to the Department, Dr.

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Gellman-Danley wrote that another HLC employee, Dr. Anthea Sweeney, assumed the responsibilities of managing the DCEH proceedings. (Dr. Sweeney is reported to have directed an outside attorney to respond to Mr. Holt letter) HLC's letter states that "Kohart (outside counsel for HLC) made attempts to contact the parties' counsel, but they did not respond to the outreach. As such, it appeared to HLC that the institutes did not wish to communicate further about the matter."

These statements are not consistent with the facts or sound practice. If, in fact, HLC's attorney was unable to reach anyone representing DCEH, standard practice would call for a specific, written response to Mr. Holt's letter conveying that his understandings were incorrect, if HLC's position was that accreditation had been forfeited. No such letter was written. Further, the notion that DCEH had lost interest in further communicating is contradicted by its actions demanding an appeal.⁵⁰

The regulation at 34 C.F.R. § 602.25(a) requires accrediting agencies to provide institutions with "adequate written specification[s] of its requirements, including clear standards, for an institution or program to be accredited or preaccredited." Regulatory "adequacy" is judged based on all of the facts and circumstances of each individual case, but at a minimum requires clear standards, fairly communicated. In this case, the Department finds that HLC's November 16, 2017 letter and subsequent communication with the Institutions failed to provide adequate notice or written specifications, including clear standards, regarding the accreditation status described in the letter.

The letter does not include clear statements that accreditation was being withdrawn, which is required when an agency removes or withdraws accreditation. Instead, it used the vague and ambiguous term "Change of Control Candidacy" status. Understanding the precise meaning of that term requires reference to multiple sections of HLC policy manual that are not identified in the November 16, 2017 letter. In addition, that letter describes the accreditation status using four different terms,⁵¹ without clearly delineating the difference among them, further obfuscating the true nature and meaning of that status. Accordingly, the Department finds that HLC violated the Institutions' due process rights under 34 C.F.R. § 602.25(a) for failure to provide clear standards regarding institutional accreditation and pre-accreditation.

The Department finds that HLC did not "provide sufficient opportunity for a written response...regarding any deficiencies identified by the agency... before any adverse action is taken." No such opportunity was afforded DCEH in the November 16, 2017 letter. Absence of this opportunity violates 34 C.F.R. § 602.25(d), further depriving DCEH of due process required by Department regulations.

In addition, the November 16, 2017 letter fails to describe the Board's action as an adverse action, which it clearly was under INST.E.50.010. HLC has maintained that the action of the Board was not an adverse action, because the Institutions consented to having the conditions of Change of Control Candidacy Status imposed on them. In this instance, the Institutions had applied for Change of Control, Structure or Organization approval. The Board processed the application and provided the Institutions with two options: accept Change of Control Candidacy

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Status, meaning forfeit accreditation status in order to proceed with the purchase of the EDMC assets; or do not proceed with the transaction.

HLC contends that, upon reading the November 16 letter, the institutions “*should reasonably have known* that the condition they were contemplating whether to accept—and ultimately did accept—was a period of time during which the Institutions would hold preaccreditation status.”⁵² The Department disagrees and does not think a reasonable interpretation of the letter implies that the Institutions had the opportunity to appeal the imposition of that condition, or that HLC action in “approving” its application with conditions would be an adverse action.

Department regulations do not allow agencies to force institutions to give up due process rights when processing a change in ownership resulting in a change in control. Accordingly, the Department finds HLC violated the Institutions’ due process rights under INST.E.50.010 and 34 C.F.R. §§ 602.25(e) and 602.25(f).

HLC fairly contends that it “expects any institution accredited by HLC to become familiar with HLC policies generally, and in particular, with those that apply in an immediately relevant circumstance such as a change of control.”⁵³ The Department does not contest that Institutions are expected to be knowledgeable about accreditation policy. However, in this instance, HLC did not reference any of its own policies on which it was relying to take action against the Institutions in its November 16, 2017 letter.

As explained earlier, HLC’s actions are not consistent with INST.B.20.040 and INST.F.20.070, as only INST.E.50.010 explicitly provides a process for candidacy to be conditioned with a Change of Control, Structure or Organization. HLC cites the Institutions failure to ask questions relating to the true nature of the status as evidence that they understood it or should have understood it and implicitly acquiesced to its use. However, HLC was required to prospectively afford them the opportunity to appeal.

This prospective appeal process, where an institution maintains its accreditation status until it has exhausted its appeal rights, preserves its status prior to a final action being taken. This requirement is critically important to the integrity of the accreditation process. HLC’s offer to provide an appeal to the agency on May 30, 2018, after the damage associated with the loss of accreditation had occurred, was a hollow gesture. The notice and right to appeal should have accompanied the November 16, 2017 letter. Furthermore, HLC’s belated decision to provide an appeal conflicts with its theory that the action they took was not an adverse action and was not appealable.

This web of intertwined policies are not substantively straightforward or clear, and accordingly HLC actions were not in compliance with 34 C.F.R. § 602.25(a). Furthermore, the Department does not think it would be reasonable to require institutions to decipher such policies. They should have been advised by HLC on precisely how they would function in the instant case.

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The regulation at 34 C.F.R. § 602.25(a) required HLC to provide the institutions with “adequate written specifications of its requirements, including clear standards” for accreditation. Accreditor policies promising accreditation to institutions on terms the accreditor knew, or should have known, would not allow subject institutions to meet the Department’s eligibility requirements plainly fails this test.

III. Staff Proposed Recognition Recommendation

Department staff recommend limiting HLC’s current recognition such that it may not accredit additional institutions of higher education that do not currently hold accreditation or preaccreditation status with the agency for the duration of the 12 month period pending a compliance determination by the Senior Department Official.

The staff also proposes to recommend that the compliance report include details on HLC’s efforts to mitigate the negative effects of HLC’s procedurally erroneous decision to withdraw accreditation from Institutions on students, especially with regard to the status of academic credits earned at the Institutions during calendar year 2018.

In HLC’s response to the draft staff analysis, it asked for the Department for clarity regarding the precise impact of this limitation. Specifically, HLC stated that it “does not interpret this recommendation to prohibit HLC from granting candidacy to new institutions or from granting accreditation to institutions that, prior to the initiation of the relevant 12-month period, were in candidacy status with HLC.”⁵⁴ The Department confirms that HLC’s interpretation, as stated in its June 1, 2020 letter, is correct.

HLC must continue to provide Department staff with 60 days’ advance notice before its Board plans to take action to rescind, modify, revise, or change in any way its policies authorized under 34 C.F.R. § 602.22(a)(2)(ii)⁵⁵ relating to change in ownership or control, so the Department may review any proposals as authorized under 34 C.F.R. § 602.33(a)(2).

HLC also argues that the “recommended limitation on HLC’s accrediting authority is misaligned with what the Department has stated are its concerns. Moreover, the recognition recommendation is arbitrarily punitive.” To the contrary, the Department continues to be concerned about HLC’s ability to make accreditation decisions in a consistent manner and provide due process to institutions. Until HLC has come into compliance with Department regulations, the Department seeks to limit its ability to grow by accrediting new institutions of higher education thereby adding to its membership. We believe this limitation on growth is appropriate and is sufficiently related to the underlying noncompliance.

Lastly, HLC has stated that it is at a loss regarding what the Department wishes it to report as part of the compliance report and what it should do to address the lingering harm suffered by students. HLC will be required to demonstrate in the compliance report how it has addressed the findings of noncompliance identified in this report. Additionally, the Department continues to believe that because of HLC’s procedural deficiencies that its actions in moving the Institutions

to a candidacy status are void. HLC must take action to rectify this issue and recognize the Department's interpretation of the events before the Department's concerns will be allayed.

IV. Additional issues raised by HLC

The sections below respond to issues raised by HLC in its responses to the staff draft analysis that are not otherwise addressed in the sections above.

A. HLC's claims that the Department's Actions are Arbitrary and Capricious

HLC claims that the Department's actions in this case are arbitrary and capricious because the Department did not take action in the "identical case for Everest College Phoenix("ECP") . . ." The Department is concerned that HLC considers these disparate cases to be "identical." They most certainly are not, as the ECP Change of Control transaction was abandoned by the parties involved. Here, the parties completed the Change of Control which is a "legitimate reason" for the Department to open a 34 C.F.R. § 602.33 inquiry into this case, even though it did not open an inquiry into the ECP case. Here, students were directly harmed by HLC's failure to provide due process. In the ECP case, the institution ultimately voluntarily resigned its accreditation with HLC, and any harm suffered by students was not proximately caused by HLC.

Like all federal agencies, the Department must prioritize its resources regarding the oversight it conducts over regulated entities. Failure to open an inquiry regarding ECP is not affirmative evidence that the Department is treating this case differently than past cases.

B. HLC's Concerns about Department Staff Involved in the Inquiry

HLC claims that because it has received communication and corresponded with several different staff at the Department that it is "at a loss as to who is serving as the 'Department staff' in this review and who is serving as the 'senior Department official,' and seeks transparency and clarity as to: (a) which Department staff are conducting the compliance review and making a determination whether to present a final staff analysis to NACIQI based on review of HLC's Written Response, and (b) the identity of the senior Department official who would make any decision based on any potential NACIQI recommendation. As HLC navigates this compliance review, it is entitled to be on notice as to who is serving as the decision-maker(s) in this process in accordance with these regulations. Indeed, it is of material consequence which Department staff or officials are the decision-makers at which stage of the regulatory process."⁵⁶

As HLC points out, under 34 C.F.R. §§ 602.33-602.36 "Department staff" make initial inquiries into accreditation agency compliance. However, HLC has no such entitlement to know specifically who is working on matters relating to this inquiry as a procedural matter. The Department has the authority to manage and delegate its workload needs as it deems appropriate, and the Department is not required to indicate which specific Department staff are carrying out the Department's duties in any given case. The Department staff that fulfill these responsibilities

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include staff in the Office of Postsecondary Education (OPE) as well as attorneys who work in the Department's Office of General Counsel.

The Department also does not have a legal obligation to identify the Senior Department Official (SDO) as demanded by HLC. However, the Department notes that although Diane Jones, Principal Deputy Under Secretary Delegated the Duties of Under Secretary, has generally served as the SDO during her tenure at the Department, she has decided not to participate in the Department's current review of this matter. The SDO will be Dr. Mitchell M. Zais, Deputy Secretary of Education.

HLC's knowledge or lack thereof regarding which Department staff may be working on this inquiry at any given time has no legal bearing on its ability to respond to Department requests or the draft staff analysis. Accordingly, it is not afforded additional time to respond to the staff draft analysis.

C. Timeliness of the Department's Inquiry

HLC has contended that, prior to opening an official 34 C.F.R. § 602.33 inquiry, Department staff were generally aware of the events that transpired with the Institutions' transaction yet did not raise any concerns. HLC points out that nearly two years passed since the November 16, 2017 letter was sent and before the Department sent HLC a letter requesting a production of documents and responses to interrogatories. However, neither Department regulations nor the HEA provide a statute of limitations on when the Department may conduct oversight inquiries. The Department's inquiry in the instant case is fully consistent with our authority to conduct oversight over HLC.

D. HLC Argues that the Department has Overstepped its Authority to Intervene in this Case

In its March 20, 2020 letter, HLC stated that the Department cannot intervene in specific accreditation matters at individual schools. Specifically, HLC claims that "the Department of Education Organization Act limits the Secretary's authority over accrediting agencies.⁵⁷ In fact, in *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, the D.C. District Court held, "[w]hile the Secretary has the authority to decide whether a particular accreditator's standards warrant approval as a reliable indicator of educational quality, 20 U.S.C. § 1099b(a), the Department itself is barred from interfering in an accrediting agency's assessment regarding individual schools. 20 U.S.C. § 3403(b)."⁵⁸

20 U.S.C. § 3403 codifies the Department of Education Organization Act, which prohibits the Department from "exercise[ing] any direction, supervision, or control over ... any accrediting agency ... *except to the extent authorized by law.*" (emphasis added).⁵⁹ 20 U.S.C. § 1099b codifies the Higher Education Amendments of 1992 (Pub. L. 102-325), which amended the HEA to add provisions requiring agencies to provide due process to institutions of higher education, including a provision requiring that "[n]o accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the

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purposes of this chapter or for other Federal purposes, unless the agency or association meets criteria established by the Secretary” including “due process procedures that provide ... for an opportunity for the institution or program to appeal any adverse action under this section, including denial, withdrawal, suspension, or termination of accreditation, taken against the institution or program, prior to such action becoming final.”⁶⁰

HLC cites dicta from *Armstrong* to imply that the Department cannot retrospectively second guess HLC’s accreditation decisions regarding the Institutions.⁶¹ However, while the statutes cited by the *Armstrong* Court make clear that while the Department must generally avoid exercising any direction, supervision, or control over accreditation agencies, the statutes also make clear that Department *must* evaluate agencies based on their actions relative to certain criteria in the statute and the regulations, including agencies’ compliance with the requirements of due process when taking adverse actions.

Remedies related to a due process violation by an agency are necessarily retrospective, and the Department cannot ignore such violations merely because they happened in the past. Where accreditation is lost (or withdrawn), in most cases the institutions are forced to close, rendering any litigation challenging the action impractical and of little utility. It would likewise be difficult for a student injured by a procedurally erroneous agency decision to seek relief from such a decision in court, in part because of decisions like *Armstrong*. Thus, to the extent that HLC continues to ignore the ways in which its decision regarding the Institutions violated applicable law designed to protect the Institutions and their students, we must continue to evaluate HLC accordingly under the applicable statutes and regulations.

V. Conclusion

The Department staff continue to have concerns about HLC’s resistance to correcting the record and taking appropriate action to help students that had formerly attended the Institutions. In this instance, the Department does not believe that HLC’s noncompliance is so grave that it would warrant a suspension or termination of recognition. However, the Department staff have proposed a recommendation that we believe reflects the gravity of the circumstance and appropriately limits HLC’s ability to grow until they have come into full compliance. We also believe that the action recommended reminds the larger community of institutions and Agencies that we serve that we take seriously the assurance that institutions are guaranteed due process rights in dealings with accreditors, and that these agencies understand their authority is constrained by basic notions of fair dealing and due process.

Sincerely,

Annamarie Weisman

Digitally signed by Annmarie
Weisman
Date: 2020.06.30 15:48:32 -04'00'

Annamarie Weisman
Senior Director,
Policy Development, Analysis, and Accreditation Services

HLC-DCEH-014628

Endnotes

¹ The Art Institute of Colorado (OPEID: 02078900), including the campuses formerly located at: 1200 Lincoln Street, Denver CO (Extension: 02078900); and 675 South Broadway Street, Denver, CO (Extension: 02078904).

² The Illinois Institute of Art (OPEID: 01258400), including the campuses formerly located at: 350 North Orleans Street, Suite 136-L, Chicago, IL (Extension: 01258400); 1000 Plaza Drive, Suite 100, Schaumburg, IL (Extension: 01258401); and 28175 Cabot Drive, Novi, MI (Extension: 01258405).

³ Letter from the Department to HLC (Jan. 31, 2020) (Exhibit 1).

⁴ Letter from the Department to HLC (May 1, 2020) (Exhibit 2).

⁵ Letter from HLC to the Department (March 20, 2020) (Exhibit 3).

⁶ Letter from HLC to the Department (June 1, 2020) (Exhibit 4).

⁷ Letter from the Department to HLC (June 17, 2020) (Exhibit 5).

⁸ NACIQI Meeting Notice, 85 Fed. Reg. 38132 (June 25, 2020), available electronically at: <https://www.federalregister.gov/documents/2020/06/25/2020-13723/national-advisory-committee-on-institutional-quality-and-integrity>.

⁹ *See generally* Letter from the Department to HLC (Feb. 25, 2020) (granting HLC an eight day extension to respond to the Department's letter from January 31, 2020); Letter from the Department to HLC (Mar. 6, 2020) (granting HLC a 14-day extension to respond to the Department's letter from January 31, 2020); *supra* note 4, (granting HLC a 30-day extension in response to procedural arguments raised by HLC, although the Department noted that it does not believe regulations required us to provide this courtesy to the Agency).

¹⁰ *See* HLC's policy INST.E.50.010 in effect at the time of the transaction (Jan. 18, 2018) (Exhibit 6).

¹¹ 34 C.F.R. § 602.18(c).

¹² 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f).

¹³ *See* HLC's policy INST.B.20.040 in effect at the time of the transaction (Jan. 18, 2018) (Exhibit 7).

¹⁴ *See* HLC's policy INST.F.20.070 in effect at the time of the transaction (Jan. 18, 2018) (Exhibit 8).

¹⁵ Letter from HLC to the Institutions (November 17, 2017) (Exhibit 9).

¹⁶ *Id.* at 1.

¹⁷ *Id.*

¹⁸ INST.E.50.010, *supra* note 10, at 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 34 C.F.R. §§ 602.22(a)(1) and 602.22(a)(2)(ii).

²² HLC's contention that it merely used Change of Control Candidate for Accreditation status as a passive condition of approval also conflicts with its own internal policy set forth in INST.B.20.040 that the purpose of approval by HLC is "to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction."

²³ HLC Letter, *supra* note 5.

²⁴ INST.F.20.070, *supra* note 14.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See generally* HLC letter, *supra* note 15.

²⁸ The transaction occurred during the 5 years preceding the Department's decision to grant HLC a five-year renewal of recognition on May 9, 2018.

²⁹ HLC Letter, *supra* note 5, at 31-32.

³⁰ *Id.* at 21.

³¹ *Id.* at 22.

³² *Id.* at 28.

³³ INST.E.50.010, *supra* note 10, at 1.

³⁴ *Id.*

³⁵ HLC Letter, *supra* note 5, at 5-9.

³⁶ *Id.*

³⁷ Letter from HLC to the Institutions (Oct. 3, 2017) (Exhibit 10).

³⁸ *Id.*

³⁹ HLC letter, *supra* note 15, at 1-4.

⁴⁰ *See* transcript of Department call with Ron Holt, Esq., outside counsel for DCEH (Dec. 9, 2019) (Exhibit 11).

⁴¹ *See* emails between Department staff and Ron Holt (December 2019) (Exhibits 12.1-12.4).

⁴² *See* e-mail from Dr. Karen Peterson Solinski, former Executive Vice President at HLC (Dec. 26, 2019) (Exhibit 13).

⁴³ HLC Letter, *supra* note 5, at 2-3.

⁴⁴ HLC Letter, *supra* note 3, at 44.

⁴⁵ HLC Letter, *supra* note 6, at 6.

⁴⁶ 34 C.F.R. § 602.33(c).

⁴⁷ HLC Letter, *supra* note 6, at 8.

⁴⁸ *Id.*

⁴⁹ Letter from Ron Holt and David Harpool to HLC (Feb. 2, 2018) (Exhibit 14) at 1.

⁵⁰ *Id.* at 2.

⁵¹ Change of Control, Structure, or Organization; Change of Control Candidacy Status; Change of Control Candidate for Accreditation; Change of Control Candidacy.

⁵² HLC Letter, *supra* note 5, at 22.

⁵³ *Id.* at 25.

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⁵⁴ HLC Letter, *supra* note 6, at 14.

⁵⁵ 34 C.F.R. § 602.22(a)(2)(ii).

⁵⁶ *See* HLC Letter, *supra* note 6, at 9.

⁵⁷ *See* 20 U.S.C. § 3403(b).

⁵⁸ *Id.* at 36, quoting *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, 980 F. Supp. 53, 63 (D.D.C. 1997), *aff'd*, 168 F.3d 1362 (D.C. Cir. 1999), *op. am. on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999).

⁵⁹ *Id.*

⁶⁰ 20 U.S.C. § 1099b(a)(6).

⁶¹ *See Armstrong*, 980 F. Supp. at 63.

Exhibit 1

EXHIBIT 1



UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF POSTSECONDARY EDUCATION

January 31, 2020

VIA EMAIL AND UPS OVERNIGHT

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604

Dr. Gellman-Danley:

The U.S. Department of Education (Department) is in receipt of the letter from the Higher Learning Commission (herein referred to as “HLC” or “the Agency”) dated November 13, 2019, as well as its supplemental letter dated January 13, 2020, all responding to the Department’s letter to HLC dated October 24, 2019. As you are aware, the Department has significant concerns about the process used by the HLC Board to move the Art Institute of Colorado (OPEID: 02078900)¹ and the Illinois Institute of Art (OPEID: 01258400)² (collectively the “Institutions”) to “Change of Control Candidate for Accreditation” status.

In the course of our review, the Department reviewed documents provided by HLC, other documents pertaining to the inquiry and conducted interviews with individuals involved in the transaction. Now, based on our review of the facts and pursuant to 34 C.F.R. § 602.33(c),³ the

¹ The Art Institute of Colorado (OPEID: 02078900), including the campuses located at: 1200 Lincoln Street, Denver CO (Extension: 02078900); and 675 South Broadway Street, Denver, CO (Extension: 02078904).

² The Illinois Institute of Art (OPEID: 01258400), including the campuses located at: 350 North Orleans Street, Suite 136-L, Chicago, IL (Extension: 01258400); 1000 Plaza Drive, Suite 100, Schaumburg, IL (Extension: 01258401); and 28175 Cabot Drive, Novi, MI (Extension: 01258405).

³ If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff notes that one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria, it -
(1) Prepares a written draft analysis of the agency’s compliance with the criteria of concern. The draft analysis reflects the results of the review and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or

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HLC-DCEH-014634

Department finds that HLC was not compliant with its own policy under INST.E.50.010;⁴ 34 C.F.R. § 602.18(c) (pertaining to consistency in decision making);⁵ and 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f) (due process);⁶ in moving the Institutions to Change of Control Candidate for accreditation status.

I. Noncompliance with the HLC Policy INST.E.50.010 and Department Regulations Pertaining to Consistency in Decision-Making under 34 C.F.R. § 602.18(c)

On May 1, 2017, the Institutions submitted an Application for Change of Control, Structure, or Organization to HLC under INST.B.20.040 and INST.F.20.070. After conducting an extensive review of the application, including several site visits, HLC sent a letter to the Presidents of the Institutions and the CEO of DCEH on November 16, 2017 (“the November 16, 2017 letter”). The November 16, 2017 letter states that the HLC Board “voted to approve the application for Change of Control, Structure, or Organization ... however, this approval is subject to change of control candidacy status.” The letter does not explicitly provide notice that, rather than approving or denying the application under INST.B.20.040, the Board decided to invoke its authority under INST.E.50.010 to move the institutions to “candidacy” status. Nor does the letter explicitly state that the Institutions must give up their accredited status as a condition of the HLC approving the sale of the Institutions.

terminate recognition, or require the submission of a compliance report and to continue recognition pending a final decision on compliance;

(2) Sends the draft analysis including any identified areas of non-compliance, and a proposed recognition recommendation, and all supporting documentation to the agency; and

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation, specifying a deadline that provides at least 30 days for the agency's response.

34 C.F.R. § 602.33(c).

⁴See HLC’s policy INST.E.50.010 in effect at the time of the transaction on (Jan. 18, 2019) (Exhibit 1).

⁵ The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency -

(c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards;

34 C.F.R. § 602.18(c).

⁶ The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.

(d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.

(e) Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(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.

34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f).

INST.E.50.010 did provide the Board with the authority to move an institution from an accredited status to candidacy status “subsequent to the close of a Change of Control, Structure or Organization,” if certain conditions are met and the Board finds that “all of the Criteria for Accreditation and Federal Compliance Requirements” are no longer met without issue. However, INST.E.50.010 clearly states that “moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.”

The November 16, 2017 letter does not provide any notice to DCEH of its right to appeal the requirement that accreditation be forfeited. As set forth in greater detail below, this failure to provide notice of the right to appeal provided evidence to support DCEH’s assumption that accreditation was not being withdrawn as a condition of the sale being approved at the time the transaction closed.

HLC now contends that the Board did not need to advise DCEH of its right to appeal because it did not “act” in approving the Institution’s application. HLC also contends that DCEH voluntarily consummated the transaction and thus absolved HLC of its duty to allow for an appeal as required by INST.E.50.010. The Department disagrees. First, Department regulations require accreditors to approve or disapprove substantive changes by an accredited institution, including changes in ownership. 34 C.F.R. §§ 602.22(a)(1) and 602.22(a)(2)(ii).⁷ The Institutions were, at the time of the transaction, fully accredited by HLC. The Agency’s approval of the sale, subject to certain conditions, clearly was an “action” within the meaning of the regulations. Second, conditioning the sale transaction upon the withdrawal of accreditation is clearly an “adverse action” as defined within the context of INST.E.50.010. As such, it required the timely provision of a notice of a right to appeal.⁸

The Department finds that HLC did not follow its published policy under INST.E.50.010 when it acted to place the Institutions on this status without providing for an opportunity to appeal. This, in turn, means that HLC’s actions were not in compliance with 34 C.F.R. § 602.18(c) as it failed to base its decision on HLC’s published standards.

⁷ If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if --

- (1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution;
- (2) The agency's definition of substantive change includes at least the following types of change:
 - (ii) Any change in the legal status, form of control, or ownership of the institution.

34 C.F.R. §§ 602.22(a)(1) and 602.22(a)(2)(ii).

⁸ HLC’s contention that it merely used Change of Control Candidate for Accreditation status as a passive condition of approval also conflicts with its own internal policy set forth in INST.B.20.040 that the purpose of approval by HLC is “to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction.”

II. Failure to Provide Due Process under 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f)

The Institutions have asserted in documents provided to the Department by HLC that the Agency misled them regarding the true nature of Change of Control Candidacy status. To assess the legitimacy of these assertions, the Department conducted an extensive review of the communications between HLC and the Institutions regarding this status. The Department finds that HLC’s communication with the Institutions, at best, obfuscated the true nature of change of control candidacy status—namely that such status required an institution to give up or otherwise lose accreditation. The excerpts and analysis detailed below regarding the communications between HLC and the Institutions illustrate this obfuscation.

On October 3, 2017, HLC sent the presidents of the Institutions and the Executive Chairman of DCEH a letter with the Staff Summary Report and Fact-finding Visit Report for the Change of Control Structure, or Organization. In the letter, HLC described the following options the Board may take in response to the Institutions’ applications for Change of Control Candidacy status: “(1) to approve the extension of accreditation following the consummation of the transaction; (2) to approve the extension of accreditation subject to certain conditions, as determined necessary by the Board; (3) to deny the extension of accreditation following the transaction; or (4) to approve the extension of accreditation following the transaction subject to a period of candidacy.”

The fourth item in the list above is the option that HLC ultimately decided to use when processing the Institutions’ applications; however, the letter describes that option as an “[approval of] the extension of accreditation,” which suggests that using that option would keep accreditation intact, rather than withdrawing accreditation, while HLC evaluated the actual performance of the new owners following the closing of the proposed transaction.

The Board met November 2-3, 2017, and then sent the November 16, 2017 letter to the Institutions. HLC contends that this letter describes the terms and conditions for the Institutions’ voluntary forfeiture of accreditation. Relevant excerpts from the letter are listed below to provide context:

During its meeting on November 2-3, 2017, the Board voted to approve the application (emphasis added) for Change of Control, Structure, or Organization wherein the Dream Center Foundation, through Dream Center Education Holdings LLC and related intermediaries, acquires certain assets currently held by Education Management Corporation, including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below [. . .]

The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance (emphasis added) with the Eligibility Requirements

to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance (emphasis added) with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future [...]

The institutions undergo a period of candidacy (emphasis added) known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months (emphasis added) but shall not exceed the maximum period of four years.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway (emphasis added) and identify the date of the next comprehensive evaluation, which shall be no more than five years from the date of this action.

In the course of the review, Assistant Secretary for Postsecondary Education, Robert King, and Department staff conducted an interview with Mr. Ron Holt, Esq., outside counsel for DCEH on December 9, 2019, and with Dr. Karen Peterson Solinski, former Executive Vice President at HLC who oversaw the Education Management Corporation (EDMC) and DCEH transaction for HLC during her employment on December 23, 2019. Mr. Holt advised the Department that while representing DCEH in the larger transaction involving over forty schools and five separate accreditors, his experience with HLC was remarkably unique. Holt told the Department that until HLC published the public disclosure on January 20, 2018, advising students that accreditation had been lost, he did not believe that the approval of the sale transaction required giving up accreditation of the two institutions involved. Further, Holt stated that if DCEH understood that the schools would lose accreditation as a condition of the sale, DCEH would not have completed the transaction.^{9, 10}

Ms. Solinski told the Assistant Secretary that she believed both institutions would remain accredited during the six-month period beginning on the date of the transaction. She believed that HLC would begin monitoring the Institutions closely after the transaction to ascertain whether or not they were implementing the various requirements HLC had set forth as expectations in the letter approving the transaction. She stated in a written email to Department staff:¹¹

“...that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions ... The purpose of the Change of Control Candidacy

⁹ See transcript of Department call with Ron Holt, Esq., outside counsel for DCEH (Dec. 9, 2019) (Exhibit 2).

¹⁰ See emails between Department staff and Ron Holt (December 2019) (Exhibits 3.1-3.4).

¹¹ See e-mail from Dr. Karen Peterson Solinski, former Executive Vice President at HLC (Dec. 26, 2019) (Exhibit 4).

was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC criteria for Accreditation and other policies of the Commission going forward..."

Several additional factors compounded HLC's failure to provide clear, accurate information regarding the putative loss of accreditation:

- i. Nowhere in the November 16, 2017 letter does HLC explicitly state accreditation must be forfeited or lost if the transaction is completed.
- ii. Within the site visit report dated October 3, 2017, and the letter from the HLC Board dated November 16, 2017, extensive commentary was included regarding the capabilities of DCEH to meet the financial needs of the Institutions. The report referenced specific revenue projections, a pro forma financial statement, and an array of strategies to increase enrollment by improving the reputation of the Institutions, engaging in new advertising, expanding access to scholarships and state grants, achieving not for profit status, expanding development efforts to raise funds for scholarship programs, and "implementing cost savings in payroll, bad debts, property and excise taxes, facilities related expenses and outside services."

Nowhere in the report or in the letter from the Board did HLC mention that, if the Institutions lost access to Title IV funding as a result of the transaction, it could create a critical financial obstacle that would need to be overcome for the Institutions to remain financially viable. In the absence of such an observation or other clear statements to the contrary, it was reasonable that DCEH would not be aware that HLC was removing accreditation.

- iii. Shortly after the publication of the formal Disclosure describing the loss of accreditation, Mr. Ron Holt, attorney for DCEH, sent a letter to HLC in which he stated: "... we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the institutions for one year ... as the Commission has done for dozens of other institutions going through a Change of Control ..."

Holt wrote a letter to HLC dated February 23, 2018, in which he sought confirmation from HLC that the following statements were accurate:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in 'pre-accreditation status,' a term of art that is defined in federal regulations...

2. Both institutions remain accredited, in the status of change of Control Candidate for Accreditation ... and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.

In response to the Holt letter, Dr. Karen Peterson Solinski, former Executive Vice President at HLC, sent an email dated February 24, 2018, acknowledging receipt and advised DCEH that HLC was “reviewing it and will be in touch early next week.” For reasons unknown to the Department, Dr. Solinski’s employment with HLC ended shortly thereafter. In the November 13, 2019 HLC response to the Department, Dr. Gellman-Danley wrote that another HLC employee, Dr. Anthea Sweeney, assumed the responsibilities of managing the DCEH proceedings (Dr. Sweeney is reported to have directed an outside attorney to respond to the Holt letter). HLC’s letter states that “Kohart (outside counsel for HLC) made attempts to contact the parties’ counsel, but they did not respond to the outreach. As such, it appeared to HLC that the institutes did not wish to communicate further about the matter.”

These statements are not consistent with the facts or sound practice. If, in fact, HLC’s attorney was unable to reach anyone representing DCEH, standard practice would call for a specific, written response to the Holt letter conveying that his understandings were incorrect, if HLC’s position was that accreditation had been forfeited. No such letter was written. Further, the notion that DCEH had lost interest in further communicating is contradicted by their actions demanding an appeal.

34 C.F.R. § 602.25(a) requires accrediting agencies to provide institutions with “adequate written specification[s] of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.” Regulatory ‘adequacy’ is judged based on all of the facts and circumstances of each individual case, but at a minimum requires clear standards, fairly communicated. In this case, the Department finds that HLC’s November 16, 2017 letter and subsequent communication with the Institutions failed to provide adequate notice or written specifications, including clear standards, regarding the accreditation status described in the letter. The letter does not include clear statements that accreditation was being withdrawn, which is required when an agency removes or withdraws accreditation. Instead, it cloaked its action within the vague and ambiguous term “Change of Control Candidacy” status. Understanding the precise meaning of that term requires reference to multiple sections of HLC policy manual that are not identified in the November 16, 2017 letter. In addition, that letter describes the accreditation status using four different terms,¹² without clearly delineating the difference among them, further obfuscating the true nature and meaning of that status. Accordingly, the Department finds that HLC violated the Institutions’ due process rights under 34 C.F.R. § 602.25(a) for failure to provide clear standards regarding institutional accreditation and preaccreditation.

¹² Change of Control, Structure, or Organization; Change of Control Candidacy Status; Change of Control Candidate for Accreditation; and Change of Control Candidacy.

The Department finds that HLC did not “provide sufficient opportunity for a written response...regarding any deficiencies identified by the agency... before any adverse action is taken.” No such opportunity was afforded DCEH in the November 16, 2017 letter. Absence of this opportunity violates 34 C.F.R. § 602.25(d), further depriving DCEH of due process required by Department regulations.

In addition, the November 16, 2017 letter fails to describe the Board’s action as an adverse action, which it clearly was under INST.E.50.010. HLC has maintained that the action of the Board was not an adverse action, because the Institutions consented to having the conditions of Change of Control Candidacy Status imposed on them. In this instance, the Institutions had applied for Change of Control, Structure or Organization approval. The Board processed the application and provided the Institutions with two options: accept Change of Control Candidacy Status, meaning forfeit accreditation status in order to proceed with the purchase of the EDMC assets; or do not proceed with the transaction.

Department regulations do not allow agencies to force institutions to give up their due process rights when processing a change in ownership resulting in a change in control. Accordingly, the Department finds HLC violated the Institutions’ due process rights under INST.E.50.010 and 34 C.F.R. §§ 602.25(e) and 602.25(f).

Further, the November 16, 2017 letter indicates that a site visit would be scheduled within six months of the sale transaction being closed “focused on ascertaining the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements...” The letter further states a second focused evaluation must occur “no later than June 2019” after which the Board “shall reinstate accreditation and place the institutions on the Standard Pathway...” (at p. 4). This *ad hoc* sequence of events by the Board ignored applicable Departmental regulations.

Finally, 34 C.F.R. § 600.11(c)¹³ prohibits an institution from being considered for accreditation “for 24 months after it has had its accreditation or pre-accreditation withdrawn, revoked, or otherwise terminated for cause, unless the accreditation agency ... rescinds that action.” This regulation also prohibits agencies from moving an institution from accredited to pre-accredited status. In contrast, INST.E.50.010 allowed the Board to take an institution from accredited to candidacy status, defines such an action as an adverse action, and allows for apparent re-instatement within 6 to 18 months, contrary to the requirements of 34 C.F.R. §600.11(c). Accreditor policies that promise accreditation to institutions on terms that would not allow the institutions to meet the Department’s eligibility requirements are counterproductive at best. An

¹³ Loss of accreditation or preaccreditation.

(1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

34 C.F.R. § 600.11(c).

accreditor applying such a policy should at a minimum inform the institution of any such obvious inconsistency between its provision of accreditation to the institution and the institution's subsequent ability to use that accreditation to meet Departmental eligibility requirements. HLC did not do so here.

34 C.F.R. § 602.25(a) required HLC to provide the institutions with "adequate written specifications of its requirements, including clear standards" for accreditation. Accrediting agency policies promising accreditation to institutions on terms the accreditor knew, or should have known, would not allow subject institutions to meet the Department's eligibility requirements plainly fails this test, absent disclosure of the implications to institutions.

III. HLC's Remedial Actions in Response to its Noncompliance

As stated above, the Department finds HLC in noncompliance with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f),¹⁴ and with its own policy under INST.E.50.010.¹⁵ As provided under 34 C.F.R. § 602.33(c)(3), HLC has 30 days to respond in writing to this report. In addition to responding to each of the Department's findings of noncompliance, HLC should also provide (1) a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future; and (2) a detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions¹⁶ on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

In addition, HLC is advised that it should provide Department staff with 60 days' advance notice before its Board plans to take action to rescind, modify, revise, or change in any way its policies

¹⁴ The text for each of these regulations is provided in prior footnotes.

¹⁵ The Department is aware of the action of HLC's Board to repeal INST.E.50.010 in its entirety; however, it remains concerned about HLC's future compliance with Department regulations. *See* HLC Change of Control, Structure or Organization Policy Change published November 2019, available at http://download.hlcommission.org/policy/updates/AdoptedPolicies-ChangeofControl_2019-11_POL.pdf. In addition, it did not go unnoticed by the Department that HLC decided to use a punitive provision under its policies that it had never previously used after receiving a letter from five Members of Congress on June 22, 2017, scrutinizing the proposed EDMC/DCEH transaction. The Department would like to remind HLC that all accreditation agencies should maintain independence from undue influence from elected officials so not to run afoul with 34 C.F.R. § 602.18(c) and to ensure public confidence in the accreditation process. In addition, HLC's institutional standards under Criterion 2, Integrity: Ethical and Responsible Conduct 2.C.(3) require institutions to maintain independence from undue influence on the part of elected officials. Accordingly, it would seem antithetical to that policy if HLC's Board would not also hold itself to the same ethical standard.

¹⁶ The Art Institute of Colorado (OPEID: 02078900), the Illinois Institute of Art (OPEID: 01258400), including all of the locations, as referenced in footnote 1 and 2 of this document.

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authorized under 34 C.F.R. § 602.22(a)(2)(ii)¹⁷ relating to change in ownership or control, so the Department may review any proposals as authorized under 34 C.F.R. § 602.33(a)(2).¹⁸

The Department will evaluate HLC's response and may present its findings, as provided under 34 C.F.R. § 602.33(e),¹⁹ at the National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting in July 2020. If, however, the Department staff are satisfied with HLC's response to this letter (including by showing adequate steps have been taken to prevent due process failures and to assist in any efforts to correct the relevant transcripts of those students who attended the Institutions), then the Department staff would have a reasoned basis for finding that HLC has demonstrated compliance and for notifying NACIQI accordingly, as authorized by 34 C.F.R. § 602.33(d).²⁰

If you have any questions about this letter, please contact Herman Bounds, Director of Accreditation, at (202) 453-6128 or Herman.Bounds@ed.gov.

¹⁷ If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if -

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

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

34 C.F.R. § 602.22(a)(2)(ii).

¹⁸ Department staff may review the compliance of a recognized agency with the criteria for recognition at any time -

(2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.

34 C.F.R. § 602.33(a)(2).

¹⁹ If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has not demonstrated compliance, the staff -

(1) Notifies the agency that the draft analysis will be finalized for presentation to the Advisory Committee;

(2) Publishes a notice in the Federal Register including, if practicable, an invitation to the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(3) Provides the agency with a copy of all public comments received and, if practicable, invites a written response from the agency;

(4) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received; and

(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c).

34 C.F.R. § 602.33(e).

²⁰ If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, the staff notifies the agency in writing of the results of the review. If the review was requested by the Advisory Committee, staff also provides the Advisory Committee with the results of the review.

34 C.F.R. § 602.33(d).

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Sincerely,



Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and
Innovation

**Policy Title: Accredited to Candidate Status****Number: INST.E.50.010**

The Board of Trustees may determine that an institution be moved from accredited to candidate status subsequent to the close of a Change of Control, Structure or Organization transaction as a result of the findings of an on-site team, including either a Fact-Finding or other team, visiting the institution or the findings in a summary report. The Board must find that the institution, as a result of or related to the Change of Control, Structure or Organization, meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices but no longer meets all of the Criteria for Accreditation and Federal Compliance Requirements. It must also find that the institution meets the requirements of the candidacy program. Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.

Process for Moving an Institution From Accredited to Candidate Status

The Board of Trustees may take an action to move an institution from accredited to candidate status in conjunction with a Change of Control, Structure or Organization, as outlined in [Commission policy INST.B.20.040](#). In addition, a team recommendation arising out of a comprehensive or focused evaluation within six (6) months of the close of a transaction approved under [INST.B.20.040](#) to move the institution from accredited to candidate status, will automatically be referred to an Institutional Actions Council Hearing Committee. The Board will consider both the team recommendation and the Institutional Actions Council Hearing Committee recommendations in its deliberations. In all cases, the Board of Trustees will act on a recommendation to move an institution from accredited to candidate status only if the institution's chief executive officer has been given at least two weeks to place before the Board of Trustees a written response to the recommendation of the team or Institutional Actions Council Hearing Committee.

Public Disclosure of Accredited to Candidate Status

A Public Disclosure Notice for an institution whose status has shifted under this policy will be available on the Commission's website shortly after, but not more than twenty-four (24) hours after, the Commission notifies the institution of the action moving the institution from accredited to candidate status. An

institution moved from accredited to candidate status must notify its Board members, administrators, faculty, staff, students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the institution must also disclose this new status whenever it refers to its Commission affiliation.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 50: Accredited to Candidate Status

Last Revised: February 2014

First Adopted: June 2009

Revision History: February 2011, February 2014

Notes: Policies combined November 2012 – 2.5(e), 2.5(e)1, 2.5(e)2

Related Policies: INST.B.20.020 Candidacy, INST.B.20.040 Change of Control, Structure, or Organization

EXHIBIT 2



UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF POSTSECONDARY EDUCATION

Date: December 9, 2019; 3:30 PM to 4:00 PM EST

Subject: Substantially Verbatim Transcript of Phone Call between Robert King, Assistant Secretary for Postsecondary Education, and Ron Holt, attorney at Rouse Frets White Goss Gentile Rhodes, P.C. and former outside council for Dream Center Education Holdings (DCEH)

Robert King: First, thank you for making time for this call, I trust it was unexpected. We are doing an assessment of decisions made by HLC [Higher Learning Commission] as it pertained to your clients AIC [Art Institute of Colorado] and AII [Illinois Institute of Art] and DCEH. First question – do you feel comfortable discussing this? We’d like to understand what your thinking is and what concerns you might have.

Ron Holt: Yes, Mr. King, I’m certainly willing to talk to you about HLC’s actions with respect to those institutions. There may be a point where you may ask things that are within attorney client privilege.

Robert King: I totally understand, and I leave it to you to define what you can and can’t talk about.

Ron Holt: Let me give you some current history, as you know there was an effort made in second half of 2017 to transition ownership of those two schools from for-profit organizations to Dream Center and that eventually a request was made to approve the sale to HLC. They published a letter in 2017 saying the transaction can go forward, subject to a number of conditions, and embedded was the loss of accreditation, although the new enterprise would be able to have accreditation restored. That’s not how we understood it.

Robert King: I understand, but at some point, Dream Center, through you, conveyed their surprise. On February 2nd you drafted a letter on behalf of Dream Center indicating essentially shock that accreditation had been withdrawn. The reason I’m calling is there was a subsequent letter in February to Barbara Gellman-Danley seemingly indicating that an agreement had been reached that both institutions are eligible for title IV funding and are accredited. So, what prompted the writing of that letter? We sent HLC a very detailed set of questions, asking them to provide documentation, preceding and following November 2017, January 2018, and your letter on February 23rd, which never generated a written response from HLC. If you recall, what prompted the February 23rd letter, either written or oral communication?

Ron Holt: I don’t remember any communication with HLC; however, there was a communication that David Harpool and I had with our client, and I don’t remember the exact

nature of that communication. We had a conversation with Randy Barton, and he had a discussion with Brent Richardson and with someone at the Department [The U.S. Department of Education]. Because of that conversation, we wrote the letter. These two worked for Dream Center, Richardson was CEO and Barton was Chairman of the Board.

Robert King: When you said Department did you mean Department of Education?

Ron Holt: Yes. At some point in time, I had been interviewed by the staff of Bobby Scott's committee, and I shared with them that at some point in time, February or later, after that initial surprise on our part, seeing what was described as a disclosure, I was involved in both of those closing. I worked on the deal from the start throughout all of 2017. We were surprised after we closed the second closing on January 19, 2018. We saw that notice the following day and it was contrary to our understanding. We talked it through and sent out the letter. At some point we were led to understand that the executives at Dream Center were discussing this with people from the Department. We heard this through our clients, verbally. I don't think we had email communications about that, but I'm not 100 percent sure who they were with. We believe it might've been Michael Frola and maybe Donna Mangold and maybe Diane Jones. Long and short of it was the Department, specifically one or more of these individuals, were going to intervene with HLC and encourage them to change position. We never would have closed the transaction without the accreditation part. The way the closing of the transfer of these EDMC schools - that were to be sold - it was for the very purpose of getting the approval of HLC. That approval had been for October 2017, by Middle States one and HLC for the other one - for four schools. The irony is this application took a year. Initial contact was made by EDMC with HLC in November 2016, and it was a long, arduous process. HLC made visits to Dream Center in Los Angeles and made visits to Pittsburgh. They gathered a lot of information, there wasn't any reason anyone would have believed, at Dream Center, that accreditation would've been gone by the closing of this. Everyone felt betrayed and shocked - every other accreditor approved the transfer of the schools with the accreditation intact. We didn't believe that they meant what they said. That perspective informed what we did from then on, we didn't tell students because we didn't believe it to be true. In terms of that letter, I can't tell you what we heard or what I heard but there must have been our client sharing something they had heard from the Department.

Robert King: In terms of a response, we asked HLC what they did. They claimed in their response to us that they attempted to reach someone from Dream Center by phone and were unable to do so. Assuming that was correct, receiving a letter like yours, if I were unable to reach you with that content, I would've drafted a letter stating that each of your points were incorrect. Did you get such letter back from HLC?

Ron Holt: I believe we heard back from them in May - seems to me there was letter in May - I don't recall anything any sooner. Do you have the documents in front of you?

Robert King: I don't have everything but let me go back and find the section.

Ron Holt: I just found this May letter. I'll take a look at it.

Robert King: It says May 21st. That was a letter from you, and they responded on May the 30th and it's about granting you an appeal if you wanted to take advantage of it.

Ron Holt: We were trying to figure out how to take out an appeal, and we were trying to figure out in the February 23rd letter for them to give us some guidance.

Robert King: You made four points – the Institutions will remain eligible for Title IV, remain accredited, will have an objective review for continued accreditation, and that the institutions will convey to their students that they will remain accredited and undergo the reaccreditation process...So that's what you asked for.

Ron Holt: They are telling you that they responded to this letter?

Robert King: Their response says on the same day the Institutes transmitted the February letter, Frola emailed Solinski, employed at HLC, although her employment ended shortly thereafter, after this 23rd letter. On the same day, Frola emailed Solinski indicating the status could be problematic for the schools' Title IV eligibility. Frola had received the January letters, and then it says, let's see, it says February 23rd was the first time Frola reached out to Solinski indicating CCC status [Change of Control Candidacy status] could be problematic. A call was contemplated, but didn't take place until March 9th, due to postponements by Frola and Solinski. On the call it says Frola was accompanied by Department officials and legal counsel, and Frola asked Sweeney whether CCC was accredited status. Sweeney responded that candidacy is a formally recognized status, but it's not accredited status. Sweeney informed Frola that the board had made no independent determination about tax status or Title IV status, since it is under the purview of the IRS and Department of Education. Apparent confusion would reemerge in Jones' October 31st, 2018 letter to HLC. The point here is that I don't see in their response any effort to respond to your February 23rd letter – it says, Sweeney, who is an HLC employee specifically instructed Mary Kohart in March 2018 to follow up with institutes' counsel, and they made attempts but they didn't respond to the outreach. It seemed to HLC that they didn't seem to want to reach out.

Ron Holt: Here's the May 21st letter – I'm going to forward this May 21st letter to you [all follow up correspondence between Mr. Holt and Department officials is included in Exhibit 2].

Okay, this is not an excuse, but I'll put things in context. I was in and out of the picture in this time period in terms of my involvement with matters here for DCEH [Dream Center Education Holdings]. I'd have to talk to Harpool, he actually was accreditation counsel advisor to our firm, but he's now no longer with us, he's the president of a college. What happened to me was that on February 8th I went to hospital with cardiac problems – I had a minor heart attack and had some issues - I wasn't the guy that was answering all of these emails. Clients took over some of this directly, including Randy Barton, who also was an attorney. In my absence, I may have fielded some of these inquiries, as I followed up with some of these things, but I was out in March and April, so it is possible that Mary tried to reach me. I feel confident that any message that I couldn't answer I would have passed on to Harpool or Barton. We wouldn't let it go unanswered.

Robert King: Even if the statement here is accurate, they tried and no one responded, having received the February 23rd letter, HLC should've responded back to you and expressed disagreement, whether they were right or wrong. I find it remarkable given your letter stating your understanding, that they would not have made a more vigorous effort to reach out.

Ron Holt: I don't have any letter in my file from that time period. Just our May 21st letter, asking for appeal and processes for appeal. At that point, there's a lot more pressure from students and others on clarification and the status of these institutions. It still says not accredited online and HLC hasn't changed their position. By this time there was executive leadership and maybe Diane Jones suggesting an effort be made by the Department with HLC to get them to change their position. It was a position that they took, and instead they could recognize that we had accreditation provisional to these conditions and 6 months to meet these conditions, and we had negotiations with them from November to the January closing, so we debated some of those positions. There was a condition about continuing to monitor the schools, where 39 state attorneys general had an agreement to monitor that went to court for 3 years. At the end it might or might not be extended. HLC wanted us to agree that we would continue that monitoring for another 2 years. We were saying, why should we do that unless all 39 states agree to it. Never once did they bring up, through Karen, the idea that you won't be accredited anyways for 6 months. No one said you won't be accredited. The schools would have stayed with EDMC and retained their accreditation. EDMC would have taught them out which is better than what HLC did.

Robert King: The only language in the November letter - and I've read it backwards and forwards - is on page 4 after it was identified that institutions host a focused visit "on the following topics" and states all of those common things for accreditation efforts. At the end it says: "If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action."

Two paragraphs later they say: "The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation."

I find it bizarre - because in one paragraph accreditation will need to be reinstated, but they don't say they are withdrawing accreditation, which makes this insufficient - and second, if you go

ahead without approval, they might withdraw accreditation. My question – how did you interpret that paragraph on page 4?

Ron Holt: We interpreted from the lens of looking at earlier statements. On the first page they cite they've taken formal action in response to the application, filed by institution, and at the bottom, they've considered 5 factors...and it looked as if they had been met them...top of the second, board found institutions hadn't met these factors without issue but demonstrated sufficient compliance, and CCC status can rebuild full compliance....so we read that and understood it to mean that we had demonstrated probable compliance, and were on path toward compliance and demonstrated sufficient compliance, and that we were CCC which was a new category they had created. Because of that we figured it was in accreditation category, even though they make statements later, we figured that meant change into normal accreditation and out of this pre-accreditation. Honestly because it was a new status, we found ourselves to be confused, and we thought it was part of the status to be accredited.

You could read it to mean - oh what they really mean here is you're not accredited - but obviously this letter wasn't a model of communication and maybe we should have insisted on more clarity, in hindsight obviously, given what HLC did to us. It never occurred to us that what was up here was we were headed to no accreditation post-closing. It had never happened to anybody. We've never had any accreditor do this to us - write you a letter saying we have approved the deal, satisfy these conditions, and when you change owners you lose it. It was extraordinary, unique, and it's hard to find words.

Robert King: It strikes us the behavior of HLC was insufficient. The one question I asked and got a rambling answer out of them was the question of during the time this transaction was going on, above the fray, did the faculty change, curriculum change, anything change? While this stuff was going on in the boardrooms, my sense is that nothing changed in the classrooms. The kinds of things that would ordinarily lead to loss of accreditation, didn't happen here.

Ron Holt: Nothing changed but the c-suite, a small group of people that were exited. Brent and Crowley from Grand Canyon and Randy Barton coming on board and becoming part of this team, and you had a small group of people running EDMC that were leaving, everyone else stayed the same.

Robert King: Seems to me HLC lost sight of students here and got overwhelmed by other forces. I'm going to have to go, but I'm very thankful, I didn't know what to expect, and we might prevail upon you for other information, but what you have provided has been very helpful. Our expectation is to issue some sort of findings regarding HLC's conduct during this. Whether it may have consequence I don't know but it will highlight insufficiency on their part. But who knows? We want accreditors to behave appropriately and we think here that didn't happen.

Ron Holt: We did file an internal complaint in June of 2018, and I don't know if you have that, but I'd be happy to email that to you as well.

Robert King: Have they responded?

Ron Holt: I don't think they did, but shortly after they decided to teach out these schools. The Department was made aware of the teach out - Diane Jones knew and DCEH tried to right it but accreditation was never resolved in a satisfactory manner.

EXHIBIT 3.1, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf

From: Ronald L. Holt <RHolt@rousepc.com>

Sent: Monday, December 9, 2019 3:55 PM

To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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May 21, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
[REDACTED]

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
[REDACTED]

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”).

We wrote on February 2, 2018 to express our concern that the January 20, 2018 Commission's Public Disclosure (“Disclosure”) is not consistent with the terms extended to the Institutions by the Commission (following applications filed by the Institutions in late 2016 and supplemented in 2017) in the Commission's November 16, 2017 letter with respect the planned change in ownership of the Institutions (the “Transactions”) involving their acquisition by subsidiaries of the nonprofit Dream Center Foundation.

While the Institutions regarded being placed in the status of Change of Control Candidate for Accreditation, which the Commission's November 16, 2017 letter had described as pre-accreditation candidacy status, as an unwarranted response to the planned change in ownership, the Institutions, through letters dated November 29, 2017 and January 4, 2018, confirmed (with only a few modifications) that they would accept candidacy status, believing that they would be treated as pre-approved candidates on a fast-track needing to only address the issues raised in the November 16, 2017 letter, and they proceeded to close the Transactions on January 19, 2018 (the “Closing”) on that basis. The next day, however, the Commission issued its Disclosure describing the Institutions' status to mean something far different from what the Institutions believed candidacy and pre-accreditation status would mean here.

As we stated in our February 2, 2018 letter, the issue here is not solely maintaining Title IV eligibility of these institutions; it is also meeting the reasonable expectations and interests of our students, a goal which should be shared by the Commission. To be frank, had the Commission plainly stated in its November 16, 2017 letter what it later said in the Disclosure, DCEH would not have carried out the Closing of the Transactions because the necessary regulatory consent would not have existed and the Transactions would not have been in the best interests of the

students. Quite honestly, DCEH feels that it was misled by HLC to its detriment and the detriment of its students and that DCEH has actionable legal claims against HLC.

In an effort to avoid a legal battle, in our February 2, 2018 letter, we informed you that we believe that, pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action that is subject to appeal, we informed you of the Institutions' refusal to accept the Commission's decision as stated in the Disclosure and the Institutions' desire to appeal that decision, and we requested your input on how we should proceed with the appeal.

While President Gellman-Danley sent correspondence on February 7, 2018 indicating that a change was being made to the Disclosure, she maintained in her letter that the Institutions were not in pre-accreditation status (she indicated that HLC does not have such a status) and that the Institutions need to apply for and establish their candidacy for accreditation. She noted that some changes had been made to some of the language in the Disclosure concerning certain procedural matters. But those changes do not allay the concerns that the Institutions have about the expectations and interests of their students, as the Disclosure continues to state that all students who did not graduate prior to January 19, 2018 are attending institutions not accredited by HLC and taking programs not accredited by HLC and will be earning credentials not accredited by HLC. This, quite simply, is unacceptable. Moreover, President Gellman-Danley's letter does not acknowledge the Institutions' decision to appeal the Commission's decision to place the Institutions in the status of Change of Control Candidate for Accreditation, nor does it provide them with any directions on how to pursue their appeal, as we had requested in our February 2, 2018 letter.

Thus, to date, we have not received any guidance on how we can pursue our appeal with HLC. If such guidance is not given to us in writing within the next ten (10) days, we will assume that HLC is unwilling to allow DCEH to pursue an internal appeal, and DCEH will proceed with a legal action. We trust this can be avoided and we again repeat our request for instructions on the pursuit of an appeal.

Sincerely

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc: Mary E. Kohart, Esq.
Counsel to HLC



Higher Learning Commission
Page 3
May 21, 2018

Mr. Brent Richardson
[REDACTED]

Chris Richardson, Esq.
[REDACTED]

Mr. David Ray
[REDACTED]

Mr. Elden Monday
[REDACTED]

Ms. Shelley Murphy
[REDACTED]

EXHIBIT 3.2, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM
To: [REDACTED]; [REDACTED]; [REDACTED]
Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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June 27, 2018

Ms. Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Subject: Appeal of HLC Decision to Remove Accreditation from The Art Institute of Colorado and Illinois Institute of Art

Via: Email

Dear President Gellman-Danley:

The letter represents a formal appeal prepared by Dream Center Education Holdings, LLC (DCEH), parent of The Art Institute of Colorado (AIC) and Illinois Institute of Art (ILIA). The appeal concerns the January 19, 2018 decision of the Higher Learning Commission (HLC) to remove accreditation of AIC and ILIA and place the institutions in Change of Control Candidacy Status.

This appeal of the HLC decision is founded on the following arguments:

Institutional Histories

AIC was established in 1952 and first accredited by HLC in 2008. ILIA was established in 1916 and first accredited by HLC in 2004. Since achieving HLC accreditation, both institutions have operated in accordance with the criteria, policies, and assumed practices established by HLC. At the time of the change of ownership on January 19, 2018, both institutions were in good standing and operating in compliance with all HLC expectations. Prior to January 19, 2018, HLC had never revoked nor suspended the accreditation of either institution. Following the change of ownership, there were no modifications to operational processes or academic programs and both institutions have continued to be governed by independent Boards of Trustees, which operate in accordance with established bylaws.

In other words, the institutions on January 20, 2018 were the same institutions that existed on January 19, yet the Commission announced they ceased to hold accreditation. Moreover, our review of Commission actions has confirmed removal of accreditation from an institution on the sole basis of a change of ownership is unprecedented among HLC decisions.

Discriminatory Practice

The decision of the Commission is arbitrary and capricious, unfair to the new owner who purchased the institution with good intentions, punitive to the students, and an inconsistent application of policy and practice. As the Commission is aware, it is unprecedented that the Commission would take an accredited institution, and solely on the basis of change of ownership, strip it of its accreditation. The compliance of the institution with Commission standards was the same the day before, of and after the closing of the sale. If the Commission had desired or intended to remove accreditation from the institution, it should have acted prior to the sale but not on the basis of the sale. This is especially true in light of the fact that it is well known that other HLC-accredited institutions, which have previously gone through change of ownership, including transition from for-profit to non-profit status, have not been placed in Change of Control Candidacy Status following approval of their change of control applications. By placing AIC and ILIA in Change in Control Candidacy Status, HLC has violated the consistency requirement stipulated within US Department of Education 34 CFR § 602.18. Obligations under 34 CFR § 602.18 require that HLC maintain controls that ensure the consistent application of the agency's standards across all institutions.

Ambiguous and Misleading Communications

The HLC action letter of November 16, 2017, which initially responded to the change of control applications filed by the two HLC-accredited institutions, was ambiguous and misleading. While the communication stated that the institutions would be placed in the position of candidates for accreditation, DCEH understood and assumed that the institutions were effectively pre-approved and remain accredited as candidates. The November 16 letter made no mention that accreditation would be immediately removed upon the change in ownership and during the time period while the institutions completed Eligibility Filings; if that statement had been made, DCEH would not have closed the transaction. Instead the letter stated that the institutions had demonstrated sufficient compliance to be considered for preaccreditation status; but latter HLC claimed it did not have preaccreditation status, further illustrating the confusing nature of the November 16 letter. Given that neither institution was under a show cause or probation sanction at the time of change of control, it was logical that accreditation would be extended for a customary transitional period to be followed by a site visit aimed at verifying operations and practices (which is what happened with all of the other accrediting agencies for the other institutions involved in the DCEH – EDMC transactions). Importantly, this assumption stemmed directly from HLC’s own guiding framework, which attests that the commission will “[work] within the context of its

expectations for accredited institutions [to] streamline processes and procedures for member institutions.”¹

Acting in Good Faith

Being new to the higher education arena, DCEH entered into the change of control process with a somewhat limited understanding of certain protocols and practices. Throughout the entire change of control process, the entire organization (i.e., parent and institutions) acted in good faith to comply with all requests for information and evidentiary materials. Simply put, DCEH set forth on the venture with a goal to sustain the success of all acquired institutions, including AIC and ILIA. In no way did DCEH seek to disrupt student success or bring harm to the institutions, particularly with regard to the longstanding accreditation status of the two HLC-accredited institutions. In fact, the acquisition of the institutions by DCEH was intended to relieve HLC of concerns about the prior owner.

Irreparable Harm to Students

Declaring the institutions unaccredited after January 19, 2018 and further declaring all coursework completed and credentials earned after that date to lack accreditation (even when earned prior to January 19, 2018) would inappropriately harm AIC and ILIA students, especially for students graduating in the term immediately following accreditation removal. A decision to remove accreditation during their final term will cause irreparable harm to their professional and academic futures. Since learning of the Commission’s Disclosure issued on January 20, DCEH has been in communication with HLC to urge it to reconsider its position and the impact that position will have on students if it is not revised.

Limited Request

As the Commission is now aware, DCHE has made the decision to carry out an orderly closure of both institutions with a planned closure date of September 30, 2018. Therefore, the request for reinstatement of accreditation is for a very limited period through the conclusion of the teach-out (i.e., through September 30, 2018). Eligibility Filings were made on March 1, 2018, and demonstrate current compliance with all criteria, policies, and assumed practices.

With this appeal, DCEH respectfully requests that HLC reconsider their decision regarding accreditation of AIC and ILIA. DCEH requests that accreditation of the two institutions be immediately reinstated and made retroactive to the date of January 19, 2018 and be extended through closure of the institutions on September 30, 2018. Reinstatement of accreditation is

¹ VISTA: HLC’s Strategic Directions. Value to Members – Guiding Framework Item 3.

in the best interest of the students who attend the institutions. The lack of accreditation for their work and effort would have a significant adverse impact on their professional, academic, and financial lives.

DCEH has been working in good faith with the Commission for over five months to resolve this matter in an equitable manner that is to the benefit of the students and AIC and ILIA. DCEH would encourage the Commission to take this appeal up at its meeting tomorrow and do the right the thing for the students at these schools. If DCEH does not hear from the Commission by 12:00 PM CST on Friday, it will file suit to protect itself and its students. We understand this is a short time frame but unfortunately time is a luxury we cannot afford.

Sincerely,



Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC

CC

Dr. Anthea Sweeney,
Vice President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Mary E. Kohart, Esq.
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

EXHIBIT 3.3, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: DCEH - HLC Communications
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf; Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf; Peterson 2-24-18 Email to Holt.pdf; HLC Response to DCEH Letter of Intent to Appeal - May 30 2018.pdf; Letter of Appeal_HLC_Final.doc

From: Ronald L. Holt <[redacted]>
Sent: Monday, December 9, 2019 8:04 PM
To: King, Robert <[redacted]>; Cox, Jack <[redacted]>; [redacted]
Cc: Mary K Whitmer <[redacted]>
Subject: DCEH - HLC Communications

Dear Assistant Secretary King, I write one more time to let you know that, since you raised the issue of what kind of response we (DCEH counsel) might have received to our February 23, 2018 letter to HLC, I reviewed my files and also touched base by email with Dr. David Harpool (my former colleague who had worked with me on representing DCEH on its accreditation matters with HLC and other accreditors), and the only communication that we believe we received from HLC, after February 23, 2018 and prior to late May 2018, is the attached February 24, 2018 email message from Karen Peterson at HLC promising that somebody from HLC would be in touch with us within the next week, which, to our recollection, did not happen. We do not recall hearing again from HLC until late May, after we had sent HLC our May 21, 2018 follow up letter, which prompted a May 30, 2018 letter from Anthea Sweeney, a copy of which is attached. As mentioned in my prior email, DCEH filed a formal appeal with HLC in late June 2018. While David Harpool and I have not been able to identify any communications with HLC during the interval from late February to late May 2018, as I mentioned during our call, it is possible that during this time period there may have been verbal communications about the HLC problem between DCEH executives and senior officials at the Department, who, in turn, might have had communications with representatives of HLC. Regards, Ron

Ronald L. Holt
Attorney

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
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ATTACHMENT "Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

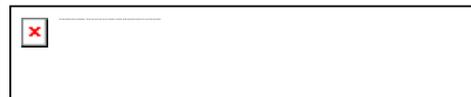
Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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ATTACHMENT "Peterson 2-24-18 Email to Holt.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

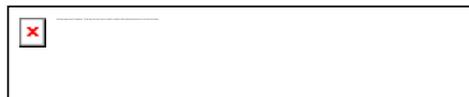
Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); [REDACTED]; David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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Ronald L. Holt

From: Anthea Sweeney <[REDACTED]>
Sent: Wednesday, May 30, 2018 3:14 PM
To: Ronald L. Holt; David Harpool; Monday, Elden; Ramey, Jennifer A.; byohe; [REDACTED]
Cc: Barbara Gellman-Danley; Andrew Lootens-White; Eric Martin; Jim Meyer; Michael Seuring; Mary E. Kohart
Subject: Re: The Illinois Institute of Art and The Art Instiute of Colorado
Attachments: HLC Response to EDMC Letter of Intent to Appeal - May 30 2018.pdf
Importance: High

Dear All,

Attached is HLC's response to your recent correspondence received on May 21, 2018. Thank you.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, May 21, 2018 8:24 AM
To: Barbara Gellman-Danley; Anthea Sweeney
Cc: [REDACTED]; David Harpool; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: The Illinois Institute of Art and The Art Instiute of Colorado

Dear President Gellman-Danley and Vice President Sweeney:

Attached please find a letter from Dr. David Harpool and me sent on behalf of our clients, The Illinois Art Institute and The Art Institute of Colorado. We have copied Mary Kohart, whom we understand to be outside counsel for HLC.

Regards, Ron Holt

Ronald L. Holt, Attorney
[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]

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230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

May 30, 2018

VIA ELECTRONIC MAIL

Ronald L. Holt, Esq.
David Harpool, Esq.
Rouse Frets Gentile Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106

Messrs. Holt and Harpool:

I am writing on behalf of the Higher Learning Commission (HLC) in response to your letter dated May 21, 2018 on behalf of Art Institute of Colorado and Illinois Institute of Art (“the Institutes”) in which you inquire about HLC’s Appeal process. HLC has reviewed your request and will proceed to convene an Appeals Panel to hear the Institutes’ appeal in accordance with the Commission’s Appeal Procedures document which is enclosed.

We believe in the integrity of our Appeals process and we will work to develop a timeline that brings swift resolution to this matter. In order for specific dates to be determined however, an Appellate Document on behalf of the Institutes must be provided in accordance with the enclosed Appeal Procedures document as soon as possible. (A single Appellate Document may be filed.) As an overview of the timeline, HLC will respond to the Appellate Document no later than 4 weeks from the date of receipt, after which the Institutes may provide, at their option, a rebuttal to HLC’s response within two weeks. Based on the time needed for an Appeals Panel to review the materials, we anticipate a hearing could proceed under these assumptions as early as August with final resolution to follow. Commission Staff will then provide an update to the Board of Trustees of the Higher Learning Commission at its November 2018 meeting.

Pending the outcome of the Institutes’ appeal of the November 2017 Board action, certain review activities related to the Institutes which were anticipated to occur in the interim will be suspended immediately. Specifically, the Commission’s ongoing review of interim reports which had been required every 90 days by the HLC Board’s action letter of November 16, 2017 will be suspended; the Institutes will not be required to provide any additional 90-day reports pending the final outcome of the appeal. Likewise, HLC’s review of the Institutes’ respective Eligibility Filings submitted on February 1, 2018 will be suspended.

In its November 16, 2017 action letter, however, the HLC Board also required a focused visit to “ascertain the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.” Because the timing of this particular evaluation is intended to satisfy the requirements of Title 34 of the Code of Federal Regulations, Section 602.24(b) following approval

HLC-DCEH-014670

Holt and Harpool, May 30, 2018 2

of a Change of Ownership, HLC is not able to suspend this focused visit on the basis of a pending appeal. Therefore, Commission staff will continue preparations to finalize arrangements and will continue to communicate with the institutions accordingly.

Except as otherwise specifically limited by the Appeals Procedure document, routine HLC activities will continue without interruption. Thank you in advance for your cooperation. If you have questions concerning this letter, please feel free to contact me directly at [REDACTED] or 312-881-8128.

Best Regards,



Anthea M. Sweeney
Vice President for Legal and Governmental Affairs

Enc.: HLC Appeals Procedure

Cc: Elden Monday, Interim President, Art Institute of Colorado
Dr. Ben Yohe, Accreditation Liaison Officer, Art Institute of Colorado
Jennifer Ramey, President, Illinois Institute of Art
Deann Surdo, Accreditation Liaison Officer, Illinois Institute of Art
Dr. Barbara Gellman-Danley, President, Higher Learning Commission
Executive Leadership Team, Higher Learning Commission

EXHIBIT 3.4, INCLUDING ATTACHMENTS

Huston, John

From: Ronald L. Holt <[REDACTED]>
Sent: Thursday, December 12, 2019 4:48 PM
To: Huston, John
Cc: Cox, Jack; King, Robert
Subject: RE: HLC Letter
Attachments: Barton 7-3-18 Email to Holt re Conversation with DOE re HLC Retro Accreditation.pdf; Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf; DCEH Letter of Appeal_HLC_Final_6_27_2018.pdf

Hi John, I have a copy of the June 27, 2018 email message (attached) sent by Chris Richardson, then DECH General Counsel, to convey Brent Richardson's appeal letter to HLC. But I do not have a copy of any email acknowledgement that DCEH may have received from HLC. I also do not know what subsequent email, phone or other communications HLC may have had with DCEH executives, as I was not party to any such communications and they were not forwarded to me. I was made aware, through a July 3, 2018 email message from Randy Barton, DCEH Board Chairman, that he had heard that officials at the U.S. Department of Education had discussed this matter with senior management at HLC and there apparently then was a belief by the Department's officials that HLC was going to reverse its position on the 4 institutions that DCEH had acquired from EDMC and reinstate their accreditation retroactive to the January 19, 2018 closing by DECH on the purchase from EDMC of the 4 schools (the July 3, 2018 email is attached; while originally privileged, somebody earlier this year, without the knowledge of approval of DCEH's Receiver or me, disclosed it to Congressman Scott's Committee, whose staff provided a copy of it to a NY Times reporter, who later quoted it in a late July story about DCEH's collapse; so the email is no longer privileged). But, as we now know, HLC apparently reversed course and never carried out the reinstatement. The former DCEH executives who most likely would have had subsequent communications with HLC, following submission of the June 27, 2018 appeal letter, were Brent Richardson and Shelly Murphy and possibly also Randy Barton. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Huston, John <[REDACTED]>
Sent: Thursday, December 12, 2019 2:38 PM
To: Ronald L. Holt <[REDACTED]>

Cc: Cox, Jack <[REDACTED]>; King, Robert <[REDACTED]>
Subject: RE: HLC Letter

Hi Mr. Holt,

Thank you for this information. Would you be able to forward the email that was sent to HLC on June 27, 2018 delivering the appeal? Did they acknowledge receipt of the appeal or otherwise follow up to process the appeal?

Regards,

--
John Huston
Office of Postsecondary Education
U.S. Department of Education
[REDACTED]

From: Cox, Jack <[REDACTED]>
Sent: Thursday, December 12, 2019 3:29 PM
To: Huston, John <[REDACTED]>
Subject: FW: HLC Letter

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM

To: [REDACTED]; [REDACTED]; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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Ronald L. Holt

From: Randall Barton <[REDACTED]>
Sent: Tuesday, July 3, 2018 4:37 PM
To: Ronald L. Holt
Cc: Crowley, John E. ([REDACTED]); David Harpool; Garrett, Chad ([REDACTED]); [REDACTED]; [REDACTED]; [REDACTED]
Subject: Re: HLC - Any News?

We just got off the phone with DOE. It appears HLC is in sync with retro accreditation and teach out plans. Dianne at all 3 accreditors on and they will all agree to one plan with Department blessing and hopefully funding from the LOC.

On Tue, Jul 3, 2018 at 2:27 PM Ronald L. Holt <[REDACTED]> wrote:

Hi All, based on the media stories, I am sure you are quite busy dealing with lender issues and other ramifications of moving forward on plans to close 30 campuses. My only purpose in writing is to ask whether we have heard from DOE about its efforts to get HLC to accept our proposal to reinstate accreditation for ILIA and AIC? Ron

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



**Rouse Frets
Gentile Rhodes, LLC**

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--

Randall K. Barton

Mobile: [REDACTED]

ATTACHMENT "Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf"

(HLC contends it never received this email as it was sent to the incorrect email address)

Ronald L. Holt

From: [REDACTED]
Sent: Wednesday, June 27, 2018 6:49 PM
To: Ronald L. Holt; David Harpool
Subject: FW: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

FYI

From: [REDACTED]
Sent: Wednesday, June 27, 2018 4:48 PM
To: 'bgdanley@hlcommission.org'; 'asweeney@hlcommission.org'; '[REDACTED]'
Cc: [REDACTED]; Murphy, Shelly M. ([REDACTED])
Subject: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art

President Gellman-Danley:

Please find attached a follow up communication based on the call between DCEH and the commission yesterday. Feel free to reach out to Brent directly with any questions or to David Harpool at Rouse Frets.

Regards

Chris Richardson
General Counsel

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EXHIBIT 4

Huston, John

From: Karen Peterson <[REDACTED]>
Sent: Thursday, December 26, 2019 3:52 PM
To: King, Robert
Cc: Huston, John
Subject: Re: HLC/Dream Center transaction

Bob: Thank you for our conversation on Monday. I am writing to confirm that you have accurately described my understanding of the transaction based on my long familiarity as HLC Vice President (then Executive Vice President until 3/2018) of Legal & Governmental Affairs with oversight of Change of Control and policy development/implementation and based on the understanding of the HLC Board that adopted the Change of Control policies in 2009 and 2010. You correctly indicated in our conversation, and I agree, that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions identified in your e-mail. The purpose of the Change of Control Candidacy was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC Criteria for Accreditation and other policies of the Commission going forward because at the time of these actions there was not certainty in this regard and, as you indicated, the November 2017 letter outlining the proposed action identified significant compliance issues arising from the evaluation of the proposed transaction. As I indicated, I was not privy to conversations in November and December 2017 between HLC staff and DCEH personnel to ensure all parties had a correct understanding of either the status or the next steps from a practical implementation perspective nor do I know enough about those communications to understand whether DCEH personnel achieved sufficient understanding to consent meaningfully to the action as they attempted to do in a letter addressed to HLC in January 2018 or to provide meaningful and accurate disclosures to current and prospective students.

Please let me know if you have additional questions and the next steps in your process.

Best regards, Karen

Karen Peterson Solinski

On Monday, December 23, 2019 01:19:15 PM CST, King, Robert <[REDACTED]> wrote:

Karen: thank you, once again, for making the time to speak with us, and for filling in information we think vital to our analysis of HLC managing the request to approve the sale of a large group of educational institutions from a for profit ownership group to a non-profit group called Dream Center Education Holdings (DCEH).

I wanted to take this moment to once again confirm your understanding of the transaction with respect to the question of the accreditation of the two institutions located within the HLC jurisdiction. We understood you to say that both institutions remained accredited during a six month period following the sale during which the HLC would monitor the actions and behavior of DCEH, ascertain whether they could remain accredited (because they were progressing toward meeting each of the items that had raised "concerns" during the site visits in the fall of 2017, and then outlined in the November 16, 2017 letter), or in the alternative, to withdraw their accreditation (because they were not meeting the expectations set out in the November 16 letter).

Could you either confirm that I have accurately described your understanding as communicated to us this morning, or if not, please correct what I have written in a response email. Thanks so much, Bob

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Exhibit 2



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

May 1, 2020

VIA EMAIL

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604

Dr. Gellman-Danley:

The U.S. Department of Education (Department) received the letter from the Higher Learning Commission (herein referred to as “HLC” or “the Agency”) dated March 20, 2020, responding to the Department’s January 31, 2020 letter to HLC. The Department is disappointed that HLC contested our findings rather than working collaboratively to help the students of the former Art Institute of Colorado (OPEID: 02078900)¹ and Illinois Institute of Art (OPEID: 01258400)² (collectively the “Institutions”).

HLC asserted that the Department’s January 31, 2020 letter is procedurally deficient, as it does not include a recommendation regarding what action to take with respect to recognition. The Department hoped that HLC would be willing to cure its noncompliance and act to remedy the lasting impact its actions have had on the Institutions’ former students. However, HLC’s letter and April 23, 2020 decision by the HLC Board make it clear that HLC is unwilling to take steps to help impacted students.

The Department staff’s proposed recommendation is to continue the agency’s recognition as a nationally recognized accrediting agency at this time, and require the agency to come into compliance within 12 months with 34 C.F.R. §§ 602.18(c), 34 C.F.R. 602.25(a), 602.25(d),

¹ The Art Institute of Colorado (OPEID: 02078900), including the campuses located at: 1200 Lincoln Street, Denver CO (Extension: 02078900); and 675 South Broadway Street, Denver, CO (Extension: 02078904).

² The Illinois Institute of Art (OPEID: 01258400), including the campuses located at: 350 North Orleans Street, Suite 136-L, Chicago, IL (Extension: 01258400); 1000 Plaza Drive, Suite 100, Schaumburg, IL (Extension: 01258401); and 28175 Cabot Drive, Novi, MI (Extension: 01258405).

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The Department of Education’s mission is to promote student achievement and preparation for global Competitiveness by fostering educational excellence and ensuring equal access.

HLC-DCEH-014680

Dr. Barbara Gellman-Danley, President
Higher Learning Commission
April __ 2020
Page 2

602.25(e), and 602.25(f), and to submit a compliance report due 30 days thereafter that demonstrates the agency's compliance.

Department staff also proposes a recommendation limiting HLC's current recognition such that it may not accredit additional institutions of higher education that do not currently hold accreditation or preaccreditation status with the agency for the duration of the 12 month period pending a compliance determination by the Senior Department Official.

Finally, the staff proposes to recommend that the compliance report include details on HLC's efforts to mitigate the negative effects of HLC's procedurally erroneous decision to withdraw accreditation from the two institutions set forth above on students, especially with regard to the status of academic credits earned at the Institutions during calendar year 2018.

In the interest of providing due process to the agency, HLC has 30 days to respond to this letter, although the Department notes that it does not believe regulations require us to provide this courtesy. The Department will consider this letter in conjunction with the January 31, 2020 letter collectively as the draft staff analysis for the purposes of 34 CFR § 602.33(c)(1). The Department will evaluate HLC's March 20, 2020 letter and its response to this letter when finalizing our analysis.

HLC also contended that the Department has not provided HLC with all supporting documentation used in writing the draft analysis. Specially, HLC contended that the Department must provide HLC with a transcript of a December 23, 2019 interview between Robert King, Assistant Secretary for Postsecondary Education, and Karen Solinski. The Department did not create a transcript, nor did it record that interview. However, the Department did not rely on what was said orally in that interview. Instead, we relied exclusively on Ms. Solinski's December 26, 2019 email, which the Department provided to HLC as *Exhibit 4* in the January 31, 2019 letter.

If you have any questions about this letter, please contact Herman Bounds, Director of Accreditation, at (202) 453-6128 or Herman.Bounds@ed.gov.

Sincerely,

Annmarie Weisman
Senior Director,
Policy Development, Analysis, and Accreditation Services

Exhibit 3



230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

March 20, 2020

VIA ELECTRONIC MAIL

Dr. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Lynn.mahaffie@ed.gov

Dear Dr. Mahaffie:

This letter is in response to your letter dated January 31, 2020, in which the U.S. Department of Education (the “Department”) notified the Higher Learning Commission (“HLC” or the “Commission”) that it conducted a review related to the accreditation statuses of the Art Institute of Colorado and the Illinois Institute of Art (collectively, the “Institutes”) and, pursuant to 34 C.F.R. § 602.33(c), had found HLC in “noncompliance” with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f), and with HLC’s “Accredited to Candidate Status” policy INST.E.50.010, which no longer is in effect. The Department initially provided HLC with 30 days to respond to these findings¹ and requested that HLC provide a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future, and

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

As described herein, HLC firmly disputes the Department’s allegations of noncompliance and respectfully requests, for the reasons stated below, that the Department close this inquiry with no further action.

¹ HLC originally requested a 30-day extension of time; the Department granted an eight-day extension. HLC understands from discussions with Department officials that only an eight-day extension was permissible, given the Department’s concern relating to the “upcoming” NACIQI meeting—sometime in July—at which this issue may be considered. Upon a subsequent request by HLC for an additional two-week extension, necessitated by HLC’s understanding that a third-party complaint was filed in federal court by the Dream Center Foundation (“DCF”) against HLC in *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.), the Department granted HLC until March 23, 2020 to respond to these findings. *See also* footnote 82.

HLC-DCEH-014683

I. THE DEPARTMENT'S PROCEDURAL DEFICIENCIES HAVE MATERIAL CONSEQUENCES FOR HLC AND MUST FIRST BE CURED

As a preliminary matter, the Department's actions fail to conform with the procedures expressly and plainly outlined in its regulations, resulting in procedural errors that materially, and negatively, hinder HLC's ability to meaningfully respond to the January 31, 2020 letter. To explain, as cited by the Department in the third footnote of its January 31, 2020 letter, federal regulations direct the Department, upon determination that "one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria," to prepare a "written draft analysis" that "includes a recommendation regarding what action to take with respect to recognition." The Department is then directed to send this draft analysis to the agency with "any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation to the agency."² The accrediting agency is then provided an opportunity to respond in writing to the draft analysis and proposed recognition recommendation.³

The Department's January 31, 2020 letter (hereinafter, the "Draft Analysis") identifies areas of alleged noncompliance, but critically, does *not* provide HLC with a specific recognition recommendation. Furthermore, the Department has failed to provide HLC with all supporting documentation relevant to its Draft Analysis. These procedural deficiencies are addressed, in turn.

As the Department is aware, HLC accredits institutions of higher education in 19 states, including Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming. As of February 28, 2020, HLC has granted accredited status to 973 colleges and universities and preaccredited status to seven institutions. Institutions accredited by HLC range from some of the country's most recognized premier research universities to a number of mission-based for-profit institutions, as well as large and small private non-profit and for-profit institutions. Other HLC-accredited institutions include a wide range of community colleges, public institutions within state university systems, tribal colleges, HBCUs, and faith-based institutions. The total student population of the institutions accredited by HLC numbers well over 5 million students, including over 375,000 students at for-profit institutions.

Given the wide range of potential consequences to HLC and its membership under the cited regulations—ranging from compliance reporting to recognition revocation—HLC must be provided notice of what recognition recommendations are under consideration, if any.⁴ As recognized by the regulations, in requiring the Department to provide such notice, this information is not superficial, but of material consequence.⁵ Indeed, such information provides

² 34 C.F.R. § 602.33(c)(1) (emphasis added).

³ 34 C.F.R. § 602.33(c)(2), (c)(3).

⁴ Indeed, under the Administrative Procedure Act, the Department is prohibited from taking action, "without observance of procedure required by law." 5 U.S.C. § 706.

⁵ See Proposed Rule, *Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary's Recognition of Accrediting Agencies*, 74 FR 39515 (Aug. 6, 2009) (codified at 34 C.F.R. § 602.33)

necessary context as to the extent of the Department's concerns and the possible consequences facing HLC, as well as the nearly 1,000 member-institutions and over 5 million students who could be affected by the Department's intended action. It is not only in violation of federal regulations, but antithetical to the principles of due process, to require HLC to respond to the Draft Analysis without any notice of what action the Department is considering taking against it.⁶

To the second procedural deficiency, the Department has not provided to HLC "all supporting documentation" with its Draft Analysis as required by the regulations.⁷ As part of its inquiry, and as noted in the Draft Analysis, the Department interviewed Mr. Ron Holt, outside legal counsel for the Institutes and Dream Center Education Holdings, their parent company; as well as Ms. Karen Peterson Solinski, former Executive Vice President of Legal and Governmental Affairs at HLC. The Department referenced statements, issues, and emails involving Mr. Holt and Ms. Solinski multiple times in its Draft Analysis and the accompanying materials. While the Department provided HLC with the transcript of its interview with Mr. Holt,⁸ it failed to provide the transcript of its interview with Ms. Solinski. Presumably, any such interview would have addressed the issues, discussions, and emails referenced in multiple places throughout the Department's Draft Analysis. In failing to provide "all supporting documentation," including this transcript, the Department's review under 34 C.F.R. § 602.33 fails to provide yet another fundamental and consequential component of due process and denies HLC the opportunity to know the facts that underlie the Department's findings.

For these reasons, if the Department intends to proceed with any action that may affect HLC's recognition status or result in compliance reports, the Department must first cure these deficiencies and follow the unambiguous letter of the regulations. To do so, the Department must reissue its Draft Analysis, including both its specific recommendation and the transcript from Ms. Solinski's interview—as well as any other relevant information the Department failed to provide—and thereafter allow HLC at least 30 days to respond.

Despite these procedural deficiencies, and in the spirit of cooperation and transparency with the Department, as well as out of concern that any failure to do so will unfairly prejudice HLC in this process, HLC responds to, and wholly disputes, the concerns raised in the Draft Analysis, which cannot stand unrefuted. HLC's response to the substantive issues raised by the Department should not be construed as a waiver of any procedural arguments. In the event the Department

(stating that, in response to concerns by non-federal negotiators in negotiated rulemaking that "the Department not act arbitrarily and provide adequate notice to and communication with the agency when conducting a review during an agency's period of recognition..."), the Department added language to then-proposed 34 C.F.R. § 602.33 "to reflect the consultation between Department staff and the agency, and the provision to the agency of the documentation concerning the inquiry").

⁶ HLC acknowledges that new regulations scheduled to take effect July 1, 2020 will no longer require the Department to provide a recognition recommendation with its Draft Analysis. *See* Final Rules, *The Secretary's Recognition of Accrediting Agencies*, 84 Fed. Reg. 58928 (Nov. 1, 2019) (to be codified at 34 C.F.R. § 602.33). It is questionable whether failing to provide an accrediting agency with notice of the potential action being considered against it comports with the principles and legal requirements of due process; nonetheless, this new approach is not applicable to the Draft Analysis in question, which clearly predates the effective date of the new regulations.

⁷ *See* 34 C.F.R. § 602.33(c)(2).

⁸ *See* Draft Analysis, Exhibit 2.

reissues the Draft Analysis, HLC reserves the right to submit a written response in accordance with 34 C.F.R. § 602.33(c)(3).⁹

II. RELEVANT HISTORY

As you are aware, the Institutes in question have a troubled history, yet showed signs of meaningful progress over time. The Illinois Institute of Art was first accredited by HLC in 2004, and the Art Institute of Colorado in 2008. At the time, the Institutes were owned by The Art Institutes International II, LLC (the “Art Institutes System”), a wholly-owned subsidiary of Education Management Corporation (“EDMC”), a for-profit company that, at one time, operated over 50 post-secondary educational institutions. The Illinois Institute of Art joined the Art Institutes System in 1995; the Art Institute of Colorado had joined decades earlier, in 1975.¹⁰ Neither of the Institutes had a seamless accreditation history with HLC, but both demonstrated continued improvement in support of their ongoing accreditation during that time, as demonstrated by various interim reports, among other things.

For example, following interim report requirements as part of its initial grant of accreditation in 2009, and then again in 2010 related to concerns over enrollment, the Art Institute of Colorado was put on the public sanction of Notice in June 2013 related to concerns over faculty workload, limited capacity to assess institutional effectiveness, and limited results in implementing a faculty development system. As a result of these challenges, the Board determined that the Art Institute of Colorado was at risk of non-compliance with Criteria Three, Four and Five of the HLC Criteria for Accreditation. In response, it made sufficient progress in these areas to have this sanction removed in February 2015.

Similarly, the Illinois Institute of Art’s initial accreditation required monitoring in the form of focused visits on assessment of student learning, financial organization, and workload impact. In addition, due to enrollment concerns, HLC also required interim reports between 2010 and 2015. Following its comprehensive evaluation, HLC ultimately imposed the sanction of Notice in

⁹ By letter dated October 24, 2019, the Department requested certain information from HLC. HLC responded in writing on November 13, 2019 and provided numerous documents to the Department. HLC-OPE 1-15429 were provided for the Department’s review via separate link and password to Dr. Mahaffie and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department. The Department then requested additional information, which HLC provided in writing on January 13, 2020. HLC also supplemented its production to the Department at that time, with links provided to [HLC-OPE 15430-15433](#); [HLC-OPE 15434](#); and [HLC-OPE 15435-15440](#). This response to the Department’s Draft Analysis incorporates all responses and documents previously provided to the Department about this matter. Documents previously provided to the Department that are cited to in this response have also been hyperlinked herein for the Department’s convenience. Additionally, HLC supplements its production with [HLC-PET 1-2](#); [HLC-PET 3-9](#); [HLC-PET 10-34](#); [HLC-PET 35](#); and [HLC-SUPP 1-8](#). [HLC-PET 1-2](#) is an April 13, 2017 communication from the Department to HLC regarding HLC’s petition for continued recognition, and [HLC-PET 3-9](#) and [HLC-PET 10-34](#) had been provided to the Department on June 8, 2017 pursuant to HLC’s petition for continued recognition. [HLC-PET 35](#) is the Department’s May 9, 2018 letter informing HLC that HLC’s federal recognition has been renewed for a five-year period. [HLC-SUPP 1-8](#) is a document containing relevant HLC procedures that had not been previously provided to the Department. The HLC-PET and HLC-SUPP documents have been hyperlinked in this response and are available for download through that link. The password to access the linked documents has been provided to Dr. Mahaffie and Mr. Bounds via email.

¹⁰ The Art Institute of Colorado and the Illinois Institute of Art were the only institutions in the Art Institutes System that were accredited by HLC.

November 2015. This sanction related to HLC's concerns over the integrity of its student disclosures, student support, institutional resources, strategic planning, and institutional improvement. Despite these concerns, the Illinois Institute of Art demonstrated sufficient progress by November 2017, thereby resulting in the removal of the sanction (with some noted concerns from the Board).

Undeniably, the Institutes both had imperfect accreditation histories, and in the time immediately preceding their change of control application, had been facing declining enrollment and financial concerns, particularly as related to their parent company. Indeed, EDMC had been facing ongoing financial issues and significant litigation, including an investigation by the attorneys general of 39 states and the District of Columbia that resulted in a Consent Judgment against EDMC in 2015.¹¹ As a result, EDMC's subsidiaries, including the Institutes, were required to significantly transform certain aspects of their internal operations. Notably, it was these "financial and reputational burdens" which, according to the Institutes themselves, served as the impetus for EDMC to seek a non-profit buyer for the Art Institutes System, as well as the other for-profit higher education systems then-owned by EDMC.¹² It was ultimately this intended sale which led to the Institutes' change of control application now in question.

The Institutes' Change of Control Application

On May 1, 2017, the Institutes submitted a change of control application to HLC. This application informed HLC that EDMC had entered into an asset purchase agreement on February 24, 2017 for the purpose of the Dream Center Foundation ("DCF") acquiring the Institutes and other EDMC-owned institutions. An EDMC representative had previously met with Dr. Anthea Sweeney, who was HLC's liaison to the Institutes at the time, to discuss this proposed transaction in a preliminary fashion. Dr. Sweeney directed EDMC to file a joint change of control application on behalf of the Institutes by May 1, 2017.

¹¹ The Consent Judgment required EDMC to significantly reform its recruitment and enrollment practices, including mandating additional disclosures to students, prohibiting enrollment in unaccredited programs, and extending the period when new students could withdraw with no financial obligation. EDMC was also required to forgive \$102.8 million in outstanding loan debt held by more than 80,000 former students nationwide and submit to the independent monitoring of a former U.S. Associate Attorney General for a period of three years. *See* New York State Office of the Attorney General, Press Release Archives, *A.G. Schneiderman Announces \$102.8 Million Settlement with EDMC to Forgive Student Loans and Reform Recruiting and Enrollment Practices* (Nov. 16, 2015), <https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-1028-million-settlement-edmc-forgive-student-loans-and>; Iowa Dep't of Justice, Office of the Attorney General, *EDMC to Change Practices, Forgive Loans through Agreement with Miller and State Attorneys General* (Nov. 16, 2015), <https://www.iowaattorneygeneral.gov/newsroom/edmc-to-change-practices-forgive-loans-through-agreement-with-miller-and-state-attorneys-general>; Office of the Attorney General of the State of Ohio, *Attorney General DeWine Announces \$10.6 Million in Ohio Student Loans to be Forgiven as Part of Multistate Settlement with For-Profit College Provider* (Nov. 16, 2015), [https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-\\$10-6-Million-in](https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-$10-6-Million-in); Maryland Office of the Attorney General, *AG Frosh: \$1.4 Million in Loans Forgiven For Nearly 1,000 Maryland Students* (Nov. 16, 2015), <http://www.marylandattorneygeneral.gov/Press/2015/111615.pdf>.

¹² The quoted language was in the Institutes' change of control application, which was previously produced to the Department as HLC-OPE 2865-5206 (at HLC-OPE 2867). That application is not linked again here due to the size of the document.

As the Department is aware, HLC requires institutions to submit a change of control application for the purposes of ensuring that, in layman's terms, the proposed change will not negatively impact students, and that the institution, under new governance and a new corporate structure, will be administratively and financially capable of continuing to meet HLC's Criteria for Accreditation. HLC does not approve the actual transaction, but rather approves a change of control application based on, among other factors, whether there is a substantial likelihood that the institution will remain in compliance with HLC's Criteria for Accreditation and Eligibility Requirements post-transaction. At that time, institutions that proceeded with a change of control without HLC approval were subject to withdrawal of accreditation.

The then-effective HLC policy governing this process, INST.B.20.040, "Change of Control, Structure or Organization," required that an institution undergoing a change of control "demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that the approval... is in the best interest of the Commission."¹³ INST.B.20.040 also permitted the HLC Board to approve a change of control "subject to conditions on the institution or its accreditation." Relatedly, then-applicable HLC policy INST.F.20.070, "Processes for Seeking Approval of a Change of Control," articulated the precise evaluative framework the Board would apply in considering a change of control application.¹⁴

The application for a change of control proposed that Dream Center Education Holdings ("DCEH"), a non-profit company of DCF, and of which DCF was the sole member, would purchase the Institutes from their existing corporate parent EDMC. According to the Institutes' application, the intent of this transaction was for the Institutes to "become 501(c)(3) tax exempt non-profit institutions," "provide missing reputational and financial stability," and "help [the Illinois Institute of Art] to resolve all of the issues that led to the Commission placing it on Notice on November 12, 2015."¹⁵

As part of its review of the proposed transaction, HLC conducted a site visit in August 2017. Thereafter, EDMC presented to HLC a letter addressed to EDMC from the Department dated September 12, 2017 that provided that the Department had preliminarily concluded that, "it does not see any impediment to... its request for non-profit institution status."¹⁶ Based on this letter, HLC concluded that the Department "confirmed the likelihood that Title IV would be extended to the institutions after they converted to non-profit status as a result of acquisition by the DCEH and that the institutions appeared to meet the Department's definition of non-profit."¹⁷

On October 3, 2017, HLC provided the Institutes with a Staff Summary Report and Fact Finding Visit Report.¹⁸ This report noted HLC's numerous concerns with the Institutes' ability to comply with HLC's Eligibility Requirements and Criteria for Accreditation after the transaction. In

¹³ [HLC-OPE 15239-15242](#)

¹⁴ [HLC-OPE 15268-15275](#)

¹⁵ See footnote 12.

¹⁶ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039); see also [HLC-OPE 7081-7106](#)

¹⁷ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039)

¹⁸ [HLC-OPE 7030-7080](#)

particular, HLC found that there was substantial likelihood based on available evidence that, due to financial challenges associated with declining enrollment, the HLC Eligibility Requirement of *stability* would not be met after the proposed transaction.¹⁹ Further, HLC determined that, due to EDMC's record of "inappropriate, unethical or untruthful dealings with students," as indicated by the multi-state attorneys general investigation, the Eligibility Requirement of *integrity of business and academic operations* also would not be met; likewise, the Eligibility Requirement of *planning* with regard to current and former business and academic operations would also not be met.²⁰ Although HLC noted that the Institutes had made sufficient progress in resolving the underlying causes giving rise to the sanctions of Notice, ultimately the Eligibility Requirement related to the *accreditation record* would also not be met.²¹ Finally, HLC found that certain Core Components of the HLC Criteria for Accreditation would be met with concerns: Core Components 1.D (focus on public good); 2.A (policies and procedures ensure integrity); 2.B (clear communications with students and prospective students); 2.C (clarity of governing board structure); 4.A (educational quality based on student outcomes); 5.A (financial resources); and 5.C (institutional planning).²²

Despite these failings and concerns, HLC found there was a substantial likelihood that numerous other Eligibility Requirements and Core Components would be met after the transaction. In particular, HLC found that the Institutes employed sufficient qualified faculty and academic personnel and had sufficient learning resources and support services for students and therefore, anticipated this would remain the case after the transaction.

Conditional Approval of Change of Control Application Offered to Institutes (November 2017)

On November 2-3, 2017, the HLC Board approved the Institutes' change of control application *with conditions*, one of which was that the Institutes "undergo a period of candidacy known as Change of Control Candidacy." The Board's approval was aligned with HLC policies and procedures. As noted above, INST.B.20.040 provided that the Board may approve a change of control application "subject to conditions on the institution or its accreditation." The Board could, as it did here, condition its approval upon the Institutes' acceptance of a period of candidacy during which they would address several deficiencies that gave rise to HLC's concern for the Institutes' ability to meet various HLC requirements after the transaction closed. The then-effective procedures for INST.B.20.040 provided that an approval *with conditions* was not appealable.²³

In contrast, the procedures provided for an appeal of decisions where, in appropriate cases as an alternative to denial, candidacy was imposed *because the proposed transaction forms a new institution requiring a period of candidacy*. While then-effective INST.E.50.010 permitted the Board to move an institution from accredited status to candidate status subsequent to the close of a change of control, this policy was not applicable when an institution undergoing a change of control voluntarily agreed to accept the condition of candidacy status, as was the case here.

¹⁹ *Id.* (at HLC-OPE 7043)

²⁰ *Id.* (at HLC-OPE 7047-7048)

²¹ *Id.* (at HLC-OPE 7050)

²² *Id.* (at HLC-OPE 7051-7065)

²³ [HLC-SUPP 1-8](#)

The Board's approval was officially communicated to the Institutes in a joint action letter dated November 16, 2017 (the "Joint Action Letter").²⁴ In this letter, HLC explained that the Board "found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for "preaccreditation status" identified as "Change of Control Candidate for Accreditation[.]"²⁵ The conditions set forth by the Board included that the Institutes:

- (1) undergo a period of candidacy known as a Change of Control Candidacy;
- (2) submit an interim report every 90 days;
- (3) submit Eligibility Filings no later than February 1, 2018;
- (4) host a focused visit within six months of the transaction date; and
- (5) host a second focused site visit no later than June 2019.²⁶

The Institutes were notified that "[i]f at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall *reinstate accreditation* and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation..."²⁷ The Institutes were given 14 days to accept the conditions in writing, or the approval would become null and void, meaning the application would be deemed denied. A denied application does not alter an institution's accredited status. If the conditions were accepted, the Institutes were also required to close the transaction within 30 days from the date of the Board's approval as is consistent with federal regulations, or to notify HLC as soon as possible so alternative arrangements could be identified to ensure the Board's approval remained in effect.

Over the next several weeks, the Institutes and HLC discussed the conditions in the Joint Action Letter. On November 29, 2017, the Institutes jointly wrote to HLC, stating "We understand that both [the Art Institute of Colorado] and [Illinois Institute of Art] will undergo a period of candidacy beginning with the close of the transaction." Further, the Institutes requested that: (a) the deadline for the Eligibility Filings be extended from February 1, 2018 to March 1, 2018; (b) the interim report be allowed to be submitted as a single joint report; and (c) that the transaction closure deadline be extended to January 15.²⁸ This letter also provided—with reference to the required interim reports and the Consent Judgment—that all periodic reports from the Settlement Administrator would be delivered, but that the Institutes "d[id] not believe any further reports would be any more meaningful." In the Joint Action Letter, HLC had set forth the condition that the interim reports were to include "[a]n update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent

²⁴ [HLC-OPE 7726-7732](#)

²⁵ *Id.* (emphasis added)

²⁶ In setting forth this schedule, the Board staggered the deliverables to allow the Institutes to demonstrate compliance in a reasonable time and manner, rather than setting an arbitrary deadline by which they would have to show compliance all at once.

²⁷ *Id.* (emphasis added)

²⁸ See [HLC-OPE 7740-7741](#); see also [HLC-OPE 7738-7739](#) (email sent earlier that same day requesting an extension of the date by which the closing may occur)

third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator."²⁹

On December 1, 2017, then Executive Vice President for Legal and Governmental Affairs at HLC, Karen Solinski, spoke with EDMC's general counsel, DCEH's general counsel, and DCEH's outside counsel, Ron Holt, regarding these requests for changes to the conditions. Mr. Holt emailed Ms. Solinski that evening, summarizing that they had spoken about the transaction closing and stating that the letter sent "concerning the conditions set forth in HLC's November 16 letter... largely provides our understanding of the conditions."³⁰ Thereafter, Mr. Holt and Ms. Solinski exchanged emails regarding what financial information DCEH and DCF would need to include in the interim reports, including discussion over what financial information must be provided for the Institutes' parent and related entities in relation to the condition concerning monitoring of compliance under the Consent Judgment.³¹ DCF and DCEH requested that HLC accept the determination of the Settlement Administrator, then-expected in early 2019, and not require any additional third-party monitoring or audit processes.

HLC staff agreed to the Institutes' request for the non-substantive modification to the requirement of the interim reports such that quarterly financials would be provided within 45 days of the close of the quarter (rather than in each interim report provided every 90 days), but made clear that the requested modifications that were substantive in nature would require Board approval.³² In none of these discussions occurring between November 27 and December 22, 2017 did the Institutes request a modification to the condition of candidacy. The Institutes also did not raise any questions or concerns about the timeline for reinstatement of accreditation which, as outlined in the Joint Action Letter, would follow a series of successful focused site visits.

By letter received January 3, 2018, Brent Richardson, CEO for DCEH, acknowledged that HLC staff were able to make the non-substantive modification to the conditions, and requested once more that DCEH be excused from the condition of continued compliance with the Consent Judgment beyond the conclusion of the work of the Settlement Administrator.³³ This letter raised no concerns, questions, or requests related to the condition of candidacy or the reinstatement of accreditation. Subsequently, Dr. Sweeney emailed the Institutes reminding them that because they were requesting substantive modifications to some of the conditions, these requests would need to be brought to the Board for further consideration.³⁴ Dr. Sweeney also asked for a more formal indication as to whether the parties had *accepted* the Change of Control candidacy status.

²⁹ [HLC-OPE 7726-7732](#) (at HLC-OPE 7727)

³⁰ [HLC-OPE 7742-7761](#)

³¹ [HLC-OPE 7742-7761](#); [HLC-OPE 7742-7761](#)

³² [HLC-OPE 7742-7761](#)

³³ [HLC-OPE 7762](#)

³⁴ [HLC-OPE 15285-15287](#); *see also*, [HLC-OPE 7742-7761](#) (reminder sent on December 22, 2017)

Conditional Approval of Change of Control Accepted by Institutes (January 2018)

By letter dated January 4, 2018, the Institutes and DCEH formally accepted the Board's conditions for approval of the change of control application.³⁵ In this letter, the Institutes and DCEH noted that they accepted the conditions from the Joint Action Letter, as modified by the non-substantive revision set forth in the December 22, 2017 email between Ms. Solinski and Mr. Holt, and reiterated that the transfer had not closed within 30 days of the action letter. Despite previous discussions in which the Institutes had requested substantive modifications to some of the conditions (but not the condition of candidacy), the Institutes and DCEH decided not to pursue any of these requested modifications that required Board action, including not pursuing a modification to the condition of an audit process conducted by an independent third-party following the conclusion of the work of the Settlement Administrator under the Consent Judgment. This letter provided that the "details concerning implementation of third-party monitoring in 2019 can be provided later." The letter explicitly stated the Institutes "agree to accept Change of Control candidacy status set forth in the Higher Learning Commission's approval letter dated November 16, 2017," and provided that DCEH planned to close the transaction with EDMC no later than January 15, 2018.

As memorialized in an action letter dated January 12, 2018, the Board approved the Institutes' request for a later closing date, approved the requested non-substantive modification to the interim report condition, and again reiterated that the approval was subject to the condition of candidacy.³⁶ Specifically, the letter provided, "As you know, this approval is specifically subject to a Change of Control Candidacy, which is effective immediately upon the closing of the transaction." The letter further reiterated the significance of candidacy, stating,

Once confirmation of the transaction closing is received, the institutions will enter Change of Control Candidacy status, which will be effective on the date of the close of the transaction, and the Commission will issue a Public Disclosure Notice and provide copies of this action letter to the various external entities identified on this letter. As a reminder, any public announcement by the buyers about this action must include the information that any approval provided by the Commission was subject to the condition of the buyers accepting Change of Control Candidacy status for not less than six months up to a maximum of four years, and that the buyers have accepted the condition.

HLC also reminded the Institutes of the Obligations of Affiliation under INST.B.30.020 which require that an institution "portrays its accreditation status with the Commission clearly to the public." HLC informed the Institutes that they expected the Institutes "have properly notified their students of the acceptance of the Board's condition of Change of Control Candidacy and have clearly stated its impact on current and prospective students once the transaction closes."

³⁵ [HLC-OPE 7763-7764](#)

³⁶ [HLC-OPE 7769-7771](#)

HLC was informed on January 20, 2018 that the transaction between EDMC and DCEH had closed.³⁷ Upon closing, the Institutes' candidacy status became effective immediately. HLC issued a Public Disclosure Notice as of that date stating that the Institutes “have transitioned to being a candidate for accreditation after previously being accredited.”³⁸ Following the consummation of the transaction, HLC reminded the Institutes of their obligation to update their websites to show their preaccreditation status.³⁹

The Institutes Inquire about Condition of Candidacy (February 2018)

On February 2, 2018, attorneys Mr. Holt and Dr. David Harpool, outside counsel for the Institutes and DCEH, wrote to HLC that they “were shocked that the Commission placed the Institutions in candidacy status,” that they understood the Institutes to now be in a “pre-candidacy” status, and stated they were requesting an appeal.⁴⁰ HLC took prompt action that same day to update the Public Disclosure Notice which was designed to provide information about the process by which the accreditation could be reinstated in response to concerns raised in this letter about procedural language.⁴¹ HLC also responded to the letter on February 7, 2018 by reminding counsel that the Institutes voluntarily consented to candidacy status as outlined in the action letters related to HLC’s decision regarding the Institutes’ change of control application.⁴² HLC also explained that the Commission has no such status known as “pre-candidacy” status.

On February 23, 2018, Mr. Holt and Dr. Harpool again wrote to HLC.⁴³ In this letter, they wrote that, in determining whether they “could accept the conditions of the November 16, 2017 letter,” they had relied in good faith on an understanding that the Institutes would remain eligible for Title IV based on the Commission’s reference in the November 16, 2017 letter “to the institutions as being in ‘preaccreditation status.’” Mr. Holt and Dr. Harpool, expressing familiarity with the term, wrote that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.” They wrote to “confir[m]” from HLC that the Institutes: (1) were eligible for Title IV; (2) “remain accredited, in the status of Change of Control Candidate for Accreditation”; (3) “will receive an objective review for continued accreditation”; and (4) “will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.” They further stated that they hoped to avoid an appeal and possible litigation. This correspondence was subsequently referred to HLC's external

³⁷ [HLC-OPE 7776-7777](#); HLC was under the impression that the transaction had closed that day. HLC later learned that the transaction closed on January 19, 2018.

³⁸ [HLC-OPE 7780-7781](#); *see also* [HLC-OPE 7778-7779](#) (Public Disclosure Notice updated on February 2, 2018 to remove certain procedural language)

³⁹ [HLC-OPE 15292-15296](#)

⁴⁰ [HLC-OPE 7782-7783](#); Pursuant to HLC policy, there was also no appeal right for an application approved with conditions, as this was not an adverse action.

⁴¹ [HLC-OPE 7778-7779 \(February 2, 2018 update to the January 20, 2018 Public Disclosure Notice\)](#); *see also* [footnote 38](#).

⁴² [HLC-OPE 7784-7785](#)

⁴³ [HLC-OPE 7786-7787](#)

counsel to respond.⁴⁴ This letter confirmed that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status at the time they were determining whether to accept the conditions from November 16, 2017 through January 4, 2018.

HLC Granted the Institutes an Opportunity to Appeal (May 2018)

Over the coming months, the Institutes and HLC continued to communicate on a regular basis regarding all manner of normal accreditation activities, from the submission of required Eligibility Filings and interim reports to routine updates on personnel changes at each Institute. Then, on May 21, 2018, counsel for the Institutes submitted a letter of intent to appeal and requested instructions for filing such appeal related to their candidacy status.⁴⁵

On May 30, 2018, HLC granted the request for an appeal.⁴⁶ The Institutional Appeals procedure, which at all times is published on HLC's website and, among other navigation methods, retrievable by keyword search, was sent to the Institutes that day. It provides that an institution “may submit the appellate document electronically but must also submit two copies of the entire submission in paper form.”⁴⁷ HLC provided the Institutes with this opportunity to appeal outside of the terms of the applicable policy for a number of reasons, the most important of which was DCEH’s insistence that it would not have accepted the candidacy condition if it had known that the Institutes would be on a preaccredited status rather than an accredited status. Though there was no objective basis for confusion from the clearly articulated Joint Action Letter and the documented conversations between HLC staff and the Institutes, DCEH, and their counsel—which included DCEH’s and the Institutes’ counsel’s explicit acknowledgment that they understood candidacy to be a preaccreditation status—HLC was concerned that the only potential source for confusion may have been due to undocumented communications with a now former employee.

Specifically, given Ms. Solinski’s prior involvement in the matter and her recent departure, HLC was not in a position at that time to be precisely confident as to what she had said to DCEH and whether any *oral* communications between Ms. Solinski and DCEH may have resulted in confusion.⁴⁸ Thus, in an abundance of caution and to ensure adequate due process was afforded to the Institutes in this unique circumstance, HLC permitted the Institutes to appeal.

On May 25, 2018, Dr. Sweeney informed peer reviewers, who were at that point finalizing their reports as a result of their review of the respective Institutes' Eligibility Filings, that review activities were being suspended due to the receipt of the May 21, 2018 letter of intent to appeal.

⁴⁴ HLC’s outside counsel, Mary Kohart, later reached out to Mr. Holt offering to discuss the issues raised in this letter. Mr. Holt did not return her call.

⁴⁵ [HLC-OPE 12264-12266](#)

⁴⁶ See [HLC-OPE 12267-12268](#)

⁴⁷ [HLC-OPE 15252-15264](#)

⁴⁸ See, e.g., [HLC-OPE 15312-15315](#) (explaining to the Department that DCEH and the Institutes were now stating that they were misled about their accreditation status and that the full record of Ms. Solinski’s communications with DCEH was unknown)

HLC's May 30, 2018 letter communicated to counsel for DCEH that the Institutes must submit an "Appellate Document . . . as soon as possible."⁴⁹ HLC provided that, in the interim, it would suspend certain review activities, but that the focused site visit required under 34 C.F.R. § 602.24(b) would go forward.⁵⁰

Thereafter, in full anticipation of an appeal, Dr. Sweeney met with various other HLC staff to discuss related topics, including to ensure the post-change of control focused visits would move forward as required under HLC policy and federal regulations, despite the suspension of the other deliverables of the Joint Action Letter, and to discuss the members of a would-be Appeals Panel to hear the Institutes' appeal. Standard practice was to review the then-current members of the Appeals Body and consider how the Appeals Panel would be constituted. Because there were no individuals on the Appeals Body from a similar institution at the time, HLC took initial action to identify a person to serve that role and review HLC policy to ensure that it permitted President Dr. Gellman-Danley to add a representative to the Appeals Panel to meet the need. These steps demonstrate HLC's reliance that an appeal would be forthcoming and its steps to prepare for such action as it awaited the Appellate Document.

The Institutes Request "Retroactive" Accreditation (June 2018)

On June 20, 2018—twenty days following HLC's offer for an appeal opportunity—legal counsel for DCEH requested a meeting with HLC to "discuss the matters raised in [its] May 21, 2018 letter," which HLC had already responded to by laying out the steps by which an appeal could be brought. In response, Dr. Sweeney provided Mr. Harpool with options for call times on either June 25 or June 26.

Rather than scheduling a call with Dr. Sweeney, Dr. Harpool set forth a proposal by email dated June 24, 2018 for HLC to grant the Institutes accreditation "from the time of the Schools respective initial accreditation through [December 31, 2018]," and in return, the Institutes would cease to admit any new students and provide a three-option teach-out plan.⁵¹ Dr. Sweeney requested that the parties proceed with a call.

During the call, held on June 26, 2018, two days before HLC's June Board meeting, Dr. Sweeney, Dr. Gellman-Danley, and outside counsel for HLC, Ms. Mary Kohart, explained that this request was untimely for consideration by the Board, and while the Board would be updated as to the Institutes' request, it would not consider any action related to the Institutes (including their request for what would essentially be "retroactive" accreditation) at the upcoming Board meeting. It was also explained that HLC could not make any commitments about responding to their request. HLC policy did not permit retroactive accreditation for the Institutes. This was consistent with the Department's position that retroactive accreditation was prohibited. Notably,

⁴⁹ [HLC-OPE 12267-12268](#)

⁵⁰ HLC consulted with the Department as to whether this visit could be waived, and the Department confirmed it could not. See [HLC-OPE 15312-15315](#)

⁵¹ See [HLC-OPE 15322-15324](#)

HLC sought guidance on this issue from the Department, which confirmed to HLC that same day that retroactive accreditation was prohibited.⁵²

The following day, on June 27, 2018—as HLC *later* discovered in December 2019—Mr. Chris Richardson, DCEH’s General Counsel, attempted to send the Institutes’ Appellate Document via email. Mr. Richardson’s email was intended to be addressed to Dr. Barbara Gellman-Danley, HLC President, with copies to Dr. Sweeney and outside counsel for HLC, Ms. Kohart. Notably, the word “commission” in the domain name of the email addresses for both Dr. Gellman-Danley and Dr. Sweeney was misspelled (“hlcomission” with one "M," rather than “hlcommission”). Further, the copy that was directed to Ms. Kohart went to her spam account, perhaps because the sender’s domain name, “lopescapital,” was not a familiar sender or associated with a known entity, such as DCEH. For these reasons, Mr. Richardson’s email was not discovered by HLC or its outside counsel until December 2019, after the Department itself brought the existence of this letter to HLC’s attention.⁵³

The Appellate Document itself only indicated that the Institutes’ appeal was sent via email. HLC has no evidence to suggest that a hard copy was ever sent to or received by HLC, as required by the Institutional Appeals procedure provided to the Institutes and at all times publicly available on the HLC website. DCEH and the Institutes did not, at any time subsequent to its transmission, make any inquiries to HLC about receipt of this document or the status of the Institutes’ appeal. Moreover, as further detailed below, DCEH’s and the Institutes’ communication and conduct thereafter did not put HLC on any notice that an appeal had been submitted.

Preparations for the Institutes’ Closure (July - November 2018)

Despite having just attempted to submit its requested appeal, less than a week later on July 3, 2018, DCEH publicly announced the closures of the Institutes. At this time, it also announced the closure of 16 other Art Institute campuses, nine Argosy University campuses and three South University campuses (none of which were HLC-accredited institutions).⁵⁴ HLC updated its Public Disclosure Notice for the Institutes on July 7, 2018 to provide that it had come to HLC’s attention that DCEH intended to cease enrollment at various locations, including the Institutes.⁵⁵ HLC provided information to students in this updated disclosure with links to information on teach-outs and closed school discharge. Thereafter, HLC communicated with the Institutes on

⁵² See [HLC-OPE 15325-15327](#) (June 6, 2017 Memorandum from Herman Bounds, Director, Accreditation Group, Department of Education); [HLC-OPE 15325-15327](#) (June 26, 2018 Email from Elizabeth Daggett, analyst at the Department). Subsequently, on June 27, 2018, Diane Auer Jones, Principal Deputy Undersecretary at the Department, stated by both phone and email that the Department would be issuing “corrected guidance” on the issue of retroactive accreditation and that the 2017 memorandum would be retracted. That same day, Mr. Bounds provided that the 2017 guidance was not applicable to the situation with the Institutes. On July 3, 2018, Dr. Jones informed Dr. Sweeney that the Department would be willing to provide a written letter stating that retroactive accreditation of the Institutes would not jeopardize HLC’s recognition. HLC did not, at any time, make any assurances to the Department or to DCEH that it would retroactively accredit the Institutes. See [HLC-OPE 15333-15335](#). Indeed, retroactive accreditation for the Institutes was not possible under HLC’s policies.

⁵³ See [HLC-OPE 15430-15433](#), [15434](#)

⁵⁴ The News & Observer, *For-profit school operator closing 30 campuses, including 3 in NC* (July 2, 2018) <https://www.newsobserver.com/news/local/article214193329.html>.

⁵⁵ [HLC-OPE 12258-12260](#)

July 12, 2018, regarding certain critical but missing information required for their respective Teach-Out Plans to be approved. In this letter, HLC again noted its continuing concerns about the Institutes' disclosures published on their website between January 20, 2018 and June 12, 2018, and about other communications to students regarding accreditation status.⁵⁶ HLC reminded the Institutes that peer reviewer-led focused visits would be conducted on July 16 and 17, 2018, as these were not waivable under federal law. Finally, HLC also notified the Institutes that the peer reviewers had been apprised of the recent closure announcement. This communication was subsequently provided by HLC to the Department via email on July 17, 2018.⁵⁷

Following the focused site visits, HLC's peer reviewers recommended withdrawal of candidacy for the Art Institute of Colorado and reinstatement of accreditation for the Illinois Institute of Art. In each case, the relevant Institute had an opportunity to provide, and did provide, an institutional response. On October 9, 2018, HLC approved the Institutes' Teach-Out Plans and Teach-Out Agreements so that the Institutes could implement their respective plans in advance of the anticipated closures.

On November 1, 2018, the Board continued each Institute's candidacy until the planned closure date. This action was memorialized in writing to each Institute on November 7, 2018, and HLC issued the required Public Disclosure Notices.⁵⁸

Between November 20-21, 2018, each Institute wrote a letter to HLC stating its intent to appeal HLC's "January 20, 2018 action" (the effective date of the application approval, with the condition of candidacy) and the November 1, 2018 action (extension of candidacy).⁵⁹ Curiously, neither letter mentioned that the Institutes had already attempted to submit (to the wrong email address) an appeal more than five months earlier, nor alleged that HLC failed to respond to that appeal. Instead, each letter reads as the first and only appeal related to the respective Institute's candidacy status.

When HLC responded eight days later (following the Thanksgiving holiday) on November 28, 2018, HLC recounted that the Institutes requested to appeal six months prior, on May 21, 2018. HLC explained that it had no obligation to provide the appeal at that time, but nevertheless did so, despite the "Institute[s] never fil[ing] any appeal." Based on what it knew at the time, and its reasonable belief that the parties had allowed the earlier opportunity to lapse, HLC concluded that the untimely attempt to appeal the approval of the change of control application with the condition of candidacy was not appropriate.⁶⁰ HLC also informed the Institutes that continuation of candidacy was not an "adverse action" and therefore not appealable.

⁵⁶ [HLC-OPE 12562-12580](#)

⁵⁷ See [HLC-OPE 15347-15353](#)

⁵⁸ See [HLC-OPE 15180-15186](#), [15168-15171](#), [15172-15179](#)

⁵⁹ See [HLC-OPE 15187-15189](#), [15190-15191](#)

⁶⁰ See [HLC-OPE 15192-15194](#), [15195-15198](#)

On January 8, 2019, DCEH informed HLC that the Institutes closed on December 28, 2018 and that they “forego their membership with the Commission.”⁶¹ Accordingly, HLC issued the required Public Disclosure Notice to this effect.⁶²

Department Inquiries about the Institutes’ Candidacy Status and Closure

The Department began expressing to HLC its interest in the Institutes’ accreditation status many months after the Department was previously made aware of HLC’s approval of the change of control application with the condition of candidacy. Indeed, HLC’s November 16, 2017 Joint Action Letter was sent to both Michael Frola, Director of Multi-Regional and Foreign School Participation Division at the Department, and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department, as was the January 12, 2018 letter,⁶³ which incorporated the earlier letter and made one non-substantive modification regarding the interim report requirement. Neither Mr. Frola, Mr. Bounds, nor any other Department official ever raised concerns about HLC’s compliance with federal regulations or the condition of candidacy in the context of change of control at those times.

Even after the transaction between EDMC and DCEH closed and DCEH began raising concerns about preaccreditation status, the Department still waited to raise any questions about the Institutes’ accreditation status for some time. Mr. Frola was copied on various communications and received copies of relevant materials from DCEH relating to accreditation status in early February, yet neither he nor any other Department official raised concerns at that time.⁶⁴ Mr. Frola was again copied on the electronic transmission of a letter sent by legal counsel for DCEH and the Institutes, this time DCEH’s February 23, 2018 letter in which Mr. Holt and Dr. Harpool stated that, in determining that the Institutes would accept the conditions of the change of control application approval, they relied on their understanding of the Institutes “as being in ‘preaccreditation status,’ a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁶⁵ In this letter, DCEH requested that HLC confirm that the Institutes “remain eligible for Title IV.” That same day, Mr. Frola emailed Ms. Solinski, stating “the candidacy status that HLC has Dream Center on following the [change of

⁶¹ See [HLC-OPE 15204-15205](#)

⁶² See [HLC-OPE 15206](#)

⁶³ This letter was sent to Mr. Frola and Mr. Bounds on January 23, 2018, after the close of the transaction on January 20, 2018, consistent with common practice.

⁶⁴ Mr. Frola was copied on an email sent by legal counsel for DCEH and the Institutes, which attached their February 2, 2018 letter in which DCEH and the Institutes first raised concerns about candidacy. [HLC-OPE 15297](#); [HLC-OPE 7782-7783](#). Mr. Frola then, by email to Ms. Solinski, requested a copy of the draft Public Disclosure Letter referenced in the underlying letter; unfortunately, HLC cannot verify that Ms. Solinski responded. However, Mr. Frola was sent a copy of HLC’s February 7, 2018 response, which explained that, as detailed in the Joint Action Letter, the Institutes were on Change of Control Candidate for Accreditation status and would be eligible to seek accredited status. This response also explained that the Public Disclosure Notice, which stated that the Institutes “transitioned to being a candidate for accreditation after previously being accredited” and that courses or degrees earned at the Institutes during the candidacy period were not accredited by HLC, was available on HLC’s website at the time. [HLC-OPE 7784-7785](#); [HLC-OPE 7778-7779](#)

⁶⁵ [HLC-OPE 7786-7787](#)

control] could be problematic for the schools [sic] title IV eligibility."⁶⁶ Dr. Sweeney arranged a call with Mr. Frola in response.⁶⁷ On March 9, 2018, Dr. Sweeney and Mr. Frola spoke by phone, along with other representatives from HLC and the Department. On this call, Mr. Frola asked Dr. Sweeney whether candidacy was an accreditation status. Dr. Sweeney informed him that candidacy was a preaccreditation status. Mr. Frola then asked whether the HLC Board had made an independent determination that the Institutes were non-profit institutions. Dr. Sweeney informed Mr. Frola that, as the Department was certainly aware, HLC had not made any independent determination as to the Institutes' tax status or any independent determination as to the Institutes' eligibility for Title IV funding, as those determinations were in the rightful purview of the IRS and the Department, respectively.

HLC heard nothing more from the Department about the Institutes generally, much less about any issues pertaining to their accreditation status or Title IV eligibility, until May 22, 2018.⁶⁸ At this time, having received a letter of intent to appeal from the Institutes on May 21, 2018, Dr. Sweeney called Mr. Frola to follow up on their earlier conversation on March 9, 2018, and he informed her that the Department had issued Temporary Program Participation Agreements on a month-to-month basis as of February 20, 2018 and had granted the Institutes temporary interim non-profit status on May 3, 2018. Dr. Sweeney followed-up by email and requested copies of the temporary approvals.⁶⁹ Mr. Frola provided the copies as requested, but did not raise any concerns about the Institutes' accreditation status, their Title IV eligibility, or the propriety of HLC's approval of the change of control application with the condition of candidacy in either his call with Dr. Sweeney or his subsequent email.

On May 30, 2018, and in response to the pending letter of intent to appeal from DCEH on behalf of the Institutes, Dr. Sweeney reached out to Ms. Elizabeth Daggett, an analyst at the Department, to confirm whether an evaluation required to occur within six months following a change of control under the change of control regulations could be suspended pending the Institutes' appeal of an aspect of HLC's approval of the change of control application.⁷⁰ Dr. Sweeney informed Ms. Daggett that the Institutes were now alleging they did not understand that candidacy indicated that they would no longer be accredited, despite their acknowledgment of candidacy as a preaccreditation status. Ms. Daggett thanked Dr. Sweeney for the information and confirmed that this type of visit could not be waived. She did not indicate that any action taken by HLC was contrary to regulations or that the Department had any concerns with the Institutes' accreditation status.

Despite further communications with the Department in June, July and August 2018, at no time until October 31, 2018 did any Department official so much as indicate to HLC that it took issue with HLC's approval of the change of control application with the condition of candidacy. Indeed, on June 27, 2018, the Principal Deputy Undersecretary at the Department, Dr. Diane

⁶⁶ [HLC-OPE 15298-15299](#)

⁶⁷ [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#). The call was slightly delayed due to Ms. Solinski's departure from HLC.

⁶⁸ On May 9, 2018, the Department communicated to HLC that it had granted it a five-year period of recognition. [HLC-PET 35](#).

⁶⁹ [HLC-OPE 15302-15311](#)

⁷⁰ [HLC-OPE 15312-15315](#)

Auer Jones, called Dr. Gellman-Danley to discuss the possibility of retroactive accreditation. At no point in the conversations about retroactive accreditation around this time did any Department official raise concerns about HLC's compliance with federal regulations or its own policies in taking its November 16, 2017 action.

Indeed, an analysis of the various communications with officials at the Department around this time is illustrative. On June 27, 2018, Dr. Jones left a voicemail with Dr. Gellman-Danley in which she raised the idea of retroactive accreditation as an option for the Institutes.⁷¹ Dr. Sweeney responded on Dr. Gellman-Danley's behalf and wrote to Dr. Jones, indicating that she understood that the Institutes had sought "support for a confidential proposal...presented to HLC...in lieu of proceeding with HLC's established processes, to seek reinstatement of accreditation."⁷² At Dr. Gellman-Danley's request, Dr. Sweeney asked to arrange a call with Dr. Jones to "seek clarity" on the Department's position regarding retroactive accreditation. Dr. Jones responded by email and stated that the Department would be retracting its 2017 memorandum, in which it took the position that retroactive accreditation was inconsistent with regulation, and that it would instead be issuing "corrected guidance."⁷³ However, in a call Dr. Sweeney had with Ms. Daggett and Mr. Bounds that same day, the Department indicated that, even if retroactive accreditation were permitted by the Department, HLC should "be mindful of current federal regulations on ensuring consistency in decisionmaking." Dr. Sweeney understood the Department to be indicating that any future action taken by HLC with respect to the Institutes should be consistent with current HLC policy and HLC's other decisionmaking.

Later that evening, Dr. Jones called Dr. Sweeney and again shared that the Department would soon be issuing additional guidance on the issue of retroactive accreditation. While she asked that HLC work with her exclusively at the Department regarding the Institutes, at no time did Dr. Jones indicate that she believed HLC had acted contrary to regulations or its own policy. Dr. Sweeney and Dr. Jones again emailed regarding the issue of retroactive accreditation on July 3, 2018,⁷⁴ but no assurances were ever made by HLC that it would, indeed, retroactively accredit the Institutes. In fact, such action was not permitted under HLC policies. The July 3 email stated that the Board "can consider an earlier reinstatement of accreditation than initially contemplated in its original action letter" (which had provided that reinstatement would occur after the second focused evaluation if the Institutes then met the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns). While Dr. Sweeney asked for written assurance that reinstating the Institutes' accreditation effective as of January 19, 2018 would not jeopardize HLC's recognition (due to fact it was not permitted by HLC policy and, at the time,

⁷¹ Dr. Sweeney had, while speaking with Ms. Daggett about an unrelated issue on June 26, 2018, inquired about the Department's position on retroactive accreditation. This question was a result of the June 24, 2018 email from Dr. Harpool that HLC had read to effectively request that the Institutes be retroactively accredited, as well as the June 26, 2018 call with DCEH's and the Institutes' representatives. Ms. Daggett had provided Dr. Sweeney with the memorandum authored by Mr. Bounds stating that the Department prohibited retroactive accreditation. See [HLC-OPE 15325-15327](#); [HLC-OPE 15322-15324](#)

⁷² [HLC-OPE 15331-15332](#)

⁷³ The Department issued new guidance permitting retroactive accreditation on July 25, 2018, which effectively superseded the 2017 memorandum. [HLC-15354-15355](#)

⁷⁴ [HLC-OPE 15333-15335](#)

prohibited by the Department), Dr. Sweeney made no assurances about whether accreditation would be reinstated or, if it were, made effective retroactively.

Following the announced closures of the Institutes, the Department and HLC communicated regarding HLC's concerns about the Institutes' Teach-Out Plans as well as their disclosures to students regarding their accreditation status.⁷⁵ Dr. Jones also emailed Dr. Sweeney on July 29, 2018 with questions about the transferability of credits and whether HLC requires transcripts "to be marked in such a way to indicate the campus's accreditation status for each semester."⁷⁶ Dr. Sweeney responded the next day and informed Dr. Jones that HLC had no requirements for what must appear on a transcript, but that, to support those students who earned credits or graduated prior to January 20, 2018, the Institutes could provide a letter making clear that those credits were indeed accredited if that status was not clear from the face of their transcripts. Specifically, Dr. Sweeney wrote:

Students who graduated from the Institutes prior to January 20, 2018 (the effective date of Change of Control candidacy) graduated from accredited institutions. If that is not already clear on their transcripts, the Institutes (or later, the entity with ongoing responsibility for student records) should accompany all transcripts with an official letter or notation that makes this fact clear.⁷⁷

Dr. Sweeney explained that because of the "complexity of this case and the ways things evolved," it was likely that other institutions would make the default assumption that either the Institutes were never accredited or were always accredited. Dr. Sweeney further explained that an additional explanation (such as the one described above) may be necessary due to the level of nuance around when the Institutes became preaccredited. Dr. Jones thanked Dr. Sweeney for the information and wrote, "I'll add this to my list of things to follow up on."⁷⁸

Dr. Sweeney emailed Dr. Jones again on August 23, 2018, noting that HLC had "continuing concerns about the information being provided to students" by the Institutes.⁷⁹ Dr. Jones thanked Dr. Sweeney "for the update," and asked for information related to the Institutes' site visits. Dr. Sweeney informed Dr. Jones that the site teams had recommended reinstatement of accreditation for the Illinois Institute of Art, but withdrawal of candidacy for the Art Institute of Colorado, and that the Board would decide each issue in the fall. Dr. Jones again thanked Dr. Sweeney for the information but did not provide any indication that she was concerned about the Institutes' status, either from the effective date of candidacy or going forward through closure.⁸⁰

Nearly two months later, on October 31, 2018, Dr. Jones wrote to HLC stating that the Department had concerns with HLC's compliance with federal regulations related to its actions

⁷⁵ [HLC-OPE 15343-15346](#)

⁷⁶ [HLC-OPE 15347-15353](#)

⁷⁷ [HLC-OPE 15347-15353](#) (at HLC-OPE 1538) (emphasis in original)

⁷⁸ *See id.* (at HLC-OPE 15347-15349)

⁷⁹ [HLC-OPE 15356-15358](#)

⁸⁰ On October 15, 2018, Dr. Jones informed Dr. Sweeney and Dr. Gellman-Danley that she was concerned about statements made by a peer reviewer during the site visit at the Illinois Institute of Art. Dr. Jones expressed concern that students may decide not to transfer schools based on the peer reviewer's statement that accreditation would be retroactive if it were restored. *See* [HLC-OPE 15359-15360](#).

concerning the Institutes. This was the first time HLC was given any notice from the Department of such concerns. Dr. Jones and Dr. Gellman-Danley had also spoken by phone two days prior, on October 29, 2018, at Dr. Jones' request. During the October 29 call, Dr. Jones had again informed HLC that a decision by HLC to retroactively accredit the Institutes would not be negatively viewed by the Department, as she had also previously stated in July 2018, and informed Dr. Gellman-Danley that she had identified a way for the HLC Board to effectuate such retroactive accreditation and would issue a letter indicating as such. On the evening of October 31, 2018, following receipt of the October 31 letter, Dr. Jones, Dr. Gellman-Danley, and Dr. Sweeney spoke by phone. On that call, Dr. Jones suggested that HLC could consider rescinding its November 2017 Joint Action Letter and instead place the Institutes on a sanction or issue a Show-Cause Order. Dr. Gellman-Danley and Dr. Sweeney told Dr. Jones that the HLC Board would evaluate each Institute based on the evidence available and in accordance with the HLC policies. Dr. Jones and Dr. Gellman-Danley spoke again later that night. Dr. Jones advised that HLC should simply submit a brief response to her stating that HLC will review its policies.⁸¹ HLC did so on November 7, 2018.

With the exception of Dr. Jones' testimony before the Subcommittee on Economic and Consumer Policy of the House Committee on Oversight in May 2019 (which HLC learned of independently), HLC did not hear from the Department regarding any compliance issue related to HLC's application of its policies and procedures to the Institutes' change of control application, including its response to the October 31, 2018 letter, until October 24, 2019.⁸² As the Department is aware, at that time it requested certain information and documents from HLC, which were provided on November 13, 2019, and later supplemented upon the Department's request on January 13, 2020.

On November 8, 2019, the Department issued a press release announcing that it would cancel the loans of students who attended the Institutes between January 20, 2018 and December 31, 2018.⁸³ In this press release, the Department wrote,

The decision to cancel student loans and restore Pell Grant eligibility comes because students were harmed by the Higher Learning Commission's

⁸¹ In fact, Dr. Jones initially told HLC that the Department would retract the October 31, 2018 letter. She then stated that the letter could not be retracted, but that HLC should only provide a short response regarding its policy review.

⁸² On October 22, 2019, former students of the Institutes filed a lawsuit against the Department alleging that the Department improperly distributed Title IV funds (*Infusino v. DeVos*, 1:19-CV-03162 (D.D.C.)). The Department announced on November 8, 2019, that it would cancel the loans of more than 1,500 students who attended the Institutes. To note, former students of the Institutes also filed a lawsuit on December 6, 2018 against the Illinois Institute of Art, DCF, and DCEH pleading claims under the Illinois Consumer Fraud and Deceptive Practices Act for misrepresentations of material fact, omissions of material fact, and unfairness related to the Institutes' disclosures of their accreditation status, as well as claims for negligent misrepresentation and fraudulent concealment (*Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)). DCF's motion to dismiss the second amended complaint was denied on January 6, 2020. On February 28, 2020, DCF filed a third-party complaint against HLC in the *Dunagan* suit. This complaint specifically references the Department's present "investigation" of HLC.

⁸³ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

classification of the institutions in a newly developed and improperly defined accreditation status after January 20, 2018. The Department is concerned that the Art Institute of Colorado and the Illinois Institute of Art were actually fully accredited from January 20, 2018, until their closings at the end of the year. Because HLC has required these two schools to note on student transcripts that credits and degrees earned during this period are from a non-accredited institution, students have been harmed as they seek transfer credit and employment elsewhere.

The Department stated that HLC had imposed a requirement on the Institutes to alter students' transcripts to indicate that credits earned after January 20, 2018 were unaccredited. To HLC's knowledge, no representative of HLC ever spoke or emailed with any representative for the Institutes, DCEH, or DCF regarding any such notations on student transcripts. As provided above, Dr. Sweeney emailed Dr. Jones on July 30, 2018, regarding measures the Institutes could take—but were not required to take—to assist students who had earned credits at the Institutes while they were accredited. Specifically, this option was to help ensure that the accreditation status of the Institutes prior to January 20, 2018 was made clear to the institutions to which those students sought to transfer. Nowhere in that communication did Dr. Sweeney tell Dr. Jones that the Institutes were required to indicate on transcripts that credits earned after January 20, 2018 were from nonaccredited institutions. The Department did not have further communications with HLC about transcript notations until the issuance of the Draft Analysis, and HLC has entirely no idea as to what communications or actions the Department is referring in this press release.

III. SUBSTANTIVE RESPONSE TO FINDINGS OF NONCOMPLIANCE

At all times, HLC has complied with the required standards and required operating policies, as provided for at 34 C.F.R. §§ 602.16 – 602.28, as well as its own policies. As such, HLC respectfully disagrees with the Department's findings of noncompliance. In response to the Institutes' change of control application, HLC: (a) provided due process as required under § 602.25, (b) complied with its own policies and procedures, and (c) acted with consistency in decision-making as required by § 602.18.

As a preliminary and important matter—and in accordance with its regular process for policy review—HLC revised various relevant policies and procedures related to the change of control process. Among other things, this effort will enhance due process and ensure that a scenario such as this will not occur again. Specifically, Policy INST.E.50.010—with which the Department asserts HLC was non-compliant, but, as explained below was not applicable here—has been eliminated. Correspondingly, and again, while not applicable here, HLC also has removed from its policies the option of approving a change of control where the Board “determines that the transaction forms a new institution requiring a period of time in Candidacy” (which did not occur here). Likewise, HLC will no longer approve a change of control application with the *condition* of candidacy (as occurred here) and has made clear in its revised procedures that no condition would alter an institution's accreditation status. These revisions also align with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020, which will prohibit an accreditor from moving an institution from accredited to preaccredited status.

While HLC complied with its own policies and then-applicable federal regulations at all times during the approval of the Institutes' change of control application, as explained below, these revisions to HLC policies and procedures already address all of the Department's concerns.

a. HLC Did Not Violate Due Process Requirements (§§ 602.25(a), (d), (e), and (f))

The Department requires that an accrediting agency “demonstrate that the procedures it uses throughout the accrediting process satisfy due process.”⁸⁴ The regulation then identifies the ways in which an accrediting agency meets this standard: provision of adequate written specification of accreditation and preaccreditation requirements; provision of reasonable time for compliance with agency requests; written specification of deficiencies; sufficient opportunity for a written response prior to adverse action; notification in writing of any adverse action; an opportunity to appeal adverse action; a written decision regarding such an appeal; and an opportunity to review new financial information prior to a final adverse action decision.

The Draft Analysis contends that HLC violated due process by failing to provide clear standards regarding accreditation, and, in relation to an alleged adverse action, failing to provide the opportunity for a written response, notification of such adverse action in writing, and an opportunity to appeal. These contentions are both erroneous and not grounded in the facts of this matter. As explained below, due process is precisely what HLC provided to the Institutes upon receipt of their change of control application and throughout the entire process of working with them following the Board's decision concerning their change of control application.

As a general matter, due process requires notice and an opportunity to respond.⁸⁵ Both critical elements were provided here. The documented communications between HLC and the Institutes in November and December of 2017, as well as in January of 2018, make clear that the parties entered into an agreement with clear notice and sufficient information to make an informed decision. By virtue of the Joint Action Letter explicitly stating that (1) acceptance of candidacy status was a condition of the approval, (2) candidacy is a preaccreditation status, and (3) accreditation would be reinstated after the second focused evaluation if accreditation criteria were met, DCEH and the Institutes *should reasonably have known* that the condition they were contemplating whether to accept—and ultimately did accept—was a period of time during which the Institutes would hold preaccreditation status.

Moreover, and fatal to any assertion that the Institutes were not informed of the impact of this condition at the time, Mr. Holt and Dr. Harpool's February 23, 2018 letter specifically provided that they understood that the Institutes would be placed on a “preaccreditation status” *prior* to the Institutes' acceptance of the condition. As noted above, this letter documented that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status during the time from November 16, 2017 through January 4, 2018 in which they were determining whether to accept the conditions. Critically, as noted in the letter, Mr. Holt and Dr.

⁸⁴ 34 C.F.R. § 602.25

⁸⁵ *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) (“The essential elements of due process are notice and an opportunity to respond”) (*citing Cleveland Board of Education v. Longermill*, 470 U.S. 532, 546 (1985)).

Harpool noted that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁸⁶

Further, the ongoing communications between HLC and DCEH from the extended time of the Board’s notice of the condition of candidacy on November 16, 2017 through the Institutes’ and DCEH’s explicit acceptance of that condition on January 4, 2018 demonstrate that DCEH and the Institutes had more than sufficient opportunity to respond to and raise any questions or concerns about this condition. Indeed, the Institutes and HLC engaged in an interactive process regarding minor modifications to the original conditions based upon the requests of counsel for the Institutes and DCEH. The back-and-forth during this time period clearly reflects that DCEH was given ample opportunity to respond, as they repeatedly, and successfully, availed themselves of that right throughout this timeframe.

In addition to the period between the Joint Action Letter and the Institutes’ acceptance of the conditions of the change of control, the Institutes were given yet another opportunity to respond when, on May 30, 2018, they were given explicit information as to how to appeal their candidacy status, despite no requirement that HLC provide such an appeal. Simply put, the evidence is clear that HLC provided due process, including the opportunity to appeal the candidacy status, and therefore unequivocally complied with the four provisions of 34 C.F.R. § 602.25 identified by the Department in its Draft Analysis.

Compliance with 34 C.F.R. § 602.25(a) (clear standards)

An accrediting agency satisfies due process when it has “adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.”⁸⁷ In its Draft Analysis, the Department finds that this requirement was not met because the Joint Action Letter did “not include clear statements that accreditation was being withdrawn” and “cloaked [HLC’s] action within the vague and ambiguous term ‘Change of Control Candidacy’ status,” a term which the Department states can only be understood through “reference to multiple sections of HLC Policy.” Respectfully, HLC disagrees.

As detailed in Section II above, the November 16, 2017 Joint Action Letter explicitly stated the following:

- “[T]he Board voted to approve the application for Change of Control, Structure, or Organization . . . however, this approval is subject to the requirement of Change of Control Candidacy Status.”
- “The Board . . . found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for *pre-accreditation status* identified as ‘Change of Control Candidate for Accreditation’ . . .”
- “The conditions set forth . . . are . . . [that] [t]he institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the

⁸⁶ [HLC-OPE 7786-7787](#). Any question about the Institutes’ Title IV eligibility at the time turned on whether the Department, in accordance with the Higher Education Act, 20 U.S.C. 1001 et seq., considered the Institutes as maintaining their for-profit status, or whether their application for non-profit status had been accepted.

⁸⁷ 34 C.F.R. § 602.25(a)

close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.”

- “*If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation . . .*”⁸⁸

There is no need for highly-specialized knowledge of accreditation to know that a term with the prefix “pre” is distinguishable from a term without any such prefix, or to know the meaning of the term “reinstate.” Clearly, “preaccreditation” has a meaning distinct from “accreditation,” even just under the plain meaning of the term. Furthermore, accreditation could only be “reinstate[d]” if the Institutes had not been accredited for some period of time. A plain reading of the Joint Action Letter—not even considering HLC’s policies and procedures, which provide additional context—makes clear that candidacy is a preaccreditation status, and that the Institutes would thus be on a preaccreditation status until such time that they demonstrated to the Board that they met the Criteria for Accreditation, at which time accreditation would be reinstated. There is no need for highly-specialized knowledge of accreditation to recognize this distinction.

Likewise, the Department’s finding that the use of the terms (1) “Change of Control, Structure, or Organization”; (2) “Change of Control Candidacy Status”; (3) “Change of Control Candidate for Accreditation”; and (4) “Change of Control Candidacy” . . . “obfuscat[ed] the true nature and meaning of candidacy status” is not supported by a plain reading of the Joint Action Letter. The first term, “Change of Control, Structure, or Organization,” references the organizational changes, which are within the control of an institution, that trigger the application requirement. The plain meaning of the second, third and fourth terms are variations of terms that are clearly synonymous. Ultimately, these terms all clearly explain that there is a difference between (A) “accreditation,” and (B) “candidate for accreditation,” or “candidacy,” or “candidacy status.”

For example, in written communication with HLC, the following acknowledgements of this concept were stated by the Institutes and/or DCEH’s representatives themselves:

- “We understand that both [Institutes] will undergo a period of candidacy beginning with the close of the transaction” (November 29, 2017 letter)⁸⁹
- “[The Institutes] agree to accept Change of Control candidacy status” (January 4, 2018 letter)⁹⁰

As such, it is clear that the Institutes and DCEH *themselves* used the terms “candidacy” and “candidacy status” interchangeably. When put in context of the ongoing communications between DCEH, the Institutes, and HLC, it is clear that the use of the terms “candidacy status,” “candidacy,” and “candidate for accreditation” did not cause any now-alleged confusion on the part of DCEH and the Institutes. Moreover, if the Institutes were confused upon receipt of the Joint Action Letter, they could have raised questions or asked for clarification about these terms

⁸⁸ [HLC-OPE 7726-7732](#) (emphasis added).

⁸⁹ [HLC-OPE 7740-7741](#)

⁹⁰ [HLC-OPE 7763-7764](#)

during any of their subsequent conversations with HLC. They never did so, despite raising questions about many other matters. Again, it does not take any highly-specialized knowledge to understand that candidacy status, candidacy, and candidate for accreditation are synonymous terms indicating a preaccreditation status.

Despite the fact that this particular concept does not require a significant level of sophistication, HLC recognizes that accreditation standards are somewhat specialized. As held by the Eighth Circuit Court of Appeals, accreditors' standards "are not guides for the layman but for professionals in the field of education."⁹¹ For this reason, HLC reasonably expects any institution accredited by HLC to become familiar with HLC policies generally, and in particular, with those that apply in an immediately relevant circumstance such as a change of control. These policies are readily available on HLC's website for precisely this reason, and an institution's staff liaison is always available to answer questions related to HLC policy. Thus, it is a reasonable expectation that the Institutes would be familiar with HLC policy and reasonably be in a position to understand the Joint Action Letter. The Department's finding that a full understanding of the term "candidacy" would have required the Institutes to read HLC policies does not support the conclusion that HLC did not have adequate written standards.

Ultimately, DCEH and the Institutes would have been aware upon simply reading the Joint Action Letter that candidacy was a "preaccreditation" status and that, assuming they accepted the conditions, upon their decision to consummate the transaction, they would no longer be "accredited," as accreditation would later be "reinstated." If for any reason these terms were confusing to the Institutes or their legal counsel, they could have reviewed HLC policy or asked their liaison or any other HLC staff member questions at any time between the receipt of the Joint Action Letter and their acceptance of the conditions, a period that ultimately spanned over 45 days. Whether or not the Institutes had *actual knowledge* of the meaning of the term does not determine whether or not HLC complied with § 602.25(a). HLC's policies and the Joint Action Letter provided adequate written specification and clear standards such that the Institutes *reasonably should have known* that the condition of candidacy was a preaccreditation status prior to the time they accepted such condition of candidacy.

Compliance with 34 C.F.R. § 602.25(d), (e), and (f) (due process)

As a preliminary matter, 34 C.F.R. § 602.25(d), (e), and (f), which all address how an accrediting agency demonstrates it has satisfied due process in relation to an adverse action, are not applicable because no adverse action was taken here. At issue was approval of the Institutes' change of control application with conditions—an inherently *non-adverse* action—as was permitted under HLC policies and procedures in effect at the time. The Institutes discussed with HLC several of the conditions (although not the candidacy condition), and ultimately agreed to the condition of candidacy without objection. There was no adverse action triggering the requirement that the Institutes be afforded the due process rights provided for in subsections (d), (e), and (f), and therefore these provisions are entirely inapplicable.

⁹¹ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987).

However, assuming *in arguendo* that the agreed-to condition of candidacy did constitute an “adverse action,” HLC still afforded adequate due process to the Institutes. In the end, HLC unquestionably complied with both the letter and the spirit of each of the cited subsections of the regulation. To explain, 34 C.F.R. § 602.25(d) provides that an accrediting agency satisfies due process when it provides “sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.” The clear intent of the provision is that an institution must have an opportunity for meaningful communication with their accreditor. This intent was fulfilled through ongoing and documented communication between HLC and the Institutes both following the November 2017 Board action, which was not effective absent their acceptance of explicit conditions, and prior to the January 2018 Board action, which clearly reiterated the conditions would take effect only upon the parties' consummation of the transaction.

Indeed, as detailed in Section II above, the Institutes initially requested multiple changes, but subsequently withdrew all their requests except for a single non-substantive modification, which was granted. Upon learning of HLC's determination that other requested modifications were substantive and would require Board approval, the Institutes decided not to pursue those modifications and instead accepted all conditions. They had ample opportunity to speak with HLC about their concerns. They engaged in substantive communications with HLC regarding the approval of the change of control application. The Institutes' choice not to provide written feedback regarding the condition of candidacy status does not mean that they were deprived of due process; rather, due process was afforded to them, and they did not seek to question, oppose, or even inquire further about the condition of candidacy. Instead, the Institutes explicitly agreed to it. Because meaningful discussions occurred regarding the Board's approval with conditions, and because an opportunity to accept such conditions after due consideration was provided to the Institutes, and further, because the Institutes' subsequent written acceptance of the conditions satisfied 34 C.F.R. § 602.25(d), HLC complied with the regulation.

HLC's compliance with subsection (e) is also apparent. Specifically, 34 C.F.R. § 602.25(e) provides that an accrediting agency satisfies due process when it “[n]otifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.” Even if the Board's action qualifies as an adverse action (and HLC contends it does not), § 602.25(e) was satisfied. The Joint Action Letter made clear that the Institutes would have the preaccreditation status of candidacy; thus, the Institutes were notified in writing of the action. The Joint Action Letter describes why the Institutes were not eligible for continued accreditation if the change of control were to go forward, but did meet the requirements for candidacy. The letter sent January 12, 2018 following the Institutes' acceptance of candidacy—which incorporated the Joint Action Letter and the Board's rationale by reference—also again stated that the candidacy would be effective upon close of the transaction. As such, the requirement that the “notice describe the basis for the action” was satisfied.

The same is true with respect to subsection (f). This regulation, 34 C.F.R. § 602.25(f), states that an accrediting agency satisfies due process when it “[p]rovides 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.” Again, if the candidacy condition had been an adverse action,

§ 602.25 was satisfied. Indisputably, the Institutes were granted the right to appeal on May 30, 2018. At this time, HLC communicated to outside legal counsel for DCEH and the Institutes that an Appellate Document should be submitted as soon as possible. Three weeks later, on June 20, DCEH's outside legal counsel requested a meeting with HLC. Thereafter he submitted requests for what was essentially retroactive accreditation to HLC by email on June 24, not an appeal of the candidacy condition. A telephone meeting was promptly held on June 26 regarding DCEH's requests, at which DCEH made no mention of their desire for an appeal.

On June 27, four weeks after HLC provided information about the appeal process, DCEH, through its General Counsel using an unfamiliar email address, attempted to submit an Appellate Document via email to HLC President Dr. Gellman-Danley, but used *an incorrect email address*. This email was also sent to Dr. Sweeney *at an incorrect email address* and to outside counsel for HLC, Ms. Kohart. Likely given that the email was not from the Institutes or DCEH, but rather an unfamiliar domain, the email went to Ms. Kohart's spam folder. As a result, HLC never received the Appellate Document.

Six days after DCEH, on behalf of the Institutes, incorrectly attempted to submit the Appellate Document electronically, and failed to submit it in paper form as required under the Institutional Appeals procedure, DCEH announced the closures of the Institutes. DCEH and the Institutes never followed-up with HLC regarding their attempted appeal submission; no hard copies of the Appellate Document were ever submitted; no confirmation of receipt from HLC was ever received; and no inquiries were ever made about the status of the appeal. Moreover, when a subsequent and untimely appeal was requested by DCEH on behalf of the Institutes six months later in November 2018, no reference was made to the Institutes' earlier Appellate Document. Even if DCEH made a good faith pursuit of an appeal on June 27, 2018, DCEH clearly abandoned any intent to pursue that appeal. As such, and because it was DCEH's decision not to pursue their appeal, it cannot be said that HLC deprived DCEH of due process.

Ultimately, while HLC disputes that it was required to allow an appeal in these circumstances, an appeal was nevertheless provided. It was DCEH's decision not to pursue the appeal it was afforded. The requirements of 34 C.F.R. § 602.25(f) were thus met. Furthermore, this provision of an appeal remedied any purported due process harm resulting from the alleged failure to comply with any other subsection of 34 C.F.R. § 602.25. The principles of due process mandate that an accreditor provide notice and an opportunity to respond.⁹² Due process does not require the accreditor to handhold a party in availing themselves of that opportunity. The letter and spirit of the regulations were met by the provision of adequate due process here, and HLC was in compliance with the relevant regulations.

b. HLC Has Complied with Its Own Policies and Procedures

While the Draft Analysis alleges that the Joint Action Letter was an "adverse action" under HLC Policy INST.E.50.010, HLC respectfully disagrees. HLC policy, particularly INST.B.20.040 and its related procedures, permits the Board to approve a change of control *with or without*

⁹² *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) ("The essential elements of due process are notice and an opportunity to respond").

conditions. This conditional approval was a separate decision from a decision under INST.E.50.010 to move an institution to candidacy *because the transaction forms a new institution* (as an alternative to denial). Because the Institutes agreed to the condition of candidacy here, INST.E.50.010 was not even invoked.

At no point in approving the Institutes' change of control application was HLC acting under INST.E.50.010, and thus at no point could it be noncompliant with that policy. HLC's position here is not merely a disagreement with the Department. Rather, HLC's position must supersede the Department's finding. Courts have been clear that an accrediting agency's interpretation of its own rules should be given deference. It is important that the Department permit HLC to exercise discretion in implementing its own policies and procedures. As written by a Michigan district court and affirmed by the U.S. Court of Appeals for the Sixth Circuit, "Accrediting procedures are guides that, if construed . . . too strictly, would strip the accrediting bodies of the discretion they need to assess the unique circumstances presented by different schools."⁹³ The Department's interpretation of HLC's policy and procedure does not afford HLC the discretion and deference to which it is legally entitled. As such, the Department's findings that HLC invoked its authority under INST.E.50.010 to "move" the Institutes to candidacy, that the Joint Action Letter was an adverse action under INST.E.50.010, and that HLC violated the Institutes' due process rights under INST.E.50.010 cannot stand.

Even if, *in arguendo*, HLC did not comply with its own policies, such noncompliance does not violate due process unless it "resulted in any fundamental unfairness arising out of the process employed."⁹⁴ Technicalities of noncompliance that do not have a consequential impact do not result in due process deprivations. Indeed, courts have held in analyzing accreditation decisions that the principles of fairness are "flexible and involve weighing the 'nature of the controversy and the competing interests of the parties' on a case by case basis."⁹⁵ Where either process results in the same outcome, the process employed is not fundamentally unfair.⁹⁶

HLC's decision to use the option of change of control candidacy as a condition to be accepted by the Institutes, rather than moving the Institutes to change of control candidacy pursuant to INST.E.50.010, was not fundamentally unfair, because the outcome would have been no different if HLC, instead of securing an agreed-to condition for candidacy, had moved the Institutes to candidacy status under INST.E.50.010. If HLC had moved the Institutes to candidacy status, the Institutes would have been provided an opportunity to appeal, as they were ultimately allowed under the process employed here.

Therefore, the decision not to utilize INST.E.50.010 was not fundamentally unfair, and any alleged noncompliance with HLC policies and procedures does not violate due process.

⁹³ *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

⁹⁴ *Lincoln Mem'l Univ. Duncan Sch. of Law v. Am. Bar Ass'n*, No. 3:11-CV-608, 2012 WL 1108125, at *5 (E.D. Tenn. Apr. 2, 2012).

⁹⁵ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987); *Marlboro Corp. v. Association of Indep. Colleges*, 556 F.2d 78, 81 (1st Cir.1977).

⁹⁶ *See Med. Inst. of Minnesota*, 817 F.2d 1315 ("MIM has made no showing that the outcome of the hearing would have been different had cross-examination been allowed.").

The Department also found that INST.E.50.010 conflicted with 34 C.F.R. § 600.11(c), stating in its Draft Analysis:

Finally, 34 C.F.R. § 600.11(c) prohibits an institution from being considered for accreditation “for 24 months after it has had its accreditation or pre-accreditation withdrawn, revoked, or otherwise terminated for cause, unless the accreditation agency ... rescinds that action.” This regulation also prohibits agencies from moving an institution from accredited to pre-accredited status. In contrast, INST.E.50.010 allowed the Board to take an institution from accredited to candidacy status, defines such an action as an adverse action, and allows for apparent reinstatement within 6 to 18 months, contrary to the requirements of 34 C.F.R. §600.11(c). Accreditor policies that promise accreditation to institutions on terms that would not allow the institutions to meet the Department’s eligibility requirements are counterproductive at best. An accreditor applying such a policy should at a minimum inform the institution of any such obvious inconsistency between its provision of accreditation to the institution and the institution’s subsequent ability to use that accreditation to meet Departmental eligibility requirements. HLC did not do so here.

HLC disagrees with the Department’s interpretation, and proffers that it had, despite no requirement for doing so, informed the Institutes that their eligibility for Title IV while on a preaccredited status was dependent on the Department’s determination that the Institutes were non-profit.

Indeed, part 600 of Title 34 of the Code of Federal Regulation concerns *institutional* eligibility for Title IV funds—this part does not impose requirements on accrediting agencies. Title IV eligibility is a separate and distinct matter from accreditation. As such, 34 C.F.R. § 600.11(c) does not, as the Department states without support, “prohibit[] agencies from moving an institution from accredited to pre-accredited status.” Rather, this regulation provides that after *accreditation or preaccreditation* are *withdrawn, revoked or terminated for cause*, the Department cannot find the institution eligible for Title IV purposes for a period of 24 months. This prohibition on the Department's authority related to Title IV eligibility, while related to accreditation status, has nothing to do with the underlying accreditation decision, and places no requirements or prohibitions on an accrediting agency in terms of its own decision-making.

While the new 34 C.F.R. § 602.23(f)(1)(iv) will generally prohibit an accreditor from moving an institution from an accredited to preaccredited status, this new provision does not go into effect until July 1, 2020 and is not applicable to events that predate that effective date. Moreover, as previously discussed, HLC has revised its policies and procedures to align with this new regulation. Because 34 C.F.R. § 600.11(c) does not impose any requirements on accreditors, and because, under the Department of Education Organization Act⁹⁷ the Secretary does not have authority over accreditors except as provided by law, the Department’s finding here is simply erroneous.

⁹⁷ 20 U.S.C. § 3403(b)

Even if, *in arguendo*, Part 600 of Title 34 was applicable to accrediting agencies (which it is not), and § 600.11(c) somehow prohibits an accrediting agency from reinstating accreditation for 24 months after accreditation or preaccreditation are withdrawn, revoked, or terminated for cause (which it does not), the Department misunderstands how the instant scenario would relate to such an impermissible interpretation of the regulation. The Institutes voluntarily accepted a condition of a period of candidacy; HLC did not "withdraw[], revoke[], or otherwise terminate[]" the Institutes' accreditation. As such, INST.E.50.010 did not conflict with federal regulations, even if understood in this manner.

Nevertheless, HLC shares the concerns of the Department, echoed by former students of the Institutes in litigation against the Department⁹⁸ and DCEH,⁹⁹ that the Institutes were not eligible for Title IV funding at some period of time. However, HLC did not become aware until March 9, 2018 that the Institutes had not yet been determined to be non-profit by the IRS or that the Department had not yet made a determination about the Institutes' eligibility under Title IV. As HLC made clear to Mr. Frola on March 9, 2018, and as the Department should be well-aware, HLC does not make *any* determinations about whether an institution is non-profit under IRS regulations or whether an Institution is eligible for Title IV under Department regulations. HLC does not have the authority to do so. Such determinations are exclusively within the purview of the IRS and the Department, respectively. Indeed, HLC was not informed until May 22, 2018, the day after the agency received the Institutes' letter of intent to appeal, when Dr. Sweeney called and spoke with Mr. Frola, that the Department had granted the Institutes monthly Temporary Program Participation Agreements effective February 20, 2020 and temporary interim non-profit status on May 3, 2018.

However, the Department's determinations as to the Institutes' Title IV eligibility are irrelevant as to whether HLC policy, or even HLC's actions, comported with federal regulations. While the Draft Analysis concludes that an accreditor should inform an institution of any "obvious inconsistency between its provision of accreditation to the institution and the institution's subsequent ability to use that accreditation to meet Departmental eligibility requirements," it is not the responsibility of the accreditor to ensure an institution is eligible for financial aid, whether as a non-profit institution (eligible if accredited or preaccredited) or a for-profit institution (only eligible if accredited).¹⁰⁰ Moreover, Dr. Sweeney, as liaison to the Institutes, did make clear to Illinois Institute of Art President Josh Pond, during a phone call on January 26, 2018, that any disclosure language regarding preaccreditation and Title IV eligibility must take into account whether the Department had made a final determination that the Institutes were non-profit entities. As such, even if INST.E.50.010 did conflict with federal eligibility requirements, which it does not, HLC did exactly what the Department suggests here that HLC should have done.

Finally, and as mentioned previously, HLC has rescinded INST.E.50.010—as acknowledged by the Department in a mere footnote of the Draft Analysis. As such, any findings by the

⁹⁸ *Infusino v. Devos*, No. 1:19-CV-03162 (D.D.C.)

⁹⁹ *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)

¹⁰⁰ *Compare* 34 C.F.R. § 600.4 (a private or public nonprofit institution of higher education can be accredited or preaccredited for purposes of Title IV eligibility) *with* 34 C.F.R. § 600.5 (a propriety (for-profit) institution of higher education must be accredited for purposes of Title IV eligibility).

Department related to HLC's alleged noncompliance with INST.E.50.010 and the policy's alleged conflict with Department regulations are no longer applicable.

c. HLC has Acted with Consistency in Decision-Making

34 C.F.R. § 602.18 requires that the agency “consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program... is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency.” In relevant part, the regulations provide that an agency demonstrates it has met this standard where it “[b]ases decisions regarding accreditation and preaccreditation on the agency's published standards.” 34 C.F.R. § 602.18(c). HLC respectfully disagrees with the Department's finding that it was in noncompliance with § 602.18(c), as its decisions were based on its published standards.

As explained in Section III(b), HLC did not act under INST.E.50.010 when it offered the Institutes an approval of the change of control application with the condition of candidacy. Rather, it was acting under INST.B.20.040 and corresponding procedures, which at the time permitted approval based on the condition of candidacy. Again, HLC is entitled to deference from the Department in interpreting and applying its own policies and procedures.¹⁰¹ HLC's determination that it was acting under INST.B.20.040, not INST.E.50.010, in this matter is within the proper scope of its discretion, not the Department's. At the time, an approval with the condition of candidacy was permissible under HLC's published standards, and as such, HLC has demonstrated it met 34 C.F.R. § 602.18.

Moreover, the purpose behind 34 C.F.R. § 602.18, generally, is to ensure consistency in decision-making. While an approval with the condition of candidacy is not common, it is consistent with past practice. In 2014, Everest College Phoenix (“ECP”), an institution that at the time had been accredited by HLC since 1997, and was then-owned by Corinthian Colleges, Inc. (“CCI”), submitted a change of control application after CCI announced a deal that allowed for ECP and 55 other campuses to be sold to Educational Credit Management Corporation (“ECMC”) and run by an ECMC subsidiary, Zenith Education Group (“Zenith”). The HLC Board, concerned about the ability of ECP to meet accreditation standards under new ownership, approved the change of control with conditions, including the condition of candidacy. This offer was communicated through a March 6, 2015 action letter substantially similar to the action letter provided to the Institutes.¹⁰² In relevant part, that action letter stated:

- "The Board approved the application but subject to several conditions. First, the Board required that the College undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction transferring the College and certain CCI assets to Zenith. The period of the Change of Control candidacy

¹⁰¹ See, e.g., *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

¹⁰² See [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to HLC's June 8, 2017 petition for continued recognition).

may be as short as six months but shall not exceed the maximum period of four years for candidacy."

- "If, at the time of either evaluation the institution is able to demonstrate to the subsequent satisfaction of the Board that it meets the Eligibility Requirements and Criteria for Accreditation, the Board shall *reinstate* accreditation."¹⁰³

The condition was accepted by ECP and, at the institution's request, HLC set the candidacy date for the end of the term.¹⁰⁴ However, shortly thereafter and prior to the effective date of candidacy, the deal between CCI and ECMC collapsed, CCI filed for bankruptcy, ECP closed its campuses and online operations, and ECP voluntarily resigned from HLC. As such, the change of control candidacy status never became effective.

A review of the ECP matter is important not only because it demonstrates that HLC's approval of the Institutes' change of control application with the condition of candidacy is aligned with past practice and demonstrative of consistency in decision-making, but also because the Department previously requested files related to the ECP transaction and was aware of this option and its application.

A brief history may be helpful: HLC was to file a petition for recognition in Summer 2017. HLC had provided exhaustive responses to memoranda from the Department on June 3, 2013, and December 15, 2016. On April 13, 2017, shortly after HLC submitted its response to the second memorandum, the Department sent a letter requesting additional information that HLC was to include with its petition for recognition.¹⁰⁵ The Department stated it needed this information in order "to conduct a thorough analysis of HLC in preparation for the review of its recognition." The Department specifically requested a narrative with supporting documents relating to HLC's accreditation of ECP. Such a narrative, along with supporting documents including the action letter sent to ECP informing ECP that HLC would approve the change of control application with the condition of candidacy, and ECP's initial response accepting this condition, was provided to the Department as Exhibit I.6 to the petition for continued recognition submitted by HLC on June 8, 2017.¹⁰⁶

As detailed in Section IV, the Department did not at any time indicate to HLC that it had concerns with HLC's regulatory compliance related to the ECP change of control application, or the approval of that application with the condition of candidacy. In fact, a five-year period of recognition was granted to HLC by the Department on May 9, 2018.¹⁰⁷ As such, HLC could not be aware that the Department would later take a position that it was impermissible for an accreditor to approve a change of control application with the condition of candidacy. To the contrary, because the Department received this information pursuant to its "responsibility to conduct a thorough analysis," prior to HLC receiving the full five-year recognition without any additional reporting requirements, it would be most logical for HLC to understand that the

¹⁰³ *Id.* (emphasis added).

¹⁰⁴ *See id.*

¹⁰⁵ [HLC-PET 1-2 \(April 13, 2017 letter from the Department requesting additional information\)](#)

¹⁰⁶ [HLC-PET 3-9](#) (June 8, 2017 cover letter from HLC to Mr. Bounds to petition for continued recognition); [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to petition for continued recognition)

¹⁰⁷ [HLC-PET 35](#)

Department reviewed the requested ECP materials and approved of the manner in which HLC approved the change of control.¹⁰⁸ Ultimately, when HLC approved the Institutes' change of control application with the condition of candidacy in the same manner, this action was consistent with decision-making previously approved by the Department. For this additional reason, this finding cannot stand.

IV. THE DEPARTMENT'S FINDINGS OF NONCOMPLIANCE ARE ARBITRARY AND CAPRICIOUS

The Department cannot take action that is “arbitrary, capricious, [or] an abuse of discretion.”¹⁰⁹ This targeted inquiry into HLC's approval of the Institutes' change of control application with the condition of candidacy is arbitrary and capricious, and any recommendation to take action impacting HLC's recognition status as a result of this inquiry would be as well.

Most significantly, the Department has acted in an arbitrary and capricious manner by identifying the Institutes' candidacy status as problematic when it did not do so in a nearly identical case for Everest College Phoenix (“ECP”), despite having been provided meaningful and fulsome detail about that prior circumstance. Unquestionably, the Department is required to treat like cases alike—this is a fundamental norm for agencies.¹¹⁰ As stated eloquently by the D.C. Circuit Court of Appeals, “[i]t is axiomatic that an agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so.”¹¹¹ The Department has no such legitimate reason here for distinguishing between its review of these two situations.

As detailed in Section III above, the Department specifically requested information about the ECP change of control application and HLC's related approval. In response, HLC provided all documents relevant to that application and approval for the Department's review. Presumably, the Department indeed read these materials, which included the action letter sent by HLC to ECP that explained HLC was offering an approval of the change of control application with conditions, including the condition of candidacy, with an opportunity for later reinstatement of accreditation. Again, the Department did not raise any concerns about the ECP transaction at any time, despite receiving all relevant materials about that change of control application.

¹⁰⁸ Notably, in footnote 15 of the Draft Analysis, the Department accused HLC of “us[ing] a punitive provision under its policies that it had never previously used after receiving a letter from five Members of Congress.” Not only was HLC's approval of the change of control application with the condition of candidacy not punitive, it had also, as detailed herein, been previously used. HLC was not, as the Department asserts, “undu[ly] influence[d]” by certain elected officials. Rather, HLC evaluated the Institutes' change of control application, and their respective ability to meet the Criteria for Accreditation after the transaction, using an evidence-based approach and a fair process that allowed for due process, consistent with past action, its own policies, and federal regulations.

¹⁰⁹ 5 U.S.C. § 706(2)(A)

¹¹⁰ *Westar Energy, Inc. v. Federal Energy Regulatory Com'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) (“fundamental norm of administrative procedure requires an agency to treat like cases alike.”).

¹¹¹ *Kreis v. Sec'y of Air Force*, 406 F.3d 684, 687 (D.C. Cir. 2005) (internal quotations omitted) (emphasis added).

The Department's findings that HLC was noncompliant with federal regulations and its own policy in the Institutes' matter is "an unexplained departure from its precedent"¹¹² and therefore arbitrary and capricious. For this reason alone, this finding also cannot stand.

Moreover, the unreasonable length of time between the action at issue and the Department's review of that action is, in and of itself, arbitrary and capricious, and antithetical to the requirement that agency action not be unreasonably delayed.¹¹³ This transaction was first brought to the Department's attention on November 16, 2017, when the Joint Action Letter to the Institutes was also sent to Mr. Frola and Mr. Bounds at the Department. During the period beginning early March 2018 and ending on May 21, 2018, HLC had communication with the Department regarding the Institutes' accreditation status. During this time, the Department granted a five-year recognition to HLC.

However, the Department did not inform HLC of the now-articulated concerns relating to this matter until Dr. Jones wrote to HLC on October 31, 2018, despite the Department's knowledge of this action since November 16, 2017.¹¹⁴ In that exchange, Dr. Jones told Dr. Gellman-Danley to simply submit a brief response to her letter stating that HLC will review its policies. HLC did so on November 7, 2018 and, receiving no reply to that response other than a prompt acknowledgment of receipt, believed in good faith that nothing further was required from the Department on this issue. Consistent with this commitment and HLC's philosophy of continuous improvement, however, HLC took action to immediately begin reviewing the relevant policies and procedures. As previously explained, HLC ultimately rescinded INST.E.50.010 in November 2019, following its regular policy revision process which includes seeking stakeholder input.

Notably, HLC was not told that its November 7, 2018 response was insufficient or that the Department had ongoing concerns with its accreditation actions until October 24, 2019—707 days after the Joint Action Letter was sent; 642 days after the EDMC/DCEH transaction closed and the Institutes' candidacy status became effective; and 353 days following its response. And, of course, the Draft Analysis raising concerns with this candidacy status was not sent until over two full years after the effective date of candidacy. The Department's action in raising this concern years after the alleged non-compliance is entirely arbitrary and capricious.

V. HLC'S RESPONSE TO THE DEPARTMENT'S REQUESTS FOR A NARRATIVE RESPONSE AND A DETAILED PLAN

The Department has requested: (1) "a narrative, including any supporting documentation, on steps it has or will take to prevent due process failures in the future" and (2)

¹¹² *See id.*

¹¹³ *See* 5 U.S.C. § 706(1)

¹¹⁴ HLC notes that Mr. Frola raised a concern that candidacy status could affect the Institutes' Title IV eligibility on February 23, 2018 and made inquiries about whether HLC had made determinations about the Institutes' non-profit status during a March 9, 2018 call. Despite these inquiries, he did not raise any concerns about the legitimacy of HLC's policy or application thereof in this circumstance. *See* [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#).

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

Due Process Narrative

HLC has, throughout this response, provided the requested narrative regarding steps it has or will take to prevent due process failures. HLC engages at all times in a process of analyzing its policies, procedures, and practices, and its Board makes necessary revisions to policies and procedures to conform with best practices, to respond to emerging issues, and in pursuit of continual improvement. HLC staff and its Board think critically about what has worked well, and what has resulted in less-than-ideal outcomes, related to its accreditation practices. HLC strongly believes that the institutions it accredits are entitled to due process, just as it believes the students who attend those institutions are entitled to a high-quality education and transparent disclosures about accreditation and any concerns therein. As such, both as part of its general commitment to continuous improvement and in response to the harm to students as a result of the Institutes' failure to appropriately disclose to students the Institutes' preaccreditation status (which the Institutes attribute to purported confusion), and EDMC's and DCEH's determination to close the transaction once the semester had already begun, HLC has taken steps to ensure the scenario is not repeated in the future.

Most notably, and as recognized by the Department, INST.E.50.010 has been withdrawn. As such, there no longer is an HLC policy permitting an institution to be "moved" from accreditation to candidacy. This policy change also aligns with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020. On February 27, 2020, HLC submitted revisions to two additional Change of Control-related policies (INST.F.20.070 and INST.F.20.080) to Ms. Daggett for advance review. HLC received an acknowledgement with a commitment to providing feedback no later than April 29, 2020. HLC is also in the process of revising the procedures relevant to a change of control application and approval, to align with other change of control policy changes adopted in 2019, and to otherwise clarify the procedures for HLC's membership.

Moreover, the Board undertook an independent analysis of what transpired with respect to the Institutes' change of control application, the approval of the change of control application with the condition of candidacy, the mid-semester closure of the transaction by EDMC and DCF, the Institutes' inadequate disclosures to their students, and the Institutes' eventual closure. In recognition of the new § 602.23(f)(1) (which would not have necessarily applied in this scenario, as candidacy was a voluntary condition) and of the harm to students caused by the Institutes' disclosures about its status, the Board will no longer approve a change of control application with the condition of candidacy. HLC has revised its procedures to provide that any conditions that may accompany a change of control application approval will not include conditions that could alter an institution's accreditation status.

While HLC provided more than meaningful due process in the circumstance in question, these changes reflect HLC's enduring commitment to due process. Further, this effort will certainly continue to align HLC policies, procedures, and practice with the Department's compliance expectations, particularly as defined by new regulations scheduled to take effect July 1, 2020.

With this effort already nearly complete, HLC has more than fully responded to the Department's compliance concerns.

A Detailed Plan

As an initial matter, and as the Department is certainly aware, HLC has no authority over an institution's transcripts or an institution's decision to accept transfer credit. HLC certainly shares the Department's concern for the students who attended the Institutes who, now after their closure, may have trouble transferring credits earned at the Institutes. Once HLC is made aware of the details of "any effort to correct the academic transcripts of those students" or of the details around "any effort" to help those students that is being undertaken by the now-closed Institutes, DCEH, DCF, or the Department, it will happily consider how it may reasonably assist. Without knowing the details of these efforts, however, HLC cannot provide a detailed plan to the Department in this regard.

To a related issue, this request inadvertently gives the impression that the Department is requiring, as an end result, that HLC "retroactively" accredit the Institutes. Specifically, the request asks that the transcripts of students attending on or after January 20, 2018 "show that the students earned credits and credentials from an accredited institution." HLC presumes this was unintentional, as the Department is certainly aware that it cannot direct an accreditor to make specific accreditation decisions about specific schools. Indeed, the Department of Education Organization Act limits the Secretary's authority over accrediting agencies. *See* 20 U.S.C. § 3403(b). In fact, in *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, the D.C. District Court held,

*[w]hile the Secretary has the authority to decide whether a particular accreditor's standards warrant approval as a reliable indicator of educational quality, 20 U.S.C. § 1099b(a), the Department itself is barred from interfering in an accrediting agency's assessment regarding individual schools. 20 U.S.C. § 3403(b).*¹¹⁵

Likewise, the Administrative Procedures Act also dictates that courts set aside agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."¹¹⁶ As such, any determination regarding whether the Institutes met the Criteria for Accreditation following their change of control must rest with HLC. To the extent that the Department's primary goal would be to obtain action from HLC that would result in "retroactive accreditation," the use of its oversight authority to secure such action is not supported by law.

However, HLC deeply shares in the Department's concern for the students negatively impacted by DCF's and DCEH's actions and stands ready to work with the Department to assist those students as they work to pursue their educational and professional goals. While each college and university across the country adopts its own credit transfer policies and may, or may not, choose to accept credits obtained at a preaccredited institution, HLC is in a unique position to provide

¹¹⁵ *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, 980 F. Supp. 53, 63 (D.D.C. 1997), *aff'd*, 168 F.3d 1362 (D.C. Cir. 1999), *opinion amended on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999).

¹¹⁶ 5 U.S.C. § 706.

meaningful support to impacted students as it relates to the transferability of their credits. As part of the Institutes' closure process, they established an online resource for students seeking to continue their educations; one of the resources includes a list of potential alternative schools for displaced students. Fourteen of the potential alternative schools are accredited by HLC. As such, HLC is able to reach out to those schools, and to the extent applicable, other schools accredited by HLC, in an effort to remind institutions that they are able to accept credits from preaccredited institutions, to help make more obtainable enrollment and credit acceptance for these students. Upon the agreement of the Department that the crux of the present matter is related to concern over impacted students' ability to transfer their credits, HLC is willing to distribute a letter reminding its member institutions that they are not prohibited from accepting credits from these schools and encouraging each school to consider immediate recruiting efforts to students impacted by the Institutes' closure, and/or inform member institutions that the Institutes' candidacy status was not related to the quality of instruction. HLC is more than willing to work collaboratively with the Department to find other ways to help these students, provided any such action is aligned with HLC policy and Department regulations.

VI. CONCLUSION

The Department's actions in this matter—while presumably well-intentioned and driven by the desire to support students, particularly the vulnerable students whose lives were negatively impacted by the Institutes' abrupt closure and whose choices were dramatically limited by DCF's and DCEH's inaccurate disclosures—have strayed from the fundamental principles of procedural and substantive due process to which it owes its regulated stakeholders. Inexplicably, the Department asks HLC to explain what steps it will take to prevent alleged “due process failures in the future,” but fails to recognize that the policy it contends was not followed is no longer in effect. Thus, it is impossible for the complained of action to reoccur under current HLC policy and procedures.

With respect to the aggrieved students, it is DCF, DCEH's and the Institutes' actions and omissions—not HLC's—that have left students displaced and in need of immediate and jointly coordinated support by the regulatory authorities and accreditors who are best-positioned to provide meaningful assistance. The Department's November 8, 2019 press release¹¹⁷ alleging that HLC harmed students based on its transcript requirements is without any evidentiary support. Dr. Sweeney provided Dr. Jones with a clear statement that HLC does not impose any requirements regarding transcripts. She also explained that the Institutes could provide a notation on, or documentation accompanying, the transcripts of students who graduated prior to January 20, 2018, explaining that the Institutes had been accredited. This suggestion was clearly made in the spirit of helping those students who obtained credits from the Institutes while they were accredited. To say HLC required that the transcripts contain notations that the credits earned are *unaccredited*, rather than Dr. Sweeney's actual suggestion about *accredited* credits, is inaccurate.¹¹⁸ Moreover, the Department ignores and minimizes DCF's and DCEH's repeated

¹¹⁷ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

¹¹⁸ See [HLC-OPE 15347-15353](#)

attempts to exploit HLC's policies, procedures and good faith communications for its own objectives, including solving its own significant financial challenges, at students' expense.

Nevertheless, HLC remains sensitive to the students' plight and is eager to assist with any ongoing effort the Department is prepared to describe. HLC stands ready and willing to respond by working *alongside* the Department in a coordinated way in responding to student needs. Yet, this current exercise of identifying hollow policy and procedural "failings," and demanding vague and undefined action from HLC in a manner that exceeds the Department's authority in numerous ways, does nothing to further that goal.

To be clear, HLC's actions in this matter were firmly rooted in then-applicable policies and procedures that were aligned with federal regulations and consistently applied. HLC's response to the change of control application was not unprecedented, but remarkably, followed the exact same process that had been previously offered to the Department in full detail, which at that time drew no concern. Due process, notice of applicable policies, and a meaningful opportunity to respond to the conditional approval were all provided to the Institutes.

Finally, despite HLC's strong demonstration that it complied with both federal regulations and sound and clearly articulated policies, HLC has timely made meaningful changes to address the results of its Board's independent analysis, while simultaneously ensuring that the Department's noncompliance concerns will never arise in the future. To that end, and for the reasons stated above, the Department must promptly close this inquiry with no further action.

Sincerely,



Barbara Gellman-Danley, PhD
President

CC (via email): Herman Bounds, Director of Accreditation, U.S. Department of Education
Anthea Sweeney, Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Marla Morgen, Associate Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Julie Miceli, Partner, Husch Blackwell
Jed Brinton, Deputy General Counsel, U.S. Department of Education

Exhibit 4



HIGHER LEARNING COMMISSION

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June 1, 2020

VIA ELECTRONIC MAIL

Annmarie Weisman
Senior Director
Policy Development, Analysis, and Accreditation Services
U.S. Department of Education
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Washington, DC 20202
Annmarie.Weisman@ed.gov

Dear Ms. Weisman:

This letter is in response to the May 1, 2020, letter to the Higher Learning Commission (“HLC”) from the U.S. Department of Education (the “Department”).¹ Both this letter and its exhibits (the “Supplemental Written Response”) and HLC’s March 20, 2020, letter and the exhibits linked therein (the “Initial Written Response”) (collectively, the “Written Response”) constitute HLC’s written response to the Department’s draft analysis of HLC’s compliance with, or effective application of, the criteria for recognition, as provided to HLC through the Department’s January 31 and May 1 letters (collectively, the “Draft Analysis”).² In summary and as reflected in its previous submission, HLC maintains that its actions with respect to the Institutes were in compliance with applicable regulations and its own policies, that it has since taken action to fully address the Department’s concerns relating to future compliance, and that the Department must therefore close this compliance inquiry. Further, as explained more fully herein, HLC reserves the right to supplement or otherwise amend its Written Response.

¹ On May 5, 2020, HLC confirmed that because the 30-day time period allotted for its response ended on a Sunday, this letter was to be submitted on Monday, June 1, 2020. Subsequently, HLC requested an additional two weeks to respond due to ongoing communications between HLC and the Department on this matter, through each of our respective legal counsel. This request was denied, and this letter thus constitutes the timely response of HLC to the May 1, 2020 letter.

² HLC’s Written Response also fully incorporates any responses and documents previously provided to the Department, including those sent on November 13, 2019, and January 13, 2020. *See* Initial Written Response footnote 9 for an explanation of the documents that have been provided to the Department as linked exhibits. To note, documents labeled HLC-OPE 1-15429, HLC-OPE 15430-15433, HLC-OPE 15434, and HLC-OPE 15435-15440 were provided to Dr. Lynn Mahaffie and Herman Bounds, as representatives of the Department, via an email with a link and password. Select previously provided documents were also hyperlinked in HLC’s Initial Written Response, as were additional documents labeled HLC-PET 1-2, HLC-PET 3-9, HLC-PET 10-34, HLC-PET 35, and HLC-SUPP 1-8. The password to access the linked documents was again provided to Dr. Mahaffie and Mr. Bounds. HLC presumes that the Department took the necessary action to download these documents. However, to the extent the Department cannot access these documents, HLC is happy to provide an additional link and password upon request.

HLC-DCEH-014722

I. RELEVANT BACKGROUND

The Department, through its then Deputy Assistant Secretary for Policy, Planning and Innovation, Dr. Lynn Mahaffie, notified HLC on January 31, 2020, that it had conducted a review of HLC related to the accreditation statuses of the Art Institute of Colorado and the Illinois Institute of Art (collectively, the “Institutes”) and reached certain findings of noncompliance. The relevant history of HLC’s action with respect to the Institutes and their accreditation statuses, as well as the Department’s communications with HLC regarding the Institutes and the instant compliance review, is contained fully in HLC’s Initial Written Response.³

To summarize that history, in May 2017, the Institutes submitted a joint change of control application, which memorialized that Education Management Corporation (“EDMC”) had entered into an asset purchase agreement through which the Dream Center Foundation (“DCF”) and its subsidiary Dream Center Education Holdings (“DCEH”) would acquire the Institutes from EDMC. On November 16, 2017, the Institutes were notified that HLC had approved the change of control application with conditions, one of which was that the Institutes “undergo a period of candidacy known as Change of Control Candidacy.”⁴ This action was taken instead of, for example, declining to approve the 2017 change of control application.

The Institutes formally and explicitly accepted the condition of candidacy on January 4, 2018, and were made aware by HLC of the requirement that they make accurate disclosures to students regarding candidacy status. This acceptance was knowing; counsel for DCEH communicated to HLC in February of 2018 that he accurately understood candidacy to be a preaccreditation status. Then on July 3, 2018, DCEH announced the closure of the Institutes, and the Institutes implemented a teach-out plan. The Institutes closed on December 28, 2018, and subsequently voluntarily resigned their membership with HLC effective January 8, 2019.

As relevant to the Department’s stated concerns regarding HLC’s actions with respect to the DCEH schools, the Institutes were in candidacy status (rather than accredited status) from January 20, 2018 through the Institutes’ voluntary resignation on January 8, 2019, and thus credits earned by students during that time were not earned from an accredited institution.

Ten months after the Institutes’ closure, on October 24, 2019, the Department initiated information and production requests to HLC. Apparently during that time, the Department decided to open a review into HLC’s actions with respect to the Institutes. On January 31, 2020, the Department informed HLC that it had determined HLC’s actions with respect to the Institutes’ change of control application were noncompliant with certain federal regulations, including being inconsistent with an internal HLC policy (which had been in place since 2009 and which HLC had, by January 2020, already repealed after its independent review of the

³ See Initial Written Response, Section II (attached hereto as **Exhibit A**).

⁴ See Initial Written Response, footnote 24 (linking to HLC-OPE 7726-7732).

policy). The Department's compliance review and related findings were inconsistent with the Department's previous communications to HLC and came after a significant delay.⁵

II. THE DEPARTMENT'S DRAFT ANALYSIS AND HLC'S INITIAL WRITTEN RESPONSE

Under 34 C.F.R. § 602.33(c), the Department is authorized to review the compliance of recognized accrediting agencies when Department staff learn of information that “appears credible and raises issues relevant to recognition” of the accrediting agency. Upon determination that “one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria,” the Department is directed to send a “written draft analysis” to the accreditation agency that includes “any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation.” The Department’s January 31, 2020, letter (the “Initial Draft Analysis”) was procedurally deficient, as it failed to provide any recognition recommendation and did not provide HLC with all supporting documentation that underlies the findings of noncompliance. Therein, the Department wrote that it “finds that HLC was not compliant with its own policy under INST.E.50.010; 34 C.F.R. § 602.18(c) (pertaining to consistency in decision making); and 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f) (due process); in moving the Institut[es] to Change of Control Candidate for accreditation status.”⁶ The Department requested

⁵ The Departments’ inquiries about the Institutes’ candidacy status and closure were fully detailed in Section II of the Initial Written Response, particularly at pages 16-21. However, a brief summary of that extensive narrative is illustrative of several concerns related to the Department’s eventual compliance review, including (1) the Department’s delay in conducting such review, and (2) the Department’s focus on the possibility of “retroactive” accreditation for the Institutes. First, HLC was not provided any notice that the Department had any concerns about HLC’s November 2017 action(s) with respect to the Institutes until October 31, 2018, when Diane Auer Jones, Principal Deputy Undersecretary at the Department, wrote to HLC that the Department was “concerned” that the change of control candidacy status had “caused disruption and confusion for students” and was inconsistent with Department regulations and HLC policy. This letter was the first indication of *any* concerns with HLC’s actions in this matter, despite HLC’s and the Department’s ongoing and extensive conversations about the Institutes up until that point. These prior ongoing communications included: (a) the Department’s receipt of both the November 16, 2017 and January 12, 2018 letters from the HLC Board to the Institutes regarding approval of the change of control application with conditions, including candidacy; (b) written and oral conversations in the spring of 2018 with Michael Frola, Director of Multi-Regional and Foreign School Participation Division at the Department, regarding the Institutes’ accreditation status and Title IV eligibility; (c) numerous conversations in the summer and fall of 2018 with Ms. Jones and other Department staff about the Institutes’ request for what appeared to be retroactive accreditation, the possibility of retroactive accreditation generally, teach-out plans, and HLC’s ability to ensure students who graduated from the Institutes prior to January 20, 2018 had sufficient documentation to demonstrate that their credits came from an accredited institution; and (d) at least one email in August 2018 to Ms. Jones about HLC’s ongoing concerns about the Institutes’ disclosures to students. Despite raising these concerns on the evening of October 31, 2018—nearly a year after the action in question—Ms. Jones then informed HLC by phone the same night that, in response to the Department’s concerns raised in its letter, HLC only needed to inform the Department that it would review its policies on this topic, which HLC then promptly did. As such, the Department’s October 24, 2019 letter formally seeking information about HLC’s actions—which came nearly another full year later—was yet again untimely and completely unexpected. Indeed, the Department’s January 31, 2020 letter effectively commencing this compliance review not only came more than a year after the Institutes’ closure, but over two years after the HLC Board’s action to approve the change of control application with conditions, including candidacy, *and* the Institutes’ explicit, written acceptance of this condition, of which the Department was provided contemporaneous or near-contemporaneous notification.

⁶ See Initial Draft Analysis.

that HLC respond to each of these findings of noncompliance, and also provide certain narrative responses.

HLC submitted its Initial Written Response to the Initial Draft Analysis on March 20, 2020. First, HLC explained to the Department that the agency's failure to provide all supporting documentation and provide a recognition recommendation were materially consequential procedural errors. Despite these deficiencies, and in the spirit of ongoing cooperation and a desire to seek a resolution agreeable to all parties, HLC also fully responded to the Department's substantive concerns. In detail, HLC explained how and why it was compliant with regard to each of the identified regulatory findings. Additionally, the Initial Written Response detailed the steps HLC had taken to "prevent due process failures," including: (a) rescinding INST.E.50.010; (b) revising procedures to provide any conditions that may accompany a change of control application approval would not include conditions that could alter an institution's accreditation status; and (c) continuing to align HLC's policies, procedures, and practice with the new regulations scheduled to take effect July 1, 2020.

The Initial Draft Analysis also requested that HLC provide "a detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the [Institutes] on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution." In reply, in its Initial Written Response, HLC reminded the Department that it had previously responded to the Department's questions in July 2018 about the Institutes, including questions regarding transcripts generally, and informed the Department that HLC does not require institutions to mark their transcripts to identify their accreditation status, generally. At that time, HLC also offered suggestions for how DCEH could identify, through the students' transcripts or via a letter, where credits were earned by students while the Institutes were accredited.⁷ Also in the Initial Written Response, HLC respectfully requested guidance from the Department as to what efforts were underway to "correct the academic transcripts" of former students of the Institutes, and explained it could provide, as specifically requested by the Department, a "detailed plan on how HLC intends to assist" in such efforts once these efforts were identified.

Without any of the requested information from the Department, HLC instead informed the Department of action it *could* take to assist students in successfully transferring their credits to other HLC-member institutions, namely by providing guidance to HLC member institutions about their ability, in accordance with their own policies and procedures, to accept credits earned by students at the Institutes while the Institutes were in candidacy status.⁸ HLC requested that the Department confirm that such action would meet the underlying intent behind the Department's request for a "detailed plan." As discussed below, although the Department declined to provide any such confirmation, HLC has indeed provided such guidance to its member-institutions in an effort to assist the Institutes' former students.

⁷ Indeed, HLC had already provided the Department with information about transcripts. *See* Initial Written Response, p. 19 (citing HLC-OPE 15347-15353).

⁸ Notably, HLC-member institutions are permitted to make their own determinations about whether to accept transfer credit, including from preaccredited institutions.

The Department responded to HLC's March 20, 2020 letter in writing on May 1, 2020 ("Supplemental Draft Analysis"). In this Supplemental Draft Analysis, the Department partially responded to the procedural concerns raised by HLC. Notably, the Department provided HLC with a recognition recommendation. However, as further explained below, the Department did not remedy its failure to provide all supporting documentation to HLC. The Department also did not address any of the substantive responses contained within HLC's March 20, 2020 letter.

III. HLC IS IN COMPLIANCE WITH THE CRITERIA FOR RECOGNITION AND THE DEPARTMENT MUST CLOSE THIS REVIEW

After review of the Department's Supplemental Draft Analysis, HLC continues to have concerns with the entirety of this compliance review. However, HLC once again fully responds to the Department, in the spirit of cooperation and transparency.

First and foremost, HLC fully and adequately responded to the Department's findings that it was noncompliant with INST.E.50.010, 34 CFR § 602.18(c), and §§ 34 CFR 602.25(a), (d), (e), and (f) in its Initial Written Response (attached hereto as **Exhibit A**). As such, HLC does not re-address these specific findings herein. Instead, this Supplemental Written Response seeks to address three ongoing or new issues.

First, the Draft Analysis, in its entirety, continues to be procedurally deficient. Second, HLC requests clarification of what action the Department wishes HLC to take with respect to the Institutes, particularly since HLC has already explained the steps it has taken to correct any alleged deficiencies, both with respect to its own actions and to assist the students who were harmed by certain actions of the Institutes, EDMC, DCEH, and DCF. Finally, HLC requests clarification of the scope of the Department's proposed recognition recommendation. To the extent possible, HLC also responds to that recommendation.

For the reasons stated herein, and in HLC's March 20, 2020 response, HLC respectfully submits that the Department must close this inquiry.

a. THE DEPARTMENT HAS NOT FULLY CORRECTED ITS MATERIALLY-CONSEQUENTIAL PROCEDURAL DEFICIENCIES AND HAS CREATED NEW ONES

As an initial matter, and quite disappointingly, the Department appears to correlate HLC's "assert[ion]" of the Department's failure to comply with the procedural requirements of the relevant regulation as some sort of indication that, in the Department's words, "HLC is unwilling to take steps to help impacted students."⁹

To the contrary, HLC's request that the Department simply follow the procedural requirements, in accordance with its own regulations, in conducting this review does not indicate that HLC is unwilling to support students. As the numerous oral and written conversations between HLC and the Department on this matter have made clear, HLC is first and foremost concerned with

⁹ See Supplemental Draft Analysis.

ensuring that *all* students—both those who attended the Institutes and those at any HLC member institution—receive a high-quality education through which the students’ hard work results in valuable training, skills, and credits. All of HLC’s actions have been in the interest of helping students and have followed all relevant regulations and policies. The Department’s concerns about HLC’s legitimate notice to the Department that its Initial Draft Analysis did not comply with 34 CFR § 602.33(c), are baffling and raises questions about the Department’s use of its authority to review recognized agencies in this instance.

HLC appreciates that the Department minimally acknowledged HLC’s procedural arguments in its Supplemental Draft Analysis. However, while the Department has now made an effort to provide HLC with a recognition recommendation, the Department has not remedied its failure to provide HLC with all supporting documentation for this recommendation; and has created a new procedural issue pertaining to which Department officials are serving in what roles in this process and which Department officials have decision-making authority regarding this compliance review.

i. THE DEPARTMENT’S FAILURE TO PROVIDE SUPPORTING DOCUMENTATION

The Department maintains that it was not required to provide a transcript of the December 23, 2019 interview conducted by Robert King, Assistant Secretary for Postsecondary Education, of Karen Peterson Solinski, former Executive Vice President of Legal and Governmental Affairs at HLC, because the Department did not create a transcript and “relied exclusively on Ms. Solinski’s December 26, 2019 email.”¹⁰ It is perplexing that the Department would prepare a “Substantially Verbatim Transcript of Phone Call”¹¹ that occurred on December 9, 2019 between Mr. King and Ron Holt, outside counsel for DCEH, about these same topics and then not prepare a similar transcript for its *subsequent* phone call with Ms. Solinski just 14 days later. Still, even if the Department failed to record or transcribe Ms. Solinski’s interview, it certainly should have notes of the interview. Indeed, it is common practice for persons to take notes contemporaneously with or shortly following a call to record the substance of a conversation. HLC is entitled to any such notes or other documentation, as they would constitute supporting documentation under the regulation.

The Department has long-recognized the importance of providing accrediting agencies with such documentation. As the Department is aware, 34 CFR § 602.33 was developed through negotiated rulemaking. In response to specific concerns raised by non-federal negotiators that the Department would “act arbitrarily” or fail to “provide adequate notice to and communication with the agency” when conducting a review under the regulation, the Department added regulatory language “to reflect the consultation between Department staff and the agency, and the provision to the agency of the documentation concerning the inquiry.”¹² As such, under § 602.33(c)(2), the Department is required to provide *all* supporting documentation to the accrediting agency to whom it has sent a draft analysis identifying alleged noncompliance.

¹⁰ See Supplemental Draft Analysis.

¹¹ See Initial Draft Analysis, Exhibit 2.

¹² See Proposed Rule, *Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary’s Recognition of Accrediting Agencies*, 74 FR 39515 (Aug. 6, 2009) (codified at 34 C.F.R. § 602.33).

This is not a request placing form over substance. Not only do the regulations require that any and all documentation related to Ms. Solinski's interview be provided to HLC, but such documentation is *necessary* for HLC to fully respond to the Department's Draft Analysis. Indeed, HLC is concerned both that the Department has not accurately summarized Ms. Solinski's statements and has relied on two witnesses—Ms. Solinski and Mr. Holt—whose credibility or objectivity on these issues may be in question.

The Department provided HLC with a copy of the email Mr. King sent Ms. Solinski following their December 23, 2019 interview, in which Mr. King sought confirmation of remarks Ms. Solinski made during that interview, and Ms. Solinski's response.¹³ While Ms. Solinski initially wrote that Mr. King had "accurately described [her] understanding of the transaction," she then provided additional details that were *inconsistent* with Mr. King's summary of her remarks.

For example, Ms. Solinski wrote that HLC would "need to reconfirm . . . the institutions' ability to meet the HLC Criteria for Accreditation," indicating that HLC had taken some action related to the Institutes' accreditation status, changing that status, and would reevaluate and possibly reinstate that status after a certain time period. To the contrary, Mr. King had written that after six months, HLC would "ascertain whether [the Institutes] could remain accredited," indicating that some status-quo relating to the accreditation status would be maintained for a time-period. There is inconsistency between these statements.

Moreover, while both Mr. King and Ms. Solinski wrote that HLC did not "withdraw" accreditation, neither email makes explicit reference to candidacy status as opposed to accredited status, which presumably would have been discussed on the phone call. The substance of these two emails, and their apparent inconsistency, indicates that more may have been said by Ms. Solinski in the interview, and any such additional statements by Ms. Solinski would likely have influenced the Department's action.

Separately, the email exchange raises concerns regarding Ms. Solinski's credibility on this issue. Ms. Solinski has not been an employee of HLC since February 28, 2018. Contrary to her assertion that she was not privy to certain conversations, Ms. Solinski was HLC's main point of contact with Mr. Holt, counsel for DCF, DCEH, and the Institutes from November 2017 through February 2018.¹⁴ Moreover, not only did Ms. Solinski and Mr. Holt communicate via email during that time, they also had conversations to which other staff at HLC were not privy first-hand, thus further supporting the need for materials relating to discussions between Ms. Solinski and Department staff.

Because the Department did not support its findings with any statements from former Institute officials or current HLC staff, and in fact failed to interview any current HLC employees during this compliance review, HLC is concerned that the Department relied heavily on the remarks of only Ms. Solinski and Mr. Holt, whose credibility and objectivity on these issues may be in question. All documentation supporting the Department's compliance review and findings, including documentation of the Department's interview with Ms. Solinski, are therefore necessary for HLC to understand how the Department reached its conclusions, and enable HLC

¹³ See Initial Draft Analysis, Exhibit 4.

¹⁴ See Initial Written Response, p. 9 (citing HLC-OPE 7742-7761); *id.*, p. 12 (citing HLC-OPE 15312-15315).

to provide the Department with the additional responsive detail necessary to alleviate its concerns.

Due to the Department's failure to adequately provide HLC with the supporting documentation to which it is entitled, and that is necessary for it to meaningfully and fully respond to the Draft Analysis, HLC filed a Freedom of Information Act ("FOIA") request on May 21, 2020 (attached hereto as **Exhibit B**). As such, and as a means of curing any such procedural deficiency, HLC reserves the right to amend its Written Response with any information it learns through the Department's response to this FOIA request.

**ii. THE DEPARTMENT'S LACK OF CLARITY REGARDING
DECISION-MAKERS AND/OR POINTS OF CONTACT**

HLC is also now concerned about a new procedural deficiency and seeks clarification as to which Department staff members are engaged in this compliance review. In the course of the review, HLC has been given shifting information about whom it should work with related to the Department's concerns of HLC's noncompliance, resolution thereof, and who the decision-makers may be at various points in the compliance review process.

Under 34 CFR §§ 602.33-602.36, where "Department staff" make an initial determination of deficiencies with an agency's compliance with the criteria for recognition, they are directed to provide a draft analysis to the agency. The agency then has an opportunity to demonstrate compliance, as documented by a written response to Department staff. Upon review of the agency's written response, the Department staff may either conclude that the agency has demonstrated compliance, or conclude that the agency is in noncompliance, in which event Department staff are directed to finalize the draft analysis and present a final staff analysis and recognition recommendation to the National Advisory Committee on Institutional Quality and Integrity (NACIQI). NACIQI then reviews the relevant information and makes a recommendation to the "senior Department official." After the accrediting agency and Department staff submit written comments on NACIQI's recommendation, the senior Department official "makes a decision regarding recognition of an agency[.]" The "senior Department official" is defined as the "senior official in the U.S. Department of Education who reports directly to the Secretary regarding accrediting agency recognition."¹⁵

HLC was of the understanding that Robert King, Assistant Secretary for the Office of Postsecondary Education—to whom Dr. Mahaffie, and now Ms. Weisman, report—was serving as the relevant "senior Department official" in this matter. Dr. Mahaffie and Ms. Weisman were, respectively, the signatories on the Initial and Supplemental Draft Analyses, and Herman Bounds, Director of Accreditation, was identified by the Department in both the Initial and Supplemental Draft Analyses as the Department staff to whom HLC should direct any questions.

As such, following receipt of the Supplemental Draft Analysis, HLC's President submitted via email on May 5, 2020, a request for a phone call with both Ms. Weisman and Mr. Bounds. In lieu of a response from either Ms. Weisman or Mr. Bounds, HLC received an email from Jed

¹⁵ 34 CFR § 602.3.

Brinton, Deputy General Counsel at the Department, that same day. Mr. Brinton was not included on HLC's email request, but he wrote back to explain that he "would be glad to speak on behalf of the Department." Notably, Ms. Weisman and Mr. Bounds were not included in Mr. Brinton's email. Subsequently, on a call with HLC's outside legal counsel on May 6, 2020, Mr. Brinton explained that he was "delegated" as the Department's "point of contact" with HLC on this compliance inquiry, was authorized to speak with HLC about this inquiry, and that the requested call between HLC's President and Ms. Weisman and Mr. Bounds would not occur. Instead, Mr. Brinton offered to speak with HLC's President, other staff members, and HLC's outside legal counsel.¹⁶ HLC's legal counsel asked Mr. Brinton if he was serving as a decision-maker, meaning the "Department staff" or "senior Department official" as contemplated under the applicable regulations. Mr. Brinton demurred, stating that he would "have to get back to" her on that issue.

Other events preceding this response have also created confusion as to which Department officials are serving in what role under the regulations. Notably, on or around April 22, 2020, HLC's outside legal counsel spoke with Mr. Brinton regarding a specific possible action the HLC Board could take with respect to the Institutes.¹⁷ In response, and recognizing that HLC had previously rescinded the policy in question, Mr. Brinton explained that the proposed action, if taken by HLC, would resolve the Department's compliance concerns and close this inquiry.¹⁸

HLC is now at a loss as to who is serving as the "Department staff" in this review and who is serving as the "senior Department official," and seeks transparency and clarity as to: (a) which Department staff are conducting the compliance review and making a determination whether to present a final staff analysis to NACIQI based on review of HLC's Written Response, and (b) the identity of the senior Department official who would make any decision based on any potential NACIQI recommendation. As HLC navigates this compliance review, it is entitled to be on notice as to who is serving as the decision-maker(s) in this process in accordance with these regulations.

Indeed, it is of material consequence which Department staff or officials are the decision-makers at which stage of the regulatory process. As mentioned above, Department staff may, upon review of HLC's Written Response, find that HLC is in compliance with the criteria for recognition. If Ms. Weisman, Dr. Mahaffie, and/or Mr. Bounds are the Department staff making the relevant decisions at this stage of the process—as indicated by the Initial and Supplement Draft Analyses—then HLC's attempts to collaborate with the Department in order to address its concerns should go through those persons. It is unclear which Department staff or officials have the authority to terminate the compliance review, and upon which statements made by Department staff and counsel HLC may rely, particularly as it relates to resolving this inquiry. In

¹⁶ This call took place between Mr. Brinton and HLC's President, staff members, and outside legal counsel on May 15, 2020.

¹⁷ HLC's legal counsel and Mr. Brinton first communicated on or about February 24, 2020, regarding the Department's Initial Draft Analysis, and have communicated from that date through as recently as May 22, 2020, both through phone calls and over email about the Draft Analysis and various actions HLC has considered taking, and action HLC has taken, with respect to the Institutes, both to help students and to address the Department's concerns.

¹⁸ As detailed more in Section III(b), this action—changing the effective date of the Institutes' candidacy to their date of voluntary resignation—was ultimately not taken.

HLC's attempts to fully respond to the Department's concerns and reach a mutually satisfactory resolution, it is materially necessary that HLC be able to confer with the appropriate Department staff and officials. Undoubtedly, as an agency under oversight itself, the Department can appreciate that direct discussions between a decision-maker and its regulated party can often lead to more fruitful and robust discussions relating to compliance concerns and resolution thereof. For this reason, HLC requested the opportunity to confer with the appropriate stakeholders at the Department responsible for making a determination on referral to NACIQI about the Department's concerns, and how those may be best addressed. Effectively, HLC has been denied such opportunity.¹⁹

b. THE DEPARTMENT MUST PROVIDE ADDITIONAL GUIDANCE AS TO WHAT ACTION IT BELIEVES HLC MUST TAKE TO REMEDY THE ALLEGED NONCOMPLIANCE AND MITIGATE NEGATIVE EFFECTS FOR FORMER STUDENTS

As detailed at length in the Initial Written Response, and communicated to the Department over the last several months (in particular to Mr. Brinton), HLC is seeking clarity on (1) how it can further demonstrate its current compliance with the applicable regulations, given all actions it has taken to do so to date; and (2) what action it can take that will satisfy the Department's requests related to assisting the former students of the Institutes.

In the Initial Draft Analysis, the Department directed HLC to provide (1) a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future; and (2) a detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution. Somewhat similarly, in the Supplemental Draft Analysis, the Department recommended that HLC must "come into compliance within 12 months with 34 C.F.R. §§ 602.18(c), 34 C.F.R. 602.25(a), 602.25(d), 602.25(e), and 602.25(f)," and submit a compliance report regarding such compliance. However, the affirmative obligation imposed on HLC by the Department shifted from the correction of transcripts, perhaps in response to HLC's explanation that it did not, in fact, impose any specific requirements on its membership related to accepting transfer credits and issuing transcripts, to a requirement that HLC provide "details on HLC's efforts to mitigate the negative effects of HLC's procedurally erroneous decision to

¹⁹ Notably, 34 C.F.R. § 602.33(c) provides that during the course of the Department's review under § 602.33(a), the Department should provide HLC with the documentation concerning its review and consult with HLC. Only after the "provision to the agency of the documentation concerning the inquiry and consultation with the agency" can the Department staff "note[] that one or more deficiencies may exist in the agency's compliance." Upon such a preliminary determination, the Department is directed to send HLC its draft analysis of the compliance concerns, with the supporting documentation and recognition recommendation. Indeed, this consultation is clearly intended to also continue *after* the Draft Analysis is sent, as upon review of HLC's Written Response, Department staff may conclude that HLC has demonstrated compliance and close its review. The Department should have therefore consulted HLC both prior to and after sending HLC its Draft Analysis. Consultation with the appropriate Department officials is not only contemplated under the regulations, it is a materially consequential step that may result in resolution of this compliance review to which HLC was denied.

withdraw accreditation from the two institutions set forth above on students, especially with regard to the status of academic credits earned at the Institutions during calendar year 2018.”

As an initial matter, and as described previously in HLC’s Initial Response, not only did HLC’s actions with respect to the Institutes not violate these regulations, but HLC has also fully explained how it is currently in compliance. Indeed, the Department’s assertion that HLC’s decision “to withdraw accreditation” was “procedurally erroneous” is simply false. First, there was no withdrawal of accreditation. As fully documented, HLC approved the change of control application with several conditions, including the condition that the Institutes accept a period of candidacy. This decision by the HLC Board was based on HLC’s specialized knowledge of accreditation, and its concerns about the ability of the Institutes’ new owners to meet accreditation standards. The condition of candidacy was explicitly accepted by the Institutes. As such, the Institutes went from accredited to candidacy (preaccreditation) status upon their consummation of the transaction.²⁰ Unfortunately, and despite explicit instructions from HLC, the Institutes, and DCEH/DCF, did not accurately inform students of their preaccreditation status. These inaccurate disclosures on the part of the Institutes, DCEH and DCF were inexcusable from HLC’s perspective and do not reflect misconduct or procedural error by HLC.

Second, even if HLC’s actions *were* procedurally erroneous, any alleged procedural deficiencies were remedied when HLC granted the Institutes the opportunity to appeal in May 2018. The Institutes did not timely or accurately seek out this appeal. Instead, 20 days after being given the opportunity to appeal, they requested what amounted to retroactive accreditation; then, they submitted an appeal only electronically and to the wrong email address; and finally, they decided to close less than a week after the erroneously-submitted appeal, without ever inquiring then, or at any time thereafter, as to whether HLC had received the appeal (which it had not). There simply are no grounds to support that HLC made a decision that was contrary to the regulations.

Moreover, HLC has repealed the policy in question, INST.50.010, in its entirety. Because of the policy repeal and the requirements imposed by the new 34 C.F.R. § 602.23(f)(1)(iv), effective July 1, 2020, a scenario such as this—where an institution chooses to move from accredited to candidacy status as a condition on the approval of its change of control application—will never be repeated. Ultimately, there are simply no ongoing considerations regarding future compliance in relation to HLC’s policies, procedures, and/or practices.

All told, HLC cannot rewrite these events or change “retroactively” its decisions that took place well over two years ago. While HLC has not taken the action the Department seems to be seeking, i.e. retroactively accrediting the Institutes (an action which is not provided for in HLC’s current policies), HLC shares the Department’s concerns about any continued impact felt by the Institutes’ former students. As such, HLC is dedicated to assisting these students in whatever

²⁰ HLC notified the Institutes of its initial approval of the change of control transaction with the condition of candidacy on November 16, 2017, with the expectation that the transaction would close within 30 days. The Institutes accepted the conditions on January 4, 2018 and informed HLC that EDMC and DCEH had not complied with the 30-day closure expectation. HLC granted the Institutes their requested extension of the closure date; the transaction ultimately closed on or around January 20, 2018. EDMC’s and DCEH’s delay in completing the transaction resulted in the condition of candidacy becoming effective *after* the Institutes’ semester began, and not prior to, as originally anticipated by HLC. *See* Initial Written Response, pp 7-11 (and documents cited therein).

way is aligned with the best interests of the students and HLC's standards and policies. In fact, in the Initial Written Response, HLC informed the Department that it would "distribute a letter reminding its member institutions that they are not prohibited from accepting credits from these schools and encouraging each school to consider immediate recruiting efforts to students impacted by the Institutes' closure, and/or inform member institutions that the Institutes' candidacy status was not related to the quality of instruction." At that time, HLC requested that the Department provide guidance as to whether this solution proposed by HLC was aligned with the Department's goals. While the Department declined to substantively respond to this request for guidance, since the submission of the Initial Written Response, HLC has acted on the steps it listed therein. For example, on April 29, 2020, HLC sent a letter to member institutions in Illinois, Colorado, and Michigan about accepting transfer credits from former students of the Institutes. This letter was provided to the Department on that same day. A similar letter, which also included information about a dedicated phone line that HLC established to answer questions regarding transfer, was subsequently sent on May 27, 2020 to all other HLC member institutions (attached hereto as **Exhibit C**). Both letters were also sent to the relevant state educational agencies in which the member institutions are located.

HLC has also proactively sought out additional ways of assisting impacted students. For example, on its own initiative, the HLC Board considered whether the Institutes' effective date of candidacy could be changed from January 20, 2018 to January 8, 2019. Upon notification that the HLC Board would be considering this action, the Department, through Mr. Brinton, indicated to HLC's counsel that such action would resolve the entirety of this compliance inquiry. However, on April 23, 2020, after careful analysis and consideration, the HLC Board declined to take this action for a variety of reasons, including that the action would have not alleviated the undue burden students have suffered as a result of the actions of DCF, DCEH and the Institutes, as required by HLC policy, and in fact, may further exacerbate that burden.

Following the Board's well-reasoned denial of this possible course of action, HLC immediately took action to develop a multifaceted outreach plan to further support any former students of the Institutes experiencing any continued impact with respect to transfer of credits. Indeed, HLC and Mr. Brinton spoke at length on May 15, 2020, about how HLC could provide additional targeted support to the former students of the Institutes, including through broader outreach to HLC member institutions, state agencies, and even through direct student channels, regarding how the Institutes' former students could successfully transfer their credits to member institutions. On this call, HLC specifically requested input and suggestions from the Department on how to amplify this message; however, Mr. Brinton declined to provide any substantive input or assistance. HLC agreed to memorialize its plan in writing for Mr. Brinton.

Following this conversation, HLC memorialized its "Enhancing Transfer Opportunities – Communications Plan" ("Communications Plan"), as developed based on HLC's own professional expertise (attached hereto as **Exhibit D**). As explained in the Communications Plan, HLC is taking action through numerous communications vehicles to inform *all* member institutions, and other stakeholders, about transfer opportunities for students impacted by the Institutes' closure. In particular, the increase in online learning due to the COVID-19 pandemic has provided a unique opportunity for students to enroll at institutions outside their home geographies, and as such there are additional opportunities for students who attended the

Institutes in 2018 to seek to transfer their credits to an HLC-accredited institution and complete their degree, if they so desire.

The Communications Plan was provided to the Department on May 18, 2020, with a second request for further input from the Department as to how HLC might partner with the Department to amplify its message, as well as a request that the Department provide HLC with guidance as to whether the plan sufficiently addressed the Department's concerns. After hearing no reply, HLC's legal counsel again reached out to Mr. Brinton on May 21, 2020, in accordance with Mr. Brinton's directive that he was the sole point of contact for the Department on this issue, seeking guidance on the proposed plan. Mr. Brinton responded on behalf of the Department that, "[t]hese actions will not eliminate the impacts of (or otherwise fully moot or resolve) the procedural problems with the handling of the Institutes' accreditation that have been addressed in the Department's correspondence with HLC over the past several months." Significantly, Mr. Brinton's statements that changing the effective dates of the Institutes' candidacy to January 8, 2019 *would* address the Department's compliance concerns, but that HLC's efforts to assist former students of the Institutes in transferring their credits earned during candidacy to other, accredited institutes *would not* address the Department's compliance concerns, are an indication that the Department is seeking a very specific resolution.

At this point, to be frank, HLC is at a loss regarding how to respond to the Department, while also complying with HLC policies and maintaining its own independence as an accreditor. While the Department is expressly prohibited from "interfering in an accrediting agency's assessment regarding individual schools,"²¹ it appears that the Department is attempting to strong-arm HLC into retroactively accrediting the Institutes by turning down every solution from HLC that is *not* retroactive accreditation, or an action (such as changing the effective date of candidacy) that would have the same effect. The Department simply does not have the regulatory authority to usurp HLC's independent decision-making authority or to require HLC take the Department's single preferred course of action.

HLC has taken multiple measures to ensure that the accreditation option in question here will not occur in the future and has proposed solutions that could help the former students of the Institutes without jeopardizing its integrity as an accreditor or harming students. None of these actions have satisfied the Department. As such, it has unfortunately become clear that HLC cannot satisfy the Department without retroactively accrediting the Institutes, an action inconsistent with HLC's accrediting policies and standards, and importantly, which may exacerbate the burden students have suffered as a result of the actions of DCF, DCEH and the Institutes.

HLC respectfully submits that the Department must close this inquiry or advise why the actions HLC has taken thus far and proposes to take, particularly with regards to the outreach identified in the Communications Plan, is insufficient. HLC also respectfully requests a detailed explanation of what action the Department will require HLC to take to be considered in compliance with the regulations, and to satisfy the Department's recommendation regarding

²¹ *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, 980 F. Supp. 53, 63 (D.D.C. 1997) (citing 20 U.S.C. § 3403(b)), *aff'd*, 168 F.3d 1362 (D.C. Cir. 1999), *opinion amended on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999).

mitigation of negative effects suffered by former students of the Institutes. Additionally, given that the Department has reviewed HLC's March 20, 2020 letter, it would be helpful for the Department to identify how HLC has not demonstrated such compliance through its Initial Written Response.

c. THE DEPARTMENT MUST CLARIFY ITS PROPOSED RECOGNITION RECOMMENDATION

HLC understands the Department's proposed recognition recommendation consists of three-prongs: (1) that HLC "come into compliance" with the five cited regulations within 12 months and submit a compliance report 30 days thereafter; (2) that HLC cannot grant an *accredited* status (as opposed to a *candidate* status) to any institution that does not currently hold either *candidate* or *accredited* status with HLC for that same 12-month period; and (3) that HLC take certain unspecified steps in support of the former students of the Institutes to help them transfer credits and/or have such credits deemed "accredited" credits, and include details of this action in the aforementioned compliance report.

As detailed in depth above, HLC is at a loss for what the Department wishes HLC to do with regard to the first and third prongs.

With regards to the second prong, through which the Department proposes a limitation on HLC's accrediting authority, HLC seeks confirmation of its understanding of the Department's language. HLC understands the Department's statement that HLC "may not accredit additional institutions of higher education that do not currently hold accreditation or preaccreditation status with the agency" to be referring to a prohibition, lasting for 12 months, on HLC's ability to take "new" institutions—i.e., those that are not currently holding candidacy (preaccreditation) or accredited status with HLC—through the eligibility process; grant candidacy; and then grant accreditation within that 12-month period. HLC does not interpret this recommendation to prohibit HLC from granting candidacy to new institutions or from granting accreditation to institutions that, prior to the initiation of the relevant 12-month period, were in candidacy status with HLC.

HLC also requests confirmation that the Department no longer seeks to impose a requirement on HLC that it must provide the Department with 60 days' advance notice of any policy revisions.²² This requirement was not included in the Department's recognition recommendation in the Supplemental Draft Analysis. Unless and until the Department revises its recognition recommendation to provide otherwise, HLC presumes that this limitation on HLC's ability to revise its policies is not a part of the current recommendation.

Finally, HLC questions the Department's proposed limitation as punitive, arbitrary, and completely unrelated to the substance of its compliance inquiry. Recommendations that limit an accreditors' authority should seemingly help the agency improve its compliance with the criteria for recognition. In fact, the senior Department official is required to specify the reasons for

²² See Initial Draft Analysis, pp. 9-10.

which he or she reaches a decision to limit recognition.²³ There is simply no justification here for the recommended limitation on HLC's accrediting authority.

Indeed, the underlying inquiry involves one discrete issue: HLC's use of a policy that permitted it to accept a change of control application subject to the condition of candidacy, as applied to the Institutes.²⁴ Yet, the proposed limitation on HLC's recognition is not only unrelated to the action in question and the Department's findings of noncompliance, it also does not make sense given HLC's policy changes and changes to federal regulations. In particular, since HLC has already eliminated the policy under which the approval of a change of control application with the condition of candidacy occurred, any recognition limitation would have absolutely no impact on improving HLC's practices, policies, and procedures on this issue.²⁵ Furthermore, the practice in question will be prohibited under the new 34 C.F.R. § 602.23(f)(1), which becomes effective in July. Critically, HLC has already ensured its policies and procedures align with this and other new regulations. As such, the Department's findings related to HLC's compliance with the criteria for recognition have already been resolved—HLC is currently in compliance, and its efforts to ensure compliance cannot be further improved upon by the proposed limitation.

The recommended limitation on HLC's accrediting authority is misaligned with what the Department has stated are its concerns. Moreover, the recognition recommendation is arbitrarily punitive. While HLC has sought confirmation that its understanding of the recommendation is correct, it also seeks to make clear that not only is *any* recognition action not justified—given that the Department's findings of noncompliance are incorrect and unsupported and that HLC has taken action to ensure that a similar action will not occur in the future—but also that this specific recommendation is inappropriate, for the reasons explained herein.

In summary, if the Department intended its recognition recommendation to have a different meaning than a 12-month prohibition on HLC's ability to grant accredited status to an institution not currently holding candidacy status; if the Department intended the recommendation to include the limitation on policy revisions presented in the Initial Written Analysis; or if the Department otherwise revises its recommendation for any reason, HLC needs to be provided sufficient notice and ample opportunity to meaningfully respond to the recommendation, in accordance with the regulations.

IV. CONCLUSION

HLC has taken meaningful action to respond to the Department's concerns for the former students of the Institutes and will continue to support those students within the bounds of its authority, particularly in response to any direct requests from those students. HLC believes that its actions taken to date to support students and encourage its membership to do the same will

²³ 34 C.F.R. § 602.36.

²⁴ As explained at length in the Initial Written Response, HLC had previously applied this policy to Everest College Phoenix ("ECP"). See Initial Written Response, pp. 31-33 (and documents cited therein). The Department reviewed HLC's actions with respect to ECP, and at no time so much as indicated to HLC that it had concerns with this policy or practice. See *id.*

²⁵ As explained in the Initial Written Response, in addition to rescinding INST.E.50.010, "HLC has revised its procedures to provide that any conditions that may accompany a change of control application approval will not include conditions that could alter an institution's accreditation status." See *id.* at p. 35.

Ms. Weisman
June 1, 2020

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further assist the former students of the Institutes, who are interested in doing so, in seeking credit transfers. At the same time, HLC remains committed to working with the Department in amplifying this message and reaching a resolution to this matter in a manner that is consistent with HLC's policies and aligned with student interests.

Moreover, for the reasons stated above and in its Initial Written Response, HLC's actions with respect to the Institutes were in compliance with applicable regulations and its own policies. The agency has taken action to fully address the Department's concerns relating to future compliance by eliminating the policy it previously relied on to effectuate the action in question. As such, the Department must close this inquiry instead of forwarding any final staff analysis and recognition recommendation to NACIQI.

Further, in the event that additional information comes to light to which HLC would have been entitled per this compliance review, including pursuant to the Department's response to this Supplemental Written Response or the Department's response to HLC's FOIA request, HLC reserves the rights to supplement and/or amend its Written Response.

Sincerely,



Barbara Gellman-Danley, PhD
President

CC (via email): Herman Bounds, Director of Accreditation, U.S. Department of Education
Anthea Sweeney, Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Marla Morgen, Associate Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Julie Miceli, Partner, Husch Blackwell
Jed Brinton, Deputy General Counsel, U.S. Department of Education

Exhibit A

March 20, 2020

VIA ELECTRONIC MAIL

Dr. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Lynn.mahaffie@ed.gov

Dear Dr. Mahaffie:

This letter is in response to your letter dated January 31, 2020, in which the U.S. Department of Education (the “Department”) notified the Higher Learning Commission (“HLC” or the “Commission”) that it conducted a review related to the accreditation statuses of the Art Institute of Colorado and the Illinois Institute of Art (collectively, the “Institutes”) and, pursuant to 34 C.F.R. § 602.33(c), had found HLC in “noncompliance” with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f), and with HLC’s “Accredited to Candidate Status” policy INST.E.50.010, which no longer is in effect. The Department initially provided HLC with 30 days to respond to these findings¹ and requested that HLC provide a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future, and

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

As described herein, HLC firmly disputes the Department’s allegations of noncompliance and respectfully requests, for the reasons stated below, that the Department close this inquiry with no further action.

¹ HLC originally requested a 30-day extension of time; the Department granted an eight-day extension. HLC understands from discussions with Department officials that only an eight-day extension was permissible, given the Department’s concern relating to the “upcoming” NACIQI meeting—sometime in July—at which this issue may be considered. Upon a subsequent request by HLC for an additional two-week extension, necessitated by HLC’s understanding that a third-party complaint was filed in federal court by the Dream Center Foundation (“DCF”) against HLC in *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.), the Department granted HLC until March 23, 2020 to respond to these findings. *See also* footnote 82.

I. THE DEPARTMENT'S PROCEDURAL DEFICIENCIES HAVE MATERIAL CONSEQUENCES FOR HLC AND MUST FIRST BE CURED

As a preliminary matter, the Department's actions fail to conform with the procedures expressly and plainly outlined in its regulations, resulting in procedural errors that materially, and negatively, hinder HLC's ability to meaningfully respond to the January 31, 2020 letter. To explain, as cited by the Department in the third footnote of its January 31, 2020 letter, federal regulations direct the Department, upon determination that "one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria," to prepare a "written draft analysis" that "includes a recommendation regarding what action to take with respect to recognition." The Department is then directed to send this draft analysis to the agency with "any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation to the agency."² The accrediting agency is then provided an opportunity to respond in writing to the draft analysis and proposed recognition recommendation.³

The Department's January 31, 2020 letter (hereinafter, the "Draft Analysis") identifies areas of alleged noncompliance, but critically, does *not* provide HLC with a specific recognition recommendation. Furthermore, the Department has failed to provide HLC with all supporting documentation relevant to its Draft Analysis. These procedural deficiencies are addressed, in turn.

As the Department is aware, HLC accredits institutions of higher education in 19 states, including Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming. As of February 28, 2020, HLC has granted accredited status to 973 colleges and universities and preaccredited status to seven institutions. Institutions accredited by HLC range from some of the country's most recognized premier research universities to a number of mission-based for-profit institutions, as well as large and small private non-profit and for-profit institutions. Other HLC-accredited institutions include a wide range of community colleges, public institutions within state university systems, tribal colleges, HBCUs, and faith-based institutions. The total student population of the institutions accredited by HLC numbers well over 5 million students, including over 375,000 students at for-profit institutions.

Given the wide range of potential consequences to HLC and its membership under the cited regulations—ranging from compliance reporting to recognition revocation—HLC must be provided notice of what recognition recommendations are under consideration, if any.⁴ As recognized by the regulations, in requiring the Department to provide such notice, this information is not superficial, but of material consequence.⁵ Indeed, such information provides

² 34 C.F.R. § 602.33(c)(1) (emphasis added).

³ 34 C.F.R. § 602.33(c)(2), (c)(3).

⁴ Indeed, under the Administrative Procedure Act, the Department is prohibited from taking action, "without observance of procedure required by law." 5 U.S.C. § 706.

⁵ See Proposed Rule, *Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary's Recognition of Accrediting Agencies*, 74 FR 39515 (Aug. 6, 2009) (codified at 34 C.F.R. § 602.33)

necessary context as to the extent of the Department's concerns and the possible consequences facing HLC, as well as the nearly 1,000 member-institutions and over 5 million students who could be affected by the Department's intended action. It is not only in violation of federal regulations, but antithetical to the principles of due process, to require HLC to respond to the Draft Analysis without any notice of what action the Department is considering taking against it.⁶

To the second procedural deficiency, the Department has not provided to HLC "all supporting documentation" with its Draft Analysis as required by the regulations.⁷ As part of its inquiry, and as noted in the Draft Analysis, the Department interviewed Mr. Ron Holt, outside legal counsel for the Institutes and Dream Center Education Holdings, their parent company; as well as Ms. Karen Peterson Solinski, former Executive Vice President of Legal and Governmental Affairs at HLC. The Department referenced statements, issues, and emails involving Mr. Holt and Ms. Solinski multiple times in its Draft Analysis and the accompanying materials. While the Department provided HLC with the transcript of its interview with Mr. Holt,⁸ it failed to provide the transcript of its interview with Ms. Solinski. Presumably, any such interview would have addressed the issues, discussions, and emails referenced in multiple places throughout the Department's Draft Analysis. In failing to provide "all supporting documentation," including this transcript, the Department's review under 34 C.F.R. § 602.33 fails to provide yet another fundamental and consequential component of due process and denies HLC the opportunity to know the facts that underlie the Department's findings.

For these reasons, if the Department intends to proceed with any action that may affect HLC's recognition status or result in compliance reports, the Department must first cure these deficiencies and follow the unambiguous letter of the regulations. To do so, the Department must reissue its Draft Analysis, including both its specific recommendation and the transcript from Ms. Solinski's interview—as well as any other relevant information the Department failed to provide—and thereafter allow HLC at least 30 days to respond.

Despite these procedural deficiencies, and in the spirit of cooperation and transparency with the Department, as well as out of concern that any failure to do so will unfairly prejudice HLC in this process, HLC responds to, and wholly disputes, the concerns raised in the Draft Analysis, which cannot stand unrefuted. HLC's response to the substantive issues raised by the Department should not be construed as a waiver of any procedural arguments. In the event the Department

(stating that, in response to concerns by non-federal negotiators in negotiated rulemaking that "the Department not act arbitrarily and provide adequate notice to and communication with the agency when conducting a review during an agency's period of recognition..."), the Department added language to then-proposed 34 C.F.R. § 602.33 "to reflect the consultation between Department staff and the agency, and the provision to the agency of the documentation concerning the inquiry").

⁶ HLC acknowledges that new regulations scheduled to take effect July 1, 2020 will no longer require the Department to provide a recognition recommendation with its Draft Analysis. *See* Final Rules, *The Secretary's Recognition of Accrediting Agencies*, 84 Fed. Reg. 58928 (Nov. 1, 2019) (to be codified at 34 C.F.R. § 602.33). It is questionable whether failing to provide an accrediting agency with notice of the potential action being considered against it comports with the principles and legal requirements of due process; nonetheless, this new approach is not applicable to the Draft Analysis in question, which clearly predates the effective date of the new regulations.

⁷ *See* 34 C.F.R. § 602.33(c)(2).

⁸ *See* Draft Analysis, Exhibit 2.

reissues the Draft Analysis, HLC reserves the right to submit a written response in accordance with 34 C.F.R. § 602.33(c)(3).⁹

II. RELEVANT HISTORY

As you are aware, the Institutes in question have a troubled history, yet showed signs of meaningful progress over time. The Illinois Institute of Art was first accredited by HLC in 2004, and the Art Institute of Colorado in 2008. At the time, the Institutes were owned by The Art Institutes International II, LLC (the “Art Institutes System”), a wholly-owned subsidiary of Education Management Corporation (“EDMC”), a for-profit company that, at one time, operated over 50 post-secondary educational institutions. The Illinois Institute of Art joined the Art Institutes System in 1995; the Art Institute of Colorado had joined decades earlier, in 1975.¹⁰ Neither of the Institutes had a seamless accreditation history with HLC, but both demonstrated continued improvement in support of their ongoing accreditation during that time, as demonstrated by various interim reports, among other things.

For example, following interim report requirements as part of its initial grant of accreditation in 2009, and then again in 2010 related to concerns over enrollment, the Art Institute of Colorado was put on the public sanction of Notice in June 2013 related to concerns over faculty workload, limited capacity to assess institutional effectiveness, and limited results in implementing a faculty development system. As a result of these challenges, the Board determined that the Art Institute of Colorado was at risk of non-compliance with Criteria Three, Four and Five of the HLC Criteria for Accreditation. In response, it made sufficient progress in these areas to have this sanction removed in February 2015.

Similarly, the Illinois Institute of Art’s initial accreditation required monitoring in the form of focused visits on assessment of student learning, financial organization, and workload impact. In addition, due to enrollment concerns, HLC also required interim reports between 2010 and 2015. Following its comprehensive evaluation, HLC ultimately imposed the sanction of Notice in

⁹ By letter dated October 24, 2019, the Department requested certain information from HLC. HLC responded in writing on November 13, 2019 and provided numerous documents to the Department. HLC-OPE 1-15429 were provided for the Department’s review via separate link and password to Dr. Mahaffie and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department. The Department then requested additional information, which HLC provided in writing on January 13, 2020. HLC also supplemented its production to the Department at that time, with links provided to [HLC-OPE 15430-15433](#); [HLC-OPE 15434](#); and [HLC-OPE 15435-15440](#). This response to the Department’s Draft Analysis incorporates all responses and documents previously provided to the Department about this matter. Documents previously provided to the Department that are cited to in this response have also been hyperlinked herein for the Department’s convenience. Additionally, HLC supplements its production with [HLC-PET 1-2](#); [HLC-PET 3-9](#); [HLC-PET 10-34](#); [HLC-PET 35](#); and [HLC-SUPP 1-8](#). [HLC-PET 1-2](#) is an April 13, 2017 communication from the Department to HLC regarding HLC’s petition for continued recognition, and [HLC-PET 3-9](#) and [HLC-PET 10-34](#) had been provided to the Department on June 8, 2017 pursuant to HLC’s petition for continued recognition. [HLC-PET 35](#) is the Department’s May 9, 2018 letter informing HLC that HLC’s federal recognition has been renewed for a five-year period. [HLC-SUPP 1-8](#) is a document containing relevant HLC procedures that had not been previously provided to the Department. The HLC-PET and HLC-SUPP documents have been hyperlinked in this response and are available for download through that link. The password to access the linked documents has been provided to Dr. Mahaffie and Mr. Bounds via email.

¹⁰ The Art Institute of Colorado and the Illinois Institute of Art were the only institutions in the Art Institutes System that were accredited by HLC.

November 2015. This sanction related to HLC's concerns over the integrity of its student disclosures, student support, institutional resources, strategic planning, and institutional improvement. Despite these concerns, the Illinois Institute of Art demonstrated sufficient progress by November 2017, thereby resulting in the removal of the sanction (with some noted concerns from the Board).

Undeniably, the Institutes both had imperfect accreditation histories, and in the time immediately preceding their change of control application, had been facing declining enrollment and financial concerns, particularly as related to their parent company. Indeed, EDMC had been facing ongoing financial issues and significant litigation, including an investigation by the attorneys general of 39 states and the District of Columbia that resulted in a Consent Judgment against EDMC in 2015.¹¹ As a result, EDMC's subsidiaries, including the Institutes, were required to significantly transform certain aspects of their internal operations. Notably, it was these "financial and reputational burdens" which, according to the Institutes themselves, served as the impetus for EDMC to seek a non-profit buyer for the Art Institutes System, as well as the other for-profit higher education systems then-owned by EDMC.¹² It was ultimately this intended sale which led to the Institutes' change of control application now in question.

The Institutes' Change of Control Application

On May 1, 2017, the Institutes submitted a change of control application to HLC. This application informed HLC that EDMC had entered into an asset purchase agreement on February 24, 2017 for the purpose of the Dream Center Foundation ("DCF") acquiring the Institutes and other EDMC-owned institutions. An EDMC representative had previously met with Dr. Anthea Sweeney, who was HLC's liaison to the Institutes at the time, to discuss this proposed transaction in a preliminary fashion. Dr. Sweeney directed EDMC to file a joint change of control application on behalf of the Institutes by May 1, 2017.

¹¹ The Consent Judgment required EDMC to significantly reform its recruitment and enrollment practices, including mandating additional disclosures to students, prohibiting enrollment in unaccredited programs, and extending the period when new students could withdraw with no financial obligation. EDMC was also required to forgive \$102.8 million in outstanding loan debt held by more than 80,000 former students nationwide and submit to the independent monitoring of a former U.S. Associate Attorney General for a period of three years. *See* New York State Office of the Attorney General, Press Release Archives, *A.G. Schneiderman Announces \$102.8 Million Settlement with EDMC to Forgive Student Loans and Reform Recruiting and Enrollment Practices* (Nov. 16, 2015), <https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-1028-million-settlement-edmc-forgive-student-loans-and>; Iowa Dep't of Justice, Office of the Attorney General, *EDMC to Change Practices, Forgive Loans through Agreement with Miller and State Attorneys General* (Nov. 16, 2015), <https://www.iowaattorneygeneral.gov/newsroom/edmc-to-change-practices-forgive-loans-through-agreement-with-miller-and-state-attorneys-general>; Office of the Attorney General of the State of Ohio, *Attorney General DeWine Announces \$10.6 Million in Ohio Student Loans to be Forgiven as Part of Multistate Settlement with For-Profit College Provider* (Nov. 16, 2015), [https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-\\$10-6-Million-in](https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-$10-6-Million-in); Maryland Office of the Attorney General, *AG Frosh: \$1.4 Million in Loans Forgiven For Nearly 1,000 Maryland Students* (Nov. 16, 2015), <http://www.marylandattorneygeneral.gov/Press/2015/111615.pdf>.

¹² The quoted language was in the Institutes' change of control application, which was previously produced to the Department as HLC-OPE 2865-5206 (at HLC-OPE 2867). That application is not linked again here due to the size of the document.

As the Department is aware, HLC requires institutions to submit a change of control application for the purposes of ensuring that, in layman's terms, the proposed change will not negatively impact students, and that the institution, under new governance and a new corporate structure, will be administratively and financially capable of continuing to meet HLC's Criteria for Accreditation. HLC does not approve the actual transaction, but rather approves a change of control application based on, among other factors, whether there is a substantial likelihood that the institution will remain in compliance with HLC's Criteria for Accreditation and Eligibility Requirements post-transaction. At that time, institutions that proceeded with a change of control without HLC approval were subject to withdrawal of accreditation.

The then-effective HLC policy governing this process, INST.B.20.040, "Change of Control, Structure or Organization," required that an institution undergoing a change of control "demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that the approval... is in the best interest of the Commission."¹³ INST.B.20.040 also permitted the HLC Board to approve a change of control "subject to conditions on the institution or its accreditation." Relatedly, then-applicable HLC policy INST.F.20.070, "Processes for Seeking Approval of a Change of Control," articulated the precise evaluative framework the Board would apply in considering a change of control application.¹⁴

The application for a change of control proposed that Dream Center Education Holdings ("DCEH"), a non-profit company of DCF, and of which DCF was the sole member, would purchase the Institutes from their existing corporate parent EDMC. According to the Institutes' application, the intent of this transaction was for the Institutes to "become 501(c)(3) tax exempt non-profit institutions," "provide missing reputational and financial stability," and "help [the Illinois Institute of Art] to resolve all of the issues that led to the Commission placing it on Notice on November 12, 2015."¹⁵

As part of its review of the proposed transaction, HLC conducted a site visit in August 2017. Thereafter, EDMC presented to HLC a letter addressed to EDMC from the Department dated September 12, 2017 that provided that the Department had preliminarily concluded that, "it does not see any impediment to... its request for non-profit institution status."¹⁶ Based on this letter, HLC concluded that the Department "confirmed the likelihood that Title IV would be extended to the institutions after they converted to non-profit status as a result of acquisition by the DCEH and that the institutions appeared to meet the Department's definition of non-profit."¹⁷

On October 3, 2017, HLC provided the Institutes with a Staff Summary Report and Fact Finding Visit Report.¹⁸ This report noted HLC's numerous concerns with the Institutes' ability to comply with HLC's Eligibility Requirements and Criteria for Accreditation after the transaction. In

¹³ [HLC-OPE 15239-15242](#)

¹⁴ [HLC-OPE 15268-15275](#)

¹⁵ See footnote 12.

¹⁶ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039); see also [HLC-OPE 7081-7106](#)

¹⁷ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039)

¹⁸ [HLC-OPE 7030-7080](#)

particular, HLC found that there was substantial likelihood based on available evidence that, due to financial challenges associated with declining enrollment, the HLC Eligibility Requirement of *stability* would not be met after the proposed transaction.¹⁹ Further, HLC determined that, due to EDMC's record of "inappropriate, unethical or untruthful dealings with students," as indicated by the multi-state attorneys general investigation, the Eligibility Requirement of *integrity of business and academic operations* also would not be met; likewise, the Eligibility Requirement of *planning* with regard to current and former business and academic operations would also not be met.²⁰ Although HLC noted that the Institutes had made sufficient progress in resolving the underlying causes giving rise to the sanctions of Notice, ultimately the Eligibility Requirement related to the *accreditation record* would also not be met.²¹ Finally, HLC found that certain Core Components of the HLC Criteria for Accreditation would be met with concerns: Core Components 1.D (focus on public good); 2.A (policies and procedures ensure integrity); 2.B (clear communications with students and prospective students); 2.C (clarity of governing board structure); 4.A (educational quality based on student outcomes); 5.A (financial resources); and 5.C (institutional planning).²²

Despite these failings and concerns, HLC found there was a substantial likelihood that numerous other Eligibility Requirements and Core Components would be met after the transaction. In particular, HLC found that the Institutes employed sufficient qualified faculty and academic personnel and had sufficient learning resources and support services for students and therefore, anticipated this would remain the case after the transaction.

Conditional Approval of Change of Control Application Offered to Institutes (November 2017)

On November 2-3, 2017, the HLC Board approved the Institutes' change of control application *with conditions*, one of which was that the Institutes "undergo a period of candidacy known as Change of Control Candidacy." The Board's approval was aligned with HLC policies and procedures. As noted above, INST.B.20.040 provided that the Board may approve a change of control application "subject to conditions on the institution or its accreditation." The Board could, as it did here, condition its approval upon the Institutes' acceptance of a period of candidacy during which they would address several deficiencies that gave rise to HLC's concern for the Institutes' ability to meet various HLC requirements after the transaction closed. The then-effective procedures for INST.B.20.040 provided that an approval *with conditions* was not appealable.²³

In contrast, the procedures provided for an appeal of decisions where, in appropriate cases as an alternative to denial, candidacy was imposed *because the proposed transaction forms a new institution requiring a period of candidacy*. While then-effective INST.E.50.010 permitted the Board to move an institution from accredited status to candidate status subsequent to the close of a change of control, this policy was not applicable when an institution undergoing a change of control voluntarily agreed to accept the condition of candidacy status, as was the case here.

¹⁹ *Id.* (at HLC-OPE 7043)

²⁰ *Id.* (at HLC-OPE 7047-7048)

²¹ *Id.* (at HLC-OPE 7050)

²² *Id.* (at HLC-OPE 7051-7065)

²³ [HLC-SUPP 1-8](#)

The Board's approval was officially communicated to the Institutes in a joint action letter dated November 16, 2017 (the "Joint Action Letter").²⁴ In this letter, HLC explained that the Board "found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for "preaccreditation status" identified as "Change of Control Candidate for Accreditation[.]"²⁵ The conditions set forth by the Board included that the Institutes:

- (1) undergo a period of candidacy known as a Change of Control Candidacy;
- (2) submit an interim report every 90 days;
- (3) submit Eligibility Filings no later than February 1, 2018;
- (4) host a focused visit within six months of the transaction date; and
- (5) host a second focused site visit no later than June 2019.²⁶

The Institutes were notified that "[i]f at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall *reinstate accreditation* and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation..."²⁷ The Institutes were given 14 days to accept the conditions in writing, or the approval would become null and void, meaning the application would be deemed denied. A denied application does not alter an institution's accredited status. If the conditions were accepted, the Institutes were also required to close the transaction within 30 days from the date of the Board's approval as is consistent with federal regulations, or to notify HLC as soon as possible so alternative arrangements could be identified to ensure the Board's approval remained in effect.

Over the next several weeks, the Institutes and HLC discussed the conditions in the Joint Action Letter. On November 29, 2017, the Institutes jointly wrote to HLC, stating "We understand that both [the Art Institute of Colorado] and [Illinois Institute of Art] will undergo a period of candidacy beginning with the close of the transaction." Further, the Institutes requested that: (a) the deadline for the Eligibility Filings be extended from February 1, 2018 to March 1, 2018; (b) the interim report be allowed to be submitted as a single joint report; and (c) that the transaction closure deadline be extended to January 15.²⁸ This letter also provided—with reference to the required interim reports and the Consent Judgment—that all periodic reports from the Settlement Administrator would be delivered, but that the Institutes "d[id] not believe any further reports would be any more meaningful." In the Joint Action Letter, HLC had set forth the condition that the interim reports were to include "[a]n update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent

²⁴ [HLC-OPE 7726-7732](#)

²⁵ *Id.* (emphasis added)

²⁶ In setting forth this schedule, the Board staggered the deliverables to allow the Institutes to demonstrate compliance in a reasonable time and manner, rather than setting an arbitrary deadline by which they would have to show compliance all at once.

²⁷ *Id.* (emphasis added)

²⁸ See [HLC-OPE 7740-7741](#); see also [HLC-OPE 7738-7739](#) (email sent earlier that same day requesting an extension of the date by which the closing may occur)

third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator."²⁹

On December 1, 2017, then Executive Vice President for Legal and Governmental Affairs at HLC, Karen Solinski, spoke with EDMC's general counsel, DCEH's general counsel, and DCEH's outside counsel, Ron Holt, regarding these requests for changes to the conditions. Mr. Holt emailed Ms. Solinski that evening, summarizing that they had spoken about the transaction closing and stating that the letter sent "concerning the conditions set forth in HLC's November 16 letter... largely provides our understanding of the conditions."³⁰ Thereafter, Mr. Holt and Ms. Solinski exchanged emails regarding what financial information DCEH and DCF would need to include in the interim reports, including discussion over what financial information must be provided for the Institutes' parent and related entities in relation to the condition concerning monitoring of compliance under the Consent Judgment.³¹ DCF and DCEH requested that HLC accept the determination of the Settlement Administrator, then-expected in early 2019, and not require any additional third-party monitoring or audit processes.

HLC staff agreed to the Institutes' request for the non-substantive modification to the requirement of the interim reports such that quarterly financials would be provided within 45 days of the close of the quarter (rather than in each interim report provided every 90 days), but made clear that the requested modifications that were substantive in nature would require Board approval.³² In none of these discussions occurring between November 27 and December 22, 2017 did the Institutes request a modification to the condition of candidacy. The Institutes also did not raise any questions or concerns about the timeline for reinstatement of accreditation which, as outlined in the Joint Action Letter, would follow a series of successful focused site visits.

By letter received January 3, 2018, Brent Richardson, CEO for DCEH, acknowledged that HLC staff were able to make the non-substantive modification to the conditions, and requested once more that DCEH be excused from the condition of continued compliance with the Consent Judgment beyond the conclusion of the work of the Settlement Administrator.³³ This letter raised no concerns, questions, or requests related to the condition of candidacy or the reinstatement of accreditation. Subsequently, Dr. Sweeney emailed the Institutes reminding them that because they were requesting substantive modifications to some of the conditions, these requests would need to be brought to the Board for further consideration.³⁴ Dr. Sweeney also asked for a more formal indication as to whether the parties had *accepted* the Change of Control candidacy status.

²⁹ [HLC-OPE 7726-7732](#) (at HLC-OPE 7727)

³⁰ [HLC-OPE 7742-7761](#)

³¹ [HLC-OPE 7742-7761](#); [HLC-OPE 7742-7761](#)

³² [HLC-OPE 7742-7761](#)

³³ [HLC-OPE 7762](#)

³⁴ [HLC-OPE 15285-15287](#); *see also*, [HLC-OPE 7742-7761](#) (reminder sent on December 22, 2017)

Conditional Approval of Change of Control Accepted by Institutes (January 2018)

By letter dated January 4, 2018, the Institutes and DCEH formally accepted the Board's conditions for approval of the change of control application.³⁵ In this letter, the Institutes and DCEH noted that they accepted the conditions from the Joint Action Letter, as modified by the non-substantive revision set forth in the December 22, 2017 email between Ms. Solinski and Mr. Holt, and reiterated that the transfer had not closed within 30 days of the action letter. Despite previous discussions in which the Institutes had requested substantive modifications to some of the conditions (but not the condition of candidacy), the Institutes and DCEH decided not to pursue any of these requested modifications that required Board action, including not pursuing a modification to the condition of an audit process conducted by an independent third-party following the conclusion of the work of the Settlement Administrator under the Consent Judgment. This letter provided that the "details concerning implementation of third-party monitoring in 2019 can be provided later." The letter explicitly stated the Institutes "agree to accept Change of Control candidacy status set forth in the Higher Learning Commission's approval letter dated November 16, 2017," and provided that DCEH planned to close the transaction with EDMC no later than January 15, 2018.

As memorialized in an action letter dated January 12, 2018, the Board approved the Institutes' request for a later closing date, approved the requested non-substantive modification to the interim report condition, and again reiterated that the approval was subject to the condition of candidacy.³⁶ Specifically, the letter provided, "As you know, this approval is specifically subject to a Change of Control Candidacy, which is effective immediately upon the closing of the transaction." The letter further reiterated the significance of candidacy, stating,

Once confirmation of the transaction closing is received, the institutions will enter Change of Control Candidacy status, which will be effective on the date of the close of the transaction, and the Commission will issue a Public Disclosure Notice and provide copies of this action letter to the various external entities identified on this letter. As a reminder, any public announcement by the buyers about this action must include the information that any approval provided by the Commission was subject to the condition of the buyers accepting Change of Control Candidacy status for not less than six months up to a maximum of four years, and that the buyers have accepted the condition.

HLC also reminded the Institutes of the Obligations of Affiliation under INST.B.30.020 which require that an institution "portrays its accreditation status with the Commission clearly to the public." HLC informed the Institutes that they expected the Institutes "have properly notified their students of the acceptance of the Board's condition of Change of Control Candidacy and have clearly stated its impact on current and prospective students once the transaction closes."

³⁵ [HLC-OPE 7763-7764](#)

³⁶ [HLC-OPE 7769-7771](#)

HLC was informed on January 20, 2018 that the transaction between EDMC and DCEH had closed.³⁷ Upon closing, the Institutes' candidacy status became effective immediately. HLC issued a Public Disclosure Notice as of that date stating that the Institutes “have transitioned to being a candidate for accreditation after previously being accredited.”³⁸ Following the consummation of the transaction, HLC reminded the Institutes of their obligation to update their websites to show their preaccreditation status.³⁹

The Institutes Inquire about Condition of Candidacy (February 2018)

On February 2, 2018, attorneys Mr. Holt and Dr. David Harpool, outside counsel for the Institutes and DCEH, wrote to HLC that they “were shocked that the Commission placed the Institutions in candidacy status,” that they understood the Institutes to now be in a “pre-candidacy” status, and stated they were requesting an appeal.⁴⁰ HLC took prompt action that same day to update the Public Disclosure Notice which was designed to provide information about the process by which the accreditation could be reinstated in response to concerns raised in this letter about procedural language.⁴¹ HLC also responded to the letter on February 7, 2018 by reminding counsel that the Institutes voluntarily consented to candidacy status as outlined in the action letters related to HLC’s decision regarding the Institutes’ change of control application.⁴² HLC also explained that the Commission has no such status known as “pre-candidacy” status.

On February 23, 2018, Mr. Holt and Dr. Harpool again wrote to HLC.⁴³ In this letter, they wrote that, in determining whether they “could accept the conditions of the November 16, 2017 letter,” they had relied in good faith on an understanding that the Institutes would remain eligible for Title IV based on the Commission’s reference in the November 16, 2017 letter “to the institutions as being in ‘preaccreditation status.’” Mr. Holt and Dr. Harpool, expressing familiarity with the term, wrote that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.” They wrote to “confir[m]” from HLC that the Institutes: (1) were eligible for Title IV; (2) “remain accredited, in the status of Change of Control Candidate for Accreditation”; (3) “will receive an objective review for continued accreditation”; and (4) “will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.” They further stated that they hoped to avoid an appeal and possible litigation. This correspondence was subsequently referred to HLC's external

³⁷ [HLC-OPE 7776-7777](#); HLC was under the impression that the transaction had closed that day. HLC later learned that the transaction closed on January 19, 2018.

³⁸ [HLC-OPE 7780-7781](#); *see also* [HLC-OPE 7778-7779](#) (Public Disclosure Notice updated on February 2, 2018 to remove certain procedural language)

³⁹ [HLC-OPE 15292-15296](#)

⁴⁰ [HLC-OPE 7782-7783](#); Pursuant to HLC policy, there was also no appeal right for an application approved with conditions, as this was not an adverse action.

⁴¹ [HLC-OPE 7778-7779 \(February 2, 2018 update to the January 20, 2018 Public Disclosure Notice\)](#); *see also* [footnote 38](#).

⁴² [HLC-OPE 7784-7785](#)

⁴³ [HLC-OPE 7786-7787](#)

counsel to respond.⁴⁴ This letter confirmed that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status at the time they were determining whether to accept the conditions from November 16, 2017 through January 4, 2018.

HLC Granted the Institutes an Opportunity to Appeal (May 2018)

Over the coming months, the Institutes and HLC continued to communicate on a regular basis regarding all manner of normal accreditation activities, from the submission of required Eligibility Filings and interim reports to routine updates on personnel changes at each Institute. Then, on May 21, 2018, counsel for the Institutes submitted a letter of intent to appeal and requested instructions for filing such appeal related to their candidacy status.⁴⁵

On May 30, 2018, HLC granted the request for an appeal.⁴⁶ The Institutional Appeals procedure, which at all times is published on HLC's website and, among other navigation methods, retrievable by keyword search, was sent to the Institutes that day. It provides that an institution “may submit the appellate document electronically but must also submit two copies of the entire submission in paper form.”⁴⁷ HLC provided the Institutes with this opportunity to appeal outside of the terms of the applicable policy for a number of reasons, the most important of which was DCEH’s insistence that it would not have accepted the candidacy condition if it had known that the Institutes would be on a preaccredited status rather than an accredited status. Though there was no objective basis for confusion from the clearly articulated Joint Action Letter and the documented conversations between HLC staff and the Institutes, DCEH, and their counsel—which included DCEH’s and the Institutes’ counsel’s explicit acknowledgment that they understood candidacy to be a preaccreditation status—HLC was concerned that the only potential source for confusion may have been due to undocumented communications with a now former employee.

Specifically, given Ms. Solinski’s prior involvement in the matter and her recent departure, HLC was not in a position at that time to be precisely confident as to what she had said to DCEH and whether any *oral* communications between Ms. Solinski and DCEH may have resulted in confusion.⁴⁸ Thus, in an abundance of caution and to ensure adequate due process was afforded to the Institutes in this unique circumstance, HLC permitted the Institutes to appeal.

On May 25, 2018, Dr. Sweeney informed peer reviewers, who were at that point finalizing their reports as a result of their review of the respective Institutes' Eligibility Filings, that review activities were being suspended due to the receipt of the May 21, 2018 letter of intent to appeal.

⁴⁴ HLC’s outside counsel, Mary Kohart, later reached out to Mr. Holt offering to discuss the issues raised in this letter. Mr. Holt did not return her call.

⁴⁵ [HLC-OPE 12264-12266](#)

⁴⁶ See [HLC-OPE 12267-12268](#)

⁴⁷ [HLC-OPE 15252-15264](#)

⁴⁸ See, e.g., [HLC-OPE 15312-15315](#) (explaining to the Department that DCEH and the Institutes were now stating that they were misled about their accreditation status and that the full record of Ms. Solinski’s communications with DCEH was unknown)

HLC's May 30, 2018 letter communicated to counsel for DCEH that the Institutes must submit an "Appellate Document . . . as soon as possible."⁴⁹ HLC provided that, in the interim, it would suspend certain review activities, but that the focused site visit required under 34 C.F.R. § 602.24(b) would go forward.⁵⁰

Thereafter, in full anticipation of an appeal, Dr. Sweeney met with various other HLC staff to discuss related topics, including to ensure the post-change of control focused visits would move forward as required under HLC policy and federal regulations, despite the suspension of the other deliverables of the Joint Action Letter, and to discuss the members of a would-be Appeals Panel to hear the Institutes' appeal. Standard practice was to review the then-current members of the Appeals Body and consider how the Appeals Panel would be constituted. Because there were no individuals on the Appeals Body from a similar institution at the time, HLC took initial action to identify a person to serve that role and review HLC policy to ensure that it permitted President Dr. Gellman-Danley to add a representative to the Appeals Panel to meet the need. These steps demonstrate HLC's reliance that an appeal would be forthcoming and its steps to prepare for such action as it awaited the Appellate Document.

The Institutes Request "Retroactive" Accreditation (June 2018)

On June 20, 2018—twenty days following HLC's offer for an appeal opportunity—legal counsel for DCEH requested a meeting with HLC to "discuss the matters raised in [its] May 21, 2018 letter," which HLC had already responded to by laying out the steps by which an appeal could be brought. In response, Dr. Sweeney provided Mr. Harpool with options for call times on either June 25 or June 26.

Rather than scheduling a call with Dr. Sweeney, Dr. Harpool set forth a proposal by email dated June 24, 2018 for HLC to grant the Institutes accreditation "from the time of the Schools respective initial accreditation through [December 31, 2018]," and in return, the Institutes would cease to admit any new students and provide a three-option teach-out plan.⁵¹ Dr. Sweeney requested that the parties proceed with a call.

During the call, held on June 26, 2018, two days before HLC's June Board meeting, Dr. Sweeney, Dr. Gellman-Danley, and outside counsel for HLC, Ms. Mary Kohart, explained that this request was untimely for consideration by the Board, and while the Board would be updated as to the Institutes' request, it would not consider any action related to the Institutes (including their request for what would essentially be "retroactive" accreditation) at the upcoming Board meeting. It was also explained that HLC could not make any commitments about responding to their request. HLC policy did not permit retroactive accreditation for the Institutes. This was consistent with the Department's position that retroactive accreditation was prohibited. Notably,

⁴⁹ [HLC-OPE 12267-12268](#)

⁵⁰ HLC consulted with the Department as to whether this visit could be waived, and the Department confirmed it could not. See [HLC-OPE 15312-15315](#)

⁵¹ See [HLC-OPE 15322-15324](#)

HLC sought guidance on this issue from the Department, which confirmed to HLC that same day that retroactive accreditation was prohibited.⁵²

The following day, on June 27, 2018—as HLC *later* discovered in December 2019—Mr. Chris Richardson, DCEH’s General Counsel, attempted to send the Institutes’ Appellate Document via email. Mr. Richardson’s email was intended to be addressed to Dr. Barbara Gellman-Danley, HLC President, with copies to Dr. Sweeney and outside counsel for HLC, Ms. Kohart. Notably, the word “commission” in the domain name of the email addresses for both Dr. Gellman-Danley and Dr. Sweeney was misspelled (“hlcomission” with one "M," rather than “hlcommission”). Further, the copy that was directed to Ms. Kohart went to her spam account, perhaps because the sender’s domain name, “lopescapital,” was not a familiar sender or associated with a known entity, such as DCEH. For these reasons, Mr. Richardson’s email was not discovered by HLC or its outside counsel until December 2019, after the Department itself brought the existence of this letter to HLC’s attention.⁵³

The Appellate Document itself only indicated that the Institutes’ appeal was sent via email. HLC has no evidence to suggest that a hard copy was ever sent to or received by HLC, as required by the Institutional Appeals procedure provided to the Institutes and at all times publicly available on the HLC website. DCEH and the Institutes did not, at any time subsequent to its transmission, make any inquiries to HLC about receipt of this document or the status of the Institutes’ appeal. Moreover, as further detailed below, DCEH’s and the Institutes’ communication and conduct thereafter did not put HLC on any notice that an appeal had been submitted.

Preparations for the Institutes’ Closure (July - November 2018)

Despite having just attempted to submit its requested appeal, less than a week later on July 3, 2018, DCEH publicly announced the closures of the Institutes. At this time, it also announced the closure of 16 other Art Institute campuses, nine Argosy University campuses and three South University campuses (none of which were HLC-accredited institutions).⁵⁴ HLC updated its Public Disclosure Notice for the Institutes on July 7, 2018 to provide that it had come to HLC’s attention that DCEH intended to cease enrollment at various locations, including the Institutes.⁵⁵ HLC provided information to students in this updated disclosure with links to information on teach-outs and closed school discharge. Thereafter, HLC communicated with the Institutes on

⁵² See [HLC-OPE 15325-15327](#) (June 6, 2017 Memorandum from Herman Bounds, Director, Accreditation Group, Department of Education); [HLC-OPE 15325-15327](#) (June 26, 2018 Email from Elizabeth Daggett, analyst at the Department). Subsequently, on June 27, 2018, Diane Auer Jones, Principal Deputy Undersecretary at the Department, stated by both phone and email that the Department would be issuing “corrected guidance” on the issue of retroactive accreditation and that the 2017 memorandum would be retracted. That same day, Mr. Bounds provided that the 2017 guidance was not applicable to the situation with the Institutes. On July 3, 2018, Dr. Jones informed Dr. Sweeney that the Department would be willing to provide a written letter stating that retroactive accreditation of the Institutes would not jeopardize HLC’s recognition. HLC did not, at any time, make any assurances to the Department or to DCEH that it would retroactively accredit the Institutes. See [HLC-OPE 15333-15335](#). Indeed, retroactive accreditation for the Institutes was not possible under HLC’s policies.

⁵³ See [HLC-OPE 15430-15433](#), [15434](#)

⁵⁴ The News & Observer, *For-profit school operator closing 30 campuses, including 3 in NC* (July 2, 2018) <https://www.newsobserver.com/news/local/article214193329.html>.

⁵⁵ [HLC-OPE 12258-12260](#)

July 12, 2018, regarding certain critical but missing information required for their respective Teach-Out Plans to be approved. In this letter, HLC again noted its continuing concerns about the Institutes' disclosures published on their website between January 20, 2018 and June 12, 2018, and about other communications to students regarding accreditation status.⁵⁶ HLC reminded the Institutes that peer reviewer-led focused visits would be conducted on July 16 and 17, 2018, as these were not waivable under federal law. Finally, HLC also notified the Institutes that the peer reviewers had been apprised of the recent closure announcement. This communication was subsequently provided by HLC to the Department via email on July 17, 2018.⁵⁷

Following the focused site visits, HLC's peer reviewers recommended withdrawal of candidacy for the Art Institute of Colorado and reinstatement of accreditation for the Illinois Institute of Art. In each case, the relevant Institute had an opportunity to provide, and did provide, an institutional response. On October 9, 2018, HLC approved the Institutes' Teach-Out Plans and Teach-Out Agreements so that the Institutes could implement their respective plans in advance of the anticipated closures.

On November 1, 2018, the Board continued each Institute's candidacy until the planned closure date. This action was memorialized in writing to each Institute on November 7, 2018, and HLC issued the required Public Disclosure Notices.⁵⁸

Between November 20-21, 2018, each Institute wrote a letter to HLC stating its intent to appeal HLC's "January 20, 2018 action" (the effective date of the application approval, with the condition of candidacy) and the November 1, 2018 action (extension of candidacy).⁵⁹ Curiously, neither letter mentioned that the Institutes had already attempted to submit (to the wrong email address) an appeal more than five months earlier, nor alleged that HLC failed to respond to that appeal. Instead, each letter reads as the first and only appeal related to the respective Institute's candidacy status.

When HLC responded eight days later (following the Thanksgiving holiday) on November 28, 2018, HLC recounted that the Institutes requested to appeal six months prior, on May 21, 2018. HLC explained that it had no obligation to provide the appeal at that time, but nevertheless did so, despite the "Institute[s] never fil[ing] any appeal." Based on what it knew at the time, and its reasonable belief that the parties had allowed the earlier opportunity to lapse, HLC concluded that the untimely attempt to appeal the approval of the change of control application with the condition of candidacy was not appropriate.⁶⁰ HLC also informed the Institutes that continuation of candidacy was not an "adverse action" and therefore not appealable.

⁵⁶ [HLC-OPE 12562-12580](#)

⁵⁷ See [HLC-OPE 15347-15353](#)

⁵⁸ See [HLC-OPE 15180-15186](#), [15168-15171](#), [15172-15179](#)

⁵⁹ See [HLC-OPE 15187-15189](#), [15190-15191](#)

⁶⁰ See [HLC-OPE 15192-15194](#), [15195-15198](#)

On January 8, 2019, DCEH informed HLC that the Institutes closed on December 28, 2018 and that they “forego their membership with the Commission.”⁶¹ Accordingly, HLC issued the required Public Disclosure Notice to this effect.⁶²

Department Inquiries about the Institutes’ Candidacy Status and Closure

The Department began expressing to HLC its interest in the Institutes’ accreditation status many months after the Department was previously made aware of HLC’s approval of the change of control application with the condition of candidacy. Indeed, HLC’s November 16, 2017 Joint Action Letter was sent to both Michael Frola, Director of Multi-Regional and Foreign School Participation Division at the Department, and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department, as was the January 12, 2018 letter,⁶³ which incorporated the earlier letter and made one non-substantive modification regarding the interim report requirement. Neither Mr. Frola, Mr. Bounds, nor any other Department official ever raised concerns about HLC’s compliance with federal regulations or the condition of candidacy in the context of change of control at those times.

Even after the transaction between EDMC and DCEH closed and DCEH began raising concerns about preaccreditation status, the Department still waited to raise any questions about the Institutes’ accreditation status for some time. Mr. Frola was copied on various communications and received copies of relevant materials from DCEH relating to accreditation status in early February, yet neither he nor any other Department official raised concerns at that time.⁶⁴ Mr. Frola was again copied on the electronic transmission of a letter sent by legal counsel for DCEH and the Institutes, this time DCEH’s February 23, 2018 letter in which Mr. Holt and Dr. Harpool stated that, in determining that the Institutes would accept the conditions of the change of control application approval, they relied on their understanding of the Institutes “as being in ‘preaccreditation status,’ a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁶⁵ In this letter, DCEH requested that HLC confirm that the Institutes “remain eligible for Title IV.” That same day, Mr. Frola emailed Ms. Solinski, stating “the candidacy status that HLC has Dream Center on following the [change of

⁶¹ See [HLC-OPE 15204-15205](#)

⁶² See [HLC-OPE 15206](#)

⁶³ This letter was sent to Mr. Frola and Mr. Bounds on January 23, 2018, after the close of the transaction on January 20, 2018, consistent with common practice.

⁶⁴ Mr. Frola was copied on an email sent by legal counsel for DCEH and the Institutes, which attached their February 2, 2018 letter in which DCEH and the Institutes first raised concerns about candidacy. [HLC-OPE 15297](#); [HLC-OPE 7782-7783](#). Mr. Frola then, by email to Ms. Solinski, requested a copy of the draft Public Disclosure Letter referenced in the underlying letter; unfortunately, HLC cannot verify that Ms. Solinski responded. However, Mr. Frola was sent a copy of HLC’s February 7, 2018 response, which explained that, as detailed in the Joint Action Letter, the Institutes were on Change of Control Candidate for Accreditation status and would be eligible to seek accredited status. This response also explained that the Public Disclosure Notice, which stated that the Institutes “transitioned to being a candidate for accreditation after previously being accredited” and that courses or degrees earned at the Institutes during the candidacy period were not accredited by HLC, was available on HLC’s website at the time. [HLC-OPE 7784-7785](#); [HLC-OPE 7778-7779](#)

⁶⁵ [HLC-OPE 7786-7787](#)

control] could be problematic for the schools [sic] title IV eligibility." ⁶⁶ Dr. Sweeney arranged a call with Mr. Frola in response. ⁶⁷ On March 9, 2018, Dr. Sweeney and Mr. Frola spoke by phone, along with other representatives from HLC and the Department. On this call, Mr. Frola asked Dr. Sweeney whether candidacy was an accreditation status. Dr. Sweeney informed him that candidacy was a preaccreditation status. Mr. Frola then asked whether the HLC Board had made an independent determination that the Institutes were non-profit institutions. Dr. Sweeney informed Mr. Frola that, as the Department was certainly aware, HLC had not made any independent determination as to the Institutes' tax status or any independent determination as to the Institutes' eligibility for Title IV funding, as those determinations were in the rightful purview of the IRS and the Department, respectively.

HLC heard nothing more from the Department about the Institutes generally, much less about any issues pertaining to their accreditation status or Title IV eligibility, until May 22, 2018. ⁶⁸ At this time, having received a letter of intent to appeal from the Institutes on May 21, 2018, Dr. Sweeney called Mr. Frola to follow up on their earlier conversation on March 9, 2018, and he informed her that the Department had issued Temporary Program Participation Agreements on a month-to-month basis as of February 20, 2018 and had granted the Institutes temporary interim non-profit status on May 3, 2018. Dr. Sweeney followed-up by email and requested copies of the temporary approvals. ⁶⁹ Mr. Frola provided the copies as requested, but did not raise any concerns about the Institutes' accreditation status, their Title IV eligibility, or the propriety of HLC's approval of the change of control application with the condition of candidacy in either his call with Dr. Sweeney or his subsequent email.

On May 30, 2018, and in response to the pending letter of intent to appeal from DCEH on behalf of the Institutes, Dr. Sweeney reached out to Ms. Elizabeth Daggett, an analyst at the Department, to confirm whether an evaluation required to occur within six months following a change of control under the change of control regulations could be suspended pending the Institutes' appeal of an aspect of HLC's approval of the change of control application. ⁷⁰ Dr. Sweeney informed Ms. Daggett that the Institutes were now alleging they did not understand that candidacy indicated that they would no longer be accredited, despite their acknowledgment of candidacy as a preaccreditation status. Ms. Daggett thanked Dr. Sweeney for the information and confirmed that this type of visit could not be waived. She did not indicate that any action taken by HLC was contrary to regulations or that the Department had any concerns with the Institutes' accreditation status.

Despite further communications with the Department in June, July and August 2018, at no time until October 31, 2018 did any Department official so much as indicate to HLC that it took issue with HLC's approval of the change of control application with the condition of candidacy. Indeed, on June 27, 2018, the Principal Deputy Undersecretary at the Department, Dr. Diane

⁶⁶ [HLC-OPE 15298-15299](#)

⁶⁷ [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#). The call was slightly delayed due to Ms. Solinski's departure from HLC.

⁶⁸ On May 9, 2018, the Department communicated to HLC that it had granted it a five-year period of recognition. [HLC-PET 35](#).

⁶⁹ [HLC-OPE 15302-15311](#)

⁷⁰ [HLC-OPE 15312-15315](#)

Auer Jones, called Dr. Gellman-Danley to discuss the possibility of retroactive accreditation. At no point in the conversations about retroactive accreditation around this time did any Department official raise concerns about HLC's compliance with federal regulations or its own policies in taking its November 16, 2017 action.

Indeed, an analysis of the various communications with officials at the Department around this time is illustrative. On June 27, 2018, Dr. Jones left a voicemail with Dr. Gellman-Danley in which she raised the idea of retroactive accreditation as an option for the Institutes.⁷¹ Dr. Sweeney responded on Dr. Gellman-Danley's behalf and wrote to Dr. Jones, indicating that she understood that the Institutes had sought "support for a confidential proposal...presented to HLC...in lieu of proceeding with HLC's established processes, to seek reinstatement of accreditation."⁷² At Dr. Gellman-Danley's request, Dr. Sweeney asked to arrange a call with Dr. Jones to "seek clarity" on the Department's position regarding retroactive accreditation. Dr. Jones responded by email and stated that the Department would be retracting its 2017 memorandum, in which it took the position that retroactive accreditation was inconsistent with regulation, and that it would instead be issuing "corrected guidance."⁷³ However, in a call Dr. Sweeney had with Ms. Daggett and Mr. Bounds that same day, the Department indicated that, even if retroactive accreditation were permitted by the Department, HLC should "be mindful of current federal regulations on ensuring consistency in decisionmaking." Dr. Sweeney understood the Department to be indicating that any future action taken by HLC with respect to the Institutes should be consistent with current HLC policy and HLC's other decisionmaking.

Later that evening, Dr. Jones called Dr. Sweeney and again shared that the Department would soon be issuing additional guidance on the issue of retroactive accreditation. While she asked that HLC work with her exclusively at the Department regarding the Institutes, at no time did Dr. Jones indicate that she believed HLC had acted contrary to regulations or its own policy. Dr. Sweeney and Dr. Jones again emailed regarding the issue of retroactive accreditation on July 3, 2018,⁷⁴ but no assurances were ever made by HLC that it would, indeed, retroactively accredit the Institutes. In fact, such action was not permitted under HLC policies. The July 3 email stated that the Board "can consider an earlier reinstatement of accreditation than initially contemplated in its original action letter" (which had provided that reinstatement would occur after the second focused evaluation if the Institutes then met the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns). While Dr. Sweeney asked for written assurance that reinstating the Institutes' accreditation effective as of January 19, 2018 would not jeopardize HLC's recognition (due to fact it was not permitted by HLC policy and, at the time,

⁷¹ Dr. Sweeney had, while speaking with Ms. Daggett about an unrelated issue on June 26, 2018, inquired about the Department's position on retroactive accreditation. This question was a result of the June 24, 2018 email from Dr. Harpool that HLC had read to effectively request that the Institutes be retroactively accredited, as well as the June 26, 2018 call with DCEH's and the Institutes' representatives. Ms. Daggett had provided Dr. Sweeney with the memorandum authored by Mr. Bounds stating that the Department prohibited retroactive accreditation. See [HLC-OPE 15325-15327](#); [HLC-OPE 15322-15324](#)

⁷² [HLC-OPE 15331-15332](#)

⁷³ The Department issued new guidance permitting retroactive accreditation on July 25, 2018, which effectively superseded the 2017 memorandum. [HLC-15354-15355](#)

⁷⁴ [HLC-OPE 15333-15335](#)

prohibited by the Department), Dr. Sweeney made no assurances about whether accreditation would be reinstated or, if it were, made effective retroactively.

Following the announced closures of the Institutes, the Department and HLC communicated regarding HLC's concerns about the Institutes' Teach-Out Plans as well as their disclosures to students regarding their accreditation status.⁷⁵ Dr. Jones also emailed Dr. Sweeney on July 29, 2018 with questions about the transferability of credits and whether HLC requires transcripts "to be marked in such a way to indicate the campus's accreditation status for each semester."⁷⁶ Dr. Sweeney responded the next day and informed Dr. Jones that HLC had no requirements for what must appear on a transcript, but that, to support those students who earned credits or graduated prior to January 20, 2018, the Institutes could provide a letter making clear that those credits were indeed accredited if that status was not clear from the face of their transcripts. Specifically, Dr. Sweeney wrote:

Students who graduated from the Institutes prior to January 20, 2018 (the effective date of Change of Control candidacy) graduated from accredited institutions. If that is not already clear on their transcripts, the Institutes (or later, the entity with ongoing responsibility for student records) should accompany all transcripts with an official letter or notation that makes this fact clear.⁷⁷

Dr. Sweeney explained that because of the "complexity of this case and the ways things evolved," it was likely that other institutions would make the default assumption that either the Institutes were never accredited or were always accredited. Dr. Sweeney further explained that an additional explanation (such as the one described above) may be necessary due to the level of nuance around when the Institutes became preaccredited. Dr. Jones thanked Dr. Sweeney for the information and wrote, "I'll add this to my list of things to follow up on."⁷⁸

Dr. Sweeney emailed Dr. Jones again on August 23, 2018, noting that HLC had "continuing concerns about the information being provided to students" by the Institutes.⁷⁹ Dr. Jones thanked Dr. Sweeney "for the update," and asked for information related to the Institutes' site visits. Dr. Sweeney informed Dr. Jones that the site teams had recommended reinstatement of accreditation for the Illinois Institute of Art, but withdrawal of candidacy for the Art Institute of Colorado, and that the Board would decide each issue in the fall. Dr. Jones again thanked Dr. Sweeney for the information but did not provide any indication that she was concerned about the Institutes' status, either from the effective date of candidacy or going forward through closure.⁸⁰

Nearly two months later, on October 31, 2018, Dr. Jones wrote to HLC stating that the Department had concerns with HLC's compliance with federal regulations related to its actions

⁷⁵ [HLC-OPE 15343-15346](#)

⁷⁶ [HLC-OPE 15347-15353](#)

⁷⁷ [HLC-OPE 15347-15353](#) (at HLC-OPE 1538) (emphasis in original)

⁷⁸ *See id.* (at HLC-OPE 15347-15349)

⁷⁹ [HLC-OPE 15356-15358](#)

⁸⁰ On October 15, 2018, Dr. Jones informed Dr. Sweeney and Dr. Gellman-Danley that she was concerned about statements made by a peer reviewer during the site visit at the Illinois Institute of Art. Dr. Jones expressed concern that students may decide not to transfer schools based on the peer reviewer's statement that accreditation would be retroactive if it were restored. *See* [HLC-OPE 15359-15360](#).

concerning the Institutes. This was the first time HLC was given any notice from the Department of such concerns. Dr. Jones and Dr. Gellman-Danley had also spoken by phone two days prior, on October 29, 2018, at Dr. Jones' request. During the October 29 call, Dr. Jones had again informed HLC that a decision by HLC to retroactively accredit the Institutes would not be negatively viewed by the Department, as she had also previously stated in July 2018, and informed Dr. Gellman-Danley that she had identified a way for the HLC Board to effectuate such retroactive accreditation and would issue a letter indicating as such. On the evening of October 31, 2018, following receipt of the October 31 letter, Dr. Jones, Dr. Gellman-Danley, and Dr. Sweeney spoke by phone. On that call, Dr. Jones suggested that HLC could consider rescinding its November 2017 Joint Action Letter and instead place the Institutes on a sanction or issue a Show-Cause Order. Dr. Gellman-Danley and Dr. Sweeney told Dr. Jones that the HLC Board would evaluate each Institute based on the evidence available and in accordance with the HLC policies. Dr. Jones and Dr. Gellman-Danley spoke again later that night. Dr. Jones advised that HLC should simply submit a brief response to her stating that HLC will review its policies.⁸¹ HLC did so on November 7, 2018.

With the exception of Dr. Jones' testimony before the Subcommittee on Economic and Consumer Policy of the House Committee on Oversight in May 2019 (which HLC learned of independently), HLC did not hear from the Department regarding any compliance issue related to HLC's application of its policies and procedures to the Institutes' change of control application, including its response to the October 31, 2018 letter, until October 24, 2019.⁸² As the Department is aware, at that time it requested certain information and documents from HLC, which were provided on November 13, 2019, and later supplemented upon the Department's request on January 13, 2020.

On November 8, 2019, the Department issued a press release announcing that it would cancel the loans of students who attended the Institutes between January 20, 2018 and December 31, 2018.⁸³ In this press release, the Department wrote,

The decision to cancel student loans and restore Pell Grant eligibility comes because students were harmed by the Higher Learning Commission's

⁸¹ In fact, Dr. Jones initially told HLC that the Department would retract the October 31, 2018 letter. She then stated that the letter could not be retracted, but that HLC should only provide a short response regarding its policy review.

⁸² On October 22, 2019, former students of the Institutes filed a lawsuit against the Department alleging that the Department improperly distributed Title IV funds (*Infusino v. DeVos*, 1:19-CV-03162 (D.D.C.)). The Department announced on November 8, 2019, that it would cancel the loans of more than 1,500 students who attended the Institutes. To note, former students of the Institutes also filed a lawsuit on December 6, 2018 against the Illinois Institute of Art, DCF, and DCEH pleading claims under the Illinois Consumer Fraud and Deceptive Practices Act for misrepresentations of material fact, omissions of material fact, and unfairness related to the Institutes' disclosures of their accreditation status, as well as claims for negligent misrepresentation and fraudulent concealment (*Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)). DCF's motion to dismiss the second amended complaint was denied on January 6, 2020. On February 28, 2020, DCF filed a third-party complaint against HLC in the *Dunagan* suit. This complaint specifically references the Department's present "investigation" of HLC.

⁸³ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

classification of the institutions in a newly developed and improperly defined accreditation status after January 20, 2018. The Department is concerned that the Art Institute of Colorado and the Illinois Institute of Art were actually fully accredited from January 20, 2018, until their closings at the end of the year. Because HLC has required these two schools to note on student transcripts that credits and degrees earned during this period are from a non-accredited institution, students have been harmed as they seek transfer credit and employment elsewhere.

The Department stated that HLC had imposed a requirement on the Institutes to alter students' transcripts to indicate that credits earned after January 20, 2018 were unaccredited. To HLC's knowledge, no representative of HLC ever spoke or emailed with any representative for the Institutes, DCEH, or DCF regarding any such notations on student transcripts. As provided above, Dr. Sweeney emailed Dr. Jones on July 30, 2018, regarding measures the Institutes could take—but were not required to take—to assist students who had earned credits at the Institutes while they were accredited. Specifically, this option was to help ensure that the accreditation status of the Institutes prior to January 20, 2018 was made clear to the institutions to which those students sought to transfer. Nowhere in that communication did Dr. Sweeney tell Dr. Jones that the Institutes were required to indicate on transcripts that credits earned after January 20, 2018 were from nonaccredited institutions. The Department did not have further communications with HLC about transcript notations until the issuance of the Draft Analysis, and HLC has entirely no idea as to what communications or actions the Department is referring in this press release.

III. SUBSTANTIVE RESPONSE TO FINDINGS OF NONCOMPLIANCE

At all times, HLC has complied with the required standards and required operating policies, as provided for at 34 C.F.R. §§ 602.16 – 602.28, as well as its own policies. As such, HLC respectfully disagrees with the Department's findings of noncompliance. In response to the Institutes' change of control application, HLC: (a) provided due process as required under § 602.25, (b) complied with its own policies and procedures, and (c) acted with consistency in decision-making as required by § 602.18.

As a preliminary and important matter—and in accordance with its regular process for policy review—HLC revised various relevant policies and procedures related to the change of control process. Among other things, this effort will enhance due process and ensure that a scenario such as this will not occur again. Specifically, Policy INST.E.50.010—with which the Department asserts HLC was non-compliant, but, as explained below was not applicable here—has been eliminated. Correspondingly, and again, while not applicable here, HLC also has removed from its policies the option of approving a change of control where the Board “determines that the transaction forms a new institution requiring a period of time in Candidacy” (which did not occur here). Likewise, HLC will no longer approve a change of control application with the *condition* of candidacy (as occurred here) and has made clear in its revised procedures that no condition would alter an institution's accreditation status. These revisions also align with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020, which will prohibit an accreditor from moving an institution from accredited to preaccredited status.

While HLC complied with its own policies and then-applicable federal regulations at all times during the approval of the Institutes' change of control application, as explained below, these revisions to HLC policies and procedures already address all of the Department's concerns.

a. HLC Did Not Violate Due Process Requirements (§§ 602.25(a), (d), (e), and (f))

The Department requires that an accrediting agency “demonstrate that the procedures it uses throughout the accrediting process satisfy due process.”⁸⁴ The regulation then identifies the ways in which an accrediting agency meets this standard: provision of adequate written specification of accreditation and preaccreditation requirements; provision of reasonable time for compliance with agency requests; written specification of deficiencies; sufficient opportunity for a written response prior to adverse action; notification in writing of any adverse action; an opportunity to appeal adverse action; a written decision regarding such an appeal; and an opportunity to review new financial information prior to a final adverse action decision.

The Draft Analysis contends that HLC violated due process by failing to provide clear standards regarding accreditation, and, in relation to an alleged adverse action, failing to provide the opportunity for a written response, notification of such adverse action in writing, and an opportunity to appeal. These contentions are both erroneous and not grounded in the facts of this matter. As explained below, due process is precisely what HLC provided to the Institutes upon receipt of their change of control application and throughout the entire process of working with them following the Board's decision concerning their change of control application.

As a general matter, due process requires notice and an opportunity to respond.⁸⁵ Both critical elements were provided here. The documented communications between HLC and the Institutes in November and December of 2017, as well as in January of 2018, make clear that the parties entered into an agreement with clear notice and sufficient information to make an informed decision. By virtue of the Joint Action Letter explicitly stating that (1) acceptance of candidacy status was a condition of the approval, (2) candidacy is a preaccreditation status, and (3) accreditation would be reinstated after the second focused evaluation if accreditation criteria were met, DCEH and the Institutes *should reasonably have known* that the condition they were contemplating whether to accept—and ultimately did accept—was a period of time during which the Institutes would hold preaccreditation status.

Moreover, and fatal to any assertion that the Institutes were not informed of the impact of this condition at the time, Mr. Holt and Dr. Harpool's February 23, 2018 letter specifically provided that they understood that the Institutes would be placed on a “preaccreditation status” *prior* to the Institutes' acceptance of the condition. As noted above, this letter documented that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status during the time from November 16, 2017 through January 4, 2018 in which they were determining whether to accept the conditions. Critically, as noted in the letter, Mr. Holt and Dr.

⁸⁴ 34 C.F.R. § 602.25

⁸⁵ *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) (“The essential elements of due process are notice and an opportunity to respond”) (*citing Cleveland Board of Education v. Longermill*, 470 U.S. 532, 546 (1985)).

Harpool noted that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁸⁶

Further, the ongoing communications between HLC and DCEH from the extended time of the Board’s notice of the condition of candidacy on November 16, 2017 through the Institutes’ and DCEH’s explicit acceptance of that condition on January 4, 2018 demonstrate that DCEH and the Institutes had more than sufficient opportunity to respond to and raise any questions or concerns about this condition. Indeed, the Institutes and HLC engaged in an interactive process regarding minor modifications to the original conditions based upon the requests of counsel for the Institutes and DCEH. The back-and-forth during this time period clearly reflects that DCEH was given ample opportunity to respond, as they repeatedly, and successfully, availed themselves of that right throughout this timeframe.

In addition to the period between the Joint Action Letter and the Institutes’ acceptance of the conditions of the change of control, the Institutes were given yet another opportunity to respond when, on May 30, 2018, they were given explicit information as to how to appeal their candidacy status, despite no requirement that HLC provide such an appeal. Simply put, the evidence is clear that HLC provided due process, including the opportunity to appeal the candidacy status, and therefore unequivocally complied with the four provisions of 34 C.F.R. § 602.25 identified by the Department in its Draft Analysis.

Compliance with 34 C.F.R. § 602.25(a) (clear standards)

An accrediting agency satisfies due process when it has “adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.”⁸⁷ In its Draft Analysis, the Department finds that this requirement was not met because the Joint Action Letter did “not include clear statements that accreditation was being withdrawn” and “cloaked [HLC’s] action within the vague and ambiguous term ‘Change of Control Candidacy’ status,” a term which the Department states can only be understood through “reference to multiple sections of HLC Policy.” Respectfully, HLC disagrees.

As detailed in Section II above, the November 16, 2017 Joint Action Letter explicitly stated the following:

- “[T]he Board voted to approve the application for Change of Control, Structure, or Organization . . . however, this approval is subject to the requirement of Change of Control Candidacy Status.”
- “The Board . . . found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for *pre-accreditation status* identified as ‘Change of Control Candidate for Accreditation’ . . .”
- “The conditions set forth . . . are . . . [that] [t]he institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the

⁸⁶ [HLC-OPE 7786-7787](#). Any question about the Institutes’ Title IV eligibility at the time turned on whether the Department, in accordance with the Higher Education Act, 20 U.S.C. 1001 et seq., considered the Institutes as maintaining their for-profit status, or whether their application for non-profit status had been accepted.

⁸⁷ 34 C.F.R. § 602.25(a)

close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.”

- “*If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation . . .*”⁸⁸

There is no need for highly-specialized knowledge of accreditation to know that a term with the prefix “pre” is distinguishable from a term without any such prefix, or to know the meaning of the term “reinstate.” Clearly, “preaccreditation” has a meaning distinct from “accreditation,” even just under the plain meaning of the term. Furthermore, accreditation could only be “reinstate[d]” if the Institutes had not been accredited for some period of time. A plain reading of the Joint Action Letter—not even considering HLC’s policies and procedures, which provide additional context—makes clear that candidacy is a preaccreditation status, and that the Institutes would thus be on a preaccreditation status until such time that they demonstrated to the Board that they met the Criteria for Accreditation, at which time accreditation would be reinstated. There is no need for highly-specialized knowledge of accreditation to recognize this distinction.

Likewise, the Department’s finding that the use of the terms (1) “Change of Control, Structure, or Organization”; (2) “Change of Control Candidacy Status”; (3) “Change of Control Candidate for Accreditation”; and (4) “Change of Control Candidacy” . . . “obfuscat[ed] the true nature and meaning of candidacy status” is not supported by a plain reading of the Joint Action Letter. The first term, “Change of Control, Structure, or Organization,” references the organizational changes, which are within the control of an institution, that trigger the application requirement. The plain meaning of the second, third and fourth terms are variations of terms that are clearly synonymous. Ultimately, these terms all clearly explain that there is a difference between (A) “accreditation,” and (B) “candidate for accreditation,” or “candidacy,” or “candidacy status.”

For example, in written communication with HLC, the following acknowledgements of this concept were stated by the Institutes and/or DCEH’s representatives themselves:

- “We understand that both [Institutes] will undergo a period of candidacy beginning with the close of the transaction” (November 29, 2017 letter)⁸⁹
- “[The Institutes] agree to accept Change of Control candidacy status” (January 4, 2018 letter)⁹⁰

As such, it is clear that the Institutes and DCEH *themselves* used the terms “candidacy” and “candidacy status” interchangeably. When put in context of the ongoing communications between DCEH, the Institutes, and HLC, it is clear that the use of the terms “candidacy status,” “candidacy,” and “candidate for accreditation” did not cause any now-alleged confusion on the part of DCEH and the Institutes. Moreover, if the Institutes were confused upon receipt of the Joint Action Letter, they could have raised questions or asked for clarification about these terms

⁸⁸ [HLC-OPE 7726-7732](#) (emphasis added).

⁸⁹ [HLC-OPE 7740-7741](#)

⁹⁰ [HLC-OPE 7763-7764](#)

during any of their subsequent conversations with HLC. They never did so, despite raising questions about many other matters. Again, it does not take any highly-specialized knowledge to understand that candidacy status, candidacy, and candidate for accreditation are synonymous terms indicating a preaccreditation status.

Despite the fact that this particular concept does not require a significant level of sophistication, HLC recognizes that accreditation standards are somewhat specialized. As held by the Eighth Circuit Court of Appeals, accreditors' standards "are not guides for the layman but for professionals in the field of education."⁹¹ For this reason, HLC reasonably expects any institution accredited by HLC to become familiar with HLC policies generally, and in particular, with those that apply in an immediately relevant circumstance such as a change of control. These policies are readily available on HLC's website for precisely this reason, and an institution's staff liaison is always available to answer questions related to HLC policy. Thus, it is a reasonable expectation that the Institutes would be familiar with HLC policy and reasonably be in a position to understand the Joint Action Letter. The Department's finding that a full understanding of the term "candidacy" would have required the Institutes to read HLC policies does not support the conclusion that HLC did not have adequate written standards.

Ultimately, DCEH and the Institutes would have been aware upon simply reading the Joint Action Letter that candidacy was a "preaccreditation" status and that, assuming they accepted the conditions, upon their decision to consummate the transaction, they would no longer be "accredited," as accreditation would later be "reinstated." If for any reason these terms were confusing to the Institutes or their legal counsel, they could have reviewed HLC policy or asked their liaison or any other HLC staff member questions at any time between the receipt of the Joint Action Letter and their acceptance of the conditions, a period that ultimately spanned over 45 days. Whether or not the Institutes had *actual knowledge* of the meaning of the term does not determine whether or not HLC complied with § 602.25(a). HLC's policies and the Joint Action Letter provided adequate written specification and clear standards such that the Institutes *reasonably should have known* that the condition of candidacy was a preaccreditation status prior to the time they accepted such condition of candidacy.

Compliance with 34 C.F.R. § 602.25(d), (e), and (f) (due process)

As a preliminary matter, 34 C.F.R. § 602.25(d), (e), and (f), which all address how an accrediting agency demonstrates it has satisfied due process in relation to an adverse action, are not applicable because no adverse action was taken here. At issue was approval of the Institutes' change of control application with conditions—an inherently *non-adverse* action—as was permitted under HLC policies and procedures in effect at the time. The Institutes discussed with HLC several of the conditions (although not the candidacy condition), and ultimately agreed to the condition of candidacy without objection. There was no adverse action triggering the requirement that the Institutes be afforded the due process rights provided for in subsections (d), (e), and (f), and therefore these provisions are entirely inapplicable.

⁹¹ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987).

However, assuming *in arguendo* that the agreed-to condition of candidacy did constitute an “adverse action,” HLC still afforded adequate due process to the Institutes. In the end, HLC unquestionably complied with both the letter and the spirit of each of the cited subsections of the regulation. To explain, 34 C.F.R. § 602.25(d) provides that an accrediting agency satisfies due process when it provides “sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.” The clear intent of the provision is that an institution must have an opportunity for meaningful communication with their accreditor. This intent was fulfilled through ongoing and documented communication between HLC and the Institutes both following the November 2017 Board action, which was not effective absent their acceptance of explicit conditions, and prior to the January 2018 Board action, which clearly reiterated the conditions would take effect only upon the parties' consummation of the transaction.

Indeed, as detailed in Section II above, the Institutes initially requested multiple changes, but subsequently withdrew all their requests except for a single non-substantive modification, which was granted. Upon learning of HLC's determination that other requested modifications were substantive and would require Board approval, the Institutes decided not to pursue those modifications and instead accepted all conditions. They had ample opportunity to speak with HLC about their concerns. They engaged in substantive communications with HLC regarding the approval of the change of control application. The Institutes' choice not to provide written feedback regarding the condition of candidacy status does not mean that they were deprived of due process; rather, due process was afforded to them, and they did not seek to question, oppose, or even inquire further about the condition of candidacy. Instead, the Institutes explicitly agreed to it. Because meaningful discussions occurred regarding the Board's approval with conditions, and because an opportunity to accept such conditions after due consideration was provided to the Institutes, and further, because the Institutes' subsequent written acceptance of the conditions satisfied 34 C.F.R. § 602.25(d), HLC complied with the regulation.

HLC's compliance with subsection (e) is also apparent. Specifically, 34 C.F.R. § 602.25(e) provides that an accrediting agency satisfies due process when it “[n]otifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.” Even if the Board's action qualifies as an adverse action (and HLC contends it does not), § 602.25(e) was satisfied. The Joint Action Letter made clear that the Institutes would have the preaccreditation status of candidacy; thus, the Institutes were notified in writing of the action. The Joint Action Letter describes why the Institutes were not eligible for continued accreditation if the change of control were to go forward, but did meet the requirements for candidacy. The letter sent January 12, 2018 following the Institutes' acceptance of candidacy—which incorporated the Joint Action Letter and the Board's rationale by reference—also again stated that the candidacy would be effective upon close of the transaction. As such, the requirement that the “notice describe the basis for the action” was satisfied.

The same is true with respect to subsection (f). This regulation, 34 C.F.R. § 602.25(f), states that an accrediting agency satisfies due process when it “[p]rovides 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.” Again, if the candidacy condition had been an adverse action,

§ 602.25 was satisfied. Indisputably, the Institutes were granted the right to appeal on May 30, 2018. At this time, HLC communicated to outside legal counsel for DCEH and the Institutes that an Appellate Document should be submitted as soon as possible. Three weeks later, on June 20, DCEH's outside legal counsel requested a meeting with HLC. Thereafter he submitted requests for what was essentially retroactive accreditation to HLC by email on June 24, not an appeal of the candidacy condition. A telephone meeting was promptly held on June 26 regarding DCEH's requests, at which DCEH made no mention of their desire for an appeal.

On June 27, four weeks after HLC provided information about the appeal process, DCEH, through its General Counsel using an unfamiliar email address, attempted to submit an Appellate Document via email to HLC President Dr. Gellman-Danley, but used *an incorrect email address*. This email was also sent to Dr. Sweeney *at an incorrect email address* and to outside counsel for HLC, Ms. Kohart. Likely given that the email was not from the Institutes or DCEH, but rather an unfamiliar domain, the email went to Ms. Kohart's spam folder. As a result, HLC never received the Appellate Document.

Six days after DCEH, on behalf of the Institutes, incorrectly attempted to submit the Appellate Document electronically, and failed to submit it in paper form as required under the Institutional Appeals procedure, DCEH announced the closures of the Institutes. DCEH and the Institutes never followed-up with HLC regarding their attempted appeal submission; no hard copies of the Appellate Document were ever submitted; no confirmation of receipt from HLC was ever received; and no inquiries were ever made about the status of the appeal. Moreover, when a subsequent and untimely appeal was requested by DCEH on behalf of the Institutes six months later in November 2018, no reference was made to the Institutes' earlier Appellate Document. Even if DCEH made a good faith pursuit of an appeal on June 27, 2018, DCEH clearly abandoned any intent to pursue that appeal. As such, and because it was DCEH's decision not to pursue their appeal, it cannot be said that HLC deprived DCEH of due process.

Ultimately, while HLC disputes that it was required to allow an appeal in these circumstances, an appeal was nevertheless provided. It was DCEH's decision not to pursue the appeal it was afforded. The requirements of 34 C.F.R. § 602.25(f) were thus met. Furthermore, this provision of an appeal remedied any purported due process harm resulting from the alleged failure to comply with any other subsection of 34 C.F.R. § 602.25. The principles of due process mandate that an accreditor provide notice and an opportunity to respond.⁹² Due process does not require the accreditor to handhold a party in availing themselves of that opportunity. The letter and spirit of the regulations were met by the provision of adequate due process here, and HLC was in compliance with the relevant regulations.

b. HLC Has Complied with Its Own Policies and Procedures

While the Draft Analysis alleges that the Joint Action Letter was an "adverse action" under HLC Policy INST.E.50.010, HLC respectfully disagrees. HLC policy, particularly INST.B.20.040 and its related procedures, permits the Board to approve a change of control *with or without*

⁹² *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) ("The essential elements of due process are notice and an opportunity to respond").

conditions. This conditional approval was a separate decision from a decision under INST.E.50.010 to move an institution to candidacy *because the transaction forms a new institution* (as an alternative to denial). Because the Institutes agreed to the condition of candidacy here, INST.E.50.010 was not even invoked.

At no point in approving the Institutes' change of control application was HLC acting under INST.E.50.010, and thus at no point could it be noncompliant with that policy. HLC's position here is not merely a disagreement with the Department. Rather, HLC's position must supersede the Department's finding. Courts have been clear that an accrediting agency's interpretation of its own rules should be given deference. It is important that the Department permit HLC to exercise discretion in implementing its own policies and procedures. As written by a Michigan district court and affirmed by the U.S. Court of Appeals for the Sixth Circuit, "Accrediting procedures are guides that, if construed . . . too strictly, would strip the accrediting bodies of the discretion they need to assess the unique circumstances presented by different schools."⁹³ The Department's interpretation of HLC's policy and procedure does not afford HLC the discretion and deference to which it is legally entitled. As such, the Department's findings that HLC invoked its authority under INST.E.50.010 to "move" the Institutes to candidacy, that the Joint Action Letter was an adverse action under INST.E.50.010, and that HLC violated the Institutes' due process rights under INST.E.50.010 cannot stand.

Even if, *in arguendo*, HLC did not comply with its own policies, such noncompliance does not violate due process unless it "resulted in any fundamental unfairness arising out of the process employed."⁹⁴ Technicalities of noncompliance that do not have a consequential impact do not result in due process deprivations. Indeed, courts have held in analyzing accreditation decisions that the principles of fairness are "flexible and involve weighing the 'nature of the controversy and the competing interests of the parties' on a case by case basis."⁹⁵ Where either process results in the same outcome, the process employed is not fundamentally unfair.⁹⁶

HLC's decision to use the option of change of control candidacy as a condition to be accepted by the Institutes, rather than moving the Institutes to change of control candidacy pursuant to INST.E.50.010, was not fundamentally unfair, because the outcome would have been no different if HLC, instead of securing an agreed-to condition for candidacy, had moved the Institutes to candidacy status under INST.E.50.010. If HLC had moved the Institutes to candidacy status, the Institutes would have been provided an opportunity to appeal, as they were ultimately allowed under the process employed here.

Therefore, the decision not to utilize INST.E.50.010 was not fundamentally unfair, and any alleged noncompliance with HLC policies and procedures does not violate due process.

⁹³ *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

⁹⁴ *Lincoln Mem'l Univ. Duncan Sch. of Law v. Am. Bar Ass'n*, No. 3:11-CV-608, 2012 WL 1108125, at *5 (E.D. Tenn. Apr. 2, 2012).

⁹⁵ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987); *Marlboro Corp. v. Association of Indep. Colleges*, 556 F.2d 78, 81 (1st Cir.1977).

⁹⁶ *See Med. Inst. of Minnesota*, 817 F.2d 1315 ("MIM has made no showing that the outcome of the hearing would have been different had cross-examination been allowed.").

The Department also found that INST.E.50.010 conflicted with 34 C.F.R. § 600.11(c), stating in its Draft Analysis:

Finally, 34 C.F.R. § 600.11(c) prohibits an institution from being considered for accreditation “for 24 months after it has had its accreditation or pre-accreditation withdrawn, revoked, or otherwise terminated for cause, unless the accreditation agency ... rescinds that action.” This regulation also prohibits agencies from moving an institution from accredited to pre-accredited status. In contrast, INST.E.50.010 allowed the Board to take an institution from accredited to candidacy status, defines such an action as an adverse action, and allows for apparent reinstatement within 6 to 18 months, contrary to the requirements of 34 C.F.R. §600.11(c). Accreditor policies that promise accreditation to institutions on terms that would not allow the institutions to meet the Department’s eligibility requirements are counterproductive at best. An accreditor applying such a policy should at a minimum inform the institution of any such obvious inconsistency between its provision of accreditation to the institution and the institution’s subsequent ability to use that accreditation to meet Departmental eligibility requirements. HLC did not do so here.

HLC disagrees with the Department’s interpretation, and proffers that it had, despite no requirement for doing so, informed the Institutes that their eligibility for Title IV while on a preaccredited status was dependent on the Department’s determination that the Institutes were non-profit.

Indeed, part 600 of Title 34 of the Code of Federal Regulation concerns *institutional* eligibility for Title IV funds—this part does not impose requirements on accrediting agencies. Title IV eligibility is a separate and distinct matter from accreditation. As such, 34 C.F.R. § 600.11(c) does not, as the Department states without support, “prohibit[] agencies from moving an institution from accredited to pre-accredited status.” Rather, this regulation provides that after *accreditation or preaccreditation are withdrawn, revoked or terminated for cause*, the Department cannot find the institution eligible for Title IV purposes for a period of 24 months. This prohibition on the Department's authority related to Title IV eligibility, while related to accreditation status, has nothing to do with the underlying accreditation decision, and places no requirements or prohibitions on an accrediting agency in terms of its own decision-making.

While the new 34 C.F.R. § 602.23(f)(1)(iv) will generally prohibit an accreditor from moving an institution from an accredited to preaccredited status, this new provision does not go into effect until July 1, 2020 and is not applicable to events that predate that effective date. Moreover, as previously discussed, HLC has revised its policies and procedures to align with this new regulation. Because 34 C.F.R. § 600.11(c) does not impose any requirements on accreditors, and because, under the Department of Education Organization Act⁹⁷ the Secretary does not have authority over accreditors except as provided by law, the Department’s finding here is simply erroneous.

⁹⁷ 20 U.S.C. § 3403(b)

Even if, *in arguendo*, Part 600 of Title 34 was applicable to accrediting agencies (which it is not), and § 600.11(c) somehow prohibits an accrediting agency from reinstating accreditation for 24 months after accreditation or preaccreditation are withdrawn, revoked, or terminated for cause (which it does not), the Department misunderstands how the instant scenario would relate to such an impermissible interpretation of the regulation. The Institutes voluntarily accepted a condition of a period of candidacy; HLC did not "withdraw[], revoke[], or otherwise terminate[]" the Institutes' accreditation. As such, INST.E.50.010 did not conflict with federal regulations, even if understood in this manner.

Nevertheless, HLC shares the concerns of the Department, echoed by former students of the Institutes in litigation against the Department⁹⁸ and DCEH,⁹⁹ that the Institutes were not eligible for Title IV funding at some period of time. However, HLC did not become aware until March 9, 2018 that the Institutes had not yet been determined to be non-profit by the IRS or that the Department had not yet made a determination about the Institutes' eligibility under Title IV. As HLC made clear to Mr. Frola on March 9, 2018, and as the Department should be well-aware, HLC does not make *any* determinations about whether an institution is non-profit under IRS regulations or whether an Institution is eligible for Title IV under Department regulations. HLC does not have the authority to do so. Such determinations are exclusively within the purview of the IRS and the Department, respectively. Indeed, HLC was not informed until May 22, 2018, the day after the agency received the Institutes' letter of intent to appeal, when Dr. Sweeney called and spoke with Mr. Frola, that the Department had granted the Institutes monthly Temporary Program Participation Agreements effective February 20, 2020 and temporary interim non-profit status on May 3, 2018.

However, the Department's determinations as to the Institutes' Title IV eligibility are irrelevant as to whether HLC policy, or even HLC's actions, comported with federal regulations. While the Draft Analysis concludes that an accreditor should inform an institution of any "obvious inconsistency between its provision of accreditation to the institution and the institution's subsequent ability to use that accreditation to meet Departmental eligibility requirements," it is not the responsibility of the accreditor to ensure an institution is eligible for financial aid, whether as a non-profit institution (eligible if accredited or preaccredited) or a for-profit institution (only eligible if accredited).¹⁰⁰ Moreover, Dr. Sweeney, as liaison to the Institutes, did make clear to Illinois Institute of Art President Josh Pond, during a phone call on January 26, 2018, that any disclosure language regarding preaccreditation and Title IV eligibility must take into account whether the Department had made a final determination that the Institutes were non-profit entities. As such, even if INST.E.50.010 did conflict with federal eligibility requirements, which it does not, HLC did exactly what the Department suggests here that HLC should have done.

Finally, and as mentioned previously, HLC has rescinded INST.E.50.010—as acknowledged by the Department in a mere footnote of the Draft Analysis. As such, any findings by the

⁹⁸ *Infusino v. Devos*, No. 1:19-CV-03162 (D.D.C.)

⁹⁹ *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)

¹⁰⁰ *Compare* 34 C.F.R. § 600.4 (a private or public nonprofit institution of higher education can be accredited or preaccredited for purposes of Title IV eligibility) *with* 34 C.F.R. § 600.5 (a propriety (for-profit) institution of higher education must be accredited for purposes of Title IV eligibility).

Department related to HLC's alleged noncompliance with INST.E.50.010 and the policy's alleged conflict with Department regulations are no longer applicable.

c. HLC has Acted with Consistency in Decision-Making

34 C.F.R. § 602.18 requires that the agency “consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program... is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency.” In relevant part, the regulations provide that an agency demonstrates it has met this standard where it “[b]ases decisions regarding accreditation and preaccreditation on the agency's published standards.” 34 C.F.R. § 602.18(c). HLC respectfully disagrees with the Department's finding that it was in noncompliance with § 602.18(c), as its decisions were based on its published standards.

As explained in Section III(b), HLC did not act under INST.E.50.010 when it offered the Institutes an approval of the change of control application with the condition of candidacy. Rather, it was acting under INST.B.20.040 and corresponding procedures, which at the time permitted approval based on the condition of candidacy. Again, HLC is entitled to deference from the Department in interpreting and applying its own policies and procedures.¹⁰¹ HLC's determination that it was acting under INST.B.20.040, not INST.E.50.010, in this matter is within the proper scope of its discretion, not the Department's. At the time, an approval with the condition of candidacy was permissible under HLC's published standards, and as such, HLC has demonstrated it met 34 C.F.R. § 602.18.

Moreover, the purpose behind 34 C.F.R. § 602.18, generally, is to ensure consistency in decision-making. While an approval with the condition of candidacy is not common, it is consistent with past practice. In 2014, Everest College Phoenix (“ECP”), an institution that at the time had been accredited by HLC since 1997, and was then-owned by Corinthian Colleges, Inc. (“CCI”), submitted a change of control application after CCI announced a deal that allowed for ECP and 55 other campuses to be sold to Educational Credit Management Corporation (“ECMC”) and run by an ECMC subsidiary, Zenith Education Group (“Zenith”). The HLC Board, concerned about the ability of ECP to meet accreditation standards under new ownership, approved the change of control with conditions, including the condition of candidacy. This offer was communicated through a March 6, 2015 action letter substantially similar to the action letter provided to the Institutes.¹⁰² In relevant part, that action letter stated:

- "The Board approved the application but subject to several conditions. First, the Board required that the College undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction transferring the College and certain CCI assets to Zenith. The period of the Change of Control candidacy

¹⁰¹ See, e.g., *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

¹⁰² See [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to HLC's June 8, 2017 petition for continued recognition).

may be as short as six months but shall not exceed the maximum period of four years for candidacy."

- "If, at the time of either evaluation the institution is able to demonstrate to the subsequent satisfaction of the Board that it meets the Eligibility Requirements and Criteria for Accreditation, the Board shall *reinstate* accreditation."¹⁰³

The condition was accepted by ECP and, at the institution's request, HLC set the candidacy date for the end of the term.¹⁰⁴ However, shortly thereafter and prior to the effective date of candidacy, the deal between CCI and ECMC collapsed, CCI filed for bankruptcy, ECP closed its campuses and online operations, and ECP voluntarily resigned from HLC. As such, the change of control candidacy status never became effective.

A review of the ECP matter is important not only because it demonstrates that HLC's approval of the Institutes' change of control application with the condition of candidacy is aligned with past practice and demonstrative of consistency in decision-making, but also because the Department previously requested files related to the ECP transaction and was aware of this option and its application.

A brief history may be helpful: HLC was to file a petition for recognition in Summer 2017. HLC had provided exhaustive responses to memoranda from the Department on June 3, 2013, and December 15, 2016. On April 13, 2017, shortly after HLC submitted its response to the second memorandum, the Department sent a letter requesting additional information that HLC was to include with its petition for recognition.¹⁰⁵ The Department stated it needed this information in order "to conduct a thorough analysis of HLC in preparation for the review of its recognition." The Department specifically requested a narrative with supporting documents relating to HLC's accreditation of ECP. Such a narrative, along with supporting documents including the action letter sent to ECP informing ECP that HLC would approve the change of control application with the condition of candidacy, and ECP's initial response accepting this condition, was provided to the Department as Exhibit I.6 to the petition for continued recognition submitted by HLC on June 8, 2017.¹⁰⁶

As detailed in Section IV, the Department did not at any time indicate to HLC that it had concerns with HLC's regulatory compliance related to the ECP change of control application, or the approval of that application with the condition of candidacy. In fact, a five-year period of recognition was granted to HLC by the Department on May 9, 2018.¹⁰⁷ As such, HLC could not be aware that the Department would later take a position that it was impermissible for an accreditor to approve a change of control application with the condition of candidacy. To the contrary, because the Department received this information pursuant to its "responsibility to conduct a thorough analysis," prior to HLC receiving the full five-year recognition without any additional reporting requirements, it would be most logical for HLC to understand that the

¹⁰³ *Id.* (emphasis added).

¹⁰⁴ *See id.*

¹⁰⁵ [HLC-PET 1-2 \(April 13, 2017 letter from the Department requesting additional information\)](#)

¹⁰⁶ [HLC-PET 3-9](#) (June 8, 2017 cover letter from HLC to Mr. Bounds to petition for continued recognition); [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to petition for continued recognition)

¹⁰⁷ [HLC-PET 35](#)

Department reviewed the requested ECP materials and approved of the manner in which HLC approved the change of control.¹⁰⁸ Ultimately, when HLC approved the Institutes' change of control application with the condition of candidacy in the same manner, this action was consistent with decision-making previously approved by the Department. For this additional reason, this finding cannot stand.

IV. THE DEPARTMENT'S FINDINGS OF NONCOMPLIANCE ARE ARBITRARY AND CAPRICIOUS

The Department cannot take action that is "arbitrary, capricious, [or] an abuse of discretion."¹⁰⁹ This targeted inquiry into HLC's approval of the Institutes' change of control application with the condition of candidacy is arbitrary and capricious, and any recommendation to take action impacting HLC's recognition status as a result of this inquiry would be as well.

Most significantly, the Department has acted in an arbitrary and capricious manner by identifying the Institutes' candidacy status as problematic when it did not do so in a nearly identical case for Everest College Phoenix ("ECP"), despite having been provided meaningful and fulsome detail about that prior circumstance. Unquestionably, the Department is required to treat like cases alike—this is a fundamental norm for agencies.¹¹⁰ As stated eloquently by the D.C. Circuit Court of Appeals, "[i]t is axiomatic that an agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so."¹¹¹ The Department has no such legitimate reason here for distinguishing between its review of these two situations.

As detailed in Section III above, the Department specifically requested information about the ECP change of control application and HLC's related approval. In response, HLC provided all documents relevant to that application and approval for the Department's review. Presumably, the Department indeed read these materials, which included the action letter sent by HLC to ECP that explained HLC was offering an approval of the change of control application with conditions, including the condition of candidacy, with an opportunity for later reinstatement of accreditation. Again, the Department did not raise any concerns about the ECP transaction at any time, despite receiving all relevant materials about that change of control application.

¹⁰⁸ Notably, in footnote 15 of the Draft Analysis, the Department accused HLC of "us[ing] a punitive provision under its policies that it had never previously used after receiving a letter from five Members of Congress." Not only was HLC's approval of the change of control application with the condition of candidacy not punitive, it had also, as detailed herein, been previously used. HLC was not, as the Department asserts, "undu[ly] influence[d]" by certain elected officials. Rather, HLC evaluated the Institutes' change of control application, and their respective ability to meet the Criteria for Accreditation after the transaction, using an evidence-based approach and a fair process that allowed for due process, consistent with past action, its own policies, and federal regulations.

¹⁰⁹ 5 U.S.C. § 706(2)(A)

¹¹⁰ *Westar Energy, Inc. v. Federal Energy Regulatory Com'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) ("fundamental norm of administrative procedure requires an agency to treat like cases alike.").

¹¹¹ *Kreis v. Sec'y of Air Force*, 406 F.3d 684, 687 (D.C. Cir. 2005) (internal quotations omitted) (emphasis added).

The Department's findings that HLC was noncompliant with federal regulations and its own policy in the Institutes' matter is "an unexplained departure from its precedent"¹¹² and therefore arbitrary and capricious. For this reason alone, this finding also cannot stand.

Moreover, the unreasonable length of time between the action at issue and the Department's review of that action is, in and of itself, arbitrary and capricious, and antithetical to the requirement that agency action not be unreasonably delayed.¹¹³ This transaction was first brought to the Department's attention on November 16, 2017, when the Joint Action Letter to the Institutes was also sent to Mr. Frola and Mr. Bounds at the Department. During the period beginning early March 2018 and ending on May 21, 2018, HLC had communication with the Department regarding the Institutes' accreditation status. During this time, the Department granted a five-year recognition to HLC.

However, the Department did not inform HLC of the now-articulated concerns relating to this matter until Dr. Jones wrote to HLC on October 31, 2018, despite the Department's knowledge of this action since November 16, 2017.¹¹⁴ In that exchange, Dr. Jones told Dr. Gellman-Danley to simply submit a brief response to her letter stating that HLC will review its policies. HLC did so on November 7, 2018 and, receiving no reply to that response other than a prompt acknowledgment of receipt, believed in good faith that nothing further was required from the Department on this issue. Consistent with this commitment and HLC's philosophy of continuous improvement, however, HLC took action to immediately begin reviewing the relevant policies and procedures. As previously explained, HLC ultimately rescinded INST.E.50.010 in November 2019, following its regular policy revision process which includes seeking stakeholder input.

Notably, HLC was not told that its November 7, 2018 response was insufficient or that the Department had ongoing concerns with its accreditation actions until October 24, 2019—707 days after the Joint Action Letter was sent; 642 days after the EDMC/DCEH transaction closed and the Institutes' candidacy status became effective; and 353 days following its response. And, of course, the Draft Analysis raising concerns with this candidacy status was not sent until over two full years after the effective date of candidacy. The Department's action in raising this concern years after the alleged non-compliance is entirely arbitrary and capricious.

V. HLC'S RESPONSE TO THE DEPARTMENT'S REQUESTS FOR A NARRATIVE RESPONSE AND A DETAILED PLAN

The Department has requested: (1) "a narrative, including any supporting documentation, on steps it has or will take to prevent due process failures in the future" and (2)

¹¹² *See id.*

¹¹³ *See* 5 U.S.C. § 706(1)

¹¹⁴ HLC notes that Mr. Frola raised a concern that candidacy status could affect the Institutes' Title IV eligibility on February 23, 2018 and made inquiries about whether HLC had made determinations about the Institutes' non-profit status during a March 9, 2018 call. Despite these inquiries, he did not raise any concerns about the legitimacy of HLC's policy or application thereof in this circumstance. *See* [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#).

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

Due Process Narrative

HLC has, throughout this response, provided the requested narrative regarding steps it has or will take to prevent due process failures. HLC engages at all times in a process of analyzing its policies, procedures, and practices, and its Board makes necessary revisions to policies and procedures to conform with best practices, to respond to emerging issues, and in pursuit of continual improvement. HLC staff and its Board think critically about what has worked well, and what has resulted in less-than-ideal outcomes, related to its accreditation practices. HLC strongly believes that the institutions it accredits are entitled to due process, just as it believes the students who attend those institutions are entitled to a high-quality education and transparent disclosures about accreditation and any concerns therein. As such, both as part of its general commitment to continuous improvement and in response to the harm to students as a result of the Institutes' failure to appropriately disclose to students the Institutes' preaccreditation status (which the Institutes attribute to purported confusion), and EDMC's and DCEH's determination to close the transaction once the semester had already begun, HLC has taken steps to ensure the scenario is not repeated in the future.

Most notably, and as recognized by the Department, INST.E.50.010 has been withdrawn. As such, there no longer is an HLC policy permitting an institution to be "moved" from accreditation to candidacy. This policy change also aligns with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020. On February 27, 2020, HLC submitted revisions to two additional Change of Control-related policies (INST.F.20.070 and INST.F.20.080) to Ms. Daggett for advance review. HLC received an acknowledgement with a commitment to providing feedback no later than April 29, 2020. HLC is also in the process of revising the procedures relevant to a change of control application and approval, to align with other change of control policy changes adopted in 2019, and to otherwise clarify the procedures for HLC's membership.

Moreover, the Board undertook an independent analysis of what transpired with respect to the Institutes' change of control application, the approval of the change of control application with the condition of candidacy, the mid-semester closure of the transaction by EDMC and DCF, the Institutes' inadequate disclosures to their students, and the Institutes' eventual closure. In recognition of the new § 602.23(f)(1) (which would not have necessarily applied in this scenario, as candidacy was a voluntary condition) and of the harm to students caused by the Institutes' disclosures about its status, the Board will no longer approve a change of control application with the condition of candidacy. HLC has revised its procedures to provide that any conditions that may accompany a change of control application approval will not include conditions that could alter an institution's accreditation status.

While HLC provided more than meaningful due process in the circumstance in question, these changes reflect HLC's enduring commitment to due process. Further, this effort will certainly continue to align HLC policies, procedures, and practice with the Department's compliance expectations, particularly as defined by new regulations scheduled to take effect July 1, 2020.

With this effort already nearly complete, HLC has more than fully responded to the Department's compliance concerns.

A Detailed Plan

As an initial matter, and as the Department is certainly aware, HLC has no authority over an institution's transcripts or an institution's decision to accept transfer credit. HLC certainly shares the Department's concern for the students who attended the Institutes who, now after their closure, may have trouble transferring credits earned at the Institutes. Once HLC is made aware of the details of "any effort to correct the academic transcripts of those students" or of the details around "any effort" to help those students that is being undertaken by the now-closed Institutes, DCEH, DCF, or the Department, it will happily consider how it may reasonably assist. Without knowing the details of these efforts, however, HLC cannot provide a detailed plan to the Department in this regard.

To a related issue, this request inadvertently gives the impression that the Department is requiring, as an end result, that HLC "retroactively" accredit the Institutes. Specifically, the request asks that the transcripts of students attending on or after January 20, 2018 "show that the students earned credits and credentials from an accredited institution." HLC presumes this was unintentional, as the Department is certainly aware that it cannot direct an accreditor to make specific accreditation decisions about specific schools. Indeed, the Department of Education Organization Act limits the Secretary's authority over accrediting agencies. *See* 20 U.S.C. § 3403(b). In fact, in *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, the D.C. District Court held,

*[w]hile the Secretary has the authority to decide whether a particular accreditor's standards warrant approval as a reliable indicator of educational quality, 20 U.S.C. § 1099b(a), the Department itself is barred from interfering in an accrediting agency's assessment regarding individual schools. 20 U.S.C. § 3403(b).*¹¹⁵

Likewise, the Administrative Procedures Act also dictates that courts set aside agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."¹¹⁶ As such, any determination regarding whether the Institutes met the Criteria for Accreditation following their change of control must rest with HLC. To the extent that the Department's primary goal would be to obtain action from HLC that would result in "retroactive accreditation," the use of its oversight authority to secure such action is not supported by law.

However, HLC deeply shares in the Department's concern for the students negatively impacted by DCF's and DCEH's actions and stands ready to work with the Department to assist those students as they work to pursue their educational and professional goals. While each college and university across the country adopts its own credit transfer policies and may, or may not, choose to accept credits obtained at a preaccredited institution, HLC is in a unique position to provide

¹¹⁵ *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, 980 F. Supp. 53, 63 (D.D.C. 1997), *aff'd*, 168 F.3d 1362 (D.C. Cir. 1999), *opinion amended on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999).

¹¹⁶ 5 U.S.C. § 706.

meaningful support to impacted students as it relates to the transferability of their credits. As part of the Institutes' closure process, they established an online resource for students seeking to continue their educations; one of the resources includes a list of potential alternative schools for displaced students. Fourteen of the potential alternative schools are accredited by HLC. As such, HLC is able to reach out to those schools, and to the extent applicable, other schools accredited by HLC, in an effort to remind institutions that they are able to accept credits from preaccredited institutions, to help make more obtainable enrollment and credit acceptance for these students. Upon the agreement of the Department that the crux of the present matter is related to concern over impacted students' ability to transfer their credits, HLC is willing to distribute a letter reminding its member institutions that they are not prohibited from accepting credits from these schools and encouraging each school to consider immediate recruiting efforts to students impacted by the Institutes' closure, and/or inform member institutions that the Institutes' candidacy status was not related to the quality of instruction. HLC is more than willing to work collaboratively with the Department to find other ways to help these students, provided any such action is aligned with HLC policy and Department regulations.

VI. CONCLUSION

The Department's actions in this matter—while presumably well-intentioned and driven by the desire to support students, particularly the vulnerable students whose lives were negatively impacted by the Institutes' abrupt closure and whose choices were dramatically limited by DCF's and DCEH's inaccurate disclosures—have strayed from the fundamental principles of procedural and substantive due process to which it owes its regulated stakeholders. Inexplicably, the Department asks HLC to explain what steps it will take to prevent alleged “due process failures in the future,” but fails to recognize that the policy it contends was not followed is no longer in effect. Thus, it is impossible for the complained of action to reoccur under current HLC policy and procedures.

With respect to the aggrieved students, it is DCF, DCEH's and the Institutes' actions and omissions—not HLC's—that have left students displaced and in need of immediate and jointly coordinated support by the regulatory authorities and accreditors who are best-positioned to provide meaningful assistance. The Department's November 8, 2019 press release¹¹⁷ alleging that HLC harmed students based on its transcript requirements is without any evidentiary support. Dr. Sweeney provided Dr. Jones with a clear statement that HLC does not impose any requirements regarding transcripts. She also explained that the Institutes could provide a notation on, or documentation accompanying, the transcripts of students who graduated prior to January 20, 2018, explaining that the Institutes had been accredited. This suggestion was clearly made in the spirit of helping those students who obtained credits from the Institutes while they were accredited. To say HLC required that the transcripts contain notations that the credits earned are *unaccredited*, rather than Dr. Sweeney's actual suggestion about *accredited* credits, is inaccurate.¹¹⁸ Moreover, the Department ignores and minimizes DCF's and DCEH's repeated

¹¹⁷ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

¹¹⁸ See [HLC-OPE 15347-15353](#)

attempts to exploit HLC's policies, procedures and good faith communications for its own objectives, including solving its own significant financial challenges, at students' expense.

Nevertheless, HLC remains sensitive to the students' plight and is eager to assist with any ongoing effort the Department is prepared to describe. HLC stands ready and willing to respond by working *alongside* the Department in a coordinated way in responding to student needs. Yet, this current exercise of identifying hollow policy and procedural "failings," and demanding vague and undefined action from HLC in a manner that exceeds the Department's authority in numerous ways, does nothing to further that goal.

To be clear, HLC's actions in this matter were firmly rooted in then-applicable policies and procedures that were aligned with federal regulations and consistently applied. HLC's response to the change of control application was not unprecedented, but remarkably, followed the exact same process that had been previously offered to the Department in full detail, which at that time drew no concern. Due process, notice of applicable policies, and a meaningful opportunity to respond to the conditional approval were all provided to the Institutes.

Finally, despite HLC's strong demonstration that it complied with both federal regulations and sound and clearly articulated policies, HLC has timely made meaningful changes to address the results of its Board's independent analysis, while simultaneously ensuring that the Department's noncompliance concerns will never arise in the future. To that end, and for the reasons stated above, the Department must promptly close this inquiry with no further action.

Sincerely,



Barbara Gellman-Danley, PhD
President

CC (via email): Herman Bounds, Director of Accreditation, U.S. Department of Education
Anthea Sweeney, Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Marla Morgen, Associate Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Julie Miceli, Partner, Husch Blackwell
Jed Brinton, Deputy General Counsel, U.S. Department of Education

Exhibit B

HUSCH BLACKWELL

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May 21, 2020

VIA E-MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue, SW, LBJ 7W104
Washington, DC 20202-4536
E-Mail: EDFOIAManager@ed.gov

Re: FOIA Request

Dear FOIA Liaison:

I am writing to request information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, on behalf of the Higher Learning Commission (“HLC”). I serve as outside counsel for HLC in relation to certain regulatory matters, as described below.

As you are aware, the U.S. Department of Education (“Department”) recognizes and regulates accrediting agencies (“agencies”) such as HLC under the terms set forth in 34 C.F.R. § 602 *et seq.* Under 34 C.F.R. § 602.33(c), the Department is permitted to make a determination that “one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria,” and is directed upon making such a determination to send a “written draft analysis” to the agency that includes “any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation to the agency.”

On January 31, 2020, the Department notified HLC that it had conducted a review related to HLC’s accreditation of the Art Institute of Colorado and the Illinois Institute of Art

HLC-DCEH-014778

(collectively, the “Institutes”). The Department informed HLC that pursuant to 34 C.F.R. § 602.33(c), it had found HLC in “noncompliance” with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f), as well as an HLC policy which is no longer in effect. In this draft analysis, the Department failed to provide HLC with an accreditation recommendation. The Department also failed to provide “all supporting documentation” for its findings and recommendation. The Department’s draft analysis included a small number of exhibits, one of which was a transcript of a December 9, 2019, interview between Robert King, Assistant Secretary for Postsecondary Education, and Ron Holt, outside counsel for the Institutes. The draft analysis referenced another interview that took place on December 23, 2019, between Mr. King and a former HLC employee, Karen Solinski, but the Department did not provide HLC with a transcript of that interview. Instead, only an email Mr. King sent to Ms. Solinski following the interview, and Ms. Solinski’s email in response, were provided.

HLC filed a timely response to the Department's January 31 letter on March 20, 2020. In addition to substantively responding to the Department’s findings of noncompliance, HLC also raised concerns about the Department’s failure to give HLC all supporting documentation and notify HLC of its recommendation. On May 1, 2020, the Department responded with a second letter, and stated that its January 31 and May 1 letters would collectively be considered the Department’s draft analysis. As relevant to this FOIA request, the Department acknowledged that HLC requested to be provided with all supporting documentation. However, the Department merely responded that there was no transcript or recording of the interview with Ms. Solinski, and stated that “the Department did not rely on what was said orally in that interview [but instead] relied exclusively on Ms. Solinski’s December 26, 2019 email.”

In addition to the requirement that the Department provide HLC with “all supporting documentation” under 34 C.F.R. § 602.33(c)(1), FOIA requires that the Department, like all federal agencies, disclose any and all records upon request, unless such records fall under one of nine exemptions. *See* 5 U.S.C. § 552. HLC is requesting the following records pursuant to FOIA. Upon information and belief, none of these records are exempted from disclosure.

First, HLC requests any and all records of complaints from January 2018 through the present from students or former students at any and all campuses affiliated with the Art Institute of Colorado and the Illinois Institute of Art related to the students’ or former students’ abilities to transfer their credits earned at the Institutes to other institutions of higher education (hereinafter referred to as “Student Complaints”). For the Art Institute of Colorado (OPEID: 02078900), the campuses are located at: 1200 Lincoln Street, Denver CO (Extension: 02078900); and 675 South Broadway Street, Denver, CO (Extension: 02078904). For the Illinois Institute of Art (OPEID: 01258400), the campuses are located at: 350 North Orleans Street, Suite 136-L, Chicago, IL (Extension: 01258400); 1000 Plaza Drive, Suite 100, Schaumburg, IL (Extension: 01258401); and 28175 Cabot Drive, Novi, MI (Extension: 01258405). HLC requests the Department make available any written Student Complaints, whether sent via mail, fax, or email; any recordings of

or notes related to Student Complaints made over the phone or in-person; any written responses from the Department to Student Complaints; any recordings of or notes related to responses to Student Complaints by the Department given over the phone or in-person; any notes taken by Department staff or officials during or related to any communications with those making Student Complaints students about any such complaints; and any scheduling records related to communications regarding Student Complaints, including but not limited to calendar invitations.

Second, HLC requests any notes taken or emails prepared by Mr. King or any other Department staff or official in preparation for the December 23, 2019 interview with Ms. Solinski; any notes taken by Mr. King or any other Department staff or official during such interview; and any notes taken or emails prepared by Mr. King or any other Department staff or official subsequent to this interview that recorded, in any manner, the substance of Mr. King's and Ms. Solinski's conversation.

Third, HLC requests any email communication between Ms. Solinski and any Department staff or official from the time-period September 1, 2017 through the present related to the Dream Center Foundation ("DCF"), Dream Center Education Holdings ("DCEH"), or the Institutes.

Fourth, HLC requests any notes taken by or on the behalf of Michael Frola, Director of Multi-Regional and Foreign School Participation Division, in preparation for or during a call with HLC staff on March 9, 2018, and any notes taken by or on behalf of Mr. Frola subsequent to this call that recorded, in any manner, the substance of the call. HLC also requests any such notes taken by any other Department officials or staff who were on that call.

Fifth, HLC requests any notes taken by or emails prepared by or on behalf of Diane Auer Jones, Principal Deputy Under Secretary, in preparation for or during calls with HLC staff on the following dates: June 27, 2018; October 29, 2018; and October 31, 2018. HLC also requests any such notes taken by any other Department official or staff who was on that call, and any notes taken by or on behalf of Dr. Auer Jones or any other Department official or staff subsequent to those calls that were intended to record the substance of the call.

Sixth, HLC requests records relating to any communications between the Department and the Dream Center Foundation ("DCF"); Dream Center Education Holdings ("DCEH"); counsel representing DCF and/or DCEH, including but not limited to Mr. Holt; the appointed Receiver for DCEH and its subsidiaries, Mark E. Dottore ("Receiver"); or counsel representing the Receiver, that are related to the topics of transferability of credits, retroactive accreditation, or HLC. Specifically, HLC requests any written communications, including sent by email, letter or fax, and any notes of any such calls or in-person communications.

Seventh, HLC requests any affidavits submitted by Department staff or officials in litigation involving DCF, DCEH, and the Receiver.

HLC is requesting these records for use in relation to the Department's review of HLC's recognition as an accrediting agency. Release of these records is also in the public interest. Many students were impacted by the closure of the Institutes, and the Department has made decisions related to the Title IV loans of these students. The public is entitled to transparency regarding the Department's decision to discharge and/or cancel loans, and its decisions related to reviewing HLC's recognition.

HLC agrees to pay all applicable fees associated with this FOIA request. However, HLC disputes that fees related to the production of documents that the Department is obligated to disclose under 34 C.F.R. § 602.33(c) are applicable, such as the December 23, 2019 interview of Ms. Solinski.

Additionally, HLC requests expedited processing. The Department has requested that HLC respond to its May 1, 2020, letter by June 1, 2020. Many of these records are necessary for HLC to fully respond to the Department, and as such HLC requests that, to the extent possible, these records are released prior to June 1, 2020. Moreover, the Department has informed HLC that it recommends a limitation on its accrediting authority. Upon information and belief, the National Advisory Committee of Institutional Quality and Integrity ("NACIQI") will act on this recommendation. Release of these records is necessary for HLC's response to NACIQI. To the extent the Department alleges that the scope of the instant FOIA request will cause processing delays, HLC respectfully requests that its seven requests be separated and responded to in whichever order the Department will be able to most quickly release the requested records.

Please contact me with any questions or concerns.

Warm regards,



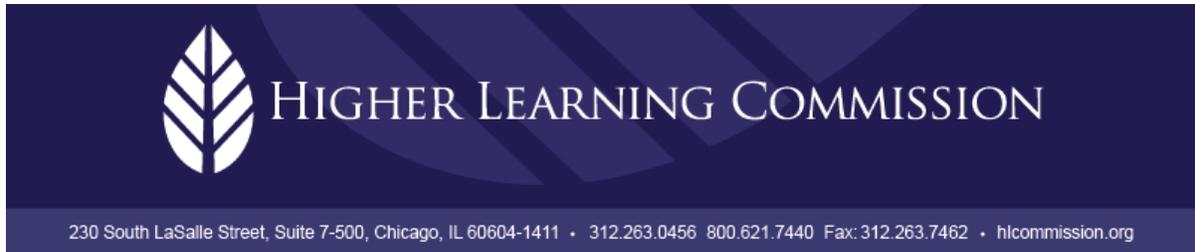
Julie Miceli

Exhibit C

From: Higher Learning Commission <president@hlcommission.org>
Sent: Wednesday, May 27, 2020 10:38 AM
To: [REDACTED]
Subject: Helping Students Through Transfer

[125 Years of Advancing Together #HLC125](#)

[View email in web browser.](#)



Dear HLC Members,

During this global crisis, HLC is asking its member institutions to make additional efforts to assist students affected by the closing of the Illinois Institute of Art and the Art Institute of Colorado to the furthest extent possible consistent with your institution's capacity. The Institutes closed abruptly in December 2018.

Every institution determines its own policies and procedures for accepting transfer credits, including credits from accredited and non-accredited institutions, from foreign institutions, and from institutions that grant credit for experiential learning and for non-traditional adult learner programs in conformity with any expectations in HLC's Assumed Practices. HLC policies for institutions on transfer of credits are [Assumed Practice A.5](#) (CRRT.B.10.020) and [Publication of Transfer Policies](#) (FDCR.A.10.040).

Institutions also have the flexibility, consistent with their policies and procedures for maintaining the integrity of their academic functions, to provide modifications that have been determined by their faculty to be appropriate under exigent circumstances. Any such modifications, while permissible, must be appropriately documented along with the institution's rationale for purposes of future HLC evaluations.

The Higher Learning Commission's goal is to encourage institutions to assist affected

students so that they can complete their programs within a reasonable time and under equitable circumstances.

HLC stands ready to respond to any questions related to transfer. HLC has established a dedicated line to answer questions from institutions, students and other stakeholders regarding transfer at 312.224.3040.

Given all your ongoing efforts, we appreciate your special consideration of these affected populations during their time of need.

Sincerely,



Barbara Gellman-Danley
President, Higher Learning Commission

You are receiving this email because you have been identified as an official contact for your institution or are a member of HLC's Peer Corps.

Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

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Exhibit D

INTERNAL

Enhancing Transfer Opportunities - Communications Plan

Goal:

HLC will inform all of its member institutions regarding opportunities for transfer to support students. This will include a focus on students who were negatively impacted by the closing of the Illinois Institute of Art and Art Institute of Colorado, and who may now have more transfer opportunities as a result of changes in the higher education landscape as the result of the ongoing global crisis. When possible, student communication networks will be included in the outreach.

Audience:

- Institutional contacts at member colleges and universities – specifically Accreditation Liaison Officers (ALOs) and Chief Executive Officers (CEOs)
- Students that reach out to HLC with questions regarding transfer of credit
- State higher education agency officials
- General public that visit HLC’s website or reach out to HLC

Messaging:

- Students are most in need for accommodations during the current global crisis.
- Higher Education institutions have an opportunity to be flexible with regard to transfer of credit and an increased use of virtual learning.
- HLC policy allows for institutions to be flexible:
 - Every institution determines its own policies and procedures for accepting transfer credits, including credits from accredited and non-accredited institutions, from foreign institutions, and from institutions that grant credit for experiential learning and for non-traditional adult learner programs in conformity with any expectations in HLC’s Assumed Practices. HLC policies for institutions on transfer of credits are [Assumed Practice A.5](#) (CRRT.B.10.020) and [Publication of Transfer Policies](#) (FDCR.A.10.040).

Institutions also have the flexibility, consistent with their policies and procedures for maintaining the integrity of their academic functions, to provide modifications that have been determined by their faculty to be appropriate under exigent circumstances. Any such modifications, while permissible, must be appropriately documented along with the institution's rationale for purposes of future HLC evaluations.

- Specifically, in the case of Art Institute of Colorado and Illinois Institute of Art, the fact that the institutions were unaccredited at the time of their abrupt closure significantly hampers former students' ability to progress academically. Institutions that are willing to be flexible in their transfer considerations can make a positive difference in the lives of these students at a critical time. HLC vice presidents for accreditation relations stand ready to respond to any questions related to transfer.

- Assisting students in their time of need, demonstrates institutions as having gone the extra mile to be of service.

Communication Channels:

- April 28 letter to all members in Colorado, Illinois and Michigan encouraging transfer opportunities.
- April 28 letter sent to state higher education agencies in Colorado, Illinois and Michigan.
- May 15 endorsement and publication of two statements on transfer of credit.
- Letter to all members and 19 state higher education agencies re: transfer opportunities regarding the Art Institutes
- Leaflet article (Leaflet article would include a larger audience – peer reviewers, all institutional contacts and subscribers plus anyone visiting the website, potentially students) re: transfer opportunities generally
- A phone number set to leave messages from all calls regarding transfer from students, parents, the public to be routed through HLC's Public Information Officer to answer questions, provide resources (will include information from the U.S. Department of Education for questions about topics that are more appropriately routed to the Department ?)
- Other suggested vehicles from the U.S. Department of Education?

Evaluation:

Evaluate follow-up questions and need for additional information based on Google analytics and open rates of email blasts.

- Explore developing a model for handling difficult transfer issues as part of a pending Students' Right to Know Guide.
- Develop a resource page on the HLC website that provides information for students regarding transfer of credit. With link to HLC's Teach Out Toolkit set to launch in September 2020.

Exhibit 5



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

June 17, 2020

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604
Via email: bgdanley@hlcommission.org

Dear Dr. Gellman-Danley:

I am writing to inform you of the results of the Office of Postsecondary Education's ("OPE") review of the information and documentation provided by the Higher Learning Commission ("HLC" or "the agency"), with respect to the Art Institute of Colorado (OPEID: 02078900) and the Illinois Institute of Art (OPEID: 01258400) (collectively the "Institutions").

On October 24, 2019, and pursuant to its authority under 34 C.F.R. § 602.33, OPE sent HLC a letter requiring it to submit information and documentation regarding its review of the change of control application from the Institutions ("Review Letter"). HLC provided its response to the Review Letter on November 13, 2019, which included a narrative as well as exhibits. The Department requested additional information and documentation on December 19, 2019, and HLC submitted its response on January 13, 2020. The November 13, 2019 and January 13, 2020 responses by HLC are hereinafter referred to as the "Review Response."

On January 31, 2020, and pursuant to its authority under 34 C.F.R. § 602.33(c), OPE sent HLC a written draft staff analysis of the agency's compliance with the criteria for recognition. The January 31, 2020, letter invited a written response from HLC in 30 days. HLC was granted an extension to provide its response, which it did on March 20, 2020, to include a narrative as well as exhibits. The March 20, 2020, response also contested the findings of OPE and asserted that the January 31, 2020, letter was procedurally deficient. On May 1, 2020, OPE responded to the March 20, 2020, letter and provided HLC a proposed recognition recommendation and an additional 30 days to respond to the compliance issues noted in the January 31, 2020 letter. The January 31, 2020 and May 1, 2020 letters from OPE are hereinafter referred to as the "Draft Staff Analysis." HLC provided its response on June 1, 2020.

This letter constitutes the Department staff's written notification to the agency that the draft analysis will be finalized for presentation to the National Advisory Committee on Institutional

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HLC-DCEH-014789

Quality and Integrity (NACIQI), pursuant to 34 C.F.R. § 602.33(e)(1). Department staff has concluded that HLC has not demonstrated compliance with the following criteria: 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f).

34 C.F.R. § 602.33(e)(2) requires the Department to publish a notice in the Federal Register that the Department staff have concluded that HLC has not demonstrated compliance, and if practicable, an invitation to the public to comment on the agency's compliance with the criteria in question. Because the Department has provided HLC with several extensions to respond to our analysis, the Department has concluded that it is no longer practicable to provide for public comment. However, we will of course allow for members of the public to comment during the actual NACIQI meeting.

Should you have any questions regarding this letter, please feel free to contact Herman Bounds, Director of Accreditation, at (202) 453-6128 or via email at herman.bounds@ed.gov. Thank you.

Sincerely,

Annmarie Weisman
Senior Director, Policy Development, Analysis,
and Accreditation Services

Exhibit 6



Policy Title: Accredited to Candidate Status

Number: INST.E.50.010

The Board of Trustees may determine that an institution be moved from accredited to candidate status subsequent to the close of a Change of Control, Structure or Organization transaction as a result of the findings of an on-site team, including either a Fact-Finding or other team, visiting the institution or the findings in a summary report. The Board must find that the institution, as a result of or related to the Change of Control, Structure or Organization, meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices but no longer meets all of the Criteria for Accreditation and Federal Compliance Requirements. It must also find that the institution meets the requirements of the candidacy program. Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.

Process for Moving an Institution From Accredited to Candidate Status

The Board of Trustees may take an action to move an institution from accredited to candidate status in conjunction with a Change of Control, Structure or Organization, as outlined in [Commission policy INST.B.20.040](#). In addition, a team recommendation arising out of a comprehensive or focused evaluation within six (6) months of the close of a transaction approved under [INST.B.20.040](#) to move the institution from accredited to candidate status, will automatically be referred to an Institutional Actions Council Hearing Committee. The Board will consider both the team recommendation and the Institutional Actions Council Hearing Committee recommendations in its deliberations. In all cases, the Board of Trustees will act on a recommendation to move an institution from accredited to candidate status only if the institution's chief executive officer has been given at least two weeks to place before the Board of Trustees a written response to the recommendation of the team or Institutional Actions Council Hearing Committee.

Public Disclosure of Accredited to Candidate Status

A Public Disclosure Notice for an institution whose status has shifted under this policy will be available on the Commission's website shortly after, but not more than twenty-four (24) hours after, the Commission notifies the institution of the action moving the institution from accredited to candidate status. An

institution moved from accredited to candidate status must notify its Board members, administrators, faculty, staff, students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the institution must also disclose this new status whenever it refers to its Commission affiliation.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 50: Accredited to Candidate Status

Last Revised: February 2014

First Adopted: June 2009

Revision History: February 2011, February 2014

Notes: Policies combined November 2012 – 2.5(e), 2.5(e)1, 2.5(e)2

Related Policies: INST.B.20.020 Candidacy, INST.B.20.040 Change of Control, Structure, or Organization

Exhibit 7



Policy Title: Change of Control, Structure or Organization

Number: INST.B.20.040

An institution shall receive Commission approval prior to undergoing a transaction that affects, or may affect, how corporate control*, structure or governance occurs at the accredited or candidate institution (hereinafter the “affiliated institution”). Approval of the transaction resulting in the CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION shall be necessary prior to its consummation to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction.

**Control shall be understood to mean the possession, direct or indirect, of the power to direct or cause the direction of, the management and policies of an institution, corporation, partnership or other entity, whether through the ownership of voting securities, by contract or otherwise. (See related definition at 34 CFR § 600.31(b).)*

Eligibility for Change of Control

No institution shall be deemed eligible for CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION merely by virtue of having accredited or candidate status with the Commission. Approval shall be at the sole discretion of the Commission’s Board of Trustees (“the Board” or “the Commission’s Board”). An institution shall apply for Commission approval of a proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION transaction through processes outlined in this policy and must demonstrate to the satisfaction of the Commission’s Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that approval of the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION is in the best interest of the Commission.

In those cases in which the Commission’s Board decides to approve a proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION, it may decide so subject to conditions on the institution or its accreditation. In those cases in which the Commission’s Board decides, in its sole discretion, that the proposed transaction builds a new institution bypassing the Eligibility Process and initial status review by

means of a comprehensive evaluation, the Commission Board shall not approve the CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION.

The Board will not consider for approval any proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION involving an institution that is under sanction, Show-Cause or loss of status or authorization from any other recognized accrediting agency or state entity or is under investigation by any state entity, or involving a buyer or investor who owns such an institution except as described in this policy. The Board will also not consider for approval any proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION for an institution the Board has determined within the previous twelve months to merit withdrawal of accreditation, even if a formal action to withdraw accreditation has not yet taken place.

The Board will consider a CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION for a Commission-affiliated institution on sanction or under Show-Cause only if there is substantial evidence that the proposed transaction resolves the issues the institution must address during the sanction or Show-Cause period and the transaction otherwise meets each of the Approval Factors identified in this policy.

Types of Transactions

The transactions that require prior Commission approval¹ include, but are not limited to, the following:

1. Sale or transfer to, or acquisition by, a new owner of all, or a substantial portion, of the institution's assets, or the assets of a branch campus or site (not including any transfer that constitutes only the granting of a security interest);
2. Merger or consolidation of an institution with one or more institutions or entities. This includes the consolidation of an institution not accredited or in candidate status with the Commission into the structure of an institution holding status with the Commission;
3. The division of the affiliated institution into one or more institutions or entities;
4. Stock transactions including Initial Public Offerings of stock as well as those transactions wherein an individual, entity or group² acquires and controls 25% of the total outstanding shares of stock of the affiliated institution, or an individual, entity or group increases or decreases its control of shares to greater or less than 25%, through individual or cumulative transactions, of the total outstanding shares of the stock of the institution;

1 Such transactions may or may not also require approval from the U.S. Department of Education.

2 For a definition of a "group" see Section 13(d)(3) of the Securities and Exchange Act of 1934.

5. Change of corporate form, governance structure, or conversion, including, but not limited to, change from Limited Partnership to Corporation, from Limited Liability Corporation to a Corporation, from a Not-for Profit Corporation to a For-Profit Corporation, a Private to Public, a Not-for Profit Corporation controlled by members to one controlled by its Board of Directors, significant change in the size of the institution's governing board;
6. Any of the transactions in items 1 through 5 above involving a parent corporation that owns or controls the affiliated institution or in any intermediate subsidiary of a parent corporation where that subsidiary has a controlling relationship to the institution and where the transaction may reasonably affect the control of the accredited institution as determined by the Commission or by the U.S. Department of Education;
7. Sale, transfer, or release of an interest in the affiliated institution such that there is change in the management or governance of the institution; and
8. Transfer of substantial academic or operational control of the affiliated institution to a third-party entity.

Change of Control, Structure, or Organization Without Prior Commission Approval

The Board shall withdraw the accreditation or candidacy of an institution that completes a CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION without receiving prior Commission approval from the Board of Trustees. The Higher Learning Commission President will take a recommendation for withdrawal to the Board upon learning of the change that took place without prior Commission approval. Prior to the Board's review, the institution will be informed about the recommendation and will have at least 14 calendar days to prepare and submit a response that the Board will have available when it considers the President's recommendation for withdrawal.

Notification to the Commission Regarding Other Transactions

An institution affiliated with the Commission must notify Commission staff of any other CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION that is not separately identified in this policy or that may be separately identified in the policy but may not be reasonably known by, or under the control of, the accredited institution, a parent entity or intermediate subsidiary prior to the transaction (e.g., disposal of stock by an investor). These changes include, but are not limited to, changes in the Chief Executive Officer of the affiliated institution, changes in the structure and composition of the Board of Trustees of the institution, other than those due to normal or mid-term completion of Board members' terms or removal or

replacement of Board members or revision of corporate bylaws through regular review processes, and sale or transfer of a block of stock that constitutes less than 25% but more than 10% of the total outstanding voting shares of the affiliated institution, its corporate parent or other entity in a controlling relationship with the institution. These changes must be reported to the Commission as soon as they are reasonably known to the institution. While such changes are to be reported for information, staff may determine in certain cases that they do constitute a Transaction that must be approved under this policy or that require Commission follow-up under Commission policies related to monitoring.

Policy Number Key

Section INST: Institutional Processes

Chapter B: Requirements for Achieving and Maintaining Affiliation

Part 20: Defining the Affiliated Entity

Last Revised: February 2010

First Adopted: June 2009 and February 2010

Revision History:

Notes: Policies combined November 2012 – 3.3, 3.3(a), 3.3(b), 3.3(e), 3.3(f).

Related Policies: INST.F.20.070 Processes for Seeking Approval of Change of Control, INST.F.20.080 Monitoring Related to Change of Control, Structure or Organization

Exhibit 8



Policy Title: Processes for Seeking Approval of Change of Control

Number: INST.F.20.070

The Commission's Board will make all decisions regarding approval of transactions under this policy taking into consideration the summary report made by Commission staff. Commission staff may seek external assistance from peer reviewers or individuals with appropriate expertise or may require an immediate on-site Fact-Finding Review to gather information about the proposed CHANGE OF CONTROL, STRUCTURE, OR ORGANIZATION in making a summary report to the Board. The summary report may contain a recommendation regarding approval of the transaction made by the institution's Commission staff liaison or by the Commission staff. Commission staff will provide the institution with a copy of the staff summary report, including the staff recommendation, if any, being provided to the Board and allow the institution 14 calendar days to prepare a response to that summary report; that response will be shared with the Board prior to its decision.

The Board may act in agreement with any recommendation put forward by Commission staff or the Board may develop and act on its own recommendation. The Board may elect to provide the institution with thirty days to respond to any recommendation before the Board takes final action.

The Board may approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction, or it may deny approval for the change. The Board may defer its consideration of the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION to the next public Board meeting date pending receipt of additional information or action by a third party such as the state or another recognized accreditor. The Board may make use of OTHER OPTIONS identified in this section.

If the U.S. Department of Education conducted a pre-acquisition review of the proposed transaction, the Board will not act on the proposed change until it has reviewed the letter issued by the Department after it completes its pre-acquisition review, the institution's response to the Department's letter, and any additional information requested by the Department in its letter.

The Board may approve the change subject to certain conditions. Such conditions may include, but are not limited to, limitations on new educational programs, student enrollment growth, development of new

campuses or sites, etc. Related to these conditions, the Board may require that it review and approve certain changes at the institution prior to their inception. The institution and other parties involved in the transaction have 14 calendar days after receiving the Board's action letter to indicate in writing the acceptance of these conditions. If the institution and the other parties do not respond in writing or decline to accept the conditions, the Board may immediately act to rescind its approval. The parties to the CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION may not act to close the transaction until accepting in writing the Board's conditions, if any.

The Board reserves the right to delegate to a Board subcommittee the review, prior to the decision by the full Board, of changes proposed under this policy and that subcommittee may make a recommendation to the full Board regarding the decision on the proposed transaction.

If the Board votes to approve the change with or without conditions, thereby authorizing accreditation for the institution subsequent to the close of the transaction, the Commission will conduct a focused or other evaluation to the institution within six months of the consummation of the transaction. A previously-scheduled comprehensive or focused evaluation may fulfill this task provided that it is scheduled, or can be rescheduled, within the six-month timeframe. The Board's action to approve a Change of Control, Structure or Organization may designate an effective date of approval provided that such date will be not later than 30 days from the date of the action. If the institution does not effect the transaction within this 30 day period, the institution must notify the Commission and seek a revised effective date, which may involve providing additional information to the Commission and another action by the Board of Trustees.

Approval Factors

The Board will consider the following factors in determining whether to approve the transaction: 1) the extension of the mission, educational programs, student body and faculty that were in place when the Commission last conducted an on-site evaluation of the affiliated institution; 2) the on-going continuation and maintenance of the institution historically affiliated with the Commission with regard to its mission, objectives, outreach, scope, structure, and related factors; 3) substantial likelihood that the institution, including the revised governance and management structure of the institution, will continue to meet the Commission's Eligibility Requirements, and Criteria for Accreditation; 4) sufficiency of financial support for the transaction; and 5) previous experience in higher education and accreditation, qualifications, and resources of new owners, Board members or other individuals who play a key role in the institution or related entities subsequent to the transaction. If the Board determines in its sole discretion that the institution or the transaction fails to meet any of the approval factors, the Board will not approve the

proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION. The Board may also renew the institution's eligibility for its existing pathways assignment or place the institution on a different pathway.

Other Board Options

The Board may act, prior to approving the proposed CHANGE OF CONTROL, to require additional review through the Eligibility Process or through a Fact-Finding Review, which may be an additional such Review, conducted by peer reviewers or by other higher education, legal or accounting professionals regarding whether the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION constitutes the creation of a new institution such that it should be required to go through a period of time in candidacy or an initial status evaluation. The review shall be conducted within sixty days of the Board's action requiring such review, and the results shall be available to the Board at its next regularly scheduled or special meeting. The institution will have seven working days to respond to the report prepared for the Board prior to the Board's meeting.

Any candidacy required by the Board under this section shall be known as a Change of Control Candidacy. The effective date of the Change of Control Candidacy shall be the closing date of the transaction. The Board shall establish the minimum and maximum length of the candidacy but not to exceed the maximum length of time for candidacy as identified in these policies, as well as the schedule of evaluations during the candidacy period.

Evaluation Visits Related to Change of Control, Structure, or Organization

Fact-Finding Review. Commission staff may call for a Fact-Finding Review prior to making a summary report to the Board regarding a proposed CHANGE OF CONTROL, STRUCTURE, OR ORGANIZATION. The role of the Fact-Finding Review will be to gather information and advise staff regarding the summary report to the Board. The Fact-Finding Review Team will not prepare a formal team report but may prepare a written summary of activities and findings. A Fact-Finding Review may take place on-site at the institution or at any other location appropriate to its activities.

In addition, the Board may call for a special Fact-Finding Review to determine, in certain cases, whether a proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION may constitute the creation of a new institution. This review may take place through the Commission's Eligibility Process or through other mechanism as defined by the Board. This review may result in a recommendation that the Board

approve a transaction subject to the institution's acceptance of a period of time as a candidate for accreditation.

Policy Number Key

Section INST: Institutional Processes

Chapter F: Maintenance and Monitoring

Part 20: Intermittent Monitoring

Last Revised: February 2017

First Adopted: June 2009

Revision History: February 2010, February 2012, June 2012, June 2015, February 2017

Notes: Policies combined November 2012 – 3.3(c), 3.3(c)1, 3.3(c)2, 3.3(c)3, 3.3(d), 3.3(d)1

Related Policies: INST.B.10.030 Related Entities, INST.B.20.040 Change of Control, Structure, or Organization

Exhibit 9



November 16, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC
7135 East Camelback Road
Phoenix, AZ 85251

Dear President Monday, President Pond, and Mr. Richardson:

This letter is formal notification of action taken by the Higher Learning Commission (“HLC” or “the Commission”) Board of Trustees (“the Board”) concerning Illinois Institute of Art (“IIA”) and the Art Institute of Colorado (“AIC”) (“the Institutes” or “the institutions,” collectively). During its meeting on November 2-3, 2017, the Board voted to approve the application for Change of Control, Structure, or Organization wherein the Dream Center Foundation (“DCF”), through Dream Center Education Holdings LLC (“DCEH” or “the buyers”) and related intermediaries, acquires certain assets currently held by Education Management Corporation (“EDMC”), including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below. In taking this action, the Board considered materials submitted to the Commission including: the Change of Control, Structure or Organization application, the Summary Report and its attachments, the additional information provided by the Institutes throughout the review process, and the Institutes’ responses to the Summary Report.

As noted under policy, the Commission considers five factors in determining whether to approve a requested Change of Control, Structure, or Organization. It is the applying institution’s burden, in its request and submission of related information, to demonstrate with clear and convincing evidence that the transaction meets these five factors and to resolve any concerns or ambiguities regarding the transaction and its impact on the institution and its ability to meet Commission

requirements. The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future.

The conditions set forth by the Board in its approval of the application subject to Change of Control Candidate for Accreditation are as follows:

The institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.

The institutions submit an interim report every 90 days following the date of the consummation of the transaction until their next comprehensive evaluations on the following topics:

- Current term enrollment at the institutions. This should include the number of full- and part-time students, as well as comparisons to planned enrollment numbers. The institutions should also provide revised enrollment projections based on enrollments at the time of submission;
- Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institutions;
- Information regarding any complaints received by DCF, DCEH or any of the institutions;
- Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, (“DCEM”), or any of the institutions;
- Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions;
- Information regarding reductions in faculty and/or staff at any of the institutions;
- Updated student retention and completion measures for each of the institutions;
- Copies of any information sent to the U.S. Department of Education (“USDE”), including any information sent in response to the USDE’s September 11, 2017 letter (or any updates to that letter); and
- An update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator.

The institutions submit separate Eligibility Filings no later than February 1, 2018, providing detailed documentation that each institution meets the Eligibility Requirements

and Assumed Practices, as well as a highly detailed plan with timelines, action steps, and personnel assignments to remedy issues related to Core Components 1.D, regarding commitment to the public good; 2.A, regarding integrity and ethical behavior; 2.B, regarding public disclosure and transparency; 2.C, regarding the autonomy of board governance; 4.A, regarding improving program outcomes; 5.A, regarding financial resources; and 5.C, regarding planning, with specific focus on enrollment and financial planning. The outcome of this process shall be reported to the HLC Board of Trustees at its spring 2018 meeting.

The institutions host a visit within six months of the transaction date, as required by HLC policy and federal regulation, focused on ascertaining the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.

The institutions host a focused visit no later than June 2019, to include a visit to the Dream Center Foundation and Dream Center Education Holdings, on the following topics:

- Core Component 1.D:
 - The institutions should provide evidence that the missions of the institutions demonstrate a commitment to public good. Specifically, that the institutions' operations align to the pursuit of the stated missions in terms of recruiting, marketing, advertising, and retention.
- Core Component 2.A:
 - The institutions should demonstrate that they possess effective policies and procedures for assuring integrity and transparency.
 - DCEH and the institutions should provide evidence that the parent company and the institutions are continuing to perform voluntarily the obligations of the Consent Agreement, as assured by DCEH to the Higher Learning Commission in writing.
- Core Component 2.B:
 - DCEH and the institutions must demonstrate that policies and procedures following the Consent Judgment have been fully implemented and are effective in ensuring the proper training and oversight of personnel.
- Core Component 2.C:
 - Evidence that the DCF, DCEH, DCEM and the Art Institutes organizations, as well as related corporations, demonstrate that they have organizational documents and have engaged in a pattern of behavior that indicates the respective boards of the institutions have been able to engage in appropriately autonomous oversight of their institutions.
- Core Component 4.A:
 - Evidence that the institutions have engaged in effective planning processes to address programs that have failed the USDE's gainful employment requirements (when those requirements were still applicable), as well as those that are "in the zone." The institutions should also provide any plans that have been implemented to improve program outcomes.

- Core Component 5.A:
 - Evidence that the institutions have increased enrollments to the levels set forth in the application for Change of Control, Structure, or Organization. This should include any revised budgetary projections and evidence of when the institutions intend to achieve balanced budgets.
- Core Component 5.C:
 - The institutions should provide any revised plans or projections that occur following consummation of the transaction.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action.

The Board will receive and review the Eligibility Filing, related staff comments, and the report of the first focused visit team to determine whether to continue the Change of Control Candidacy status. If the Eligibility Filing and focused evaluation does not provide clear, convincing and complete evidence of each institution meeting each Eligibility Requirement and of making substantial progress towards meeting the Criteria for Accreditation in the maximum period allotted for such Change of Control Candidacy as indicated in this letter, the Board may withdraw Change of Control Candidate for Accreditation status at its June 2018 meeting.

The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation.

Assuming acceptance of these conditions, the Institutes and buyers must provide written notice of the closing date within 24 hours after the transaction has closed. The Institutes are also obligated to notify the Commission prior to closing if any of the material terms of this transaction have changed or appear likely to change. By Commission policy the closing must take place within no more than thirty days from the date of the Board's approval. If there is any delay such that the transaction cannot close within this time frame, the Institutes must notify the Commission as soon as possible so alternate arrangements can be identified to ensure that the Board's approval remains in effect.

The Board based its action on the following findings made in regard to the Institutes:

In reference to the first, second, and fourth approval factors and, related to the continuity of the institutions accredited by the Commission and sufficiency of financial support for

the transaction, the institutions and the buyers have provided reasonable evidence that these factors have been met.

In reference to the third approval factor, the substantial likelihood that following consummation of the transaction the institutions will meet the Commission’s Criteria for Accreditation, with specific reference to governance, mission, programs, disclosures, administration, policies and procedures, finances, and integrity, the institutions and the buyers have provided reasonable evidence that this factor is met, although the following Criteria for Accreditation are Met with Concerns:

- Criterion One, Core Component 1.D: “The institution’s mission demonstrates commitment to the public good,” for the following reasons:
 - Neither institution has demonstrated evidence that its underlying operations, in addition to its tax status, will be transformed to reflect a non-profit mission;
 - Neither institution has demonstrated significant planning required to undertake a mission that includes the responsibility of educating a potentially very different student population represented by the Dream Center clientele; and
 - The buyers have not provided evidence that the institutions’ educational purposes will take primacy over contributing to a related or parent organization, which will be struggling in its initial years to improve the enrollment and financial wherewithal of a large number of institutions purchased from EDMC.
- Criterion Two, Core Component 2.A: “The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff,” for the following reason:
 - Although each institution is making changes to procedures specifically identified in the November 2015 Consent Judgment, neither institution has yet established a long-term track record of integrity in its auxiliary functions.
- Criterion Two, Core Component 2.B: “The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships,” for the following reasons:
 - Changes being made by the institutions to ensure transparency, particularly with students, are recent in nature and have yet to fully penetrate the complex organizational structure of which the institutions are a part; and
 - Given the replication of that operational structure and the continuity of personnel following the transaction, the potential for continuing challenges is of concern.
- Criterion Two, Core Component 2.C: “The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity,” for the following reasons:
 - There remain questions about how the governance of DCEH, its related service provider Dream Center Education Management, and the Art Institutes will take place after the transaction and how that governance will affect the governance of the AIC and IIA, and the mere replication of the EDMC corporate structure with new non-profit corporations does not resolve the

- question of how these new corporations will function in the future to assure autonomy and governance in the best interest of the institutions;
 - An apparent conflict of interest exists owing to an investment by the DCEH CEO of 10% in the purchase price for which limited documentation exists; and
 - No evidence was provided indicating that either institution’s board had yet engaged in significant consideration of the role that typifies non-profit boards.
- Criterion Four, Core Component 4.A: “The institution demonstrates responsibility for the quality of its educational programs,” for the following reasons:
 - Neither institution has demonstrated that improvements have been made to academic programs identified since January 2017 by the USDE as having poor outcomes, or that such programs have been eliminated; and
 - The risk of harm to students admitted to such programs absent such improvement or elimination is of concern, regardless of the institutions’ tax-status or whether they are subject to gainful employment regulations.
- Criterion Five, Core Component 5.A: “The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future,” for the following reasons:
 - Despite the adoption of certain cost-reducing and related measures, the impact of which are yet to be determined, the ability of each institution to sustain its resource base and improve enrollment beyond 2019 depends on the occurrence of several contingencies, most of which are assumptions tied to the institutions’ change in tax status, and none of which are guaranteed;
 - The ability of the buyers to provide the cash flow infusions necessary to sustain the institutions over the next five years are also linked to assumptions related to the institutions’ change in tax status and the long-term debt taken on by DCEH and DCF in addition to the debt acquired for the purchase price; and
 - Although the buyers are expected to have \$35 million in cash at closing (based on debt as noted above), these funds are intended to support multiple transactions within Argosy University, South University and the Art Institutes, and the potential need for and access to additional debt financing on the part of the buyers is of concern.
- Criterion Five, Core Component 5.C: “The institution engages in systematic and integrated planning,” for the following reasons:
 - Neither institution has demonstrated that the impacts of the transaction have been accounted for in their strategic planning; and
 - IIA’s strategic planning process is still in the process of maturing.

In reference to the fifth approval factor, the experience of the buyers, administration, and board with higher education, the officers (CEO and CDO) of the buyers have some experience in higher education but do not have any experience as chief officers of a large system of non-profit institutions or with the specific challenges pertinent to EDMC institutions, including challenges related to marketing and recruitment policies, governance, administration, and student outcomes across institutions with many campuses and programs operating across the United States.

The Board action, if the conditions are accepted by the Institutes and the buyers, resulted in changes to the affiliation of the Institutes. These changes will be reflected on the Institutional Status and Requirements Report. Some of the information on that document, such as the dates of the last and next comprehensive evaluation visits, will be posted to the HLC website.

Commission policy COMM.A.10.010, Commission Public Notices and Statements, requires that HLC prepare a summary of actions to be sent to appropriate state and federal agencies and accrediting associations and published on its website within thirty days of any action. The summary will include HLC Board action regarding the Institutes. The Commission will also simultaneously inform the U.S. Department of Education of this action by copy of this letter. As further explained in policy, HLC may publish a Public Statement regarding this action and the transaction following the institutions' and the buyer's decision of whether to accept the conditions outlined above. Please note that any public announcement by the buyers about this action must include the information that any approval provided by the Commission is subject to the condition of the buyers accepting Change of Control candidacy for not less than six months up to a maximum of four years.

On behalf of the Board of Trustees, I thank you and your associates for your cooperation. If you have questions about any of the information in this letter, please contact Dr. Anthea Sweeney.

Sincerely,



Barbara Gellman-Danley
President

cc: Chair of the Board of Trustees, Illinois Institute of Art
Chair of the Board of Trustees, Art Institute of Colorado
Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, the Art Institute of Colorado
Diane Duffy, Interim Executive Director, Colorado Department of Higher Education
Stephanie Bernoteit, Senior Associate Director, Academic Affairs, Illinois Board of
Higher Education
Evaluation team members
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning
Commission
Karen Peterson Solinski, Vice President for Legal and Governmental Affairs, Higher
Learning Commission
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Herman Bounds, Director, Accreditation Group, U.S. Department of Education

HLC-OPE 7732

HLC-DCEH-014811

Exhibit 10



HIGHER LEARNING COMMISSION

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Fax: 312.263.7462 | hlcommission.org

October 3, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Randall Barton, Executive Chairman
Dream Center Education Holdings LLC
7135 E. Camelback Road, Suite F 240
Scottsdale, AZ 85251

Dear President Monday, President Pond, and Chairman Barton:

Enclosed is the *Staff Summary Report* and accompanying *Fact-finding Visit Report* for the Change of Control, Structure, or Organization review, as requested by the Art Institute of Colorado and Illinois Institute of Art (“the institutions”, collectively). Under Higher Learning Commission (“HLC” or “the Commission”) policy, the institutions should review the Report and prepare a written response, which should also clearly identify any errors of fact contained in the Report. This response should be submitted to HLC no later than **October 17, 2017**. A lack of response shall be interpreted as the institutions concurring with the findings presented in the Report.

Additionally, HLC must receive a copy of the response to the U.S. Department of Education’s Preacquisition Review Letter, dated September 12, 2017. The response and any supporting materials must be received by the Commission no later than close of business on **Monday, October 9, 2017**. If this information is not provided by this deadline, the HLC Board of Trustees will not be able to review this case at its November 2017 meeting. As a reminder, all information must be submitted electronically to the Commission to www.hightail.com/u/hlc-lga.

The Commission’s Board of Trustees (“the Board”) makes the decision of whether to approve the extension of accreditation after the proposed transaction takes place. The institutions’ application for Change of Control, Structure, or Organization is currently on the Board’s agenda for the November 2017 meeting, pending receipt of the response to the U.S. Department of Education. The Board will

HLC-OPE 7030
HLC-DCEH-014813

receive the following information in preparation for its decision: the *Staff Summary Report*, the institutions' response to the Report (if any), and the joint application for Change of Control, Structure, or Organization. The institutions' historical files with the Commission, including: any previous team reports, institutional responses, action letters, and other related documents, will also be made available to the Board.

Please note that under Commission policy, the *Staff Summary Report* does not contain a recommendation to the Board. The Board has the following decision options available, as it does with all applications for Change of Control, Structure, or Organization: to approve the extension of accreditation following the consummation of the transaction; to approve the extension of accreditation subject to certain conditions, as determined necessary by the Board; to deny the extension of accreditation following the transaction; or to approve the extension of accreditation following the transaction subject to a period of candidacy. The institutions should take the Board's options into consideration when preparing a response.

Thank you for your cooperation throughout this process. If you have additional questions, please contact Dr. Anthea Sweeney.

Sincerely,



Robert Rucker
Research and Advocacy Coordinator for Legal and Governmental Affairs

Enc: Staff Summary Report
Fact-finding Visit Report

Cc: Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, The Art Institute of Colorado
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
Karen Peterson Solinski, Executive Vice President for Legal and Governmental Affairs,
Higher Learning Commission

**SUMMARY REPORT TO THE BOARD OF TRUSTEES FOR
CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION**

AS REQUESTED BY

-

**Art Institute of Colorado
Illinois Institute of Art**

**Of
EDUCATION MANAGEMENT CORPORATION**

Date: October 1, 2017

Explanation

Involved Parties

Party One: Education Management Corporation, Pittsburgh, PA (EDMC)

Education Management Corporation is a publicly-traded for-profit corporation that has been in existence for more than forty years. Until recently it was traded on the NASDAQ stock exchange. Its largest institutional shareholder is Providence Equity Partners, LLC. EDMC currently reports 101 locations in 31 states of the United States. Directly and through various intermediate subsidiary entities EDMC owns several “families” of institution: Argosy University; South University; the Art Institutes; and Brown Mackie Colleges (closing soon). The Art Institutes includes approximately 45 locations, of which HLC accredits five under the two institutional accreditations identified below. All of the regional accreditors, with the exception of AACJC, currently accredit at least one EDMC institution. Directly and through its intermediate subsidiary entities EDMC provides certain services to its institutions that include, but are not limited to, human resources, regulatory, legal, facilities management, technology, and various student-facing services.

Party Two: Art Institute of Colorado, Denver, CO (AIC)

Art Institute of Colorado is a Bachelor’s-level institution of higher education accredited by the Higher Learning Commission (HLC or the Commission) owned by EDMC, which, as noted above, is a publicly traded corporation. As reported in AIC’s most recent annual update to HLC, AIC offers five Associate’s degrees and 16 Bachelor’s degrees in fields related to art and design and culinary arts. AIC’s reported enrollment to HLC in its most recent Annual Update was 811 students of which approximately 500 were full-time undergraduate students.

AIC has a main campus in Denver and has no other locations. It is not approved by HLC to offer distance or correspondence education.

The College was first accredited by HLC in 2008. Its most recent comprehensive evaluation took place in 2012-13, at which time its accreditation was reaffirmed. It was also placed on Notice because of concerns related to student success, including: retention and attrition, institutional review of data related to student success, faculty workload and development, enrollment management, and evidence-based planning. It was removed from Notice in 2015 because it demonstrated appropriate improvements and was no longer deemed at risk of being out of compliance with the Criteria for Accreditation. It then hosted a mid-cycle review in 2016-17 on the Standard Pathway that resulted in a recommendation for a focused evaluation on its declining enrollment and revenues. AIC will host its next comprehensive evaluation in 2022-23 at which time HLC will evaluate it for reaffirmation of accreditation.

Party Three: Illinois Institute of Art, Chicago, IL (IIA)

Illinois Institute of Art is a Bachelor's-level institution of higher education accredited by HLC that is also owned by EDMC, which, as noted above, is a publicly traded corporation. As reported in IIA's most recent annual update to HLC, IIA offers eight Associate's degrees and 15 Bachelor's degrees in fields related to art and design and culinary arts. IIA's reported enrollment to HLC in its most recent Annual Update was 2,289 students of which approximately 1,400 were full-time undergraduate students.

IIA has a main campus in Chicago; it also has campuses in Schaumburg, Illinois; Novi, Michigan; and Cincinnati, Ohio. It has an additional location in Tinley Park, Illinois. It is not approved by HLC to offer distance or correspondence education.

The College became accredited by HLC in 2004; its accreditation was reaffirmed in 2008. It is on the Standard Pathway. In 2015, it was placed on Notice after a comprehensive evaluation because of concerns related to related to integrity, student support services, strategic planning, and institutional improvement. In May 2017, it hosted a Notice focused evaluation team to determine whether IIA had demonstrated appropriate improvements to support removing the institution from Notice. Following the visit, the focused evaluation team has recommended such removal, and the Commission's Board of Trustees is considering the recommendation. IIA will host its next comprehensive evaluation in 2018-19, at which time it will be evaluated for reaffirmation of accreditation.

Party Four: Dream Center and Dream Center Foundation, Los Angeles, CA (DCF or the buyers)

The Dream Center Foundation is a 501(c)(3) California non-profit organized formally in 2008 that supports the faith-based mission of the Dream Center, founded by Pastors Tommy and Matthew Barnett in California, which serves homeless, veteran and other at-risk populations in the Los Angeles area. Pastor Tommy Barnett is currently Chancellor of Southeastern University and pastor of an Assemblies of God church, the Dream City Church, in the Phoenix area; Pastor Matthew Barnett, his son, began his mission work in the Los Angeles area and launched the first Dream Center there in 1994. Some years later

the Dream Center organization acquired the former Queen of Angels hospital complex in downtown Los Angeles near Echo Park and expanded its work. Currently on the former hospital property, the Dream Center operates an extensive residential complex serving not only homeless and veteran populations, but also victims of domestic abuse, human trafficking, and previous substance abuse. It also operates an extensive food network that distributes food on a daily basis to impoverished populations throughout the greater Los Angeles area. Also at the Los Angeles Dream Center, the organization runs training programs for leaders of churches and others from across the United States who want to learn how to initiate a similar Dream Center in their own communities. Such Dream Centers in major urban centers across the country, while separate organizations from the Dream Center in Los Angeles, maintain an affiliation with the organization in Los Angeles. While the Dream Center has a clear statement of faith identified on its website that connects it to the key-teachings of the Assemblies of God faith, the Dream Center Foundation emphasizes that it is a secular foundation. DCF does not currently own or operate any institutions of higher education. DCF's Managing Director is Mr. Randall Barton.

Party Five: Dream Center Education Holdings, Scottsdale, AZ (DCEH or, together with DCF, the buyers); Dream Center Education Management (DCEM)

Dream Center Education Holdings is a non-profit Arizona Limited Liability Corporation organized in January 2017 whose sole member is DCF. DCEH was formed to facilitate this transaction and, with its related corporations, to replicate the corporate structure of EDMC, wherein EDMC was the ultimate parent of several entities that owned the assets of the educational institutions and provided certain operational assistance to them. DCEH's initial Board of Managers was comprised of Pastor Matthew Barnett, Mr. Randall Barton, and Mr. Brent Richardson, former Executive Chairman of Grand Canyon Education and former President of Grand Canyon University. DCEH is the sole member of additional Arizona nonprofit Limited Liability Corporations that will hold the assets of each of the institutions currently owned by EDMC: Art Institutes International, LLC; Dream Center South University, LLC; and Dream Center Argosy University LLC.

Dream Center Education Management is a non-profit Arizona Limited Liability Corporation organized in January 2017 whose sole member is the Dream Center Education Holdings. DCEM was formed to take over the activities of Education Management II (EMII), again replicating the corporate structure of EDMC, wherein EMII, along with EDMC, provided certain services to the institutions and related corporations within the corporate structure. (See Core Component 5.A for an explication of services offered by each entity.) DCEM's initial Board of Managers was comprised of Pastor Matthew Barnett, Mr. Brent Richardson, former Executive Chairman of Grand Canyon Education and now Chief Executive Officer of DCEH, and Mr. Randall Barton, Co-Chairman of DCEH.

Najafi Companies in Phoenix, Arizona invests internally-generated capital, and not through an investment fund, in the leisure, hospitality, consumer products, education and related markets. Najafi Companies will provide financing for the transaction to DCF, which is the borrower in this transaction.

Proposed Transaction

Overview

Through this transaction, the sellers, EDMC and multiple related corporations, will sell certain assets to the buyers, DCEH with DCF as its representative and four related Arizona non-profit LLCs. These assets include merchandise, supplies, equipment, leasehold improvements, intellectual property, books and records, good-will, and related assets. Assets excluded from this deal include cash and cash equivalents, bank accounts, tax refunds, insurance policies, and related assets. Buyers will assume certain liabilities including trade payables, certain leases, certain purchase orders, certain liabilities related to Closing Net Working Capital and certain liabilities related to unearned or deferred revenues. It is important to note that liabilities related to the Consent Judgment agreed to by EDMC are excluded and are not transferred to buyers.

The parties concluded an Asset Purchase Agreement that lays out the details of, and consideration for, the transaction. The purchase price for the assets will be \$60 million¹ with certain adjustments as laid in the Asset Purchase Agreement, which includes \$50 million as adjusted to be paid in cash at closing and an additional \$10 million in deferred payments of \$5 million paid six months and one year after closing from institutional operating revenues.² The principal adjustment will be related to Net Working Capital, which may adjust the purchase price up or down depending on how much is available at or prior to closing. The Asset Purchase Agreement also outlines some additional provisions related to the purchase in the event that the Middle States Commission on Higher Education or the Higher Learning Commission does not approve the continuation of accreditation after the transaction. Finally, the Asset Purchase Agreement indicates that immediately after the transaction sellers will pay off the current and future amounts owed under the Settlement Agreement entered into by the United States and various states.

The transaction will be financed by ED Holding, which is a Delaware limited liability corporation associated with Najafi Companies. The financing is subject to interest at the greater of 8% or at the Adjusted Libor Rate and has a term of approximately 23 years. The borrower is DCF with DCEH, DCEM, Dream Center Argosy, Dream Center South and Art Institutes International, as guarantors. Financing is subject to a Promissory Note, Credit Facility, Security, and Continuing Guaranty documents. In particular, the Credit Agreement notes that the borrowers need to establish a working capital line of credit as a condition precedent³ and that

¹ The buyers reported to HLC that the original purchase price was \$100 million, but that amount was adjusted down during the due diligence period.

² In August 2017 during the HLC Fact-finding Visit, buyers advised the HLC team that the buyers would be providing approximately \$25 million in cash at closing, and the remaining \$25 million would be paid from the Net Working Capital Adjustment; these figures were confirmed in the most recent response received September 21, 2017.

³ In this response the buyers also included a form credit agreement and related documents that would govern the terms of the line of credit in conjunction with the U.S. National Bank Association as the administrative agent. However, it remained unclear which banks had provided a commitment for the line of credit. The buyers indicated that the line of credit would be finalized at the closing.

there are certain affirmative and negative covenants associated with the financing including the provision of certain accreditation, financial and related reports to the lender, right to observe the borrower's board meetings, and related requirements. There do not appear to be any covenants related to enrollment at the colleges or other similar requirements that are often identified in such agreements with institutions of higher education. The loan is collateralized by one unit of membership in DCEH and all income, interest, distributions, property, and related assets of these corporations.

In addition, the Richardson Family Trust will be providing up to 10% of the loan on the same terms as the Najafi Companies. However, the buyers have indicated that there will be no direct loan arrangement or agreement between DCEH or DCF and the Richardson Family Trust. There are no written documents governing the participation of the Richardson Family Trust, and any arrangements are based solely on an oral understanding between the Richardsons and Mr. Najafi.

The transaction is contingent on various conditions precedent. These conditions include all pre-closing regulatory consents by accrediting and state agencies and by the U. S. Department of Education, among other considerations.

History Leading to the Transaction

EDMC conducted an initial public offering in 1996 that successfully generated \$45 million for the company's owners. In 2006 a group of investors decided to take the company private again. The transaction was financed by cash, debt financing, and equity contributions totaling \$1.3 billion. The debt financing consisted of \$1.185 billion in term loans and publicly traded notes of \$760 million in the aggregate. The debt was placed with Education Management LLC so that neither the parent corporation nor the educational subsidiaries held any of the debt. The entire transaction was reported by the independent auditors (Consolidated Financial Statements of EDMC June 1, 2006 to June 30, 2006) at \$3,669,078,000. HLC reviewed the privatization as a Change of Control under its policy at that time.

In December 2006, HLC conducted a focused evaluation to the corporate headquarters in Pittsburgh in which other regional accrediting agency representatives participated. The team reported that the investors had indicated the timeframe for their investment was a minimum of four years, but more likely five to seven years; these statements reflected provisions in the Shareholders' Agreement. The team concluded that, while the transaction did not have a material impact on the governance, mission or educational programs of the institutions accredited by HLC, the highly leveraged nature of the company, the issues with the U.S. Department of Education related to the leverage (as described below), and the short-term horizon for the investment merited a watchful eye.

The aim of other similar "going private" transactions among large higher education corporations in recent years had been to take the company private, generating significant transaction fees for the investment bankers involved in the transaction and significant debt on the books of the company, but later to eliminate the debt by going public once again. Transactions structured in this way have become increasingly rare because of the down-turn (until recently) in for-profit higher education stock and the impossibility of predicting when the market might be profitable

enough to take the company public again after this period of private investment, thus generating sufficient proceeds to pay off the debt.

In October 2009, EDMC became partially publicly traded again when it sold shares of its common stock to the public in an initial public offering, thereby reducing, but not eliminating, the percentages of stock owned by the equity investors in the “going-private” transaction and reducing some of the outstanding debt. While HLC’s Change of Control, Structure or Organization policy did not require an approval for the initial offering because not more than 25% of the total outstanding shares of stock would change hands, HLC did require an evaluation in early 2014 to evaluate the company’s plan for follow-on offerings. While HLC subsequently approved the continuation of accreditation, subject to various reporting requirements, after these follow-on offerings, the company informed HLC that it would not be proceeding with them because of market conditions at the time.

Subsequently, EDMC was the subject of several investigations and legal actions. Attorneys General in several states initiated investigations related to admissions and recruiting activities; an investigation in Colorado resulted in a consent judgment, and EDMC paid \$3.4 million without admitting any liability. EDMC was a defendant in multiple *Qui Tam* actions under the federal False Claims Act also relating to recruiting practices and particularly violations of the federal ban on incentive compensation. In November 2015, EDMC agreed to a global settlement that settled the *Qui Tam* suits, consumer fraud investigations by a consortium of 40 state attorneys general, and an investigation by the U.S. Department of Justice. EDMC agreed to pay \$95.5 million to be distributed among the various agencies, plaintiffs and claimants; to change its admissions and recruiting practices; and to forgive \$102 million in private student loan debt. (See Eligibility Requirement #16 for an explanation of this settlement with regard to revised practices.) It also agreed to independent monitoring of its activities in this regard by a special administrator appointed by the court until the end of 2018. This global settlement generally ended the lengthy investigations and actions against EDMC across the country.

During this time period EDMC also underwent significant internal business disruptions. In the fall of 2014, it voluntarily agreed to delisting from the NASDAQ after an investigation by the Securities and Exchange Commission related to the timeliness of its reports. During the three years preceding the delisting its losses totaled nearly \$2.3 billion, and most of its operating income was going to pay debt. In January 2015 its credit rating from Moody’s dropped it to junk bond status. As a result of its financial situation after 2006 it was on Heightened Cash Monitoring I⁴ with the U.S. Department of Education, and its letter of credit was approximately

⁴ In general, under the Advance Payment Method, institutions may submit a request to the U.S. Department of Education for Pell Grant, Direct Loan and Campus-Based program funds at any time — prior to or after disbursing aid to eligible students and parents. Under Heightened Cash Monitoring I, however, a school first makes disbursements to eligible students from institutional funds and submits disbursement records to the Department. Then it draws down Federal Student Aid funds to cover those disbursements in the same way as a school on the Advance Payment Method. A school placed on HCM2 no longer receives funds under the Advance Payment Method. After a school on HCM2 makes disbursements to students from its own institutional funds, a Reimbursement Payment Request must be submitted for those funds to the Department.

\$350 million. Several articles in the financial media speculated on the likelihood that the company would declare bankruptcy.

In fall of 2014 the Chief Executive Officer of EDMC met with HLC staff to discuss developing arrangements to restructure approximately \$1.5 billion of the company's outstanding debt. The transaction had the following components:

- Approximately \$1.5 billion of EDMC's funded debt would be exchanged for a combination of i) non-voting, convertible preferred stock of EDMC, ii) certain warrants, which would be exercisable into common equity of EDMC in Step 2, as described below; and iii) approximately \$400 million in new debt ("Step 1"). Step 1 was completed on January 5, 2015 after EDMC had reached agreement with most of its creditors.
- Following receipt of appropriate regulatory approvals, certain of the aforementioned non-voting shares would be mandatorily or voluntarily converted at the election of the owner to ordinary common shares in EDMC with ordinary common voting rights, which would result in i) the transfer of voting control of EDMC to holders of said non-voting preferred stock and ii) ownership by existing creditors of substantially all of the common equity interests of EDMC ("Step 2"). Step 2 was planned to take place in 2015 subsequent to the corporation receiving approval from state higher education agencies and accreditors.

The transaction constituted a change under HLC's Change of Control, Structure and Organization policy. After appropriate review HLC approved the extension of accreditation after the transaction in spring of 2015 subject to various reporting requirements. Both institutions were also under review during this time as outlined on page one of this report.

In early 2017, EDMC representatives approached HLC about the transaction under review in this report.

State/Federal Review of the Proposed Transaction

EDMC presented evidence to HLC that it notified various state agencies of the impending transaction and sought approval in those few states where pre-transaction approval is required. Specifically, with regard to the two institutions accredited by HLC, it has notified Colorado, Illinois, Michigan, and Ohio. EDMC must present written evidence that it has completed the process of pre-closing notifications and received approvals from those states that provide pre-transaction approval or that the state has acknowledged receipt of appropriate documentation and confirmed that no pre-transaction approvals are required. HLC will not provide its approval until this documentation is required. Similarly, EDMC has presented evidence that it has notified appropriate specialized accreditors.

Following its regular practice, HLC notified state higher education agencies about the proposed transaction and the procedure for reviewing the transaction; HLC also provided the opportunity to alert HLC about any concerns. Some states did identify various concerns about consumer

practices related to EDMC.

EDMC also reported that it has filed a pre-acquisition review filing with the U.S. Department of Education (“the Department”). On September 12, 2017, the Department issued its pre-acquisition review letter. In the letter, it confirmed the likelihood that Title IV would be extended to the institutions after they converted to non-profit status as a result of acquisition by the DCEH and that the institutions appeared to meet the Department’s definition of non-profit. However, the Department laid out several conditions related to its approval, and additional information that would need to be submitted post-closing. The Department indicated that the institutions would need to demonstrate that the institutions’ net income does not benefit any party other than the institutions and that the consideration for the purchase does not exceed the fair market value of the assets. The Department also requested confirmation that the compensation for executives and key personnel meets fair value expectations. Other conditions included evidence of prompt payment of the settlement amounts and the provision by buyers of a letter of credit in the amount of 10% of the amount of Title IV in the preceding fiscal year during the time of the Temporary and Provisional Program Participation Agreements issued by the Department during the time period after the closing.⁵

EDMC and the buyers have appropriately reported this transaction to other accrediting agencies. At the time of the writing of this report the Western Association of Colleges and Schools (Argosy University), the Southern Association of Colleges and Schools (South University and some Art Institutes), and the Northwest Association (one Art Institute) had provided appropriate approvals such that buyers could proceed to closing. Approval was still pending from the Middle States Commission on Higher Education. EDMC has limited associations with specialized or professional accreditors, and the institutions accredited by HLC do not have such recognition.

Commission Review of the Transaction

In May 2017, HLC conducted an Intake Meeting related to its Change of Control, Structure or Organization process at the offices of EDMC in Chandler, Arizona and at the Dream Center facility in Los Angeles. Representatives of some other regional accrediting agencies joined this Intake Meeting. During the Intake Meeting, the HLC and other representatives met and interviewed Pastor Barnett, Mr. Barton, Mr. Richardson, and Mr. Najafi and other personnel associated with EDMC or the Dream Center. In August 2017, HLC conducted a Fact-finding Visit to the corporate headquarters of EDMC in Pittsburgh, PA during which the Fact-finding Team met with representatives of DCEH (Mr. Barton and Mr. Richardson), EDMC management, and of the two institutions accredited by HLC. Sub-teams of the Fact-finding Team subsequently met with other corporate or institutional personnel and students.

HLC staff members worked with peer reviewers to develop a Fact-finding Visit Report and Summary Report. The Fact-finding Visit Report is in Appendix A of this document.

⁵ It is not clear that these conditions would be acceptable to the buyers as they indicated to the Fact-finding Team that they anticipated no conditions from the Department and that certain conditions such as an LOC might result in their not proceeding with the transaction.

Analysis of the Approval Factors

1. Extension of the mission, educational programs, student body, and faculty that were in place when the Commission last conducted an on-site evaluation of the affiliated institution:

• *Mission:*

The current mission of AIC is focused on the provision of higher education programs in culinary, art and design, and technology that lead to career opportunities. IIA has a similar mission with a focus on acquiring the skills and knowledge appropriate for a career in creative and applied arts. Neither institution is planning a change of mission related to this transaction nor would it appear that there will be a de facto change in mission based on the plans of the buyers. The buyers intend to continue to maintain the missions and related activities of these institutions. (However, see Core Component 1.D for additional considerations regarding Mission.)

• *Educational Programs:*

As noted in the initial sections of this report, both AIC and IIA currently offer Diplomas, Associate's, and Bachelor's degrees in areas related to culinary arts, fashion and design, and media. These programs are intended to prepare students for careers in these areas. In the Application for Change of Control, AIC noted that it will be considering future program additions based on its internal planning. IIA provided a similar response. During the Fact-finding Visit, buyers discussed generally considering program expansion at some facilities taking into account market demand and institutional appropriateness for expansion but noted no specific plans as yet.

• *Student Body:*

AIC reports that it enrolls about 800 students at a single campus whereas IIA enrolls about 2200 students across four campuses in three states. Both institutions have struggled with enrollment issues in the past few years. Both, however, report anticipated enrollment growth in the next few years. For example, IIA Chicago campus hopes to grow its enrollment from approximately 870 students in FY18 to 1480 students in FY22. AIC has more modest plans hoping to expand its enrollment during the same time period from 600 to 681 students. The buyers indicated that they anticipated some bump-up in enrollment at these institutions because of the change to nonprofit status. In addition, buyers noted that they expected some enrollment uptake related to the association with the Dream Center either from Dream Center personnel or Dream Center clients enrolling in these programs. Again, no specific market research had been done to support such claims nor had there as yet been any work done to lay out pathways for Dream Center personnel or clients to migrate to any of these institutions. Without these pathways having been laid out and without any significant environmental scanning, the enrollment projections, particularly at Chicago, seem unreasonably optimistic. In addition, as noted in several places in this report, there are concerns about to what extent individuals currently served by the Dream Center could benefit from these programs and what institutional changes might be required to serve them appropriately.

•**Faculty:**

AIC employs approximately 23 full-time and 82 part-time faculty at its campus. IIA employs approximately 45 full-time and 180 part-time faculty across its campuses. These individuals are at-will employees not subject to tenure and not unionized. The parties anticipate no changes in these numbers directly related to the transaction. Human resource personnel will be providing institutional employees with appropriate benefit and other related information prior to the closing, at which time all the employees at these institutions will have a new employer. Conditions of employment, benefits and salary will remain the same. Of course, if these institutions have operational deficits or do not meet enrollment targets to ensure that they at least break-even, the buyers may need to re-examine faculty populations.

Therefore, the evidence available to HLC indicates that the mission, educational programs, student body, and faculty that were in place when HLC last conducted an on-site evaluation of these institutions are likely to remain in place after the proposed transaction.

2. The ongoing continuation and maintenance of the institution historically affiliated with the Commission with regard to its mission, objectives, outreach, scope, structure and related factors:

As previously noted, there are no plans to change the respective missions or objectives of these institutions. They each have their own Boards of Trustees and management, and the pattern of interaction with an intermediate and ultimate parent corporation is likely to continue for the near future. In the short term, these factors are likely to remain unchanged. While the buyers appear to be holding the status quo consistent for the near term, in the longer term, they will need to make changes to contain spending and create efficiencies if they are going to move the overall operation out of pattern of enrollment decreases and operational losses.

With regard to marketing to students, there do not appear to be any significant changes to strategy or positioning any time soon. The buyers note that they will continue to use online and offline media, direct communications, and related strategies. The buyers have not indicated any particular interest in changing these plans in the immediate future. In a letter to HLC dated September 19, 2017, the buyers have confirmed their willingness to continue to abide by the terms of the consent decree. It is important to note that the marketing and recruiting practices at EDMC changed significantly after the Consent Judgment. It is not clear to what extent the pressure to expand enrollment at some campuses that have had enrollment challenges and the need to restore the overall operations to fiscal viability may impact the buyers' willingness long term to continue these improvements in recruiting and admissions practices.

Longer term, the positioning of these institutions also remains less clear. On several occasions during the Fact-finding Visit, the Fact-finding Team discussed with the buyers the high tuition at these institutions, the pattern of debt students often take on to complete these programs, and the value to students given that steady high-paying jobs in some of these fields may not be readily available to graduates. The team also discussed challenges with market saturation related to these programs, particularly in the Chicago marketplace. The team noted a number of Art Institute

operations that have had declining enrollments for several years. While buyers acknowledged these challenges it was not clear that they had engaged in a careful review of the viability of each Art Institute operation, nor did they appear to have a plan to discontinue operations at some campuses if such action were necessary to ensure that the remaining Art Institutes would become more efficient and cost-effective as a result. Buyers intend for the near term to replicate the complicated EDMC corporate structure developed for a publicly-traded for-profit institution with significant tax and legal challenges. However, maintaining this structure and its cost, as well as trying to reach enrollment targets that may have limited basis in reality, may put more pressure on recruiting and admissions in ways that have had undesirable outcomes in the past in this corporate entity. If the HLC Board of Trustees continues the accreditation of these institutions after the closing of the transaction, it should attach monitoring designed to review on a regular basis marketing and admissions practices as well as corporate planning to assure that these institutions have reasonable enrollment targets that they can achieve and that they can continue to assure ethical and responsible approaches to recruiting and admissions.

The evidence available to the Commission indicates that these three institutions will continue to maintain the mission, objectives, outreach, scope, and structure of the institutions historically affiliated with the Commission. However, it should be noted that it is not clear that the parties have given the issue of growth and institutional viability for the long term sufficient consideration.

3. Substantial likelihood that the institution, including the revised governance and management structure of the institution, will continue to meet the Commission's Eligibility Requirements and Criteria for Accreditation:

Assessment of Compliance with Eligibility Requirements⁶ after the Transaction

1. Jurisdiction of the Commission

The institution falls within the Commission's jurisdiction as defined in the Commission's Bylaws (Article III). The Commission extends accreditation and candidacy for accreditation to higher education institutions that are 1) incorporated in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, or operating under federal authority within these states, and 2) have substantial presence, as defined in Commission policy, within these states.

After the transaction, this eligibility requirement will be MET. Both the AIC and IIA are currently accredited by HLC and satisfy HLC's jurisdictional requirement. DCEH operates as a non-profit LLC chartered in the state of Arizona. Following consummation of the transaction, each institution is anticipated to become an Arizona non-profit limited liability corporation with substantial presence in their current states of Colorado and Illinois, in addition to the states where their branch campuses may be located.

⁶ Unlike the Criteria for Accreditation, HLC policy provides only that Eligibility Requirements are either "MET" or "NOT MET." For this reason, there is not always an exact correspondence between findings on Eligibility Requirements and related Core Components within the Criteria.

2. Legal Status

The institution is appropriately authorized in each of the states, sovereign nations, or jurisdictions in which it operates to award degrees, offer educational programs, or conduct activities as an institution of higher education. At least one of these jurisdictions must be in the HLC region.

After the transaction, this eligibility requirement will be MET. Both the AIC and IIA currently hold legal authorization to award degrees, offer educational programs and otherwise conduct activities as institutions of higher education. AIC derives its authority from the Colorado Department of Higher Education (CDHE), Commission on Higher Education, while IIA is authorized by the Illinois Board of Higher Education. Nothing in the record suggests that this will change after the transaction closes. IBHE will determine at its meeting on December 12, 2017 whether it approves the parties' application. CDHE will be notified post-closing, as applicable.

3. Governing Board

The institution has an independent governing board that possesses and exercises the necessary legal power to establish and review the basic policies that govern the institution.

After the transaction, this Eligibility Requirement will be MET, as AIC and IIA each have governing boards that possess the necessary legal power to provide oversight over the respective institutions. However, there remain some concerns related to governance best discussed under Criterion Two, Core Component 2.C (met with concerns) and Criterion Five, Core Component 5.B (met with concerns).

4. Stability

The institution demonstrates a history of stable operations and consistent control during the two years preceding the submission of the [Change of Control Application].

After the transaction, this eligibility requirement will be NOT MET. AIC and IIA have both been consistently controlled by the same entities, namely Art Institutes International LLC and ultimately, EDMC for at least two years prior to the submission of the change of control application currently under review. However, due to financial challenges associated with declining enrollments at tuition-dependent institutions, IIA has not maintained stable operations over the last two years. In 2015, it initiated teach-outs for three of its five campuses. The teach-out of one of its branch campuses (Art Institute of Michigan - Troy, MI) concluded in December 2016, while teach-outs of two other branch campuses (Art Institute of Ohio – Cincinnati, OH and IIA – Tinley Park, IL) are planned to conclude in December 2017. Following the transaction, both AIC and IIA anticipate that conversion to non-profit status will provide for increased enrollments as well as the ability to apply for certain types of grants which will further strengthen the financial status of the institutions. However, there is no evidence to suggest that following the transaction, an immediate increase in enrollments will be sufficient to overcome the need for these drastic cost-saving measures.

5. Mission Statement

The institution has a statement of mission approved by its governing board and appropriate for a degree-granting institution of higher education. The mission defines the nature and purpose of the higher learning provided by the institution and the students for whom it is intended.

Following the transaction, this Eligibility Requirement will be MET. However, there are significant concerns to be addressed. The institutions each have a Board-approved statement of mission appropriate for degree-granting institutions of higher education. The mission of AIC is “to provide higher education programs leading to professional opportunities in the fields of culinary arts, art and design, and technology, which prepare graduates for job entry and career advancement.” The mission statement of IIA is to “inspire the passion, creativity and innovation essential for students pursuing the skills and knowledge for a career in the creative and applied arts.” According to the change of control application, following the transaction, the missions of the respective institutions are expected to remain completely unchanged. DCEH’s mission (to provide “accessible, affordable, relevant and purposeful” educational opportunities) easily and seamlessly assimilates the missions of each of the aforementioned institutions. This issue raised by these facts is elaborated upon under Criterion One, Core Component 1.D (met with concerns).

6. Educational Programs

The institution has educational programs that are appropriate for an institution of higher education. The Commission may decline to evaluate an institution for status with the Commission if the institution’s mission or educational programs fall outside areas in which the Commission has demonstrated expertise or lacks appropriate standards for meaningful review.

In appropriate proportion, the institution’s programs are degree granting and involve coursework provided by the institution, establishing the institution’s commitment to degree-granting higher education.

The institution has clearly articulated learning goals for its academic programs and has strategies for assessment in place.

The institution:

- maintains a minimum requirement for general education for all of its undergraduate programs whether through a traditional practice of distributed curricula (15 semester credits for AAS degrees, 24 for AS or AA degrees, and 30 for bachelor’s degrees) or through integrated, embedded, interdisciplinary, or other accepted models that demonstrate a minimum requirement equivalent to the distributed model. Any exceptions are explained and justified.***
- has a program of general education that is grounded in a philosophy or framework developed by the institution or adopted from an established framework. It imparts common knowledge and intellectual concepts to students and develops skills and attitudes that the institution believes every college-educated person should possess. The institution clearly and publicly articulates the purposes, content and intended learning outcomes of its general education program.***

- *conforms to commonly accepted minimum program length: 60 semester credits for associate's degrees, 120 semester credits for bachelor's degrees, and 30 semester credits beyond the bachelor's for master's degrees. Any exception to these minima must be explained and justified.*
- *meets the federal requirements for credit ascription described in the Commission's Federal Compliance Program.*

Following the transaction, this eligibility requirement will be MET. However, there are significant concerns related to certain programs at each institution. AIC and IIA both offer academic programs in disciplines generally appropriate to higher education. Although the institutions anticipate adding new programs in the long term, both institutions have represented that no changes to academic programs will be made in the short term. Nevertheless, there are concerns related to the success of graduates, more appropriately discussed under Criterion Four, Core Component 4.A (met with concerns).

7. Information to the Public

The institution makes public its statements of mission, vision, and values; full descriptions of its program requirements; its requirements for admission both to the institution and to particular programs or majors; its policies on acceptance of transfer credit, including how credit is applied to degree requirements; clear and accurate information on all student costs, including tuition, fees, training and incidentals, and its policy on refunds; its policies regarding good standing, probation, and dismissal; all residency requirements; and grievance and complaint procedures.

The institution portrays clearly and accurately to the public its accreditation status with national, specialized, and professional accreditation agencies as well as with the Higher Learning Commission, including a clear distinction between Candidate or Accredited status and an intention to seek status.

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA have been making changes designed specifically to respond to opportunities to improve transparency described in the recent Consent Judgment. However, there remain issues outstanding discussed under Criterion Two, Core Component 2.B (met with concerns).

8. Financial Capacity

The institution has the financial base to support its operations and sustain them in the future. It demonstrates a record of responsible fiscal management, including appropriate debt levels.

The institution:

- *has a prepared budget for the current year and the capacity to compare it with budgets and actual results of previous years; and*
- *undergoes external financial audit by a certified public accountant or a public audit agency. For private institutions the audit is annual; for public institutions it is at least every two years.*

(Institutions under federal control are exempted provided that they have other reliable information to document the institution's fiscal resources and management.)

Following the transaction, this eligibility requirement will be MET. If the assumptions underlying the *pro forma* statements provided by the institutions are correct, they may well become financially self-sufficient as of 2019. However, there is still a significant amount of uncertainty which is detailed under Core Component 5.A (met with concerns).

9. Administration

The institution has a Chief Executive Officer appointed by its governing board.

The institution has governance and administrative structures that enable it to carry out its operations.

Following the transaction, this eligibility requirement will be MET. According to evidence provided, both AIC and IIA are led by Chief Executive Officers. AIC's president Barbara O'Reilly, however, was appointed as interim president by EDMC, rather than the institution's governing board following the sudden departure of former president James Caldwell from that position in July 2017, and she has recently departed. The AIC Board is currently considering firms to assist with a search for the permanent president. Each institution appears to otherwise possess the governance and administrative structures necessary to carry out current operations. Yet there remain issues for concern discussed under Criterion Five, Core Component 5.B (met with concerns).

10. Faculty and Other Academic Personnel

The institution employs faculty and other academic personnel appropriately qualified and sufficient in number to support its academic programs.

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA employ qualified faculty and academic personnel in sufficient numbers with no issues being raised in recent HLC reviews or evaluations. The transaction will have no material impact on these personnel.

11. Learning Resources

The institution owns or has secured access to the learning resources and support services necessary to support the learning expected of its students (research laboratories, libraries, performance spaces, clinical practice sites, museum collections, etc.).

Following the transaction, this eligibility requirement will be MET. AIC and IIA maintain learning resources and support services for their students. No issues were raised for AIC in recent HLC reviews or evaluations in this area, and while it was a basis for IIA's Notice, the underlying reasons, now appear to have been resolved. The transaction will have no material impact on these resources. Given the needs of the contemplated student populations, however, the institutions may well need to reevaluate the adequacy of current student support services following the transaction.

12. Student Support Services

The institution makes available to its student support services appropriate for its mission, such as advising, academic records, financial aid, and placement.

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA maintain student support services, including advising, academic records, financial aid and placement with no issues raised in recent HLC reviews or evaluations. Although the transaction is expected to have no material impact on these personnel, given the needs of the contemplated student populations, the institutions will need to reevaluate the adequacy of current student support services.

13. Planning

The institution demonstrates that it engages in planning with regard to its current and future business and academic operations.

Following the transaction, the eligibility requirement will be NOT MET. Neither the Board of AIC nor that of IIA had the opportunity to integrate consideration of the contemplated transaction into their strategic planning processes. As a result, neither institution's Strategic Plan contemplates the transaction. When pressed about the extent of due diligence that was conducted at the Board level, Board members for each institution reported little more than "researching online" as their primary method of learning more about the prospective buyers. Moreover, there appeared to be little interest at the Board level in the details of how the transaction would work beyond consummation. For example, Board members appeared satisfied to learn about the terms of the Service Level agreement with DCEM as an "item of information" after the fact, despite the fact that said agreement could have significant financial impacts on their respective institutions for areas related to academic operations, educational services, enrollment services, financial aid processing, IT support, student accounting and recovery/collection services. In addition, beyond the formal announcement in January 2017, the President at IIA indicated the lack of opportunity to learn details about the future vision around the transaction until the HLC Fact-finding visit which occurred in late August 2017. While the existence of a non-disclosure agreement is offered by DCEH as the explanation for this lack of engagement with institutional constituents, the argument is weak given that communication between the prospective buyers and the institutions was only restricted if EDMC personnel were not present; it was not prohibited as a general matter. Finally, the members of the Board of DCEH have only recently been identified and there is little evidence to support their having engaged in any significant planning with regard to the immediate aftermath of the transaction if approved. DCEH representatives indicated that the new Board would not be engaged, even provisionally, until after the transaction closed. This issue is flagged again under Criterion Five, Core Component 5.C (not met).

14. Policies and Procedures

The institution has appropriate policies and procedures for its students, administrators, faculty, and staff.

Following the transaction, this eligibility requirement will be MET. Both institutions appear to have policies and procedures in place for their students, administrators, faculty and staff. The

appropriateness of such procedures, particularly those applying to students is fair to say a work in progress. These concerns are elaborated upon under Criterion Two, Core Component 2.A (met with concerns).

15. Current Activity

The institution has students enrolled in its degree programs. (To be granted initial accreditation, an institution must have graduated students from at least one-degree program.)

Following the transaction, this eligibility requirement will be MET. Both AIC and IIA have students currently enrolled in HLC-accredited degree programs. While enrollment has been declining and various EDMC subsidiaries have had to initiate teach-outs due to failing finances, EDMC has been clear that campuses in teach-out are excluded from the contemplated transaction. Therefore, this requirement will continue to be met after the transaction.

16. Integrity of Business and Academic Operations

The institution has no record of inappropriate, unethical, and untruthful dealings with its students, with the business community, or with agencies of government. The institution complies with all legal requirements (in addition to authorization of academic programs) wherever it does business.

Following the transaction, this eligibility requirement will be NOT MET. It would not be a true statement to set forth that neither EDMC nor its subsidiaries have had any record of inappropriate, unethical or untruthful dealings with students. A multistate investigation initiated in January 2014 by attorneys general in 39 states plus the District of Columbia ultimately resulted, on November 16, 2015, in a Consent Judgment requiring EDMC to significantly reform its recruitment and enrollment practices, including mandating additional disclosures to students, prohibiting enrollment in unaccredited programs and extending the period when new students could withdraw with no financial obligation. The parent corporation was also required to forgive \$102.8 million in outstanding loan debt held by more than 80,000 former students nationwide and submit to the independent monitoring of a Settlement Administrator for a period of three (3) years. Beyond the period of independent monitoring, except for certain aspects of the Consent Judgment, EDMC will not be relieved of its obligations under the Consent Judgment until twenty (20) years from its Effective Date. Several of EDMC's subsidiaries, including Art Institute of Colorado and IIA, were required to significantly transform certain aspects of their internal operations as a result of this Consent Judgment. Among the requirements, published by the Iowa Attorney General who led the investigation, are the following:

- Not make misrepresentations concerning accreditation, selectivity, graduation rates, placement rates, transferability of credit, financial aid, veterans' benefits, and licensure requirements. EDMC shall not engage in deceptive or abusive recruiting practices and shall record online chats and telephone calls with prospective students.
- Provide a single-page disclosure to each prospective student that includes the student's anticipated total cost, median debt for those who complete the program, the default rate for those enrolled in the same program, warning about the unlikelihood that credits from some EDMC schools will transfer to other institutions, the median earnings for those who complete the program, and the job placement rate.

- Require every prospective student utilizing federal student loans or financial aid to submit information to the interactive Electronic Financial Impact Platform (EFIP) in order to obtain a personalized picture of the student’s projected education program costs, estimated debt burden and expected post-graduate income.
- Reform its job placement rate calculations and disclosures to provide more accurate information about students’ likelihood of obtaining sustainable employment in their chosen career.
- Not enroll students in programs that do not lead to state licensure when required for employment or that, due to lack of accreditation, will not prepare graduates for jobs in their field.
- Require incoming undergraduate students with fewer than 24 credits to complete an orientation program prior to their first class.
- Permit incoming undergraduate students at ground campuses to withdraw within seven days of the beginning of the term or first day of class (whichever is later) without incurring any cost.
- Permit incoming undergraduate students in online programs with fewer than 24 online credits to withdraw within 21 days of the beginning of the term without incurring any cost.
- Require that its lead vendors, which are companies that place website or pop-up ads urging consumers to consider new educational or career opportunities, agree to certain compliance standards. Lead vendors shall be prohibited from making misrepresentations about federal financing, including describing loans as grants or “free money;” sharing student information without their consent; or implying that educational opportunities are, in fact, employment opportunities.⁷

In addition, in a related settlement, EDMC agreed to pay a \$95 million to resolve a separate federal whistleblower lawsuit under the False Claims Act. The U.S. Department of Justice on behalf of the Department of Education alleged in that case that EDMC illegally paid incentive-based compensation to its admissions recruiters tied to the number of students they recruit. While the parent corporation, EDMC has not admitted, and does not admit, any of the conduct alleged in this section, it would not be a true statement to set forth that neither it nor its subsidiaries have any record of inappropriate, unethical or untruthful dealings with students.

At HLC’s request, the Co-Chairman of DCEH has submitted a letter confirming the buyers’ intent to comply with the provisions of the multi-state Attorney General’s Consent Judgment in accordance with the provisions of the Consent Judgment. The transaction has consistently been described in common parlance by EDMC as a “lift and shift” arrangement in which EDMC employees continue in their previous roles within the new organizational structure for an undisclosed period. Given this “lift and shift” HLC will need a meaningful mechanism to ensure that the requirements of the Consent Judgment, many of which are designed to protect students, are adhered to at least through the twentieth anniversary of the effective date of the Consent Judgment, as stated in the Section VII, paragraph 124 of the Consent Judgment; while the Co-Chairman’s statement is a helpful start in making this assurance HLC would need additional mechanisms to assure students are protected for the future.

⁷ Available online at: <https://www.iowaattorneygeneral.gov/newsroom/edmc-to-change-practices-forgive-loans-through-agreement-with-miller-and-state-attorneys-general/>

17. Consistency of Description Among Agencies

The institution describes itself consistently to all accrediting and governmental agencies with regard to its mission, programs, governance, and finances.

Following the transaction, this eligibility requirement will be MET. There is no evidence present to support that AIC or IIA have described themselves other than consistently to all accrediting and governmental agencies with regard to their respective missions, programs, governance, or finances.

18. Accreditation Record

The institution has not had its accreditation revoked and has not voluntarily withdrawn under a show-cause order or been under a sanction with another accrediting agency recognized by CHEA or USDE within the five years preceding the initiation of the Eligibility Process.

Following the transaction, this eligibility requirement will be NOT MET. While neither institution has had its accreditation revoked, nor have they withdrawn under a show-cause order, as of this writing, IIA remains on Notice. The Institute was placed on Notice after it hosted its Year 4 comprehensive evaluation in 2015, during which a team of peer reviewers recommended that the Institute be placed on Notice based on findings related to Criteria Two, Three, and Five. IIA hosted a focused visit in Spring 2017 during which the team found it had made sufficient progress in resolving the underlying causes giving rise to the Notice sanction. The team has recommended that Notice be removed while suggesting that continued monitoring on finances (Core Component 5.A) is appropriate. While HLC Staff has concurred in the recommendation, HLC remains concerned that there is no opportunity for an intervening track record of good standing prior to the consideration of a transaction of this nature. As of this writing, the Board has yet to take final action to remove IIA from Notice; it will consider whether to remove the sanction in the same meeting when it will consider approving the proposed transaction because the applicants have offered an argument that the proposed transaction is designed to resolve one or more issues the institution under sanction must address: in this case, finances. Commission staff believes the HLC Board must not only decide whether the argument offered is a compelling one, but whether the risk of harm to prospective students, particularly the populations contemplated by this transaction, absent an intervening track record of good standing, is too great.

19. Good Faith and Planning to Achieve Accreditation

The board has authorized the institution to seek affiliation with the Commission and indicated its intention, if affiliated with the Commission, to accept the Obligations of Affiliation.

The institution has a realistic plan for achieving accreditation with the Commission within the period of time set by Commission policy.

- ***If the institution offers programs that require specialized accreditation or recognition in order for its students to be certified or sit for licensing examinations, it either has the appropriate accreditation or discloses publicly and clearly the consequences of the lack thereof. The institution always makes clear to students the distinction between regional and specialized or***

program accreditation and the relationships between licensure and the various types of accreditation.

- ***If the institution is predominantly or solely a single-purpose institution in fields that require licensure for practice, it demonstrates that it is also accredited by or is actively in the process of applying to a recognized specialized accrediting agency for each field, if such agency exists.***

Following the transaction, this eligibility requirement will be MET. The Boards of both AIC and IIA have authorized the submission of the Change of Control application for HLC consideration and signaled their intent to have the respective institutions continue to meet HLC's Obligations of Affiliation, Criteria for Accreditation and other requirements following consummation of the transaction.

The Chairman of DCEH has provided a letter indicating the buyers' intent to continue voluntarily complying with the terms of the Consent Judgment according to its terms. While his verbal indication at the Fact-Finding visit was for a commitment through 2018 (the end of the independent monitoring period for the Settlement Administrator), it is clear HLC will need to assign significant monitoring to assure that students' interests are adequately protected as discussed with regard to Eligibility Requirement #16.

Lastly, the fact that virtually no information was shared with the institutions' leadership for an extended period following the initial announcement, based it is said, on a non-disclosure agreement that would have enabled such communication so long as EDMC personnel was present, constitutes a lapse in transparency, a key tenet of good faith and a prerequisite for strategic planning, as discussed with regard to Eligibility Requirement #4.

Summary. While the evidence available to the Commission indicates that the majority of the Eligibility Requirements will continue to be MET after the transaction, some are clearly NOT MET: Stability (#4); Planning (#13); Integrity (#16); and Accreditation Record (#18). While some of the issues relating to these conclusions may be remedied by the Change of Control, others, particularly the issues surrounding integrity, will still apply. If the Board approves the extension of accreditation after the Change of Control, the six-month focused evaluation should look carefully at these issues. In addition, DCEH should identify mechanisms for assuring on a long-term basis the integrity of its approaches to students, and HLC should continue to monitor its practice in this regard into the future after the six-month focused evaluation.

Assessment of Compliance with the Criteria for Accreditation after the Transaction

Criterion One. Mission

The institution's mission is clear and articulated publicly; it guides the institution's operations.

Core Components

1.A. The institution's mission is broadly understood within the institution and guides its operations. Both AIC and IIA's missions are broadly understood, with no issues being raised in recent HLC reviews or evaluations. According to the parties, the transaction will have no material impact on the respective missions.

1.B. The mission is articulated publicly.

Both AIC and IIA publish their current missions, with no issues being raised in recent HLC reviews or evaluations. The transaction will have no material impact on this practice.

1.C. The institution understands the relationship between its mission and the diversity of society.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact here.

1.D. The institution's mission demonstrates commitment to the public good.

Post-closing, this Core Component will be MET WITH CONCERNS after the transaction. The parties have provided evidence that upon consummation of the transaction the institutions will become non-profit corporations with secular educational missions that are identical to their current ones. Although each institution currently has a Board-approved mission, there is little to no evidence that either institution has undertaken any deep consideration of how their mission and underlying operations might be reimagined to account for the transaction currently under contemplation, or more importantly, the new contingent of students they intend to serve.

Mere conversion to non-profit tax status does not demonstrate a commitment to the public good. What is clear is the institutions will derive the benefits of non-profit ownership, while accessing a readily available conduit of prospective students represented by the DCF's current clientele and volunteers. The Dream Center itself functions based on a faith-based mission which it uses, laudably, to reach and serve its clients - individuals struggling to overcome traumatic life circumstances, including poverty, homelessness, human trafficking, domestic violence and drug addiction. Current clients benefit from the Dream Center's services, which include homeless shelters, job training and foster youth programs, while having their very basic needs met: food, clothing, shelter, healthcare, and educational opportunities from pre-school through GED completion.

It is the intention of the parties that these individuals will constitute a new, ready-made pool of prospective student pool following the transaction, alleviating long-standing enrollment problems for the Institutes, while the latter secure a tax status that avoids the high scrutiny ("headwinds" and "under siege" were common terms at the Fact-Finding visit) that comes with membership in the for-profit sector. Over time, the parties aspire to offer college-level academic programs on-site and/or online at Dream Centers worldwide. Yet, the institutions have not provided any evidence indicating how their mission or their operations will be modified, if at all, to account for the fact that following the transaction, they will be undertaking to offer educational programs to especially vulnerable populations conveniently supplied to them through their new corporate parent. Beyond a statement of intent, they have not provided evidence that risky academic programs with poor outcomes, identified since January 2017, are currently being discontinued or currently being improved. No evidence of strategic planning for the responsibilities of non-profit status, beyond the acknowledgement of the potential benefits of non-profit status, is evident.

Also, as previously noted with regard to integrity in admissions, recruiting and related student issues, there remain questions about how DCEH will ensure behavior marked by appropriate integrity and commitment to the public good in its approach to student recruiting and admissions,

particularly after 2018 and with the populations served by the Dream Center when the processes are no longer directly monitored by the Administrator agreed to by EDMC in the Consent Judgment.

Criterion One Summary

Criterion One and all its Core Components will be Met after the transaction, except for Core Component 1.D which will be Met with Concerns. The six-month focused evaluation team should carefully at these issues, if the Board approves the extension of accreditation after the transaction. The Board may also consider additional monitoring in this area after the six-month focused evaluation takes place.

Criterion Two. Integrity: Ethical and Responsible Conduct

The institution acts with integrity; its conduct is ethical and responsible.

Core Components

2.A. The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows fair and ethical policies and processes for its governing board, administration, faculty, and staff.

This Core Component will be MET WITH CONCERNS after the transaction. While the transaction is not expected to have a material impact on the policies and procedures of either AIC nor IIA, given a significant change will occur in terms of the student population to be served by these institutions and given the questions that have been raised by the Consent Judgment about several questionable procedures that have been institutionalized over an extended period, substantial doubt remains about whether the institutions' procedures are appropriate as they currently exist. HLC acknowledges that the institutions are in the process of making changes to improve transparency and fairness in communications, including training administrators and staff, but a track record of sustaining appropriate policies and procedures has not yet been well established. The Chairman of DCEH has submitted a letter indicating that the company intends to perform voluntarily any obligations of the Consent Judgment according to its terms. At the Fact-Finding visit, he verbally indicated this voluntary compliance would extend through 2018. In the first Annual Report of the Settlement Administrator under the Consent Judgment, EDMC's compliance efforts were described as a "work in progress" given that many of the key requirements were only recently coming into effect. In addition, despite what the Settlement Administrator recognized as proper guidance and training, more time would be needed for the transformation of practices to penetrate the entire organization. This will still be relevant given the substantial numbers of EDMC employees who will become DCEH employees in what has repeatedly been termed a "lift and shift" approach.

2.B. The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships.

Following the transaction, this Core Component will be MET WITH CONCERNS after the transaction. The basic information about the institution provided by AIC and IIA appears to be

accurate and complete, and this information is likely to continue to be accurate and complete. Of greater concern, however, is the information provided to students in the recruiting and admissions process that has been a focus in the settlement. The Chairman of DCEH has submitted a letter indicating that the company intends to perform voluntarily any obligations of the Consent Judgment according to its terms. At the Fact-Finding visit, Mr. Barton verbally indicated this voluntary compliance would extend through 2018, whereas the term in the Consent Judgment, except for certain provisions, is 20 years from its effective date. In the first Annual Report of the Settlement Administrator under the Consent Judgment, dated September 30, 2016, EDMC's compliance efforts were described as a "work in progress" given that many of the key requirements were only recently coming into effect and evidence was nascent. In addition, despite what the Settlement Administrator recognized as appropriate guidance and training, the report noted more time would be needed for the transformation of practices to penetrate the entire organization. This suggests that notwithstanding IIA's progress in this area more generally (see the focused visit team's recommendation for removal of Notice), HLC may need to follow-up periodically after the expiration of the Settlement Administrator's term if good practices fail to take hold.

2.C. The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.

This Core Component will be MET WITH CONCERNS after the transaction. As previously outlined in this report, after the closing of the transaction IIA and AIC will each become Arizona non-profit limited liability corporations. Because they are new corporations, they have new foundational documents including Articles of Organization and Bylaws that outline the work of the Board. The Articles of Organization for both entities were filed with the State of Arizona in April of 2017. As stated in the Articles, the sole member of each limited liability corporation is the Art Institutes International, another Arizona limited liability corporation. The initial Board of Managers of IIA and AIC was identified in the Articles as Mr. Barton, Managing Director of DCF and Chief Development Officer and Co-Chairman of DCEH; Mr. Richardson, Chief Executive Officer and Co-Chairman of DCEH; and Pastor Matthew Barnett, President of DCF. In general, the structure of these corporations replicates the existing structures of the Art Institutes in the EDMC corporate arrangements.

While it is clear that there are new non-profit corporations for the two colleges, the intended structure of the Art Institutes International is less clear. The buyers have stated their intent for the Art Institutes to be a non-profit Arizona limited liability corporation. However, a search of corporation records in Arizona does not document a new or revised Arizona non-profit limited liability corporation related to the Arts Institutes International, the name stated in the documentation provided to HLC. The existing Art Institutes International, LLC and Art Institutes International II, LLC are both listed in Arizona corporation records as foreign corporations with a domicile in Pennsylvania; also is it not clear that this intermediate company as presently constituted is non-profit. The buyers have indicated that DCEH will be the sole member of the Arts Institutes International once it becomes an Arizona nonprofit LLC. However, the Fact-finding Visit team was unable to document this arrangement in Arizona corporate records. DCEH will need to provide documentation that appropriate filings have taken place to ensure that Art (or Arts) Institutes International, LLC, is recognized in Arizona as non-

profit and provide the Bylaws and Operating Agreements supporting this organization. DCEH will also need to provide a thorough explanation of the role of the Art Institutional International, LLC in its role as the sole member of the accredited colleges and through what structures or personnel it will exercise this role.

As previously noted, DCEH is a new Arizona non-profit limited liability corporation. DCEH holds the right of appointment to the Board of Managers of the Arts Institutes International and employs a number of people who provide services to the individual institutions as well as is the sole member of DCEM, a related corporation that also provides certain shared services to institutions. DCEH's Board of Managers/Directors includes the Chief Executive, Chief Development, Chief Financial, Chief Marketing, and Chief Operations Officers as well as the General Counsel. The Board of Managers also includes the Presidents of the Art Institutes, South University and Argosy University. Its Board of Trustees/Directors includes Mr. Barton, Mr. Richardson, and Pastor Matthew Barnett as well as several independent Trustees who appear to have no business or familial relationship with the initial Board of Managers or anyone else in the corporate structure. However, the intersection between the two Boards is not clear based on the documentation provided to the Commission to date. The parties will need to ensure that the Commission has a clear explanation of the role of the Board of Managers/Directors and the Board of Trustees/Directors.

As noted in the overview of the transaction, the Najafi companies have asked Mr. Richardson to provide 10% of the purchase price through the Richardson Family Trust. This participation in the financing has been arranged between Mr. Najafi and Mr. Richardson, and there is no written documentation for this arrangement, according to the two principals. The parties affirm that Mr. Richardson has no direct or indirect direct loan arrangement with DCEH. However, an investment or buy-in by the Chief Executive Officer seems to be an unusual expectation for what the parties have described as a credit, not an investment or equity, arrangement. However, the September 21, 2017 response indicates that Mr. Richardson will recuse himself from any DCEH Board discussions about the credit arrangements with Najafi or ED Holdings following DCEH's conflict of interest policy. Nevertheless these undocumented arrangements suggest an appearance of conflict of interest, no matter how carefully they may be handled in actuality, and the lack of written documentation gives rise to a concern about whether there may be other undocumented aspects of this transaction.

The proposed Bylaws of the new IIA, LLC and AIC, LLC are substantially similar to the existing Bylaws. The Bylaws provide for a Board of Trustees of not less than six and not more than nine trustees who are elected to three year terms up to a maximum of four consecutive terms. The Trustees are ultimately selected by the member, the Art Institutes International. Two-thirds of the Trustees are Public Trustees, which the Bylaws define as a member "who does not, either directly or through a familial relationship, have any employment, contractual or financial interest in IIA or AIC, as appropriate, or any affiliate company of DCEH, LLC," which would presumably include anyone with a relationship with any of the institutions or intermediate holding companies in the DECH structure or with the DCF. The identified powers of the Trustees are clearly stated in the Bylaws. The Trustees have the authority to engage the

President, approve educational programs, review and approve institutional policy, and recommend to the member (i.e., Art Institutes International) potential candidates to fill a Public Trustee vacancy on the Board. In consultation with DCEH, the Board will also approve a budget, set tuition and fees, and maintain and update a strategic plan. The Public Trustees, except for any attritions as a result of regular term limits or expirations, will generally remain in place after the closing. New non-Public Trustees have been selected to replace the Trustees previously appointed by EDMC through the Art Institutes International. The Boards have a Code of Conduct and Conflict of Interest policies to help ensure ethical decisions that are free of conflict of interest. As previously noted, both IIA and AIC have had evaluations in the past year, and there were no substantial concerns about the current governance structure, and these new proposed arrangements generally replicate previous arrangements. After the transaction, it appears that the Board will continue to fulfill the responsibilities the Commission expects of a board and will have sufficient input from its Public Trustees to constitute a public voice.

However, it is important to note some concerns. The Fact-finding Team interviewed both the Board of IIA and of AIC. In general, the team found a Board of dedicated and knowledgeable individuals who were very interested in the welfare of the colleges. However, as of the date of the Fact-finding visit, representatives of DCEH had not had a detailed conversation about the future of each of these colleges with its respective board. The buyers indicated that confidentiality provisions in the Asset Purchase Agreement would preclude such conversations. However, the Fact-finding Team notes the provisions of the Confidentiality Agreement place conditions on such conversations but do not prohibit them all together. In addition, at the time of the Fact-finding Visit, the Board of each college had not formally approved any of the services agreements, particularly as to the charges that the college would accrue. In the September 21, 2017, response the buyers documented that the services agreements between the Art Institutes International LLC and DCEH as to certain centralized services and DCEM as to other services had been approved by each Board, at least relative to the expenses, if any, the colleges would accrue by their participation in the agreements. Neither Board had grappled with its new role as the Board of non-profit institution wherein the Board typically plays a key role in fundraising, connection with the community, and public service related to the college. In addition, while it is clear that these Boards have participated substantially in planning as per their authority under the Bylaws, such planning will need to be updated so that it is in concert with the plans of the buyers; as of the Fact-finding Visit it was not clear when the buyers would engage with the Trustees of each board in activities to update the strategic plan, outline new fund-raising or community initiatives, or agree on a vision for the future.

Finally, the structure of DCEM is not clear. DCEM was formed in January 2017 as another Arizona non-profit limited liability corporation with the same members as DCEH. However, the September 21, 2017 response from the parties contained organizational and managing documents for New Education Management Corporation, which is a Delaware LLC. The parties have not submitted the appropriate documents for DCEM.

In general, it appears that the two institutions accredited by HLC will continue to demonstrate sufficient autonomy, as required by this Core Component. However, these institutions are part

of a larger constellation of corporate arrangements about which some of the governing details remain unclear. With its institutional response to this report, the buyers need to submit the Operating Agreements for Arts Institutes International and DCEM, as well as clear and complete explanation of how corporate governance will take place and the intersections between that corporation and the other corporations in the constellation of corporations. The buyers have repeatedly noted their intent in these new arrangements to preserve the complex EDMC structures; however, the long-term wisdom of maintaining them in a non-profit structure without the attendant tax and related considerations is unclear.

If the Board of the Commission approves the extension of accreditation after the transaction, the six-month focused evaluation should review again all the Operating Agreements, Bylaws, Corporate Minutes and related documents for each organization noted above to ensure that each entity is observing appropriate boundaries to allow the accredited colleges to make autonomous decisions in the best interest of the colleges they govern.

2.D. The institution is committed to freedom of expression and the pursuit of truth in teaching and learning.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

2.E. The institution's policies and procedures call for responsible acquisition, discovery and application of knowledge by its faculty, students, and staff.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

Criterion Two Summary

Criterion Two and its Core Components will be Met with Concerns after the transaction, except for Core Components 2.D and 2.E which will be Met. In particular, Core Components 2.A, 2.B and 2.C. will be Met with Concerns, and the Commission's Board of Trustees should require monitoring in this area if the Board approves the extension of accreditation after the transaction. In addition, the parties should note some additional information relative to Core Component 2.C that should be submitted with the institutional response to this report.

Criterion Three. Teaching and Learning: Quality, Resources, and Support

The institution provides high quality education, wherever and however its offerings are delivered.

Core Components

3.A. The institution's degree programs are appropriate to higher education.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

3.B. The institution demonstrates that the exercise of intellectual inquiry and the acquisition, applic

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

3.C. The institution has the faculty and staff needed for effective, high-quality programs and student services.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have some material impact on this Core Component given the falling enrollments and the need to eliminate redundancy. However, these adjustments are not expected to result in insufficient staff.

3.D. The institution provides support for student learning and effective teaching.

AIC had no issues raised in recent HLC reviews or evaluations related to this Core Component. Although it formed a basis for IIA to be placed on Notice, the recent focused visit to review the sanction revealed the institution is no longer at risk of non-compliance on this basis. The transaction will have no material impact on the institutions' practices in this area.

3.E. The institution fulfills the claims it makes for an enriched educational environment.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

Criterion Three Summary

Criterion Three and all its Core Components will be Met after the transaction.

Criterion Four. Teaching and Learning: Evaluation and Improvement

The institution demonstrates responsibility for the quality of its educational programs, learning environments, and support services, and it evaluates their effectiveness for student learning through processes designed to promote continuous improvement.

Core Components

4.A. The institution demonstrates responsibility for the quality of its educational programs.

This Core Component will be MET WITH CONCERNS after the transaction. Academic programs with poor outcomes, particularly those that have failed the U.S. Department of Education's gainful employment requirements under EDMC's management will either need to be eliminated, or improved if they are to be continued following the transaction under DCEH's management, especially given the less stringent gainful employment requirements applied to

non-profit institutions. The fact that the U.S. Department has not extended gainful employment after the institutions move to non-profit status does not remove the responsibility of DCEH and the institutions to ensure that programs ostensibly designed to lead to careers, in fact, do lead to careers.

The following programs at AIC were reported in January 2017⁸ as having failed the U.S. Department of Education's gainful employment requirements:

- Baking & Pasty Arts/Baker/Pastry Chef (2 yr. Associate's degree);
- Culinary Arts/Chef Training (2 yr. Associate's degree);
- Industrial and Product Design (3 yr. Bachelor's degree);
- Commercial Photography (2 yr. Associate's and 3 yr. Bachelor's degrees);
- Interior Design (3 yr. Bachelor's degree);
- Cinematography and Film/Video Production (2 yr. Associate's and 3 yr. Bachelor's degrees); and
- Intermedia/Multimedia (3 yr. Bachelor's degree).

The expected earnings for these degrees ranged from approximately \$15,500 (for the Associate's degree in Commercial Photography) to \$33,500 (for the Bachelor's degree in Industrial and Product Design).

The following programs at IIA were also reported as having failed the gainful employment requirements:

- Animation, Interactive Technology, Video Graphics and Special Effects (3 yr. Bachelor's degree);
- Culinary Arts/Chef Training (2 yr. Associate's degree);
- Commercial Photography (3 yr. Bachelor's degree);
- Fashion/Apparel Design (3 yrs. Bachelor's degree);
- Graphic Design (2 yr. Associate's degree);
- Cinematography and Film/Video Production (3 yr. Bachelor's degree);
- Intermedia/Multimedia (3 yr. Bachelor's degree); and
- Fashion Merchandising (2 yr. Associate's degree).

The expected earnings for these degrees ranged from approximately \$20,200 (for the Associate's degree in Graphic Design) to \$26,800 (for the Bachelor's degree in Animation, Interactive Technology, Video Graphics, and Special Effects).

While HLC staff is cognizant of the common expectation that new graduates in creative disciplines will work hard to "break in" to the field, the fact remains that what the rules contemplate, given the range of expected earnings, are entry-level positions. Evidence of academic planning at the institutional level to either improve outcomes for, or eliminate, such programs remains to be seen. The potential that vulnerable student populations with low to no

⁸ Available online at: <http://www.chronicle.com/article/Here-Are-the-Programs-That/238851>

information and a high affinity for Dream Center-related institutions will be exposed to risky educational programs continues to exist.

According to the application, DCEH intends to promptly work with campus administrations to determine whether improvements to these programs can be made and, if so, how to facilitate such changes. If changes are not appropriate, DCEH has indicated it will work with the campuses to determine if any of these programs that are failing or “in the zone” should be discontinued.

4.B. The institution demonstrates a commitment to educational achievement and improvement through ongoing assessment of student learning.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

4.C. The institution demonstrates a commitment to educational improvement through ongoing attention to retention, persistence, and completion rates in its degree and certificate programs.

Neither AIC nor IIA had issues raised in recent HLC reviews or evaluations related to this Core Component. The transaction will have no material impact on this practice.

Criterion Four Summary

Criterion Four and its Core Components will be Met after the transaction, except for one Core Component 4.A., which will be Met with Concerns. The Commission’s Board of Trustees should require monitoring in this area at the six-month focused evaluation or thereafter if the Board approves the extension of accreditation after the transaction.

Criterion Five. Resources, Planning, and Institutional Effectiveness

The institution’s resources, structures, and processes are sufficient to fulfill its mission, improve the quality of its educational offerings, and respond to future challenges and opportunities. The institution plans for the future.

Core Components

5.A. The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future.

This Core Component will be MET WITH CONCERNS after the transaction. The financial picture of both IIA and AIC as shown in the *pro forma* financial statements provided in the application and in the additional materials provided in September 2017, depends on several favorable factors that might accrue to the institutions after transaction. That is, the institutions may well experience increased reputational strength, more access to high school recruitment opportunities, establishment of a fundraising development function, tax reductions from the non-profit status, and overhead cost savings from downsizing of previous for-profit ownership. It is

not altogether clear if and when all these factors might take effect within the next five years, as projected. No substantive evidence was provided in connection with the viability of each of these factors. Certainly, IIA and AIC would have a chance to recover from the headwinds they have faced under the ownership of EDMC after the transaction. If all assumptions made in the *pro forma* financial statements are accurate, they likely will become self-supporting financially after 2019. It is also significant to note that prior to that, these institutions will require cash flow infusion(s) from DCF/DCEH. Of course, if some or all of the assumptions turn out to have been overly optimistic, financial difficulties will continue beyond 2019.

The ability for DCF/DCEH to provide any working capital infusion to IIA and AIC in the next five years depends largely on the same assumptions built into the IIA and IAC's projected financial statements. At the time of closing, DCF/DCEH is projected to have about \$78 million in cash. However, these funds are intended to support multiple transactions within the Argosy University, South University, and the Art Institutes. If the favorable assumptions for the Art Institute schools turn out to be optimistic (as well as the *pro forma* assumptions of the other institutions), the \$78 million cash will most likely be consumed faster than projected. (It is not clear how DCEH's resource allocation processes will ensure that AIC and IIA educational purposes will be maintained given the potential for elective resource allocations to other institutions subject to the overall transaction with EDMC.) Under those circumstances, DCF/DCEH will have to resort to additional debt financing to meet their financial needs. Since DCF/DCEH is already moderately leveraged at the outset, financial institutions will likely be less willing to provide additional lending opportunities.

Further, as a condition precedent to the transaction between DCF and Ed Holdings, LLC, DCF is required to secure a line of credit. According to information from DCF provided in September 2017, DCF has engaged in negotiations with an investment banker who has identified potential lenders and with direct lenders to provide a credit line. To date, there is no documentation to support a finding that the line of credit has been secured.

As mentioned elsewhere in this report, it is anticipated that IIA and AIC will continue to operate under the same mission with no current plans to modify any mission of the acquired institutions. Likewise, institutional structures after the transaction will remain in place. That is, the governing board, administration, faculty, and staff will remain in place. Therefore, the evidence suggests that the institutions will continue to have qualified and trained human resources sufficient to support institutional operations.

As mentioned in this report, IIA has a main campus in Chicago. IIA also has locations in Schaumburg, Illinois; and Novi, Michigan. and Cincinnati, Ohio. (DCF's application indicates that the Cincinnati location will be closed after the transaction.) AIC has its main location in Denver, CO, with no additional locations. DCF will assume the leasing arrangements for the campus locations allowing for continued campus operations, although DCF indicated the current terms for said leases will be reviewed and potentially renegotiated.

With respect to institutional support services AIC and IAA now receive from EDMC, DCEH intends to carry on with many of those services under two categories: "central services" and "shared services." In that regard, DCEH will provide centralized services, such as faculty

management, faculty support, curriculum design, human resources, and other general services to all the schools and universities acquired. Current EDMC service leaders will be retained from EDMC, including the CFO and Chief Marketing Officer. However, DCEH also intends that each acquired institution would have certain local resources staff. (This is somewhat of a departure from the current EDMC model for some services.) At the system level (DCEH), there would also exist a centralized resources functions to handle common issues among the various institutions, etc.

Shared services will be handled through another limited liability company under DCEH. Dream Center Education Management (DCEM), which is a new LLC with DCEH as the sole member. Shared Services will operate like a third-party outsourcing services firm—designed to provide efficient and quality service to each institution. Service prices will be negotiated between DCEM and institutional administrators and trustees at what was described as “arms-length.” DCEH will retain approximately 60% of the EDMC staff due to the closing of the Brown Mackie College system. DCEH envisions saving money through these two service models while leaving “sufficient autonomy” for each institution to directly interact with students. Neither board of AIC and IIA have ever approved of the EDMC shared services arrangements. However, it appears both institutional boards have approved the pricing structure relative to these arrangements, but not the agreements themselves as the institutions are not a direct party to the contract between DCEH or DCEM and the Art Institutes International through these services will be provided. While there are documents indicating types of services, price listing, and proposed service metrics, the team is not able to fully assess the viability of both models.

In summary, it is understandable that from a strategic point of view, the proposed transaction seems to be the institutions’ best option at the moment. In that regard, IIA and AIC may be able to recover from their downward operational spirals after the transaction if the key assumptions discussed above are borne out. If not, there will be considerable uncertainty in their financial future.

5.B. The institution’s governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.

This Core Component will be MET after the transaction. IIA and AIC each have an administrative structure that supports the College. Both Colleges have a Campus or Institutional President; Vice President for Academic Affairs or Provost, as appropriate; Director or Dean of Student Affairs or Services, as appropriate; and related administrative officials. Each institution will preserve its existing administrative personnel, structures, and functions.⁹ The governing arrangements provide for oversight by a board that appoints the President and delegates appropriate authority to the President to operate the College and to appoint an administrative team to assist in those operations. Recent evaluation teams have reviewed the governance and administrative structure of the Colleges and found them to be reasonable and effective. However, as with Core Component 2.C, the Fact-finding Team remains cautious about the corporate structure beyond the boundaries of the Colleges and the impact of this structure on effective governance.

⁹ Note that at the time of the Fact-finding Visit there was an interim appointment for the campus presidency of AIC, and this person exited the position shortly after the visit.

In particular, as explained under Core Component 5.A, each college currently relies on the EDMC structure to provide various supporting services, and this arrangement will be continued by services provided in the future by DCEH and DCEM pursuant to agreements between each of these entities and the Arts Institutes International. While these services are appropriate and provide extended resources to the Colleges, there are certain questions about these arrangements in terms of administration and governance. The compensation for such services between DCEH and the Arts Institutes, as stated in the Agreement, is based on an allocation methodology that will be determined in the future. The agreement indicates that the methodology will be subject to negotiation although it is not clear that such services will be provided at an established fair market value. Both the agreement between the Art Institutes and DCEM or DCEH provides that the services are on a non-exclusive basis. For the services provided by DCEM the compensation will be outlined in various Service Level Agreements. In the September 21, 2017 response the parties have provided a chart of the cost of each shared service to the Colleges. The Boards of each institution have approved chart of the shared services although they are not a signatory to the agreements between the Art Institutes and DCEH or DCEM.¹⁰

DCEH is in the process of completing its administrative structures. Mr. Barton as Chief Development Officer and Mr. Richardson as Chief Executive Officer will be providing the primary vision and oversight, respectively, of the DCEH. Both individuals have stated that they will not be working pursuant to an employment contract and will be paid \$1 per year. While these arrangements would not appear to be a hardship for either individual, the lack of a contract is unusual at this level and raises a variety of concerns about dedication to the considerable workload or the possibility that either one might depart suddenly.

As previously noted, DCEH has filled out its Board of Managers/Directors and its Board of Trustees/Directors although the relationship between those two bodies needs some additional explanation. Mr. Barton and Mr. Richardson noted at the Fact-finding Visit that these bodies have not met even provisionally and will not meet until after the closing so they will not have approved any of the proposed documents or structures as they are being developed.

DECH has agreed to hire most of the existing EDMC and Art Institutes personnel other than at the senior executive level. As previously noted in this report, this arrangement was described at various times during the Fact-finding Visit as “lift and shift.”¹¹ There is a large number of personnel from EDMC making this shift, and the Fact-finding Team notes that the complexity and cost of maintaining this large, diffuse structure seem better suited to a large, publicly-traded for-profit institution than a large non-profit network or system of colleges, which seems to be the direction in which this entity will evolve. In addition, Mr. Barton and Mr. Richardson are located in the Phoenix-LA area, further complicating the management of DCEH personnel, many of

¹⁰ Because the initial Board of Managers of DCEH, the Art Institutes International, LLC, and presumably DCEM are the same or significantly overlapping, it is not clear whether the Colleges’ interests were appropriately protected in the discussions finalizing the agreements, even though the institutions are clearly third-party beneficiaries of these agreements. Nevertheless, the non-exclusivity and other arrangements provide some protection for these Colleges.

¹¹ Of course, as a legal matter, the current EDMC and Art Institutes employees will have new employers immediately after the closing and will be subject to new terms of employment and benefit packages. As a practical matter, the buyers have agreed to continue the same terms and benefits, but the Fact-finding Team was concerned that senior human resources personnel at EDMC seemed to have a limited understanding of the documentation and personnel engagement, though routine, that is necessary related to such a transaction and the transition in employers.

whom are located in the Pittsburgh area. It seems likely that over time management will consolidate services in the Chandler area where EDMC already maintains a large facility that is being assumed by DCEH and that could be expanded. In addition, Mr. Barton and Mr. Richardson have noted their interest in moving some services back to the individual institutions resulting, perhaps, in a more streamlined operation. However, it is not clear whether these ideas have reached a planning stage and what evidence and evaluation DCEH will rely on in making this determination.

It is important to note that there remains considerable suspicion in the public arena about the possibility of other as yet undisclosed arrangements benefiting parties who are not directly identified in any of the supporting or foundational documents. The Fact-finding Visit Team asked for assurance that there were no other arrangements, written or unwritten, and with one entity in particular, and Mr. Barton provided this assurance in writing on behalf of DCEH.

If the Board of the Commission approves the extension of the accreditation of these two institutions after the transaction, the six-month focused and other later evaluation teams should review the efficacy of these new structures and arrangements after their implementation to determine whether they provide good service and are effective in ensuring the well-being of the Colleges and review DCEH's planning for subsequent consolidation, if it determines to move in that direction.

5.C. The institution engages in systematic and integrated planning.

This Core Component will be MET WITH CONCERNS after the transaction. While each of AIC and IIA now have functioning strategic plans, the latter's efforts only recently developed from an annual operational plan to a multi-year strategic plan. In addition, neither institution's strategic plans contemplate the transaction due to a significant lack of communication over an extended period. As a result, the impacts of the transaction under consideration have not yet fully taken into account any potential linkages from assessment, or budgeting, and the institutions have yet to articulate what if any measures will be taken if even their conservative *pro forma* statements fail to pan out.

5.D. The institution works systematically to improve its performance.

This Core Component will be MET after the transaction. AIC had no issues raised in recent HLC reviews or evaluations related to this Core Component. IIA, while it is cited on this Core Component back in 2015, has since resolved issues sufficiently to receive a removal of notice recommendation from the visiting team. The transaction will have no material impact on the institutions' practices in these areas.

Criterion Five Summary

Criterion Five and its Core Components will be MET after the transaction, except for Core Components 5.A and 5.C, which will be MET WITH CONCERNS based on the financial risk attendant to the transaction and the lack of integration of the buyers' plans with the institutional

plans. The Commission's Board of Trustees should require monitoring in these areas if the Board approves the extension of accreditation after the transaction.

4. Sufficiency of financial support for the transaction.

DCF's most recent net acquisition price to be paid to EDMC is \$26.3 million (\$50 million purchase price, less the assumed \$23.7 million working capital adjustment due from EDMC). In accordance with the *pro forma* consolidated statement of activities, DCF will realize \$120.2 million purchase gain upon the close of the transaction, representing the difference between the fair market values of the assets acquired and the purchase price. To finance the acquisition, DCF borrowed \$105 million in long-term debt, leaving \$78.7 million cash balance at the end of close date. This level of debt financing is aimed at maintaining a liquidity position for the organization's working capital needs and for payment of the \$10.5 million deferred settlement due to EDMC within a year.

If the student enrollment projections materialize in subsequent years, DCF is expected to generate sufficient cash flow from operations and positive changes in working capital in the future. In accordance with the *pro forma* financial statement, DCF anticipates maintaining acid test and current ratios above 1.0 throughout the projected period with cash never falling below \$50 million. In addition, DCF's net assets are projected to increase from the \$139.1 million at transaction closing to \$164.4 million on June 30, 2018; \$191.2 million on June 30, 2019; and \$238.6 million on June 30, 2020. The operations of DCEH are projected to result in increase in net assets of 129.6 million, 26.5 million, and 46.8 million in FY2018-2020, respectively. These financial projections are based on several key assumptions:

- New students will increase due to reputational improvement from becoming not-for-profit.
- Removal of probationary status from the Department of Education.
- New advertising and high school outreach.
- Expanded access to scholarships and state grants due to not-for-profit status.
- The ability to build a development function to raise funds and scholarships.
- DCF/DCEH will realize cost savings in payroll, bad debts, property and excise taxes, facilities-related expenses, and outside services (compared to levels required under the previous for-profit ownership structure).
- The upward changes in enrollment and the cost savings will be in full effect two years after the transaction.

If these assumptions are too optimistic (which may well be the case in a transaction of this size and scope and with the additional assumptions that reputational improvement and access to scholarship monies provided to students attending nonprofit institutions will be achieved immediately), there will be significant pressures for DCF to seek additional financial resources to cover its working capital and capital expenditures. Since DCF's debt-to-equity ratio is already high (2.72 on September 1, 2017; 2.37 on June 30, 2018; and 2.01 on June 30, 2019), it is anticipated that there will be challenges in obtaining additional debt financing. (Another possibility is equity financing from major donor. However, this option may not be possible either.)

Both IIA and AIC have experienced considerable headwinds due to regulatory difficulties of current parent EDMC, affordability, negative press, competitive pressures facing proprietary education, and the impact from EDMC's financial situation. Both institutions will likely require financial assistance to execute their strategic plans in the short term. As shown from the *pro forma* financial statement of AIC, that institution will experience a decrease in cash of (\$828,000) in 2018 and (\$399,000) in 2019. The September 2017 update to HLC actually increased the cash deficit to (\$1,100,000) in 2018. The composite financial ratios will hit 1.62 in 2018 and 1.57 in 2019.

As shown in the projected financial statement updated after the fact-finding visit, the IIA will suffer a combined decrease in net assets (losses from operations) of (\$2,558,000) in 2018 and (177,000) in 2019. Because of these operating losses, IIA will experience a decrease in cash flow of (9,104,000) in 2018 and (155,000) in 2019. The composite financial score for the IIA will hit 1.51 in 2018 and 1.87 in 2019.

In 2020-2022, the institutions are projected to show positive changes in net assets—assuming improvement initiatives in their business plans come to fruition, including, among others:

- A more deliberate, targeted approach to marketing and recruitment, and a reduction in the pay-per-lead (PPL) channel of applications;
- Implementation of the “College Bound” program, which affords students the opportunity to take courses free of charge and experience life as a student without financial risk; and
- Implementation of a scholarship program (The Art Grant) aimed at reducing student educational costs by 15% for associate degree-seeking students and 20% for bachelor degree-seeking students.

Incorporating the favorable outcome from these improvement initiatives, and relying on the “reputational strength” and the high school recruitment opportunities post transaction, the enrollment growth assumption for new students for AIC is 0.9% in FY2018, 5% in FY2019, and FY2020, and 3% in FY2021 and FY2022.

The enrollment growth assumption for IIA is projected to be flat in FY2018, 9.3% in FY2019, 13% in FY2020, 5% in FY2021, and 3% in FY2022. For AI Schaumburg, the assumption for the growth rate is 3.5% in FY2018, 20% in FY2019, 6% in FY2020 and FY2021, and 3% in FY2022. For the AI Detroit campus, the assumption for the growth rate is 9.5% in FY2018, 5% in FY2019 and FY2020, and 3% in FY2021 and FY2022.

Although the reputational strength and high school recruitment opportunities might increase new students and overall SSB, a number of the assumed growth rates appear to be optimistic and also appear to occur more quickly than common experiences in higher education would seem to bear out. The fact that the updated projected financial results (provided in September 2017) for all the institutions were revised mostly downward when compared with the *pro forma* figures contained in the original application, there are strong indications that the projected financial revenues are susceptible to overestimation and overstatement. If these assumptions turn out to be too

optimistic, the institutions will need one or more financial infusions from DCF and DCEH in the years to come in order to maintain operations.

5. Previous experience in higher education, qualifications, and resources of the new owners, Board members or other individuals who play a key role in the institution or related entities subsequent to the transaction.

Neither DCF nor DCEH has any experience owning a college or providing services for other colleges. DCEH was recently formed by the DCF and related parties to facilitate the asset purchase of EDMC. DCEH has recently completed the process of selecting its Board of Managers/Directors and the Board of Trustees/Directors. Included in the Board of Managers/Directors are the Presidents of Argosy, the Arts Institute International, and South as well as various C-suite executives. Most of these above individuals were previously employed by EDMC and therefore have previous experience managing a large complex higher education operation. Nevertheless it is important to note that most of them appear to have limited experience with non-profit higher education, and their previous higher education experience is with a large for-profit entity. Nevertheless it may be reasonable for DCEH to retain these individuals because they understand how to manage this particular enterprise that, while now non-profit, largely replicates EDMC structures. The Board of Trustees/Directors includes appropriate individuals with backgrounds in both public non-profit higher education as well as for-profit higher education and public members who have strong community service credentials and previous service on the boards of various entities including non-profit higher education institutions. DCEH appears to have appropriate oversight at the Board level from competent individuals with knowledge about higher education.

The principal officers and co-chairmen of DCEH, Mr. Barton and Mr. Richardson, also have experience in higher education. Mr. Barton is a tax attorney who has been a Foundation Executive and Vice President for Northwest University and a senior executive with AG Financial, which provides financing solutions for non-profits including colleges and universities. Mr. Richardson is former President and Executive Chairman of Grand Canyon University. However, their biographical information does not include a presidency or chief executive officer position with a large non-profit university. So their preparation for this particular situation seems limited.

The Boards of AIC and IIA will remain as presently constituted with the addition of representatives of DCEH. The members of these Boards are knowledgeable about their institutions and have appropriate backgrounds in business, education, and related fields. The current administration of each of these institutions will also remain in place. Again, these individuals appear to have appropriate higher education credentials for their positions and responsibilities.

In general, the transaction ensures that there are competent individuals with higher education experience at all levels after the closing. However, it is important to note again that neither DCF nor DCEH have owned a college previously and that officers of DCEH who have the vision for this transaction have no senior executive experience operating a non-profit college or providing services to other colleges.

Summary

This transaction may very well save these Colleges that might otherwise be facing a very uncertain future given the significant current financial challenges at EDMC. DCF and DCEH will be operating these institutions as non-profit, and they will therefore be exiting the challenging environment of for-profit higher education currently in the U.S. DCF and DCEH have indicated their commitment at least through 2018 to maintaining improvements in admissions and recruiting that resulted from the Consent Judgment. They have also articulated some nascent plans for improving efficiencies and streamlining operations.

There is evidence of reasonable continuity after the transaction in both the internal factors (mission, educational programs, faculty and enrollment) and the external factors (outreach, public positioning, and related factors and compliance with the Commission's standards, as summarized below.

However, there are also significant challenges. Neither DCF nor DCEH has ever operated a college much less a large complex network of multiple colleges with different missions. In replicating the EDMC structure, which has a significant record of financial, enrollment, and integrity challenges, they may very well not be positioning themselves or the colleges for success. The corporations will be taking on a significant level of debt to support operations until each college can at least be self-supporting; however, the assumptions about enrollment growth at some of the EDMC institutions may be overly optimistic in a current environment where even strong non-profit institutions have struggled to maintain enrollments. The idea that the reputational issues currently attached to these colleges while owned by EDMC will be improved quickly by becoming non-profit seems simplistic; it may very well take several years before prospective students and the public no longer associate these institutions with some of the problems of the past. Some of the EDMC programs have failed gainful employment standards, and, while these standards will not be applicable to these institutions when they are non-profit, the underlying problem of offering high-tuition career programs that do not seem to lead to successful student outcomes remains. In short, while the proposed arrangements offered by these buyers present an opportunity to save these colleges, they also present some risk of not being successful in meeting the goal of offering good quality programs with strong outcomes for students from a solid operational and financial base.

While it is reasonable to conclude that the two institutions will continue to meet the Eligibility Requirements and Criteria for Accreditation, there are specific issues as identified below:

Eligibility Requirements. Evidence currently available to the Commission does NOT indicate that AIC and IIA will continue to meet all the Eligibility Requirements after the transaction.

This report notes significant questions about Eligibility Requirements #3 (Governing Board), #5 (Mission), #6 (Educational Programs), #7 (Information to the Public), #8 (Finances), #9 (Administration), and #14 (Policies and Procedures). In addition, Eligibility Requirements #4 (Stability), #13 (Planning), #16 (Integrity of Operations), and #18 (Accreditation Record) are **Not Met**. As noted, many of these issues may be remedied through and after the transaction, but

the Commission will need to monitor the situation carefully to be sure they are remedied.

Should the Board of HLC choose to approve the continuation of accreditation after this transaction, it should structure monitoring containing specific directives both at the six-month focused evaluation and through other approaches designed to meaningfully review these areas and ensure that students' interests are adequately protected.

Criteria for Accreditation. Evidence available to the Commission indicates that AIC and IIA will meet the Criteria for Accreditation after the transaction. However, this report identifies the following Core Components as MET WITH CONCERNS:

- **Core Component 1.D**, “The institution’s mission demonstrates commitment to the public good;”
- **Core Component 2.A**, “The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows fair and ethical policies and processes for its governing board, administration, faculty, and staff;”
- **Core Component 2.B**, “The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships;”
- **Core Component 2.C**, “The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity;”
- **Core Component 4.A**, “The institution demonstrates responsibility for the quality of its educational programs;”
- **Core Component 5.A**, “The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future;”
- **Core Component 5.C**, “The institution engages in systematic and integrated planning.”

Should the Board of the Higher Learning Commission choose to approve the continuation of accreditation after this transaction, it should structure monitoring containing specific directives designed to meaningfully review these areas and ensure that students' interests are adequately protected.

ATTACHMENT: Appendix A: Fact-finding Visit Report

Report of a Fact-Finding Visit to Education Management Corporation

August 24-25, 2017

Fact Finding Team

HLC Peer Reviewers

Dr. Sandra Gautt

Dr. Otto Chang

Sam Kerr, Adjunct Staff, Legal and Governmental Affairs/Peer Reviewer

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Overview

The fact-finding visit to the Education Management Corporation (EDMC) was a component of the HLC change of control, structure, or organization (“change of control”) process, initiated by EDMC’s March 2017 announcement of its intent to enter into an asset purchase agreement for the acquisition of its 31 Art Schools, along with South University and Argosy University by the Dream Center Foundation (DCF), a non-profit religious organization associated with the Pentecostal Church. The Higher Learning Commission accredits two of the Art Schools, Art Institute of Colorado (AIC) and Illinois Institute of Art (ILIA). The proposed transaction would convert EDMC systems from for-profit to nonprofit status. HLC sent a fact-finding team to conduct a series of onsite interviews with the respective parties August 24 and 25, 2017 at EDMC corporate headquarters in Pittsburgh, PA. The team was presented with updated documentation on site. Since no opportunity to review the materials on site existed, the team posed questions based on its preparation and asked the parties to highlight which aspects of the new documentation they wished particularly to bring to the team’s attention during the course of the interviews. The interview topics focused on the following elements aligned with the Higher Learning Commission change of control approval factors: mission alignment, commitment to students and other stakeholders, transaction transparency, financial stability and future directions, governance, impact on campus structures and operations, stakeholder interaction, and integrity issues.

The following sections record the substance of each set of interviews. Each section includes identification of the participants, areas of interest relative to the approval factors, questions guiding the conversations, information provided by the participants, and peer reviewer observations.

Fact-Finding Visit: Day One

Meeting with Presidents and Senior Leadership of Art Institute of Colorado and Illinois Institute of Art

Participants Present (in person and via conference call): President, Illinois Institute of Art, Interim President, Art Institute of Colorado, Provost, Illinois Art Institute, Vice President and Dean of Academic Affairs, Art Institute of Colorado, Regional Financial Directors

Areas of Focus: transaction process, current and contemplated changes to campus structure and operations, interaction with the Dream Center, mission alignment

Questions Guiding the Conversation

What has been your interaction with the prospective buyers or their representatives? Has the proposed transaction been transparent to campus stakeholders?

How does the mission of the Art Institutes (AIs) align with the Dream Center mission?

What is the impact of the proposed transaction on current and future financial planning? Academic planning?

What are the positive gains and challenges that will result from the completed transaction?

Interview Notes

The conversation with senior leadership included the Presidents, campus Chief Academic Officers and regional financial directors. The years of EDMC service among the seven leaders varied from 17 years to a few months. Both presidents have held senior leadership positions within the EDMC across several AI institutions and all academic leaders had prior higher education experience. The AIC Interim President had been with EDMC for three years, serving as interim president for various institutions most recently in Florida and in California before assuming the AIC position 4-5 weeks prior to the fact-finding visit. The ILIA President had served EDMC for almost 17 years, previously as President of Art Institute of San Antonio and Associate Vice President for start-up operations at EDMC before joining Illinois Institute of Art as its president. Within the EDMC organizational structure, the two institutions (AIC and IIA) are within a region with oversight for financial planning provided by regional directors.

Following an overview of the Change of Control review process and a summary of HLC's prior initial interaction meeting with Dream Center in Phoenix and Los Angeles earlier in the summer, the fact-finding team explored with the presidents the topic of transaction transparency. The team probed what previous interactions the institutional presidents had had with the prospective buyers, Dream Center, or their representatives and what, if any, due diligence was conducted at the institutional level in contemplation of the transaction. The team learned that prior to the time of the fact-finding visit, the institutional presidents had had no contact with the prospective buyers. The President of Illinois Institute of Art indicated that that day was the first opportunity he had to meet, interact with or learn about any of the ideas or goals held by the prospective buyers. This led to questions about how financial planning at the institutional level is progressing and whether it is now taking into account the contemplated transaction.

The team learned that individual accounting systems did not exist at the institutions. Spending and expenditures were centralized. ILIA Chicago is projecting a \$2.5 million loss in revenue in terms of the revenue side of EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization). The institution is adopting some cost-saving measures, such as taking a more traditional approach to marketing rather than using third party vendors. The institution's leadership believes more people will be able to attend school with \$0 monthly payment as a result of freezing tuition, reduction of the Expected Family Contribution (EFC) and offering need-based grants in the form of a tuition discount. Both institutions indicated that the Boards "might" be supportive of lower tuition as well as committed to non-profit fundraising. While they don't anticipate making dramatic changes to marketing, they believed access would improve with these measures and disassociation with the EDMC brand. The leadership was not able to articulate how long it would take to realize positive gains under new ownership or with new branding and marketing.

The presidents stated that the mission of AI institutions aligned with the Dream Center’s mission. Although the differences in constituencies served were not directly addressed, they did state that the relationship of the missions was viewed as complementary. In addition, the governing boards of the institutions had been told there would be no changes in the institutional missions after the transaction.

Conference Call with Illinois Institute of Art Board

Participants via Conference Call: Board chair, 6 Board members

Areas of Focus: transaction transparency, mission alignment post transition, current board duties and responsibilities, overview of the transaction, future plans for ILIA

Questions Guiding the Conversation

What are the Board’s role and function?

What is the Board’s knowledge of the transaction? When and how were they informed of the proposed transaction? What changes will occur for ILIA during and as a result of the transaction?

What is the Board’s role in review and approval of the shared service agreement?

Interview Notes and Observations

The Board provided an overview of the ways it provides oversight over the institution, its core academic operations, and finances, as well as its role in supervising and reviewing the president. The Board described a defined process for self-evaluation and annual review. There are no standing committees; the Board generally operates as a Committee of the Whole, except to the extent there are ad hoc committees; such as a compensation committee responsible for addressing compensation for the campus president. The Board feels it has complete autonomy to make decisions.

The Board Chair stated that he was confidentially informed that EDMC was exploring options with potential buyers in late 2016. The formal announcement to the Illinois Institute of Art Board about the transaction occurred in January 2017 and included a 20-minute meeting with representatives from EDMC and DCF. The Board was shown a PowerPoint presentation outlining DCF’s background and the proposed transaction. In responses to further questions regarding the history of interactions concerning the transaction, the team learned the Board’s due diligence consisted largely of “doing research online.” The Board articulated general agreement in principle with the idea of alignment between the institutions’ mission and that of the Dream Center, but did not appear to have detailed information beyond what was publicly available.

The Board is not expecting a capital infusion as a result of the transaction. However, they feel there will be an increase in enrollment as a result of the transaction. They also believe the image of the institution will be enhanced. The Board did articulate that it only foresaw positive outcomes for enrollment and thereby for finances were the transaction to be completed. When pressed about its role in reviewing financial pro formas and how involved it was in the review of revenues, expenses, change in net assets, the Board assured the team that it was very involved.

When asked about the impact of the prospective Shared Services Agreement (SSA) on the institution, the Board indicated it did not review and did not expect to review the SSA. Board members indicated that they were advised that the proposed transition is supposed to be a “turn-key” operation and all the shared service contracts with EDMC will continue. Board members were not aware that DCF might shift some of the shared service responsibilities to local institutions, including public relations or marketing. However, they were informed that Dream Center Education Holdings (DCEH) would continue to provide

central service such as information technology, accounting, legal, and compliance. Board members felt comfortable with the shared service and central service arrangement with DCEH. The Board indicated that they have no reason to review, discuss, or approve the shared services agreement in a Board meeting. They anticipated that it would be treated as an information item with the agreement and service quality negotiated by the campus president with the “corporate office.” The Board did not view the agreement and evaluation of services as a key item prompting in-depth review and approval.

Conference Call with Art Institute of Colorado Board

Participants via Conference Call: Board Chair, 5 Board members

Areas of Focus: transaction transparency, mission alignment post transition, current board duties and responsibilities, overview of the transaction, future plans for AIC

Questions Guiding the Conversation

What are the Board’s role and function?

What is the Board’s knowledge of the transaction? When and how were they informed of the proposed transaction? What changes will occur for AIC during and as a result of the transaction?

Interview Notes and Observations

The Board has its own charter, independent of EDMC, and evaluates the academic and economic performance of AIC. The team noted that of the 6 individuals who were Board members for AIC, two were EDMC representatives, four were non-EDMC affiliated, and one individual had participated in the earlier call as a member of the IIIA Board, indicating overlap in the governance structure of the institutions. The Board described its mechanisms for institutional oversight, including four fixed meetings a year, supplemented by a 5-8 ad hoc meetings. The Board Chair described with some detail the Boards’ role in strategic planning, reviewing and approving the budget, and engaging with the president.

Questions turned to the recent change in leadership at AIC. The Board Chair indicated that the previous president’s exit was rather precipitous and that the interim president had been appointed by EDMC on short notice. The Board retained a search firm in July 2017 and planned to launch a search for a permanent president. The target hiring date is still uncertain dependent on the schedule of candidate interviews.

The Board chair stated that the Art Institutes (AIs) System Coordinating Board handles the shared services agreement with EDMC. Thus, the AI system and the campus president negotiate the agreement. As with the Illinois Institute of Art Board, this Board does not review, discuss, or review the shared services agreement.

When asked about their history of interactions with the prospective buyers, Dream Center or their representatives, they indicated learning about the proposed transaction at a very high level. The Board has had no contact with DCF leadership. The Board chair indicated that he was informed of a potential transaction in late December 2016. The official announcement of a potential transaction was made at the January 19, 2017, Board meeting. This meeting was lasted approximately 20 minutes and did not provide much detail, including the name of the purchaser. The Board members appeared to be comfortable with a substantial amount of uncertainty regarding details. Board members have the impression that no major changes will occur during the transition from EDMC to DCF.

The Board characterized the transaction largely as an opportunity to gain tax-exempt status, which they

overwhelmingly view as a benefit in the current regulatory environment. Although additional resources may be coming, it is not a major expectation of the Board. They believe the main advantages will come from enhanced educational programs because of the non-profit status.

Meeting with Dream Center Education Holdings, LLC Key Leadership

Participants: DCEH President, DCEH Board Chair, DCEH Chief Financial Officer

Areas of Focus: overview of transaction, current transaction status (including accreditation and US Department of Education approvals), mission, financial resources, organizational structure post-transaction, long-term planning, interaction of the Dream Center with the institutions, ethical considerations

Questions Guiding the Conversation

What is the status of DCEH's responses to Western Association of Schools and College's (WASC) concerns underlying the accreditation agency's conditional approval of the transaction?

How does the leadership propose to address perceived and actual conflicts of interest? What are the specific conflict management strategies used to address the concerns raised by the HLC team? Are there other areas or relationships that could be perceived as potential conflicts? How will these be managed?

What are the assumptions and analytical models underlying the financial projections for DCEH?

What are DCEH's strategies for allocation of central service and shared service functions?

What are the strategies to address the financial deficits and varying financial solvency of the institutions being purchased?

What synergetic effect between the Dream Center and the institutions will be realized as a result of the transaction? What are the major priorities for the future?

Interview Notes

The team met with Dream Center Education Holdings (DCEH), LLC, key leadership -- President, Board Chair and Chief Financial Officer. The team elected to speak with the President and Board Chair at length first, before having the Chief Financial Officer join the conversation. The DCEH president confirmed that he has now entered into a contract, approved by the DCEH Board, to serve as President. The DCEH leadership team has not had much contact with leadership from the institutions. The Board Chair explained that under the current contract, the DCEH leadership team is prohibited from visiting with institutional leadership without being accompanied by EDMC representatives. Therefore, there have been very few interactions with the institutional administrators, faculty, or staff.

The Board chair presented a supplementary report to the Change of Control application updating several changes, including the deferral of Middle Schools Commission on Higher Education (MSCHE) decision until November 2017 for additional information, the finalization of loan agreement between DCF and the Najafi organization, selection of additional board members for DCEH, deferral of the time for the closing pending regulatory approval, changes of AIC and ILIA's bylaws, and the most recent version of the Transition Service Agreement (TSA) and the Shared Service Agreement.

The team probed for more information regarding WASC's conditional approval of the transaction and Dream Center's response to the Southern Association of Colleges and Schools (SACS) concerns. The Board Chair indicated that the Dream Center has submitted responses to the concerns raised by WASC and SACS. A copy of the response letter will be sent to HLC for reference. It was at this time that the team learned that the online division is part of AI Pittsburgh which might have implications for how the transaction proceeds in light of the action of Middle States (MSCHE) to reject the transaction for

insufficient information and evidence at its June 22, 2017 meeting.

The Board chair reiterated what he perceives as an approval by SACS COC of the transaction with certain required conditions subsequent to closing. He indicated that the Department of Education had requested additional information related to, among other things, the financing and structure of the transaction. The team requested that this information along with the institution's response to the items be provided. The Chair noted that the value of the transaction had been further reduced due to an adjustment for working capital.

The team inquired about potential conflict of interest issues. The chair indicated that members of DCEH signed conflict of interest forms. The team had previously learned that the DCEH president had been invited to invest in the potential transaction. While no final agreement has been reached in connection with a potential investment, the President indicated that he still plans to fund up to 10% of the transaction, for which he would probably use a separate, pre-existing LLC. When pressed to identify the members of said LLC, he indicated himself, his brother and a brother-in-law. It appeared to the team that the president did not perceive this as a conflict of interest for which a management plan may be required. In exploring other parties who might be engaged in the potential transaction, the DCEH chair indicated that that the transaction would not benefit Significant Systems or any related entities. A letter to that effect will be sent to HLC.

The DCEH leadership indicated they have agreed to voluntarily comply with the good practices indicated by the Consent Agreement even if they might be cumbersome. (The Administrator continues to monitor through the end of 2018.) The team requested a written commitment on this topic be sent to HLC.

The team learned that a "Board-in-Waiting" for DCEH had been identified and all members have signed Conflict of Interest documents. However, the Board has not met prior to the transaction's completion to engage in any planning. The team followed up on the apparent lack of engagement between the prospective buyers and the institutions. The Chair stated that non-disclosure agreements made any prior interaction impossible. Upon further follow-up, the team learned that in reality, the disclosures were really only prohibited where no EDMC representative was present.

The board chair stated that DCEH's services to all acquired institutions would consist of "central services" and "shared services." The DCEH central services was established to provide more efficient centralized services, such as faculty management, faculty support, curriculum design, human resources, and other general services to all the acquired schools and universities. During the transition period, four of the central administrators will be hired from EDMC, including the CFO and Chief Marketing Officer. As a strategy to improve the efficiency of the central services, the DCEH leadership team indicated that they would be "tightening the ship" by renegotiating many of the contracts EDMC entered into to cut costs. Insurance policies and property management were mentioned as potential areas for savings. In addition, they believe the discontinuance of the huge current EDMC corporate overhead cost will realize substantial savings. When asked if DCEH had been working with the schools to align strategies to improve operations, the Chair indicated there had not been much contact with the schools' administration, faculty or staff due to a prohibition stated in the current negotiations.

The goal of the shared service model is to save money and yet leave sufficient autonomy for each institution to directly interact with students. Organizationally, shared services would be handled through a separate limited liability company under DCEH. Dream Center Education Management (DCEM) is a new LLC with DCEH as the sole member. Shared Services will operate similarly to a third-party outsourcing service firm, designed to provide efficient and quality service to each institution. Service prices would be negotiated between DCEM and institutional administrators and trustees at "arms-length." Explicit agreement and contract prices are required by WASC as part of its conditional approval of the

transaction. The team learned that EDMC has contracted 60% of the original shared services and anticipates pushing student-focused services back to the schools following the transaction.

The DCEH Chief Financial Officer joined the meeting to respond to the team's questions regarding the financial pro formas provided in the application. He stated his current employment status with DCEH as follows: although he is paid by EDMC and functions as an employee "on loan," he works for DCEH and is "sequestered" from any EDMC information. Pressed as to how the figures in the financial pro formas were derived and what assumption underpinned the pro formas, the CFO indicated modest growth assumptions were made based on the institutions' current tax status; in addition they anticipated re-branding, re-marketing, potentially adding additional programs which are currently in the works, increasing enrollments using DCF networks, and improving retention rates. The latter would only be implemented in the long-term and are not reflected in the pro formas. The DCEH CFO commented that the AI CFO worked with regional finance directors to develop pro forma figures. It was not clear to the CFO what budget assumptions were used. The team requested a copy of the budget assumptions supporting the pro forma financial statements, as revised, to reflect recent operating results.

The pro forma financial statements projected a negative cash flow problem (operational deficits and cash shortages in some years) that will require working capital infusion(s) from DCF. The team probed how the Dream Center Foundation would address these shortfalls, given their financial resources. The response was that 10 of 31 Art Institutes are not profitable and that the buyers entered with their eyes wide open. The DCEH leadership team indicated that the institutions acquired by DCEH are schools that currently have profits or can be turned into profits in the future. A process was described whereby centralizing finances, the new owners could essentially allocate profits from currently profitable schools to support operational deficits and cash shortage of currently unprofitable institutions. The plan is to help weak schools at least break even. The chair emphasized the role of leadership at both high- performing and low-performing institutions is critical. The major priorities for the future are "turning around" the institutions, development and fundraising. There is a desire to revisit marketing systems and to reduce cost per lead while finding better leads to improve enrollment. Future plans include fundraising, investing some tuition money in good causes (a strategy that resonates with today's students) and getting grants to feed into the whole enterprise. DCEH expects that reducing costs will attract students and a 2-3 year lead-time will be needed for a positive turnaround.

The chair stated that there would be a synergetic effect from the proposed transaction. For example, DCF has many interns and staff volunteers who will have access to higher education opportunities within their own organization; DCF will have a platform to showcase higher education with humanistic values, i.e., education that values people; the not-for-profit status will allow DCF to raise scholarship money to reduce the cost of education to some AI students; and AI will also have an opportunity to apply for research grants to enhance quality of its educational programs. The president pointed out that Grand Canyon University, as a Christian University, illustrates the potential synergy of instilling Christian values into higher education. He believed that his GCU experiences would help to bring such synergy from the missions of DCF and the acquired higher education institutions.

Meeting with EDMC Leadership Personnel

Participants: Senior Vice President and Chief Marketing Officer, Art Institutes; Vice President Human Resources, Art Institutes, Chad Garrett, Vice President Operations, Services and Support, EDMC.

Areas of Focus: functional aspects of the transaction and transition, current and future management structure, anticipated operations in Pittsburgh post-transition

Questions Guiding the Conversation

How will current EDMC operations supporting the institutions be configured post transaction? What are the transition strategies?

Interview Notes

The team met with EDMC personnel representing various areas within Centralized Services; including the Senior Vice President and Chief Marketing Officer, Art Institutes, the VP for Human Resources, Art Institutes, and the VP of Operations, Services and Support, and discussed a number of administrative non-student facing functions. The team learned more about the reporting structures within EDMC's centralized and shared services systems.

The shared service system has approximately 350 employees providing common services to EDMC institutions, including student accounts, financial aid, academic support services, and military certification. The cost of these services is charged back to individual institutions. The level of service is constantly evaluated to balance between cost and student experience. The service cost is intended to reflect the reduction in overhead cost and is annually reviewed and negotiated. Representatives of the shared service system converse constantly with the institutions to determine services needed and what services are affordable. The current shared services system was created 3-4 years ago to meet the goal of cutting down the overhead cost of each institution.

The EDMC leadership team does not anticipate any major changes in shared services as a result of the potential transaction. There was a staff reduction in June 2017 that was dictated by a contraction in business need. However, there appears to be a fair amount of built-in redundancy at multiple levels, particularly human resources. The team asked what was anticipated to occur after the transaction. The VP for Human Resources, Art Institutes attempted to describe what she termed a "lift and shift" in which the personnel would simply be shifted into the new organizational structure. In this model, she stated that current employees would just need to fill out a new W4 and new appointment form to retain their employment. When pressed however, it became clearer that not all positions would or could be retained in the long-term.

The Senior VP and Chief Marketing Officer of Art Institutes described excitement regarding the different messaging that can be designed and communicated. The marketing employees feel that although the campus will remain pretty much the same, the message will be different. Marketing compliance will be an important aspect of any campaign or information distribution.

Meeting with Institutional Presidents and Chief Academic Officers

Participants: President, Illinois Institute of Art, Interim President, Art Institute of Colorado, Provost, Illinois Art Institute, Vice President and Dean of Academic Affairs, Art Institute of Colorado

Areas of Focus: strategic planning, financial projections, ethics

Questions Guiding the Conversation

What is the projected impact transaction on the institutions' strategic plans?

Is the current strategic plan reflected in the proforma financial statements contained in the application?

Does AI have the right culture to function under the not-for-profit umbrella?

Interview Notes

The ILIA president outlined future plans indicating that the current Strategic Plan was finished in October 2016, long before anyone at the institutions knew a transaction was being contemplated. An announcement regarding the proposed transaction was made in early 2017. Both the ILIA and AIC presidents indicated that their initial contact with Dream Center Foundation representatives was at this fact-finding visit.

Both presidents indicated that despite lack of prior contact with DCF representatives, the leadership at their institutions has been talking about or contemplating possible strategic impact of the transaction on the institution. The ILIA president reflected at length regarding the “headwinds” represented by increasing regulation targeting the for-profit sector, the deteriorating morale at the institution and how he believed the vicious cycle resulting from those factors contributed to low enrollment. The transaction and the resulting non-profit status is viewed as offering more fund-raising opportunities, expanded high school recruitment access, and more opportunities for AI students to find internships and employment through the Dream Center network. The AIC president stressed an increased role of data analytics to help enhance institutional effectiveness and ultimately improve community engagement.

The team explored with the presidents their knowledge of and involvement in the development of the *pro forma* financial statements submitted with application. The ILIA president indicated that he had seen a draft of the application but was not familiar with the details of the financial statement. He noted that to his knowledge, the current strategic plan is not reflected in the pro-forma financial statements. Although the plan is more ambitious, in his opinion, it is possible to achieve the results of the *pro forma* statements. Possible cost savings could come from the reduction of debt service cost and bad debt expense as well as increased enrollments resulting from disassociation with the negative publicity surrounding EDMC. Both presidents expressed optimism for the financial future of their institutions.

The ethical culture required within non-profit organizations was explored. The depth of the ethical issues that plagued EDMC was discussed in the context of transitioning from a for-profit entity to the culture required to function under the not-for-profit umbrella. Both presidents indicated that this “culture-shift” has already occurred in several ways including marketing and recruitment that is not misleading, provision of ethical training activities for employees, particularly in financial aid and admissions, and termination actions.

Fact-Finding Visit – Day Two

Tour of EDMC Administrative Facility

Areas of Focus: operational response to recent Consent Agreement, anticipated changes as a result of the proposed transaction

Interview Notes and Observations

The team toured the EDMC’s facility in the “Strip District” section of Philadelphia and interviewed in an impromptu manner various staff members encountered during the tour. Although most of the information shared was expositive in nature, the team in particular was interested in learning what if anything had changed in day-to-day operations either as a result of the recent Consent Agreement or in anticipation of the transaction.

The team was able to verify that calls with students were being monitored for quality control. For

example, a Senior Director gave examples of violations relating to “failing to disclose that a call was being recorded” and described that if the keyword “recorded” was not detected, the violation would be coded according to a pre-established scorecard. However, certain aspects of this monitoring raised more questions. Another employee described her role in monitoring calls, administering tests as part of training employees who conducted calls, and assigning consequences for calls that, based on their scores, violated pre-defined protocols. However, this individual could not provide examples of specific impermissible conduct that would result in one score or another. She could only confirm that a particular score would result in a particular consequence. It appeared that this individual had very limited information in order to perform her role in a holistic fashion. In addition, she could not identify what if anything had changed with respect to interactions with students in recent months or whether such changes were tied to the Consent Agreement.

The team also observed and heard from employees in Information Technology and Marketing. The team learned that the corporation was in the process of renegotiating its leased space, not only to extend the term of the lease but also to reduce the leased space, which appeared more than ample for the number of individuals observed using the space.

Conference Call with Student Services and Career Services Personnel from AIC and ILIA

Participants: Director of Student Services, Art Institute of Michigan; Director of Student Services, Art Institute of Colorado, Director of Career Services, Illinois Art Institute

Areas of Focus: institutional policies, procedures and processes related to student services

Questions Guiding the Conversation

What are the current student support services provided?

What will be the impact of the potential transaction on students?

Interview Notes

The team interviewed representatives who work within Student Services providing support on their individual campuses. Students appear to be supported through a number of programs and strategies designed to improve retention and institutional effectiveness. The representatives described conducting Town Halls, providing mentoring, administering Noel Levitz surveys, in addition to attending to students’ at risk status.

Student Services personnel described themselves as problem-solvers, fielding questions about a wide range of issues affecting students’ day-to-day experience at the institutions. They have primary responsibility to be the on-site student advocate. They described having weekly meetings with corporate specialists and having resources available to them if they were out of their depth. They also expressed confidence that additional resources would be provided if needed to do their jobs after the proposed transaction.

Career services personnel indicated that students had a choice whether or not to use the services. When asked whether the transaction would make the job easier, the representatives echoed the sentiment expressed earlier by the President and others, that conversion to non-profit status would make a significant difference because it would provide students and alumni with “more avenues to pursue” for employment. Compared to the status quo, they indicated that the potential transaction would enhance community interaction, increase internships and scholarships, and provide financial stability to grow enrollment, stabilize educational costs and possibly add new resources.

Conference Call with Current Students

Participants: Cross-section of students (13) representing diverse programs in Media Arts, Visual Effects, Graphic Design, and Fashion Design.

Areas of Focus: student experience at AI

Questions Guiding the Conversation

How would they describe their learning experience at AI?

How well does AI prepare them for their choice of job prospects after graduation?

What role did AI's for-profit status play in their decision to attend?

How do they perceive the relationship of tuition costs to the value of their education?

Interview Notes

When asked whether the institute's status as a for-profit had played any role in their decision to attend the institution, the resounding answer was "no." When asked what recommendations they would have to improve their institutions, the team received indications that the institution should re-examine tuition for on-ground versus online programming; consider offering general education online and other courses on-ground; re-evaluate independent study online which appears to be viewed as too expensive. The team inquired about tuition costs relative to the value proposition of their education. Students indicated that AI tuition is relatively expensive, or somewhat over-priced, but that it may be worth the costs considering job prospects for graduates. The students' confidence in future career prospects was generally high, not just as a function of helpfulness of Career Services, but because of a high sense of self-efficacy and resourcefulness among the students which the team was particularly impressed by.

Final Meeting with EDMC and DCEH Leadership

Participants: DCEH President, DCEH Chief Financial Officer, EDMC Legal Counsel, Interim President, Art Institute of Colorado, President, Illinois Institute of Art, EDMC Associate Vice President for Regional Accreditation

Areas of Focus: clarification of information from the interviews, identification of additional documentation to be submitted

Interview Notes

The team thanked the group for its hospitality and verbally requested additional documentation as a result of the interviews or was offered by the various parties during the course of the visit. These requests are confirmed in a written letter dated September 12, 2017 to both presidents that is included in the record.

Exhibit 11

EXHIBIT 11



UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF POSTSECONDARY EDUCATION

Date: December 9, 2019; 3:30 PM to 4:00 PM EST

Subject: Substantially Verbatim Transcript of Phone Call between Robert King, Assistant Secretary for Postsecondary Education, and Ron Holt, attorney at Rouse Frets White Goss Gentile Rhodes, P.C. and former outside council for Dream Center Education Holdings (DCEH)

Robert King: First, thank you for making time for this call, I trust it was unexpected. We are doing an assessment of decisions made by HLC [Higher Learning Commission] as it pertained to your clients AIC [Art Institute of Colorado] and AII [Illinois Institute of Art] and DCEH. First question – do you feel comfortable discussing this? We’d like to understand what your thinking is and what concerns you might have.

Ron Holt: Yes, Mr. King, I’m certainly willing to talk to you about HLC’s actions with respect to those institutions. There may be a point where you may ask things that are within attorney client privilege.

Robert King: I totally understand, and I leave it to you to define what you can and can’t talk about.

Ron Holt: Let me give you some current history, as you know there was an effort made in second half of 2017 to transition ownership of those two schools from for-profit organizations to Dream Center and that eventually a request was made to approve the sale to HLC. They published a letter in 2017 saying the transaction can go forward, subject to a number of conditions, and embedded was the loss of accreditation, although the new enterprise would be able to have accreditation restored. That’s not how we understood it.

Robert King: I understand, but at some point, Dream Center, through you, conveyed their surprise. On February 2nd you drafted a letter on behalf of Dream Center indicating essentially shock that accreditation had been withdrawn. The reason I’m calling is there was a subsequent letter in February to Barbara Gellman-Danley seemingly indicating that an agreement had been reached that both institutions are eligible for title IV funding and are accredited. So, what prompted the writing of that letter? We sent HLC a very detailed set of questions, asking them to provide documentation, preceding and following November 2017, January 2018, and your letter on February 23rd, which never generated a written response from HLC. If you recall, what prompted the February 23rd letter, either written or oral communication?

Ron Holt: I don’t remember any communication with HLC; however, there was a communication that David Harpool and I had with our client, and I don’t remember the exact

nature of that communication. We had a conversation with Randy Barton, and he had a discussion with Brent Richardson and with someone at the Department [The U.S. Department of Education]. Because of that conversation, we wrote the letter. These two worked for Dream Center, Richardson was CEO and Barton was Chairman of the Board.

Robert King: When you said Department did you mean Department of Education?

Ron Holt: Yes. At some point in time, I had been interviewed by the staff of Bobby Scott's committee, and I shared with them that at some point in time, February or later, after that initial surprise on our part, seeing what was described as a disclosure, I was involved in both of those closings. I worked on the deal from the start throughout all of 2017. We were surprised after we closed the second closing on January 19, 2018. We saw that notice the following day and it was contrary to our understanding. We talked it through and sent out the letter. At some point we were led to understand that the executives at Dream Center were discussing this with people from the Department. We heard this through our clients, verbally. I don't think we had email communications about that, but I'm not 100 percent sure who they were with. We believe it might've been Michael Frola and maybe Donna Mangold and maybe Diane Jones. Long and short of it was the Department, specifically one or more of these individuals, were going to intervene with HLC and encourage them to change position. We never would have closed the transaction without the accreditation part. The way the closing of the transfer of these EDMC schools - that were to be sold - it was for the very purpose of getting the approval of HLC. That approval had been for October 2017, by Middle States one and HLC for the other one - for four schools. The irony is this application took a year. Initial contact was made by EDMC with HLC in November 2016, and it was a long, arduous process. HLC made visits to Dream Center in Los Angeles and made visits to Pittsburgh. They gathered a lot of information, there wasn't any reason anyone would have believed, at Dream Center, that accreditation would've been gone by the closing of this. Everyone felt betrayed and shocked - every other accreditor approved the transfer of the schools with the accreditation intact. We didn't believe that they meant what they said. That perspective informed what we did from then on, we didn't tell students because we didn't believe it to be true. In terms of that letter, I can't tell you what we heard or what I heard but there must have been our client sharing something they had heard from the Department.

Robert King: In terms of a response, we asked HLC what they did. They claimed in their response to us that they attempted to reach someone from Dream Center by phone and were unable to do so. Assuming that was correct, receiving a letter like yours, if I were unable to reach you with that content, I would've drafted a letter stating that each of your points were incorrect. Did you get such letter back from HLC?

Ron Holt: I believe we heard back from them in May - seems to me there was letter in May - I don't recall anything any sooner. Do you have the documents in front of you?

Robert King: I don't have everything but let me go back and find the section.

Ron Holt: I just found this May letter. I'll take a look at it.

Robert King: It says May 21st. That was a letter from you, and they responded on May the 30th and it's about granting you an appeal if you wanted to take advantage of it.

Ron Holt: We were trying to figure out how to take out an appeal, and we were trying to figure out in the February 23rd letter for them to give us some guidance.

Robert King: You made four points – the Institutions will remain eligible for Title IV, remain accredited, will have an objective review for continued accreditation, and that the institutions will convey to their students that they will remain accredited and undergo the reaccreditation process...So that's what you asked for.

Ron Holt: They are telling you that they responded to this letter?

Robert King: Their response says on the same day the Institutes transmitted the February letter, Frola emailed Solinski, employed at HLC, although her employment ended shortly thereafter, after this 23rd letter. On the same day, Frola emailed Solinski indicating the status could be problematic for the schools' Title IV eligibility. Frola had received the January letters, and then it says, let's see, it says February 23rd was the first time Frola reached out to Solinski indicating CCC status [Change of Control Candidacy status] could be problematic. A call was contemplated, but didn't take place until March 9th, due to postponements by Frola and Solinski. On the call it says Frola was accompanied by Department officials and legal counsel, and Frola asked Sweeney whether CCC was accredited status. Sweeney responded that candidacy is a formally recognized status, but it's not accredited status. Sweeney informed Frola that the board had made no independent determination about tax status or Title IV status, since it is under the purview of the IRS and Department of Education. Apparent confusion would reemerge in Jones' October 31st, 2018 letter to HLC. The point here is that I don't see in their response any effort to respond to your February 23rd letter – it says, Sweeney, who is an HLC employee specifically instructed Mary Kohart in March 2018 to follow up with institutes' counsel, and they made attempts but they didn't respond to the outreach. It seemed to HLC that they didn't seem to want to reach out.

Ron Holt: Here's the May 21st letter – I'm going to forward this May 21st letter to you [all follow up correspondence between Mr. Holt and Department officials is included in Exhibit 2].

Okay, this is not an excuse, but I'll put things in context. I was in and out of the picture in this time period in terms of my involvement with matters here for DCEH [Dream Center Education Holdings]. I'd have to talk to Harpool, he actually was accreditation counsel advisor to our firm, but he's now no longer with us, he's the president of a college. What happened to me was that on February 8th I went to hospital with cardiac problems – I had a minor heart attack and had some issues - I wasn't the guy that was answering all of these emails. Clients took over some of this directly, including Randy Barton, who also was an attorney. In my absence, I may have fielded some of these inquiries, as I followed up with some of these things, but I was out in March and April, so it is possible that Mary tried to reach me. I feel confident that any message that I couldn't answer I would have passed on to Harpool or Barton. We wouldn't let it go unanswered.

Robert King: Even if the statement here is accurate, they tried and no one responded, having received the February 23rd letter, HLC should've responded back to you and expressed disagreement, whether they were right or wrong. I find it remarkable given your letter stating your understanding, that they would not have made a more vigorous effort to reach out.

Ron Holt: I don't have any letter in my file from that time period. Just our May 21st letter, asking for appeal and processes for appeal. At that point, there's a lot more pressure from students and others on clarification and the status of these institutions. It still says not accredited online and HLC hasn't changed their position. By this time there was executive leadership and maybe Diane Jones suggesting an effort be made by the Department with HLC to get them to change their position. It was a position that they took, and instead they could recognize that we had accreditation provisional to these conditions and 6 months to meet these conditions, and we had negotiations with them from November to the January closing, so we debated some of those positions. There was a condition about continuing to monitor the schools, where 39 state attorneys general had an agreement to monitor that went to court for 3 years. At the end it might or might not be extended. HLC wanted us to agree that we would continue that monitoring for another 2 years. We were saying, why should we do that unless all 39 states agree to it. Never once did they bring up, through Karen, the idea that you won't be accredited anyways for 6 months. No one said you won't be accredited. The schools would have stayed with EDMC and retained their accreditation. EDMC would have taught them out which is better than what HLC did.

Robert King: The only language in the November letter - and I've read it backwards and forwards - is on page 4 after it was identified that institutions host a focused visit "on the following topics" and states all of those common things for accreditation efforts. At the end it says: "If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action."

Two paragraphs later they say: "The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation."

I find it bizarre - because in one paragraph accreditation will need to be reinstated, but they don't say they are withdrawing accreditation, which makes this insufficient - and second, if you go

ahead without approval, they might withdraw accreditation. My question – how did you interpret that paragraph on page 4?

Ron Holt: We interpreted from the lens of looking at earlier statements. On the first page they cite they've taken formal action in response to the application, filed by institution, and at the bottom, they've considered 5 factors...and it looked as if they had been met them...top of the second, board found institutions hadn't met these factors without issue but demonstrated sufficient compliance, and CCC status can rebuild full compliance....so we read that and understood it to mean that we had demonstrated probable compliance, and were on path toward compliance and demonstrated sufficient compliance, and that we were CCC which was a new category they had created. Because of that we figured it was in accreditation category, even though they make statements later, we figured that meant change into normal accreditation and out of this pre-accreditation. Honestly because it was a new status, we found ourselves to be confused, and we thought it was part of the status to be accredited.

You could read it to mean - oh what they really mean here is you're not accredited - but obviously this letter wasn't a model of communication and maybe we should have insisted on more clarity, in hindsight obviously, given what HLC did to us. It never occurred to us that what was up here was we were headed to no accreditation post-closing. It had never happened to anybody. We've never had any accreditor do this to us - write you a letter saying we have approved the deal, satisfy these conditions, and when you change owners you lose it. It was extraordinary, unique, and it's hard to find words.

Robert King: It strikes us the behavior of HLC was insufficient. The one question I asked and got a rambling answer out of them was the question of during the time this transaction was going on, above the fray, did the faculty change, curriculum change, anything change? While this stuff was going on in the boardrooms, my sense is that nothing changed in the classrooms. The kinds of things that would ordinarily lead to loss of accreditation, didn't happen here.

Ron Holt: Nothing changed but the c-suite, a small group of people that were exited. Brent and Crowley from Grand Canyon and Randy Barton coming on board and becoming part of this team, and you had a small group of people running EDMC that were leaving, everyone else stayed the same.

Robert King: Seems to me HLC lost sight of students here and got overwhelmed by other forces. I'm going to have to go, but I'm very thankful, I didn't know what to expect, and we might prevail upon you for other information, but what you have provided has been very helpful. Our expectation is to issue some sort of findings regarding HLC's conduct during this. Whether it may have consequence I don't know but it will highlight insufficiency on their part. But who knows? We want accreditors to behave appropriately and we think here that didn't happen.

Ron Holt: We did file an internal complaint in June of 2018, and I don't know if you have that, but I'd be happy to email that to you as well.

Robert King: Have they responded?

Ron Holt: I don't think they did, but shortly after they decided to teach out these schools. The Department was made aware of the teach out - Diane Jones knew and DCEH tried to right it but accreditation was never resolved in a satisfactory manner.

Exhibit 12.1-12.4

EXHIBIT 12.1, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf

From: Ronald L. Holt <RHolt@rousepc.com>

Sent: Monday, December 9, 2019 3:55 PM

To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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May 21, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
[REDACTED]

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
[REDACTED]

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”).

We wrote on February 2, 2018 to express our concern that the January 20, 2018 Commission's Public Disclosure (“Disclosure”) is not consistent with the terms extended to the Institutions by the Commission (following applications filed by the Institutions in late 2016 and supplemented in 2017) in the Commission's November 16, 2017 letter with respect the planned change in ownership of the Institutions (the “Transactions”) involving their acquisition by subsidiaries of the nonprofit Dream Center Foundation.

While the Institutions regarded being placed in the status of Change of Control Candidate for Accreditation, which the Commission's November 16, 2017 letter had described as pre-accreditation candidacy status, as an unwarranted response to the planned change in ownership, the Institutions, through letters dated November 29, 2017 and January 4, 2018, confirmed (with only a few modifications) that they would accept candidacy status, believing that they would be treated as pre-approved candidates on a fast-track needing to only address the issues raised in the November 16, 2017 letter, and they proceeded to close the Transactions on January 19, 2018 (the “Closing”) on that basis. The next day, however, the Commission issued its Disclosure describing the Institutions' status to mean something far different from what the Institutions believed candidacy and pre-accreditation status would mean here.

As we stated in our February 2, 2018 letter, the issue here is not solely maintaining Title IV eligibility of these institutions; it is also meeting the reasonable expectations and interests of our students, a goal which should be shared by the Commission. To be frank, had the Commission plainly stated in its November 16, 2017 letter what it later said in the Disclosure, DCEH would not have carried out the Closing of the Transactions because the necessary regulatory consent would not have existed and the Transactions would not have been in the best interests of the

students. Quite honestly, DCEH feels that it was misled by HLC to its detriment and the detriment of its students and that DCEH has actionable legal claims against HLC.

In an effort to avoid a legal battle, in our February 2, 2018 letter, we informed you that we believe that, pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action that is subject to appeal, we informed you of the Institutions' refusal to accept the Commission's decision as stated in the Disclosure and the Institutions' desire to appeal that decision, and we requested your input on how we should proceed with the appeal.

While President Gellman-Danley sent correspondence on February 7, 2018 indicating that a change was being made to the Disclosure, she maintained in her letter that the Institutions were not in pre-accreditation status (she indicated that HLC does not have such a status) and that the Institutions need to apply for and establish their candidacy for accreditation. She noted that some changes had been made to some of the language in the Disclosure concerning certain procedural matters. But those changes do not allay the concerns that the Institutions have about the expectations and interests of their students, as the Disclosure continues to state that all students who did not graduate prior to January 19, 2018 are attending institutions not accredited by HLC and taking programs not accredited by HLC and will be earning credentials not accredited by HLC. This, quite simply, is unacceptable. Moreover, President Gellman-Danley's letter does not acknowledge the Institutions' decision to appeal the Commission's decision to place the Institutions in the status of Change of Control Candidate for Accreditation, nor does it provide them with any directions on how to pursue their appeal, as we had requested in our February 2, 2018 letter.

Thus, to date, we have not received any guidance on how we can pursue our appeal with HLC. If such guidance is not given to us in writing within the next ten (10) days, we will assume that HLC is unwilling to allow DCEH to pursue an internal appeal, and DCEH will proceed with a legal action. We trust this can be avoided and we again repeat our request for instructions on the pursuit of an appeal.

Sincerely

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc: Mary E. Kohart, Esq.
Counsel to HLC



Higher Learning Commission
Page 3
May 21, 2018

Mr. Brent Richardson
[REDACTED]

Chris Richardson, Esq.
[REDACTED]

Mr. David Ray
[REDACTED]

Mr. Elden Monday
[REDACTED]

Ms. Shelley Murphy
[REDACTED]

EXHIBIT 12.2, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM
To: [REDACTED]; [REDACTED]; [REDACTED]
Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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June 27, 2018

Ms. Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Subject: Appeal of HLC Decision to Remove Accreditation from The Art Institute of Colorado and Illinois Institute of Art

Via: Email

Dear President Gellman-Danley:

The letter represents a formal appeal prepared by Dream Center Education Holdings, LLC (DCEH), parent of The Art Institute of Colorado (AIC) and Illinois Institute of Art (ILIA). The appeal concerns the January 19, 2018 decision of the Higher Learning Commission (HLC) to remove accreditation of AIC and ILIA and place the institutions in Change of Control Candidacy Status.

This appeal of the HLC decision is founded on the following arguments:

Institutional Histories

AIC was established in 1952 and first accredited by HLC in 2008. ILIA was established in 1916 and first accredited by HLC in 2004. Since achieving HLC accreditation, both institutions have operated in accordance with the criteria, policies, and assumed practices established by HLC. At the time of the change of ownership on January 19, 2018, both institutions were in good standing and operating in compliance with all HLC expectations. Prior to January 19, 2018, HLC had never revoked nor suspended the accreditation of either institution. Following the change of ownership, there were no modifications to operational processes or academic programs and both institutions have continued to be governed by independent Boards of Trustees, which operate in accordance with established bylaws.

In other words, the institutions on January 20, 2018 were the same institutions that existed on January 19, yet the Commission announced they ceased to hold accreditation. Moreover, our review of Commission actions has confirmed removal of accreditation from an institution on the sole basis of a change of ownership is unprecedented among HLC decisions.

Discriminatory Practice

The decision of the Commission is arbitrary and capricious, unfair to the new owner who purchased the institution with good intentions, punitive to the students, and an inconsistent application of policy and practice. As the Commission is aware, it is unprecedented that the Commission would take an accredited institution, and solely on the basis of change of ownership, strip it of its accreditation. The compliance of the institution with Commission standards was the same the day before, of and after the closing of the sale. If the Commission had desired or intended to remove accreditation from the institution, it should have acted prior to the sale but not on the basis of the sale. This is especially true in light of the fact that it is well known that other HLC-accredited institutions, which have previously gone through change of ownership, including transition from for-profit to non-profit status, have not been placed in Change of Control Candidacy Status following approval of their change of control applications. By placing AIC and ILIA in Change in Control Candidacy Status, HLC has violated the consistency requirement stipulated within US Department of Education 34 CFR § 602.18. Obligations under 34 CFR § 602.18 require that HLC maintain controls that ensure the consistent application of the agency's standards across all institutions.

Ambiguous and Misleading Communications

The HLC action letter of November 16, 2017, which initially responded to the change of control applications filed by the two HLC-accredited institutions, was ambiguous and misleading. While the communication stated that the institutions would be placed in the position of candidates for accreditation, DCEH understood and assumed that the institutions were effectively pre-approved and remain accredited as candidates. The November 16 letter made no mention that accreditation would be immediately removed upon the change in ownership and during the time period while the institutions completed Eligibility Filings; if that statement had been made, DCEH would not have closed the transaction. Instead the letter stated that the institutions had demonstrated sufficient compliance to be considered for preaccreditation status; but latter HLC claimed it did not have preaccreditation status, further illustrating the confusing nature of the November 16 letter. Given that neither institution was under a show cause or probation sanction at the time of change of control, it was logical that accreditation would be extended for a customary transitional period to be followed by a site visit aimed at verifying operations and practices (which is what happened with all of the other accrediting agencies for the other institutions involved in the DCEH – EDMC transactions). Importantly, this assumption stemmed directly from HLC’s own guiding framework, which attests that the commission will “[work] within the context of its

expectations for accredited institutions [to] streamline processes and procedures for member institutions.”¹

Acting in Good Faith

Being new to the higher education arena, DCEH entered into the change of control process with a somewhat limited understanding of certain protocols and practices. Throughout the entire change of control process, the entire organization (i.e., parent and institutions) acted in good faith to comply with all requests for information and evidentiary materials. Simply put, DCEH set forth on the venture with a goal to sustain the success of all acquired institutions, including AIC and ILIA. In no way did DCEH seek to disrupt student success or bring harm to the institutions, particularly with regard to the longstanding accreditation status of the two HLC-accredited institutions. In fact, the acquisition of the institutions by DCEH was intended to relieve HLC of concerns about the prior owner.

Irreparable Harm to Students

Declaring the institutions unaccredited after January 19, 2018 and further declaring all coursework completed and credentials earned after that date to lack accreditation (even when earned prior to January 19, 2018) would inappropriately harm AIC and ILIA students, especially for students graduating in the term immediately following accreditation removal. A decision to remove accreditation during their final term will cause irreparable harm to their professional and academic futures. Since learning of the Commission’s Disclosure issued on January 20, DCEH has been in communication with HLC to urge it to reconsider its position and the impact that position will have on students if it is not revised.

Limited Request

As the Commission is now aware, DCHE has made the decision to carry out an orderly closure of both institutions with a planned closure date of September 30, 2018. Therefore, the request for reinstatement of accreditation is for a very limited period through the conclusion of the teach-out (i.e., through September 30, 2018). Eligibility Filings were made on March 1, 2018, and demonstrate current compliance with all criteria, policies, and assumed practices.

With this appeal, DCEH respectfully requests that HLC reconsider their decision regarding accreditation of AIC and ILIA. DCEH requests that accreditation of the two institutions be immediately reinstated and made retroactive to the date of January 19, 2018 and be extended through closure of the institutions on September 30, 2018. Reinstatement of accreditation is

¹ VISTA: HLC’s Strategic Directions. Value to Members – Guiding Framework Item 3.



in the best interest of the students who attend the institutions. The lack of accreditation for their work and effort would have a significant adverse impact on their professional, academic, and financial lives.

DCEH has been working in good faith with the Commission for over five months to resolve this matter in an equitable manner that is to the benefit of the students and AIC and ILIA. DCEH would encourage the Commission to take this appeal up at its meeting tomorrow and do the right the thing for the students at these schools. If DCEH does not hear from the Commission by 12:00 PM CST on Friday, it will file suit to protect itself and its students. We understand this is a short time frame but unfortunately time is a luxury we cannot afford.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brent Richardson', written over a light blue horizontal line.

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC

CC

Dr. Anthea Sweeney,
Vice President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Mary E. Kohart, Esq.
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

EXHIBIT 12.3, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: DCEH - HLC Communications
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf; Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf; Peterson 2-24-18 Email to Holt.pdf; HLC Response to DCEH Letter of Intent to Appeal - May 30 2018.pdf; Letter of Appeal_HLC_Final.doc

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 8:04 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Cc: Mary K Whitmer <[REDACTED]>
Subject: DCEH - HLC Communications

Dear Assistant Secretary King, I write one more time to let you know that, since you raised the issue of what kind of response we (DCEH counsel) might have received to our February 23, 2018 letter to HLC, I reviewed my files and also touched base by email with Dr. David Harpool (my former colleague who had worked with me on representing DCEH on its accreditation matters with HLC and other accreditors), and the only communication that we believe we received from HLC, after February 23, 2018 and prior to late May 2018, is the attached February 24, 2018 email message from Karen Peterson at HLC promising that somebody from HLC would be in touch with us within the next week, which, to our recollection, did not happen. We do not recall hearing again from HLC until late May, after we had sent HLC our May 21, 2018 follow up letter, which prompted a May 30, 2018 letter from Anthea Sweeney, a copy of which is attached. As mentioned in my prior email, DCEH filed a formal appeal with HLC in late June 2018. While David Harpool and I have not been able to identify any communications with HLC during the interval from late February to late May 2018, as I mentioned during our call, it is possible that during this time period there may have been verbal communications about the HLC problem between DCEH executives and senior officials at the Department, who, in turn, might have had communications with representatives of HLC. Regards, Ron

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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ATTACHMENT "Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

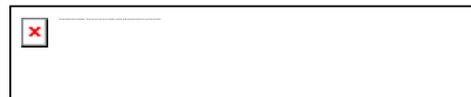
Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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ATTACHMENT "Peterson 2-24-18 Email to Holt.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); [REDACTED]; David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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ATTACHMENT "HLC Response to DCEH Letter of Intent to Appeal - May 30 2018.pdf"

Ronald L. Holt

From: Anthea Sweeney <[REDACTED]>
Sent: Wednesday, May 30, 2018 3:14 PM
To: Ronald L. Holt; David Harpool; Monday, Elden; Ramey, Jennifer A.; byohe; [REDACTED]
Cc: Barbara Gellman-Danley; Andrew Lootens-White; Eric Martin; Jim Meyer; Michael Seuring; Mary E. Kohart
Subject: Re: The Illinois Institute of Art and The Art Instiute of Colorado
Attachments: HLC Response to EDMC Letter of Intent to Appeal - May 30 2018.pdf
Importance: High

Dear All,

Attached is HLC's response to your recent correspondence received on May 21, 2018. Thank you.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, May 21, 2018 8:24 AM
To: Barbara Gellman-Danley; Anthea Sweeney
Cc: [REDACTED]; David Harpool; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: The Illinois Institute of Art and The Art Instiute of Colorado

Dear President Gellman-Danley and Vice President Sweeney:

Attached please find a letter from Dr. David Harpool and me sent on behalf of our clients, The Illinois Art Institute and The Art Institute of Colorado. We have copied Mary Kohart, whom we understand to be outside counsel for HLC.

Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]

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HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

May 30, 2018

VIA ELECTRONIC MAIL

Ronald L. Holt, Esq.
David Harpool, Esq.
Rouse Frets Gentile Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106

Messrs. Holt and Harpool:

I am writing on behalf of the Higher Learning Commission (HLC) in response to your letter dated May 21, 2018 on behalf of Art Institute of Colorado and Illinois Institute of Art (“the Institutes”) in which you inquire about HLC’s Appeal process. HLC has reviewed your request and will proceed to convene an Appeals Panel to hear the Institutes’ appeal in accordance with the Commission’s Appeal Procedures document which is enclosed.

We believe in the integrity of our Appeals process and we will work to develop a timeline that brings swift resolution to this matter. In order for specific dates to be determined however, an Appellate Document on behalf of the Institutes must be provided in accordance with the enclosed Appeal Procedures document as soon as possible. (A single Appellate Document may be filed.) As an overview of the timeline, HLC will respond to the Appellate Document no later than 4 weeks from the date of receipt, after which the Institutes may provide, at their option, a rebuttal to HLC’s response within two weeks. Based on the time needed for an Appeals Panel to review the materials, we anticipate a hearing could proceed under these assumptions as early as August with final resolution to follow. Commission Staff will then provide an update to the Board of Trustees of the Higher Learning Commission at its November 2018 meeting.

Pending the outcome of the Institutes’ appeal of the November 2017 Board action, certain review activities related to the Institutes which were anticipated to occur in the interim will be suspended immediately. Specifically, the Commission’s ongoing review of interim reports which had been required every 90 days by the HLC Board’s action letter of November 16, 2017 will be suspended; the Institutes will not be required to provide any additional 90-day reports pending the final outcome of the appeal. Likewise, HLC’s review of the Institutes’ respective Eligibility Filings submitted on February 1, 2018 will be suspended.

In its November 16, 2017 action letter, however, the HLC Board also required a focused visit to “ascertain the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.” Because the timing of this particular evaluation is intended to satisfy the requirements of Title 34 of the Code of Federal Regulations, Section 602.24(b) following approval

HLC-DCEH-014889

Holt and Harpool, May 30, 2018 2

of a Change of Ownership, HLC is not able to suspend this focused visit on the basis of a pending appeal. Therefore, Commission staff will continue preparations to finalize arrangements and will continue to communicate with the institutions accordingly.

Except as otherwise specifically limited by the Appeals Procedure document, routine HLC activities will continue without interruption. Thank you in advance for your cooperation. If you have questions concerning this letter, please feel free to contact me directly at [REDACTED] or 312-881-8128.

Best Regards,



Anthea M. Sweeney
Vice President for Legal and Governmental Affairs

Enc.: HLC Appeals Procedure

Cc: Elden Monday, Interim President, Art Institute of Colorado
Dr. Ben Yohe, Accreditation Liaison Officer, Art Institute of Colorado
Jennifer Ramey, President, Illinois Institute of Art
Deann Surdo, Accreditation Liaison Officer, Illinois Institute of Art
Dr. Barbara Gellman-Danley, President, Higher Learning Commission
Executive Leadership Team, Higher Learning Commission

EXHIBIT 12.4, INCLUDING ATTACHMENTS

Huston, John

From: Ronald L. Holt <[REDACTED]>
Sent: Thursday, December 12, 2019 4:48 PM
To: Huston, John
Cc: Cox, Jack; King, Robert
Subject: RE: HLC Letter
Attachments: Barton 7-3-18 Email to Holt re Conversation with DOE re HLC Retro Accreditation.pdf; Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf; DCEH Letter of Appeal_HLC_Final_6_27_2018.pdf

Hi John, I have a copy of the June 27, 2018 email message (attached) sent by Chris Richardson, then DECH General Counsel, to convey Brent Richardson's appeal letter to HLC. But I do not have a copy of any email acknowledgement that DCEH may have received from HLC. I also do not know what subsequent email, phone or other communications HLC may have had with DCEH executives, as I was not party to any such communications and they were not forwarded to me. I was made aware, through a July 3, 2018 email message from Randy Barton, DCEH Board Chairman, that he had heard that officials at the U.S. Department of Education had discussed this matter with senior management at HLC and there apparently then was a belief by the Department's officials that HLC was going to reverse its position on the 4 institutions that DCEH had acquired from EDMC and reinstate their accreditation retroactive to the January 19, 2018 closing by DECH on the purchase from EDMC of the 4 schools (the July 3, 2018 email is attached; while originally privileged, somebody earlier this year, without the knowledge of approval of DCEH's Receiver or me, disclosed it to Congressman Scott's Committee, whose staff provided a copy of it to a NY Times reporter, who later quoted it in a late July story about DCEH's collapse; so the email is no longer privileged). But, as we now know, HLC apparently reversed course and never carried out the reinstatement. The former DCEH executives who most likely would have had subsequent communications with HLC, following submission of the June 27, 2018 appeal letter, were Brent Richardson and Shelly Murphy and possibly also Randy Barton. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Huston, John <[REDACTED]>
Sent: Thursday, December 12, 2019 2:38 PM
To: Ronald L. Holt <[REDACTED]>

Cc: Cox, Jack <[REDACTED]>; King, Robert <[REDACTED]>
Subject: RE: HLC Letter

Hi Mr. Holt,

Thank you for this information. Would you be able to forward the email that was sent to HLC on June 27, 2018 delivering the appeal? Did they acknowledge receipt of the appeal or otherwise follow up to process the appeal?

Regards,

--
John Huston
Office of Postsecondary Education
U.S. Department of Education
[REDACTED]

From: Cox, Jack <[REDACTED]>
Sent: Thursday, December 12, 2019 3:29 PM
To: Huston, John <[REDACTED]>
Subject: FW: HLC Letter

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM

To: [REDACTED]; [REDACTED]; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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Ronald L. Holt

From: Randall Barton <[REDACTED]>
Sent: Tuesday, July 3, 2018 4:37 PM
To: Ronald L. Holt
Cc: Crowley, John E. ([REDACTED]); David Harpool; Garrett, Chad ([REDACTED]); [REDACTED]; [REDACTED]; [REDACTED]
Subject: Re: HLC - Any News?

We just got off the phone with DOE. It appears HLC is in sync with retro accreditation and teach out plans. Dianne at all 3 accreditors on and they will all agree to one plan with Department blessing and hopefully funding from the LOC.

On Tue, Jul 3, 2018 at 2:27 PM Ronald L. Holt <[REDACTED]> wrote:

Hi All, based on the media stories, I am sure you are quite busy dealing with lender issues and other ramifications of moving forward on plans to close 30 campuses. My only purpose in writing is to ask whether we have heard from DOE about its efforts to get HLC to accept our proposal to reinstate accreditation for ILIA and AIC? Ron

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



**Rouse Frets
Gentile Rhodes, LLC**

[1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106](http://www.rousefrets.com)
www.rousefrets.com

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--

Randall K. Barton

Mobile: [REDACTED]

ATTACHMENT "Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf"

(HLC contends it never received this email as it was sent to the incorrect email address)

Ronald L. Holt

From: [REDACTED]
Sent: Wednesday, June 27, 2018 6:49 PM
To: Ronald L. Holt; David Harpool
Subject: FW: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

FYI

From: [REDACTED]
Sent: Wednesday, June 27, 2018 4:48 PM
To: 'bgdanley@hlcommission.org'; 'asweeney@hlcommission.org'; '[REDACTED]'
Cc: [REDACTED]; Murphy, Shelly M. ([REDACTED])
Subject: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art

President Gellman-Danley:

Please find attached a follow up communication based on the call between DCEH and the commission yesterday. Feel free to reach out to Brent directly with any questions or to David Harpool at Rouse Frets.

Regards

Chris Richardson
General Counsel

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

EXHIBIT 4

Huston, John

From: Karen Peterson <[REDACTED]>
Sent: Thursday, December 26, 2019 3:52 PM
To: King, Robert
Cc: Huston, John
Subject: Re: HLC/Dream Center transaction

Bob: Thank you for our conversation on Monday. I am writing to confirm that you have accurately described my understanding of the transaction based on my long familiarity as HLC Vice President (then Executive Vice President until 3/2018) of Legal & Governmental Affairs with oversight of Change of Control and policy development/implementation and based on the understanding of the HLC Board that adopted the Change of Control policies in 2009 and 2010. You correctly indicated in our conversation, and I agree, that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions identified in your e-mail. The purpose of the Change of Control Candidacy was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC Criteria for Accreditation and other policies of the Commission going forward because at the time of these actions there was not certainty in this regard and, as you indicated, the November 2017 letter outlining the proposed action identified significant compliance issues arising from the evaluation of the proposed transaction. As I indicated, I was not privy to conversations in November and December 2017 between HLC staff and DCEH personnel to ensure all parties had a correct understanding of either the status or the next steps from a practical implementation perspective nor do I know enough about those communications to understand whether DCEH personnel achieved sufficient understanding to consent meaningfully to the action as they attempted to do in a letter addressed to HLC in January 2018 or to provide meaningful and accurate disclosures to current and prospective students.

Please let me know if you have additional questions and the next steps in your process.

Best regards, Karen

Karen Peterson Solinski

On Monday, December 23, 2019 01:19:15 PM CST, King, Robert <[REDACTED]> wrote:

Karen: thank you, once again, for making the time to speak with us, and for filling in information we think vital to our analysis of HLC managing the request to approve the sale of a large group of educational institutions from a for profit ownership group to a non-profit group called Dream Center Education Holdings (DCEH).

I wanted to take this moment to once again confirm your understanding of the transaction with respect to the question of the accreditation of the two institutions located within the HLC jurisdiction. We understood you to say that both institutions remained accredited during a six month period following the sale during which the HLC would monitor the actions and behavior of DCEH, ascertain whether they could remain accredited (because they were progressing toward meeting each of the items that had raised "concerns" during the site visits in the fall of 2017, and then outlined in the November 16, 2017 letter), or in the alternative, to withdraw their accreditation (because they were not meeting the expectations set out in the November 16 letter).

Exhibit 13

EXHIBIT 13

Huston, John

From: Karen Peterson <[REDACTED]>
Sent: Thursday, December 26, 2019 3:52 PM
To: King, Robert
Cc: Huston, John
Subject: Re: HLC/Dream Center transaction

Bob: Thank you for our conversation on Monday. I am writing to confirm that you have accurately described my understanding of the transaction based on my long familiarity as HLC Vice President (then Executive Vice President until 3/2018) of Legal & Governmental Affairs with oversight of Change of Control and policy development/implementation and based on the understanding of the HLC Board that adopted the Change of Control policies in 2009 and 2010. You correctly indicated in our conversation, and I agree, that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions identified in your e-mail. The purpose of the Change of Control Candidacy was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC Criteria for Accreditation and other policies of the Commission going forward because at the time of these actions there was not certainty in this regard and, as you indicated, the November 2017 letter outlining the proposed action identified significant compliance issues arising from the evaluation of the proposed transaction. As I indicated, I was not privy to conversations in November and December 2017 between HLC staff and DCEH personnel to ensure all parties had a correct understanding of either the status or the next steps from a practical implementation perspective nor do I know enough about those communications to understand whether DCEH personnel achieved sufficient understanding to consent meaningfully to the action as they attempted to do in a letter addressed to HLC in January 2018 or to provide meaningful and accurate disclosures to current and prospective students.

Please let me know if you have additional questions and the next steps in your process.

Best regards, Karen

Karen Peterson Solinski

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Karen: thank you, once again, for making the time to speak with us, and for filling in information we think vital to our analysis of HLC managing the request to approve the sale of a large group of educational institutions from a for profit ownership group to a non-profit group called Dream Center Education Holdings (DCEH).

I wanted to take this moment to once again confirm your understanding of the transaction with respect to the question of the accreditation of the two institutions located within the HLC jurisdiction. We understood you to say that both institutions remained accredited during a six month period following the sale during which the HLC would monitor the actions and behavior of DCEH, ascertain whether they could remain accredited (because they were progressing toward meeting each of the items that had raised "concerns" during the site visits in the fall of 2017, and then outlined in the November 16, 2017 letter), or in the alternative, to withdraw their accreditation (because they were not meeting the expectations set out in the November 16 letter).

Could you either confirm that I have accurately described your understanding as communicated to us this morning, or if not, please correct what I have written in a response email. Thanks so much, Bob

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Exhibit 14

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions

Exhibit 26

Date Transmitted: July 10, 2018

From: Diane Jones

Subject: *Re: HLC ColoradoArtInstituteVisitSchedule_Draft_7-10-18.docx*

From: Murphy, Shelly M. </O=EDMC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FDC38C5E0CF42A38F409B909562306B-MURPHY, SHELLY>
Sent: Tuesday, July 10, 2018 8:43 PM
To: Jones, Diane <Diane.Jones@ed.gov>
Subject: Re: HLC ColoradoArtInstituteVisitSchedule_Draft_7-10-18.docx

Okay, thank you Diane.

We will prepare for the visits.

Shelly Murphy
Chief Officer Regulatory and Government Affairs
Dream Center Education Holdings, LLC
Smurphy@dcedh.org
Cell: 480-650-4249

> On Jul 10, 2018, at 1:39 PM, Jones, Diane <Diane.Jones@ed.gov> wrote:

>
> Hi Shelly,
> This visit is a requirement under candidacy status. When a change of control takes place, the institution becomes a candidate for reinstatement of accreditation. In order to maintain your candidacy status, I believe you need to go forward with the visit. I know it is an added expense, but especially during a teach-out, accreditors typically like to visit a campus to make sure students are getting what they need until the very end. I think it is to your benefit to have the accreditor do a visit and be able to report that the teach-out is going well and that students are being served.

> Diane

>

> -----Original Message-----

> From: Murphy, Shelly M. [<mailto:smurphy@dcedh.org>]
> Sent: Tuesday, July 10, 2018 4:29 PM
> To: Jones, Diane
> Subject: HLC ColoradoArtInstituteVisitSchedule_Draft_7-10-18.docx

>

> Hi Diane,

>

> We haven't had any communication with HLC since we sent our appeal letter two weeks ago. We just received confirmation that they are moving forward with a site visit at our Colorado campus. This is surprising given it's an additional expense for DCEH. We would have assumed that the visits would be canceled. Do you have any suggestions on how we show address? Thanks -sm

>

>

> -----
> CONFIDENTIALITY NOTICE: This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient, you may not review, copy or distribute this message. If you have received this email in error, please notify the sender immediately and delete the original message. Neither the sender nor the company for which he or she works accepts any liability for any damage caused by any virus transmitted by this email.

Exhibit 27

Date Transmitted: Feb. 7, 2018

From: Higher Learning Commission

Subject: *Revised Public Disclosure Notice*

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

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However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

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DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions



February 7, 2018

VIA ELECTRONIC MAIL

Dr. David Harpool and Ronald L. Holt
Rouse Frets Gentile Rhodes, LLC
1100 Walnut St.
Suite 2900
Kansas City, MO 64106

Dear Dr. Harpool and Mr. Holt:

I am writing in response to your letter of February 2, 2018, to confirm that the Art Institute of Colorado (“AIC”) and Illinois Institute of Art (“IIA”) are in Change of Control Candidate for Accreditation status with the Higher Learning Commission as of January 20, 2018. Your letter reaffirms their voluntary consent to such status as earlier indicated in a letter from Presidents Josh Pond of IIA and Elden Monday of AIC on January 4, 2018. As such, both institutions are eligible to seek accredited status following the requirements outlined in the November 16, 2017 Action Letter, as modified by the January 12, 2018 Action Letter, which confirmed again that approval of the extension of status was subject to a Change of Control Candidacy and clarified the schedule for the filing of an Eligibility Filing to confirm the institutions’ compliance with the Eligibility Requirements and the schedule for subsequent focused evaluations.

None of the terms outlined in these letters have changed or been modified based on any language in the Public Disclosure Notice (“PDN”). The institutions are not in pre-candidacy status, as your letter indicates; the Commission has no such status. As noted above, the institutions remain eligible to apply for accredited status based on the terms outlined in the November 16, 2017 Action Letter. I would note that your clients had a lengthy opportunity (early November 2017 to early January 2018) to review the November Action Letter, to determine the implications for their institutions prior to filing their consent on January 4, 2018, and to ask questions to their HLC staff liaison if anything in the November action was unclear.

While the Commission believes that the Public Disclosure Notice as previously published, accurately represented the terms of the November 16, 2017 Action Letter, Commission staff has modified the PDN on the HLC website to remove certain procedural language that was questioned in your letter of protest. I trust that these modifications will allay any concerns that you have that the PDN modified in some way the terms of the November 16, 2017 letter to which your clients specifically consented.

Thank you. If you have any further questions, please contact Karen Peterson, Executive Vice President for Legal and Governmental Affairs.

Dr. Harpool and Mr. Holt, February 7, 2018 2

Sincerely,

A handwritten signature in black ink that reads "Barbara Gellman-Danley". The signature is written in a cursive style with a large initial 'B'.

Barbara Gellman-Danley
President

Cc: Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
Karen Peterson, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission

Exhibit 28

Date Transmitted: Feb. 23, 2018

From: Ronald L. Holt and David Harpool

Subject: *Re: The Art Institute of Colorado and the Illinois Art Institute*

February 23, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
Bgellman-danley@hlcommission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley,

We have discussed your letter of response and the proposed Public Notice Disclosure with our clients. To ensure that we correctly understand your response and the status of our client schools (Illinois Institute of Art and the Art Institute of Colorado), we are confirming that:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in “preaccreditation status,” a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution. *See* 34 C.F.R. §§ 600.2 & 600.4 (a)(5)(i). (We and our clients, in determining that we could accept the conditions of the November 16, 2017 letter, as modified by the Commission’s January 12, 2018 letter, and could continue to serve our students and meet their expectations, relied in good faith on this understanding.).
2. Both institutions remain accredited, in the status of Change of Control Candidate for Accreditation, per their change of ownership, and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.
3. Both institutions will receive an objective review for continued accreditation, with team members who have the requisite skill and experience to render an unbiased decision.
4. Both institutions will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.

Please confirm that our understandings, as stated above, are correct. It is our clients’ desire to avoid pursuit of an appeal and possible litigation, a goal that we trust the Commission shares, and the foregoing understandings are essential to that objective.

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Page 2
February 23, 2018

Very truly yours,

ROUSE FRETS GENTILE RHODES, LLC

_____/s/_____
Ronald L. Holt

_____/s/_____
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc:

Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
brichardson@dcedh.org

Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Michael.frola@ed.gov

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
asweeney@hlcommission.org

Karen Solinski, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission
ksolinski@hlcommission.org

Exhibit 29

Date Transmitted: May 21, 2018

From: Ronald L. Holt and David Harpool

Subject: *Re: The Art Institute of Colorado and the Illinois Art Institute*

May 21, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission

bgdanley@hlcommission.org

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission

asweeney@hlcommission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”).

We wrote on February 2, 2018 to express our concern that the January 20, 2018 Commission's Public Disclosure (“Disclosure”) is not consistent with the terms extended to the Institutions by the Commission (following applications filed by the Institutions in late 2016 and supplemented in 2017) in the Commission’s November 16, 2017 letter with respect the planned change in ownership of the Institutions (the “Transactions”) involving their acquisition by subsidiaries of the nonprofit Dream Center Foundation.

While the Institutions regarded being placed in the status of Change of Control Candidate for Accreditation, which the Commission’s November 16, 2017 letter had described as pre-accreditation candidacy status, as an unwarranted response to the planned change in ownership, the Institutions, through letters dated November 29, 2017 and January 4, 2018, confirmed (with only a few modifications) that they would accept candidacy status, believing that they would be treated as pre-approved candidates on a fast-track needing to only address the issues raised in the November 16, 2017 letter, and they proceeded to close the Transactions on January 19, 2018 (the “Closing”) on that basis. The next day, however, the Commission issued its Disclosure describing the Institutions’ status to mean something far different from what the Institutions believed candidacy and pre-accreditation status would mean here.

As we stated in our February 2, 2018 letter, the issue here is not solely maintaining Title IV eligibility of these institutions; it is also meeting the reasonable expectations and interests of our students, a goal which should be shared by the Commission. To be frank, had the Commission plainly stated in its November 16, 2017 letter what it later said in the Disclosure, DCEH would not have carried out the Closing of the Transactions because the necessary regulatory consent would not have existed and the Transactions would not have been in the best interests of the

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students. Quite honestly, DCEH feels that it was misled by HLC to its detriment and the detriment of its students and that DCEH has actionable legal claims against HLC.

In an effort to avoid a legal battle, in our February 2, 2018 letter, we informed you that we believe that, pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action that is subject to appeal, we informed you of the Institutions' refusal to accept the Commission's decision as stated in the Disclosure and the Institutions' desire to appeal that decision, and we requested your input on how we should proceed with the appeal.

While President Gellman-Danley sent correspondence on February 7, 2018 indicating that a change was being made to the Disclosure, she maintained in her letter that the Institutions were not in pre-accreditation status (she indicated that HLC does not have such a status) and that the Institutions need to apply for and establish their candidacy for accreditation. She noted that some changes had been made to some of the language in the Disclosure concerning certain procedural matters. But those changes do not allay the concerns that the Institutions have about the expectations and interests of their students, as the Disclosure continues to state that all students who did not graduate prior to January 19, 2018 are attending institutions not accredited by HLC and taking programs not accredited by HLC and will be earning credentials not accredited by HLC. This, quite simply, is unacceptable. Moreover, President Gellman-Danley's letter does not acknowledge the Institutions' decision to appeal the Commission's decision to place the Institutions in the status of Change of Control Candidate for Accreditation, nor does it provide them with any directions on how to pursue their appeal, as we had requested in our February 2, 2018 letter.

Thus, to date, we have not received any guidance on how we can pursue our appeal with HLC. If such guidance is not given to us in writing within the next ten (10) days, we will assume that HLC is unwilling to allow DCEH to pursue an internal appeal, and DCEH will proceed with a legal action. We trust this can be avoided and we again repeat our request for instructions on the pursuit of an appeal.

Sincerely

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc: Mary E. Kohart, Esq.
Counsel to HLC
mek@elliottgreenleaf.com

Mr. Brent Richardson
brichardson@dcedh.org

Chris Richardson, Esq.
crichardson@dcedh.org

Mr. David Ray
dray@dcedh.org

Mr. Elden Monday
emonday@dcedh.org

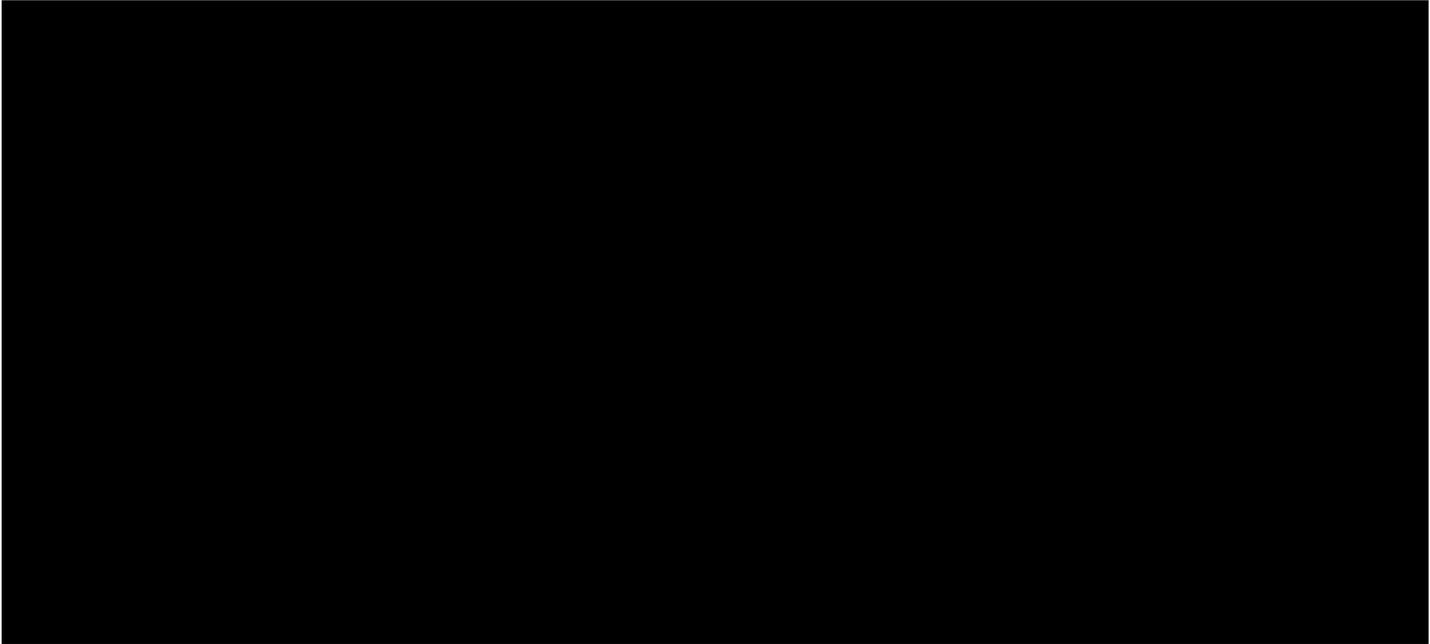
Ms. Shelley Murphy
smurphy@dcedh.org

Exhibit 30

Date Transmitted: June 27, 2018

From: Chis Richardson

Subject: *Appeal of HLC Decision regarding the Art Institute of Colorado and Illinois Institute of Art*



From: crichardson@lopescapital.com [mailto:crichardson@lopescapital.com]
Sent: Wednesday, June 27, 2018 7:48 PM
To: bgdanley@hlcomission.org; asweeney@hlcomission.org; Mary E. Kohart
Cc: brichardson@lopescapital.com; Murphy, Shelly M. (smurphy@dcedh.org)
Subject: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art

President Gellman-Danley:

Please find attached a follow up communication based on the call between DCEH and the commission yesterday. Feel free to reach out to Brent directly with any questions or to David Harpool at Rouse Frets.

Regards

Chris Richardson
General Counsel

Exhibit 31

Date Transmitted: Jan. 13, 2020

From: President Gellman-Danley

Subject: *Letter to Lynn Mahaffie*



January 13, 2020

VIA EMAIL

Dr. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Lynn.mahaffie@ed.gov

Dear Dr. Mahaffie:

This letter follows up on a telephone conference that you and other staff from the U.S. Department of Education ("the Department") had with Higher Learning Commission (HLC) Associate Vice President of Legal and Regulatory Affairs Marla Morgen on December 19, 2019.

On that call, you and Department staff asked HLC to provide additional information and documentation regarding two specific issues associated with HLC's November 13, 2019 response ("November 13 Response") to the Department's October 24, 2019 letter related to the Illinois Institute of Art (ILIA), the Art Institute of Colorado (AIC) (collectively "the Institutes") and Dream Center Education Holdings (DCEH).

First, you asked for information about a June 27, 2018 letter from Brent Richardson, then CEO of DCEH, allegedly sent to HLC President Barbara Gellman-Danley, HLC Vice President of Legal and Regulatory Affairs Anthea Sweeney, and Mary Kohart, of the law firm Elliott Greenleaf, on or about that date ("June 27 Letter"). When Morgen indicated on the call that she was not familiar with the June 27 Letter, the Department indicated it would provide the letter to HLC.

Second, you asked for additional information related to the other HLC member institution that HLC indicated in its November 13 Response had previously been offered the condition of accepting Change of Control candidacy as part of a Change of Control application approval by the HLC Board of Trustees ("the Board").

Following the call, also on December 19, 2019, Department analyst Elizabeth Daggett sent an email to Morgen reiterating the requests made by the Department and attaching the June 27 Letter. Specifically, Daggett stated:

I have attached the letter from DCEH to HLC dated June 27, 2018. Please let us know if HLC received this letter and any response it provided. If in that review, HLC finds any other correspondence that was not included in the November 13, 2019 submission

by HLC to the Department, we request submission of that correspondence as well and any explanation for why it was initially excluded. Finally, we are requesting a redacted copy of the other institution that was offered the Change of Control Candidacy status as a condition of a change of control, as noted in HLC's submission.

HLC's responses to each of these supplemental requests is below.

Supplemental Request #1: June 27, 2018 Letter from Richardson to Gellman-Danley, et al.

You inquired about, and provided HLC with a copy of, a letter dated June 27, 2018 from Brent Richardson, then CEO of DCEH, that was allegedly sent by email to HLC President Barbara Gellman-Danley, and, while not expressly stated in the letter, was allegedly sent by email to HLC Vice President of Legal and Regulatory Affairs Anthea Sweeney and Mary Kohart, of the law firm Elliott Greenleaf, on or about that date ("June 27 Letter") ([HLC-OPE 15430-15433](#), watermark added by HLC).

Although the Department has the June 27 Letter itself, you indicated on the December 19, 2019 call that, to the best of your knowledge, you were not in possession of any accompanying documents related to the transmission of the June 27 Letter, such as a transmittal email or confirmation of delivery.

To begin with, on May 21, 2018, DCEH and the Institutes indicated their intent to "pursue an appeal" ([HLC-OPE 12264-12266](#)). On, May 30, 2018, HLC provided DCEH and the Institutes with HLC's Appeal Procedures (which were also at all times available on HLC's website) and outlined next steps for pursuing an appeal ([HLC-OPE 12267-12268](#) and [HLC-OPE 15252-15264](#)). For example, HLC asked DCEH to submit its Appellate Document promptly and proposed a schedule that would have allowed for an appeal hearing to be held sometime in August 2018.

HLC's Appeal Procedures permitted DCEH to submit an Appellate Document electronically but required it to "also submit two copies in paper form" ([HLC-OPE 15252-15264](#) at pg.15259).

The June 27 Letter purports to be a "formal appeal." Presumably, the June 27 Letter is the "Appellate Document" required by HLC procedures, as explained by HLC in its May 30 letter and the associated procedures that were attached.

After speaking to the Department in December 2019, HLC conducted a thorough investigation to determine whether the June 27 Letter had been attached to any email received by Gellman-Danley or Sweeney or whether paper copies had been delivered to HLC.

As further explained below, upon completion of this investigation, **HLC has not located any information indicating that HLC received the June 27 Letter in either electronic form or hard copy at any time prior to December 2019.** To the contrary, as further explained below, HLC's investigation suggests that the June 27 Letter was incorrectly transmitted to HLC ([HLC-](#)

[OPE 15434](#)). Moreover, while an email attaching the June 27 Letter was received by Kohart's law firm, HLC's external counsel, on or about June 27, 2018 ([HLC-OPE 15434](#)), the email was filtered by the law firm's software into a spam folder. It therefore never appeared in Kohart's email inbox and was never seen by her until the December 2019 searches were performed.

As also further explained below, HLC also reviewed whether there were any communications between HLC and DCEH or the Institutes that should have put HLC on notice of the June 27 Letter or a pending appeal as a result of the June 27 Letter. HLC could not identify any such communications. To the contrary, the communications between HLC and DCEH and the Institutes make plain that neither DCEH, the Institutes, nor HLC thereafter referenced the June 27 Letter, which HLC did not know existed, or otherwise thought any appeal process was underway as a result of the June 27 Letter. In fact, as further explained below, HLC's representatives participated in a June 26 conference call with representatives of DCEH and the Institutes that led HLC to believe that DCEH no longer intended to follow up with any appeal.

A. HLC's investigation indicates that HLC did not receive the June 27 Letter

The June 27 Letter states that it was sent to Gellman-Danley by email and implies that the same mode of transmission was used for Sweeney and Kohart ([HLC-OPE 15430-15433](#)). As such, HLC first thoroughly checked its email systems to see if Gellman-Danley or Sweeney received an email on or about June 27, 2018 which attached the June 27 Letter. HLC located no such email during this search.

A close examination of the transmittal email accompanying the June 27 Letter, which, as further explained below, was recently provided to HLC by Kohart, may explain why no such email was received by HLC. The transmittal email indicates that it was sent by email to bgdanley@hlcommission.org and asweeney@hlcommission.org ([HLC-OPE 15434](#)). Both email addresses for Gellman-Danley and Sweeney are incorrect. The email suffix required was "hlcommission.org" not "hlcomission.org" (incorrectly spelled with one "M" instead of two "Ms"). To the best of HLC's knowledge, an email sent to these incorrect email addresses would not reach either individual's inbox or otherwise be received by HLC, and, in this instance, did not reach HLC's email system or either individual's email inbox.

HLC also searched to see if, as required by its Appeals Procedure, DCEH or the Institutes had sent, and HLC had received, hard copies of the June 27 Letter. There is no record that HLC received the June 27 Letter prior to receiving it from the Department in December 2019.

Whether received electronically or in hard copy, HLC would have placed any document like the June 27 Letter into the administrative records it maintains relating to AIC and ILIA. HLC has confirmed that the June 27 Letter does not appear in either institution's administrative record, which once again confirms that the June 27 Letter was not received by HLC prior to December 2019.

HLC also asked Kohart, its external counsel for this matter throughout the relevant time period, to conduct the same search. Kohart found no record that she received a hard copy of the June 27

Letter. Kohart also searched the emails she had received and did not locate any email attaching the June 27 Letter. She then expanded her search to include emails not delivered to her inbox but that might have been filtered into a spam folder by the software used by her law firm. This search uncovered an unfamiliar email sent by a "crichardson@lopescapital.com" to Kohart, bgdanley@hlcommission.org and asweeney@hlcommission.org ([HLC-OPE 15434](#)). Kohart provided this email to HLC.

Ultimately, it is HLC's reasonable belief that no HLC employee received an email attaching the June 27 Letter, that the email sent to its external counsel was never received in her email inbox but treated as spam, and that neither HLC nor its external counsel received the mandated paper copies. Thus, Gellman-Danley, Sweeney, and Kohart at no time believed that any Appellate Document had been sent by DCEH or the Institutes to HLC in June 2018 and were not aware of the June 27 Letter prior to December 2019.

B. All information available to HLC indicates that HLC had no reason to know that the June 27 Letter existed and that neither HLC, DCEH, nor the Institutes was under the belief that an appeal was underway as a result of the June 27 Letter

Upon receipt of DCEH and the Institutes' May 21, 2018 intent to appeal letter, HLC provided DCEH and the Institutes with detailed information regarding next steps in the appeal process ([HLC-OPE 12264-12266](#), [HLC-OPE 12267-12268](#), and [HLC-OPE 15252-15264](#)). Specifically, among other things, HLC asked DCEH and the Institutes to submit an Appellate Document "as soon as possible" and indicated that HLC would respond to that Appellate Document "no later than 4 weeks from the date of receipt." HLC also sketched out a timeline for an appeal process that would include "a hearing...as early as August with final resolution to follow." Finally, HLC indicated that, with one limited exception as required by federal regulations, it would suspend evaluation activities for the Institutes "pending the final outcome of the appeal." Correspondingly, HLC promptly began preparing for an appeal. These preparations included gathering the names of potential individuals to serve on the Appeal Panel.

In response to a series of emails from late June 2018 from David Harpool, counsel to DCEH and the Institutes ([HLC-OPE 15322-15324](#)), the parties participated in a conference call on June 26, 2018. Gellman-Danley and Sweeney participated for HLC, accompanied by Kohart. To the best of HLC's knowledge, Harpool and attorney Ronald Holt participated on behalf of DCEH and the Institutes.

On the call, HLC and its external counsel were led to believe that DCEH and the Institutes had abandoned an appeal in light of their intention, which had not yet been publicly announced, to close the Institutes. In other words, DCEH and the Institutes indicated that they would not further follow up on their intent to appeal.

Instead, on the call, DCEH and the Institutes wanted to explore the possibility of retroactive accreditation. Indeed, in keeping with the new direction raised by DCEH and the Institutes on the June 26 call regarding retroactive accreditation, HLC almost immediately received a call from

Principal Deputy Under Secretary Diane Auer Jones ("Jones") regarding the possibility of retroactive accreditation. See November 13 Response #10-12 at pgs. 20-23.

On the call, HLC indicated three things in response to the information conveyed by DCEH and the Institutes. First, HLC indicated that retroactive accreditation was not allowable under HLC policy and therefore, no commitments could be made in that regard. Second, HLC reminded DCEH and the Institutes that the Institutes were on the agenda of the upcoming Board meeting, taking place on June 28-29, 2018, as an "update" item, rather than an "action" item, and therefore no Board action affecting the Institutes should be expected at the upcoming meeting. Third, HLC assured DCEH and the Institutes that the update to the Board regarding the Institutes would include the fact that this call had taken place.

Following the June 26, 2018 call, numerous communications and events indicate that neither HLC, DCEH, nor the Institutes believed any appeal was in process as a result of the June 27 Letter.

First, based on the information provided by DCEH and the Institutes on the June 26 call, HLC stopped its appeal preparations, such as discussion regarding scheduling and the identification of potential members of the Appeal Panel.

Additionally, in providing an update to the Board at its meeting on June 28-29, 2018, no mention was made of the June 27 Letter. Rather, the update provided by HLC staff referenced the June 26, 2018 call. In contrast, when HLC received a letter from Jones on the evening of the October 31, 2018, the night before its Board meeting, HLC staff promptly informed the Board of this letter ([HLC-OPE 15363](#)). See November 13 Response #19 at pg. 30.

Second, at no point following June 27 did anyone at the Institutes or DCEH follow up with HLC regarding the June 27 Letter in any manner whatsoever. In its letter of May 30, 2018, HLC stated it would respond to an Appellate Document within four weeks after its receipt. Assuming that the June 27 Letter was intended as the requested Appellate Document, HLC did not provide DCEH or the Institutes with such a response to the June 27 Letter (because it did not receive the June 27 Letter). Yet neither DCEH nor the Institutes contacted HLC at any time to ask why they had not received the expected responsive document from HLC. The May 30 letter also indicates that an Appeal Hearing could be held as early as August. No such hearing was scheduled. Yet, neither DCEH nor the Institutes communicated with HLC to follow up on the scheduling of such a hearing or regarding the identity of those who would serve on the Appeal Panel. Finally, the June 27 Letter included a statement that DCEH and the Institutes would commence litigation if no response was received by noon "on Friday" (June 29). Yet, that day came and went without any further mention of litigation by DCEH or the Institutes as a result of HLC's failure to respond to the June 27 Letter.

Third, in October 2018, Brent Richardson, the signatory of the June 27 Letter, along with other DCEH representatives and representatives of AIC, appeared at a hearing to address issues relating to whether AIC met HLC's Criteria for Accreditation and other HLC requirements following a recent site visit ([HLC-OPE 14862-14980](#)). At no point during the course of planning

for or conducting that hearing was any mention made of the June 27 Letter or any ongoing appeal.

Finally, in November 2018, the Institutes each submitted letters to HLC seeking to appeal actions taken by HLC's Board in November 2017 and November 2018 ([HLC-OPE 15187-15189](#) and [HLC-OPE 15190-15191](#)). HLC responded to these letters later in November 2018 ([HLC-OPE 15192-15194](#) and [HLC-OPE 15195-15198](#)). Critically, none of these letters—neither the appeal requests from the Institutes nor HLC's responses—mention the June 27 Letter or indicate that the Institutes or DCEH had previously attempted to appeal the portion of their current appeal requests related to the Board's November 2017 actions through the June 27 Letter.

Taken together, the collective conduct of all the involved parties clearly demonstrates that none of the parties were proceeding under the belief that the June 27 Letter had started an appeal process, and nothing occurred after June 27, 2018 that would have lead HLC to believe that the June 27 Letter, which it still did not know existed, had begun an appeal process.

Supplemental Request #2: Previous Institution Offered Change of Control Candidacy

In item #16 of the November 13 Response, HLC provided:

In one previous case very similar to the one currently under review, the parties to a transaction, though initially willing to accept Change of Control candidacy as a condition of approval, ultimately found themselves unwilling and abandoned their plans to consummate the transaction. The relevant institution remains accredited by HLC to date.

The Department has requested that HLC provide a redacted version of the action letter pertaining to the institution referenced in item #16 of the November 13 Response.

In 2015, the Board approved a member institution's Change of Control application with the condition that the institution accept the status of Change of Control candidacy ([HLC-OPE 15435-15440](#)). This action letter involves the institution referenced in item #16 of the November 13 Response. (Note that there were also two additional action letters pertaining to this institution's Change of Control application subsequent to this action letter; one extending the time period in which the institution could complete the transaction and one denying a request by the institution to modify the conditions of the Board's approval. However, the above-referenced action letter indicates that the Board offered Change of Control candidacy as a condition of approval of a Change of Control application.)

As further described in the November 13 Response, the member institution ultimately chose not to pursue the relevant transaction. As such, the institution remained accredited. HLC would like to take this opportunity to clarify and amend its initial response to item #16 in the November 13 Response. Although the institution remained accredited at the time of Board action, it voluntarily withdrew its accreditation thereafter and as a result is no longer accredited by HLC.

HLC appreciates the opportunity to provide this additional information and documentation.

Enclosed, please find the three documents linked in this supplemental response that were not previously provided to the Department with the November 13 Response ([HLC-OPE 15430-15433](#); [HLC-OPE 15434](#); and [HLC-OPE 15435-15440](#)).

Please do not hesitate to let me know if you have any additional questions.

Sincerely,



Barbara Gellman-Danley
President

CC (via email): Herman Bounds, Director, Accreditation Group, Office of Postsecondary
Education, U.S. Department of Education
Elizabeth Daggett, Analyst, U.S. Department of Education

Enclosures: HLC-OPE 15430-15433
HLC-OPE 15434
HLC-OPE 15435-15440

Exhibit 32

Date Transmitted: Aug. 2, 2018

From: Diane Jones

Subject: *Email to Shelly Murphy re: Accreditation Compliance Information*

Huston, John

From: Jones, Diane
Sent: Thursday, April 18, 2019 7:34 PM
To: Huston, John
Subject: FW: list
Attachments: Updates 7.18.18.docx

From: Jones, Diane
Sent: Thursday, August 2, 2018 11:46 PM
To: Murphy, Shelly M. <smurphy@dcedh.org>
Subject: list

Hi Shelly,
I'm sorry for giving you the wrong list. Here is the correct one.
Diane

Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of Under Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202
202-453-7333
Diane.jones@ed.gov

Phone Call 7/18/18

- Accreditors need to be hearing from the presidents and board chairs of each educational group as well as from campus leaders. Accreditors want to hear from campus leaders, not corporate entities, and they want to hear from leaders of the institutional boards.
- DCHC must be forthcoming and honest with accreditors. This is critical.
- DCHC and the institutions must provide students with accurate information about each institution's accreditation status. Institutions that are candidates for accreditation must be clear with students candidacy status does not guarantee that the institution will be accredited, and that if the campus becomes accredited, the campus does not know whether or not that accreditation will be restored retroactively to the change of control. Note that HLC's policy for retroactive accreditation is limited to 30 days prior to the board's decision. Campus and organizational leaders may not comment on the likelihood of gaining accreditation. Campus leaders must inform students that in the event the institution does not gain accreditation status, other campuses are still permitted by their accreditors to accept these credits in transfer, but the teaching-out campus cannot guarantee that an institution will do so. Campus leaders must be working with other institutions to try to negotiate transfer agreements with institutions that agree to accept credits awarded subsequent to the change of control, while the institution was a candidate for accreditation but was not accredited. It is critical that the HLC campuses have well-developed contingency plans in the event that HLC does not accredit one or more of those campuses.
- Campus leaders, faculty and staff must have all of the information about the planned teach-out: the timeline, the date of closure, the funding that will be available to the school to complete the teach-out, who/how student records will be maintained after closure, what retention incentives are in place to retain faculty and staff, continuing student services, and ultimately the physical closure of the campus including disposal/distribution of furniture, books, supplies, etc.
- Accreditors need a complete list of campus leaders, key faculty members (program directors, department chairs, etc.), and members of each institution's BOD. These lists must be updated when personnel changes occur, which includes notifying the accreditor if and when presidents and chief academic officers leave the institution, and providing the name and credentials of the individual acting in those roles while a permanent replacement is identified. Individuals who are acting in campus leadership roles must understand the responsibilities of their new role, and ideally should be partnered with a leader at a continuing campus who can provide mentorship.
- Students must be provided with the link to FSA's website about school closures, and must be made aware of their opportunity to apply for a closed school loan discharge.
- Institutions must provide accreditors with the names of teach-out partner institutions and provide copies of formal teach-out agreements.
- Institutions must provide accreditors with names of partners for articulation agreements and with copies of those agreements.

- Institutions must be working with other institutions in their local area to assist students who wish to transfer. This includes holding transfer fairs on the closing campus, providing students with a list of comparable programs at local institutions, and working with leaders at those campuses to be sure that student credits are accepted in transfer. This includes working with local institutions to encourage them to accept credits from a campus that has candidacy status. Accreditors do not prevent institutions from accepting credits from an institution that has lost accreditation or is a candidate for accreditation.
- If the Pittsburgh campus is going to be used as the on-line teach-out campus, students must be told that this campus is on probation with its accreditor. The campus must also immediately resolve all problems associated with probation. (Note- this was updated with DCHC when Middle States put Pittsburgh on show cause such that DCHC can no longer use AI online as a teach-out option and must find a different online transfer institution if it wishes to offer an online teach-out option).
- DCHC should refrain from threatening accreditors with legal action. **Note that the Department does not need to recognize the accreditation of an institution that pursues legal action rather than arbitration in the event of a negative action.** In the case of HLC, DCHC should be aware that they missed their opportunity to file an appeal and subsequently the campuses did not provide the information HLC requested to take to their board based on the timeline provided to the campuses by HLC prior to their June board meeting.
- In the case of the HLC campuses, DCHC campuses should start immediately looking for transfer partners and teach-out partners to help students concerned about accreditation status transfer to a new institution and have their credits earned after the change of control accepted by those institutions.
- Accreditors need a complete list, by student, of the teach-out plans selected by the student, including the name of the institution to which the student will transfer or the name of the teach-out partner. Note that the difference between a transfer partner and a teach-out partner is that accreditors typically waive the 25% rule for students who enroll with a teach-out partner institution.
- It is recommended that the campus leaders of each teach-out campus provide regular and accurate communication to students about their options and the progress of the teach-out plan. For example, as new articulation, transfer or teach-out agreements are negotiated with other institutions; students must be made aware of those options and any financial support that DCHC is offering to those students to help with the transition. The website should also be updated regularly, and Facebook streamed information should be linked to the website. It is critically important that in one-on-one conversations, students be given exactly the same information as they are provided during the group discussions and through written communication.
- Students must be kept informed. We cannot overemphasize the importance of keeping students and campus staff informed.

Exhibit 33

Date Transmitted: Mar. 2, 2018

From: Deana Echols

Subject: *Re: Final Call – HLC Eligibility Filing*

From: [Echols, Deana C.](#)
To: [DelSanto, Chris](#); [Murphy, Shelly M.](#)
Subject: RE: Final Call -- HLC Eligibility Filing
Date: Friday, March 2, 2018 9:49:41 AM
Attachments: [image001.jpg](#)
[image002.png](#)

Hi Chris and Shelly,

I am not sure exactly what I need to confirm. Did HLC respond to our letter? If so, could someone send the response? The language below does not match the latest directive from HLC (prior to our response last week) on what we are required to disclose. Also, I believe HLC requires the disclosure to all students, I am not sure that the catalog updates, etc. would meet their expectations. Will we also do an email blast to all currently enrolled students?

Chris,

Regarding your question on the link, I am not sure which link to use. If the language below is what will be in our catalog, I am not sure where else we would direct students.

If you can let me know what you need me to do, I will gladly do it.

Thanks,

Deana

Deana Echols

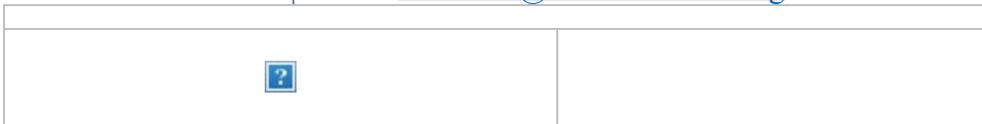
Vice President Student Finance and Compliance

Dream Center Education Holdings, LLC
210 Sixth Avenue, 4th floor
Pittsburgh, PA 15222
(770) 883-8414
(706) 276-2996
dcechols@dcedh.org

From: DelSanto, Chris
Sent: Friday, March 02, 2018 8:55 AM
To: Murphy, Shelly M. <smurphy@dcedh.org>
Cc: Echols, Deana C. <dcechols@dcedh.org>
Subject: RE: Final Call -- HLC Eligibility Filing

What URL goes in the (link)?

Chris DelSanto
Vice President Risk and Compliance
Office: 412-995-7377 | Email: cdelsanto@dreamcentered.org



1400 Penn Ave | Pittsburgh, PA 15222
WWW.DCEDH.ORG

From: Murphy, Shelly M.
Sent: Thursday, March 01, 2018 5:43 PM
To: DelSanto, Chris <cdelsanto@dcedh.org>
Cc: Echols, Deana C. <dcechols@dcedh.org>
Subject: Re: Final Call -- HLC Eligibility Filing

Yes, that looks correct.

Deana can you confirm. Thanks

Shelly Murphy
Dream Center Education Holdings
Regulatory and Government Affairs
480-650-4249

On Mar 1, 2018, at 2:52 PM, DelSanto, Chris <cdelsanto@dcedh.org> wrote:

Shelly,

Yes, my BPC team can facilitate this change.

Just so I am clear on the direction, you want the following language to replace the current accreditation statement in all relevant areas (websites, catalogs, etc.); correct?

The Art Institute of Colorado is in transition during a change of ownership. We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. For more information ([link](#)).

The Illinois Institute of Art is in transition during a change of ownership. We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. For more information ([link](#)).

What URL goes in the ([link](#))?

Chris DelSanto
Vice President Risk and Compliance
Office: 412-995-7377 | Email: cdelsanto@dreamcentered.org
<image005.jpg>
<image006.png>

1400 Penn Ave | Pittsburgh, PA 15222
WWW.DCEDH.ORG

From: Murphy, Shelly M.
Sent: Thursday, March 01, 2018 1:49 PM
To: DelSanto, Chris <cdelsanto@dcedh.org>
Subject: Fwd: Final Call -- HLC Eligibility Filing

Chris,

Can your team handle this?

Shelly Murphy
Dream Center Education Holdings
Regulatory and Government Affairs
480-650-4249

Begin forwarded message:

From: "McLaughlin, Ellyn D." <edmclaughlin@dcedh.org>
Date: March 1, 2018 at 9:21:31 AM MST
To: "Valdez, Benjamin A." <bvaldez@aii.edu>, "Murphy, Shelly M." <smurphy@dcedh.org>, "Richardson, Chris C." <crichardson@dcedh.org>
Cc: "DelSanto, Chris" <cdelsanto@dcedh.org>, "Surdo, Deann C." <dsurdo@aii.edu>
Subject: RE: Final Call -- HLC Eligibility Filing

Once we hear from Shelly about who is changing the website, Chris R has said the statement should be changed everywhere.

Ellyn McLaughlin, EdD
Assistant Vice President, Regional Accreditation
Accreditation & State Licensing
Phone: 443-671-1111
Fax: 443-671-1110

From: McLaughlin, Ellyn D.
Sent: Thursday, March 1, 2018 10:31 AM
To: Valdez, Benjamin A.; Murphy, Shelly M.; Richardson, Chris C.
Cc: DeSanto, Chris; Grossi, Deann C.
Subject: RE: Final Call -- HLC Eligibility Filing

Hi Benjamin,

As I understand, Shelly is arranging for the website change. I will copy her here to confirm that the website change is being handled. Shelly -- who is making the website change for the ILIA and Colorado candidacy statement. The email from Chris R had said you were handling that.

Regarding second question, it is my assumption that the accreditation statement will change everywhere it is posted (website, catalog, view books, etc.) as there can't be different accreditation statements posted. I will also copy Chris Richardson here just to confirm this practice. Chris R -- The accreditation statement is to change everywhere it appears, right?

I am also copying Deann here just to keep someone from ILIA in the loop on all of this.

Ellyn

Ellyn McLaughlin, EdD
Assistant Vice President, Regional Accreditation
Accreditation & State Licensing
Phone: 443-671-1111
Fax: 443-671-1110

From: Valdez, Benjamin A.
Sent: Thursday, March 1, 2018 10:21 AM
To: McLaughlin, Ellyn D.
Subject: RE: Final Call -- HLC Eligibility Filing

Ellyn,

I wanted to follow-up with you regarding updating the website with the updated verbiage regarding our accreditation status. Is this something that we need to do at the campus level or will it be done through your office? Also, will we need to make this change in the catalog as well????

Thanks,

Benjamin A. Valdez, DBA, EdS
Vice President & Dean of Academic Affairs
bvaldez@aii.edu
Phone: 303-824-4879 I Fax: 303-284-4890

1200 Lincoln Street I Denver, CO 80203
artinstitutes.edu/denver

-----Original Message-----

From: McLaughlin, Ellyn D.
Sent: Tuesday, February 27, 2018 8:06 AM
To: McLaughlin, Ellyn D. <edmclaughlin@dcedh.org>; Ray, David <dray@aii.edu>; Yohe, Ben <byohe@aii.edu>; Lawrence, Jodie <jlawrence@aii.edu>; Valdez, Benjamin A. <bvaldez@aii.edu>; Pond, Josh <jpond@aii.edu>; Brown, Claude <clbrown@aii.edu>; Barton, Randall <rabarton@dcedh.org>; Baughman, Leslie <lbaughman@aii.edu>; DelSanto, Chris <cdelsanto@dcedh.org>; Monday, Elden <emonday@aii.edu>; Murphy, Shelly M. <smurphy@dcedh.org>; Richardson, Chris C. <crichardson@dcedh.org>; Surdo, Deann C. <dsurdo@aii.edu>
Cc: Chris Richardson <crichardson@lopescapital.com>
Subject: RE: Final Call -- HLC Eligibility Filing

For discussion on our call today (related to the HLC candidacy notification to students/public):

Response in the narratives:

The Art Institute of Colorado portrays clearly and accurately to the public its current status with the Higher Learning Commission and with specialized, and professional accreditation agencies.

The Illinois Institute of Art portrays clearly and accurately to the public its current status with the Higher Learning Commission and with specialized, and professional accreditation agencies.

Posting on the websites:

The Art Institute of Colorado is in transition during a change of ownership. We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. For more information ([link](#)).

The Illinois Institute of Art is in transition during a change of ownership. We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. For more information ([link](#)).

The remaining question is how/if the schools are to be disclosing the status during enrollment and recruitment at this time. Are the schools to inform students?

Ellyn McLaughlin, EdD
Assistant Vice President, Regional Accreditation Accreditation &
State Licensing
Phone: 443-671-1111
Fax: 443-671-1110

From: McLaughlin, Ellyn D.
Sent: Sunday, February 25, 2018 11:08 AM
Required: Ray, David; Yohe, Ben; Lawrence, Jodie; Valdez,
Benjamin A.; Pond, Josh; Brown, Claude; Barton, Randall;
Baughman, Leslie; DelSanto, Chris; Monday, Elden; Murphy, Shelly
M.; Richardson, Chris C.; Surdo, Deann C.
Optional: Chris Richardson
Subject: Final Call -- HLC Eligibility Filing
When: Tuesday, February 27, 2018 11:00 AM-12:00 PM.
Where: Conference Call

This will likely be our final team call before submission of the HLC Eligibility Filing, which is due March 1. The Eligibility Filing will include the following pieces:

PDF 1 – Description of the institution

PDF 2 – Narrative responses to all requirements, assumed practices, and core components
PDF 3 – File containing all evidentiary materials
HLC Action Plan for each institution

The colleges should bring all remaining questions/gaps to this call.

One specific point to discuss and confirm is the accreditation statement on the websites for both ILIA and AI Colorado. The current statement that is posted says “accredited” rather than the typical statement associated with HLC candidacy.

1-888-585-8475

Conference Room 456-486-846

Organizer ID 7622313

Exhibit 34

Date Transmitted: Aug. 23, 2018

From: Anthea Sweeney

Subject: *RE: Art Institutes: An Update*

Subject: RE: Art Institutes: An Update
Date: Thursday, August 23, 2018 at 1:15:28 PM Central Daylight Time
From: Jones, Diane
To: Barbara Gellman-Danley

And thanks so much for the introduction to Stephanie! The call was very helpful. If you have a moment, could you give me a call? [REDACTED]
Diane

From: Barbara Gellman-Danley [REDACTED]
Sent: Thursday, August 23, 2018 2:11 PM
To: Jones, Diane
Subject: Re: Art Institutes: An Update

Always here for you.
Barbara

Sent from my iPhone

On Aug 23, 2018, at 1:08 PM, Jones, Diane [REDACTED] wrote:

Thank you, Anthea. We have encouraged them to find transfer partners quickly and had over 100 schools on our webinar this week, so hopefully students of closing campuses will be able to start at a new school in September.
Diane

From: Anthea Sweeney [REDACTED]
Sent: Thursday, August 23, 2018 1:14 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Re: Art Institutes: An Update

We do have news on that. The team reports were issued to both institutions with mixed results:

- The team for Illinois Institute of Art indicated that the institution is in compliance with our requirements and recommended reinstatement of accredited status.
- The team for Art Institute of Colorado indicated non-compliance with the requirements and recommended withdrawal of candidacy status.
-

Our Board will make a decision considering these recommendations this Fall. In advance of that decision, a Board committee hearing will be scheduled in October for representatives of Art Institute of Colorado in order to provide appropriate due process. If candidacy status is withdrawn, the effective date would either coincide with the end of the term or with the closing date, rather than date of decision - that is up to the Board.

Institutional responses are due by August 27, 2018.

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Jones, Diane <[REDACTED]>
Sent: Thursday, August 23, 2018 10:55 AM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley
Subject: RE: Art Institutes: An Update

Thanks so much for the update, Anthea. I will remind them to send their accreditors updated staffing lists. Any news on the site visits?
Diane

From: Anthea Sweeney <[REDACTED]>
Sent: Thursday, August 23, 2018 11:52 AM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Art Institutes: An Update

Good Morning Diane,

I hope this message finds you well. I wanted to write and provide you an important update arising from HLC's continuing concerns about the information being provided to students by the institutions we accredit.

HLC's Obligations of Affiliation, which apply to all affiliated institutions including candidate institutions, require that ***"an institution portray its accreditation status with the Commission clearly to the public, including the status of its branch campuses and related entities."***

I have attached two screen shots taken at the indicated timestamps showing what is currently displayed on ILIA's website as an example. As you can see, the landing page simply indicates the institution is no longer enrolling students and redirects them to other related entities without any immediate indication that the Online Division, a major component of the teach-out plan is on Show-Cause. Students would need to click through several places to get to that information. In addition, while our own Mark of Affiliation appears on ILIA's webpage related to accreditation, there is no prominent statement that in fact indicates a pending closure. Students must click through our Mark of Affiliation to get to yet another link that takes them to our Public Disclosure Notice on our website, and we are concerned this means they are not receiving all pertinent information regarding all their options (including closed school

discharge).

Therefore, we will be requiring both Illinois Institute of Art and Art Institute of Colorado to publish the full text of our Public Disclosure Notice directly and prominently on their website. We will be providing detailed instructions to the institutions about this by letter by close of business tomorrow. We wanted you to be aware in advance in case you receive any communications from them inquiring about this.

On a separate note, if in fact you received a list of individuals at the institutional level responsible for leadership at Art Institute of Colorado per our previous conversation, please pass that information along. We understand from our evaluation that both the individual who previously served as president and the Chief Academic Officer have since departed.

Thank you. We continue to value your input and coordination.

Best Regards,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Lin [REDACTED]
Fax: [REDACTED]

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Exhibit 35

Date Transmitted: Jan. 23, 2018

From: Lisa Noack

Subject: *HLC Action Letter for EDMC Institutions*

Lisa Noack

From: Lisa Noack
Sent: Tuesday, January 23, 2018 8:27 AM
To: Michael.frola@ed.gov; herman.bounds@ed.gov
Subject: HLC Action Letter for EDMC Institutions
Attachments: EDMC Action Letter 1-12-18.pdf

On January 9, 2018, the HLC Board of Trustees reaffirmed its approval of the Illinois Institute of Art's and the Art Institute of Colorado's application for Change of Control, Structure or Organization, wherein certain assets of Education Management Corporation (including the assets of the Institutes) are acquired by Dream Center Education Holdings and related intermediaries, which was conditioned on the parties closing the transaction in mid-January 2018. The Action Letter detailing this reaffirmation is attached. HLC received notification that the transaction closing occurred on January 20, 2018, with the institutions having accepted all conditions stated in the Board's November 2017 Action Letter, as reiterated by the attached.

Best regards,

Lisa

Lisa Noack

Assistant to the President & Board

Higher Learning Commission

230 South LaSalle Street, Suite 7-500

Chicago, IL 60604-1411

Voice: [REDACTED] / Fax: [REDACTED]

E-mail: [REDACTED]

Exhibit 36

Date Transmitted: Feb. 12, 2018

From: Shelly Murphy

Subject: *RE: PDN – EDMC CofC Candidacy Jan 2018 Colo.pdf*

From: Frola, Michael <Michael.Frola@ed.gov>
Sent: Monday, February 12, 2018 6:55 PM
To: Murphy, Shelly M. <smurphy@dcedh.org>
Subject: RE: PDN - EDMC CofC Candidacy Jan 2018 Colo.pdf

Hi Shelly,

Per our discussion, the regulation regarding Institution of higher education is 600.4.

§600.4 Institution of higher education.

(a) An institution of higher education is a public or private nonprofit educational institution that—

- (1) Is in a State, or for purposes of the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and Federal TRIO programs may also be located in the Federated States of Micronesia or the Marshall Islands;
- (2) Admits as regular students only persons who—
 - (i) Have a high school diploma;
 - (ii) Have the recognized equivalent of a high school diploma; or
 - (iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;
- (3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located in accordance with §600.9;
- (4)(i) Provides an educational program—
 - (A) For which it awards an associate, baccalaureate, graduate, or professional degree;
 - (B) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or
 - (C) That is at least a one academic year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation; and
- (ii) May provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and
- (5) Is—
 - (i) Accredited or preaccredited; or**
 - (ii) Approved by a State agency listed in the Federal Register in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal student assistance programs.
 - (b) An institution is physically located in a State if it has a campus or other instructional site in that State.
 - (c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

Additionally, 600.2 Definitions defines preaccredited as follows:

Preaccredited: A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

Hope this is helpful,
Mike

From: Murphy, Shelly M. [mailto:smurphy@dcedh.org]
Sent: Tuesday, February 06, 2018 10:01 AM
To: Frola, Michael
Subject: PDN - EDMC CofC Candidacy Jan 2018 Colo.pdf

Mike,

Per our discussions this is the most recent letter from HLC, specifically the section “What this means for Students”

Exhibit 37

Date Transmitted: Mar. 6, 2020

From: Brent Richardson

Subject: *Letter to Chairman Robert C. "Bobby" Scott*

March 6, 2020

SENT BY EMAIL TO Tylease.Alli@mail.house.gov

The Honorable Robert C. ("Bobby") Scott
Chairman, Committee on Education and Labor
United States House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515-6100

Re: Dream Center Education Holdings

Dear Chairman Scott:

This letter is in response to your letter dated January 31, 2020 to me regarding Dream Center Education Holdings and its communications with the U.S. Department of Education.¹

QUESTION 1. Did you ever personally reach out to the Department of Education once Higher Learning Commission (HLC) sent Dream Center a public notice disclosure title[d] "From Accredited to Candidate" that stated the Illinois Institute of Art and the Colorado Art Institute were not accredited?

RESPONSE: As a preliminary matter, I note that the above referenced notice stated that the institutions "have transitioned to being a candidate for accreditation" and hold "a recognized status with HLC indicating the institution meets the standards for candidacy." In response to your question of whether Dream Center Education Holdings reached out to the Department of Education, yes, Dream Center Education Holdings contacted the Department of Education to express its objection to the position taken by HLC in January 2018 regarding accreditation of the Illinois Institute of Art and the Colorado Art Institute. The Department of Education official initially involved with the HLC issue was Mike Frola, Division Director, Office of Federal Aid.

- a. **If yes, did you have any meetings with any Department officials regarding the matter? Please name any officials you met with, the date of any meetings, and the Department's response and any directions given regarding the matter.**

RESPONSE: In February 2018, Shelly Murphy of Dream Center Education Holdings and I had a meeting with Mr. Frola, at which the issue of HLC accreditation of the Illinois

¹The Committee staff granted two extension requests, resulting in this response being due today, March 6, 2020.

Institute of Art and the Colorado Art Institute was discussed. There also was a meeting in April or May of 2018 attended by Mr. Richardson, Ms. Murphy, John Crowley and Randy Barton on behalf of Dream Center, and several Department of Education officials, including Under Secretary Auer Jones. However, I do not recall the HLC accreditation issue being expressly discussed at this later meeting.

QUESTION 2. To the best of your knowledge did Undersecretary Diane Auer Jones have first-hand knowledge that HLC's Change of Control Candidacy Status was not fully accredited under HLC's regulations prior to July 11, 2018?

RESPONSE: To the best of my knowledge, Under Secretary Auer Jones would have known prior to July 11, 2018 of the position of the HLC regarding the accreditation status of the Illinois Institute of Art and the Colorado Art Institute. Under Secretary Auer Jones attended a meeting in April or May 2018 between Dream Center Education Holdings and the Department of Education. Although I do not recall the HLC accreditation issue being discussed at that meeting, it stands to reason that meeting participants would have known about the HLC issue. In addition, when Dream Center Education Holdings was considering filing a court complaint against HLC, I received a call from Under Secretary Auer Jones who said that we should not file the lawsuit. Instead, Under Secretary Auer Jones said she was working with HLC and would resolve the matter through that process. This phone call would have occurred either in late May or in June 2018.

QUESTION 3. In May and June 2018 Dream Center was preparing to file a lawsuit against HLC regarding the accreditation status of the Illinois Institute of Art and the Colorado Art Institute.

RESPONSE: Counsel or Dream Center Education Holdings drafted a complaint against HLC regarding the accreditation status of the Illinois Institute of Art and the Colorado Art Institute.

a. Why was this lawsuit not filed at that time?

RESPONSE: The lawsuit was not filed at that time because Dream Center Education Holdings was hoping that the Department of Education could help resolve the accreditation status issue without the need for litigation that could take years before a favorable outcome ultimately was achieved. As noted above in June 2018 or earlier, Under Secretary Auer Jones called me and said that we should not file the lawsuit. Instead, Under Secretary Auer Jones was working with HLC and would get the reaccreditation dispute for the two schools resolved.

b. Did any Department official contact you to ask you not to file the lawsuit?

RESPONSE: Yes, in late May or in June 2018, Under Secretary Auer Jones asked us not to file the lawsuit against HLC so that Ms. Auer Jones could pursue a more informal and expedited resolution of the accreditation issue.

- c. **Did any Department official claim that they would assist in resolving Dream Center's accreditation dispute with HLC?**

RESPONSE: Yes, Under Secretary Auer Jones indicated that she would undertake efforts to facilitate an informal and expedited resolution of the HLC accreditation issue.

- d. **If anyone from the Department of Education contacted you personally regarding the lawsuit, please name the official, whether any discussions were initiated by you or the Department of Education, the content of any discussions, the date of any discussions, any actions of inactions you took as [a] result of any discussions, and any promises or agreements made between you and any Department officials.**

RESPONSE: Because Dream Center Education Holdings was asked by Under Secretary Auer Jones during a phone call in late May or in June 2018 not to file the lawsuit, Dream Center Education Holdings held off filing the lawsuit against HLC.

If you or your staff have any questions regarding the above information please contact our counsel, Stinson LLP, through Roy Goldberg or Chris Simpson (copied here).

Sincerely,



Brent Richardson

Copies: roy.goldberg@stinson.com; christopher.simpson@stinson.com

Exhibit 38

Date Transmitted: Mar. 8, 2018

From: Anthea Sweeney

Subject: *RE: Alternative Options for a Call*

Re: Alternative Options for a Call

Anthea Sweeney

Thu 3/8/2018 12:44 PM

To: Frola, Michael [REDACTED];

Cc: Samuel D. Kerr [REDACTED];

Thanks Mike,

We'll speak with you then on the conference line indicated.

Best,
Anthea

Anthea M. Sweeney, Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Frola, Michael [REDACTED] >
Sent: Thursday, March 8, 2018 10:09 AM
To: Anthea Sweeney
Cc: Samuel D. Kerr
Subject: Re: Alternative Options for a Call

Good morning,
We are available tomorrow at noon CST.
Thanks,
Mike

Sent from my iPhone

On Mar 8, 2018, at 6:30 AM, Anthea Sweeney [REDACTED] wrote:

Dear Mr. Frola,

Thanks for your patience while I arranged for alternative times to speak about the Dream Center/EDMC transaction. My colleague, Sam Kerr, who is a long-time peer reviewer and attorney will join the call. Sam has been working with HLC on a number of recent cases and was involved with this particular transaction.

Here are some options:

Friday March 9 (tomorrow) at 12 Noon Central or 3:00 p.m. Central
Wednesday March 14 at 8:30 a.m. Central or
Thursday March 15 at 1:00 p.m. Central.

We're hoping to connect with you tomorrow if possible to hear your concerns.

The Dial-in Information (regardless of which option is chosen) is:

Dial [REDACTED]

Conference Code: [REDACTED]

Please let us know which time works best for you and any other colleagues at the Department who wish to join. Thank you.

Best,

Anthea M. Sweeney, Ed.D.

Vice President for Legal and Governmental Affairs

Higher Learning Commission

230 South LaSalle Street, Suite 7-500

Chicago, IL 60604

Main Tel.: [REDACTED]

Direct Line: [REDACTED]

Fax: [REDACTED]

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Exhibit 39

Date Transmitted: May 30, 2018

From: Anthea Sweeney

Subject: *RE: Urgent Question Regarding Suspending a Required Evaluation*

Re: Urgent Question regarding Suspending a Required Evaluation

Anthea Sweeney

Thu 5/31/2018 8:15 AM

To: Daggett, Elizabeth [REDACTED];

Sensitivity Confidential

You too, Beth. I deeply appreciate your attentiveness at what was a critical decisionmaking moment yesterday.

Have a wonderful day.

Anthea Sweeney

[Get Outlook for Android](#)

From: Daggett, Elizabeth [REDACTED]
Sent: Thursday, May 31, 2018 8:11:15 AM
To: Anthea Sweeney
Subject: RE: Urgent Question regarding Suspending a Required Evaluation

Thank you for this additional information, Anthea. I have not shared this information and understand the need for discretion. Please keep me posted and let me know if you have any other questions. Thanks again and have a good day.
Beth

Elizabeth Daggett
Tel: [REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, May 30, 2018 1:52 PM
To: Daggett, Elizabeth
Subject: Re: Urgent Question regarding Suspending a Required Evaluation
Sensitivity: Confidential

Hi Beth,

I've been in meetings this morning, but thank you for this swift and clear response. I suspected there were no exceptions to the regulation, so we will continue our planning for the evaluations in July. I should add that we have not yet responded to the institutions request for Appeal, but plan to do so later today. I am asking that this information not be shared with the institutions by the Department.

The Commission agreed to extend the Board's conditional approval on the transaction when the institutions made it clear the transaction would not close within 30 days of initial Board action (due to pending state agency approvals for the subject institutions, as well as other non-HLC accredited

institutions involved in the transaction.) However, LGA at the time made it clear it would only seek that extension following acceptance by the institutions of the Board's conditions.

- The institutions accepted the Board's conditions via letter on January 4, 2018.
- HLC issued a second action letter extending the Board's approval on January 12, 2018.
- The transaction was finalized on January 20, 2018 (which explains the evaluation occurring this summer.)

The institutions first sent a "Letter of Protest" via email on February 2nd, 2018 to HLC, three weeks after the second Board action largely focused on language in HLC's Public Disclosure Notice. Our Appeals Procedure, which is available on our website, requires a letter of intent to appeal within two weeks of Commission action. HLC's response to the institutions' letter of February 2nd was silent on the matter of appeal. However, at that time HLC considered the immediate matter resolved rather simply by a modification to the institutions' Public Disclosure Notices, which while technically accurate in their original form, set forth a level of detail to which the institutions vigorously objected at the time.

Last week we received this recent letter demanding response by today regarding access to HLC's Appeal process. This comes as we are discovering the following problematic text on the institutions' websites:

"We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. Higher Learning Commission (230 S. LaSalle Street, Suite 7-500, Chicago, IL 60604-1413, 1.800.621.7440, www.hlcommission.org/)." (HLC's Mark of Affiliation is then correctly displayed.)

Despite language in the HLC Board's action letter of November 16, 2017 and repeated communications between Karen Peterson Solinski and their external counsel in early December 2017 and beyond, that acceptance of the Change of Control candidacy condition imposed by the HLC Board in its action letter would represent a form of status, *but not accredited status*, the institutions are now alleging that they did not fully understand what Change of Control candidacy would signify at the time they accepted the Board's condition. They have openly threatened litigation, absent access to the HLC Appeal process. Since they are specifically claiming they were "misled" (which places the effectiveness of their consent in doubt) and the full record of Karen's communications with the external counsel are not completely known, (some conversations took place in person or by phone without other HLC staff in attendance), we thought to provide the institutions' access to the Appeal process, though not required, might assist in limiting any ensuing litigation to arbitration (under HLC's Obligations of Affiliation).

I hope this additional background is helpful.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Daggett, Elizabeth [REDACTED]
Sent: Wednesday, May 30, 2018 7:50 AM
To: Anthea Sweeney
Subject: RE: Urgent Question regarding Suspending a Required Evaluation

Good morning, Anthea. Unfortunately, Section 602.24(b) does not provide any leeway for delaying the site visit for a change of ownership. The regulation is quite clear that the site visit must occur "as soon as practicable, but no later than six months after the change of ownership." There is no language related to the *approval* of the change of ownership by the agency in this section, so the appeal of such approval would not affect this requirement. Therefore, I do not see a way for HLC to delay the site visit and meet the regulations. Please let me know if you have any further questions.

In addition to your question, I guess I would have a question as to how the institution still has the opportunity to appeal a decision that occurred in November 2017? That seems like a very long window for the intent to appeal of any agency decision.

Beth

Elizabeth Daggett
Tel [REDACTED]
[REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, May 30, 2018 6:43 AM
To: Daggett, Elizabeth
Subject: Urgent Question regarding Suspending a Required Evaluation
Importance: High

Good Morning Beth,

I have an urgent question regarding whether HLC is allowed to suspend an evaluation that is required by federal regulations following an approval of a Change of Control transaction, if the reason for the suspension is the institutions have appealed an aspect of the HLC Board's decision. I believe you may be familiar with the case more generally: The Dream Center's acquisition of Art Institute of Colorado and Illinois Institute of Art (EDMC subsidiaries). As you may be aware, while HLC's Board approved the transaction, it did so with several conditions, one of which was to move the Institutes from Accredited to Candidate status under HLC policy. Such a decision is subject to appeal under our policies. The Institutes have indicated their intent to appeal.

In its November 16, 2017 action letter, among several other monitoring requirements, the HLC Board required a focused visit within six months to "*ascertain the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.*"

HLC understands the Institutes' appeal to rest on concerns related to being moved from Accredited to Candidate status. Meanwhile the HLC Board thought this condition was a necessary condition of its approval based on several factors, some of which are indicated above. **Do we have the ability to suspend this evaluation on the basis of the pending appeal and not run afoul of Department expectations? Is an exception even possible?** Since the transaction closed earlier this year, we had been planning for this required evaluation to occur in July. Please advise as soon as possible today.

Thank you,
Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

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Exhibit 40

Date Transmitted: June 24, 2018

From: David Harpool

Subject: *RE: DCEH and The Art Institutes*

Re: DCEH and The Art Institutes

Anthea Sweeney

Mon 6/25/2018 4:27 PM

To: David Harpool [REDACTED]

Cc: Barbara Gellman-Danley [REDACTED]; Mary E. Kohart [REDACTED];

Sensitivity Confidential

Good Afternoon,

We do indeed believe a call tomorrow would still be helpful. Please refer to the dial-in information previously provided by the external counsel's office.

Thanks,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: David Harpool <[REDACTED]>
Sent: Sunday, June 24, 2018 8:16 PM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley; Mary E. Kohart
Subject: RE: DCEH and The Art Institutes

I have my client's authority to agree to the following. Here is their request, which I believe to be in the best interest of the Commission, their students and my clients.

1. My clients will, through their ordinary course of business, provide a three-option teach-out plan, for each school within the Commission's region. Each of the schools, will provide their students, three paths/options to degree completion. Path one, is to complete the required course work for graduation, on their current campus, by 12/31/2018. We anticipate, based on our analysis that 1/3 of the students will graduate through the on-campus teach out. Path two, is the option for students to transfer to our online offering. Based on the number of students who have taken online courses, we anticipate 1/3 of the students will complete their degree online. Path three, is to transfer to other regionally accredited institutions, receiving credit for all courses taken and

permitted to pay for their remaining courses, at or below, our institutions current tuition. All three options, will be designed and implemented according to the Commission's teach-out plan guidelines and submitted for approval, no later than 30 days from your agreement, to this proposal. Ordinary course of business means, my client will continue to provide and adequately staff all services required to carry out the teach-out as they have provided prior to the teach-out.

2. All students who earned credits or graduated, from the time of the Schools respective initial accreditation through 12/31/2018, will be deemed to have attended or graduated from an accredited institution Further, that the schools are, have and will continue, to be accredited through 12/31/2018. These statements will be made clear and unambiguous, in our Statement of Affiliation and any required disclosure.

3. My client will, immediately upon approval of this agreement, cease to admit new students to any of the impacted schools.

Please let me know if this proposal is accepted, and whether or not you believe the call, scheduled for Tuesday, is necessary or beneficial.

From: Anthea Sweeney [REDACTED]
Sent: Thursday, June 21, 2018 4:37 PM
To: David Harpool
Cc: Barbara Gellman-Danley; Mary E. Kohart
Subject: Re: DCEH and The Art Institutes

Mr. Harpool,

Thank you for your message. I am responding on behalf of President Barbara Gellman-Danley who is currently away on HLC business. As you may be aware our Board of Trustees will be meeting soon. As a result, this is a very busy time and we are unable to accommodate an in-person meeting. Nevertheless, we would like the opportunity to provide our Board a full update regarding this matter and any proposal you wish to make may benefit from the Board's input.

For that reason, we are proposing a conference call, in lieu of a meeting at one of the following times in advance of our Board meeting:

Monday June 25 - 11:30 a.m. - 12:45 p.m. Central
Tuesday June 26 - 9:30 a.m. - 10:45 a.m. Central

Our external counsel, Mary Kohart Esq., will also be in attendance. A prompt response to this message confirming your availability and who else will be participating on the call would be greatly appreciated. I will then send out dial-in information.

Thanks in advance.

Best Wishes,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

-----Original Message-----

From: David Harpool [REDACTED]
Sent: Wednesday, June 20, 2018 3:08 PM
To: President [REDACTED]
Subject: DCEH and The Art Institutes

Dr. Barbara Gellman-Hanley

I am writing on behalf of our client, DCEH to request a meeting as soon as possible, to discuss the matters raised in our May 21, 2018 letter.

My clients are considering their options in terms of the Art Institutes and I believe a meeting may help us resolve this matter and avoid litigation.

David Harpool, J.D., PHD
Attorney at Law

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Exhibit 41

Date Transmitted: June 6, 2017

From: U.S. Department of Education

Subject: *Accreditation Effective Date*



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

DATE: June 6, 2017

TO: Executive Directors and Presidents,
Recognized Accrediting Agencies

FROM: Herman Bounds 
Director
Accreditation Division

SUBJECT: Accreditation Effective Date

The purpose of this correspondence is to clarify the U.S. Department of Education's (Department) expectation regarding the accreditation effective date used by accrediting agencies.

The Department of Education requires an accreditation decision to be effective on the date an accrediting agency's decision-making body makes the decision. It cannot be made retroactive, except to the limited extent provided in 34 C.F.R. § 602.22(b) with respect to changes in ownership.

Some questions have arisen as to whether the accreditation effective date can be the date of the on-site review. The answer is no. Sections 602.15(a) (3-6) of the Secretary's Criteria for Recognition (Criteria) clearly reference and distinguish an evaluation body and a decision-making body. The team that conducts the on-site review is an evaluation body and does not have decision-making authority. Establishing the accreditation date as the date of the on-site review is essentially giving that team decision-making authority, which is not in accordance with the Criteria.

As noted in 34 C.F.R. § 602.18, the Department expects the decision-making body to review the entire record, which includes information and documentation other than the on-site review team report, when making its accreditation decision. The on-site review team does not have the information necessary to make an accreditation decision for an accrediting agency, nor is it authorized to do so by the Criteria.

Therefore, any accrediting agency that does not use the date that an accrediting agency's decision-making body makes the decision as the accreditation effective date must amend its policies and cease this practice going forward.

My staff and I are available, as always, to respond to any questions you may have.

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Exhibit 42

Date Transmitted: June 26, 2018

From: Elizabeth Daggett

Subject: *RE: Memo from Herman Bounds*

FW: Memo from Herman Bounds

Daggett, Elizabeth

Tue 6/26/2018 2:14 PM

To: Anthea Sweeney

1 attachments (856 KB)

Memo to agencies re accreditation effective date.pdf;

FYI

Elizabeth Daggett

Tel:

From: Sheffield, Cathy

Sent: Tuesday, June 06, 2017 12:36 PM

To: New York Board of Regents-5; 'Accreditation Commission for Acupuncture and Oriental Medicine'; Accreditation Commission for Education in Nursing; Accreditation Commission for Midwifery Education'-2; Accreditation Council for Education in Nutrition and Dietetics; 'Accrediting Bureau of Health Education Schools'; 'Accrediting Commission of Career Schools and Colleges'; 'Accrediting Council for Continuing Education and Training'; 'American Bar Association'; 'American Board of Funeral Service Education'; 'American Council on Pharmaceutical Education'; 'American Dental Association'; American Occupational Therapy Association; 'American Optometric Association'; 'American Osteopathic Association (E-mail)'; 'American Physical Therapy Association'; 'American Podiatric Medical Association'; 'American Psychological Association'; 'American Speech-Language-Hearing Association'; 'American Veterinary Medical Association'; 'Association for Biblical Higher Education (E-mail)'; 'Association for Clinical Pastoral Education Inc'; 'Association for Clinical Pastoral Education Inc'; Association of Advanced Rabbinical and Talmudic Schools; Association of Institutions of Jewish Studies; Commission on Accreditation of Healthcare; Commission on Accrediting of the Association of Theological Schools (ats@ats.edu); 'Commission on Collegiate Nursing Education'; 'Commission on English Language Program Accreditation (E-mail)'; 'Commission on Massage Therapy Accreditation (E-mail)'; 'Council on Accreditation of Nurse Anesthesia Educational Programs (E-mail)'; Council on Chiropractic Education; Council on Education for Public Health; 'Council on Naturopathic Medical Education (E-mail)'; 'Council on Occupational Education (E-mail)'; 'Distance Education Accrediting Commission'; 'Joint Review Committee on Education in Radiologic Technology'; Karen Moynahan; 'Liaison Committee on Medical Education'; Middle States Commission on Higher Education; Middle States Commission on Secondary Schools; Middle States Commission on Secondary Schools; Midwifery Education Accreditation

Council [REDACTED]; 'Montessori Accreditation Council for Teacher Education' [REDACTED]; 'National Accrediting Commission of Career Arts & Sciences (NACCAS) (E-mail) ' [REDACTED]; 'National Asso of Schools of Art & Design' [REDACTED]; 'National Association of Nurse Practitioners in Women's Health' [REDACTED]; New England Association of Schools and Colleges Commission Institutions of Higher Education [REDACTED]; New York Board of Regents --2 [REDACTED]; New York State Board of Regents and Commissioner [REDACTED]; North Central Association of Colleges and Schools HLC [REDACTED]; North Central Association of Colleges and Schools The Higher Learning Commission [REDACTED]; Northwest Commission on Colleges and Universities [REDACTED]; Southern Association of Colleges and Schools Commission on Colleges [REDACTED]; 'Transnational Association of Christain Colleges and Schools (E-mail) ' [REDACTED]; Western Association of Schools and Colleges AccreditingCommission for Community and Junior Colleges [REDACTED]; Western Association of Schools and Colleges AccreditingCommission for Senior Colleges and Universities; [REDACTED]; Kansas Board of Nursing; Maryland State Board of Nursing [REDACTED]; Maryland State Board of Nursing 1 [REDACTED]; [REDACTED]; Missouri Board of Nursing 1 [REDACTED]; 'New York State Board of Regents public postsecondary(E-mail) ' [REDACTED]; North Dakota Board of Nursing [REDACTED]; Oklahoma Board of Career and Technology [REDACTED]; Oklahoma Board of Career and Technology Education [REDACTED]; Pennsylvania BCT [REDACTED]; Pennsylvania St BD VT [REDACTED]; Puerto Rico State Approval Agency ([REDACTED]); Puerto Rico Voc Ed ([REDACTED])

Cc: Bounds, Herman; Daggett, Elizabeth; Mula, Chuck; Harris, Nicole S.; Shultz, Rachael; McKissic, Stephanie; Lefor, Valerie

Subject: Memo from Herman Bounds

Dear Executive Directors:

The purpose of this correspondence is to clarify the Department of Education's expectation regarding the accreditation effective date used by accrediting agencies.

Thank you

Cathy Sheffield

Staff Assistant
Accreditation Group
LBJ 6W243

E-mail: [REDACTED]



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

DATE: June 6, 2017

TO: Executive Directors and Presidents,
Recognized Accrediting Agencies

FROM: Herman Bounds Jr. 
Director
Accreditation Division

SUBJECT: Accreditation Effective Date

The purpose of this correspondence is to clarify the U.S. Department of Education's (Department) expectation regarding the accreditation effective date used by accrediting agencies.

The Department of Education requires an accreditation decision to be effective on the date an accrediting agency's decision-making body makes the decision. It cannot be made retroactive, except to the limited extent provided in 34 C.F.R. § 602.22(b) with respect to changes in ownership.

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As noted in 34 C.F.R. § 602.18, the Department expects the decision-making body to review the entire record, which includes information and documentation other than the on-site review team report, when making its accreditation decision. The on-site review team does not have the information necessary to make an accreditation decision for an accrediting agency, nor is it authorized to do so by the Criteria.

Therefore, any accrediting agency that does not use the date that an accrediting agency's decision-making body makes the decision as the accreditation effective date must amend its policies and cease this practice going forward.

My staff and I are available, as always, to respond to any questions you may have.

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HLC-OPE 15327

Exhibit 43

Date Transmitted: June 27, 2018

From: Anthea Sweeney

Subject: *RE: Cmte on Accreditation Notes*

Re: Cmte on Accreditation Notes

Anthea Sweeney

Wed 6/27/2018 2:55 PM

To: Daggett, Elizabeth [REDACTED]

Cc: Bounds, Herman [REDACTED]

Perfect. Thank you so much. I have not heard back from Under-Secretary Jones as of yet. I look forward very much to speaking with you both.

Anthea

From: Daggett, Elizabeth [REDACTED] >
Sent: Wednesday, June 27, 2018 2:29 PM
To: Anthea Sweeney
Cc: Bounds, Herman
Subject: RE: Cmte on Accreditation Notes

Herman and I will call you at 4pm ET. Thanks.

Elizabeth Daggett

Tel: [REDACTED]

[REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, June 27, 2018 2:52 PM
To: Daggett, Elizabeth
Subject: Re: Cmte on Accreditation Notes

Yes. Please call my cell at [REDACTED] after 3.30p.m. your time. I am offsite. I need to speak with you too as Diane Auer Jones (new Under-Secretary) has now reached out to our President with different ideas about the Art Institutes, despite Herman's memo. I am urgently asked to reach her asap. I will look to connect with you after.

Thanks, Beth.

Anthea

Get [Outlook for Android](#)

From: Daggett, Elizabeth [REDACTED]
Sent: Wednesday, June 27, 2018 8:23:59 AM

To: Anthea Sweeney
Subject: RE: Cmte on Accreditation Notes

Hi, Anthea. I've taken a look at your proposal and have some questions. Do you have time this afternoon?
Beth

Elizabeth Daggett

Tel: ([REDACTED])
[REDACTED]

From: Anthea Sweeney [mailto:[REDACTED]]
Sent: Tuesday, June 26, 2018 3:28 PM
To: Daggett, Elizabeth
Subject: Fw: Cmte on Accreditation Notes

Beth,

Here is the concept as I described to the Committee on Accreditation (a subcommittee of our Board). They're still thinking it over. I would greatly value your opinion on such a policy before Thursday morning.
Thanks,
Anthea

From: Anthea Sweeney
Sent: Saturday, June 23, 2018 11:30 AM
To: [REDACTED]; John Richman [REDACTED]; [REDACTED]; [REDACTED]
Cc: Barbara Gellman-Danley
Subject: Re: Cmte on Accreditation Notes

Greetings All,



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for your consideration.

Very Respectfully,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

Exhibit 44

Date Transmitted: June 27, 2018

From: Michael Frola

Subject: *RE: HLC*

From: Murphy, Shelly M. </O=EDMC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FDC38C5E0CF42A38F409B909562306B-MURPHY, SHELLY>
Sent: Wednesday, June 27, 2018 1:34 PM
To: Frola, Michael <Michael.Frola@ed.gov>
Subject: Re: HLC

That would be great of Diane.
We were hoping this would be resolved as well. Thank you for your help and update.

Shelly Murphy
Chief Officer Regulatory and Government Affairs
Dream Center Education Holdings, LLC
Smurphy@dcedh.org
Cell: 480-650-4249

> On Jun 27, 2018, at 6:31 AM, Frola, Michael <Michael.Frola@ed.gov> wrote:

>
> Nothing additional. We were hoping that the HLC matter was going to get resolved so we finalize the program participation agreements.

> Also, I got word yesterday that Diane Jones was going to reach out to HLC.

> -----Original Message-----

> From: Murphy, Shelly M. [mailto:smurphy@dcedh.org]
> Sent: Wednesday, June 27, 2018 9:25 AM
> To: Frola, Michael
> Subject: Re: HLC

> I do recall the letters, but was wondering if there was anything additional. Thanks -sm

> Shelly Murphy
> Chief Officer Regulatory and Government Affairs
> Dream Center Education Holdings, LLC
> Smurphy@dcedh.org
> Cell: 480-650-4249

>> On Jun 27, 2018, at 6:21 AM, Frola, Michael <Michael.Frola@ed.gov> wrote:

>> We sent out interim determinations (see attached) for the HLC schools to be considered non-profit during our TPPA review so the school remained title IV eligible. We had to do this because HLC put the schools on pre-candidacy status.

>> -----Original Message-----

>> From: Murphy, Shelly M. [mailto:smurphy@dcedh.org]
>> Sent: Wednesday, June 27, 2018 9:16 AM
>> To: Frola, Michael
>> Subject: HLC

>> Hi Mike,

>> If i recall the Department determined that if DECH schools were NFP HLC could not put the schools in pre- candancy status?

>> Shelly Murphy
>> Chief Officer Regulatory and Government Affairs
>> Dream Center Education Holdings, LLC
>> Smurphy@dcedh.org
>> Cell: 480-650-4249

>> -----

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>> <Illinois Inst of Art Interim Decision on Conversion to Nonprofit 5.3.pdf>
>> <Ai CO Interim Decision on Conversion to Nonprofit 5.3.pdf>

>
> -----
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Exhibit 45

Date Transmitted: July 3, 2018

From: Diane Jones

Subject: *RE: Dream Center/Art Institutes Follow-up*

Re: Dream Center/Art Institutes Follow-Up

Anthea Sweeney

Tue 7/3/2018 7:52 PM

To: Jones, Diane [REDACTED];

Cc: Barbara Gellman-Danley [REDACTED];

Dear Diane,

We can certainly connect on Thursday or Friday this week. My schedule offers the most flexibility on in the afternoons on both days. However, feel free to call my direct line at your convenience.

Thanks so much for your response. Have a Happy 4th.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Jones, Diane [REDACTED]
Sent: Tuesday, July 3, 2018 1:36 PM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley
Subject: RE: Dream Center/Art Institutes Follow-Up

Thanks so much, Anthea, for the update. We will be issuing guidance to address the retroactive accreditation date more generally, but I will also be happy to provide a written letter to HLC on this specific issue to make sure that you don't need to worry about how this might impact your own recognition at a later time. I've been on the receiving end of enough ED decisions to know that having things in writing is critically important!!!

We agree that this is a challenging situation, and are grateful that HLC and other accreditors are willing to work with us to make sure that these are high quality teach-outs that serve the best interests of students.

I have meetings until around 5pm, so if we don't connect today, can we touch base later this week?

Thanks,
Diane

From: Anthea Sweeney [REDACTED]
Sent: Tuesday, July 03, 2018 2:08 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Dream Center/Art Institutes Follow-Up
Importance: High

Dear Under-Secretary-Jones,

I write to follow up on our recent telephone conversation on June 28 and at the request of Dr. Gellman-Danley concerning the Art Institutes. This morning a working group met to discuss the recent developments with the institutions. We appreciate your desire to coordinate required teach-out processes to ensure consistency across the multiple regional accreditors.

Here is our current status:

- 1) The Institutes will both very shortly host focused visits that are required by federal regulation after their recent transaction on July 16-17, 2018.
- 2) We believe our Board can consider an earlier reinstatement of accreditation than initially contemplated in its original action letter based on the best interests of students.
- 3) What we would like to request is written assurance from the Department of Education that an HLC Board decision to have the Institutes' accredited status reinstated effective as of January 19, 2018 through December 31, 2018 (in other words ensuring continuous accredited status and eliminating the period of Change of Control candidacy) will be acceptable to the Department of Education and will not jeopardize HLC's recognition.

As you can appreciate, these are highly extraordinary circumstances and we want to be sure our Board is fully apprised of the Department's unequivocal support for what will be a unique action. At the same time, we share your concern for the welfare of students currently enrolled at the Institutes.

I am available through close of business today at my direct line below and will reach out by phone to follow up later this afternoon.

Thank you.

Best Regards,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

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Exhibit 46

Date Transmitted: July 3, 2018

From: Diane Jones

Subject: *RE: Sample Student Letters*

From: [Jones, Diane](#)
To: [Murphy, Shelly M.](#)
Subject: RE: Sample student letters
Date: Tuesday, July 3, 2018 12:01:24 PM

3pm works

-----Original Message-----

From: Murphy, Shelly M. [<mailto:smurphy@dcedh.org>]
Sent: Tuesday, July 03, 2018 9:06 AM
To: Jones, Diane
Subject: Re: Sample student letters

I just realized Brent is on a flight but could be available at 10am PST 1pm EST? Would that work or the 3pm EST ?

Shelly Murphy
Chief Officer Regulatory and Government Affairs
Dream Center Education Holdings, LLC
Smurphy@dcedh.org
Cell: 480-650-4249

> On Jul 3, 2018, at 5:28 AM, Jones, Diane <Diane.Jones@ed.gov> wrote:
>
> Noon works for me. Could you send me a calendar invite with a call in number?
> Thanks
>

> -----Original Message-----

> From: Murphy, Shelly M. [<mailto:smurphy@dcedh.org>]
> Sent: Monday, July 02, 2018 10:27 PM
> To: Jones, Diane
> Subject: Re: Sample student letters
>

> Is the noon EST ? We will accommodate whichever is best for you.
>

> Shelly Murphy
> Chief Officer Regulatory and Government Affairs
> Dream Center Education Holdings, LLC
> Smurphy@dcedh.org
> Cell: 480-650-4249
>
>

>> On Jul 2, 2018, at 6:35 PM, Jones, Diane <Diane.Jones@ed.gov> wrote:
>>

>> Would noon to 1pm or 3pm to 4pm work for you? You can have as many people as necessary on the call. I'm not sure who does what in your organization, but it would be good to have the people who you brought to the FSA meeting.

>> Diane
>>

>> Sent from my iPhone
>>

>>> On Jul 2, 2018, at 9:30 PM, Murphy, Shelly M. <smurphy@dcedh.org> wrote:
>>>

>>> Hi Diane,
>>>

>>> That's great news! I've been on the edge of my seat all day. Yes - a call tomorrow would be great. What time works best and who should I have on the call? Thank you again, very much appreciate all of your help. -Shelly

>>>

>>> Shelly Murphy

>>> Chief Officer Regulatory and Government Affairs

>>> Dream Center Education Holdings, LLC

>>> Smurphy@dcedh.org

>>> Cell: 480-650-4249

>>>

>>>

>>>> On Jul 2, 2018, at 6:26 PM, Jones, Diane <Diane.Jones@ed.gov> wrote:

>>>>

>>>> Hi Shelly,

>>>> I had a good call with the regional accreditors who agreed to work together but, like you, recognize the need to move swiftly. Can we have a call tomorrow?

>>>> Diane

>>>>

>>>> Sent from my iPhone

>>>>

>>>>> On Jun 30, 2018, at 1:25 PM, Murphy, Shelly M. <smurphy@dcedh.org> wrote:

>>>>>

>>>>> This is really helpful, thank you so much.

>>>>>

>>>>> Shelly Murphy

>>>>> Chief Officer Regulatory and Government Affairs

>>>>> Dream Center Education Holdings, LLC

>>>>> Smurphy@dcedh.org

>>>>> Cell: 480-650-4249

>>>>>

>>>>>

>>>>>> On Jun 30, 2018, at 5:11 AM, Jones, Diane <Diane.Jones@ed.gov> wrote:

>>>>>>

>>>>>> Hi Shelly,

>>>>>> I was unable to find sample letters, but it is possible that your outside counsel can get sample letters from others who have conducted successful teach-outs. In general, these letters provide the student with information about the teach-out plan in general (such as when the campus will close, who will continue to lead it until then, and what classes and services will continue to be available until the last day of operations); about the specific plan for that student to complete his or her program (such as an in-place teach-out or a transfer to a partnering institution) and the timeline and requirements for doing so; and any financial relief that the closing school is providing (such as tuition discounts for the remainder of the program or scholarships to cover any tuition increase that the partnering institution will have relative to the tuition of the closing school).

>>>>>>

>>>>>> The letter should also explain that the teach-out plan has been approved by the school's accreditor and that the student who completes the teach-out will complete their program at an accredited institution (if that is, in fact, the case).

>>>>>>

>>>>>> Typically a member of the school's faculty or staff meet with each student to walk through the teach-out plan, answer any questions, and address student concerns. The announcement of a campus closure is typically very upsetting to students and faculty, and absent clear information about the opportunity each student has to complete the program, students become very worried that they will not be able to complete their program. So teach-out letters provide in writing to the student the information that they need to help them understand what comes next. The fact that it is in writing helps them over the coming days and weeks to better understand their opportunities and provides a commitment from the school to support them until the end of the teach-out.

>>>>>>

>>>>>> Many institutions have the student sign the form to acknowledge their understanding that they need to adhere to the teach-out plan in order to complete their program, and that if they take time off or reduce their course load, they will not be able to complete the program at the closing school. The situation may be different if the teach-

out plan involves transferring to a partner institution.

>>>>>>

>>>>>> Keep in mind that any student unable to complete his or her program or transfer his or her credits to another institution to complete the program is entitled to a closed school loan discharge (meaning that all federal student loans associated with enrollment at the institution are forgiven) and the Department will recoup losses associated from closed school discharges from the school or its parent organization. There may be some students who do not wish to continue their education or complete their program, and under our current regulations, these students are entitled to a full refund from the school.

>>>>>>

>>>>>> Students who left the institution within 120 days prior to its closure are also entitled to a closed school loan discharge, but some of them may actually rather complete the program if given the opportunity. So some schools send letter to students who did not complete the program before, but who are close enough to finishing at the teach-out campus that they could do so before the closure, or who may wish to enroll in on-line classes offered by campuses that will continue to operate or attend another ground campus that will continue to operate, in order to complete their program. You need to carefully determine which non-completers could actually complete the program during the teach-out period before you contact them. Of course, if their programs is available on line, you may simply want to inform them that the campus is closing, but the online campus will enable them to complete their program in the future. In this case, you may not want to add them to the teach-out, but instead may simply want to let them know that they still have an option to complete their program if they so desire.

>>>>>>

>>>>>> So the point of the letter is to inform students, protect them, make sure they understand what opportunity(ies) they have to complete the program if that is still their goal, and to make it clear exactly what a teach-out or transfer requires of the student. It also is the institution's commitment to the student to continue providing classes and services equivalent to those that were provided prior to the announcement of the teach-out (with the exception of the admissions function, which can end the day the teach-out is announced).

>>>>>>

>>>>>> Some accreditors will want to review the letter, and all will require you to keep a copy on file and provide regular updates throughout the teach-out to show which students are still on track to complete and which are not (and what the institution has done to communicate with students who are no longer on track).

>>>>>>

>>>>>> I hope this helps.

>>>>>> Diane

>>>>>>

>>>>>> -----Original Message-----

>>>>>> From: Murphy, Shelly M. [<mailto:smurphy@dcedh.org>]

>>>>>> Sent: Friday, June 29, 2018 8:11 PM

>>>>>> To: Jones, Diane

>>>>>> Subject: Sample student letters

>>>>>>

>>>>>> Hi Diane,

>>>>>> Do you have a sample of the student letters that communicates teach-out options? For example that include the 1yr Return option. Thank you

>>>>>>

>>>>>> Shelly Murphy

>>>>>> Chief Officer Regulatory and Government Affairs

>>>>>> Dream Center Education Holdings, LLC

>>>>>> Smurphy@dcedh.org

>>>>>> Cell: 480-650-4249

>>>>>>

>>>>>> -----

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>>>>>>

>>>>>> -----

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>>>>

>>>> -----

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Exhibit 47

Date Transmitted: July 3, 2018

From: Shelly Murphy

Subject: *Re: Call with Diane Jones*

From: [Murphy, Shelly M.](#)
To: [Randall Barton](#)
Cc: [Richardson, Brent D.](#); [Crowley, John E.](#)
Subject: Re: Call with Diane Jones
Date: Tuesday, July 3, 2018 12:34:16 PM

The call is noon AZ. Deb will be sending a meeting invite soon

Shelly Murphy
Chief Officer Regulatory and Government Affairs
Dream Center Education Holdings, LLC
Smurphy@dcedh.org
Cell: 480-650-4249

On Jul 3, 2018, at 8:45 AM, Randall Barton <rbarton4953@gmail.com> wrote:

Shelly...any word on the schedule with Diane Jones call?

On Mon, Jul 2, 2018 at 8:10 PM, Murphy, Shelly M. <smurphy@dcedh.org> wrote:

Hi All,

Diane has requested a call with the group from the FSA/ DC meeting for tomorrow. Please hold your schedule for time confirmation. It will either be 9:30am or noon PST. I'm pending time zone confirm.

Shelly Murphy
Chief Officer Regulatory and Government Affairs
Dream Center Education Holdings, LLC
Smurphy@dcedh.org
Cell: 480-650-4249

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--

Randall K. Barton
Mobile: 918-200-1000

Exhibit 48

Date Transmitted: July 3, 2018

From: Randall Barton

Subject: *Re HLC – Any News*

From: [Randall Barton](#)
To: [Ronald L. Holt](#)
Cc: [Crowley, John E.](#); [David Harpool](#); [Garrett, Chad](#); [Richardson, Brent D.](#); [Richardson, Chris C.](#); [Murphy, Shelly M.](#)
Subject: Re: HLC - Any News?
Date: Tuesday, July 3, 2018 5:37:43 PM

We just got off the phone with DOE. It appears HLC is in sync with retro accreditation and teach out plans. Dianne at all 3 accreditors on and they will all agree to one plan with Department blessing and hopefully funding from the LOC.

On Tue, Jul 3, 2018 at 2:27 PM Ronald L. Holt <[REDACTED]@rousefrets.com> wrote:

Hi All, based on the media stories, I am sure you are quite busy dealing with lender issues and other ramifications of moving forward on plans to close 30 campuses. My only purpose in writing is to ask whether we have heard from DOE about its efforts to get HLC to accept our proposal to reinstate accreditation for ILIA and AIC? Ron

Ronald L. Holt, Attorney
[REDACTED]



[1100 Walnut Street, Suite 2900](#)
[Kansas City, Missouri 64106](#)
www.rousefrets.com

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--

Randall K. Barton

Mobile: [REDACTED]

Exhibit 49

Date Transmitted: July 25, 2018

From: U.S. Department of Education

Subject: *Retroactive establishment of the date of accreditation*



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

MEMORANDUM

DATE: July 25, 2018

TO: Accrediting Agency Executive Directors and Presidents

FROM: Diane Auer Jones, Principal Deputy Under Secretary, Delegated to Perform the Duties of Under Secretary and Assistant Secretary for the Office of Postsecondary Education 

SUBJECT: Retroactive establishment of the date of accreditation

The purpose of this correspondence is to retract the U.S. Department of Education's June 6, 2017, guidance regarding accreditation effective dates used by accrediting agencies. In the earlier guidance document, the Department determined that an agency could not establish a retroactive accreditation date due to the fact that key events in the initial recognition process, such as site visits, are not conducted by the agency's decision-making body.

Upon further consideration, the Department agrees with the recommendation provided by the National Advisory Council for Institutional Quality and Improvement and will permit the retroactive application of a date of accreditation, following an affirmative accreditation decision, as described below.

Our change of position is based on our recognition that some programmatic or specialized accreditors require a program to enroll and/or graduate one or more students prior to rendering a final accreditation decision for that program. Our June 6, 2017, policy would render students who enrolled during the accreditation review period, as is required by some accreditors, ineligible for certain credentialing opportunities or jobs even though they completed the program that was awarded accreditation based on the quality of the program during the time these students were enrolled.

Therefore, the Department will now permit agencies to establish a retroactive accreditation date that goes back no farther than the beginning of the initial accreditation review process to ensure that credits and credentials awarded to students who were enrolled or completed a program during the formal initial accreditation review, or a review following a change in ownership or control, are from an accredited program.

The initial accreditation review process begins on the date on which the accreditor completes its review of the program's initial application for accreditation or change of ownership or control

review and places the program on the pathway for accreditation or reinstatement of accreditation. Some accreditors use the term applicant status, candidacy status or pre-accreditation status to describe the point at which the program is officially recognized as being on the pathway to accreditation, but this terminology is not required as long as the accreditor has a process in place to receive, review and approve initial or change of ownership or control applications, and upon an affirmative application review decision (which can be made by agency staff, an agency decision body or a subcommittee of an agency decision body), consider the program to be in the process of seeking accreditation or reinstatement of accreditation. The initial accreditation review process does not begin the day an application is submitted by the program or the date on which the application was received by the accreditor, but instead on the date on which the application was approved and the program was permitted to pursue accredited status, or on the date on which ownership or control changed.

In the event that the initial application review is extended by the accreditor, including to provide additional time for the program to graduate an initial cohort or come into full compliance based on a good cause determination by the accreditor, then the initial review period extends to the date agreed to by the program and the accreditor. All students enrolled during that time period, including the extension, may be considered to have enrolled in or graduated from an accredited program. However, if the initial application results in denial and a new application must be submitted to initiate a new review process, the students who enrolled in or completed the program during the initial application process would not be eligible to benefit from a retroactive effective date based on an affirmative award resulting from the second initial application for accreditation, except that if accreditation was granted prior to that student's graduation, the student would then be considered to have graduated from an accredited program.

Accreditors that utilize retroactive establishment dates to serve students enrolled in programs that receive an affirmative accreditation decision may elect to establish the effective date based on their standards and criteria and the approval of the agency's appropriate decision-making body. Our original guidance suggested that the date of accreditation had to coincide with an affirmative decision of the agency's relevant body. However, none of the regulations cited in our prior guidance specify that accreditation can only be granted on a prospective basis. *See* 34 C.F.R. §§ 602.15, 602.18, 602.22. Indeed, the fact that one of the regulations contains an express prohibition on retroactive accreditation in one specific context (when there has been a substantive change) strongly suggests that there is not a general rule prohibiting retroactive accreditation, since such a general rule would make a specific prohibition unnecessary. *See* 34 C.F.R. § 602.22(b). And although it is true that the decision-making body is distinct from the evaluation body, and that the evaluation body that conducts the on-site review does not have decision-making authority, it does not follow that the decision-making body is prohibited from giving retroactive effect to an accreditation decision, either specifically back to the date of on-site review or back to any other prior date. We now recognize that the agency's decision-making body, though potentially not involved directly in an event that establishes the retroactive date,

will be making a decision about the program's accreditation status and should be able to determine a retroactive date of accreditation based on the agency's standards and criteria and the program's demonstrated ability to meet certain milestones. The effective date may go back as far as, but cannot be prior to, the date on which the agency completed the review of the program's application and officially recognized the program as being in the accreditation review process.

If you have any questions about the retraction of our earlier guidance or the revised guidance provided herein, do not hesitate to contact Herman Bounds, Director of Accreditation at (202) 453-6128.

Exhibit 50

Date Transmitted: July 30, 2018

From: Diane Jones

Subject: *Re: Art Institutes: Teach Out Plans: HLC's Acknowledgement of Receipt*

RE: Art Institutes

Jones, Diane [REDACTED]

Mon 7/30/2018 6:48 PM

To: Anthea Sweeney [REDACTED]

Cc: Barbara Gellman-Danley [REDACTED]

Hi Anthea,

This is very helpful and I appreciate that you took time during your vacation to answer me. I thought you were coming back from vacation this week, so my timing was off and I apologize for that.

Thanks for the explanation about transcripts – I'll add this to my list of things to follow up on.

The 25% rule I was talking about is the residency requirement. We call it the 25% rule as an internal short-hand, but it is the residency requirement that I was referring to and should have used the correct terminology. Sorry about that.

Thanks, again, for the information,
Diane

From: Anthea Sweeney [REDACTED]
Sent: Monday, July 30, 2018 5:49 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Re: Art Institutes

Hi Diane,

Thanks for your email. I'll try to respond to your questions as best I can. However, I want to emphasize we have not previewed any specific recommendations to the Institutes prior to their receipt of the draft reports which are being dispatched this week by the team chairs for correction of errors of fact.

Historically speaking, whenever an institution that was seeking accreditation surmised that HLC would deny accreditation, that institution either voluntarily resigned candidacy status before our Board took action, or withdrew its application for initial accreditation (depending on how far along it had progressed). Either way, the institution acted preemptively to avoid such an action on its record. Nevertheless, in all such cases, students who have graduated from such institutions are considered to have graduated from unaccredited institutions. This would also be the case for students who graduated 31 days prior to a positive HLC decision granting initial accreditation. Based on our policy, those students

would have also graduated from an unaccredited institution.

So here are the key responses to your questions regarding these institutions:

- i) Students who graduated from the Institutes prior to January 20, 2018 (the effective date of Change of Control candidacy) graduated from accredited institutions. If that is not already clear on their transcripts, the Institutes (or later, the entity with ongoing responsibility for student records) should accompany all transcripts with an official letter or notation that makes this fact clear.
- ii) Also, any credits earned prior to January 20, 2018 were earned from accredited institutions for the same reason.
- iii) Those students who graduated after January 20, 2018 and any credits earned after that date (unless and until reinstatement occurs) are from unaccredited institutions.

HLC has a general expectation based on its requirements related to integrity and transparency that transcripts be accurate. That general expectation includes any representation regarding the institution's accreditation status. However, HLC has never specifically articulated in its requirements what should be on any institution's transcript. Because of the complexity of this case and the way things evolved here, the absence of any notation or any letter accompanying a transcript, is likely to result in a default assumption that is incorrect: either that a) the Institutes are and have always been accredited, or b) that the Institutes are not and were never accredited. The truth is more likely to be nuanced, which demands more of an explanation from the Institutes and/or the entity with ongoing responsibility for student records.

I am unclear as to which 25% rule you are referring (hopefully, this has not been confused with our contractual arrangements requirements?). However, the major difference between transfer partners and teach-out partners is this: transfer partners evaluate credits based on their own transfer policies and may or may not accept all of those credits. Also transfer institutions deal with a specific population, namely students who are more than a year out from graduating. On the other hand, teach-out partners by virtue of a contract called a "teach-out agreement "are agreeing to waive their own institution's residency requirements, and essentially accepting graduating students and their credits as they find them, assuming those students are graduating within a year.

I hope these responses are helpful.

Best Wishes,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: 3 [REDACTED] 2

From: Jones, Diane [REDACTED]
Sent: Sunday, July 29, 2018 9:13 AM

To: Anthea Sweeney
Cc: Barbara Gellman-Danley
Subject: RE: Art Institutes

Hi Anthea,

Barbara mentioned that the reports for the two campus visits are due to you soon. In follow-up to the group call that we had a week or so ago, I notified Dream Center that they must have a transfer institution or teach-out partner identified for every student at their two schools in candidacy status since accreditation may be denied. I emphasized to them even prior to the site visits that these are not pro forma visits, and that site visits are particularly important for schools in teach-out so that accreditors can be assured that students are receiving a high quality education, including under the challenging situation of a teach-out.

Thanks for reminding me that even if the campus is not accredited, other institutions may still accept credits from AI (although that is a decision up to the receiving institution), although AI campus leaders will need to work with transfer partners to satisfy any questions or concerns the transfer partner(s) may have about those credits. I know that there are a number of campuses near AI in Chicago that have similar programs, but I'm not as familiar with the location and offerings of schools in Colorado. In both cases, however, I have encouraged Dream Center to identify partners who could take all of the students in transfer or through a teach-out partnership. I also explained to Dream Center the difference between transfer partners and teach-out partners with regard to the 25% rule.

If the campuses are not accredited, does HLC still consider the credits earned while the campuses were accredited (prior to the change of control) to have been earned from an accredited institution?

Since your current retro-accreditation policy goes back only 30 days (during our early conversations, I had confused your policy with SACS policy and thought it went back a year), it seems as though even if there is a positive decision, there will still be a period of time during which students who graduated may have graduated from an institution in candidacy status, not an accredited institution. What does HLC require of an institution if it issues degrees while in candidacy and then the campus is denied accreditation? Do those transcripts need to be marked in such a way to indicate the campus's accreditation status for each semester?

Sorry for the questions, but I want to make sure I know what your policies are in the event of a negative decision at one or both campuses. I haven't before had to navigate a situation in which a school in candidacy status closes either before receiving accreditation or is denied accreditation, so I need your guidance.

Thanks,
Diane

From: Anthea Sweeney [mailto:anthea.sweeney@hlc.edu]
Sent: Friday, July 20, 2018 7:59 AM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Re: Art Institutes: Teach Out Plans: HLC's Acknowledgement of Receipt

Thanks so much!!

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From: Jones, Diane [REDACTED]
Sent: Friday, July 20, 2018 6:51:34 AM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley
Subject: Re: Art Institutes: Teach Out Plans: HLC's Acknowledgement of Receipt

Hi Anthea

I told DCHC to provide every accreditor with full staff lists for each campus and to provide immediate notification to the accreditor whenever there is a change in leadership staff. I will remind them that they must provide you the name of the CO President right away.

Diane

Sent from my iPhone

On Jul 20, 2018, at 5:05 AM, Anthea Sweeney [REDACTED] wrote:

Diane,

Thank you for this detailed and thorough update. We appreciate your insistence that the parties adhere to HLC requirements.

My only question is whether you were provided the exact name of the individual who is/would be serving as campus president in Colorado? If not, this is a crucial follow up question. We were informed by our peer reviewers that the institution's president resigned a couple weeks ago and there appears to be no plan in place to replace him. Knowing precisely the identity of the individual they are referring to will be critical to our communications with the institution.

We will certainly keep you informed of further developments in the coming weeks and look forward to our next biweekly conference call.

Thanks so much, Diane.

Best Wishes,
Anthea

Anthea Sweeney, J.D., Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South Lasalle Street
Chicago IL 60604
Direct dial: [REDACTED]

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From: Jones, Diane
Sent: Thursday, July 19, 10:17 PM
Subject: RE: Art Institutes: Teach Out Plans: HLC's Acknowledgement of Receipt

To: Barbara Gellman-Danley
Cc: Anthea Sweeney

Hi Barbara and Anthea,

I wanted to let you know that in response to the student complaint you received, tomorrow the campus president will be sending written communication to all students, faculty and staff correcting this information to make sure that students realize that the Illinois and Colorado campuses are candidates for accreditation, but are not accredited. The communication will also make it clear that the site visits have taken place, but that the institutions are not accredited and will not be accredited unless HLC makes the decision to grant accreditation. The communication will also make it clear that if HLC does grant accreditation, it is HLC that will determine the date on which that accreditation is effective and until that time, the institution is not accredited.

The campuses have been instructed to host transfer fairs and to identify transfer institutions or teach-out institutions for all students. Because the Pittsburgh campus is now on show-cause, DCHC has been informed that they must tell any student who wishes to transfer to the on-line AI campus that the institution is on show cause and they must also identify a non-DCHC online institution to serve as a transfer institution if they wish to provide a transfer option to their students.

DCHC has been instructed to make sure that students are provided with information about closed school discharges and a link to the Department's teach-out web page.

They also understand that they must provide the additional information HLC requested in response to their teach-out plan.

More to follow, but I did want you to know that they will issue a communication tomorrow to correct the information provided by the person who spoke with students.

Best,
Diane

From: Barbara Gellman-Danley [REDACTED]
Sent: Wednesday, July 18, 2018 12:11 AM
To: Jones, Diane
Cc: Anthea Sweeney
Subject: Re: Art Institutes: Teach Out Plans: HLC's Acknowledgement of Receipt

Good luck!
Thanks for asking all of us our "side" of the story.
Barbara

Sent from my iPhone

On Jul 17, 2018, at 10:25 PM, Jones, Diane [REDACTED] wrote:

Thanks so much for sharing this, and for all of the information you provided on the call. I am much better prepared for the meeting tomorrow thanks to all of you, and I will get back to you soon.
Diane

From: Anthea Sweeney [REDACTED]
Sent: Tuesday, July 17, 2018 2:30 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Art Institutes: Teach Out Plans: HLC's Acknowledgement of Receipt
Importance: High

Dear Diane,

Attached is HLC's acknowledgement of the Teach-Out plans in which we articulated our main concerns, as well as our policies and procedures which may aid with your meeting tomorrow.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Anthea Sweeney
Sent: Thursday, July 12, 2018 12:07 PM
To: Monday, Elden; Ramey, Jennifer A.; byohe; [REDACTED];
[REDACTED]
Cc: Barbara Gellman-Danley; Paul Koch; [REDACTED]
Subject: Re: Teach Out Plans: Acknowledgement of Receipt

Dear All,

The attached documents are provided as enclosures to supplement the content of the letter most recently transmitted.

Thank you.

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]

Fax: [REDACTED]

From: Anthea Sweeney

Sent: Thursday, July 12, 2018 11:56 AM

To: Monday, Elden; Ramey, Jennifer A.; byohe; [REDACTED];
[REDACTED]

Cc: Barbara Gellman-Danley; Paul Koch; [REDACTED]

Subject: Teach Out Plans: Acknowledgement of Receipt

Dear Presidents Monday and Ramey,

Attached is important correspondence from the Higher Learning Commission for your review.

Regards,

Anthea M. Sweeney, J.D. Ed.D.

Vice President for Legal and Governmental Affairs

Higher Learning Commission

230 South LaSalle Street, Suite 7-500

Chicago, IL 60604

Main Tel.: [REDACTED]

Direct Line: [REDACTED]

Fax: [REDACTED]

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Exhibit 51

Date Transmitted: Oct. 31, 2018

From: Diane Jones

Subject: *Letter to President Gellman-Danley*



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

October 31, 2018

By E-mail Transmission Only

Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, Illinois 60604

**Re: Art Institute of Colorado and the Illinois Institute of Art – Change of Control
Candidacy Status**

Dear Barbara:

The Department understands that the Higher Learning Commission (“HLC”) will consider the accreditation status of the Art Institute of Colorado (“AI Colorado”) and the Illinois Institute of Art (“AI Illinois”) (collectively, the “Art Institutes”) at its upcoming meeting in November. These two institutions were formerly owned by Education Management Corporation (“EDMC”) and were sold to Dream Center Education Holdings, Inc. (“DCEH”) in a transaction that closed on January 20, 2018. By action taken by its Board of Trustees (“Board”) during its meeting on November 2-3, 2017, HLC moved the Art Institutes to Change of Control Candidacy Status (“CCC-Status”) effective on the closing date of the transaction with DCEH. This decision was communicated to DCEH in a letter dated November 16, 2017 (“CCC-Status Letter” or “Ltr.”).

The Department is concerned that CCC-Status has caused disruption and confusion for students, graduates and the Department. This confusion was further exacerbated by information provided by an HLC site visitor during a meeting with students on July 16, 2018, in which the site visitor assured students that should accreditation be awarded, which he said was likely given all of the evidence he reviewed in preparation for and during the site visit, it would be given a “retroactive” effective date concurrent with the date of change of control.

It appears that this is the first time that HLC has placed an institution on CCC-Status. Even the Department did not understand until recently that HLC considered CCC-Status an adverse action that resulted in the withdrawal of accreditation for the Art Institutes. However, under

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Department regulations, an “adverse action” is a denial, withdrawal, suspension, revocation, or termination of accreditation or pre-accreditation, or a comparable action. 34 C.F.R. § 602.03. The Department’s regulations do not include an adverse action that would take an institution from accredited to non-accredited status and potentially back to accredited status within a period of time of less than one year and based on the results of a focused review. Once an agency takes a withdrawal action, short of rescinding that action (at which time the rescission would date back to the date of the action), the institution must undergo the full initial accreditation review process pursuant to the agency’s published standards, policies and processes. Absent rescission, an institution that has had its accreditation withdrawn for cause is Title IV ineligible for two years. 34 C.F.R. § 600.11(c).

The Department has several concerns regarding CCC-Status, and how it was implemented and communicated in regard to AI Illinois and AI Colorado. As noted above, the Department’s regulations define “adverse action” as “the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution.” *See* at 34 C.F.R. § 602.3(definitions). The HLC Policy Book (“Policy”) identifies “Accredited to Candidate Status” as an adverse action that is not a final action and is subject to appeal (INST.E.50.010). However, the CCC-Status Letter does not state that the change to CCC-Status is an adverse action, nor did it advise the Art Institutes or DCEH that it had a right to appeal. Rather, the CCC-Status Letter conveyed that the status constituted “conditions” upon which HLC would approve the change of ownership, and those conditions could be accepted or not. Ltr. at 4, 7. The Art Institutes apparently “accepted” the conditions so that the change of ownership would be approved, and as a result – seemingly inadvertently – acquiesced to a non-accredited status. There is no basis in the Department’s regulations for such a status. In addition, the CCC-Status Letter is in conflict with HLC’s policy regarding change of control status which lists the “conditions” of approval to include limitations on enrollment growth, new programs or the establishment of branch campuses. *See* INST.F.20.070. These conditions do not include forfeiture of accreditation. Subsequent communications between HLC and counsel for DCEH that have been shared with the Department, as well as our review of the videotaped conversation between the HLC site visitor and students at AI Illinois, only further muddied the situation.

The confusion about the status is not cleared up by a review of the related Policies. In INST.F.20.070, HLC states that “the Board may approve the change, thereby authorizing accreditation subsequent to the close of the transaction, or it may deny approval for the change.” This suggests that if HLC approves a change in control status, accreditation will continue beyond the close of the transaction. The policy goes on to state that upon approval of change of control,

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the Board may impose certain conditions upon the institution, such as limitations on new programs, enrollment growth, or the establishment of branch campuses. It does not list loss of accreditation as a possible “condition” of the change of control. Later, the policy states that “if the Board votes to approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction...,” which similarly suggests that if the Board approves the change of control, accreditation continues, though is subject to further review and the application of the limitations described above. INST.F.20.070 also states that if the Board determines that the transaction does not meet its five requirements, it will not approve the transaction.

In addition, if the Board determines that a proposed change of ownership and control constitutes the creation of a new institution (the parameters of which are not defined), the institution is moved to CCC-Status. *See* INST.B.20.040 and INST.F.20.070. No such finding is reflected in the CCC-Status Letter. Further, INST.E.50.010 states that the Board may move an institution to CCC-Status only if it meets all of the Eligibility Requirements and conforms with Assumed Practices “but *no longer meets* all of the Criteria for Accreditation and Federal Compliance Requirements.” The CCC-Status Letter does not indicate that the Art Institutes “no longer meet” all of the Criteria or Compliance Requirements. Instead, in regard to the basis upon which the Board based its action, the CCC-Status Letter indicates that approval factors were “met” or were “Met with Concerns.” Ltr. at 4-6. Similarly, INST.F.20.080 provides that if the post-transaction evaluation determines that if the Eligibility Requirements are met, “but not the Criteria for Accreditation,” the institution may be recommended “to be continued in status only as a candidate for accreditation.” The situation is further confused by INST.B.20.040, which states that HLC’s approval of a change in control is necessary prior to its consummation to *effectuate the continued accreditation of the institution*. Indeed, the CCC-Status Letter reads more like a probation or show cause notification, neither of which would have constituted a withdrawal, loss, or termination of accreditation.

Nor does CCC-Status comport with the requirements for withdrawal of accreditation set forth in INST.B.60.010, although the effect of CCC-Status appears to be the same. There has been no finding that the Art Institutes do not meet one or more Criteria or HLC’s Federal Compliance Requirements, that they failed to conform with the Assumed Practices, or that they failed to meet the Obligations of Affiliation. In fact, as noted above, the CCC-Status Letter indicates that the approval factors were “met” or “Met with Concerns” and that the Art Institutes were required to provide additional documentation and complete a focused on-site review.

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When the Board takes an action, INST.D.40.010 requires the action letter to provide information about opportunities for institutional response. Here, the only information provided was for the Art Institutes to accept or reject the conditions. The CCC-Status Letter did not advise the institutions that the decision to impose CCC-Status could be appealed.

Only in INST.E.50.010, but not in its other policies regarding change of control review, does HLC define change of control candidacy as an adverse action, but it refers back to INST. B.20.040, where change of control status is the result of the Board's determination that the transaction effectively "builds a new institution" bypassing the Eligibility Process and initial status review by means of a comprehensive evaluation. However, INST.B.20.040 states that under such circumstances, the Board will not approve the change of control. That the Board approved the change of control suggests that it did not determine that the change of control resulted in the building of a new institution.

There is no provision in the Department's regulations for an adverse action that would revoke accreditation and at the same time award candidacy status, which the Department assumes is the equivalent of preaccreditation. Indeed, the CCC-Status Letter refers to CCC-Status as a "preaccreditation status." However, there is no adverse action that would automatically transition an accredited institution to a preaccredited institution rather than a non-accredited institution.

An adverse action that immediately removed accreditation status would require the agency to follow its normal due process requirements, including the imposition of its published wait-out period prior to considering a new application for Eligibility or accreditation. HLC's Eligibility Requirements (CRR.T.A.10.010 -18) state that an institution may not have had its accreditation revoked within five years of the initiation of the Eligibility Process. Therefore, HLC could not take an adverse action (such as withdrawal of accreditation) at the time of change of control, and then propose to consider a new award of accreditation within a period of less than five years and without requiring the institution to submit a new application for accreditation. Doing so would violate the Department's regulations regarding due process and the consistent application of the agency's standards.

Having now seen the first example of HLC's application of CCC-Status, the Department has grave concerns as to whether the Policy itself, and as applied to the Art Institutes, is in compliance with the Department's requirements. As set forth in 34 C.F.R. § 602.25, the Department requires the agency's standards to be written clearly and applied consistently, which is not the case here since neither the Department, the HLC site visitor, nor apparently DCEH fully understood what CCC-Status meant. The policy appears to create a new accreditation

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category that is not listed in the Department's regulations, and that creates an accreditation "no man's land." Neither the Department's regulations nor HLC Policy provide a basis upon which the Art Institutes could have been moved to an unaccredited status between the date of the approved change of control (January 20, 2018) and the date of the Board's decision.

Separate from this case, the Department would like to point out its concern about the statement in INST. B. 20.040 which suggests that change of control status will be granted only when such a change is in the best interest of the Commission. It is unclear to the Department how the Commission would determine what is or is not in its best interest, but the point of accreditation reviews and determinations is to do what is in the best interest of the student. Allowing a previously accredited institution to continue educating students for ten months, knowing that credits or degrees earned during that time would not be accredited absent a retroactive "re-accreditation," simply does not serve the students' or the Commission's best interests.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Auer Jones". The signature is fluid and cursive, with a large initial "D" and "A".

Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of the Under
Secretary and the Assistant Secretary for
Postsecondary Education

Exhibit 52

Date Transmitted: June 1, 2020

From: President Gellman-Danley

Subject: *Letter to Annmarie Weisman*



June 1, 2020

VIA ELECTRONIC MAIL

Annmarie Weisman
Senior Director
Policy Development, Analysis, and Accreditation Services
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Annmarie.Weisman@ed.gov

Dear Ms. Weisman:

This letter is in response to the May 1, 2020, letter to the Higher Learning Commission (“HLC”) from the U.S. Department of Education (the “Department”).¹ Both this letter and its exhibits (the “Supplemental Written Response”) and HLC’s March 20, 2020, letter and the exhibits linked therein (the “Initial Written Response”) (collectively, the “Written Response”) constitute HLC’s written response to the Department’s draft analysis of HLC’s compliance with, or effective application of, the criteria for recognition, as provided to HLC through the Department’s January 31 and May 1 letters (collectively, the “Draft Analysis”).² In summary and as reflected in its previous submission, HLC maintains that its actions with respect to the Institutes were in compliance with applicable regulations and its own policies, that it has since taken action to fully address the Department’s concerns relating to future compliance, and that the Department must therefore close this compliance inquiry. Further, as explained more fully herein, HLC reserves the right to supplement or otherwise amend its Written Response.

¹ On May 5, 2020, HLC confirmed that because the 30-day time period allotted for its response ended on a Sunday, this letter was to be submitted on Monday, June 1, 2020. Subsequently, HLC requested an additional two weeks to respond due to ongoing communications between HLC and the Department on this matter, through each of our respective legal counsel. This request was denied, and this letter thus constitutes the timely response of HLC to the May 1, 2020 letter.

² HLC’s Written Response also fully incorporates any responses and documents previously provided to the Department, including those sent on November 13, 2019, and January 13, 2020. *See* Initial Written Response footnote 9 for an explanation of the documents that have been provided to the Department as linked exhibits. To note, documents labeled HLC-OPE 1-15429, HLC-OPE 15430-15433, HLC-OPE 15434, and HLC-OPE 15435-15440 were provided to Dr. Lynn Mahaffie and Herman Bounds, as representatives of the Department, via an email with a link and password. Select previously provided documents were also hyperlinked in HLC’s Initial Written Response, as were additional documents labeled HLC-PET 1-2, HLC-PET 3-9, HLC-PET 10-34, HLC-PET 35, and HLC-SUPP 1-8. The password to access the linked documents was again provided to Dr. Mahaffie and Mr. Bounds. HLC presumes that the Department took the necessary action to download these documents. However, to the extent the Department cannot access these documents, HLC is happy to provide an additional link and password upon request.

I. RELEVANT BACKGROUND

The Department, through its then Deputy Assistant Secretary for Policy, Planning and Innovation, Dr. Lynn Mahaffie, notified HLC on January 31, 2020, that it had conducted a review of HLC related to the accreditation statuses of the Art Institute of Colorado and the Illinois Institute of Art (collectively, the “Institutes”) and reached certain findings of noncompliance. The relevant history of HLC’s action with respect to the Institutes and their accreditation statuses, as well as the Department’s communications with HLC regarding the Institutes and the instant compliance review, is contained fully in HLC’s Initial Written Response.³

To summarize that history, in May 2017, the Institutes submitted a joint change of control application, which memorialized that Education Management Corporation (“EDMC”) had entered into an asset purchase agreement through which the Dream Center Foundation (“DCF”) and its subsidiary Dream Center Education Holdings (“DCEH”) would acquire the Institutes from EDMC. On November 16, 2017, the Institutes were notified that HLC had approved the change of control application with conditions, one of which was that the Institutes “undergo a period of candidacy known as Change of Control Candidacy.”⁴ This action was taken instead of, for example, declining to approve the 2017 change of control application.

The Institutes formally and explicitly accepted the condition of candidacy on January 4, 2018, and were made aware by HLC of the requirement that they make accurate disclosures to students regarding candidacy status. This acceptance was knowing; counsel for DCEH communicated to HLC in February of 2018 that he accurately understood candidacy to be a preaccreditation status. Then on July 3, 2018, DCEH announced the closure of the Institutes, and the Institutes implemented a teach-out plan. The Institutes closed on December 28, 2018, and subsequently voluntarily resigned their membership with HLC effective January 8, 2019.

As relevant to the Department’s stated concerns regarding HLC’s actions with respect to the DCEH schools, the Institutes were in candidacy status (rather than accredited status) from January 20, 2018 through the Institutes’ voluntary resignation on January 8, 2019, and thus credits earned by students during that time were not earned from an accredited institution.

Ten months after the Institutes’ closure, on October 24, 2019, the Department initiated information and production requests to HLC. Apparently during that time, the Department decided to open a review into HLC’s actions with respect to the Institutes. On January 31, 2020, the Department informed HLC that it had determined HLC’s actions with respect to the Institutes’ change of control application were noncompliant with certain federal regulations, including being inconsistent with an internal HLC policy (which had been in place since 2009 and which HLC had, by January 2020, already repealed after its independent review of the

³ See Initial Written Response, Section II (attached hereto as **Exhibit A**).

⁴ See Initial Written Response, footnote 24 (linking to HLC-OPE 7726-7732).

policy). The Department's compliance review and related findings were inconsistent with the Department's previous communications to HLC and came after a significant delay.⁵

II. THE DEPARTMENT'S DRAFT ANALYSIS AND HLC'S INITIAL WRITTEN RESPONSE

Under 34 C.F.R. § 602.33(c), the Department is authorized to review the compliance of recognized accrediting agencies when Department staff learn of information that “appears credible and raises issues relevant to recognition” of the accrediting agency. Upon determination that “one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria,” the Department is directed to send a “written draft analysis” to the accreditation agency that includes “any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation.” The Department’s January 31, 2020, letter (the “Initial Draft Analysis”) was procedurally deficient, as it failed to provide any recognition recommendation and did not provide HLC with all supporting documentation that underlies the findings of noncompliance. Therein, the Department wrote that it “finds that HLC was not compliant with its own policy under INST.E.50.010; 34 C.F.R. § 602.18(c) (pertaining to consistency in decision making); and 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f) (due process); in moving the Institut[es] to Change of Control Candidate for accreditation status.”⁶ The Department requested

⁵ The Departments’ inquiries about the Institutes’ candidacy status and closure were fully detailed in Section II of the Initial Written Response, particularly at pages 16-21. However, a brief summary of that extensive narrative is illustrative of several concerns related to the Department’s eventual compliance review, including (1) the Department’s delay in conducting such review, and (2) the Department’s focus on the possibility of “retroactive” accreditation for the Institutes. First, HLC was not provided any notice that the Department had any concerns about HLC’s November 2017 action(s) with respect to the Institutes until October 31, 2018, when Diane Auer Jones, Principal Deputy Undersecretary at the Department, wrote to HLC that the Department was “concerned” that the change of control candidacy status had “caused disruption and confusion for students” and was inconsistent with Department regulations and HLC policy. This letter was the first indication of *any* concerns with HLC’s actions in this matter, despite HLC’s and the Department’s ongoing and extensive conversations about the Institutes up until that point. These prior ongoing communications included: (a) the Department’s receipt of both the November 16, 2017 and January 12, 2018 letters from the HLC Board to the Institutes regarding approval of the change of control application with conditions, including candidacy; (b) written and oral conversations in the spring of 2018 with Michael Frola, Director of Multi-Regional and Foreign School Participation Division at the Department, regarding the Institutes’ accreditation status and Title IV eligibility; (c) numerous conversations in the summer and fall of 2018 with Ms. Jones and other Department staff about the Institutes’ request for what appeared to be retroactive accreditation, the possibility of retroactive accreditation generally, teach-out plans, and HLC’s ability to ensure students who graduated from the Institutes prior to January 20, 2018 had sufficient documentation to demonstrate that their credits came from an accredited institution; and (d) at least one email in August 2018 to Ms. Jones about HLC’s ongoing concerns about the Institutes’ disclosures to students. Despite raising these concerns on the evening of October 31, 2018—nearly a year after the action in question—Ms. Jones then informed HLC by phone the same night that, in response to the Department’s concerns raised in its letter, HLC only needed to inform the Department that it would review its policies on this topic, which HLC then promptly did. As such, the Department’s October 24, 2019 letter formally seeking information about HLC’s actions—which came nearly another full year later—was yet again untimely and completely unexpected. Indeed, the Department’s January 31, 2020 letter effectively commencing this compliance review not only came more than a year after the Institutes’ closure, but over two years after the HLC Board’s action to approve the change of control application with conditions, including candidacy, *and* the Institutes’ explicit, written acceptance of this condition, of which the Department was provided contemporaneous or near-contemporaneous notification.

⁶ See Initial Draft Analysis.

that HLC respond to each of these findings of noncompliance, and also provide certain narrative responses.

HLC submitted its Initial Written Response to the Initial Draft Analysis on March 20, 2020. First, HLC explained to the Department that the agency's failure to provide all supporting documentation and provide a recognition recommendation were materially consequential procedural errors. Despite these deficiencies, and in the spirit of ongoing cooperation and a desire to seek a resolution agreeable to all parties, HLC also fully responded to the Department's substantive concerns. In detail, HLC explained how and why it was compliant with regard to each of the identified regulatory findings. Additionally, the Initial Written Response detailed the steps HLC had taken to "prevent due process failures," including: (a) rescinding INST.E.50.010; (b) revising procedures to provide any conditions that may accompany a change of control application approval would not include conditions that could alter an institution's accreditation status; and (c) continuing to align HLC's policies, procedures, and practice with the new regulations scheduled to take effect July 1, 2020.

The Initial Draft Analysis also requested that HLC provide "a detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the [Institutes] on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution." In reply, in its Initial Written Response, HLC reminded the Department that it had previously responded to the Department's questions in July 2018 about the Institutes, including questions regarding transcripts generally, and informed the Department that HLC does not require institutions to mark their transcripts to identify their accreditation status, generally. At that time, HLC also offered suggestions for how DCEH could identify, through the students' transcripts or via a letter, where credits were earned by students while the Institutes were accredited.⁷ Also in the Initial Written Response, HLC respectfully requested guidance from the Department as to what efforts were underway to "correct the academic transcripts" of former students of the Institutes, and explained it could provide, as specifically requested by the Department, a "detailed plan on how HLC intends to assist" in such efforts once these efforts were identified.

Without any of the requested information from the Department, HLC instead informed the Department of action it *could* take to assist students in successfully transferring their credits to other HLC-member institutions, namely by providing guidance to HLC member institutions about their ability, in accordance with their own policies and procedures, to accept credits earned by students at the Institutes while the Institutes were in candidacy status.⁸ HLC requested that the Department confirm that such action would meet the underlying intent behind the Department's request for a "detailed plan." As discussed below, although the Department declined to provide any such confirmation, HLC has indeed provided such guidance to its member-institutions in an effort to assist the Institutes' former students.

⁷ Indeed, HLC had already provided the Department with information about transcripts. *See* Initial Written Response, p. 19 (citing HLC-OPE 15347-15353).

⁸ Notably, HLC-member institutions are permitted to make their own determinations about whether to accept transfer credit, including from preaccredited institutions.

The Department responded to HLC's March 20, 2020 letter in writing on May 1, 2020 ("Supplemental Draft Analysis"). In this Supplemental Draft Analysis, the Department partially responded to the procedural concerns raised by HLC. Notably, the Department provided HLC with a recognition recommendation. However, as further explained below, the Department did not remedy its failure to provide all supporting documentation to HLC. The Department also did not address any of the substantive responses contained within HLC's March 20, 2020 letter.

III. HLC IS IN COMPLIANCE WITH THE CRITERIA FOR RECOGNITION AND THE DEPARTMENT MUST CLOSE THIS REVIEW

After review of the Department's Supplemental Draft Analysis, HLC continues to have concerns with the entirety of this compliance review. However, HLC once again fully responds to the Department, in the spirit of cooperation and transparency.

First and foremost, HLC fully and adequately responded to the Department's findings that it was noncompliant with INST.E.50.010, 34 CFR § 602.18(c), and §§ 34 CFR 602.25(a), (d), (e), and (f) in its Initial Written Response (attached hereto as **Exhibit A**). As such, HLC does not re-address these specific findings herein. Instead, this Supplemental Written Response seeks to address three ongoing or new issues.

First, the Draft Analysis, in its entirety, continues to be procedurally deficient. Second, HLC requests clarification of what action the Department wishes HLC to take with respect to the Institutes, particularly since HLC has already explained the steps it has taken to correct any alleged deficiencies, both with respect to its own actions and to assist the students who were harmed by certain actions of the Institutes, EDMC, DCEH, and DCF. Finally, HLC requests clarification of the scope of the Department's proposed recognition recommendation. To the extent possible, HLC also responds to that recommendation.

For the reasons stated herein, and in HLC's March 20, 2020 response, HLC respectfully submits that the Department must close this inquiry.

a. THE DEPARTMENT HAS NOT FULLY CORRECTED ITS MATERIALLY-CONSEQUENTIAL PROCEDURAL DEFICIENCIES AND HAS CREATED NEW ONES

As an initial matter, and quite disappointingly, the Department appears to correlate HLC's "assert[ion]" of the Department's failure to comply with the procedural requirements of the relevant regulation as some sort of indication that, in the Department's words, "HLC is unwilling to take steps to help impacted students."⁹

To the contrary, HLC's request that the Department simply follow the procedural requirements, in accordance with its own regulations, in conducting this review does not indicate that HLC is unwilling to support students. As the numerous oral and written conversations between HLC and the Department on this matter have made clear, HLC is first and foremost concerned with

⁹ See Supplemental Draft Analysis.

ensuring that *all* students—both those who attended the Institutes and those at any HLC member institution—receive a high-quality education through which the students’ hard work results in valuable training, skills, and credits. All of HLC’s actions have been in the interest of helping students and have followed all relevant regulations and policies. The Department’s concerns about HLC’s legitimate notice to the Department that its Initial Draft Analysis did not comply with 34 CFR § 602.33(c), are baffling and raises questions about the Department’s use of its authority to review recognized agencies in this instance.

HLC appreciates that the Department minimally acknowledged HLC’s procedural arguments in its Supplemental Draft Analysis. However, while the Department has now made an effort to provide HLC with a recognition recommendation, the Department has not remedied its failure to provide HLC with all supporting documentation for this recommendation; and has created a new procedural issue pertaining to which Department officials are serving in what roles in this process and which Department officials have decision-making authority regarding this compliance review.

i. THE DEPARTMENT’S FAILURE TO PROVIDE SUPPORTING DOCUMENTATION

The Department maintains that it was not required to provide a transcript of the December 23, 2019 interview conducted by Robert King, Assistant Secretary for Postsecondary Education, of Karen Peterson Solinski, former Executive Vice President of Legal and Governmental Affairs at HLC, because the Department did not create a transcript and “relied exclusively on Ms. Solinski’s December 26, 2019 email.”¹⁰ It is perplexing that the Department would prepare a “Substantially Verbatim Transcript of Phone Call”¹¹ that occurred on December 9, 2019 between Mr. King and Ron Holt, outside counsel for DCEH, about these same topics and then not prepare a similar transcript for its *subsequent* phone call with Ms. Solinski just 14 days later. Still, even if the Department failed to record or transcribe Ms. Solinski’s interview, it certainly should have notes of the interview. Indeed, it is common practice for persons to take notes contemporaneously with or shortly following a call to record the substance of a conversation. HLC is entitled to any such notes or other documentation, as they would constitute supporting documentation under the regulation.

The Department has long-recognized the importance of providing accrediting agencies with such documentation. As the Department is aware, 34 CFR § 602.33 was developed through negotiated rulemaking. In response to specific concerns raised by non-federal negotiators that the Department would “act arbitrarily” or fail to “provide adequate notice to and communication with the agency” when conducting a review under the regulation, the Department added regulatory language “to reflect the consultation between Department staff and the agency, and the provision to the agency of the documentation concerning the inquiry.”¹² As such, under § 602.33(c)(2), the Department is required to provide *all* supporting documentation to the accrediting agency to whom it has sent a draft analysis identifying alleged noncompliance.

¹⁰ See Supplemental Draft Analysis.

¹¹ See Initial Draft Analysis, Exhibit 2.

¹² See Proposed Rule, *Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary’s Recognition of Accrediting Agencies*, 74 FR 39515 (Aug. 6, 2009) (codified at 34 C.F.R. § 602.33).

This is not a request placing form over substance. Not only do the regulations require that any and all documentation related to Ms. Solinski's interview be provided to HLC, but such documentation is *necessary* for HLC to fully respond to the Department's Draft Analysis. Indeed, HLC is concerned both that the Department has not accurately summarized Ms. Solinski's statements and has relied on two witnesses—Ms. Solinski and Mr. Holt—whose credibility or objectivity on these issues may be in question.

The Department provided HLC with a copy of the email Mr. King sent Ms. Solinski following their December 23, 2019 interview, in which Mr. King sought confirmation of remarks Ms. Solinski made during that interview, and Ms. Solinski's response.¹³ While Ms. Solinski initially wrote that Mr. King had "accurately described [her] understanding of the transaction," she then provided additional details that were *inconsistent* with Mr. King's summary of her remarks.

For example, Ms. Solinski wrote that HLC would "need to reconfirm . . . the institutions' ability to meet the HLC Criteria for Accreditation," indicating that HLC had taken some action related to the Institutes' accreditation status, changing that status, and would reevaluate and possibly reinstate that status after a certain time period. To the contrary, Mr. King had written that after six months, HLC would "ascertain whether [the Institutes] could remain accredited," indicating that some status-quo relating to the accreditation status would be maintained for a time-period. There is inconsistency between these statements.

Moreover, while both Mr. King and Ms. Solinski wrote that HLC did not "withdraw" accreditation, neither email makes explicit reference to candidacy status as opposed to accredited status, which presumably would have been discussed on the phone call. The substance of these two emails, and their apparent inconsistency, indicates that more may have been said by Ms. Solinski in the interview, and any such additional statements by Ms. Solinski would likely have influenced the Department's action.

Separately, the email exchange raises concerns regarding Ms. Solinski's credibility on this issue. Ms. Solinski has not been an employee of HLC since February 28, 2018. Contrary to her assertion that she was not privy to certain conversations, Ms. Solinski was HLC's main point of contact with Mr. Holt, counsel for DCF, DCEH, and the Institutes from November 2017 through February 2018.¹⁴ Moreover, not only did Ms. Solinski and Mr. Holt communicate via email during that time, they also had conversations to which other staff at HLC were not privy first-hand, thus further supporting the need for materials relating to discussions between Ms. Solinski and Department staff.

Because the Department did not support its findings with any statements from former Institute officials or current HLC staff, and in fact failed to interview any current HLC employees during this compliance review, HLC is concerned that the Department relied heavily on the remarks of only Ms. Solinski and Mr. Holt, whose credibility and objectivity on these issues may be in question. All documentation supporting the Department's compliance review and findings, including documentation of the Department's interview with Ms. Solinski, are therefore necessary for HLC to understand how the Department reached its conclusions, and enable HLC

¹³ See Initial Draft Analysis, Exhibit 4.

¹⁴ See Initial Written Response, p. 9 (citing HLC-OPE 7742-7761); *id.*, p. 12 (citing HLC-OPE 15312-15315).

to provide the Department with the additional responsive detail necessary to alleviate its concerns.

Due to the Department's failure to adequately provide HLC with the supporting documentation to which it is entitled, and that is necessary for it to meaningfully and fully respond to the Draft Analysis, HLC filed a Freedom of Information Act ("FOIA") request on May 21, 2020 (attached hereto as **Exhibit B**). As such, and as a means of curing any such procedural deficiency, HLC reserves the right to amend its Written Response with any information it learns through the Department's response to this FOIA request.

ii. THE DEPARTMENT'S LACK OF CLARITY REGARDING DECISION-MAKERS AND/OR POINTS OF CONTACT

HLC is also now concerned about a new procedural deficiency and seeks clarification as to which Department staff members are engaged in this compliance review. In the course of the review, HLC has been given shifting information about whom it should work with related to the Department's concerns of HLC's noncompliance, resolution thereof, and who the decision-makers may be at various points in the compliance review process.

Under 34 CFR §§ 602.33-602.36, where "Department staff" make an initial determination of deficiencies with an agency's compliance with the criteria for recognition, they are directed to provide a draft analysis to the agency. The agency then has an opportunity to demonstrate compliance, as documented by a written response to Department staff. Upon review of the agency's written response, the Department staff may either conclude that the agency has demonstrated compliance, or conclude that the agency is in noncompliance, in which event Department staff are directed to finalize the draft analysis and present a final staff analysis and recognition recommendation to the National Advisory Committee on Institutional Quality and Integrity (NACIQI). NACIQI then reviews the relevant information and makes a recommendation to the "senior Department official." After the accrediting agency and Department staff submit written comments on NACIQI's recommendation, the senior Department official "makes a decision regarding recognition of an agency[.]" The "senior Department official" is defined as the "senior official in the U.S. Department of Education who reports directly to the Secretary regarding accrediting agency recognition."¹⁵

HLC was of the understanding that Robert King, Assistant Secretary for the Office of Postsecondary Education—to whom Dr. Mahaffie, and now Ms. Weisman, report—was serving as the relevant "senior Department official" in this matter. Dr. Mahaffie and Ms. Weisman were, respectively, the signatories on the Initial and Supplemental Draft Analyses, and Herman Bounds, Director of Accreditation, was identified by the Department in both the Initial and Supplemental Draft Analyses as the Department staff to whom HLC should direct any questions.

As such, following receipt of the Supplemental Draft Analysis, HLC's President submitted via email on May 5, 2020, a request for a phone call with both Ms. Weisman and Mr. Bounds. In lieu of a response from either Ms. Weisman or Mr. Bounds, HLC received an email from Jed

¹⁵ 34 CFR § 602.3.

Brinton, Deputy General Counsel at the Department, that same day. Mr. Brinton was not included on HLC's email request, but he wrote back to explain that he "would be glad to speak on behalf of the Department." Notably, Ms. Weisman and Mr. Bounds were not included in Mr. Brinton's email. Subsequently, on a call with HLC's outside legal counsel on May 6, 2020, Mr. Brinton explained that he was "delegated" as the Department's "point of contact" with HLC on this compliance inquiry, was authorized to speak with HLC about this inquiry, and that the requested call between HLC's President and Ms. Weisman and Mr. Bounds would not occur. Instead, Mr. Brinton offered to speak with HLC's President, other staff members, and HLC's outside legal counsel.¹⁶ HLC's legal counsel asked Mr. Brinton if he was serving as a decision-maker, meaning the "Department staff" or "senior Department official" as contemplated under the applicable regulations. Mr. Brinton demurred, stating that he would "have to get back to" her on that issue.

Other events preceding this response have also created confusion as to which Department officials are serving in what role under the regulations. Notably, on or around April 22, 2020, HLC's outside legal counsel spoke with Mr. Brinton regarding a specific possible action the HLC Board could take with respect to the Institutes.¹⁷ In response, and recognizing that HLC had previously rescinded the policy in question, Mr. Brinton explained that the proposed action, if taken by HLC, would resolve the Department's compliance concerns and close this inquiry.¹⁸

HLC is now at a loss as to who is serving as the "Department staff" in this review and who is serving as the "senior Department official," and seeks transparency and clarity as to: (a) which Department staff are conducting the compliance review and making a determination whether to present a final staff analysis to NACIQI based on review of HLC's Written Response, and (b) the identity of the senior Department official who would make any decision based on any potential NACIQI recommendation. As HLC navigates this compliance review, it is entitled to be on notice as to who is serving as the decision-maker(s) in this process in accordance with these regulations.

Indeed, it is of material consequence which Department staff or officials are the decision-makers at which stage of the regulatory process. As mentioned above, Department staff may, upon review of HLC's Written Response, find that HLC is in compliance with the criteria for recognition. If Ms. Weisman, Dr. Mahaffie, and/or Mr. Bounds are the Department staff making the relevant decisions at this stage of the process—as indicated by the Initial and Supplement Draft Analyses—then HLC's attempts to collaborate with the Department in order to address its concerns should go through those persons. It is unclear which Department staff or officials have the authority to terminate the compliance review, and upon which statements made by Department staff and counsel HLC may rely, particularly as it relates to resolving this inquiry. In

¹⁶ This call took place between Mr. Brinton and HLC's President, staff members, and outside legal counsel on May 15, 2020.

¹⁷ HLC's legal counsel and Mr. Brinton first communicated on or about February 24, 2020, regarding the Department's Initial Draft Analysis, and have communicated from that date through as recently as May 22, 2020, both through phone calls and over email about the Draft Analysis and various actions HLC has considered taking, and action HLC has taken, with respect to the Institutes, both to help students and to address the Department's concerns.

¹⁸ As detailed more in Section III(b), this action—changing the effective date of the Institutes' candidacy to their date of voluntary resignation—was ultimately not taken.

HLC's attempts to fully respond to the Department's concerns and reach a mutually satisfactory resolution, it is materially necessary that HLC be able to confer with the appropriate Department staff and officials. Undoubtedly, as an agency under oversight itself, the Department can appreciate that direct discussions between a decision-maker and its regulated party can often lead to more fruitful and robust discussions relating to compliance concerns and resolution thereof. For this reason, HLC requested the opportunity to confer with the appropriate stakeholders at the Department responsible for making a determination on referral to NACIQI about the Department's concerns, and how those may be best addressed. Effectively, HLC has been denied such opportunity.¹⁹

b. THE DEPARTMENT MUST PROVIDE ADDITIONAL GUIDANCE AS TO WHAT ACTION IT BELIEVES HLC MUST TAKE TO REMEDY THE ALLEGED NONCOMPLIANCE AND MITIGATE NEGATIVE EFFECTS FOR FORMER STUDENTS

As detailed at length in the Initial Written Response, and communicated to the Department over the last several months (in particular to Mr. Brinton), HLC is seeking clarity on (1) how it can further demonstrate its current compliance with the applicable regulations, given all actions it has taken to do so to date; and (2) what action it can take that will satisfy the Department's requests related to assisting the former students of the Institutes.

In the Initial Draft Analysis, the Department directed HLC to provide (1) a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future; and (2) a detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution. Somewhat similarly, in the Supplemental Draft Analysis, the Department recommended that HLC must "come into compliance within 12 months with 34 C.F.R. §§ 602.18(c), 34 C.F.R. 602.25(a), 602.25(d), 602.25(e), and 602.25(f)," and submit a compliance report regarding such compliance. However, the affirmative obligation imposed on HLC by the Department shifted from the correction of transcripts, perhaps in response to HLC's explanation that it did not, in fact, impose any specific requirements on its membership related to accepting transfer credits and issuing transcripts, to a requirement that HLC provide "details on HLC's efforts to mitigate the negative effects of HLC's procedurally erroneous decision to

¹⁹ Notably, 34 C.F.R. § 602.33(c) provides that during the course of the Department's review under § 602.33(a), the Department should provide HLC with the documentation concerning its review and consult with HLC. Only after the "provision to the agency of the documentation concerning the inquiry and consultation with the agency" can the Department staff "note[] that one or more deficiencies may exist in the agency's compliance." Upon such a preliminary determination, the Department is directed to send HLC its draft analysis of the compliance concerns, with the supporting documentation and recognition recommendation. Indeed, this consultation is clearly intended to also continue *after* the Draft Analysis is sent, as upon review of HLC's Written Response, Department staff may conclude that HLC has demonstrated compliance and close its review. The Department should have therefore consulted HLC both prior to and after sending HLC its Draft Analysis. Consultation with the appropriate Department officials is not only contemplated under the regulations, it is a materially consequential step that may result in resolution of this compliance review to which HLC was denied.

withdraw accreditation from the two institutions set forth above on students, especially with regard to the status of academic credits earned at the Institutions during calendar year 2018.”

As an initial matter, and as described previously in HLC’s Initial Response, not only did HLC’s actions with respect to the Institutes not violate these regulations, but HLC has also fully explained how it is currently in compliance. Indeed, the Department’s assertion that HLC’s decision “to withdraw accreditation” was “procedurally erroneous” is simply false. First, there was no withdrawal of accreditation. As fully documented, HLC approved the change of control application with several conditions, including the condition that the Institutes accept a period of candidacy. This decision by the HLC Board was based on HLC’s specialized knowledge of accreditation, and its concerns about the ability of the Institutes’ new owners to meet accreditation standards. The condition of candidacy was explicitly accepted by the Institutes. As such, the Institutes went from accredited to candidacy (preaccreditation) status upon their consummation of the transaction.²⁰ Unfortunately, and despite explicit instructions from HLC, the Institutes, and DCEH/DCF, did not accurately inform students of their preaccreditation status. These inaccurate disclosures on the part of the Institutes, DCEH and DCF were inexcusable from HLC’s perspective and do not reflect misconduct or procedural error by HLC.

Second, even if HLC’s actions *were* procedurally erroneous, any alleged procedural deficiencies were remedied when HLC granted the Institutes the opportunity to appeal in May 2018. The Institutes did not timely or accurately seek out this appeal. Instead, 20 days after being given the opportunity to appeal, they requested what amounted to retroactive accreditation; then, they submitted an appeal only electronically and to the wrong email address; and finally, they decided to close less than a week after the erroneously-submitted appeal, without ever inquiring then, or at any time thereafter, as to whether HLC had received the appeal (which it had not). There simply are no grounds to support that HLC made a decision that was contrary to the regulations.

Moreover, HLC has repealed the policy in question, INST.50.010, in its entirety. Because of the policy repeal and the requirements imposed by the new 34 C.F.R. § 602.23(f)(1)(iv), effective July 1, 2020, a scenario such as this—where an institution chooses to move from accredited to candidacy status as a condition on the approval of its change of control application—will never be repeated. Ultimately, there are simply no ongoing considerations regarding future compliance in relation to HLC’s policies, procedures, and/or practices.

All told, HLC cannot rewrite these events or change “retroactively” its decisions that took place well over two years ago. While HLC has not taken the action the Department seems to be seeking, i.e. retroactively accrediting the Institutes (an action which is not provided for in HLC’s current policies), HLC shares the Department’s concerns about any continued impact felt by the Institutes’ former students. As such, HLC is dedicated to assisting these students in whatever

²⁰ HLC notified the Institutes of its initial approval of the change of control transaction with the condition of candidacy on November 16, 2017, with the expectation that the transaction would close within 30 days. The Institutes accepted the conditions on January 4, 2018 and informed HLC that EDMC and DCEH had not complied with the 30-day closure expectation. HLC granted the Institutes their requested extension of the closure date; the transaction ultimately closed on or around January 20, 2018. EDMC’s and DCEH’s delay in completing the transaction resulted in the condition of candidacy becoming effective *after* the Institutes’ semester began, and not prior to, as originally anticipated by HLC. See Initial Written Response, pp 7-11 (and documents cited therein).

way is aligned with the best interests of the students and HLC's standards and policies. In fact, in the Initial Written Response, HLC informed the Department that it would "distribute a letter reminding its member institutions that they are not prohibited from accepting credits from these schools and encouraging each school to consider immediate recruiting efforts to students impacted by the Institutes' closure, and/or inform member institutions that the Institutes' candidacy status was not related to the quality of instruction." At that time, HLC requested that the Department provide guidance as to whether this solution proposed by HLC was aligned with the Department's goals. While the Department declined to substantively respond to this request for guidance, since the submission of the Initial Written Response, HLC has acted on the steps it listed therein. For example, on April 29, 2020, HLC sent a letter to member institutions in Illinois, Colorado, and Michigan about accepting transfer credits from former students of the Institutes. This letter was provided to the Department on that same day. A similar letter, which also included information about a dedicated phone line that HLC established to answer questions regarding transfer, was subsequently sent on May 27, 2020 to all other HLC member institutions (attached hereto as **Exhibit C**). Both letters were also sent to the relevant state educational agencies in which the member institutions are located.

HLC has also proactively sought out additional ways of assisting impacted students. For example, on its own initiative, the HLC Board considered whether the Institutes' effective date of candidacy could be changed from January 20, 2018 to January 8, 2019. Upon notification that the HLC Board would be considering this action, the Department, through Mr. Brinton, indicated to HLC's counsel that such action would resolve the entirety of this compliance inquiry. However, on April 23, 2020, after careful analysis and consideration, the HLC Board declined to take this action for a variety of reasons, including that the action would have not alleviated the undue burden students have suffered as a result of the actions of DCF, DCEH and the Institutes, as required by HLC policy, and in fact, may further exacerbate that burden.

Following the Board's well-reasoned denial of this possible course of action, HLC immediately took action to develop a multifaceted outreach plan to further support any former students of the Institutes experiencing any continued impact with respect to transfer of credits. Indeed, HLC and Mr. Brinton spoke at length on May 15, 2020, about how HLC could provide additional targeted support to the former students of the Institutes, including through broader outreach to HLC member institutions, state agencies, and even through direct student channels, regarding how the Institutes' former students could successfully transfer their credits to member institutions. On this call, HLC specifically requested input and suggestions from the Department on how to amplify this message; however, Mr. Brinton declined to provide any substantive input or assistance. HLC agreed to memorialize its plan in writing for Mr. Brinton.

Following this conversation, HLC memorialized its "Enhancing Transfer Opportunities – Communications Plan" ("Communications Plan"), as developed based on HLC's own professional expertise (attached hereto as **Exhibit D**). As explained in the Communications Plan, HLC is taking action through numerous communications vehicles to inform *all* member institutions, and other stakeholders, about transfer opportunities for students impacted by the Institutes' closure. In particular, the increase in online learning due to the COVID-19 pandemic has provided a unique opportunity for students to enroll at institutions outside their home geographies, and as such there are additional opportunities for students who attended the

Institutes in 2018 to seek to transfer their credits to an HLC-accredited institution and complete their degree, if they so desire.

The Communications Plan was provided to the Department on May 18, 2020, with a second request for further input from the Department as to how HLC might partner with the Department to amplify its message, as well as a request that the Department provide HLC with guidance as to whether the plan sufficiently addressed the Department's concerns. After hearing no reply, HLC's legal counsel again reached out to Mr. Brinton on May 21, 2020, in accordance with Mr. Brinton's directive that he was the sole point of contact for the Department on this issue, seeking guidance on the proposed plan. Mr. Brinton responded on behalf of the Department that, "[t]hese actions will not eliminate the impacts of (or otherwise fully moot or resolve) the procedural problems with the handling of the Institutes' accreditation that have been addressed in the Department's correspondence with HLC over the past several months." Significantly, Mr. Brinton's statements that changing the effective dates of the Institutes' candidacy to January 8, 2019 *would* address the Department's compliance concerns, but that HLC's efforts to assist former students of the Institutes in transferring their credits earned during candidacy to other, accredited institutes *would not* address the Department's compliance concerns, are an indication that the Department is seeking a very specific resolution.

At this point, to be frank, HLC is at a loss regarding how to respond to the Department, while also complying with HLC policies and maintaining its own independence as an accreditor. While the Department is expressly prohibited from "interfering in an accrediting agency's assessment regarding individual schools,"²¹ it appears that the Department is attempting to strong-arm HLC into retroactively accrediting the Institutes by turning down every solution from HLC that is *not* retroactive accreditation, or an action (such as changing the effective date of candidacy) that would have the same effect. The Department simply does not have the regulatory authority to usurp HLC's independent decision-making authority or to require HLC take the Department's single preferred course of action.

HLC has taken multiple measures to ensure that the accreditation option in question here will not occur in the future and has proposed solutions that could help the former students of the Institutes without jeopardizing its integrity as an accreditor or harming students. None of these actions have satisfied the Department. As such, it has unfortunately become clear that HLC cannot satisfy the Department without retroactively accrediting the Institutes, an action inconsistent with HLC's accrediting policies and standards, and importantly, which may exacerbate the burden students have suffered as a result of the actions of DCF, DCEH and the Institutes.

HLC respectfully submits that the Department must close this inquiry or advise why the actions HLC has taken thus far and proposes to take, particularly with regards to the outreach identified in the Communications Plan, is insufficient. HLC also respectfully requests a detailed explanation of what action the Department will require HLC to take to be considered in compliance with the regulations, and to satisfy the Department's recommendation regarding

²¹ *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, 980 F. Supp. 53, 63 (D.D.C. 1997) (citing 20 U.S.C. § 3403(b)), *aff'd*, 168 F.3d 1362 (D.C. Cir. 1999), *opinion amended on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999).

mitigation of negative effects suffered by former students of the Institutes. Additionally, given that the Department has reviewed HLC's March 20, 2020 letter, it would be helpful for the Department to identify how HLC has not demonstrated such compliance through its Initial Written Response.

c. THE DEPARTMENT MUST CLARIFY ITS PROPOSED RECOGNITION RECOMMENDATION

HLC understands the Department's proposed recognition recommendation consists of three-prongs: (1) that HLC "come into compliance" with the five cited regulations within 12 months and submit a compliance report 30 days thereafter; (2) that HLC cannot grant an *accredited* status (as opposed to a *candidate* status) to any institution that does not currently hold either *candidate* or *accredited* status with HLC for that same 12-month period; and (3) that HLC take certain unspecified steps in support of the former students of the Institutes to help them transfer credits and/or have such credits deemed "accredited" credits, and include details of this action in the aforementioned compliance report.

As detailed in depth above, HLC is at a loss for what the Department wishes HLC to do with regard to the first and third prongs.

With regards to the second prong, through which the Department proposes a limitation on HLC's accrediting authority, HLC seeks confirmation of its understanding of the Department's language. HLC understands the Department's statement that HLC "may not accredit additional institutions of higher education that do not currently hold accreditation or preaccreditation status with the agency" to be referring to a prohibition, lasting for 12 months, on HLC's ability to take "new" institutions—i.e., those that are not currently holding candidacy (preaccreditation) or accredited status with HLC—through the eligibility process; grant candidacy; and then grant accreditation within that 12-month period. HLC does not interpret this recommendation to prohibit HLC from granting candidacy to new institutions or from granting accreditation to institutions that, prior to the initiation of the relevant 12-month period, were in candidacy status with HLC.

HLC also requests confirmation that the Department no longer seeks to impose a requirement on HLC that it must provide the Department with 60 days' advance notice of any policy revisions.²² This requirement was not included in the Department's recognition recommendation in the Supplemental Draft Analysis. Unless and until the Department revises its recognition recommendation to provide otherwise, HLC presumes that this limitation on HLC's ability to revise its policies is not a part of the current recommendation.

Finally, HLC questions the Department's proposed limitation as punitive, arbitrary, and completely unrelated to the substance of its compliance inquiry. Recommendations that limit an accreditors' authority should seemingly help the agency improve its compliance with the criteria for recognition. In fact, the senior Department official is required to specify the reasons for

²² See Initial Draft Analysis, pp. 9-10.

which he or she reaches a decision to limit recognition.²³ There is simply no justification here for the recommended limitation on HLC's accrediting authority.

Indeed, the underlying inquiry involves one discrete issue: HLC's use of a policy that permitted it to accept a change of control application subject to the condition of candidacy, as applied to the Institutes.²⁴ Yet, the proposed limitation on HLC's recognition is not only unrelated to the action in question and the Department's findings of noncompliance, it also does not make sense given HLC's policy changes and changes to federal regulations. In particular, since HLC has already eliminated the policy under which the approval of a change of control application with the condition of candidacy occurred, any recognition limitation would have absolutely no impact on improving HLC's practices, policies, and procedures on this issue.²⁵ Furthermore, the practice in question will be prohibited under the new 34 C.F.R. § 602.23(f)(1), which becomes effective in July. Critically, HLC has already ensured its policies and procedures align with this and other new regulations. As such, the Department's findings related to HLC's compliance with the criteria for recognition have already been resolved—HLC is currently in compliance, and its efforts to ensure compliance cannot be further improved upon by the proposed limitation.

The recommended limitation on HLC's accrediting authority is misaligned with what the Department has stated are its concerns. Moreover, the recognition recommendation is arbitrarily punitive. While HLC has sought confirmation that its understanding of the recommendation is correct, it also seeks to make clear that not only is *any* recognition action not justified—given that the Department's findings of noncompliance are incorrect and unsupported and that HLC has taken action to ensure that a similar action will not occur in the future—but also that this specific recommendation is inappropriate, for the reasons explained herein.

In summary, if the Department intended its recognition recommendation to have a different meaning than a 12-month prohibition on HLC's ability to grant accredited status to an institution not currently holding candidacy status; if the Department intended the recommendation to include the limitation on policy revisions presented in the Initial Written Analysis; or if the Department otherwise revises its recommendation for any reason, HLC needs to be provided sufficient notice and ample opportunity to meaningfully respond to the recommendation, in accordance with the regulations.

IV. CONCLUSION

HLC has taken meaningful action to respond to the Department's concerns for the former students of the Institutes and will continue to support those students within the bounds of its authority, particularly in response to any direct requests from those students. HLC believes that its actions taken to date to support students and encourage its membership to do the same will

²³ 34 C.F.R. § 602.36.

²⁴ As explained at length in the Initial Written Response, HLC had previously applied this policy to Everest College Phoenix ("ECP"). *See* Initial Written Response, pp. 31-33 (and documents cited therein). The Department reviewed HLC's actions with respect to ECP, and at no time so much as indicated to HLC that it had concerns with this policy or practice. *See id.*

²⁵ As explained in the Initial Written Response, in addition to rescinding INST.E.50.010, "HLC has revised its procedures to provide that any conditions that may accompany a change of control application approval will not include conditions that could alter an institution's accreditation status." *See id.* at p. 35.

further assist the former students of the Institutes, who are interested in doing so, in seeking credit transfers. At the same time, HLC remains committed to working with the Department in amplifying this message and reaching a resolution to this matter in a manner that is consistent with HLC's policies and aligned with student interests.

Moreover, for the reasons stated above and in its Initial Written Response, HLC's actions with respect to the Institutes were in compliance with applicable regulations and its own policies. The agency has taken action to fully address the Department's concerns relating to future compliance by eliminating the policy it previously relied on to effectuate the action in question. As such, the Department must close this inquiry instead of forwarding any final staff analysis and recognition recommendation to NACIQI.

Further, in the event that additional information comes to light to which HLC would have been entitled per this compliance review, including pursuant to the Department's response to this Supplemental Written Response or the Department's response to HLC's FOIA request, HLC reserves the rights to supplement and/or amend its Written Response.

Sincerely,



Barbara Gellman-Danley, PhD
President

CC (via email): Herman Bounds, Director of Accreditation, U.S. Department of Education
Anthea Sweeney, Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Marla Morgen, Associate Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Julie Miceli, Partner, Husch Blackwell
Jed Brinton, Deputy General Counsel, U.S. Department of Education

Exhibit A



March 20, 2020

VIA ELECTRONIC MAIL

Dr. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Lynn.mahaffie@ed.gov

Dear Dr. Mahaffie:

This letter is in response to your letter dated January 31, 2020, in which the U.S. Department of Education (the “Department”) notified the Higher Learning Commission (“HLC” or the “Commission”) that it conducted a review related to the accreditation statuses of the Art Institute of Colorado and the Illinois Institute of Art (collectively, the “Institutes”) and, pursuant to 34 C.F.R. § 602.33(c), had found HLC in “noncompliance” with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f), and with HLC’s “Accredited to Candidate Status” policy INST.E.50.010, which no longer is in effect. The Department initially provided HLC with 30 days to respond to these findings¹ and requested that HLC provide a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future, and

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

As described herein, HLC firmly disputes the Department’s allegations of noncompliance and respectfully requests, for the reasons stated below, that the Department close this inquiry with no further action.

¹ HLC originally requested a 30-day extension of time; the Department granted an eight-day extension. HLC understands from discussions with Department officials that only an eight-day extension was permissible, given the Department’s concern relating to the “upcoming” NACIQI meeting—sometime in July—at which this issue may be considered. Upon a subsequent request by HLC for an additional two-week extension, necessitated by HLC’s understanding that a third-party complaint was filed in federal court by the Dream Center Foundation (“DCF”) against HLC in *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.), the Department granted HLC until March 23, 2020 to respond to these findings. *See also* footnote 82.

I. THE DEPARTMENT’S PROCEDURAL DEFICIENCIES HAVE MATERIAL CONSEQUENCES FOR HLC AND MUST FIRST BE CURED

As a preliminary matter, the Department’s actions fail to conform with the procedures expressly and plainly outlined in its regulations, resulting in procedural errors that materially, and negatively, hinder HLC’s ability to meaningfully respond to the January 31, 2020 letter. To explain, as cited by the Department in the third footnote of its January 31, 2020 letter, federal regulations direct the Department, upon determination that “one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria,” to prepare a “written draft analysis” that “includes a recommendation regarding what action to take with respect to recognition.” The Department is then directed to send this draft analysis to the agency with “any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation to the agency.”² The accrediting agency is then provided an opportunity to respond in writing to the draft analysis and proposed recognition recommendation.³

The Department’s January 31, 2020 letter (hereinafter, the “Draft Analysis”) identifies areas of alleged noncompliance, but critically, does *not* provide HLC with a specific recognition recommendation. Furthermore, the Department has failed to provide HLC with all supporting documentation relevant to its Draft Analysis. These procedural deficiencies are addressed, in turn.

As the Department is aware, HLC accredits institutions of higher education in 19 states, including Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming. As of February 28, 2020, HLC has granted accredited status to 973 colleges and universities and preaccredited status to seven institutions. Institutions accredited by HLC range from some of the country’s most recognized premier research universities to a number of mission-based for-profit institutions, as well as large and small private non-profit and for-profit institutions. Other HLC-accredited institutions include a wide range of community colleges, public institutions within state university systems, tribal colleges, HBCUs, and faith-based institutions. The total student population of the institutions accredited by HLC numbers well over 5 million students, including over 375,000 students at for-profit institutions.

Given the wide range of potential consequences to HLC and its membership under the cited regulations—ranging from compliance reporting to recognition revocation—HLC must be provided notice of what recognition recommendations are under consideration, if any.⁴ As recognized by the regulations, in requiring the Department to provide such notice, this information is not superficial, but of material consequence.⁵ Indeed, such information provides

² 34 C.F.R. § 602.33(c)(1) (emphasis added).

³ 34 C.F.R. § 602.33(c)(2), (c)(3).

⁴ Indeed, under the Administrative Procedure Act, the Department is prohibited from taking action, “without observance of procedure required by law.” 5 U.S.C. § 706.

⁵ See Proposed Rule, *Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary’s Recognition of Accrediting Agencies*, 74 FR 39515 (Aug. 6, 2009) (codified at 34 C.F.R. § 602.33)

necessary context as to the extent of the Department’s concerns and the possible consequences facing HLC, as well as the nearly 1,000 member-institutions and over 5 million students who could be affected by the Department’s intended action. It is not only in violation of federal regulations, but antithetical to the principles of due process, to require HLC to respond to the Draft Analysis without any notice of what action the Department is considering taking against it.⁶

To the second procedural deficiency, the Department has not provided to HLC “all supporting documentation” with its Draft Analysis as required by the regulations.⁷ As part of its inquiry, and as noted in the Draft Analysis, the Department interviewed Mr. Ron Holt, outside legal counsel for the Institutes and Dream Center Education Holdings, their parent company; as well as Ms. Karen Peterson Solinski, former Executive Vice President of Legal and Governmental Affairs at HLC. The Department referenced statements, issues, and emails involving Mr. Holt and Ms. Solinski multiple times in its Draft Analysis and the accompanying materials. While the Department provided HLC with the transcript of its interview with Mr. Holt,⁸ it failed to provide the transcript of its interview with Ms. Solinski. Presumably, any such interview would have addressed the issues, discussions, and emails referenced in multiple places throughout the Department’s Draft Analysis. In failing to provide “all supporting documentation,” including this transcript, the Department’s review under 34 C.F.R. § 602.33 fails to provide yet another fundamental and consequential component of due process and denies HLC the opportunity to know the facts that underlie the Department’s findings.

For these reasons, if the Department intends to proceed with any action that may affect HLC’s recognition status or result in compliance reports, the Department must first cure these deficiencies and follow the unambiguous letter of the regulations. To do so, the Department must reissue its Draft Analysis, including both its specific recommendation and the transcript from Ms. Solinski’s interview—as well as any other relevant information the Department failed to provide—and thereafter allow HLC at least 30 days to respond.

Despite these procedural deficiencies, and in the spirit of cooperation and transparency with the Department, as well as out of concern that any failure to do so will unfairly prejudice HLC in this process, HLC responds to, and wholly disputes, the concerns raised in the Draft Analysis, which cannot stand unrefuted. HLC’s response to the substantive issues raised by the Department should not be construed as a waiver of any procedural arguments. In the event the Department

(stating that, in response to concerns by non-federal negotiators in negotiated rulemaking that “the Department not act arbitrarily and provide adequate notice to and communication with the agency when conducting a review during an agency’s period of recognition...”, the Department added language to then-proposed 34 C.F.R. § 602.33 “to reflect the consultation between Department staff and the agency, and the provision to the agency of the documentation concerning the inquiry”).

⁶ HLC acknowledges that new regulations scheduled to take effect July 1, 2020 will no longer require the Department to provide a recognition recommendation with its Draft Analysis. *See* Final Rules, *The Secretary’s Recognition of Accrediting Agencies*, 84 Fed. Reg. 58928 (Nov. 1, 2019) (to be codified at 34 C.F.R. § 602.33). It is questionable whether failing to provide an accrediting agency with notice of the potential action being considered against it comports with the principles and legal requirements of due process; nonetheless, this new approach is not applicable to the Draft Analysis in question, which clearly predates the effective date of the new regulations.

⁷ *See* 34 C.F.R. § 602.33(c)(2).

⁸ *See* Draft Analysis, Exhibit 2.

reissues the Draft Analysis, HLC reserves the right to submit a written response in accordance with 34 C.F.R. § 602.33(c)(3).⁹

II. RELEVANT HISTORY

As you are aware, the Institutes in question have a troubled history, yet showed signs of meaningful progress over time. The Illinois Institute of Art was first accredited by HLC in 2004, and the Art Institute of Colorado in 2008. At the time, the Institutes were owned by The Art Institutes International II, LLC (the “Art Institutes System”), a wholly-owned subsidiary of Education Management Corporation (“EDMC”), a for-profit company that, at one time, operated over 50 post-secondary educational institutions. The Illinois Institute of Art joined the Art Institutes System in 1995; the Art Institute of Colorado had joined decades earlier, in 1975.¹⁰ Neither of the Institutes had a seamless accreditation history with HLC, but both demonstrated continued improvement in support of their ongoing accreditation during that time, as demonstrated by various interim reports, among other things.

For example, following interim report requirements as part of its initial grant of accreditation in 2009, and then again in 2010 related to concerns over enrollment, the Art Institute of Colorado was put on the public sanction of Notice in June 2013 related to concerns over faculty workload, limited capacity to assess institutional effectiveness, and limited results in implementing a faculty development system. As a result of these challenges, the Board determined that the Art Institute of Colorado was at risk of non-compliance with Criteria Three, Four and Five of the HLC Criteria for Accreditation. In response, it made sufficient progress in these areas to have this sanction removed in February 2015.

Similarly, the Illinois Institute of Art’s initial accreditation required monitoring in the form of focused visits on assessment of student learning, financial organization, and workload impact. In addition, due to enrollment concerns, HLC also required interim reports between 2010 and 2015. Following its comprehensive evaluation, HLC ultimately imposed the sanction of Notice in

⁹ By letter dated October 24, 2019, the Department requested certain information from HLC. HLC responded in writing on November 13, 2019 and provided numerous documents to the Department. HLC-OPE 1-15429 were provided for the Department's review via separate link and password to Dr. Mahaffie and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department. The Department then requested additional information, which HLC provided in writing on January 13, 2020. HLC also supplemented its production to the Department at that time, with links provided to [HLC-OPE 15430-15433](#); [HLC-OPE 15434](#); and [HLC-OPE 15435-15440](#). This response to the Department’s Draft Analysis incorporates all responses and documents previously provided to the Department about this matter. Documents previously provided to the Department that are cited to in this response have also been hyperlinked herein for the Department's convenience. Additionally, HLC supplements its production with [HLC-PET 1-2](#); [HLC-PET 3-9](#); [HLC-PET 10-34](#); [HLC-PET 35](#); and [HLC-SUPP 1-8](#). [HLC-PET 1-2](#) is an April 13, 2017 communication from the Department to HLC regarding HLC's petition for continued recognition, and [HLC-PET 3-9](#) and [HLC-PET 10-34](#) had been provided to the Department on June 8, 2017 pursuant to HLC's petition for continued recognition. [HLC-PET 35](#) is the Department's May 9, 2018 letter informing HLC that HLC's federal recognition has been renewed for a five-year period. [HLC-SUPP 1-8](#) is a document containing relevant HLC procedures that had not been previously provided to the Department. The HLC-PET and HLC-SUPP documents have been hyperlinked in this response and are available for download through that link. The password to access the linked documents has been provided to Dr. Mahaffie and Mr. Bounds via email.

¹⁰ The Art Institute of Colorado and the Illinois Institute of Art were the only institutions in the Art Institutes System that were accredited by HLC.

November 2015. This sanction related to HLC's concerns over the integrity of its student disclosures, student support, institutional resources, strategic planning, and institutional improvement. Despite these concerns, the Illinois Institute of Art demonstrated sufficient progress by November 2017, thereby resulting in the removal of the sanction (with some noted concerns from the Board).

Undeniably, the Institutes both had imperfect accreditation histories, and in the time immediately preceding their change of control application, had been facing declining enrollment and financial concerns, particularly as related to their parent company. Indeed, EDMC had been facing ongoing financial issues and significant litigation, including an investigation by the attorneys general of 39 states and the District of Columbia that resulted in a Consent Judgment against EDMC in 2015.¹¹ As a result, EDMC's subsidiaries, including the Institutes, were required to significantly transform certain aspects of their internal operations. Notably, it was these "financial and reputational burdens" which, according to the Institutes themselves, served as the impetus for EDMC to seek a non-profit buyer for the Art Institutes System, as well as the other for-profit higher education systems then-owned by EDMC.¹² It was ultimately this intended sale which led to the Institutes' change of control application now in question.

The Institutes' Change of Control Application

On May 1, 2017, the Institutes submitted a change of control application to HLC. This application informed HLC that EDMC had entered into an asset purchase agreement on February 24, 2017 for the purpose of the Dream Center Foundation ("DCF") acquiring the Institutes and other EDMC-owned institutions. An EDMC representative had previously met with Dr. Anthea Sweeney, who was HLC's liaison to the Institutes at the time, to discuss this proposed transaction in a preliminary fashion. Dr. Sweeney directed EDMC to file a joint change of control application on behalf of the Institutes by May 1, 2017.

¹¹ The Consent Judgment required EDMC to significantly reform its recruitment and enrollment practices, including mandating additional disclosures to students, prohibiting enrollment in unaccredited programs, and extending the period when new students could withdraw with no financial obligation. EDMC was also required to forgive \$102.8 million in outstanding loan debt held by more than 80,000 former students nationwide and submit to the independent monitoring of a former U.S. Associate Attorney General for a period of three years. See New York State Office of the Attorney General, Press Release Archives, *A.G. Schneiderman Announces \$102.8 Million Settlement with EDMC to Forgive Student Loans and Reform Recruiting and Enrollment Practices* (Nov. 16, 2015), <https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-1028-million-settlement-edmc-forgive-student-loans-and>; Iowa Dep't of Justice, Office of the Attorney General, *EDMC to Change Practices, Forgive Loans through Agreement with Miller and State Attorneys General* (Nov. 16, 2015), <https://www.iowaattorneygeneral.gov/newsroom/edmc-to-change-practices-forgive-loans-through-agreement-with-miller-and-state-attorneys-general>; Office of the Attorney General of the State of Ohio, *Attorney General DeWine Announces \$10.6 Million in Ohio Student Loans to be Forgiven as Part of Multistate Settlement with For-Profit College Provider* (Nov. 16, 2015), [https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-\\$10-6-Million-in](https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2015/Attorney-General-DeWine-Announces-$10-6-Million-in); Maryland Office of the Attorney General, *AG Frosh: \$1.4 Million in Loans Forgiven For Nearly 1,000 Maryland Students* (Nov. 16, 2015), <http://www.marylandattorneygeneral.gov/Press/2015/111615.pdf>.

¹² The quoted language was in the Institutes' change of control application, which was previously produced to the Department as HLC-OPE 2865-5206 (at HLC-OPE 2867). That application is not linked again here due to the size of the document.

As the Department is aware, HLC requires institutions to submit a change of control application for the purposes of ensuring that, in layman's terms, the proposed change will not negatively impact students, and that the institution, under new governance and a new corporate structure, will be administratively and financially capable of continuing to meet HLC's Criteria for Accreditation. HLC does not approve the actual transaction, but rather approves a change of control application based on, among other factors, whether there is a substantial likelihood that the institution will remain in compliance with HLC's Criteria for Accreditation and Eligibility Requirements post-transaction. At that time, institutions that proceeded with a change of control without HLC approval were subject to withdrawal of accreditation.

The then-effective HLC policy governing this process, INST.B.20.040, "Change of Control, Structure or Organization," required that an institution undergoing a change of control "demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that the approval... is in the best interest of the Commission."¹³ INST.B.20.040 also permitted the HLC Board to approve a change of control "subject to conditions on the institution or its accreditation." Relatedly, then-applicable HLC policy INST.F.20.070, "Processes for Seeking Approval of a Change of Control," articulated the precise evaluative framework the Board would apply in considering a change of control application.¹⁴

The application for a change of control proposed that Dream Center Education Holdings ("DCEH"), a non-profit company of DCF, and of which DCF was the sole member, would purchase the Institutes from their existing corporate parent EDMC. According to the Institutes' application, the intent of this transaction was for the Institutes to "become 501(c)(3) tax exempt non-profit institutions," "provide missing reputational and financial stability," and "help [the Illinois Institute of Art] to resolve all of the issues that led to the Commission placing it on Notice on November 12, 2015."¹⁵

As part of its review of the proposed transaction, HLC conducted a site visit in August 2017. Thereafter, EDMC presented to HLC a letter addressed to EDMC from the Department dated September 12, 2017 that provided that the Department had preliminarily concluded that, "it does not see any impediment to... its request for non-profit institution status."¹⁶ Based on this letter, HLC concluded that the Department "confirmed the likelihood that Title IV would be extended to the institutions after they converted to non-profit status as a result of acquisition by the DCEH and that the institutions appeared to meet the Department's definition of non-profit."¹⁷

On October 3, 2017, HLC provided the Institutes with a Staff Summary Report and Fact Finding Visit Report.¹⁸ This report noted HLC's numerous concerns with the Institutes' ability to comply with HLC's Eligibility Requirements and Criteria for Accreditation after the transaction. In

¹³ [HLC-OPE 15239-15242](#)

¹⁴ [HLC-OPE 15268-15275](#)

¹⁵ See footnote 12.

¹⁶ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039); see also [HLC-OPE 7081-7106](#)

¹⁷ See [HLC-OPE 7030-7080](#) (at HLC-OPE 7039)

¹⁸ [HLC-OPE 7030-7080](#)

particular, HLC found that there was substantial likelihood based on available evidence that, due to financial challenges associated with declining enrollment, the HLC Eligibility Requirement of *stability* would not be met after the proposed transaction.¹⁹ Further, HLC determined that, due to EDMC's record of "inappropriate, unethical or untruthful dealings with students," as indicated by the multi-state attorneys general investigation, the Eligibility Requirement of *integrity of business and academic operations* also would not be met; likewise, the Eligibility Requirement of *planning* with regard to current and former business and academic operations would also not be met.²⁰ Although HLC noted that the Institutes had made sufficient progress in resolving the underlying causes giving rise to the sanctions of Notice, ultimately the Eligibility Requirement related to the *accreditation record* would also not be met.²¹ Finally, HLC found that certain Core Components of the HLC Criteria for Accreditation would be met with concerns: Core Components 1.D (focus on public good); 2.A (policies and procedures ensure integrity); 2.B (clear communications with students and prospective students); 2.C (clarity of governing board structure); 4.A (educational quality based on student outcomes); 5.A (financial resources); and 5.C (institutional planning).²²

Despite these failings and concerns, HLC found there was a substantial likelihood that numerous other Eligibility Requirements and Core Components would be met after the transaction. In particular, HLC found that the Institutes employed sufficient qualified faculty and academic personnel and had sufficient learning resources and support services for students and therefore, anticipated this would remain the case after the transaction.

Conditional Approval of Change of Control Application Offered to Institutes (November 2017)

On November 2-3, 2017, the HLC Board approved the Institutes' change of control application *with conditions*, one of which was that the Institutes "undergo a period of candidacy known as Change of Control Candidacy." The Board's approval was aligned with HLC policies and procedures. As noted above, INST.B.20.040 provided that the Board may approve a change of control application "subject to conditions on the institution or its accreditation." The Board could, as it did here, condition its approval upon the Institutes' acceptance of a period of candidacy during which they would address several deficiencies that gave rise to HLC's concern for the Institutes' ability to meet various HLC requirements after the transaction closed. The then-effective procedures for INST.B.20.040 provided that an approval *with conditions* was not appealable.²³

In contrast, the procedures provided for an appeal of decisions where, in appropriate cases as an alternative to denial, candidacy was imposed *because the proposed transaction forms a new institution requiring a period of candidacy*. While then-effective INST.E.50.010 permitted the Board to move an institution from accredited status to candidate status subsequent to the close of a change of control, this policy was not applicable when an institution undergoing a change of control voluntarily agreed to accept the condition of candidacy status, as was the case here.

¹⁹ *Id.* (at HLC-OPE 7043)

²⁰ *Id.* (at HLC-OPE 7047-7048)

²¹ *Id.* (at HLC-OPE 7050)

²² *Id.* (at HLC-OPE 7051-7065)

²³ [HLC-SUPP 1-8](#)

The Board's approval was officially communicated to the Institutes in a joint action letter dated November 16, 2017 (the "Joint Action Letter").²⁴ In this letter, HLC explained that the Board "found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for "preaccreditation status" identified as "Change of Control Candidate for Accreditation[.]"²⁵ The conditions set forth by the Board included that the Institutes:

- (1) undergo a period of candidacy known as a Change of Control Candidacy;
- (2) submit an interim report every 90 days;
- (3) submit Eligibility Filings no later than February 1, 2018;
- (4) host a focused visit within six months of the transaction date; and
- (5) host a second focused site visit no later than June 2019.²⁶

The Institutes were notified that "[i]f at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall *reinstate accreditation* and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation..."²⁷ The Institutes were given 14 days to accept the conditions in writing, or the approval would become null and void, meaning the application would be deemed denied. A denied application does not alter an institution's accredited status. If the conditions were accepted, the Institutes were also required to close the transaction within 30 days from the date of the Board's approval as is consistent with federal regulations, or to notify HLC as soon as possible so alternative arrangements could be identified to ensure the Board's approval remained in effect.

Over the next several weeks, the Institutes and HLC discussed the conditions in the Joint Action Letter. On November 29, 2017, the Institutes jointly wrote to HLC, stating "We understand that both [the Art Institute of Colorado] and [Illinois Institute of Art] will undergo a period of candidacy beginning with the close of the transaction." Further, the Institutes requested that: (a) the deadline for the Eligibility Filings be extended from February 1, 2018 to March 1, 2018; (b) the interim report be allowed to be submitted as a single joint report; and (c) that the transaction closure deadline be extended to January 15.²⁸ This letter also provided—with reference to the required interim reports and the Consent Judgment—that all periodic reports from the Settlement Administrator would be delivered, but that the Institutes "d[id] not believe any further reports would be any more meaningful." In the Joint Action Letter, HLC had set forth the condition that the interim reports were to include "[a]n update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent

²⁴ [HLC-OPE 7726-7732](#)

²⁵ *Id.* (emphasis added)

²⁶ In setting forth this schedule, the Board staggered the deliverables to allow the Institutes to demonstrate compliance in a reasonable time and manner, rather than setting an arbitrary deadline by which they would have to show compliance all at once.

²⁷ *Id.* (emphasis added)

²⁸ See [HLC-OPE 7740-7741](#); see also [HLC-OPE 7738-7739](#) (email sent earlier that same day requesting an extension of the date by which the closing may occur)

third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator."²⁹

On December 1, 2017, then Executive Vice President for Legal and Governmental Affairs at HLC, Karen Solinski, spoke with EDMC's general counsel, DCEH's general counsel, and DCEH's outside counsel, Ron Holt, regarding these requests for changes to the conditions. Mr. Holt emailed Ms. Solinski that evening, summarizing that they had spoken about the transaction closing and stating that the letter sent "concerning the conditions set forth in HLC's November 16 letter... largely provides our understanding of the conditions."³⁰ Thereafter, Mr. Holt and Ms. Solinski exchanged emails regarding what financial information DCEH and DCF would need to include in the interim reports, including discussion over what financial information must be provided for the Institutes' parent and related entities in relation to the condition concerning monitoring of compliance under the Consent Judgment.³¹ DCF and DCEH requested that HLC accept the determination of the Settlement Administrator, then-expected in early 2019, and not require any additional third-party monitoring or audit processes.

HLC staff agreed to the Institutes' request for the non-substantive modification to the requirement of the interim reports such that quarterly financials would be provided within 45 days of the close of the quarter (rather than in each interim report provided every 90 days), but made clear that the requested modifications that were substantive in nature would require Board approval.³² In none of these discussions occurring between November 27 and December 22, 2017 did the Institutes request a modification to the condition of candidacy. The Institutes also did not raise any questions or concerns about the timeline for reinstatement of accreditation which, as outlined in the Joint Action Letter, would follow a series of successful focused site visits.

By letter received January 3, 2018, Brent Richardson, CEO for DCEH, acknowledged that HLC staff were able to make the non-substantive modification to the conditions, and requested once more that DCEH be excused from the condition of continued compliance with the Consent Judgment beyond the conclusion of the work of the Settlement Administrator.³³ This letter raised no concerns, questions, or requests related to the condition of candidacy or the reinstatement of accreditation. Subsequently, Dr. Sweeney emailed the Institutes reminding them that because they were requesting substantive modifications to some of the conditions, these requests would need to be brought to the Board for further consideration.³⁴ Dr. Sweeney also asked for a more formal indication as to whether the parties had *accepted* the Change of Control candidacy status.

²⁹ [HLC-OPE 7726-7732](#) (at HLC-OPE 7727)

³⁰ [HLC-OPE 7742-7761](#)

³¹ [HLC-OPE 7742-7761](#); [HLC-OPE 7742-7761](#)

³² [HLC-OPE 7742-7761](#)

³³ [HLC-OPE 7762](#)

³⁴ [HLC-OPE 15285-15287](#); *see also*, [HLC-OPE 7742-7761](#) (reminder sent on December 22, 2017)

Conditional Approval of Change of Control Accepted by Institutes (January 2018)

By letter dated January 4, 2018, the Institutes and DCEH formally accepted the Board's conditions for approval of the change of control application³⁵ In this letter, the Institutes and DCEH noted that they accepted the conditions from the Joint Action Letter, as modified by the non-substantive revision set forth in the December 22, 2017 email between Ms. Solinski and Mr. Holt, and reiterated that the transfer had not closed within 30 days of the action letter. Despite previous discussions in which the Institutes had requested substantive modifications to some of the conditions (but not the condition of candidacy), the Institutes and DCEH decided not to pursue any of these requested modifications that required Board action, including not pursuing a modification to the condition of an audit process conducted by an independent third-party following the conclusion of the work of the Settlement Administrator under the Consent Judgment. This letter provided that the "details concerning implementation of third-party monitoring in 2019 can be provided later." The letter explicitly stated the Institutes "agree to accept Change of Control candidacy status set forth in the Higher Learning Commission's approval letter dated November 16, 2017," and provided that DCEH planned to close the transaction with EDMC no later than January 15, 2018.

As memorialized in an action letter dated January 12, 2018, the Board approved the Institutes' request for a later closing date, approved the requested non-substantive modification to the interim report condition, and again reiterated that the approval was subject to the condition of candidacy.³⁶ Specifically, the letter provided, "As you know, this approval is specifically subject to a Change of Control Candidacy, which is effective immediately upon the closing of the transaction." The letter further reiterated the significance of candidacy, stating,

Once confirmation of the transaction closing is received, the institutions will enter Change of Control Candidacy status, which will be effective on the date of the close of the transaction, and the Commission will issue a Public Disclosure Notice and provide copies of this action letter to the various external entities identified on this letter. As a reminder, any public announcement by the buyers about this action must include the information that any approval provided by the Commission was subject to the condition of the buyers accepting Change of Control Candidacy status for not less than six months up to a maximum of four years, and that the buyers have accepted the condition.

HLC also reminded the Institutes of the Obligations of Affiliation under INST.B.30.020 which require that an institution "portrays its accreditation status with the Commission clearly to the public." HLC informed the Institutes that they expected the Institutes "have properly notified their students of the acceptance of the Board's condition of Change of Control Candidacy and have clearly stated its impact on current and prospective students once the transaction closes."

³⁵ [HLC-OPE 7763-7764](#)

³⁶ [HLC-OPE 7769-7771](#)

HLC was informed on January 20, 2018 that the transaction between EDMC and DCEH had closed.³⁷ Upon closing, the Institutes' candidacy status became effective immediately. HLC issued a Public Disclosure Notice as of that date stating that the Institutes “have transitioned to being a candidate for accreditation after previously being accredited.”³⁸ Following the consummation of the transaction, HLC reminded the Institutes of their obligation to update their websites to show their preaccreditation status.³⁹

The Institutes Inquire about Condition of Candidacy (February 2018)

On February 2, 2018, attorneys Mr. Holt and Dr. David Harpool, outside counsel for the Institutes and DCEH, wrote to HLC that they “were shocked that the Commission placed the Institutions in candidacy status,” that they understood the Institutes to now be in a “pre-candidacy” status, and stated they were requesting an appeal.⁴⁰ HLC took prompt action that same day to update the Public Disclosure Notice which was designed to provide information about the process by which the accreditation could be reinstated in response to concerns raised in this letter about procedural language.⁴¹ HLC also responded to the letter on February 7, 2018 by reminding counsel that the Institutes voluntarily consented to candidacy status as outlined in the action letters related to HLC’s decision regarding the Institutes’ change of control application.⁴² HLC also explained that the Commission has no such status known as “pre-candidacy” status.

On February 23, 2018, Mr. Holt and Dr. Harpool again wrote to HLC.⁴³ In this letter, they wrote that, in determining whether they “could accept the conditions of the November 16, 2017 letter,” they had relied in good faith on an understanding that the Institutes would remain eligible for Title IV based on the Commission’s reference in the November 16, 2017 letter “to the institutions as being in ‘preaccreditation status.’” Mr. Holt and Dr. Harpool, expressing familiarity with the term, wrote that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.” They wrote to “confir[m]” from HLC that the Institutes: (1) were eligible for Title IV; (2) “remain accredited, in the status of Change of Control Candidate for Accreditation”; (3) “will receive an objective review for continued accreditation”; and (4) “will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.” They further stated that they hoped to avoid an appeal and possible litigation. This correspondence was subsequently referred to HLC's external

³⁷ [HLC-OPE 7776-7777](#); HLC was under the impression that the transaction had closed that day. HLC later learned that the transaction closed on January 19, 2018.

³⁸ [HLC-OPE 7780-7781](#); *see also* [HLC-OPE 7778-7779](#) (Public Disclosure Notice updated on February 2, 2018 to remove certain procedural language)

³⁹ [HLC-OPE 15292-15296](#)

⁴⁰ [HLC-OPE 7782-7783](#); Pursuant to HLC policy, there was also no appeal right for an application approved with conditions, as this was not an adverse action.

⁴¹ [HLC-OPE 7778-7779 \(February 2, 2018 update to the January 20, 2018 Public Disclosure Notice\)](#); *see also* footnote 38.

⁴² [HLC-OPE 7784-7785](#)

⁴³ [HLC-OPE 7786-7787](#)

counsel to respond.⁴⁴ This letter confirmed that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status at the time they were determining whether to accept the conditions from November 16, 2017 through January 4, 2018.

HLC Granted the Institutes an Opportunity to Appeal (May 2018)

Over the coming months, the Institutes and HLC continued to communicate on a regular basis regarding all manner of normal accreditation activities, from the submission of required Eligibility Filings and interim reports to routine updates on personnel changes at each Institute. Then, on May 21, 2018, counsel for the Institutes submitted a letter of intent to appeal and requested instructions for filing such appeal related to their candidacy status.⁴⁵

On May 30, 2018, HLC granted the request for an appeal.⁴⁶ The Institutional Appeals procedure, which at all times is published on HLC's website and, among other navigation methods, retrievable by keyword search, was sent to the Institutes that day. It provides that an institution “may submit the appellate document electronically but must also submit two copies of the entire submission in paper form.”⁴⁷ HLC provided the Institutes with this opportunity to appeal outside of the terms of the applicable policy for a number of reasons, the most important of which was DCEH’s insistence that it would not have accepted the candidacy condition if it had known that the Institutes would be on a preaccredited status rather than an accredited status. Though there was no objective basis for confusion from the clearly articulated Joint Action Letter and the documented conversations between HLC staff and the Institutes, DCEH, and their counsel—which included DCEH’s and the Institutes’ counsel’s explicit acknowledgment that they understood candidacy to be a preaccreditation status—HLC was concerned that the only potential source for confusion may have been due to undocumented communications with a now former employee.

Specifically, given Ms. Solinski’s prior involvement in the matter and her recent departure, HLC was not in a position at that time to be precisely confident as to what she had said to DCEH and whether any *oral* communications between Ms. Solinski and DCEH may have resulted in confusion.⁴⁸ Thus, in an abundance of caution and to ensure adequate due process was afforded to the Institutes in this unique circumstance, HLC permitted the Institutes to appeal.

On May 25, 2018, Dr. Sweeney informed peer reviewers, who were at that point finalizing their reports as a result of their review of the respective Institutes' Eligibility Filings, that review activities were being suspended due to the receipt of the May 21, 2018 letter of intent to appeal.

⁴⁴ HLC’s outside counsel, Mary Kohart, later reached out to Mr. Holt offering to discuss the issues raised in this letter. Mr. Holt did not return her call.

⁴⁵ [HLC-OPE 12264-12266](#)

⁴⁶ See [HLC-OPE 12267-12268](#)

⁴⁷ [HLC-OPE 15252-15264](#)

⁴⁸ See, e.g., [HLC-OPE 15312-15315](#) (explaining to the Department that DCEH and the Institutes were now stating that they were misled about their accreditation status and that the full record of Ms. Solinski’s communications with DCEH was unknown)

HLC's May 30, 2018 letter communicated to counsel for DCEH that the Institutes must submit an "Appellate Document . . . as soon as possible."⁴⁹ HLC provided that, in the interim, it would suspend certain review activities, but that the focused site visit required under 34 C.F.R. § 602.24(b) would go forward.⁵⁰

Thereafter, in full anticipation of an appeal, Dr. Sweeney met with various other HLC staff to discuss related topics, including to ensure the post-change of control focused visits would move forward as required under HLC policy and federal regulations, despite the suspension of the other deliverables of the Joint Action Letter, and to discuss the members of a would-be Appeals Panel to hear the Institutes' appeal. Standard practice was to review the then-current members of the Appeals Body and consider how the Appeals Panel would be constituted. Because there were no individuals on the Appeals Body from a similar institution at the time, HLC took initial action to identify a person to serve that role and review HLC policy to ensure that it permitted President Dr. Gellman-Danley to add a representative to the Appeals Panel to meet the need. These steps demonstrate HLC's reliance that an appeal would be forthcoming and its steps to prepare for such action as it awaited the Appellate Document.

The Institutes Request "Retroactive" Accreditation (June 2018)

On June 20, 2018—twenty days following HLC's offer for an appeal opportunity—legal counsel for DCEH requested a meeting with HLC to "discuss the matters raised in [its] May 21, 2018 letter," which HLC had already responded to by laying out the steps by which an appeal could be brought. In response, Dr. Sweeney provided Mr. Harpool with options for call times on either June 25 or June 26.

Rather than scheduling a call with Dr. Sweeney, Dr. Harpool set forth a proposal by email dated June 24, 2018 for HLC to grant the Institutes accreditation "from the time of the Schools respective initial accreditation through [December 31, 2018]," and in return, the Institutes would cease to admit any new students and provide a three-option teach-out plan.⁵¹ Dr. Sweeney requested that the parties proceed with a call.

During the call, held on June 26, 2018, two days before HLC's June Board meeting, Dr. Sweeney, Dr. Gellman-Danley, and outside counsel for HLC, Ms. Mary Kohart, explained that this request was untimely for consideration by the Board, and while the Board would be updated as to the Institutes' request, it would not consider any action related to the Institutes (including their request for what would essentially be "retroactive" accreditation) at the upcoming Board meeting. It was also explained that HLC could not make any commitments about responding to their request. HLC policy did not permit retroactive accreditation for the Institutes. This was consistent with the Department's position that retroactive accreditation was prohibited. Notably,

⁴⁹ [HLC-OPE 12267-12268](#)

⁵⁰ HLC consulted with the Department as to whether this visit could be waived, and the Department confirmed it could not. See [HLC-OPE 15312-15315](#)

⁵¹ See [HLC-OPE 15322-15324](#)

HLC sought guidance on this issue from the Department, which confirmed to HLC that same day that retroactive accreditation was prohibited.⁵²

The following day, on June 27, 2018—as HLC *later* discovered in December 2019—Mr. Chris Richardson, DCEH’s General Counsel, attempted to send the Institutes’ Appellate Document via email. Mr. Richardson’s email was intended to be addressed to Dr. Barbara Gellman-Danley, HLC President, with copies to Dr. Sweeney and outside counsel for HLC, Ms. Kohart. Notably, the word “commission” in the domain name of the email addresses for both Dr. Gellman-Danley and Dr. Sweeney was misspelled (“hlcomission” with one "M," rather than “hlcommission”). Further, the copy that was directed to Ms. Kohart went to her spam account, perhaps because the sender’s domain name, “lopescapital,” was not a familiar sender or associated with a known entity, such as DCEH. For these reasons, Mr. Richardson’s email was not discovered by HLC or its outside counsel until December 2019, after the Department itself brought the existence of this letter to HLC’s attention.⁵³

The Appellate Document itself only indicated that the Institutes’ appeal was sent via email. HLC has no evidence to suggest that a hard copy was ever sent to or received by HLC, as required by the Institutional Appeals procedure provided to the Institutes and at all times publicly available on the HLC website. DCEH and the Institutes did not, at any time subsequent to its transmission, make any inquiries to HLC about receipt of this document or the status of the Institutes’ appeal. Moreover, as further detailed below, DCEH’s and the Institutes’ communication and conduct thereafter did not put HLC on any notice that an appeal had been submitted.

Preparations for the Institutes’ Closure (July - November 2018)

Despite having just attempted to submit its requested appeal, less than a week later on July 3, 2018, DCEH publicly announced the closures of the Institutes. At this time, it also announced the closure of 16 other Art Institute campuses, nine Argosy University campuses and three South University campuses (none of which were HLC-accredited institutions).⁵⁴ HLC updated its Public Disclosure Notice for the Institutes on July 7, 2018 to provide that it had come to HLC’s attention that DCEH intended to cease enrollment at various locations, including the Institutes.⁵⁵ HLC provided information to students in this updated disclosure with links to information on teach-outs and closed school discharge. Thereafter, HLC communicated with the Institutes on

⁵² See [HLC-OPE 15325-15327](#) (June 6, 2017 Memorandum from Herman Bounds, Director, Accreditation Group, Department of Education); [HLC-OPE 15325-15327](#) (June 26, 2018 Email from Elizabeth Daggett, analyst at the Department). Subsequently, on June 27, 2018, Diane Auer Jones, Principal Deputy Undersecretary at the Department, stated by both phone and email that the Department would be issuing "corrected guidance" on the issue of retroactive accreditation and that the 2017 memorandum would be retracted. That same day, Mr. Bounds provided that the 2017 guidance was not applicable to the situation with the Institutes. On July 3, 2018, Dr. Jones informed Dr. Sweeney that the Department would be willing to provide a written letter stating that retroactive accreditation of the Institutes would not jeopardize HLC’s recognition. HLC did not, at any time, make any assurances to the Department or to DCEH that it would retroactively accredit the Institutes. See [HLC-OPE 15333-15335](#). Indeed, retroactive accreditation for the Institutes was not possible under HLC’s policies.

⁵³ See [HLC-OPE 15430-15433](#), [15434](#)

⁵⁴ The News & Observer, *For-profit school operator closing 30 campuses, including 3 in NC* (July 2, 2018) <https://www.newsobserver.com/news/local/article214193329.html>.

⁵⁵ [HLC-OPE 12258-12260](#)

July 12, 2018, regarding certain critical but missing information required for their respective Teach-Out Plans to be approved. In this letter, HLC again noted its continuing concerns about the Institutes' disclosures published on their website between January 20, 2018 and June 12, 2018, and about other communications to students regarding accreditation status.⁵⁶ HLC reminded the Institutes that peer reviewer-led focused visits would be conducted on July 16 and 17, 2018, as these were not waivable under federal law. Finally, HLC also notified the Institutes that the peer reviewers had been apprised of the recent closure announcement. This communication was subsequently provided by HLC to the Department via email on July 17, 2018.⁵⁷

Following the focused site visits, HLC's peer reviewers recommended withdrawal of candidacy for the Art Institute of Colorado and reinstatement of accreditation for the Illinois Institute of Art. In each case, the relevant Institute had an opportunity to provide, and did provide, an institutional response. On October 9, 2018, HLC approved the Institutes' Teach-Out Plans and Teach-Out Agreements so that the Institutes could implement their respective plans in advance of the anticipated closures.

On November 1, 2018, the Board continued each Institute's candidacy until the planned closure date. This action was memorialized in writing to each Institute on November 7, 2018, and HLC issued the required Public Disclosure Notices.⁵⁸

Between November 20-21, 2018, each Institute wrote a letter to HLC stating its intent to appeal HLC's "January 20, 2018 action" (the effective date of the application approval, with the condition of candidacy) and the November 1, 2018 action (extension of candidacy).⁵⁹ Curiously, neither letter mentioned that the Institutes had already attempted to submit (to the wrong email address) an appeal more than five months earlier, nor alleged that HLC failed to respond to that appeal. Instead, each letter reads as the first and only appeal related to the respective Institute's candidacy status.

When HLC responded eight days later (following the Thanksgiving holiday) on November 28, 2018, HLC recounted that the Institutes requested to appeal six months prior, on May 21, 2018. HLC explained that it had no obligation to provide the appeal at that time, but nevertheless did so, despite the "Institute[s] never fil[ing] any appeal." Based on what it knew at the time, and its reasonable belief that the parties had allowed the earlier opportunity to lapse, HLC concluded that the untimely attempt to appeal the approval of the change of control application with the condition of candidacy was not appropriate.⁶⁰ HLC also informed the Institutes that continuation of candidacy was not an "adverse action" and therefore not appealable.

⁵⁶ [HLC-OPE 12562-12580](#)

⁵⁷ See [HLC-OPE 15347-15353](#)

⁵⁸ See [HLC-OPE 15180-15186](#), [15168-15171](#), [15172-15179](#)

⁵⁹ See [HLC-OPE 15187-15189](#), [15190-15191](#)

⁶⁰ See [HLC-OPE 15192-15194](#), [15195-15198](#)

On January 8, 2019, DCEH informed HLC that the Institutes closed on December 28, 2018 and that they “forego their membership with the Commission.”⁶¹ Accordingly, HLC issued the required Public Disclosure Notice to this effect.⁶²

Department Inquiries about the Institutes’ Candidacy Status and Closure

The Department began expressing to HLC its interest in the Institutes’ accreditation status many months after the Department was previously made aware of HLC’s approval of the change of control application with the condition of candidacy. Indeed, HLC’s November 16, 2017 Joint Action Letter was sent to both Michael Frola, Director of Multi-Regional and Foreign School Participation Division at the Department, and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education at the Department, as was the January 12, 2018 letter,⁶³ which incorporated the earlier letter and made one non-substantive modification regarding the interim report requirement. Neither Mr. Frola, Mr. Bounds, nor any other Department official ever raised concerns about HLC’s compliance with federal regulations or the condition of candidacy in the context of change of control at those times.

Even after the transaction between EDMC and DCEH closed and DCEH began raising concerns about preaccreditation status, the Department still waited to raise any questions about the Institutes’ accreditation status for some time. Mr. Frola was copied on various communications and received copies of relevant materials from DCEH relating to accreditation status in early February, yet neither he nor any other Department official raised concerns at that time.⁶⁴ Mr. Frola was again copied on the electronic transmission of a letter sent by legal counsel for DCEH and the Institutes, this time DCEH’s February 23, 2018 letter in which Mr. Holt and Dr. Harpool stated that, in determining that the Institutes would accept the conditions of the change of control application approval, they relied on their understanding of the Institutes “as being in ‘preaccreditation status,’ a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁶⁵ In this letter, DCEH requested that HLC confirm that the Institutes “remain eligible for Title IV.” That same day, Mr. Frola emailed Ms. Solinski, stating “the candidacy status that HLC has Dream Center on following the [change of

⁶¹ See [HLC-OPE 15204-15205](#)

⁶² See [HLC-OPE 15206](#)

⁶³ This letter was sent to Mr. Frola and Mr. Bounds on January 23, 2018, after the close of the transaction on January 20, 2018, consistent with common practice.

⁶⁴ Mr. Frola was copied on an email sent by legal counsel for DCEH and the Institutes, which attached their February 2, 2018 letter in which DCEH and the Institutes first raised concerns about candidacy. [HLC-OPE 15297](#); [HLC-OPE 7782-7783](#). Mr. Frola then, by email to Ms. Solinski, requested a copy of the draft Public Disclosure Letter referenced in the underlying letter; unfortunately, HLC cannot verify that Ms. Solinski responded. However, Mr. Frola was sent a copy of HLC’s February 7, 2018 response, which explained that, as detailed in the Joint Action Letter, the Institutes were on Change of Control Candidate for Accreditation status and would be eligible to seek accredited status. This response also explained that the Public Disclosure Notice, which stated that the Institutes “transitioned to being a candidate for accreditation after previously being accredited” and that courses or degrees earned at the Institutes during the candidacy period were not accredited by HLC, was available on HLC’s website at the time. [HLC-OPE 7784-7785](#); [HLC-OPE 7778-7779](#)

⁶⁵ [HLC-OPE 7786-7787](#)

control] could be problematic for the schools [sic] title IV eligibility."⁶⁶ Dr. Sweeney arranged a call with Mr. Frola in response.⁶⁷ On March 9, 2018, Dr. Sweeney and Mr. Frola spoke by phone, along with other representatives from HLC and the Department. On this call, Mr. Frola asked Dr. Sweeney whether candidacy was an accreditation status. Dr. Sweeney informed him that candidacy was a preaccreditation status. Mr. Frola then asked whether the HLC Board had made an independent determination that the Institutes were non-profit institutions. Dr. Sweeney informed Mr. Frola that, as the Department was certainly aware, HLC had not made any independent determination as to the Institutes' tax status or any independent determination as to the Institutes' eligibility for Title IV funding, as those determinations were in the rightful purview of the IRS and the Department, respectively.

HLC heard nothing more from the Department about the Institutes generally, much less about any issues pertaining to their accreditation status or Title IV eligibility, until May 22, 2018.⁶⁸ At this time, having received a letter of intent to appeal from the Institutes on May 21, 2018, Dr. Sweeney called Mr. Frola to follow up on their earlier conversation on March 9, 2018, and he informed her that the Department had issued Temporary Program Participation Agreements on a month-to-month basis as of February 20, 2018 and had granted the Institutes temporary interim non-profit status on May 3, 2018. Dr. Sweeney followed-up by email and requested copies of the temporary approvals.⁶⁹ Mr. Frola provided the copies as requested, but did not raise any concerns about the Institutes' accreditation status, their Title IV eligibility, or the propriety of HLC's approval of the change of control application with the condition of candidacy in either his call with Dr. Sweeney or his subsequent email.

On May 30, 2018, and in response to the pending letter of intent to appeal from DCEH on behalf of the Institutes, Dr. Sweeney reached out to Ms. Elizabeth Daggett, an analyst at the Department, to confirm whether an evaluation required to occur within six months following a change of control under the change of control regulations could be suspended pending the Institutes' appeal of an aspect of HLC's approval of the change of control application.⁷⁰ Dr. Sweeney informed Ms. Daggett that the Institutes were now alleging they did not understand that candidacy indicated that they would no longer be accredited, despite their acknowledgment of candidacy as a preaccreditation status. Ms. Daggett thanked Dr. Sweeney for the information and confirmed that this type of visit could not be waived. She did not indicate that any action taken by HLC was contrary to regulations or that the Department had any concerns with the Institutes' accreditation status.

Despite further communications with the Department in June, July and August 2018, at no time until October 31, 2018 did any Department official so much as indicate to HLC that it took issue with HLC's approval of the change of control application with the condition of candidacy. Indeed, on June 27, 2018, the Principal Deputy Undersecretary at the Department, Dr. Diane

⁶⁶ [HLC-OPE 15298-15299](#)

⁶⁷ [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#). The call was slightly delayed due to Ms. Solinski's departure from HLC.

⁶⁸ On May 9, 2018, the Department communicated to HLC that it had granted it a five-year period of recognition. [HLC-PET 35](#).

⁶⁹ [HLC-OPE 15302-15311](#)

⁷⁰ [HLC-OPE 15312-15315](#)

Auer Jones, called Dr. Gellman-Danley to discuss the possibility of retroactive accreditation. At no point in the conversations about retroactive accreditation around this time did any Department official raise concerns about HLC's compliance with federal regulations or its own policies in taking its November 16, 2017 action.

Indeed, an analysis of the various communications with officials at the Department around this time is illustrative. On June 27, 2018, Dr. Jones left a voicemail with Dr. Gellman-Danley in which she raised the idea of retroactive accreditation as an option for the Institutes.⁷¹ Dr. Sweeney responded on Dr. Gellman-Danley's behalf and wrote to Dr. Jones, indicating that she understood that the Institutes had sought "support for a confidential proposal...presented to HLC...in lieu of proceeding with HLC's established processes, to seek reinstatement of accreditation."⁷² At Dr. Gellman-Danley's request, Dr. Sweeney asked to arrange a call with Dr. Jones to "seek clarity" on the Department's position regarding retroactive accreditation. Dr. Jones responded by email and stated that the Department would be retracting its 2017 memorandum, in which it took the position that retroactive accreditation was inconsistent with regulation, and that it would instead be issuing "corrected guidance."⁷³ However, in a call Dr. Sweeney had with Ms. Daggett and Mr. Bounds that same day, the Department indicated that, even if retroactive accreditation were permitted by the Department, HLC should "be mindful of current federal regulations on ensuring consistency in decisionmaking." Dr. Sweeney understood the Department to be indicating that any future action taken by HLC with respect to the Institutes should be consistent with current HLC policy and HLC's other decisionmaking.

Later that evening, Dr. Jones called Dr. Sweeney and again shared that the Department would soon be issuing additional guidance on the issue of retroactive accreditation. While she asked that HLC work with her exclusively at the Department regarding the Institutes, at no time did Dr. Jones indicate that she believed HLC had acted contrary to regulations or its own policy. Dr. Sweeney and Dr. Jones again emailed regarding the issue of retroactive accreditation on July 3, 2018,⁷⁴ but no assurances were ever made by HLC that it would, indeed, retroactively accredit the Institutes. In fact, such action was not permitted under HLC policies. The July 3 email stated that the Board "can consider an earlier reinstatement of accreditation than initially contemplated in its original action letter" (which had provided that reinstatement would occur after the second focused evaluation if the Institutes then met the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns). While Dr. Sweeney asked for written assurance that reinstating the Institutes' accreditation effective as of January 19, 2018 would not jeopardize HLC's recognition (due to fact it was not permitted by HLC policy and, at the time,

⁷¹ Dr. Sweeney had, while speaking with Ms. Daggett about an unrelated issue on June 26, 2018, inquired about the Department's position on retroactive accreditation. This question was a result of the June 24, 2018 email from Dr. Harpool that HLC had read to effectively request that the Institutes be retroactively accredited, as well as the June 26, 2018 call with DCEH's and the Institutes' representatives. Ms. Daggett had provided Dr. Sweeney with the memorandum authored by Mr. Bounds stating that the Department prohibited retroactive accreditation. See [HLC-OPE 15325-15327](#); [HLC-OPE 15322-15324](#)

⁷² [HLC-OPE 15331-15332](#)

⁷³ The Department issued new guidance permitting retroactive accreditation on July 25, 2018, which effectively superseded the 2017 memorandum. [HLC-15354-15355](#)

⁷⁴ [HLC-OPE 15333-15335](#)

prohibited by the Department), Dr. Sweeney made no assurances about whether accreditation would be reinstated or, if it were, made effective retroactively.

Following the announced closures of the Institutes, the Department and HLC communicated regarding HLC's concerns about the Institutes' Teach-Out Plans as well as their disclosures to students regarding their accreditation status.⁷⁵ Dr. Jones also emailed Dr. Sweeney on July 29, 2018 with questions about the transferability of credits and whether HLC requires transcripts "to be marked in such a way to indicate the campus's accreditation status for each semester."⁷⁶ Dr. Sweeney responded the next day and informed Dr. Jones that HLC had no requirements for what must appear on a transcript, but that, to support those students who earned credits or graduated prior to January 20, 2018, the Institutes could provide a letter making clear that those credits were indeed accredited if that status was not clear from the face of their transcripts. Specifically, Dr. Sweeney wrote:

Students who graduated from the Institutes prior to January 20, 2018 (the effective date of Change of Control candidacy) graduated from accredited institutions. If that is not already clear on their transcripts, the Institutes (or later, the entity with ongoing responsibility for student records) should accompany all transcripts with an official letter or notation that makes this fact clear.⁷⁷

Dr. Sweeney explained that because of the "complexity of this case and the ways things evolved," it was likely that other institutions would make the default assumption that either the Institutes were never accredited or were always accredited. Dr. Sweeney further explained that an additional explanation (such as the one described above) may be necessary due to the level of nuance around when the Institutes became preaccredited. Dr. Jones thanked Dr. Sweeney for the information and wrote, "I'll add this to my list of things to follow up on."⁷⁸

Dr. Sweeney emailed Dr. Jones again on August 23, 2018, noting that HLC had "continuing concerns about the information being provided to students" by the Institutes.⁷⁹ Dr. Jones thanked Dr. Sweeney "for the update," and asked for information related to the Institutes' site visits. Dr. Sweeney informed Dr. Jones that the site teams had recommended reinstatement of accreditation for the Illinois Institute of Art, but withdrawal of candidacy for the Art Institute of Colorado, and that the Board would decide each issue in the fall. Dr. Jones again thanked Dr. Sweeney for the information but did not provide any indication that she was concerned about the Institutes' status, either from the effective date of candidacy or going forward through closure.⁸⁰

Nearly two months later, on October 31, 2018, Dr. Jones wrote to HLC stating that the Department had concerns with HLC's compliance with federal regulations related to its actions

⁷⁵ [HLC-OPE 15343-15346](#)

⁷⁶ [HLC-OPE 15347-15353](#)

⁷⁷ [HLC-OPE 15347-15353](#) (at HLC-OPE 1538) (emphasis in original)

⁷⁸ *See id.* (at HLC-OPE 15347-15349)

⁷⁹ [HLC-OPE 15356-15358](#)

⁸⁰ On October 15, 2018, Dr. Jones informed Dr. Sweeney and Dr. Gellman-Danley that she was concerned about statements made by a peer reviewer during the site visit at the Illinois Institute of Art. Dr. Jones expressed concern that students may decide not to transfer schools based on the peer reviewer's statement that accreditation would be retroactive if it were restored. *See* [HLC-OPE 15359-15360](#).

concerning the Institutes. This was the first time HLC was given any notice from the Department of such concerns. Dr. Jones and Dr. Gellman-Danley had also spoken by phone two days prior, on October 29, 2018, at Dr. Jones' request. During the October 29 call, Dr. Jones had again informed HLC that a decision by HLC to retroactively accredit the Institutes would not be negatively viewed by the Department, as she had also previously stated in July 2018, and informed Dr. Gellman-Danley that she had identified a way for the HLC Board to effectuate such retroactive accreditation and would issue a letter indicating as such. On the evening of October 31, 2018, following receipt of the October 31 letter, Dr. Jones, Dr. Gellman-Danley, and Dr. Sweeney spoke by phone. On that call, Dr. Jones suggested that HLC could consider rescinding its November 2017 Joint Action Letter and instead place the Institutes on a sanction or issue a Show-Cause Order. Dr. Gellman-Danley and Dr. Sweeney told Dr. Jones that the HLC Board would evaluate each Institute based on the evidence available and in accordance with the HLC policies. Dr. Jones and Dr. Gellman-Danley spoke again later that night. Dr. Jones advised that HLC should simply submit a brief response to her stating that HLC will review its policies.⁸¹ HLC did so on November 7, 2018.

With the exception of Dr. Jones' testimony before the Subcommittee on Economic and Consumer Policy of the House Committee on Oversight in May 2019 (which HLC learned of independently), HLC did not hear from the Department regarding any compliance issue related to HLC's application of its policies and procedures to the Institutes' change of control application, including its response to the October 31, 2018 letter, until October 24, 2019.⁸² As the Department is aware, at that time it requested certain information and documents from HLC, which were provided on November 13, 2019, and later supplemented upon the Department's request on January 13, 2020.

On November 8, 2019, the Department issued a press release announcing that it would cancel the loans of students who attended the Institutes between January 20, 2018 and December 31, 2018.⁸³ In this press release, the Department wrote,

The decision to cancel student loans and restore Pell Grant eligibility comes because students were harmed by the Higher Learning Commission's

⁸¹ In fact, Dr. Jones initially told HLC that the Department would retract the October 31, 2018 letter. She then stated that the letter could not be retracted, but that HLC should only provide a short response regarding its policy review.

⁸² On October 22, 2019, former students of the Institutes filed a lawsuit against the Department alleging that the Department improperly distributed Title IV funds (*Infusino v. DeVos*, 1:19-CV-03162 (D.D.C.)). The Department announced on November 8, 2019, that it would cancel the loans of more than 1,500 students who attended the Institutes. To note, former students of the Institutes also filed a lawsuit on December 6, 2018 against the Illinois Institute of Art, DCF, and DCEH pleading claims under the Illinois Consumer Fraud and Deceptive Practices Act for misrepresentations of material fact, omissions of material fact, and unfairness related to the Institutes' disclosures of their accreditation status, as well as claims for negligent misrepresentation and fraudulent concealment (*Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)) DCF's motion to dismiss the second amended complaint was denied on January 6, 2020. On February 28, 2020, DCF filed a third-party complaint against HLC in the *Dunagan* suit. This complaint specifically references the Department's present "investigation" of HLC.

⁸³ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

classification of the institutions in a newly developed and improperly defined accreditation status after January 20, 2018. The Department is concerned that the Art Institute of Colorado and the Illinois Institute of Art were actually fully accredited from January 20, 2018, until their closings at the end of the year. Because HLC has required these two schools to note on student transcripts that credits and degrees earned during this period are from a non-accredited institution, students have been harmed as they seek transfer credit and employment elsewhere.

The Department stated that HLC had imposed a requirement on the Institutes to alter students' transcripts to indicate that credits earned after January 20, 2018 were unaccredited. To HLC's knowledge, no representative of HLC ever spoke or emailed with any representative for the Institutes, DCEH, or DCF regarding any such notations on student transcripts. As provided above, Dr. Sweeney emailed Dr. Jones on July 30, 2018, regarding measures the Institutes could take—but were not required to take—to assist students who had earned credits at the Institutes while they were accredited. Specifically, this option was to help ensure that the accreditation status of the Institutes prior to January 20, 2018 was made clear to the institutions to which those students sought to transfer. Nowhere in that communication did Dr. Sweeney tell Dr. Jones that the Institutes were required to indicate on transcripts that credits earned after January 20, 2018 were from nonaccredited institutions. The Department did not have further communications with HLC about transcript notations until the issuance of the Draft Analysis, and HLC has entirely no idea as to what communications or actions the Department is referring in this press release.

III. SUBSTANTIVE RESPONSE TO FINDINGS OF NONCOMPLIANCE

At all times, HLC has complied with the required standards and required operating policies, as provided for at 34 C.F.R. §§ 602.16 – 602.28, as well as its own policies. As such, HLC respectfully disagrees with the Department's findings of noncompliance. In response to the Institutes' change of control application, HLC: (a) provided due process as required under § 602.25, (b) complied with its own policies and procedures, and (c) acted with consistency in decision-making as required by § 602.18.

As a preliminary and important matter—and in accordance with its regular process for policy review—HLC revised various relevant policies and procedures related to the change of control process. Among other things, this effort will enhance due process and ensure that a scenario such as this will not occur again. Specifically, Policy INST.E.50.010—with which the Department asserts HLC was non-compliant, but, as explained below was not applicable here—has been eliminated. Correspondingly, and again, while not applicable here, HLC also has removed from its policies the option of approving a change of control where the Board “determines that the transaction forms a new institution requiring a period of time in Candidacy” (which did not occur here). Likewise, HLC will no longer approve a change of control application with the *condition* of candidacy (as occurred here) and has made clear in its revised procedures that no condition would alter an institution's accreditation status. These revisions also align with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020, which will prohibit an accreditor from moving an institution from accredited to preaccredited status.

While HLC complied with its own policies and then-applicable federal regulations at all times during the approval of the Institutes' change of control application, as explained below, these revisions to HLC policies and procedures already address all of the Department's concerns.

a. HLC Did Not Violate Due Process Requirements (§§ 602.25(a), (d), (e), and (f))

The Department requires that an accrediting agency “demonstrate that the procedures it uses throughout the accrediting process satisfy due process.”⁸⁴ The regulation then identifies the ways in which an accrediting agency meets this standard: provision of adequate written specification of accreditation and preaccreditation requirements; provision of reasonable time for compliance with agency requests; written specification of deficiencies; sufficient opportunity for a written response prior to adverse action; notification in writing of any adverse action; an opportunity to appeal adverse action; a written decision regarding such an appeal; and an opportunity to review new financial information prior to a final adverse action decision.

The Draft Analysis contends that HLC violated due process by failing to provide clear standards regarding accreditation, and, in relation to an alleged adverse action, failing to provide the opportunity for a written response, notification of such adverse action in writing, and an opportunity to appeal. These contentions are both erroneous and not grounded in the facts of this matter. As explained below, due process is precisely what HLC provided to the Institutes upon receipt of their change of control application and throughout the entire process of working with them following the Board's decision concerning their change of control application.

As a general matter, due process requires notice and an opportunity to respond.⁸⁵ Both critical elements were provided here. The documented communications between HLC and the Institutes in November and December of 2017, as well as in January of 2018, make clear that the parties entered into an agreement with clear notice and sufficient information to make an informed decision. By virtue of the Joint Action Letter explicitly stating that (1) acceptance of candidacy status was a condition of the approval, (2) candidacy is a preaccreditation status, and (3) accreditation would be reinstated after the second focused evaluation if accreditation criteria were met, DCEH and the Institutes *should reasonably have known* that the condition they were contemplating whether to accept—and ultimately did accept—was a period of time during which the Institutes would hold preaccreditation status.

Moreover, and fatal to any assertion that the Institutes were not informed of the impact of this condition at the time, Mr. Holt and Dr. Harpool's February 23, 2018 letter specifically provided that they understood that the Institutes would be placed on a “preaccreditation status” *prior* to the Institutes' acceptance of the condition. As noted above, this letter documented that DCEH, the Institutes, and their legal counsel had knowledge that candidacy was a preaccreditation status during the time from November 16, 2017 through January 4, 2018 in which they were determining whether to accept the conditions. Critically, as noted in the letter, Mr. Holt and Dr.

⁸⁴ 34 C.F.R. § 602.25

⁸⁵ *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) (“The essential elements of due process are notice and an opportunity to respond”) (citing *Cleveland Board of Education v. Longermill*, 470 U.S. 532, 546 (1985)).

Harpool noted that “‘preaccreditation status’ [is] a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution.”⁸⁶

Further, the ongoing communications between HLC and DCEH from the extended time of the Board’s notice of the condition of candidacy on November 16, 2017 through the Institutes’ and DCEH’s explicit acceptance of that condition on January 4, 2018 demonstrate that DCEH and the Institutes had more than sufficient opportunity to respond to and raise any questions or concerns about this condition. Indeed, the Institutes and HLC engaged in an interactive process regarding minor modifications to the original conditions based upon the requests of counsel for the Institutes and DCEH. The back-and-forth during this time period clearly reflects that DCEH was given ample opportunity to respond, as they repeatedly, and successfully, availed themselves of that right throughout this timeframe.

In addition to the period between the Joint Action Letter and the Institutes’ acceptance of the conditions of the change of control, the Institutes were given yet another opportunity to respond when, on May 30, 2018, they were given explicit information as to how to appeal their candidacy status, despite no requirement that HLC provide such an appeal. Simply put, the evidence is clear that HLC provided due process, including the opportunity to appeal the candidacy status, and therefore unequivocally complied with the four provisions of 34 C.F.R. § 602.25 identified by the Department in its Draft Analysis.

Compliance with 34 C.F.R. § 602.25(a) (clear standards)

An accrediting agency satisfies due process when it has “adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.”⁸⁷ In its Draft Analysis, the Department finds that this requirement was not met because the Joint Action Letter did “not include clear statements that accreditation was being withdrawn” and “cloaked [HLC’s] action within the vague and ambiguous term ‘Change of Control Candidacy’ status,” a term which the Department states can only be understood through “reference to multiple sections of HLC Policy.” Respectfully, HLC disagrees.

As detailed in Section II above, the November 16, 2017 Joint Action Letter explicitly stated the following:

- “[T]he Board voted to approve the application for Change of Control, Structure, or Organization . . . however, this approval is subject to the requirement of Change of Control Candidacy Status.”
- “The Board . . . found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for *pre-accreditation status* identified as ‘Change of Control Candidate for Accreditation’ . . .”
- “The conditions set forth . . . are . . . [that] [t]he institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the

⁸⁶ [HLC-OPE 7786-7787](#). Any question about the Institutes’ Title IV eligibility at the time turned on whether the Department, in accordance with the Higher Education Act, 20 U.S.C. 1001 et seq., considered the Institutes as maintaining their for-profit status, or whether their application for non-profit status had been accepted.

⁸⁷ 34 C.F.R. § 602.25(a)

close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.”

- “*If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation . . .*”⁸⁸

There is no need for highly-specialized knowledge of accreditation to know that a term with the prefix “pre” is distinguishable from a term without any such prefix, or to know the meaning of the term “reinstate.” Clearly, “preaccreditation” has a meaning distinct from “accreditation,” even just under the plain meaning of the term. Furthermore, accreditation could only be “reinstate[d]” if the Institutes had not been accredited for some period of time. A plain reading of the Joint Action Letter—not even considering HLC’s policies and procedures, which provide additional context—makes clear that candidacy is a preaccreditation status, and that the Institutes would thus be on a preaccreditation status until such time that they demonstrated to the Board that they met the Criteria for Accreditation, at which time accreditation would be reinstated. There is no need for highly-specialized knowledge of accreditation to recognize this distinction.

Likewise, the Department’s finding that the use of the terms (1) “Change of Control, Structure, or Organization”; (2) “Change of Control Candidacy Status”; (3) “Change of Control Candidate for Accreditation”; and (4) “Change of Control Candidacy”... “obfuscat[ed] the true nature and meaning of candidacy status” is not supported by a plain reading of the Joint Action Letter. The first term, “Change of Control, Structure, or Organization,” references the organizational changes, which are within the control of an institution, that trigger the application requirement. The plain meaning of the second, third and fourth terms are variations of terms that are clearly synonymous. Ultimately, these terms all clearly explain that there is a difference between (A) “accreditation,” and (B) “candidate for accreditation,” or “candidacy,” or “candidacy status.”

For example, in written communication with HLC, the following acknowledgements of this concept were stated by the Institutes and/or DCEH’s representatives themselves:

- “We understand that both [Institutes] will undergo a period of candidacy beginning with the close of the transaction” (November 29, 2017 letter)⁸⁹
- “[The Institutes] agree to accept Change of Control candidacy status” (January 4, 2018 letter)⁹⁰

As such, it is clear that the Institutes and DCEH *themselves* used the terms “candidacy” and “candidacy status” interchangeably. When put in context of the ongoing communications between DCEH, the Institutes, and HLC, it is clear that the use of the terms “candidacy status,” “candidacy,” and “candidate for accreditation” did not cause any now-alleged confusion on the part of DCEH and the Institutes. Moreover, if the Institutes were confused upon receipt of the Joint Action Letter, they could have raised questions or asked for clarification about these terms

⁸⁸ [HLC-OPE 7726-7732](#) (emphasis added).

⁸⁹ [HLC-OPE 7740-7741](#)

⁹⁰ [HLC-OPE 7763-7764](#)

during any of their subsequent conversations with HLC. They never did so, despite raising questions about many other matters. Again, it does not take any highly-specialized knowledge to understand that candidacy status, candidacy, and candidate for accreditation are synonymous terms indicating a preaccreditation status.

Despite the fact that this particular concept does not require a significant level of sophistication, HLC recognizes that accreditation standards are somewhat specialized. As held by the Eighth Circuit Court of Appeals, accreditors' standards "are not guides for the layman but for professionals in the field of education."⁹¹ For this reason, HLC reasonably expects any institution accredited by HLC to become familiar with HLC policies generally, and in particular, with those that apply in an immediately relevant circumstance such as a change of control. These policies are readily available on HLC's website for precisely this reason, and an institution's staff liaison is always available to answer questions related to HLC policy. Thus, it is a reasonable expectation that the Institutes would be familiar with HLC policy and reasonably be in a position to understand the Joint Action Letter. The Department's finding that a full understanding of the term "candidacy" would have required the Institutes to read HLC policies does not support the conclusion that HLC did not have adequate written standards.

Ultimately, DCEH and the Institutes would have been aware upon simply reading the Joint Action Letter that candidacy was a "preaccreditation" status and that, assuming they accepted the conditions, upon their decision to consummate the transaction, they would no longer be "accredited," as accreditation would later be "reinstated." If for any reason these terms were confusing to the Institutes or their legal counsel, they could have reviewed HLC policy or asked their liaison or any other HLC staff member questions at any time between the receipt of the Joint Action Letter and their acceptance of the conditions, a period that ultimately spanned over 45 days. Whether or not the Institutes had *actual knowledge* of the meaning of the term does not determine whether or not HLC complied with § 602.25(a). HLC's policies and the Joint Action Letter provided adequate written specification and clear standards such that the Institutes *reasonably should have known* that the condition of candidacy was a preaccreditation status prior to the time they accepted such condition of candidacy.

Compliance with 34 C.F.R. § 602.25(d), (e), and (f) (due process)

As a preliminary matter, 34 C.F.R. § 602.25(d), (e), and (f), which all address how an accrediting agency demonstrates it has satisfied due process in relation to an adverse action, are not applicable because no adverse action was taken here. At issue was approval of the Institutes' change of control application with conditions—an inherently *non-adverse* action—as was permitted under HLC policies and procedures in effect at the time. The Institutes discussed with HLC several of the conditions (although not the candidacy condition), and ultimately agreed to the condition of candidacy without objection. There was no adverse action triggering the requirement that the Institutes be afforded the due process rights provided for in subsections (d), (e), and (f), and therefore these provisions are entirely inapplicable.

⁹¹ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987).

However, assuming *in arguendo* that the agreed-to condition of candidacy did constitute an “adverse action,” HLC still afforded adequate due process to the Institutes. In the end, HLC unquestionably complied with both the letter and the spirit of each of the cited subsections of the regulation. To explain, 34 C.F.R. § 602.25(d) provides that an accrediting agency satisfies due process when it provides “sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.” The clear intent of the provision is that an institution must have an opportunity for meaningful communication with their accreditor. This intent was fulfilled through ongoing and documented communication between HLC and the Institutes both following the November 2017 Board action, which was not effective absent their acceptance of explicit conditions, and prior to the January 2018 Board action, which clearly reiterated the conditions would take effect only upon the parties' consummation of the transaction.

Indeed, as detailed in Section II above, the Institutes initially requested multiple changes, but subsequently withdrew all their requests except for a single non-substantive modification, which was granted. Upon learning of HLC's determination that other requested modifications were substantive and would require Board approval, the Institutes decided not to pursue those modifications and instead accepted all conditions. They had ample opportunity to speak with HLC about their concerns. They engaged in substantive communications with HLC regarding the approval of the change of control application. The Institutes' choice not to provide written feedback regarding the condition of candidacy status does not mean that they were deprived of due process; rather, due process was afforded to them, and they did not seek to question, oppose, or even inquire further about the condition of candidacy. Instead, the Institutes explicitly agreed to it. Because meaningful discussions occurred regarding the Board's approval with conditions, and because an opportunity to accept such conditions after due consideration was provided to the Institutes, and further, because the Institutes' subsequent written acceptance of the conditions satisfied 34 C.F.R. § 602.25(d), HLC complied with the regulation.

HLC's compliance with subsection (e) is also apparent. Specifically, 34 C.F.R. § 602.25(e) provides that an accrediting agency satisfies due process when it “[n]otifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.” Even if the Board's action qualifies as an adverse action (and HLC contends it does not), § 602.25(e) was satisfied. The Joint Action Letter made clear that the Institutes would have the preaccreditation status of candidacy; thus, the Institutes were notified in writing of the action. The Joint Action Letter describes why the Institutes were not eligible for continued accreditation if the change of control were to go forward, but did meet the requirements for candidacy. The letter sent January 12, 2018 following the Institutes' acceptance of candidacy—which incorporated the Joint Action Letter and the Board's rationale by reference—also again stated that the candidacy would be effective upon close of the transaction. As such, the requirement that the “notice describe the basis for the action” was satisfied.

The same is true with respect to subsection (f). This regulation, 34 C.F.R. § 602.25(f), states that an accrediting agency satisfies due process when it “[p]rovides 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.” Again, if the candidacy condition had been an adverse action,

§ 602.25 was satisfied. Indisputably, the Institutes were granted the right to appeal on May 30, 2018. At this time, HLC communicated to outside legal counsel for DCEH and the Institutes that an Appellate Document should be submitted as soon as possible. Three weeks later, on June 20, DCEH's outside legal counsel requested a meeting with HLC. Thereafter he submitted requests for what was essentially retroactive accreditation to HLC by email on June 24, not an appeal of the candidacy condition. A telephone meeting was promptly held on June 26 regarding DCEH's requests, at which DCEH made no mention of their desire for an appeal.

On June 27, four weeks after HLC provided information about the appeal process, DCEH, through its General Counsel using an unfamiliar email address, attempted to submit an Appellate Document via email to HLC President Dr. Gellman-Danley, but used *an incorrect email address*. This email was also sent to Dr. Sweeney *at an incorrect email address* and to outside counsel for HLC, Ms. Kohart. Likely given that the email was not from the Institutes or DCEH, but rather an unfamiliar domain, the email went to Ms. Kohart's spam folder. As a result, HLC never received the Appellate Document.

Six days after DCEH, on behalf of the Institutes, incorrectly attempted to submit the Appellate Document electronically, and failed to submit it in paper form as required under the Institutional Appeals procedure, DCEH announced the closures of the Institutes. DCEH and the Institutes never followed-up with HLC regarding their attempted appeal submission; no hard copies of the Appellate Document were ever submitted; no confirmation of receipt from HLC was ever received; and no inquiries were ever made about the status of the appeal. Moreover, when a subsequent and untimely appeal was requested by DCEH on behalf of the Institutes six months later in November 2018, no reference was made to the Institutes' earlier Appellate Document. Even if DCEH made a good faith pursuit of an appeal on June 27, 2018, DCEH clearly abandoned any intent to pursue that appeal. As such, and because it was DCEH's decision not to pursue their appeal, it cannot be said that HLC deprived DCEH of due process.

Ultimately, while HLC disputes that it was required to allow an appeal in these circumstances, an appeal was nevertheless provided. It was DCEH's decision not to pursue the appeal it was afforded. The requirements of 34 C.F.R. § 602.25(f) were thus met. Furthermore, this provision of an appeal remedied any purported due process harm resulting from the alleged failure to comply with any other subsection of 34 C.F.R. § 602.25. The principles of due process mandate that an accreditor provide notice and an opportunity to respond.⁹² Due process does not require the accreditor to handhold a party in availing themselves of that opportunity. The letter and spirit of the regulations were met by the provision of adequate due process here, and HLC was in compliance with the relevant regulations.

b. HLC Has Complied with Its Own Policies and Procedures

While the Draft Analysis alleges that the Joint Action Letter was an "adverse action" under HLC Policy INST.E.50.010, HLC respectfully disagrees. HLC policy, particularly INST.B.20.040 and its related procedures, permits the Board to approve a change of control *with or without*

⁹² *Auburn Univ. v. S. Ass'n of Colleges & Sch., Inc.*, 489 F. Supp. 2d 1362, 1373–74 (N.D. Ga. 2002) ("The essential elements of due process are notice and an opportunity to respond").

conditions. This conditional approval was a separate decision from a decision under INST.E.50.010 to move an institution to candidacy *because the transaction forms a new institution* (as an alternative to denial). Because the Institutes agreed to the condition of candidacy here, INST.E.50.010 was not even invoked.

At no point in approving the Institutes' change of control application was HLC acting under INST.E.50.010, and thus at no point could it be noncompliant with that policy. HLC's position here is not merely a disagreement with the Department. Rather, HLC's position must supersede the Department's finding. Courts have been clear that an accrediting agency's interpretation of its own rules should be given deference. It is important that the Department permit HLC to exercise discretion in implementing its own policies and procedures. As written by a Michigan district court and affirmed by the U.S. Court of Appeals for the Sixth Circuit, "Accrediting procedures are guides that, if construed . . . too strictly, would strip the accrediting bodies of the discretion they need to assess the unique circumstances presented by different schools."⁹³ The Department's interpretation of HLC's policy and procedure does not afford HLC the discretion and deference to which it is legally entitled. As such, the Department's findings that HLC invoked its authority under INST.E.50.010 to "move" the Institutes to candidacy, that the Joint Action Letter was an adverse action under INST.E.50.010, and that HLC violated the Institutes' due process rights under INST.E.50.010 cannot stand.

Even if, *in arguendo*, HLC did not comply with its own policies, such noncompliance does not violate due process unless it "resulted in any fundamental unfairness arising out of the process employed."⁹⁴ Technicalities of noncompliance that do not have a consequential impact do not result in due process deprivations. Indeed, courts have held in analyzing accreditation decisions that the principles of fairness are "flexible and involve weighing the 'nature of the controversy and the competing interests of the parties' on a case by case basis."⁹⁵ Where either process results in the same outcome, the process employed is not fundamentally unfair.⁹⁶

HLC's decision to use the option of change of control candidacy as a condition to be accepted by the Institutes, rather than moving the Institutes to change of control candidacy pursuant to INST.E.50.010, was not fundamentally unfair, because the outcome would have been no different if HLC, instead of securing an agreed-to condition for candidacy, had moved the Institutes to candidacy status under INST.E.50.010. If HLC had moved the Institutes to candidacy status, the Institutes would have been provided an opportunity to appeal, as they were ultimately allowed under the process employed here.

Therefore, the decision not to utilize INST.E.50.010 was not fundamentally unfair, and any alleged noncompliance with HLC policies and procedures does not violate due process.

⁹³ *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

⁹⁴ *Lincoln Mem'l Univ. Duncan Sch. of Law v. Am. Bar Ass'n*, No. 3:11-CV-608, 2012 WL 1108125, at *5 (E.D. Tenn. Apr. 2, 2012).

⁹⁵ *Med. Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987); *Marlboro Corp. v. Association of Indep. Colleges*, 556 F.2d 78, 81 (1st Cir.1977).

⁹⁶ *See Med. Inst. of Minnesota*, 817 F.2d 1315 ("MIM has made no showing that the outcome of the hearing would have been different had cross-examination been allowed.").

The Department also found that INST.E.50.010 conflicted with 34 C.F.R. § 600.11(c), stating in its Draft Analysis:

Finally, 34 C.F.R. § 600.11(c) prohibits an institution from being considered for accreditation “for 24 months after it has had its accreditation or pre-accreditation withdrawn, revoked, or otherwise terminated for cause, unless the accreditation agency ... rescinds that action.” This regulation also prohibits agencies from moving an institution from accredited to pre-accredited status. In contrast, INST.E.50.010 allowed the Board to take an institution from accredited to candidacy status, defines such an action as an adverse action, and allows for apparent reinstatement within 6 to 18 months, contrary to the requirements of 34 C.F.R. §600.11(c). Accreditor policies that promise accreditation to institutions on terms that would not allow the institutions to meet the Department’s eligibility requirements are counterproductive at best. An accreditor applying such a policy should at a minimum inform the institution of any such obvious inconsistency between its provision of accreditation to the institution and the institution’s subsequent ability to use that accreditation to meet Departmental eligibility requirements. HLC did not do so here.

HLC disagrees with the Department’s interpretation, and proffers that it had, despite no requirement for doing so, informed the Institutes that their eligibility for Title IV while on a preaccredited status was dependent on the Department’s determination that the Institutes were non-profit.

Indeed, part 600 of Title 34 of the Code of Federal Regulation concerns *institutional* eligibility for Title IV funds—this part does not impose requirements on accrediting agencies. Title IV eligibility is a separate and distinct matter from accreditation. As such, 34 C.F.R. § 600.11(c) does not, as the Department states without support, “prohibit[] agencies from moving an institution from accredited to pre-accredited status.” Rather, this regulation provides that after *accreditation or preaccreditation* are *withdrawn, revoked or terminated for cause*, the Department cannot find the institution eligible for Title IV purposes for a period of 24 months. This prohibition on the Department's authority related to Title IV eligibility, while related to accreditation status, has nothing to do with the underlying accreditation decision, and places no requirements or prohibitions on an accrediting agency in terms of its own decision-making.

While the new 34 C.F.R. § 602.23(f)(1)(iv) will generally prohibit an accreditor from moving an institution from an accredited to preaccredited status, this new provision does not go into effect until July 1, 2020 and is not applicable to events that predate that effective date. Moreover, as previously discussed, HLC has revised its policies and procedures to align with this new regulation. Because 34 C.F.R. § 600.11(c) does not impose any requirements on accreditors, and because, under the Department of Education Organization Act⁹⁷ the Secretary does not have authority over accreditors except as provided by law, the Department’s finding here is simply erroneous.

⁹⁷ 20 U.S.C. § 3403(b)

Even if, *in arguendo*, Part 600 of Title 34 was applicable to accrediting agencies (which it is not), and § 600.11(c) somehow prohibits an accrediting agency from reinstating accreditation for 24 months after accreditation or preaccreditation are withdrawn, revoked, or terminated for cause (which it does not), the Department misunderstands how the instant scenario would relate to such an impermissible interpretation of the regulation. The Institutes voluntarily accepted a condition of a period of candidacy; HLC did not "withdraw[], revoke[], or otherwise terminate[]" the Institutes' accreditation. As such, INST.E.50.010 did not conflict with federal regulations, even if understood in this manner.

Nevertheless, HLC shares the concerns of the Department, echoed by former students of the Institutes in litigation against the Department⁹⁸ and DCEH,⁹⁹ that the Institutes were not eligible for Title IV funding at some period of time. However, HLC did not become aware until March 9, 2018 that the Institutes had not yet been determined to be non-profit by the IRS or that the Department had not yet made a determination about the Institutes' eligibility under Title IV. As HLC made clear to Mr. Frola on March 9, 2018, and as the Department should be well-aware, HLC does not make *any* determinations about whether an institution is non-profit under IRS regulations or whether an Institution is eligible for Title IV under Department regulations. HLC does not have the authority to do so. Such determinations are exclusively within the purview of the IRS and the Department, respectively. Indeed, HLC was not informed until May 22, 2018, the day after the agency received the Institutes' letter of intent to appeal, when Dr. Sweeney called and spoke with Mr. Frola, that the Department had granted the Institutes monthly Temporary Program Participation Agreements effective February 20, 2020 and temporary interim non-profit status on May 3, 2018.

However, the Department's determinations as to the Institutes' Title IV eligibility are irrelevant as to whether HLC policy, or even HLC's actions, comported with federal regulations. While the Draft Analysis concludes that an accreditor should inform an institution of any "obvious inconsistency between its provision of accreditation to the institution and the institution's subsequent ability to use that accreditation to meet Departmental eligibility requirements," it is not the responsibility of the accreditor to ensure an institution is eligible for financial aid, whether as a non-profit institution (eligible if accredited or preaccredited) or a for-profit institution (only eligible if accredited).¹⁰⁰ Moreover, Dr. Sweeney, as liaison to the Institutes, did make clear to Illinois Institute of Art President Josh Pond, during a phone call on January 26, 2018, that any disclosure language regarding preaccreditation and Title IV eligibility must take into account whether the Department had made a final determination that the Institutes were non-profit entities. As such, even if INST.E.50.010 did conflict with federal eligibility requirements, which it does not, HLC did exactly what the Department suggests here that HLC should have done.

Finally, and as mentioned previously, HLC has rescinded INST.E.50.010—as acknowledged by the Department in a mere footnote of the Draft Analysis. As such, any findings by the

⁹⁸ *Infusino v. Devos*, No. 1:19-CV-03162 (D.D.C.)

⁹⁹ *Dunagan v. Illinois Inst. of Art-Chicago*, No. 19-cv-809 (N.D. Ill.)

¹⁰⁰ Compare 34 C.F.R. § 600.4 (a private or public nonprofit institution of higher education can be accredited or preaccredited for purposes of Title IV eligibility) with 34 C.F.R. § 600.5 (a propriety (for-profit) institution of higher education must be accredited for purposes of Title IV eligibility).

Department related to HLC's alleged noncompliance with INST.E.50.010 and the policy's alleged conflict with Department regulations are no longer applicable.

c. HLC has Acted with Consistency in Decision-Making

34 C.F.R. § 602.18 requires that the agency “consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program... is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency.” In relevant part, the regulations provide that an agency demonstrates it has met this standard where it “[b]ases decisions regarding accreditation and preaccreditation on the agency's published standards.” 34 C.F.R. § 602.18(c). HLC respectfully disagrees with the Department's finding that it was in noncompliance with § 602.18(c), as its decisions were based on its published standards.

As explained in Section III(b), HLC did not act under INST.E.50.010 when it offered the Institutes an approval of the change of control application with the condition of candidacy. Rather, it was acting under INST.B.20.040 and corresponding procedures, which at the time permitted approval based on the condition of candidacy. Again, HLC is entitled to deference from the Department in interpreting and applying its own policies and procedures.¹⁰¹ HLC's determination that it was acting under INST.B.20.040, not INST.E.50.010, in this matter is within the proper scope of its discretion, not the Department's. At the time, an approval with the condition of candidacy was permissible under HLC's published standards, and as such, HLC has demonstrated it met 34 C.F.R. § 602.18.

Moreover, the purpose behind 34 C.F.R. § 602.18, generally, is to ensure consistency in decision-making. While an approval with the condition of candidacy is not common, it is consistent with past practice. In 2014, Everest College Phoenix (“ECP”), an institution that at the time had been accredited by HLC since 1997, and was then-owned by Corinthian Colleges, Inc. (“CCI”), submitted a change of control application after CCI announced a deal that allowed for ECP and 55 other campuses to be sold to Educational Credit Management Corporation (“ECMC”) and run by an ECMC subsidiary, Zenith Education Group (“Zenith”). The HLC Board, concerned about the ability of ECP to meet accreditation standards under new ownership, approved the change of control with conditions, including the condition of candidacy. This offer was communicated through a March 6, 2015 action letter substantially similar to the action letter provided to the Institutes.¹⁰² In relevant part, that action letter stated:

- "The Board approved the application but subject to several conditions. First, the Board required that the College undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction transferring the College and certain CCI assets to Zenith. The period of the Change of Control candidacy

¹⁰¹ See, e.g., *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 39 F. Supp. 2d 889, 896–97 (W.D. Mich. 1998), *aff'd*, 244 F.3d 521 (6th Cir. 2001).

¹⁰² See [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to HLC's June 8, 2017 petition for continued recognition).

may be as short as six months but shall not exceed the maximum period of four years for candidacy."

- "If, at the time of either evaluation the institution is able to demonstrate to the subsequent satisfaction of the Board that it meets the Eligibility Requirements and Criteria for Accreditation, the Board shall *reinstate* accreditation."¹⁰³

The condition was accepted by ECP and, at the institution's request, HLC set the candidacy date for the end of the term.¹⁰⁴ However, shortly thereafter and prior to the effective date of candidacy, the deal between CCI and ECMC collapsed, CCI filed for bankruptcy, ECP closed its campuses and online operations, and ECP voluntarily resigned from HLC. As such, the change of control candidacy status never became effective.

A review of the ECP matter is important not only because it demonstrates that HLC's approval of the Institutes' change of control application with the condition of candidacy is aligned with past practice and demonstrative of consistency in decision-making, but also because the Department previously requested files related to the ECP transaction and was aware of this option and its application.

A brief history may be helpful: HLC was to file a petition for recognition in Summer 2017. HLC had provided exhaustive responses to memoranda from the Department on June 3, 2013, and December 15, 2016. On April 13, 2017, shortly after HLC submitted its response to the second memorandum, the Department sent a letter requesting additional information that HLC was to include with its petition for recognition.¹⁰⁵ The Department stated it needed this information in order "to conduct a thorough analysis of HLC in preparation for the review of its recognition." The Department specifically requested a narrative with supporting documents relating to HLC's accreditation of ECP. Such a narrative, along with supporting documents including the action letter sent to ECP informing ECP that HLC would approve the change of control application with the condition of candidacy, and ECP's initial response accepting this condition, was provided to the Department as Exhibit I.6 to the petition for continued recognition submitted by HLC on June 8, 2017.¹⁰⁶

As detailed in Section IV, the Department did not at any time indicate to HLC that it had concerns with HLC's regulatory compliance related to the ECP change of control application, or the approval of that application with the condition of candidacy. In fact, a five-year period of recognition was granted to HLC by the Department on May 9, 2018.¹⁰⁷ As such, HLC could not be aware that the Department would later take a position that it was impermissible for an accreditor to approve a change of control application with the condition of candidacy. To the contrary, because the Department received this information pursuant to its "responsibility to conduct a thorough analysis," prior to HLC receiving the full five-year recognition without any additional reporting requirements, it would be most logical for HLC to understand that the

¹⁰³ *Id.* (emphasis added).

¹⁰⁴ *See id.*

¹⁰⁵ [HLC-PET 1-2 \(April 13, 2017 letter from the Department requesting additional information\)](#)

¹⁰⁶ [HLC-PET 3-9](#) (June 8, 2017 cover letter from HLC to Mr. Bounds to petition for continued recognition); [HLC-PET 10-34](#) (selected documents from Exhibit I.6 to petition for continued recognition)

¹⁰⁷ [HLC-PET 35](#)

Department reviewed the requested ECP materials and approved of the manner in which HLC approved the change of control.¹⁰⁸ Ultimately, when HLC approved the Institutes' change of control application with the condition of candidacy in the same manner, this action was consistent with decision-making previously approved by the Department. For this additional reason, this finding cannot stand.

IV. THE DEPARTMENT'S FINDINGS OF NONCOMPLIANCE ARE ARBITRARY AND CAPRICIOUS

The Department cannot take action that is “arbitrary, capricious, [or] an abuse of discretion.”¹⁰⁹ This targeted inquiry into HLC's approval of the Institutes' change of control application with the condition of candidacy is arbitrary and capricious, and any recommendation to take action impacting HLC's recognition status as a result of this inquiry would be as well.

Most significantly, the Department has acted in an arbitrary and capricious manner by identifying the Institutes' candidacy status as problematic when it did not do so in a nearly identical case for Everest College Phoenix (“ECP”), despite having been provided meaningful and fulsome detail about that prior circumstance. Unquestionably, the Department is required to treat like cases alike—this is a fundamental norm for agencies.¹¹⁰ As stated eloquently by the D.C. Circuit Court of Appeals, “[i]t is axiomatic that an agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so.”¹¹¹ The Department has no such legitimate reason here for distinguishing between its review of these two situations.

As detailed in Section III above, the Department specifically requested information about the ECP change of control application and HLC's related approval. In response, HLC provided all documents relevant to that application and approval for the Department's review. Presumably, the Department indeed read these materials, which included the action letter sent by HLC to ECP that explained HLC was offering an approval of the change of control application with conditions, including the condition of candidacy, with an opportunity for later reinstatement of accreditation. Again, the Department did not raise any concerns about the ECP transaction at any time, despite receiving all relevant materials about that change of control application.

¹⁰⁸ Notably, in footnote 15 of the Draft Analysis, the Department accused HLC of “us[ing] a punitive provision under its policies that it had never previously used after receiving a letter from five Members of Congress.” Not only was HLC's approval of the change of control application with the condition of candidacy not punitive, it had also, as detailed herein, been previously used. HLC was not, as the Department asserts, “undu[ly] influence[d]” by certain elected officials. Rather, HLC evaluated the Institutes' change of control application, and their respective ability to meet the Criteria for Accreditation after the transaction, using an evidence-based approach and a fair process that allowed for due process, consistent with past action, its own policies, and federal regulations.

¹⁰⁹ 5 U.S.C. § 706(2)(A)

¹¹⁰ *Westar Energy, Inc. v. Federal Energy Regulatory Com'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) (“fundamental norm of administrative procedure requires an agency to treat like cases alike.”).

¹¹¹ *Kreis v. Sec'y of Air Force*, 406 F.3d 684, 687 (D.C. Cir. 2005) (internal quotations omitted) (emphasis added).

The Department's findings that HLC was noncompliant with federal regulations and its own policy in the Institutes' matter is "an unexplained departure from its precedent"¹¹² and therefore arbitrary and capricious. For this reason alone, this finding also cannot stand.

Moreover, the unreasonable length of time between the action at issue and the Department's review of that action is, in and of itself, arbitrary and capricious, and antithetical to the requirement that agency action not be unreasonably delayed.¹¹³ This transaction was first brought to the Department's attention on November 16, 2017, when the Joint Action Letter to the Institutes was also sent to Mr. Frola and Mr. Bounds at the Department. During the period beginning early March 2018 and ending on May 21, 2018, HLC had communication with the Department regarding the Institutes' accreditation status. During this time, the Department granted a five-year recognition to HLC.

However, the Department did not inform HLC of the now-articulated concerns relating to this matter until Dr. Jones wrote to HLC on October 31, 2018, despite the Department's knowledge of this action since November 16, 2017.¹¹⁴ In that exchange, Dr. Jones told Dr. Gellman-Danley to simply submit a brief response to her letter stating that HLC will review its policies. HLC did so on November 7, 2018 and, receiving no reply to that response other than a prompt acknowledgment of receipt, believed in good faith that nothing further was required from the Department on this issue. Consistent with this commitment and HLC's philosophy of continuous improvement, however, HLC took action to immediately begin reviewing the relevant policies and procedures. As previously explained, HLC ultimately rescinded INST.E.50.010 in November 2019, following its regular policy revision process which includes seeking stakeholder input.

Notably, HLC was not told that its November 7, 2018 response was insufficient or that the Department had ongoing concerns with its accreditation actions until October 24, 2019—707 days after the Joint Action Letter was sent; 642 days after the EDMC/DCEH transaction closed and the Institutes' candidacy status became effective; and 353 days following its response. And, of course, the Draft Analysis raising concerns with this candidacy status was not sent until over two full years after the effective date of candidacy. The Department's action in raising this concern years after the alleged non-compliance is entirely arbitrary and capricious.

V. HLC'S RESPONSE TO THE DEPARTMENT'S REQUESTS FOR A NARRATIVE RESPONSE AND A DETAILED PLAN

The Department has requested: (1) "a narrative, including any supporting documentation, on steps it has or will take to prevent due process failures in the future" and (2)

¹¹² *See id.*

¹¹³ *See* 5 U.S.C. § 706(1)

¹¹⁴ HLC notes that Mr. Frola raised a concern that candidacy status could affect the Institutes' Title IV eligibility on February 23, 2018 and made inquiries about whether HLC had made determinations about the Institutes' non-profit status during a March 9, 2018 call. Despite these inquiries, he did not raise any concerns about the legitimacy of HLC's policy or application thereof in this circumstance. *See* [HLC-OPE 15298-15299](#); [HLC-OPE 15300-15301](#).

[A] detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

Due Process Narrative

HLC has, throughout this response, provided the requested narrative regarding steps it has or will take to prevent due process failures. HLC engages at all times in a process of analyzing its policies, procedures, and practices, and its Board makes necessary revisions to policies and procedures to conform with best practices, to respond to emerging issues, and in pursuit of continual improvement. HLC staff and its Board think critically about what has worked well, and what has resulted in less-than-ideal outcomes, related to its accreditation practices. HLC strongly believes that the institutions it accredits are entitled to due process, just as it believes the students who attend those institutions are entitled to a high-quality education and transparent disclosures about accreditation and any concerns therein. As such, both as part of its general commitment to continuous improvement and in response to the harm to students as a result of the Institutes' failure to appropriately disclose to students the Institutes' preaccreditation status (which the Institutes attribute to purported confusion), and EDMC's and DCEH's determination to close the transaction once the semester had already begun, HLC has taken steps to ensure the scenario is not repeated in the future.

Most notably, and as recognized by the Department, INST.E.50.010 has been withdrawn. As such, there no longer is an HLC policy permitting an institution to be "moved" from accreditation to candidacy. This policy change also aligns with the new 34 C.F.R. § 602.23(f)(1), effective July 1, 2020. On February 27, 2020, HLC submitted revisions to two additional Change of Control-related policies (INST.F.20.070 and INST.F.20.080) to Ms. Daggett for advance review. HLC received an acknowledgement with a commitment to providing feedback no later than April 29, 2020. HLC is also in the process of revising the procedures relevant to a change of control application and approval, to align with other change of control policy changes adopted in 2019, and to otherwise clarify the procedures for HLC's membership.

Moreover, the Board undertook an independent analysis of what transpired with respect to the Institutes' change of control application, the approval of the change of control application with the condition of candidacy, the mid-semester closure of the transaction by EDMC and DCF, the Institutes' inadequate disclosures to their students, and the Institutes' eventual closure. In recognition of the new § 602.23(f)(1) (which would not have necessarily applied in this scenario, as candidacy was a voluntary condition) and of the harm to students caused by the Institutes' disclosures about its status, the Board will no longer approve a change of control application with the condition of candidacy. HLC has revised its procedures to provide that any conditions that may accompany a change of control application approval will not include conditions that could alter an institution's accreditation status.

While HLC provided more than meaningful due process in the circumstance in question, these changes reflect HLC's enduring commitment to due process. Further, this effort will certainly continue to align HLC policies, procedures, and practice with the Department's compliance expectations, particularly as defined by new regulations scheduled to take effect July 1, 2020.

With this effort already nearly complete, HLC has more than fully responded to the Department's compliance concerns.

A Detailed Plan

As an initial matter, and as the Department is certainly aware, HLC has no authority over an institution's transcripts or an institution's decision to accept transfer credit. HLC certainly shares the Department's concern for the students who attended the Institutes who, now after their closure, may have trouble transferring credits earned at the Institutes. Once HLC is made aware of the details of "any effort to correct the academic transcripts of those students" or of the details around "any effort" to help those students that is being undertaken by the now-closed Institutes, DCEH, DCF, or the Department, it will happily consider how it may reasonably assist. Without knowing the details of these efforts, however, HLC cannot provide a detailed plan to the Department in this regard.

To a related issue, this request inadvertently gives the impression that the Department is requiring, as an end result, that HLC "retroactively" accredit the Institutes. Specifically, the request asks that the transcripts of students attending on or after January 20, 2018 "show that the students earned credits and credentials from an accredited institution." HLC presumes this was unintentional, as the Department is certainly aware that it cannot direct an accreditor to make specific accreditation decisions about specific schools. Indeed, the Department of Education Organization Act limits the Secretary's authority over accrediting agencies. *See* 20 U.S.C. § 3403(b). In fact, in *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, the D.C. District Court held,

*[w]hile the Secretary has the authority to decide whether a particular accreditor's standards warrant approval as a reliable indicator of educational quality, 20 U.S.C. § 1099b(a), the Department itself is barred from interfering in an accrediting agency's assessment regarding individual schools. 20 U.S.C. § 3403(b).*¹¹⁵

Likewise, the Administrative Procedures Act also dictates that courts set aside agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."¹¹⁶ As such, any determination regarding whether the Institutes met the Criteria for Accreditation following their change of control must rest with HLC. To the extent that the Department's primary goal would be to obtain action from HLC that would result in "retroactive accreditation," the use of its oversight authority to secure such action is not supported by law.

However, HLC deeply shares in the Department's concern for the students negatively impacted by DCF's and DCEH's actions and stands ready to work with the Department to assist those students as they work to pursue their educational and professional goals. While each college and university across the country adopts its own credit transfer policies and may, or may not, choose to accept credits obtained at a preaccredited institution, HLC is in a unique position to provide

¹¹⁵ *Armstrong v. Accrediting Council For Continuing Educ. & Training, Inc.*, 980 F. Supp. 53, 63 (D.D.C. 1997), *aff'd*, 168 F.3d 1362 (D.C. Cir. 1999), *opinion amended on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999).

¹¹⁶ 5 U.S.C. § 706.

meaningful support to impacted students as it relates to the transferability of their credits. As part of the Institutes' closure process, they established an online resource for students seeking to continue their educations; one of the resources includes a list of potential alternative schools for displaced students. Fourteen of the potential alternative schools are accredited by HLC. As such, HLC is able to reach out to those schools, and to the extent applicable, other schools accredited by HLC, in an effort to remind institutions that they are able to accept credits from preaccredited institutions, to help make more obtainable enrollment and credit acceptance for these students. Upon the agreement of the Department that the crux of the present matter is related to concern over impacted students' ability to transfer their credits, HLC is willing to distribute a letter reminding its member institutions that they are not prohibited from accepting credits from these schools and encouraging each school to consider immediate recruiting efforts to students impacted by the Institutes' closure, and/or inform member institutions that the Institutes' candidacy status was not related to the quality of instruction. HLC is more than willing to work collaboratively with the Department to find other ways to help these students, provided any such action is aligned with HLC policy and Department regulations.

VI. CONCLUSION

The Department's actions in this matter—while presumably well-intentioned and driven by the desire to support students, particularly the vulnerable students whose lives were negatively impacted by the Institutes' abrupt closure and whose choices were dramatically limited by DCF's and DCEH's inaccurate disclosures—have strayed from the fundamental principles of procedural and substantive due process to which it owes its regulated stakeholders. Inexplicably, the Department asks HLC to explain what steps it will take to prevent alleged “due process failures in the future,” but fails to recognize that the policy it contends was not followed is no longer in effect. Thus, it is impossible for the complained of action to reoccur under current HLC policy and procedures.

With respect to the aggrieved students, it is DCF, DCEH's and the Institutes' actions and omissions—not HLC's—that have left students displaced and in need of immediate and jointly coordinated support by the regulatory authorities and accreditors who are best-positioned to provide meaningful assistance. The Department's November 8, 2019 press release¹¹⁷ alleging that HLC harmed students based on its transcript requirements is without any evidentiary support. Dr. Sweeney provided Dr. Jones with a clear statement that HLC does not impose any requirements regarding transcripts. She also explained that the Institutes could provide a notation on, or documentation accompanying, the transcripts of students who graduated prior to January 20, 2018, explaining that the Institutes had been accredited. This suggestion was clearly made in the spirit of helping those students who obtained credits from the Institutes while they were accredited. To say HLC required that the transcripts contain notations that the credits earned are *unaccredited*, rather than Dr. Sweeney's actual suggestion about *accredited* credits, is inaccurate.¹¹⁸ Moreover, the Department ignores and minimizes DCF's and DCEH's repeated

¹¹⁷ U.S. Dep't of Ed., *Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures* (November 8, 2019), <https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>

¹¹⁸ See [HLC-OPE 15347-15353](#)

attempts to exploit HLC's policies, procedures and good faith communications for its own objectives, including solving its own significant financial challenges, at students' expense.

Nevertheless, HLC remains sensitive to the students' plight and is eager to assist with any ongoing effort the Department is prepared to describe. HLC stands ready and willing to respond by working *alongside* the Department in a coordinated way in responding to student needs. Yet, this current exercise of identifying hollow policy and procedural "failings," and demanding vague and undefined action from HLC in a manner that exceeds the Department's authority in numerous ways, does nothing to further that goal.

To be clear, HLC's actions in this matter were firmly rooted in then-applicable policies and procedures that were aligned with federal regulations and consistently applied. HLC's response to the change of control application was not unprecedented, but remarkably, followed the exact same process that had been previously offered to the Department in full detail, which at that time drew no concern. Due process, notice of applicable policies, and a meaningful opportunity to respond to the conditional approval were all provided to the Institutes.

Finally, despite HLC's strong demonstration that it complied with both federal regulations and sound and clearly articulated policies, HLC has timely made meaningful changes to address the results of its Board's independent analysis, while simultaneously ensuring that the Department's noncompliance concerns will never arise in the future. To that end, and for the reasons stated above, the Department must promptly close this inquiry with no further action.

Sincerely,



Barbara Gellman-Danley, PhD
President

CC (via email): Herman Bounds, Director of Accreditation, U.S. Department of Education
Anthea Sweeney, Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Marla Morgen, Associate Vice President of Legal and Regulatory Affairs, Higher Learning Commission
Julie Miceli, Partner, Husch Blackwell
Jed Brinton, Deputy General Counsel, U.S. Department of Education

Exhibit B

HUSCH BLACKWELL

Julie Miceli
Office Managing Partner

120 South Riverside Plaza
Suite 2200
Chicago, IL 60606-3912
Direct: 312.526.1521
Fax: 312.655.1501
julie.miceli@huschblackwell.com

May 21, 2020

VIA E-MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue, SW, LBJ 7W104
Washington, DC 20202-4536
E-Mail: EDFOIAManager@ed.gov

Re: FOIA Request

Dear FOIA Liaison:

I am writing to request information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, on behalf of the Higher Learning Commission (“HLC”). I serve as outside counsel for HLC in relation to certain regulatory matters, as described below.

As you are aware, the U.S. Department of Education (“Department”) recognizes and regulates accrediting agencies (“agencies”) such as HLC under the terms set forth in 34 C.F.R. § 602 *et seq.* Under 34 C.F.R. § 602.33(c), the Department is permitted to make a determination that “one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria,” and is directed upon making such a determination to send a “written draft analysis” to the agency that includes “any identified areas of noncompliance, and a proposed recognition recommendation, and all supporting documentation to the agency.”

On January 31, 2020, the Department notified HLC that it had conducted a review related to HLC’s accreditation of the Art Institute of Colorado and the Illinois Institute of Art

(collectively, the “Institutes”). The Department informed HLC that pursuant to 34 C.F.R. § 602.33(c), it had found HLC in “noncompliance” with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f), as well as an HLC policy which is no longer in effect. In this draft analysis, the Department failed to provide HLC with an accreditation recommendation. The Department also failed to provide “all supporting documentation” for its findings and recommendation. The Department’s draft analysis included a small number of exhibits, one of which was a transcript of a December 9, 2019, interview between Robert King, Assistant Secretary for Postsecondary Education, and Ron Holt, outside counsel for the Institutes. The draft analysis referenced another interview that took place on December 23, 2019, between Mr. King and a former HLC employee, Karen Solinski, but the Department did not provide HLC with a transcript of that interview. Instead, only an email Mr. King sent to Ms. Solinski following the interview, and Ms. Solinski’s email in response, were provided.

HLC filed a timely response to the Department's January 31 letter on March 20, 2020. In addition to substantively responding to the Department’s findings of noncompliance, HLC also raised concerns about the Department’s failure to give HLC all supporting documentation and notify HLC of its recommendation. On May 1, 2020, the Department responded with a second letter, and stated that its January 31 and May 1 letters would collectively be considered the Department’s draft analysis. As relevant to this FOIA request, the Department acknowledged that HLC requested to be provided with all supporting documentation. However, the Department merely responded that there was no transcript or recording of the interview with Ms. Solinski, and stated that “the Department did not rely on what was said orally in that interview [but instead] relied exclusively on Ms. Solinski’s December 26, 2019 email.”

In addition to the requirement that the Department provide HLC with “all supporting documentation” under 34 C.F.R. § 602.33(c)(1), FOIA requires that the Department, like all federal agencies, disclose any and all records upon request, unless such records fall under one of nine exemptions. *See* 5 U.S.C. § 552. HLC is requesting the following records pursuant to FOIA. Upon information and belief, none of these records are exempted from disclosure.

First, HLC requests any and all records of complaints from January 2018 through the present from students or former students at any and all campuses affiliated with the Art Institute of Colorado and the Illinois Institute of Art related to the students’ or former students' abilities to transfer their credits earned at the Institutes to other institutions of higher education (hereinafter referred to as "Student Complaints"). For the Art Institute of Colorado (OPEID: 02078900), the campuses are located at: 1200 Lincoln Street, Denver CO (Extension: 02078900); and 675 South Broadway Street, Denver, CO (Extension: 02078904). For the Illinois Institute of Art (OPEID: 01258400), the campuses are located at: 350 North Orleans Street, Suite 136-L, Chicago, IL (Extension: 01258400); 1000 Plaza Drive, Suite 100, Schaumburg, IL (Extension: 01258401); and 28175 Cabot Drive, Novi, MI (Extension: 01258405). HLC requests the Department make available any written Student Complaints, whether sent via mail, fax, or email; any recordings of

or notes related to Student Complaints made over the phone or in-person; any written responses from the Department to Student Complaints; any recordings of or notes related to responses to Student Complaints by the Department given over the phone or in-person; any notes taken by Department staff or officials during or related to any communications with those making Student Complaints students about any such complaints; and any scheduling records related to communications regarding Student Complaints, including but not limited to calendar invitations.

Second, HLC requests any notes taken or emails prepared by Mr. King or any other Department staff or official in preparation for the December 23, 2019 interview with Ms. Solinski; any notes taken by Mr. King or any other Department staff or official during such interview; and any notes taken or emails prepared by Mr. King or any other Department staff or official subsequent to this interview that recorded, in any manner, the substance of Mr. King's and Ms. Solinski's conversation.

Third, HLC requests any email communication between Ms. Solinski and any Department staff or official from the time-period September 1, 2017 through the present related to the Dream Center Foundation ("DCF"), Dream Center Education Holdings ("DCEH"), or the Institutes.

Fourth, HLC requests any notes taken by or on the behalf of Michael Frola, Director of Multi-Regional and Foreign School Participation Division, in preparation for or during a call with HLC staff on March 9, 2018, and any notes taken by or on behalf of Mr. Frola subsequent to this call that recorded, in any manner, the substance of the call. HLC also requests any such notes taken by any other Department officials or staff who were on that call.

Fifth, HLC requests any notes taken by or emails prepared by or on behalf of Diane Auer Jones, Principal Deputy Under Secretary, in preparation for or during calls with HLC staff on the following dates: June 27, 2018; October 29, 2018; and October 31, 2018. HLC also requests any such notes taken by any other Department official or staff who was on that call, and any notes taken by or on behalf of Dr. Auer Jones or any other Department official or staff subsequent to those calls that were intended to record the substance of the call.

Sixth, HLC requests records relating to any communications between the Department and the Dream Center Foundation ("DCF"); Dream Center Education Holdings ("DCEH"); counsel representing DCF and/or DCEH, including but not limited to Mr. Holt; the appointed Receiver for DCEH and its subsidiaries, Mark E. Dottore ("Receiver"); or counsel representing the Receiver, that are related to the topics of transferability of credits, retroactive accreditation, or HLC. Specifically, HLC requests any written communications, including sent by email, letter or fax, and any notes of any such calls or in-person communications.

Seventh, HLC requests any affidavits submitted by Department staff or officials in litigation involving DCF, DCEH, and the Receiver.

HLC is requesting these records for use in relation to the Department's review of HLC's recognition as an accrediting agency. Release of these records is also in the public interest. Many students were impacted by the closure of the Institutes, and the Department has made decisions related to the Title IV loans of these students. The public is entitled to transparency regarding the Department's decision to discharge and/or cancel loans, and its decisions related to reviewing HLC's recognition.

HLC agrees to pay all applicable fees associated with this FOIA request. However, HLC disputes that fees related to the production of documents that the Department is obligated to disclose under 34 C.F.R. § 602.33(c) are applicable, such as the December 23, 2019 interview of Ms. Solinski.

Additionally, HLC requests expedited processing. The Department has requested that HLC respond to its May 1, 2020, letter by June 1, 2020. Many of these records are necessary for HLC to fully respond to the Department, and as such HLC requests that, to the extent possible, these records are released prior to June 1, 2020. Moreover, the Department has informed HLC that it recommends a limitation on its accrediting authority. Upon information and belief, the National Advisory Committee of Institutional Quality and Integrity ("NACIQI") will act on this recommendation. Release of these records is necessary for HLC's response to NACIQI. To the extent the Department alleges that the scope of the instant FOIA request will cause processing delays, HLC respectfully requests that its seven requests be separated and responded to in whichever order the Department will be able to most quickly release the requested records.

Please contact me with any questions or concerns.

Warm regards,



Julie Miceli

Exhibit C

From: Higher Learning Commission <president@hlcommission.org>
Sent: Wednesday, May 27, 2020 10:38 AM
To: [REDACTED]
Subject: Helping Students Through Transfer

[125 Years of Advancing Together #HLC125](#)

[View email in web browser.](#)



Dear HLC Members,

During this global crisis, HLC is asking its member institutions to make additional efforts to assist students affected by the closing of the Illinois Institute of Art and the Art Institute of Colorado to the furthest extent possible consistent with your institution's capacity. The Institutes closed abruptly in December 2018.

Every institution determines its own policies and procedures for accepting transfer credits, including credits from accredited and non-accredited institutions, from foreign institutions, and from institutions that grant credit for experiential learning and for non-traditional adult learner programs in conformity with any expectations in HLC's Assumed Practices. HLC policies for institutions on transfer of credits are [Assumed Practice A.5](#) (CRRT.B.10.020) and [Publication of Transfer Policies](#) (FDCR.A.10.040).

Institutions also have the flexibility, consistent with their policies and procedures for maintaining the integrity of their academic functions, to provide modifications that have been determined by their faculty to be appropriate under exigent circumstances. Any such modifications, while permissible, must be appropriately documented along with the institution's rationale for purposes of future HLC evaluations.

The Higher Learning Commission's goal is to encourage institutions to assist affected

students so that they can complete their programs within a reasonable time and under equitable circumstances.

HLC stands ready to respond to any questions related to transfer. HLC has established a dedicated line to answer questions from institutions, students and other stakeholders regarding transfer at 312.224.3040.

Given all your ongoing efforts, we appreciate your special consideration of these affected populations during their time of need.

Sincerely,



Barbara Gellman-Danley
President, Higher Learning Commission

You are receiving this email because you have been identified as an official contact for your institution or are a member of HLC's Peer Corps.

Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

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The information contained in this communication is confidential and intended only for the use of the recipient named above, and may be legally privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please resend it to the sender and delete the original message and copy of it from your computer system. Opinions, conclusions and other information in this message that do not relate to our official business should be understood as neither given nor endorsed by the organization.

Exhibit D

Enhancing Transfer Opportunities - Communications Plan

Goal:

HLC will inform all of its member institutions regarding opportunities for transfer to support students. This will include a focus on students who were negatively impacted by the closing of the Illinois Institute of Art and Art Institute of Colorado, and who may now have more transfer opportunities as a result of changes in the higher education landscape as the result of the ongoing global crisis. When possible, student communication networks will be included in the outreach.

Audience:

- Institutional contacts at member colleges and universities – specifically Accreditation Liaison Officers (ALOs) and Chief Executive Officers (CEOs)
- Students that reach out to HLC with questions regarding transfer of credit
- State higher education agency officials
- General public that visit HLC’s website or reach out to HLC

Messaging:

- Students are most in need for accommodations during the current global crisis.
- Higher Education institutions have an opportunity to be flexible with regard to transfer of credit and an increased use of virtual learning.
- HLC policy allows for institutions to be flexible:
 - Every institution determines its own policies and procedures for accepting transfer credits, including credits from accredited and non-accredited institutions, from foreign institutions, and from institutions that grant credit for experiential learning and for non-traditional adult learner programs in conformity with any expectations in HLC’s Assumed Practices. HLC policies for institutions on transfer of credits are [Assumed Practice A.5](#) (CRRT.B.10.020) and [Publication of Transfer Policies](#) (FDCR.A.10.040).

Institutions also have the flexibility, consistent with their policies and procedures for maintaining the integrity of their academic functions, to provide modifications that have been determined by their faculty to be appropriate under exigent circumstances. Any such modifications, while permissible, must be appropriately documented along with the institution's rationale for purposes of future HLC evaluations.

- Specifically, in the case of Art Institute of Colorado and Illinois Institute of Art, the fact that the institutions were unaccredited at the time of their abrupt closure significantly hampers former students' ability to progress academically. Institutions that are willing to be flexible in their transfer considerations can make a positive difference in the lives of these students at a critical time. HLC vice presidents for accreditation relations stand ready to respond to any questions related to transfer.

- Assisting students in their time of need, demonstrates institutions as having gone the extra mile to be of service.

Communication Channels:

- April 28 letter to all members in Colorado, Illinois and Michigan encouraging transfer opportunities.
- April 28 letter sent to state higher education agencies in Colorado, Illinois and Michigan.
- May 15 endorsement and publication of two statements on transfer of credit.
- Letter to all members and 19 state higher education agencies re: transfer opportunities regarding the Art Institutes
- Leaflet article (Leaflet article would include a larger audience – peer reviewers, all institutional contacts and subscribers plus anyone visiting the website, potentially students) re: transfer opportunities generally
- A phone number set to leave messages from all calls regarding transfer from students, parents, the public to be routed through HLC's Public Information Officer to answer questions, provide resources (will include information from the U.S. Department of Education for questions about topics that are more appropriately routed to the Department ?)
- Other suggested vehicles from the U.S. Department of Education?

Evaluation:

Evaluate follow-up questions and need for additional information based on Google analytics and open rates of email blasts.

- Explore developing a model for handling difficult transfer issues as part of a pending Students' Right to Know Guide.
- Develop a resource page on the HLC website that provides information for students regarding transfer of credit. With link to HLC's Teach Out Toolkit set to launch in September 2020.

Exhibit 53

Date Transmitted: Feb. 18, 2020

From: Committee on Education and Labor, U.S. House of Representatives

Subject: *Interview of Dr. Anthea M. Sweeney*

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6 EXECUTIVE SESSION

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8 COMMITTEE ON EDUCATION AND LABOR,

9 U.S. HOUSE OF REPRESENTATIVES,

10 WASHINGTON, D.C.

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14 INTERVIEW OF: DR. ANTHEA M. SWEENEY

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Tuesday, February 18, 2020

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Washington, D.C.

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23 The interview in the above matter was held in Room 2261, Rayburn House Office

24 Building, commencing at 9:27 a.m.

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Appearances:

For COMMITTEE ON EDUCATION AND LABOR:

- BENJAMIN SINOFF, DIRECTOR OF EDUCATION OVERSIGHT
- KIA HAMADANCHY, COUNSEL, OVERSIGHT
- KATHERINE VALLE, SENIOR EDUCATION POLICY ADVISOR
- MAX MOORE, STAFF ASSISTANT
- JUSTIN LAM, LEGAL INTERN, OVERSIGHT
- RACHEL BEERS, GAO DETAILEE
- ILANA BRUNNER, GENERAL COUNSEL
- VERONIQUE PLUVIOSE, STAFF DIRECTOR
- TYLEASE ALLI, CHIEF CLERK, EDUCATION AND LABOR
- CHRISTIAN HAINES, GENERAL COUNSEL
- BANYON VASSAR, DEPUTY DIRECTOR OF INFORMATION TECHNOLOGY
- MANDY SCHAUMBURG, MINORITY DEPUTY DIRECTOR, EDUCATION
- ALEX RICCI, MINORITY PROFESSIONAL STAFF MEMBER
- AMY JONES, MINORITY DIRECTOR OF EDUCATION AND HUMAN RESOURCES POLICY
- CYRUS ARTZ, MINORITY STAFF DIRECTOR
- CHANCE RUSSELL, MINORITY LEGISLATIVE ASSISTANT

1 For ANTHEA SWEENEY:

2

3 MARY E. KOHART, ESQ.

4 Elliott Greenleaf

5 300 Harvest Drive

6 Blue Bell, PA 19422

7

8 For ANTHEA SWEENEY AND HIGHER LEARNING COMMISSION

9

10 MARLA MORGEN, ESQ.

11 230 South LaSalle Street

12 Suite 7-500

13 Chicago, IL 60604

1 Mr. Sinoff. This is a transcribed interview of Dr. Anthea Sweeney -- did I
2 pronounce that right.

3 Ms. Sweeney. Yes.

4 Mr. Sinoff. -- conducted by the U.S. House of Representatives Committee on
5 Education and Labor. This interview was requested by Chairman Scott as part of the
6 committee's investigation into Dream Center Education Holdings. Can you please state
7 your full name and spell your last name for the record?

8 Ms. Sweeney. Anthea Marie Sweeney. Last name is spelled S-w-e-e-n-e-y.

9 Mr. Sinoff. Thank you. My name is Benjamin Sinoff, majority counsel for the U.S.
10 House of Representatives Committee on Education and Labor. I want to thank you for
11 coming in today for this interview. We appreciate that you're willing to speak with us
12 voluntarily.

13 At this time I'll ask for the additional staff in the room to introduce themselves.

14 Mr. Hamadanchy. I'm Kia Hamadanchy. I am with the majority staff of the
15 Education and Labor Committee.

16 Ms. Schaumburg. Mandy Schaumburg with the minority counsel for Dr. Foxx.

17 Mr. Ricci. Alex Ricci with the minority staff, professional staff member.

18 Mr. Russell. Chance Russell, with minority staff, legislative assistant.

19 Ms. Jones. Amy Jones with Dr. Foxx, the minority staff. I'm the education policy
20 director.

21 Mr. Artz. Cyrus Artz. I'm with the minority staff, staff director.

22 Mr. Lam. Justin Lam with the majority staff.

23 Ms. Beers. Rachel Beers, majority staff.

24 Mr. Moore. Max Moore with the majority staff.

25 Mr. Haines. Christian Haines, majority staff, general counsel.

1 Ms. Alli. Tylease Alli, chief clerk for the Committee on Education and Labor.

2 Mr. Sinoff. Banyon, do you mind introducing yourself for the record since you're
3 in here?

4 Mr. Vassar. Banyon Vassar, deputy IT director, Committee on Education and
5 Labor.

6 Mr. Sinoff. Great, thank you. Before we begin, I'd like to go over the ground rules
7 for this interview. The way this interview will proceed is as follows. The majority and
8 minority staffs will alternate asking you questions, 1 hour per side per round. The
9 majority staff will begin and proceed for an hour, and the minority staff will then have an
10 hour to ask questions.

11 Thereafter, the majority staff may ask additional questions and so on. We'll
12 alternate back and forth in this manner until there are no more questions from either side
13 of the interview -- and the interview will be over. We planned on ending after two
14 rounds of questioning for each side, right around 1:30 to accommodate Dr. Sweeney's
15 flight schedule. And so we'll plan on doing that.

16 During the interview, we'll do our best to limit the number of people who are
17 directing questions at you during any given hour. That said from time to time, follow-up
18 or clarifying questions may be useful, and if that's the case, you might hear from
19 additional people around the table.

20 You're allowed to have an attorney present to advise you. Do you have an
21 attorney representing you in a personal capacity present with you today?

22 Ms. Sweeney. I do.

23 Mr. Sinoff. Would counsel for Dr. Sweeney please identify herself for the record.

24 Ms. Kohart. I'm Mary Kohart, K-o-h-a-r-t.

25 Mr. Sinoff. Great, thank you. And?

1 Ms. Morgen. Marla Morgen, also counsel for the witness and HLC.

2 Mr. Sinoff. Wonderful, thank you. There's a stenographer taking down everything
3 I say and everything you say to make a written record of the interview. For the record to
4 be clear, please wait until I finish each question before you begin your answer, and I will
5 wait until you finish your response before asking you the next question.

6 The stenographer cannot record nonverbal answers such as shaking your head, so
7 it is important that you answer each questions with an audible, verbal answer. Do you
8 understand?

9 Ms. Sweeney. I understand.

10 Mr. Sinoff. Thank you. We want you to answer our questions in the most
11 complete and truthful manner possible, so we're going to take our time. If you have any
12 questions or do not understand any of the questions asked, please let us know. We will
13 be happy to clarify or rephrase our questions. Do you understand?

14 Ms. Sweeney. I do.

15 Mr. Sinoff. If I ask you about conversations or events in the past and you are
16 unable to recall the exact words or details, you should testify to the substance of those
17 conversations or events to the best of your recollection. If you recall only a part of a
18 conversation or event, you should give us your best recollection of those events or parts
19 of conversations that you do recall. Do you understand?

20 Ms. Sweeney. I do.

21 Mr. Sinoff. If you need to take a break, please let us know. We're happy to
22 accommodate you. Ordinarily, we take a 5-minute break at the end of the first hour and
23 each round of questioning, and a 10-minute break after each full round. But if you need a
24 break before that, just let us know.

25 However, to the extent there is a pending question, I would just ask that you finish

1 answering the question before you take a break. Do you understand?

2 Ms. Sweeney. I do.

3 Mr. Sinoff. One final thing, although you are here voluntarily, and we will not
4 swear you in, you are required by law to answer questions from Congress truthfully.
5 Pursuant to Title 18 of U.S. Code, Section 1001, it is unlawful to knowingly and willfully
6 falsify any statement, representation, writing, document, or material fact presented to
7 Congress or otherwise conceal or cover up a material fact. This statute also applies to
8 questions posed by congressional staff in an interview. Do you understand?

9 Ms. Sweeney. I do.

10 Mr. Sinoff. If at any time, you knowingly make a false statement, you could be
11 subject to criminal prosecution. Do you understand?

12 Ms. Sweeney. I do.

13 Mr. Sinoff. Is there any reason you are unable to provide truthful answers in
14 today's interview?

15 Ms. Sweeney. No, there is not.

16 Mr. Sinoff. Wonderful. Do you have any questions before we begin?

17 Ms. Sweeney. I do not.

18 Mr. Sinoff. Dr. Sweeney -- oh, I'm sorry.

19 Ms. Schaumburg. Do you want to introduce the other two staff?

20 Mr. Sinoff. Oh, I'm sorry. Yes. Two other staff came in. Can you please introduce
21 yourself for the record?

22 Ms. Valle. Sure. I am Katherine Valle. I'm with the Committee on Education and
23 Labor with Chairman Scott.

24 Ms. Pluiose. My name is Veronique Pluiose. Staff director, Education and Labor
25 Committee.

1 Mr. Sinoff. Thank you, Mandy.

2 EXAMINATION

3 BY MR. SINOFF:

4 Q Dr. Sweeney, what is your position title at Higher Learning Commission?

5 A Currently my title is vice president of legal and regulatory affairs.

6 Q Wonderful.

7 [Discussion off the record.]

8 BY MR. SINOFF:

9 Q And how long have you been in that position?

10 A The title change is very recent, but the substance of the position has only
11 slightly changed. I've been in the current role since March 1st of 2018. I have been at the
12 commission since March of 2013. And my previous role was as a vice president for
13 accreditation relations, which essentially means I had a portfolio of institutions for which I
14 manage their accreditation relationship with the commission.

15 Q Wonderful. And you predicted my next question. I was going to ask how
16 long you were at HLC. So it sounds like you've been at HLC since 2013. Is that correct?

17 A That's correct.

18 Q And how long have you worked in higher ed generally?

19 A Prior to working at the commission I was at a law school for 5 and a half
20 years, and I would say that was my real entry into the higher ed industry. So all told now,
21 I would say 12 years.

22 Q Wonderful. So I'm going to ask you a couple of questions getting into HLC's
23 initial determination of candidacy status. Ed and Dream Center have voiced -- Ed
24 meaning the Department of Education and Dream Center Education Holdings, I'll refer to
25 them as Dream Center throughout this interview -- have voiced concerns about the clarity

1 of HLC's change in control candidate status. I'd like to get some facts up front on HLC's
2 policy as it existed during the Dream Center and Education Management Corporation
3 transaction. So this is during the period of roughly all of 2017 and the beginning of 2018.

4 So during 2017, at the time of the "Education Management Corporation to Dream
5 Center" transaction, did HLC have an explicit policy on accredited-to-candidate
6 transitions?

7 A Yes, it did.

8 Q What was the purpose of the accredited-to-candidate policy?

9 A The purpose of that policy was to allow for the board of trustees, which is
10 HLC's decisionmaking body, to move an institution from accredited to candidate status
11 under certain circumstances. And those circumstances, essentially were a context where
12 a change of control transaction had occurred and the board had one of four -- one of four
13 options that it could exercise in that scenario. And one of those options would be moving
14 the institution from accredited to candidate status.

15 Q Great. And did the Department of Education ever review this HLC policy
16 prior to November of 2017?

17 A To the best of my knowledge, it certainly had the opportunity to do so. This
18 policy had been adopted by the board of the Higher Learning Commission in 2009 and
19 HLC had undergone two recognition cycles in the interim, leading up to the Dream
20 Center/EDMC transaction.

21 Q And during those recognition cycles, the Department normally would review
22 HLC's policies to some extent?

23 A Yes, it would. And in fact, in the most recent recognition cycle, one of the
24 case studies that HLC submitted to the Department was a precedent case where the
25 board sought its first application of the change of control -- so-called change of control

1 candidacy status policy. I don't know whether the Department, in fact, reviewed the case
2 study. I don't know whether the Department, in fact, reviewed the policy. I just know it
3 had the opportunity to do so.

4 Q How many case studies does HLC submit during these reviews, roughly?

5 A I don't know the answer to that.

6 Q You don't know the answer.

7 A I do know that it's a representative sample of the kinds of transactions
8 and/or cases that the board and the Institutional Actions Council has adjudicated, just in
9 the ordinary course of day-to-day operations at HLC.

10 Q Great. And during the Department's reviews of HLC's policies during these
11 recognition processes, did the Department ever voice concerns about the accredited
12 candidate policy or change of control candidacy status generally or that case study that
13 you just referenced?

14 A To the best of my knowledge, no.

15 Q Are HLC's policies available on its public facing website?

16 A Yes, they are.

17 Q Do these policies have a glossary section?

18 A HLC is continually developing a glossary, that's correct.

19 Q Between November of 2017 and March 2019, to the best of your knowledge,
20 does this glossary section include a definition of candidacy status?

21 A Yes, it did.

22 Q Do you happen to know how HLC's glossary defined candidacy status?

23 A If I might?

24 Q You may reference any exhibits.

25 I'll point you to exhibit 15, I believe.

1 A Thank you. The definition for candidacy status at that time according to
2 HLC's glossary reads, pre-accreditation status offering affiliation, not membership, with
3 HLC.

4 Q Great. And is pre-accreditation status an accredited status under the
5 Department's regulations?

6 A It is not.

7 Q It is not. Under Secretary Jones of the Department of Education has testified
8 before Congress on this issue, stating that change in control candidacy status was, quote,
9 a pre-accredited status, and pre-accredited is an accredited status, end quote. Do you
10 agree with Under Secretary Jones' testimony on this point?

11 A HLC does not. I do not. For the reason that under the current regulations,
12 pre-accreditation is unambiguously defined as public recognition that an accrediting
13 agency grants to an institution or program for a limited period of time that signifies the
14 agency has determined that the institution or program is progressing towards
15 accreditation and is likely to attain accreditation before the expiration of that limited
16 period of time. This is under 34 CFR 602.3. There is a separate definition in the
17 regulations that explicitly describes or refers to unaccredited institutions.

18 Q Can you say that one more time? It refers to unaccredited institutions,
19 meaning that -- meaning what?

20 A That an institution that is pre-accredited under the current formulation of
21 the Federal regulations, is an unaccredited institution.

22 Q Excellent, thank you. To your knowledge, do other accreditors have
23 candidate for accreditation status?

24 A Yes.

25 Q Any do these other accreditors also use, to your knowledge, use "candidate"

1 to mean pre-accredited?

2 A I do not know the answer to that question.

3 Q That's fair. Under HLC's policies, can candidate institutions advertise
4 themselves or hold themselves out publicly as accredited or fully accredited?

5 A Absolutely not.

6 Q To your knowledge, is that policy unique to HLC, or does that hold across
7 other accreditors with candidacy status?

8 A That would hold across other accreditors. It goes to the heart of
9 transparency and a commitment to not confusing the public.

10 Q Would you say that transparency and not confusing the public are core
11 accreditation requirements with HLC or with any accreditor?

12 A Yes. I would say that this requirement is echoed throughout HLC
13 requirements. You'll find it in our obligations of affiliation. You'll find it in criterion 2, in
14 terms of the way an institution represents itself to the public, at least with respect to HLC
15 standards. So, yes, it's core.

16 Q Great. And between November 2017 and March 2019, did the Department
17 prohibit use of a change in control candidacy status similar to Higher Learning
18 Commissions?

19 A To the best of our knowledge, not explicitly. There's no explicit prohibition
20 in the current regulations against moving an institution from accredited to candidate
21 status.

22 Q To your knowledge, does the Department currently prohibit a change in
23 control candidacy status as previously used by Higher Learning Commission? Have they
24 changed the regulations, in other words?

25 A They have, as of July 1, 2020, the new regulations, again to the best of my

1 knowledge, for the first time explicitly prohibit moving an institution from accredited to
2 pre-accredited status. It does not explicitly reference a change of control, but it does
3 cross-reference a separate aspect of the regs that speaks about a 2-year waiting period
4 before Title 4 can attach.

5 Q Great, thank you. Now, when HLC was conducting its
6 transactional -- pre-transactional review of the Education Management Corporation and
7 Dream Center transaction, did Dream Center explicitly agree to accept change in control
8 candidacy status at HLC for its HLC member institutions?

9 A Yes, it did.

10 Q And for the record, can you say what those member institutions names
11 were?

12 A Art Institute of Colorado and Illinois Institute of art.

13 Q Fantastic. And I will just refer to them as the Dream Center institutions for
14 simplicity's sake in this interview.

15 A Sure.

16 Q When did Dream Center explicitly agree to accept change in control
17 candidacy status?

18 A On January 4, 2018, in writing.

19 Q Did Dream Center ever previously accept it after -- between November 16,
20 2017 and January 4?

21 A There were certainly communications about the change of control candidacy
22 status in late November of 2017, and I would recall a correspondence, I think, almost at
23 the end of the month. On or about November 29th, there was an acknowledgement, an
24 explicit acknowledgement of the conditions that the board had set forth in its November
25 2016 -- sorry -- November 16, 2017, action letter.

1 Q Wonderful.

2 A But the acknowledgement of the conditions was not the same as an explicit
3 acceptance of the conditions.

4 Q So if I'm understanding correctly, Dream Center both acknowledged and
5 then accepted the change in control candidacy status?

6 A Yes, ultimately. There certainly was a lag time there, the better part of a
7 month, I would say, 2 months, the board having taken action in early November.
8 Certainly an extended period of communications between HLC and the Dream Center
9 ultimately culminating in that January 4th explicit acceptance of the conditions.

10 Q Excellent. And on January 3, 2018, HLC requested that Dream Center send a,
11 quote, "clear and formal statement of acceptance of change of control candidacy status,"
12 end quote. And I am looking at Exhibit 19 for your reference.

13 A Thank you.

14 Q Why did HLC request that clear and formal statement of acceptance?

15 A One moment, please.

16 Q Take your time.

17 A Yes. Looking at HLC OPE Bates-stamped 15286, the email references that
18 there had been communications requesting modifications of several of the conditions
19 articulated in the board's original action letter. And by original action letter, I'm referring
20 now to the November 16, 2017, action letter. None of those negotiations or requests for
21 modification treated the topic of change of control candidacy status.

22 There was, to our knowledge, a verbal conversation that occurred between a
23 former employee, my predecessor in the role, and external counsel, Mr. Ron Holt of
24 Rouse Frets for Dream Center Education Holdings and the Dream Center institutions. And
25 to the best of our knowledge, they were accepting the change of control candidacy status

1 verbally or at least amenable to the change of control candidacy status from those
2 conversations, but we had nothing in writing.

3 Q And to clarify, when you said former employee, do you mean this was -- can
4 you explain what you mean and what this former employee's position was at the time of
5 these conversations?

6 A Yes. Karen Peterson Solinski. Her employment ended on February 28 of
7 2018. And at that time, I succeeded her in that role. In her capacity, she managed the
8 change of control process. Her title was the Executive Vice President for Legal and
9 Governmental Affairs. She had been with the commission for over 35 years. And during
10 this timeframe, she was the individual who was communicating with external counsel for
11 the Dream Center and Art Institutes.

12 Q Thank you. And to reiterate something that you previously said, I want to
13 clarify that Dream Center did ultimately send a, quote, "clear and formal statement of
14 acceptance," end quote.

15 A Yes, they did. On January 4, 2018.

16 Q And at that point, you -- HLC was under the impression that Dream Center
17 understood the implications of change in control candidacy status. Is that correct?

18 A Yes, that's correct. I would add that this request on January 3rd, saying, we
19 need an unequivocal statement, came after the Dream Center and the institutes they
20 represented, through their president, communicated with the commission that they were
21 unable to close the transaction within 30 days, which under Federal regulations is the
22 customary time period that's expected.

23 What happens at HLC if an institution can't close within 30 days, it communicates
24 that it cannot and seeks an extension and they have sought this extension of the board's
25 approval, in other words, to renew its commitment under the November 16, 2017, letter,

1 so that they could then go forward and close. And because we did not have an
2 unequivocal statement of acceptance of the conditions, HLC sought that statement
3 before it would issue what would be the second action letter.

4 The second action letter was issued on January 12 of 2018, and incorporates by
5 reference all of the conditions, all of the monitoring, all of the essential terms of the
6 original action letter but for one nonsubstantive technical modification.

7 Q And you referenced that the prior employee, Ms. Karen Solinski, had
8 conversations with Ron Holt, the outside counsel for Dream Center, regarding change of
9 control candidacy status. Your understanding was that they communicated regarding the
10 impact of change of control candidacy status and its importance?

11 A Yes. Yes, I did.

12 Q And do you understand that that conversation described change of control
13 candidacy status in the way that HLC ultimately implemented it on January 20th?

14 A I have no way -- I have no way to answer that question.

15 Q Fair enough.

16 A I wasn't privy to the conversation.

17 Q That makes sense. So I'd like to confirm I understand everything you've said
18 correctly to this point. In November 2017, HLC sent Dream Center a notice indicating that
19 HLC was approving Dream Center's purchase of two institutions in question, conditioned
20 on Dream Center voluntarily agreeing to change in control candidacy status.

21 An HLC official met with Dream Center's expert accreditation counsel in December
22 of 2017, a Mr. Ron Holt, to discuss the impact of change in control candidacy status. HLC
23 then singled out change in control candidacy status to Dream Center executives before
24 the execution of Dream Center's Education Management Corporation transaction and
25 requested that Dream Center explicitly and formally accept candidacy status. Is that all

1 correct?

2 A It is, but it's incomplete.

3 Q Okay. Please.

4 A If I might.

5 Q Absolutely.

6 A Because change of control candidacy was not by a long shot the only
7 condition referenced in the board's original action letter on November 16, 2017. There
8 were several conditions. And if I might reference them explicitly, and I'm looking now at
9 the November 16, 2017, action letter. The Bates stamp is HLC OPE 7726.

10 Change of control candidacy was but the first of the conditions. There were
11 interim reports that would be due every 90 days. There were eligibility filings to be
12 produced by each institute due on February 1, 2018, demonstrating that they met the
13 eligibility requirements and assumed practices, which are two separate categories of
14 requirements HLC's policies contain. Plus, they needed to produce a detailed plan on
15 how these institutes were going to meet several of HLC's core components within its
16 criteria for accreditation.

17 They would each host a focused visit within 6 months. This is the on-site visit
18 required within 6 months of the consummation of a transaction under the Federal
19 regulations.

20 And in those visits, in the visits within 6 months, they would have to demonstrate
21 that they had resolved, to a great extent, the board's concerns related to incorporation in
22 Arizona and 11 of HLC's 19 eligibility requirements.

23 Last but not least, the institutes would be required to host yet a second focused
24 visit in June of 2019 where they would seek to demonstrate that they were in compliance
25 with seven of HLC's core components within its criteria for accreditation.

1 I share this to say that a change of control candidacy status was one of a myriad of
2 conditions that the board was seeking these institutes' explicit acceptance of before it
3 would issue the second action letter. And so my only friendly amendment, Mr. Sinoff, is
4 that the conversations -- and, again, I was not there; I was not privy to
5 them -- communications about the conditions as they were for the November 16, 2017,
6 action letter, were about a host of conditions. And, in fact, when you look at the
7 correspondence in the record, none of the requests for modifications that came to HLC
8 during this time period, between November 16, 2017, and the consummation of the
9 transaction addressed the topic of change of control candidacy status.

10 Q And when you say none of the correspondence, you mean from the Dream
11 Center?

12 A From Dream Center. In terms of requesting modifications, none of the
13 requests for modifications treated the topic of change of control candidacy status. In
14 fact, the main focus at that time seemed to be concerns they had about HLC asking that
15 monitoring continue with respect to a consent decree that they had been complying with
16 over the last time period.

17 Q This is the Education Management Corporation ongoing consent decree --

18 A That's correct.

19 Q -- with the States Attorneys General?

20 A That's correct.

21 Q Now, it looks like in your January 3rd email, however, so you said there were
22 myriad conditions --

23 A Yes.

24 Q -- that would apply through this HLC's conditional approval?

25 A Uh-huh.

1 Q But in your January 3rd email, you only called out change of control
2 candidacy status as the one condition they needed to formally and explicitly accept. In
3 fact, it appears as though, if I can direct you to Exhibit 19 --

4 A Yes.

5 Q -- you bolded change of control candidacy status.

6 A Yes.

7 Q Why did you do that?

8 A Because the correspondence in the record, received by HLC during this time
9 period, essentially shows that the Dream Center institutions withdrew their requests for
10 various modifications to several conditions once they realized that some modifications
11 were viewed as substantive, not technical, and would, therefore, require the agreement
12 and consent and approval of HLC's Board of Trustees.

13 And so once the topic of having to return to the board, to seek its approval of
14 these requested modifications -- and there were a significant number of requests. Once
15 that topic was broached, they withdrew their requests for the modifications on the
16 conditions that they had concerns about, that they had explicitly talked about or written
17 about, and only requested in the end this nonsubstantive technical modification which
18 would have allowed them to submit their financials 45 days after the end of a quarter
19 which was a reasonable request to make and something that would not have approached
20 the level of significance that would require board approval.

21 And so having gone back and forth over 2 months in writing and apparently in
22 person with counsel to the Dream Center, when the dust had cleared, what was still
23 ambiguous was whether there had ever been a clear statement of acceptance of change
24 of control candidacy status. And that status is not a status that is insignificant. It would
25 be a change in the institute's accredited status at that point.

1 And so, not wanting to leave it to chance,wanted to make sure there was ample
2 opportunity for the institutes to understand what they were consenting to.

3 Q Specifically around change of control candidacy status?

4 A Correct. None of the other conditions would have represented a change in
5 their accredited status. So this was significant enough to go back and say, are you sure?

6 Q Okay, thank you. So after going back and requesting, are you sure? Just to
7 clarify what you've said earlier, the Dream Center signed an explicit and clear formal
8 statement of acceptance on January 4th --

9 A Correct.

10 Q -- accepting HLC candidacy status. And all the while between November 29,
11 2017, and January 4, 2018, HLC's website clearly and publicly defined candidacy status as
12 pre-accredited, which as we've discussed under the Department regulations, is,
13 unambiguously defined as unaccredited. So does that all sound correct to you?

14 A That's correct.

15 Q Thank you. Now, why did HLC approve Dream Center's purchases of these
16 campuses on the condition that they accept change in control candidacy status?

17 A If I might reference the --

18 Q Absolutely.

19 A -- action letter from November 16, 2017 -- let's see here. The first half of
20 that letter essentially says what the board decided and what's required of the institution,
21 but beginning on page 6 -- I'm sorry -- page 4, at the bottom of page 4, this is
22 Bates-stamped HLC OPE 7729, the board based its action on the following findings.

23 And the letter goes on to say that the board applied its evaluative framework for
24 change of control, which at that time the board applies five approval factors and that the
25 institutes had demonstrated sufficient financial support and compliance with the first,

1 second, and fourth approval factors, or to state that more precisely, that it was expected
2 that after the transaction, they would not have any issues complying with the
3 requirements under the first, second, and fourth approval factors.

4 But in reference to the third approval factor, there was a substantial likelihood
5 that following the consummation of the transaction, the institutes would have several
6 concerns that here are categorized within each of the core components, and you see all
7 of the reasons enumerated by the board on pages 5 and 6.

8 This is important to recognize about change of control reviews. And that is that
9 they speak to an institution's likelihood of success in complying with HLC requirements
10 after the transaction. It differs from every other kind of review because other kinds of
11 reviews evaluate current state of compliance.

12 Change of control reviews, by their very nature, are prospective. They're
13 future-looking. And that's not based on HLC policy or not only based on HLC policy. It's
14 based on the regulations. The likelihood or substantial likelihood that after the
15 transaction, the institution is going to continue to meet the indicia of quality is central to
16 the board's evaluation of these types of cases, and it was central here.

17 Q Okay. And so as someone who may not be quite as familiar with HLC's
18 policies as you are, can you clarify then, in this letter, did HLC have substantive concerns
19 with Dream Center's prospective compliance?

20 A Yes, it did. And your question was why did the board approve subject to
21 change of control candidacy. The board looked at those concerns, but looked at those
22 concerns, using that prospective lens, and weighed them with the history of the
23 institutions and their current status as of that date.

24 As of that date, the institutes were both in good standing. Illinois Institute of Art
25 had just been removed from the sanction of notice that very day. Notice is a sanction

1 that suggests an institution is at risk of being out of compliance. Art Institute of Colorado,
2 though it had had a period of time on notice some years earlier, was in good standing as
3 of that date. This transaction, however, would mean quite a bit of risk in terms of the
4 ability of these institutes to continue in good standing.

5 There was a record that is also highly published, but also discussed in detail in the
6 summary report, which was the evaluative report that HLC produced in response to the
7 application that recites EDMC's, the Education Management Corporation's history
8 with -- its dealings with students.

9 State Attorney Generals across the country had investigated the corporation.
10 There had been a very large settlement, and here it is, while monitoring was still going on
11 at that time, a new corporation. Dream Center Education Holdings was a brand-new
12 holding company for which the Dream Center Foundation was the sole member, a
13 company that had never been involved in higher education and so would rely, to some
14 extent, on more experienced individuals from EDMC.

15 In the summary report, the migration or the potential for the migration of EDMC
16 personnel to Dream Center Education Holdings or its related entities -- there was a
17 management corporation there as well -- was grave cause for concern, particularly given
18 the population of students that would be served as a result of this merger -- of this
19 acquisition, I should say. This was an acquisition.

20 So the board, in granting an approval, but subject to a period of change of control
21 candidacy, was essentially saying, let's give them a chance to prove themselves after a
22 period of testing but would not seek to impose it without the parties' consent. In other
23 words, change of control candidacy, that status, would only exist if at all, if and when the
24 transaction closed.

25 Q Okay, thank you. Dream Center claimed that they found out that change of

1 control candidacy status meant they would be unaccredited when HLC sent its January
2 20, 2018, public disclosure notice. The Department has raised concerns with the
3 consistency of that notice and HLC's November 16, 2017, letter. Do you read those two
4 documents as consistent?

5 A Could you repeat the question, please?

6 Q Yes. Do you read the January 20, 2018, HLC public disclosure notice and
7 HLC's November 16, 2017, action letter as consistent? Not necessarily identical but
8 consistent.

9 A To the extent that it represented that the institutes were no longer
10 accredited as of January 20th, the answer is yes, I read them as consistent. If you look at
11 the November 16, 2017 action letter on page 4, roughly halfway down the page, it's very
12 clear that the board has provided the institutes and the buyers with 14 days from the
13 date of receipt of this action letter to accept these conditions in writing. That paragraph
14 goes on to say that if they choose to proceed with this transaction, right -- I'm sorry. If
15 the institutes choose not to proceed with this transaction, they will remain accredited
16 institutions.

17 In another place in the letter, after referencing the second focused visit that I
18 talked about in terms of the conditions, there is a statement that says the board will
19 reinstate the accreditation of the institutes if they satisfy to the board's -- if they
20 demonstrate to the board's satisfaction that they have met all of the requirements.

21 And the letter clearly references pre-accreditation explicitly. I don't see the
22 reference right now, but it's there. And anyone who was reading this letter and these
23 institutes certainly had ample time to review it, to investigate it, to check in with the
24 Department of Education about it, because they had been in contact with the
25 Department as a result of the preacquisition review process and certainly had ample

1 opportunity to inquire about the potential ramifications of accepting these conditions.

2 So the PDN, on January 20th, to the extent that it states the institutes are no
3 longer accredited as of January 20th, is consistent with the action letter.

4 Q Thank you. And I'm going to move on to retroactive accreditation. The
5 subject of retroactive accreditation now.

6 A Yes.

7 Q So who first proposed retroactive accreditation of these institutions to HLC?
8 And I might refer you to Exhibit 2.

9 A Thank you. It wasn't an explicit reference to retroactive accreditation, but it
10 was certainly clear that that is what is requested by David Harpool on behalf of his clients
11 on Sunday, June 24, 2018, via email.

12 Q And why is that clear to you?

13 A If you look at this email, paragraph 2, first, let me talk about how it begins. I
14 have my client's authority to agree to the following. This email, for its substance, was
15 unsolicited.

16 Q By whom? Unsolicited by whom?

17 A By HLC. It was unsolicited by HLC. David Harpool had reached out in the
18 days prior to HLC's June 2018 board meeting requesting a meeting as you see in this email
19 thread, and we responded politely that this was poor timing, but certainly wanted to
20 provide our board with a fulsome update. We were already scheduled to provide our
21 board with an update about the institutes. The board was monitoring this very closely.
22 And certainly by then, we had received concerning correspondence in May that we
23 needed to tell the board about. This was their intent to appeal letter. And so we offered
24 a conference call in lieu of a meeting.

25 And my email to Mr. Harpool offers two options for a time, and I end that email by

1 saying a prompt response to this message confirming your ability and who else will be
2 participating on the call would be greatly appreciated. I will then send out dial-in
3 information.

4 I was then expecting to receive a response that essentially said, either Monday
5 works or Tuesday works. Instead, he writes, I have my client's authority to agree to the
6 following. And when you get to paragraph 2 of this email, he writes -- and I'll quote here
7 because it's significant -- all students who earn credits or graduated from the time of the
8 school's respective initial accreditation through December 31, 2018, will be deemed to
9 have attended or graduated from an accredited institution. Further, that schools are,
10 have, and will continue to be accredited through December 31, 2018. That sentence that
11 begins further, asks for a number of extraordinary things.

12 Remember that the institutes, at this particular time, are candidates. They are in
13 pre-accreditation status. They are not accredited institutions. So to say that they are
14 would have been untrue. To say that they have been would also be untrue, because they
15 had been candidates as of January 20, 2018. And further would continue to be accredited
16 through December 31, 2018.

17 Essentially if HLC had agreed to that, we would be obviating the validity of any
18 focused visit that was then due to occur in mid-July that would evaluate these institutions
19 and their actual compliance with HLC requirements, but instead, would essentially say, no
20 matter what we find in those focus visits, we are going to say that you are accredited as
21 of December 31, 2018, or right through December 31, 2018. That sentence is the request
22 for retroactive accreditation.

23 Q Did HLC or did you have concerns with the legality of retroactive
24 accreditation at the time of Dream Center's request?

25 A Absolutely. From a point of view of our own policies, we had nothing in our

1 policies that would allow for what was being requested in this email. The only scenario in
2 our policies to date for an effective date that goes back in time, is for initial accreditation
3 if students have graduated within 30 days of the board's action.

4 As a result of these concerns, we did seek advice from our analyst at the
5 Department, Elizabeth Daggett, who, again, sent us a memo that was authored by
6 Herman Bounds, the director of the accreditation group at the Office of Post-Secondary
7 Education, which for some time, since its issuance in June of 2017, had long guided
8 accreditors' understanding of retroactive accreditation. It was understood generally to be
9 anathema.

10 I remember reaching out to her, having the sense that I already knew the answer
11 to this question. She sent me the memo so that I would have the actual artifact to
12 reference, to confirm internally at HLC that what we understood to be the state of the
13 world as we knew it, hadn't changed.

14 Q Now, I believe HLC's November 13, 2019, response to the U.S. Department
15 of Education indicated, demonstrated that Elizabeth Daggett sent an email. Was there a
16 phone call before that?

17 A Yes, there was.

18 Q Can you describe what happened on that phone call?

19 A To the best of my recollection --

20 Q Absolutely.

21 A -- I will. If you would just give me one moment.

22 Q Take your time.

23 A And I'll check yours as well. I think you have it. I was in the habit, ever since
24 I had taken the role of -- at that time, my title was Vice President for Legal and
25 Governmental Affairs -- of consulting with Beth Daggett proactively. I had many reasons

1 to be cautious. I was new in the role. And I believe -- and again, to the best of my
2 recollection -- we were due to speak about some other routine item, and I took the
3 opportunity to ask her about retroactive accreditation. And without disclosing any
4 privileged conversations, I sought to confirm my understanding of both our own policies
5 and the Federal regulations. And she sent me the Herman Bounds memo.

6 Q And on the phone, did she indicate the Department's policy at all on
7 retroactive accreditation as well or --

8 A I remember her saying something from -- like, this is very clear.

9 Q And at that point, did Ms. Daggett indicate that the Department was
10 planning on rescinding and replacing that memo?

11 A She did not.

12 Q Is that context you would have expected her to provide had she known
13 about it?

14 A Yes, I would.

15 Q Other than Dream Center, did any other party propose that HLC retroactively
16 accredit these institutions?

17 A I would say not explicitly, but it became clear ultimately over the course of
18 communications with the Department of Education, that it was something that Diane
19 Auer Jones wanted HLC to consider doing.

20 Q And you would say that she did not explicitly ask you to?

21 A She did not explicitly ask us to. What she did say, and I guess this is an
22 opportunity to follow up on a course of events that occurred in late June of 2018 -- recall
23 that we received David Harpool's unusual email on the Sunday evening, and we said we
24 do indeed believe a call will be necessary, because he had ended his email by saying, let
25 me know if a call is still required.

1 We listened, and it was after that call that my boss, President Gellman-Danley,
2 first asked me urgently to reach out to Diane Auer Jones. And when I did reach her, she
3 expressed disappointment at the fact that Beth Daggett had shared the Herman Bounds
4 memo. She expressed that her disappointment stemmed from what she said was
5 common knowledge, that the Department planned to rescind that memo.

6 And she sent us an email -- or sent me an email. We had not yet connected yet by
7 phone. But she was emailing me during that day, and one of those emails stated
8 explicitly that they planned to issue a new memo rescinding the Herman Bounds memo
9 about retroactive accreditation.

10 Q And to clarify, no one else at the Department around that time indicated to
11 you that they were planning on rescinding this memo?

12 A No one else at the Department said so.

13 Q But you were in communication with individuals in the accreditation group?

14 A Yes. Most commonly, Diane -- most commonly at that time, Beth Daggett. I
15 was seeking her advice often.

16 Q And you did discuss matters of retroactive accreditation?

17 A Yes. We had discussed it by phone, and she had sent me the Herman
18 Bounds memo issued a couple years earlier, so that I knew what the current orientation
19 of the Department was to retroactive accreditation. That was our understanding.

20 Q So at the time -- and you indicated that Under Secretary Jones wanted HLC
21 to consider retroactive accreditation of these institutions. At that time, was this proposal
22 allowed under HLC policy?

23 A It was not.

24 Q And was it allowed under Department guidance at the time she requested
25 it?

1 A It was not.

2 Q To your knowledge, was it allowed under departmental regulations?

3 A Not to my knowledge.

4 Q Now, HLC's November 13, 2019, letter to Ed indicates HLC's belief that at the
5 time, Ed regulations only allowed a creditor to, quote, designate the date of a change in
6 ownership as the effective date of its approval of a substantive change to be included in
7 the institution's accreditation --

8 A Right.

9 Q -- if the substantive change decision is made within 30 days of the change in
10 ownership, end quote. Was the Under Secretary proposing an action allowed under that
11 exception? The 30-day exception?

12 A She was not.

13 Q Now, at any point did the Under Secretary indicate that she was aware that
14 the retroactive accreditation proposal might pose problems for HLC in terms of complying
15 with HLC's own regulations?

16 A She did. President Gellman-Danley certainly -- and she had dispatched me to
17 ask this of Dr. Jones. She wanted some assurance in writing that if we were even thinking
18 about doing something extraordinary, our board would want to see something in writing
19 from the Department, particularly since the potential fallout for breaking one's own
20 policies can be very dire.

21 There's the Office of Inspector General to consider, for example. And Diane Auer
22 Jones wrote back and expressed that she understood our concern. And so I think from
23 relatively early on that summer, there was a passing notion that the Department might
24 send us some correspondence that would allow us to take something to our board to say,
25 our understanding had been under the Herman Bounds correspondence, the Herman

1 Bounds memo, that retroactive accreditation was seen as anathema by the Department,
2 but it seems things have changed. Here's the new understanding. If that would sway
3 them or not, it would still mean several hills to climb to change our own policies.

4 Q And so can you then walk me through what happened after June 26, 2018,
5 when you initially received the guidance from Elizabeth Daggett, regarding what you
6 described as the prohibition on retroactive accreditation?

1 [10:29 a.m.]

2 Ms. Sweeney. Yes. This was the week of our board meeting, so on the
3 Wednesday, our president would have been spending the latter half of that day meeting
4 with the board and seminar-like activity and having pre-board meeting dinners and so
5 forth. We were preparing to take to the board, on the subject of Art Institutes, a very
6 fulsome update indeed. It would include our original items; that is to say, the fact
7 that -- well, actually, it would not include our original items. The eligibility filings that
8 were due to the -- for which the board was expecting an update, had been stopped in
9 their tracks, suspended, as a result of the receipt of a May 21st, 2018, letter of intent to
10 appeal. So that process had been halted. We would need to tell the board why. The
11 interim reports, the quarterly financials, all of the close monitoring that was designed to
12 assure that the institutes were progressing well to what compliance and resolving the
13 board's concerns, all of the conditions that were meant to protect students were halted
14 in their tracks. We would have to explain why.

15 We'd also have to alert the board officially that HLC was in receipt of a May 21st,
16 2018, letter of intent to appeal. We would also have to explain to the board that we had
17 responded and that we were allowing these institutes an opportunity to appeal, though
18 the board had taken no adverse action, though their letter of intent to appeal was several
19 months belated -- our appeals procedures allow for 30 days -- on the basis of a concern
20 that there were conversations that no one but a former employee had been privy to in
21 December of 2017.

22 And so this latest document that Beth Daggett sent to us would be the last, I
23 think -- one of the last items that we would update the board on, but for the fact that the
24 very next day, we heard from Diane Auer Jones that she was disappointed in the issuance
25 of the Herman Bounds memo to me in this context. And so on the Wednesday, that

1 would be June 27th, there were a flurry of calls. Herman and Beth called me jointly. Beth
2 apologized profusely for providing me the Herman Bounds memo. Herman explained
3 that his memo was inapplicable to this situation, this particular context.

4 And then I finally did, after some phone tag, connect with Diane Auer Jones. She
5 reiterated her disappointment verbally. She had expressed it in writing. She explained
6 that, quote, these dear colleague memos are getting out of hand. And she explicitly
7 asked that, with respect to the Dream Center matter and the Art Institutes, that HLC work
8 with her directly and no longer communicate with either Herman Bounds or Beth
9 Daggett.

10 Mr. Sinoff. Thank you. And I think I am out of time for my first round of
11 questioning, so we'll grant you your 5-minute break. I'll definitely have more questions
12 on that matter when we come back.

13 [Recess.]

14 Ms. Schaumburg. We'll begin. Just quickly, thank you again for coming. We've
15 covered a lot, we're going to continue to cover a lot. We both have been preparing for
16 this independently, so you are going to see some duplication in questions. Apologies in
17 advance, but please just bear with us on that.

18 I want to make sure you remember who's on my team. I'm Mandy Schaumburg,
19 this is Alex Ricci. We've got Chance Russell, Amy Jones, and then Cyrus Artz in the
20 audience over there. Alex and I will be asking most of the questions, but you might see
21 people pass us a note or ask anything. Please don't be alarmed by that; it's just what
22 we're doing here in getting ready. So I think we're going to have a productive
23 conversation today. I appreciate you coming in. I know it's a big part of your day and
24 part of the time to prepare for these things.

25 Ms. Sweeney. Thank you.

1 Ms. Schaumburg. So with that, let's get started. And I'm going to have Alex lead
2 off.

3 EXAMINATION

4 BY MR. RICCI:

5 Q Dr. Sweeney, thanks for being here. And I just want to echo what Mandy
6 said, we really appreciate you taking your entire day off to talk to us. So thank you for
7 doing that.

8 A lot of what I'm going to ask you today is covering basics about HLC and HLC
9 policy and not being Dream Center specific.

10 A Okay.

11 Q You had helpfully mentioned in the last hour your titles and responsibilities
12 at HLC. I was hoping you could expand on your official responsibilities as vice president
13 for Accreditation Relations, understanding that was your first role at HLC.

14 A Yes. Vice president for Accreditation Relations is, colloquially speaking, a
15 staff liaison assigned to a portfolio of institutions. In that capacity, a staff liaison, and I
16 certainly did the following duties as well, would help institutions navigate the accreditors'
17 policies and certainly provide advice related to substantive change applications that were
18 being considered. For example, new programs that would be considered by the
19 institution, additional locations, branch campuses, the whole list of categories related to
20 substantive change.

21 Certainly, in my role, I had special other responsibilities. I managed the eligibility
22 process for the Commission, for institutions seeking accreditation during this time period
23 that we're speaking about now, March 13 -- 2013 to March 2018. And my portfolio was
24 slightly different from other staff liaisons. I was hired to serve institutions that needed a
25 high degree of attention for any reason. It's one of the reasons eligibility was in my

1 portfolio. It's also one of the reasons that I frequently had institutions come into my
2 portfolio when they were placed on sanction and removed from my portfolio once the
3 sanction had been removed.

4 Q Thank you. That's helpful.

5 How does this role fit within the organizational structure of HLC, specifically your
6 relationship with the board of trustees and the president?

7 A Do you mean the vice president for Accreditation Relations?

8 Q Yes.

9 A Vice presidents for Accreditation Relations report to the president directly.
10 They are the senior staff at the commission but for a small cadre of individuals who
11 constitute the executive leadership team: chief financial officer, chief operating officer, a
12 chief of staff, and certainly, at that time, during the period, the executive vice president
13 for Legal and Governmental Affairs.

14 Their relationship to the board is, as to the extent that cases were coming before
15 the board for any reason within its decisionmaking authority; for example, the grant of
16 initial accreditation or denial of initial accreditation candidacy, certainly imposition or
17 removal of sanctions, change of control, withdrawal of accreditation, high-stakes
18 decisions within the board's authority. Vice presidents for Accreditation Relations,
19 insofar as they manage the relationship in the day to day with an institution, have the
20 most factual background with respect to the institution's goals, its history with the
21 Commission, and certainly day-to-day challenges and struggles.

22 Q And how did this relationship change once you became the vice president
23 for Legal and Governmental Affairs within the larger organization?

24 A When I became the vice president for Legal and Governmental Affairs on
25 March 1st of 2018, my portfolio was not immediately removed. So I continued,

1 essentially, in two capacities. I was both the staff liaison for Art Institute of Colorado,
2 which had come into my portfolio from the very beginning. In June of 2013, when I was
3 first assigned a portfolio as a new liaison. Art Institute of Colorado was already there.
4 And then Illinois Institute of Art had come into my portfolio when it was placed on notice
5 in 2015 and remained in my portfolio until it closed.

6 So the role changed in the sense that I was at once the person with the deep
7 history with the institutions, most recent deep history with the institutions, but also
8 someone who was now in the role that my predecessor had played within the
9 organization managing a team of direct reports. Vice presidents of Accreditation
10 Relations have no direct reports. I suddenly did have direct reports and responsibility for
11 providing training with -- to the Institutional Actions Council -- HLC has a secondary
12 decisionmaking body besides the board of trustees -- with respect to what HLC policy
13 means and ensuring consistency in decisionmaking from that standpoint; ensuring
14 protections of due process are present in all of HLC's decisionmaking processes and being
15 present, certainly in addition to IAC hearings, at board meetings; preparing board
16 materials; when asked by the board, interpreting HLC policy, highlighting HLC precedents.

17 And finally, with the change in role on March 1st, 2018, I became the person who
18 had contact with internal and external counsel for institutions, to the extent that they
19 would contact the Commission and want to speak with a lawyer.

20 Q Besides counsels for institutions, who do you interact with typically with
21 colleges or universities in your current role?

22 A Presidents and the designated accreditation liaison officer at the institution.
23 This is an HLC designation, but the titles at the institution may vary widely. It could be
24 anyone from the provost or chief academic officer to director of institutional research.
25 Someone who the president at the institution has designated to be, essentially, the

1 person responsible for communicating on a day-to-day basis with HLC, understanding HLC
2 policy, certainly gaining a deeper understanding of accreditation writ large.

3 Q Earlier today, you covered that you do talk directly with the Department of
4 Education. Can you give us an accounting of the people that you do talk with at the
5 Department and in what circumstances you talk to them?

6 A Do you mean in a general -- we're still speaking generally now?

7 Q Yes.

8 A Sure. For purposes of communication with the Office of Postsecondary
9 Education, it has primarily been Elizabeth Daggett, who is HLC's analyst at the
10 Department. I have sought her advice on a number of items. Again, my posture had
11 been to be proactive and ask first in terms of understanding expectations. And Elizabeth
12 Daggett reaches out to HLC a fair bit as well. It's not uncommon for the Office of
13 Postsecondary Education to inquire into age-old complaints against an institution that are
14 in our records and so forth.

15 In terms of the Federal Student Aid Office, it had been Sarah Adams. The
16 compliance manager there now is Tammi Sawyer. I believe that's her last name. Tammi
17 reaches out, she manages the compliance unit, in particular related to change of control.
18 We have had a meeting at their offices. They recently moved closer to HLC. We went
19 and visited with them in person to establish a relationship and get to know a little bit
20 more about their operations. They have several questions for us and routinely reach out
21 to us through email or by phone with questions about institutions, records, particularly in
22 anticipation of a program review.

23 I have had some limited contact with Mike Frola. That contact had been limited
24 primarily to Dream Center. However, I have not had a lot of contact with him in recent
25 time.

1 Q Thank you.

2 In your role, do you ever communicate directly with Members of Congress or with
3 Members of Congress' staff? And if so, who and in what circumstances?

4 A I have had contact with a couple of staffers. One had been -- or is the staffer
5 in Senator Dick Durbin's office, a gentleman by the name of Brad Middleton. Brad
6 Middleton has called on occasion when there have been abrupt closures or the
7 announcement of a pending -- what appeared to be a pending closure on a relatively
8 short timeframe. And so this is something that at times I have asked to be -- have that
9 delegated or have sought to have it delegated, and I've successfully done that.

10 Q Who would you delegate that conversation to?

11 A Our office -- this is -- our office includes a governmental affairs officer now.
12 That's a relatively new title. It accounts for why my title has changed. You'll notice that
13 the title Vice President for Legal and Governmental Affairs is now Vice President of Legal
14 and Regulatory Affairs. This is so that those communications with congressional offices
15 can be appropriately managed and have an appropriate response time and continuity,
16 while the day-to-day business of quality assurance and decisionmaking can proceed
17 separately.

18 The government affairs officer is someone who, until recently, reported to me. So
19 he was a direct report until January 1st.

20 Q And what was that individual's name?

21 A Mr. Zach Waymer.

22 Q Thank you.

23 HLC accredits many institutions. Do you have an idea of just how many? If you
24 don't have the exact number, an approximate number of institutions that --

25 A Approximately 990.

1 Q And how many of those institutions are public?

2 A I do not have that information.

3 Q Private nonprofit?

4 A I don't have that information.

5 Q For-profit?

6 A About 4 percent of the membership.

7 Q Okay.

8 A I only recall that from a slide. So I don't have the statistics. Sorry.

9 Q Thank you. It's perfectly all right.

10 I want to understand a little bit more about how HLC operates from the
11 decisionmaking bodies, specifically the board of trustees. The board of trustees is the
12 final decisionmaking body at HLC?

13 A It is the final decisionmaking body. Under our policies, though, it has
14 delegated decisionmaking authority for certain kinds of routine matters to a secondary
15 decisionmaking body called the Institutional Actions Council, or IAC. The board retains
16 final decisionmaking authority for high-stakes decisions, I think I enumerated earlier, but
17 it will grant or denial of candidacy, withdrawal of candidacy, grant or denial of initial
18 accreditation, imposition or removal of a sanction, change of control, withdrawal of
19 accreditation. It has delegated final decisionmaking authority to the IAC for more routine
20 matters, such as reaffirmation of accreditation, substantive change in the ordinary
21 course, those sorts of decisions. Interim monitoring, for example, would normally be
22 assigned by or acted upon by the IAC.

23 Q Thank you.

24 How often does the board of trustees meet?

25 A It's published schedule contemplates three regular meetings per year.

1 Q Does the board ever meet for special or emergency sessions? And if so, does
2 that happen with some regularity?

3 A It does. So the regular meetings are February, June, and November. Usually
4 the last week of February and June and the first week of November. The special
5 meetings at times for compelling reasons, and the board does not do this often, but for
6 compelling reasons the board might be persuaded to meet by teleconference for a
7 limited number of cases. That has occurred.

8 Q How many people serve on the board of trustees?

9 A I don't have the exact number. Approximately 20.

10 Q Great. And what qualifications does an individual need to have in order to
11 serve on HLC's board of trustees?

12 A I don't have the description in front of me, but I can tell you that board
13 members come to us from a wide variety of institutional types. They're often very senior
14 in their respective institutions, presidents, former board members. We have a number of
15 public members that also serve on the board who come to us from outside higher
16 education.

17 Q What is the nature of HLC's president's relationship with respect to the
18 board of trustees?

19 A Can you clarify that question?

20 Q How often does the president or the board of trustees make
21 recommendations to one another? And to what extent are those recommendations
22 taken into account when making decisions?

23 A I see. So you mean with respect to decisionmaking?

24 Q In this case, yes.

25 A Okay. So the president, under our policies, does have the authority to make

1 certain kinds of recommendations to the board. For example, under our special
2 monitoring policy, an advisory visit can be required by the president, and the team that
3 evaluates the institution simply evaluates the institution based on the HLC requirements
4 articulated by the president in enumerating her concerns. But it is the president, not the
5 team, that makes the ultimate recommendation to the board.

6 Any recommendation made to the board, however, is subject to de novo review.
7 The board has the authority to agree or disagree on any aspect of the case. It can see the
8 exact same evidence in a different way. It can take into account new evidence that
9 comes to its attention in the interim. And so advisory visits is one of those contexts
10 where the president can make a recommendation to the board, but the president has
11 limited recommending authority. There are only certain enumerated cases under policy
12 where the president can make a recommendation to the board formally.

13 Q Has the board ever disagreed with the president's recommendation?

14 A Yes.

15 Q Does the board of trustees keep a minute-by-minute record of their
16 meetings?

17 A I wouldn't call it a minute-by-minute record. Minutes are kept, but it is not
18 anything approaching a faithful minute-by-minute record of board meetings.

19 Q Or a transcribed interview, let's say.

20 A Right.

21 Q How are institutions notified of actions taken by the board of trustees?

22 A When the board takes an action at its board meeting, there's usually a lag
23 time during which board action letters are prepared. And it is a strict rule that
24 institutions are not to learn of the board's action in any other manner save the issuance
25 of that action letter. So the action letter is the manner in which institutions are provided

1 any notice of the board's decisions.

2 Q And what is typically included in an action letter? I understand that there
3 are many different decisions that the accreditor can make, but is there some sort of
4 standard format that you follow for all of these actions?

5 A There is now. I say that because one of the first internal reviews that I did
6 when I assumed the role was to look at the format of action letters. And we do have
7 templates, a number of templates, that drive or underpin action letters that you see.

8 So the typical action letter will state what the board has decided. It will have a
9 statement in summary form of what is expected of the institution. This information is
10 used in a number of different ways, including to populate the description for future visits,
11 for example. And then it contains the most important part, the rationale, why the board
12 took the decision that it did. It will contain some procedural next steps, particularly
13 expectations for disclosures in the event that the board's decision is one that reasonably
14 could be expected to affect an enrolled or a perspective student's decision to either stay
15 enrolled or to enroll, respectively. And it will set forth the schedule of next reviews. For
16 example, if the board assigns monitoring, it will set that forth along with expectations, the
17 timing of the institution's next comprehensive evaluation, for example. What the
18 institution can expect to happen next.

19 It will also inform the institution of HLC's own disclosure requirements to the
20 Department and other agencies. And there are standard CC's in board action letters. So
21 for example, for the cases for which the Department -- the categories of cases for which
22 the Department mandates it, the Department is always copied. Otherwise, it is provided
23 appropriate notice within the 30-day window through an online mechanism that the
24 Department has put in place precisely for this purpose.

25 Q Thank you.

1 I want to transition a little bit to when HLC does take an action to sanction or put
2 an institution into some sort of status other than accredited. And so let's begin with
3 notice. Can you tell us what it means when an institution's accreditation status is in
4 notice and if that institution is still accredited while on notice?

5 A Yes, I can. Notice is a status that signifies that an institution, while still in
6 compliance with HLC's criteria for accreditation, is at risk of being out of compliance. It is
7 a public sanction so it is disclosed, and there are disclosure requirements for the
8 institution as well.

9 And I'm sorry, your second question -- is it still accredited?

10 Q Yes.

11 A Yes, it is still accredited.

12 Q When an institution receives this notice, are they presented with a menu of
13 options that it can consider to get out of being put on this notice of status?

14 A No. I understand your question to mean does the institution have discretion
15 to choose conditions in its action letter on notice?

16 Q Let me rephrase that. Does the institution -- is the institution given a
17 pathway where they can get out of the current accreditation status of being put on
18 notice?

19 A Yes. And I think it's fair to say that every articulation of the board's rationale
20 for its actions represents and is meant to be a roadmap for institutions as to how they can
21 remediate their status.

22 Q Great.

23 Let's move to probation. What does it mean when an institution's accreditation
24 status is in probation status? And is the institution still accredited while on probation?

25 A An institution on probation has been determined to be out of compliance

1 with HLC's requirements and it is still accredited. It is a status that is a public sanction,
2 also disclosed. And the board assigns probation in the context of noncompliance when it
3 believes that the conditions can be remedied during a reasonable period, typically 2
4 years.

5 Q Is the institution again provided with a pathway when put on probation
6 status?

7 A Yes, because every probation action letter includes the board's rationale,
8 and that is the pathway.

9 Q Thank you.

10 What does it mean when an institution's accreditation status is in show cause?

11 A Show cause represents that an institution is out of compliance. But it's not a
12 sanction; it's a procedural order. It's issued to an institution -- shifts the burden to the
13 institution to demonstrate why its accreditation should not be withdrawn, and the
14 institution is expected to marshal its evidence of compliance with all of HLC's
15 requirements, regardless of the reason for the issuance of the show cause order. Typical
16 period for show cause is 1 year. It's not meant to be a remedial period. It's simply tell us
17 why you should remain accredited. It's a public status, also disclosed.

18 Q And until the institution notifies HLC that they should continue to be
19 accredited and provides the reasons, are they still currently considered accredited by
20 HLC?

21 A They are accredited, but it is more than notifying the Commission that they
22 should remain accredited. They have to demonstrate evidence of compliance within a
23 relatively short period of time. And, yes, they remain accredited while they're preparing
24 that evidence and while they're making that demonstration.

25 Q And HLC is precise in what the institution needs to show in order to --

1 A Yes. Rationale is contained in that action letter as well.

2 Q Why has HLC withdrawn accreditation from institutions in the past? Can you
3 provide an example or two?

4 A I am only aware of one case, and this is secondhand; I will not pretend to
5 know all of the details of the case. But there was a clear ethics concern in that case. In
6 the majority of cases, institutions tend to resign their accreditation before the board has
7 a chance to act and withdraw. The moment they see the writing on the wall, they'll
8 resign. So the reality is, even though there have been a number of institutions that have
9 been out of compliance and a number of scenarios where the board was inclined to
10 withdraw accreditation, the actual number of withdrawals is a lower number.

11 Q How is the public notified of when HLC withdraws accreditation from an
12 institution?

13 A There are a number of ways. First -- and I'm speaking based on the policies
14 and our procedures, standard operating procedure -- a public disclosure notice, which is
15 typical in cases involving sanctions such as the one we just -- the ones we just talked
16 about, would be posted within 24 hours of the institution having received the letter. That
17 would be 1 business day after July 1st. But the idea is that the institutions should first
18 learn that their status has changed and then the public should be made aware that
19 their status has changed.

20 The public disclosure notice is meant to be a less technical, laymen's version of the
21 essential aspects of the status, what it means, what it means for students, what the next
22 steps are for evaluating the institution. Separate from the PDN, HLC publishes recent
23 board actions in its leaflet newsletter on a regular cycle following every board meeting.
24 And so the entire membership learns of board actions, including those that changed an
25 institution's status.

1 Q When the institution is notified of its changed status, are they presented the
2 right to appeal that decision?

3 A The only scenario where they're presented the right to appeal is if the action
4 taken constitutes an adverse action as defined under HLC policy.

5 Q Thanks.

6 When we talk about change in control status, I understand that there's been some
7 policy changes around this recently, but these questions directly relate to what the policy
8 was in the year 2018.

9 For general -- go ahead.

10 A You mean change of control candidacy status. Is this what you're speaking
11 of?

12 Q Change of control, structure, or organization.

13 A Thank you. The word "status."

14 Q Yeah. So for change of control, structure, or organization, for what reasons
15 would an institution be put into a change of structure or organization?

16 A HLC doesn't put institutions into a change of control, structure, or
17 organization. Institutions come to HLC seeking approval for a wide range of changes that
18 they're contemplating: changes in ownership, mergers, consolidations. Our policy has an
19 expansive nonexhaustive list of all the different contemplated changes that might be
20 reviewed under that policy because they're the types of changes that have the potential
21 to significantly change an institution's operations, its ability to comply with our
22 requirements. And so the board has retained final decisionmaking authority for those
23 particular types of changes, rather than leaving it to the IAC, along with the rest of the
24 substantive changes.

25 So HLC doesn't impose or put institutions into these transactions. Institutions are,

1 on some level, businesses that have business interests that seek out strategic alignments
2 and alliances and affiliations. And when they do, they come to the accreditor.

3 Q What circumstances would lead the Commission to believe that the change
4 in control, structure, or organization led to the creation of a new institution subject to
5 candidacy status instead of another accreditation status?

6 A Could you rephrase the question?

7 Q When an institution has change in control, structure, or organization under
8 your policies, does this mean that they -- HLC would view the institution as a new
9 institution and subject them to candidacy status instead of another accreditation status?
10 So are there instances where HLC would treat the change in control as not another new
11 institution subject to candidacy status but merely a change in the governing body but that
12 the underlying institution remains the same?

13 A No. Under HLC's policies, if an institution seeking approval for a change of
14 control, structure, or organization presents an application that essentially represents a
15 drastically or dramatically different institution from the predecessor institution, policy at
16 the time provided that HLC's board shall not approve that transaction.

17 Q Have there been other institutions besides Dream Center that HLC has dealt
18 with that entered into change in control, structure, or organization status?

19 A Several.

20 Q How many of those institutions subsequently went into candidacy status?

21 A None. I think what you're asking is -- and please correct me if I'm wrong.

22 Are you asking whether there have been other transactions where the institution
23 ultimately ended in change of control candidacy status? The answer is no.

24 Q Besides the Dream Center?

25 A The answer is no.

1 Q Yes.

2 When an institution closes, there's a lot of focus on what is going to happen to
3 students.

4 A Yes.

5 Q And one of the pathways, so to speak, I know that's a term of art here, but is
6 some sort of teach-out activity.

7 A Uh-huh.

8 Q So, Dr. Sweeney, in what cases would HLC ask for or require institutions to
9 develop some sort of provisional teach-out plan?

10 A So -- and this is to the best of my recollection here, but there are several
11 triggers in HLC's teach-out policy and they all have a key feature within them, and that is
12 the potential for students who are enrolled in a program, an academic program, to have
13 their studies interrupted. So an institution closing an additional location where 100
14 percent of a program is being offered would be asked for a provisional plan. An
15 institution that presents with certain financial weaknesses, an independent audit, for
16 example, signaling the institution is not considered to any longer be a going concern,
17 would be asked for a provisional plan. An institution that tells us it's ceasing operations
18 or looking to suspend operations would be asked for a provisional plan.

19 Certainly, HLC under its policies, Commission staff can in its discretion or in their
20 discretion request a provisional plan from an institution anytime there are certain risk
21 factors present. And, certainly, if the Department itself or the State higher ed authority
22 has taken certain kinds of actions. For example, in the State's case, revoking or planning
23 to revoke the institution's operating authority. And in the Department's case, if it was
24 taking a limiting, suspending, or termination action. These are all risk factors. And that
25 list will only grow as the new regs come into focus.

1 But HLC does and has asked for provisional plans, and increasingly so in recent
2 times because of the rash of abrupt closures that I think have been happening across the
3 country in contraction of higher ed. Recently, the board took the measure to add the
4 requirement of a provisional plan anytime it issues a show cause order. And it will
5 continue to ramp up its efforts in this regard.

6 Q What are the advantages and disadvantages, from your perspective, of
7 institutions pursuing these teach-out plans?

8 A The advantages and disadvantages.

9 Q Why would an institution do this? We understand from your last response
10 that there are warning signs and HLC has a very defined policy where they require some
11 sort of provisional teach-out plan, but why would an institution do this?

12 A If we would limit -- if we are limiting the context to an institution that is
13 closing down entirely, it would be a number of factors. One, concern for the students
14 who have been paying tuition and enrolled in the institution for these many years,
15 months -- however long the students were enrolled -- it would be good faith in the sense
16 of if the institution, for example, had any aspirations to once again seek accreditation at a
17 later date. The way it winds down operations or winds down a campus or an additional
18 location, these are all signs of good membership.

19 A And in the case of an institution that is closing entirely, if it had future aspirations
20 of once again being accredited by anyone, its record on how it handled its teach-out
21 arrangements would speak very highly if done with integrity, with as much care for a
22 student's academic pursuits as possible, and with as much integrity and attention to
23 quality assurance in seeking out responsible teach-out partners who would allow these
24 students to finish their pursuits in a reasonable time and under equitable conditions. It
25 would speak very poorly, however, if the institution had not made any provision for

1 students.

2 Q By provision for students you mean that a teach-out plan is beneficial to
3 students?

4 A A teach-out plan is beneficial to students when done to the highest quality.

5 Q In your work at HLC, how often have closing schools worked to develop a
6 teach-out plan?

7 A Very often. I don't have a number.

8 Q And when that happens, what does HLC do to help develop that teach-out
9 plan? So give us some examples of what your communications will look like, whether it is
10 with the institution, with other accreditors, with the State authorizer, and with the
11 Department of Education.

12 A So the -- I can speak to this from two capacities, fortunately or
13 unfortunately. The vice president for Accreditation Relations assigned to an institution
14 that finds itself, either by its own design, strategically, right, through its strategic plan,
15 orderly winding down operations, or because of exigent circumstances having to wind
16 down operations, that staff liaison is providing hands on -- strike hands on -- very
17 continuous contact with that institution to make sure that it understands everything
18 that's required. This is not an area in which the regulations had been particularly explicit
19 until very, very recently and yet to go into effect on July 1st.

20 But institutions that are shutting down don't have much practice. You only shut
21 down once. So often, they're in the position of reacting to news that they're closing and
22 having to learn all the things that need to be executed with a high degree of efficiency
23 during a terrible time, things like student inventory, where are students in their
24 programs, which institutions have you identified to date have comparable programs and
25 are within a reasonable distance. These things sound intuitive until the institution is in

1 the situation, and often order goes out the window.

2 So the vice president for Accreditation Relations who has an institution that is
3 closing under a short timeframe or an abrupt timeframe is often sought out by the
4 institution and also seeks the institution out to provide guidance on what's required for a
5 provisional plan, do you know what you need and so forth.

6 The vice president for Legal and Governmental Affairs is often involved in drafting
7 letters on behalf of the president that inform the institution what's required under HLC
8 policy, based on the existence of these various and sundry risk factors or based on the
9 fact that the institution itself has disclosed its plan to close. Often we learn of it in the
10 newspaper or because of some SEC filing that revealed it to investors.

11 And so the Office of Legal and Governmental Affairs would inform the institution
12 of its obligations under policy. The vice president for Accreditation Relations manages,
13 again, ushering the institution administratively through what the requirements are,
14 ultimately, so that a viable provisional plan and, if applicable, teach-out agreements with
15 appropriate teach-out receiving partners, find their way to the appropriate
16 decisionmaking body. And in this case, it would be the IAC, or Institutional Actions
17 Council.

18 Q Typically, generally, when an institution closes, does the Department of
19 Education get involved in helping accreditors coordinate, helping institutions find nearby
20 institutions, or is this, the brunt of it, on accreditors in the closing institution?

21 A To the best of my knowledge, the only scenario where I've seen the
22 Department get involved is Dream Center. I think there was a learning curve after the
23 Corinthian debacle. And so States, the Department, and accreditors are all in ongoing
24 conversations about this. We've seen a ratcheting up of the expectations in the
25 regulations that actually matches what is happening on the ground and responding to the

1 needs on the ground. And as recently as late January, our president was in D.C. here in a
2 triad meeting, and teach out featured prominently in the discussions about how
3 accreditors, States, and the Department can work more closely together.

4 With respect to States, State higher ed authorities often have really explicit
5 checklists. I can say that's true of the Illinois Board of Higher Education in our own State.
6 And insofar as they are often also receiving student complaints, they are also hearing
7 firsthand, just like the accreditor, from the people who are affected the most, the impact
8 that closures are having.

9 Q Thanks. I will return the remaining time to Mandy.

10 Ms. Schaumburg. Thank you.

11 BY MS. SCHAUMBURG:

12 Q Just a few things to clean up on -- to follow up on in what you just said. Just
13 to clarify, both the Art Institute of Colorado and Illinois were in your portfolio --

14 A That's right.

15 Q -- when you started?

16 A Not when I started. Art Institute of Colorado was there from June 2013
17 onward. Illinois Institute of Art came into my portfolio or was placed in my portfolio
18 when it got placed on notice.

19 Q Why was that? Why was it placed in your portfolio at that time? Is that
20 something that typically happened?

21 A Recall when I talked about my particular role as the vice president for
22 Accreditation Relations, what distinguished me from other liaisons or staff liaisons at the
23 Commission was I was hired to handle high touch or high attention cases. So eligibility
24 was part of my portfolio for that reason. New institutions seeking accreditation typically
25 need a lot of hand-holding. And, certainly, institutions that get placed on a sanction need

1 a high degree of attention. My portfolio, therefore, was smaller than my counterparts.
2 The typical staff liaison at HLC has over 100 institutions. My portfolio was smaller to
3 allow this more customized, responsive attention at a time of crisis for institutions,
4 frankly.

5 Q Okay. And at the time of the sale to Dream Center,
6 both of those institutions were accredited, correct? You had said one came off of a
7 sanction like the same day or --

8 A Well, they were both accredited, even if they were on a sanction at any
9 given point. But the transaction was consummated January 20th, 2018. They were each
10 accredited prior to the transaction being consummated, neither was on a sanction at the
11 time of the consummation.

12 Q Okay. Excellent.

13 In your conversation that -- in some of the questions that Alex just asked, one of
14 the questions was related to your interaction with the Department. One of the things
15 you mentioned was if there's a complaint, they may reach out to you. Is it typical for an
16 institution to go to the Department for a complaint or, typically, would the
17 Department -- or would the institution go to HLC for an issue before reaching out to the
18 Department?

19 A Are you speaking about a complaint filed by an institution?

20 Q Uh-huh.

21 A It's typical for the institution to file the complaint with the Commission. We
22 have a policy that allows institutions to file complaints about HLC with HLC. I can't speak
23 to what's typical.

24 Q Okay.

25 A I do know that there was a mechanism for us to hear if an institution was

1 dissatisfied with HLC.

2 Q Did either of these institutions ever file a complaint or reach out to the
3 Department as a complaint, to your knowledge?

4 A I need to refer to my documents. Sorry.

5 Q That's all right. You can look that up later.

6 A I'm relatively confident that there was communication. I can't say whether it
7 was a complaint.

8 Q Okay. Do you remember --

9 A I can't characterize it. I can't characterize --

10 Q -- what timeframe -- can you tell us what timeframe that communication
11 was in, even by year?

12 A I would say that in late summer of 2018 -- in late summer of 2018, Diane
13 Auer Jones in a call with the creditors indicated that the very next day she would be
14 meeting with the Dream Center and representatives of the institute's. I'm not sure who
15 was in the meeting. I know there were communications. I don't know if the
16 communications constituted a complaint.

17 Q Okay. Thank you.

18 You talked about the IAC and some of the authority that has been delegated to
19 them as decisionmaking versus the board itself. Is any decision that the IAC makes
20 appealable to the board or is that the final step?

21 A It is typically the final step. I say typically because if a decision has the
22 potential to be so controversial that it might be appealable or appealed, it wouldn't be in
23 the IAC's hands. It would, by definition under our policies, be the kind of decision
24 reserved for the board as final decisionmaker.

25 Q Okay. You said when you assumed the role, I assume you mean your current

1 role, you created a kind of a uniformed template for notices for HLC to follow and notices.

2 Is it in your current role that you did that?

3 A Not notices; action letters.

4 Q Action letters, okay.

5 A There had been templates, and I don't want to be misunderstood here.

6 Q Okay.

7 A There had been a methodology before in developing action letters by
8 reference to similar cases that had occurred in the past. I thought that there should be a
9 more generic approach to templates as opposed to referring to similar cases in the past.
10 So I don't mean to suggest that there was no methodology --

11 Q Okay.

12 A -- to the drafting of action letters. Notices, however, I -- Legal and
13 Governmental Affairs reviews notices. It does not draft the notices.

14 Q Okay. Why did you do this change that you thought there should be generic
15 templates to this? What prompted you to make that change?

16 A I didn't do a scientific study, but it was my sense that there was a potential
17 for errors if letters are replicated simply based on what had occurred in the past, in the
18 sense of, you know, cases are unique. Just because we have several categories of
19 policies, it shouldn't make us overly confident that every case is identical. And there are
20 often nuances in these complex cases that make a referenceto a past case that appears
21 on its surface to be similar, I think a risky proposition.

22 What I wanted to establish was a generic approach, a generic template as a
23 baseline that could then be enhanced with different customizations as the case
24 demanded, and also to establish broader internal understanding within the organization
25 of why the letters are constructed in the way they are.

1 Q And about what timeframe was this then? After you assumed this role in
2 March of 2018, correct?

3 A I would say late spring, over the summer of 2018.

4 Q Of 2018?

5 A Yeah.

6 Q Okay. You talked a lot about the communication -- or what happens when
7 you're on a different, I'm going to say, status or sanction. I am not a higher ed policy
8 expert, so I will use the terms incorrectly. I apologize.

9 A That's okay.

10 Q But what I'm curious about, though, is there any communication that
11 happens prior to an official action between HLC and the institution? What does that look
12 like? Or is there anything that if there's not an official action, that there's still a
13 communication of we're seeing a warning sign, anything like that? Can you walk me
14 through the general process of that?

1 [11:37 a.m.]

2 Ms. Sweeney. Well, the board makes its decisions based on evidence and
3 evaluation. So as a starting point, the role of peer review and peer reviewers in
4 evaluating an institution's compliance with HLC requirements is paramount. Peer
5 reviewers will evaluate the institution. They'll develop a report and they'll develop a
6 recommendation. It is only a recommendation. It has no greater force than that of a
7 recommendation that can be reviewed by decisionmaking bodies --

8 BY MS. SCHAUMBURG:

9 Q Uh-huh.

10 A -- under a construct of de novo review.

11 So depending on the nature of the evaluation, for example, a comprehensive
12 evaluation, comprehension evaluation report is developed by peer reviewers with a
13 recommendation. In the typical case, it moves forward to the IAC.

14 Q Uh-huh.

15 A But you asked about the board. So I'll posit a scenario where we're speaking
16 about a sanction.

17 Q Uh-huh.

18 A The recommendation for the sanction hypothetically comes forward from a
19 peer reviewer -- a peer review team. The institution has 2 weeks to respond. It's part of
20 our process for assuring due process --

21 Q Sorry to interrupt. Respond to the staff report?

22 A It's a peer review report.

23 Q The peer -- sorry, the peer review report.

24 A The peer review report.

25 Q Okay.

1 A The institution has an opportunity first to correct errors of fact in the draft
2 report in the context of comprehensive evaluations. And then once the report is
3 finalized, to respond substantively to the recommendations made, and so to say, for
4 example, we disagree with the finding that we're out of compliance with X or Y.

5 Q Uh-huh.

6 A Then it moves forward to an Institutional Actions Council for a hearing in the
7 scenario of, again, we're speaking about the imposition of a sanction. A delegation from
8 the institution appears before a committee of the IAC.

9 Q Uh-huh.

10 A They respond to questions back and forth, opening and closing statements
11 and so forth. The IAC produces a report. The institution has an opportunity to respond to
12 that report within 2 weeks. And then, ultimately, the record moves to the board, the
13 board as final decisionmaker. So that's the comprehensive evaluation scenario.

14 Q So at what point does the process become public? Is it public all the way
15 along or is it -- is the peer review report public? And when I say public, I mean beyond
16 just the institution and HLC.

17 A HLC does not publish its --

18 Q Okay.

19 A -- peer reviewers' reports.

20 Q Uh-huh.

21 A There are times when institutions take that step, either checking with us or
22 not checking with us.

23 Q Uh-huh.

24 A And we're always careful to say to an institution that peer reviewers'
25 recommendations are simply that. There is still a final decision to be made. The

1 evaluation is, in fact, not over. Even though the site visit may be over, the evaluation is
2 still occurring. And for that reason, the report is essentially an incomplete representation
3 of the process.

4 Q Okay.

5 A Only certain types of actions become public, and sanctions are among those
6 few.

7 Q Okay. Does the -- when the staff -- I'm sorry. I keep saying staff. When the
8 peer reviewers are on the campus doing their site visit, are they representing HLC, or how
9 does that relationship work?

10 A Peer reviewers are volunteers. They are volunteers with HLC. They are
11 evaluating institutions according to HLC's requirements and based on HLC's training. And
12 so I think it's fair to say that they represent HLC to an institution when they're on their
13 campus. When peer reviewers are on a campus, institutions say -- or are expected at a
14 campus, institutions say HLC is coming.

15 Q Okay. I have 8 seconds, so we're going to stop. Thank you very much.

16 A Thank you.

17 [Recess.]

18 Mr. Sinoff. Okay. We'll start our questioning.

19 Ms. Kohart. Yes.

20 BY MR. SINOFF:

21 Q Picking up where we left off, in your November -- or in HLC's November 13th
22 letter, HLC indicated that after you spoke with Ms. Daggett --

23 A Yes.

24 Q -- Under Secretary Jones -- this is on June 26, 2018, when you spoke with
25 Ms. Daggett -- Under Secretary Jones called Barbara Gellman-Danley, with, quote,

1 different ideas, end quote. Can you elaborate on what those different ideas were?

2 A I'm conscious of the fact that I used the euphemism -- I was conscious of
3 using a euphemism in my email at that time. Because I had just received confirmation
4 from the Department, I thought, that retroactive accreditation was still anathema. And
5 as I heard secondhand from my president -- I was not privy to whatever conversation
6 occurred -- Diane Auer Jones was suggesting that HLC could, under some circumstance,
7 consider retroactive accreditation. And I thought there was no circumstance under which
8 HLC could consider retroactive accreditation beyond what was already in its policies.

9 Q And to clarify an earlier statement you made, you said President
10 Gellman-Danley instructed you to reach out to Under Secretary Jones. To clarify, that
11 only occurred after Under Secretary Jones had reached out to President Gellman-Danley.
12 Is that correct?

13 A That's correct.

14 Q And --

15 A In fact, President Gellman-Danley was trying to reach me urgently because
16 of her concern that I reach out to Diane Auer Jones as quickly as possible.

17 Q Okay.

18 A There is a follow-on comment that I wanted to make about this exchange
19 that I had with Beth Daggett and Herman Bounds. And you would recall that I had said
20 she apologized for sharing the memo and he followed up by explaining the memo was not
21 applicable. But in their follow-up communication to me, they made clear that HLC should
22 follow its policies.

23 Q Can you clarify what you mean by that?

24 A It was subtle, but in their communication to me, there was -- and I can take
25 you to our November 13th, 2019, response. For the benefit of minority counsel, this is a

1 series of email exchanges dated beginning June 26th, 2018, Daggett-Sweeney email
2 exchanges. Let's see here. It was -- it was an exhortation to be mindful of consistency in
3 decisionmaking. It was that subtle, but I took it as a sign that HLC should follow its
4 policies.

5 I'll find it here.

6 Q Follow its policies with regard to what?

7 A With regard to the limitations on retroactive accreditation is the way I
8 interpreted that. Again, it was not an explicit -- here it is.

9 Q It's okay. We can --

10 A Yeah.

11 Q Yeah, I understand what you mean to say there.

12 A It's on or about June 27th. This is all prior to the June board meeting.

13 Q And then on June 27th, based on your letter, Under Secretary Jones called
14 you. Can you describe what you spoke with her about on that phone call?

15 A Well, she certainly wanted to confirm whether I had, in fact, spoken with
16 Beth Daggett and Herman Bounds. And I confirmed that I had, because the way things
17 played out, I had spoken to them before she and I could connect. She reiterated her
18 disappointment that they had -- or that Ms. Daggett had forwarded the Bounds memo.

19 And as you see here on page 22 of our November 13th, 2019, response, at the
20 bottom of that page, we enumerate the chronology there. So turning to page 23, this is
21 when Jones reiterated -- or suggested that the Department would be releasing additional
22 guidance on the issue of retroactive accreditation and specifically asked me to work
23 exclusively with her at the Department on this issue.

24 Q Was this the first time you had heard about this new guidance?

25 A It was.

1 Q And what was your primary method of communication with Under Secretary
2 Jones?

3 A It was email.

4 Q And between June 27, 2018, and July 3rd, 2018, HLC's November 13th letter
5 to the Department broadly describes ongoing communications with the Department but
6 doesn't get into specifics. Can you provide more details here?

7 A Between June and July -- between the end of June and July 3rd.

8 Q That's correct.

9 A You can see here on page 23 of our response where communications
10 followed the June board meeting. On July 3rd, in an email addressing several topics,
11 Sweeney indicated to Jones on behalf of HLC -- and this is where Dr. Gellman-Danley had
12 dispatched me -- there had been an internal meeting at the Commission, and it was
13 agreed that there was no point in even broaching the subject potentially with the board
14 in real terms unless we had some assurance from the Department that the board would
15 recognize that the Department had, in truth, shifted its position on retroactive
16 accreditation.

17 And so there's the quote. "What we would like to request is written assurance
18 from the Department of Education that an HLC board decision to have the institutes'
19 accredited status reinstated effective as of January 19th, 2018, through December 31st,
20 2018. In other words, ensuring continuous accredited status and eliminating the period
21 of change of control candidacy" -- which is essentially what we understood to be the
22 substance of what was requested here -- will be accepted by -- acceptable to the
23 Department and will not jeopardize HLC's recognition.

24 And Diane Auer Jones did respond and said that she would be issuing, quote,
25 "guidance to address the retroactive accreditation date more generally, but I will also be

1 happy to provide a written letter to HLC on this specific issue to make sure that you don't
2 need to worry about how this might impact your own recognition at a later time." And
3 that's on page 23 of our November 13th response.

4 Q And to be clear, at this time during the exchange of these emails, did Dream
5 Center meet all HLC accreditation criteria without issue for the period that the
6 Department was requesting that HLC consider retroactive accreditation for these
7 institutions?

8 A We had very limited information that it did. There was a thorough
9 evaluation done that prospectively forecast that there would be significant compliance
10 issues following the transaction, which occurred on January 20th, and this was June or
11 July, and the focus visits would be the only way for us to know whether, in fact, the
12 institutions were in compliance. So as far as we were aware, all of the issues and
13 concerns that the board articulated in its November 16th, 2017, action letter still applied.

14 Q And core component 2.B, regarding HLC core component 2.B regarding
15 public disclosure and transparency, did HLC have any concerns with Dream Center's
16 ability to comply with that?

17 A Yes, we did. We were aware, informally, if not only through course of
18 dealings, which I'll talk about, but also based on a review of the institution's website, that
19 they were making inaccurate statements about their accreditation status.

20 Q And --

21 A And that's inconsistent with core component 2.B, which speaks about
22 representing oneself fairly and transparently.

23 Q So if HLC had been authorized, as Under Secretary Jones was appearing to
24 offer, to retroactively accredit these campuses for the period in question, in your opinion,
25 would it have been appropriate to do so given some of the limitations that you just

1 discussed?

2 A It would not have been appropriate to do so. In fact, it would have been
3 over and beyond, I think, significant questions about the state of the institutions'
4 compliance with HLC's requirements to justify accreditation.

5 I want to say that with respect to this transparency issue, we provided -- and I
6 think you have this in your records as well --HLC-OPE 14816. It is a letter that we
7 transmitted on September 14th, 2018, to the institutes attaching a series of internal
8 emails provided to us by an individual who had, until that day, been employed with EDMC
9 and the Dream Center, and it provides a great deal of insight into just how much the
10 institutes actually understood about their status and why they chose to inaccurately
11 represent their status in a public way.

12 Q Can you briefly characterize what you're looking at? I don't have those
13 exhibits, but I assume presumably you provided them to committee, but I don't have
14 them in front of me.

15 Ms. Kohart. If you can give him the Bates number --

16 Ms. Sweeney. I'm sorry?

17 Ms. Kohart. If you have the Bates number of the emails you're referring to from
18 the --

19 Ms. Sweeney. Yes. I'll give you the range. The Bates number is HLC-OPE
20 14816-14857. And the executive summary of this is that they understood very clearly --

21 Ms. Kohart. Yeah.

22 Ms. Sweeney. -- what their status was.

23 Mr. Sinoff. Great.

24 Now I'd like to move along into the Department's investigation into HLC
25 regarding this matter.

1 Ms. Sweeney. Yes.

2 Mr. Sinoff. So Under Secretary Jones sent HLC a letter on October 31st, 2018,
3 regarding HLC's use of candidacy status in the Dream Center case. What was Under
4 Secretary Jones' stated purpose for sending this letter?

5 Ms. Kohart. As is set forth in the -- I just want -- since lawyers have been so
6 involved with HLC in all of this, I want to caution the witness that there may be answers
7 that cannot be provided without a waiver of the attorney-client privilege. I mean, if she
8 says in the letter what her purpose is, that's fine, but I don't want her to violate any
9 privileges that the Commission has with regard to the work that it's been doing in
10 responding to the Department's inquiries.

11 Ms. Sweeney. I will --

12 Mr. Sinoff. I can rephrase my question in a way that I don't believe would
13 implicate attorney-client privilege.

14 Ms. Kohart. Okay.

15 BY MR. SINOFF:

16 Q HLC's November 13th letter indicated that Dr. Sweeney, you, and
17 Dr. Gellman-Danley had conversations with Under Secretary Jones regarding this letter.

18 A That's right.

19 Q On those conversations with Under Secretary Jones, did she indicate a
20 purpose for sending this letter?

21 A If you look at page 29 of our November 13th, 2019, response, you see here
22 that -- and this is, from my perspective, secondhand. I was not with Dr. Gellman-Danley
23 when she received this call. Once Jones was able to connect with Gellman-Danley, she
24 informed Gellman-Danley that she had identified a way for the board to retroactively
25 reinstate the institutes' accredited status. And much like she had mentioned in July 2018,

1 she stated that she would be sending HLC a letter indicating that such a decision by HLC
2 would not be problematic to the Department.

3 Q And on the phone call that is referenced in that response, on page -- I
4 believe it is on page 30 --

5 A Yes.

6 Q -- and potentially on page 31, Under Secretary Jones indicated that this
7 October 31 letter was the letter that would provide that assurance?

8 A That's what she indicated.

9 Q Was this letter what you expected when she had indicated that she would
10 provide that assurance?

11 A To be clear, I personally expected no letter. I was not expecting a letter.

12 Q Fair enough.

13 Then was this the first time that the Department indicated that HLC had any
14 responsibility for the Dream Center, I'll call it the accreditation dispute?

15 A Yes. It is the first time that HLC had reason to know from the Department
16 that anything was awry with its handling of the Dream Center case.

17 Q And how long had the Department been aware that HLC had used candidacy
18 status in this way at the time of sending this letter?

19 A The Department of Education was copied on the November 16th, 2017,
20 action letter.

21 Q And that would have been 12 months beforehand?

22 A That's right. Roughly 12 months beforehand, in this case.

23 Q Slightly more.

24 A I would add, though, and I would reiterate, that they had reason to know of
25 the policy since 2009.

1 Q Okay. And had HLC interacted with the Department about this specific
2 application of change in control candidacy status prior to October 31, 2018?

3 A Yes. Through Mike Frola. Mike Frola -- this was in the very, very first few
4 days of my change in role at the Commission, so March of 2018. Michael Frola and I
5 connected by phone on March 9th, along with several of his colleagues at the
6 Department, and he asked questions about change of control candidacy, he said to get a
7 better understanding of what change of control candidacy was about. And he ended the
8 call by saying that they were going to have to do some thinking about what they would do
9 with respect to Title IV.

10 Q And I think you previously indicated that before October 31, HLC
11 representatives, so yourself and Dr. Gellman-Danley, had spoken with Under Secretary
12 Jones as well, is that correct, before October 31, 2018?

13 A Are you asking whether we spoke to her about retroactive accreditation?

14 Q No, no. About candidacy status at all, as applied in this case.

15 A I think we had, separately, though. I spoke with her, I think we were just
16 saying this in late June.

17 Q Uh-huh.

18 A I'm not privy to the conversations that she had separately with
19 Dr. Gellman-Danley.

20 Q And the accreditation group, you had spoken with them about this instance
21 of candidacy status?

22 Ms. Kohart. She should maybe -- the accreditation group meaning?

23 Mr. Sinoff. Meaning Beth Daggett and/or Herman Bounds?

24 Ms. Sweeney. They were copied on the November 16th, 2017 letter. I did not
25 communicate with them --

1 BY MR. SINOFF:

2 Q Directly?

3 A -- directly on that. I wouldn't be privy to what my predecessor's
4 communications with them were about that.

5 Q Then -- and so my question is, there were multiple times, it appears, that you
6 spoke with Department officials, possibly. It doesn't sound like you personally spoke with
7 Herman Bounds and Beth Daggett, but it sounds like you spoke with Mike Frola and
8 Under Secretary Jones about this application of change in control candidacy status --

9 A That's right.

10 Q -- in advance of October 31?

11 A That's right.

12 Q And at those times, at any point in time before October 31, did they indicate
13 that they had any concerns with HLC's application of this policy?

14 A I would say, in followup to the conversation with Mike Frola, which occurred
15 on March 9th, I heard nothing. But following receipt of the letter of intent to appeal on
16 May 21st, I recalled the conversation and realized I hadn't heard back what, in fact, the
17 Department had actually done. Recall how they had ended that call.

18 So May 22nd, I called Mike Frola, and I asked, I inquired as to what, if any,
19 outcome, what determination had the Department made. And he informed me that the
20 Department had issued a temporary provisional program participation agreement on May
21 3rd. And he assured me that I had it in my records, and we got off the phone. I checked
22 my records. I checked my predecessor's inbox, in case folks had sent it -- misdirected the
23 email, and realized I did not have those letters. And I wrote Mike Frola that very day and
24 asked him to send me what are now the May 3rd, 2018, Department of Ed temporary
25 interim not-for-profit letters.

1 Ms. Kohart. It's 12258 to 12260 and 12261 to 12263, if you --

2 Ms. Sweeney. Thank you.

3 Ms. Kohart. That's okay.

4 BY MR. SINOFF:

5 Q Okay. And it sounds like there were two phone calls between -- on October
6 31st after Under Secretary Jones transmitted the letter. The first one you were on,
7 according to your November 13th letter. Why did Under Secretary Jones call you to
8 discuss this letter?

9 A Well, in point of fact, she didn't call me. I think she was attempting -- my
10 recollection is -- and this is, again, secondhand from Dr. Gellman-Danley -- she was
11 attempting to reach Dr. Gellman-Danley. Dr. Gellman-Danley had received the October
12 31st, 2018, letter at 4:56, but she was in meetings at the time. Now, this was the night
13 before our board meeting. And she summoned me to her hotel room, and she then
14 called Diane Auer Jones to inquire about the import of this letter and the reason for its
15 transmittal.

16 Q And did you voice concerns about the letter, you or Dr. Gellman-Danley?

17 A We both did, strongly. I would say vehemently. Dr. Gellman-Danley pressed
18 upon her that this was highly extraordinary and unusual to receive correspondence like
19 this on the eve of a board meeting, particularly given the agenda for this board meeting
20 would include decisions related to the Art Institutes. And so the conversation continued.

21 Diane Auer Jones at one point, realizing the extent of the upset, offered to retract
22 the letter, and stated that no one had seen it but her and the attorneys. We don't know
23 which attorneys she's referring to when she said that. But we immediately returned that
24 with, it's our obligation to provide it to the board. And, in fact, Dr. Gellman-Danley
25 informed her it had been provided to the board. We practically answered

1 simultaneously. And so that conversation represented a very different tone in the
2 communications as had been characteristic of the Department and the Commission to
3 that point.

4 As I understand it, there was a second phone call. I was not privy to that phone
5 call. I was not there, but it was much later in the evening. Diane Auer Jones called back
6 to say again that she could not retract the letter. Again, neither of us had requested a
7 retraction, but she stated specifically the only thing HLC needed to do in response was
8 inform the Department very briefly that it intended to review its policies.

9 We most certainly would have anyway, but we obliged on November 7th, and she
10 replied quite briefly with a, "thanks, Barbara." And that essentially concluded the
11 interaction on the October 31st, 2018, letter until October 24th, 2019.

12 Q Can you explain a little bit why -- what your understanding of why Under
13 Secretary Jones offered to retract the letter?

14 A I can't speak to her intent or what she was thinking at the time, but
15 objectively, based on her language, she clearly initially thought she had the authority to
16 retract it. But by virtue of the second phone call and a statement that she could not, in
17 fact, retract it, it appears she checked.

18 Q Regarding the Department's October 24, 2019, letter that you referenced,
19 HLC's November 13th response to that letter stated that on November 1, prior to HLC's
20 response, in November 1, 2019, Herman Bounds informed HLC that the Department's
21 October 24th letter would be made public in the Federal Register as a notice of
22 investigation and records request. Did you voice concerns with this?

23 Ms. Kohart. To whom?

24 BY MR. SINOFF:

25 Q To Herman Bounds, when you were -- the November 13th letter indicates

1 that you were on the phone with him.

2 A I asked a question.

3 Q And what question did you ask?

4 A Is this a usual practice?

5 Q And what was his response?

6 A He indicated it was unusual for a matter of this kind.

7 Q Did he proceed to indicate why the Department might publish this letter
8 despite the fact that it was, as he indicated, unusual?

9 A He didn't have any rational explanation for it.

10 Q Did he have any explanation at all?

11 A He did not.

12 Q The Department recently sent a, I believe, January 31, 2020, letter to HLC.
13 Can you very briefly summarize the content of the letter?

14 Ms. Kohart. Just -- you can go ahead and summarize it, but I don't want -- this is
15 one area where we're starting to get into materials where she may not be able to answer
16 unless she references things she learned from attorneys and so forth.

17 Mr. Sinoff. Okay.

18 Ms. Kohart. But I -- you know, it speaks for itself, the letter.

19 Ms. Sweeney. I'm sorry. You said that there was a letter from the Department --

20 Ms. Kohart. On January 31st.

21 Ms. Sweeney. On January 31st.

22 Mr. Sinoff. It may be --

23 Ms. Sweeney. It's right here.

24 Mr. Sinoff. Yeah.

25 Ms. Sweeney. Thank you.

1 Well, we received this letter. We're reviewing it, we're deeply concerned about it.
2 It signals to us that we haven't resolved things. The matter remains unresolved.

3 Mr. Sinoff. Why are you concerned about it?

4 Ms. Kohart. Once again, unfortunately --

5 Ms. Sweeney. I can't answer --

6 Ms. Kohart. -- as you can imagine --

7 Ms. Sweeney. -- any further on this.

8 BY MR. SINOFF:

9 Q That Department correspondence indicates that the Department had
10 concerns with HLC's offering of appeals -- or offering of an opportunity for Dream Center
11 to appeal. In your mind, did you provide the Department proof that HLC had offered
12 Dream Center an opportunity to appeal prior to that January 31st letter?

13 A In point of fact, we did, back in May of 2018. The institutes had written their
14 letter of intent to appeal on May 21st, and on May 30th, 2018, we responded. And prior
15 to responding, I consulted with Elizabeth Daggett, because in an effort to avoid
16 embroiling volunteer peer reviewers in a potentially controversial situation, it is HLC's
17 practice to suspend ordinary evaluations when the prospect of an appeal is raised. But
18 under the Federal regulations, there didn't appear to be an exception to the onsite
19 evaluation that would need to occur within 6 months. That would mean that the focused
20 visits that were on the calendar for these institutes would have to continue and be
21 conducted.

22 And so I wanted, out of an abundance of caution, to check with the Department to
23 see whether or not I had missed something in the regulations. And as is her habit, Beth
24 Daggett was very responsive and informed me that I had not missed anything, there are
25 no exceptions.

1 And so for that reason, the May 31st -- the May 30th response signals to the
2 institutes that all but the focused visits would be suspended pending receipt of their
3 appeal. And in a separate correspondence, I sent them the appeals procedures.

4 Q And you provided all of that correspondence to the Department prior to the
5 January 31, 2020, letter, you or HLC?

6 A I don't recall. I'm sorry.

7 Q Oh, no, no problem.

8 A But it was very clear that an appeal would occur, because I recall that when
9 writing to Beth seeking this counsel, she asked why the institutes were being allowed to
10 appeal, given there was no adverse action and this was a very late appeal to a November
11 16th, 2017, action. And I explained fully and in writing.

12 Q Building on that appeal issue, was HLC's November 16, 2017, action letter
13 appealable?

14 A It was not. There was no adverse action.

15 Q Is it accurate to say that the term "adverse action" for the purposes of HLC's
16 policy does not include actions that institutions consent to?

17 A Correct. It is -- unlike all of HLC's adverse actions, these institutes had the
18 power to choose and were given ample opportunity to choose. Secondly, unlike other
19 adverse actions, the institutes had exclusive control over the trigger; mainly, the
20 consummation of the transaction that would automatically trigger the status.

21 Q And -- sorry. Go on.

22 A So it was the transaction on January 20th that automatically triggered the
23 change in status. HLC did not move the institutions to candidacy status, rather they chose
24 to accept the conditions and they chose precisely when to close the transaction, knowing
25 that it would effectuate a change in status.

1 Q And has HLC employed a similar method of -- a similar policy in the past with
2 other institutions and these final actions?

3 A There was one precedent case where the institution in question, in a
4 change-of-control scenario, was offered the same choice. I'm not privy to the intricacies
5 of that case, but in responding to the Department's later inquiry, we understood that that
6 institution ultimately did not accept the conditions and walked away from the transaction
7 and ultimately decided on its own to close. It could have remained accredited and did
8 remain accredited until it chose to close.

9 Q And at the time that HLC offered change of control candidacy status to that
10 institution, were HLC's written policies defining candidacy status, change of control, or
11 from accredited candidate or any other relevant policies different than in this case?

12 A They were not. And, in fact, again I'll mention this, this precedent case, this
13 very case was provided as a case study in HLC's most recent recognition cycle.

14 Q Can you clarify, when you say "this precedent case," you're not referring to
15 the Dream Center case, you're referring to a different case?

16 A I am referring to a different case where the institution in question ultimately
17 rejected the conditions and chose not to consummate the transaction.

18 Q So let's say we were talking about an appealable action, going back to that
19 November 16th letter. Under HLC's appeals process, how long does an institution have to
20 appeal after HLC sends an action letter? Take your time.

21 A Do you have an exhibit number?

22 Q I do. Exhibit No. 23 is HLC's appeals policy, I believe. Page 8 has the relevant
23 information.

24 A There is, in fact, an explicit timeline in HLC's appeals procedures which at all
25 times have been public information on our website, and -- yes. I believe it would have

1 been 30 days, but I want to double-check.

2 Page 6, there's an overview of the steps in the institutional appeals procedure.
3 Within 2 weeks after the date of electronic transmission of the official action letter, the
4 institution files a letter of intent with the Commission. The Commission acknowledges
5 within 2 business days. And within 6 weeks after the date of electronic transmission of
6 the official action letter, the institution submits its appellate document. That is a net of 4
7 weeks.

8 Q Okay. And I understand that there were four letters exchanged between
9 Dream Center and HLC after -- or between January 20 and February 23. And I'll list them
10 off right now. There's the January 20 public disclosure notice, I have that as exhibit 22;
11 followed by Dream Center's negative response to that notice on February 2, exhibit 24;
12 followed by HLC's February 7 amendment of its January 20 notice --

13 A Uh-huh.

14 Q -- I also have that exhibit 24; concluding with Dream Center's February 23rd
15 proposal of conditions, threatening -- and threatening litigation, exhibit 25.

16 Oh, I'm sorry. Is that right? 25, yes.

17 Can you explain why HLC did not respond in writing to Dream Center's February
18 23rd letter?

19 A Yes. At that time, Ms. Peterson Solinski was still executive vice president for
20 Legal --

21 Ms. Kohart. Again, I just want to caution you again on the privilege issues with the
22 February 23rd --

23 Ms. Sweeney. Yes.

24 -- and Governmental Affairs, at that time. The record shows she acknowledged
25 the communication. Her employment ended on February 28th. I succeeded her on

1 March 1st. And upon discovery of this letter, referred it immediately to external counsel.

2 Mr. Sinoff. And when you referred it to external counsel, did you ask external
3 counsel to --

4 Ms. Kohart. Privilege. Don't respond.

5 Mr. Sinoff. Okay.

6 BY MR. SINOFF:

7 Q In HLC's November 13th, 2019, letter to the Department indicated that
8 external -- HLC's external counsel reached out to Dream Center but did not hear back
9 about the matter. Was that your understanding of how events transpired?

10 A That is my understanding.

11 Q And that letter indicated that HLC believed the Dream Center, quote, did not
12 wish to communicate further about the matter, end quote. Is that your understanding?

13 A It is.

14 Q As part of this investigation, the committee released documents indicating
15 that Dream Center received the external counsel communication, but it decided to,
16 quote, let it sit, end quote, because it, quote, provides more runway to operate, end
17 quote. And that is exhibit 26.

18 Did Dream Center, in fact, wait to respond to HLC's external counsel March and
19 April outreach as this internal email indicates?

20 Ms. Kohart. If you know.

21 BY MR. SINOFF:

22 Q If you know.

23 A I have no way to know.

24 Q Okay.

25 A I would say that what I do know is no one called or emailed from Rouse Frets

1 or contacted me in any way from Rouse Frets to say where is our response to our
2 February 23rd letter.

3 Q And in general, with matters of accreditation with this institution and other
4 institutions that HLC accredits, is it HLC's standard process that the onus on
5 communication tends to be on the institution? So, for instance, when institutions
6 request -- or when institutions don't have information about definitions in HLC's policies,
7 when institutions don't have full information about the tax status implications of HLC's
8 actions, when institutions have appellate issues, would you expect the institutions to
9 reach out to HLC or is it HLC's policy to reach out to them?

10 A Well, there are a number of parts to your question there. I'll take tax status
11 first. HLC does not determine tax status. It's not within our purview. That is for the
12 Internal Revenue Service.

13 This institution, like all of our members, had access to HLC's website. HLC's
14 policies were on the website. HLC's appellate information, appeals procedure, were at all
15 times on the website. And the chronology, the enumerated letters that you
16 dated -- January 20th, PDN, February 2nd letter from Rouse Frets, February 7th
17 amendment to the PDN -- if you look particularly at that February 7th letter, it's very clear
18 that the tone of that letter indicates that it was the Commission's understanding that
19 there were no ambiguities here.

20 The concern that was expressed about the Commission's public disclosure notice
21 had to do with how much detail from the action letter that the board issued in November
22 was placed in the initial public disclosure notice. And the issue was in reference to
23 eligibility filings, which were completely accurate, which faithfully adhered to what, in
24 fact, were the next steps for review with this institution, and faithfully adhered to what
25 would be typical to share about what would happen next with the institution, were

1 misinterpreted.

2 And so with the February 7th letter, the Commission's language to these attorneys
3 was essentially, we don't think anything was wrong with our public disclosure notice;
4 however, we do think we have modified the public disclosure notice to -- without
5 changing the substance of what the institution requires, to satisfy your concern.

6 So the February 23rd letter, which reiterates a number of supposed or purported
7 misunderstandings, was understood at that point to be an adversarial, truly adversarial
8 letter in every sense of the word, because no one at the Commission thought the Dream
9 Center or its respective counsel at that point were confused any longer.

10 Q Now, later on, on May 21st, you indicated that -- May 21st, 2018, you
11 previously indicated the Dream Center requested to appeal what they refer to as HLC's
12 decision, the November 16, 2017, action letter. Did HLC allow Dream Center to appeal?

13 A Yes, we did. I want to share, though, that -- and I'm checking, because often
14 they would refer to the January 20th action. As I stated, there was no HLC action on
15 January 20th, but we did respond to that letter giving them the opportunity to appeal,
16 yes.

17 Q And when HLC agreed to accept Dream Center's appeal, did HLC provide
18 Dream Center with HLC's appeals processes, procedures?

19 A Yes, we did.

20 Q According to those procedures that HLC provided, what format was Dream
21 Center required to submit its appeal? And you can --

22 A I can look in the -- the institution would have had significant latitude for the
23 format that their appeal could take, but it certainly would have been a letter of some kind
24 stating their salient arguments and substantiating documents as to why they thought that
25 the board's action met some standard for appealability, whether it was arbitrary or

1 capricious or there was procedural error under our policies. We don't restrain or restrict
2 in any way the format that an institution's appeal can take, but it certainly must be in
3 writing.

4 Q Now -- I'm sorry. Go on.

5 A I don't have anything.

6 Q When you were -- when you say it has to be in writing, you mean, like, is a
7 digital copy acceptable, or is it required that it's a hard copy?

8 A Mail as well is helpful. This is -- again, I'm not thoroughly familiar with our
9 appeals process. It's, fortunately, one of those processes I haven't actually had the
10 pleasure of serving through yet. But the institutions' appeal document is treated on page
11 4 of the appeals procedure, HLC-OPE 15259. It shall consist, and it says here in the middle
12 of this paragraph with heading Institution's Filing of the Appellate Document. "The
13 appellate document shall consist of the institution's written argument supporting its
14 appeal, along with evidence and other relevant written information that will establish the
15 institution's asserted grounds for appeal. The institution may submit the appellate
16 document electronically but must also submit two copies of the entire submission in
17 paper form. Note that the institution must submit all documents related to its appeal
18 either with the appellate document or with the rebuttal."

19 Q Did Dream Center submit two paper copies to HLC?

20 A It did not.

21 Q Did they submit anything to HLC?

22 A We ultimately found out that they attempted a submission to HLC on June
23 27th, 2018. However, that transmission was unsuccessful.

24 Q Why was it unsuccessful?

25 A They misspelled "commission" in both cases, in Dr. Gellman-Danley's email

1 address and in mine as well.

2 Q So factually speaking, did you receive these appeals documents anytime in
3 2018?

4 A We did not.

5 Q To your knowledge, would Dream Center have received bounce-back
6 notifications, if you don't --

7 A I have no way to know that.

8 Q Okay. As part of this investigation, the committee released documents
9 showing that on May 31, 2018, the same date that HLC accepted Dream Center's appeal
10 request, on that date, Dream Center officials contemplated sending notice to students so
11 they would appeal HLC's actions in these internal emails. Dream Center counsel, who was
12 representing Dream Center in its appeal is Mr. Ron Holt, wrote, quote: I think that even if
13 all we do is set up a meeting with HLC executive committee in Chicago to get them to
14 stand down to some extent on their position, we are still appealing or challenging HLC's
15 position, so sending out the notice now but later not actually pursuing a full-blown
16 internal appeal would not be inconsistent.

17 Now, you said that Dream Center never successfully filed an appeal. Does
18 this -- were you aware of this strategy before our letter?

19 A We were not. This is my first time seeing this.

20 Q Sorry. That is exhibit --

21 A Exhibit 32. We were not aware of the internal strategy that Dream Center
22 had at the time. All we knew was that the institutes had expressed an intent to appeal.
23 They had been given the opportunity, and they let the opportunity lapse.

24 Q Regardless, when an institution appeals an adverse action -- though this was
25 not an adverse action by HLC's definition, as you indicated previously. When an

1 institution appeals an adverse action, does HLC require that institution to abide by HLC's
2 disclosure requirements around that prior action? So, in this case, to rephrase that
3 question, in this -- or did you understand?

4 A I do. Unless and until an appeal is successful, the board's decision stands.
5 And so the -- an inaccurate disclosure or a disclosure that's inconsistent with the
6 institution's actual status is not justifiable on the basis of plans to appeal, intent to
7 appeal, or even an actual appeal.

8 Q In this case, during this entire appeals request, did Dream Center abide by
9 HLC's public disclosure requirements?

10 A It did not, until -- it would have been in early July, there was a public report
11 out in Pittsburgh that came to HLC's attention. We certainly were already aware but
12 were in the frustrated position of having our evaluative processes, the eligibility filings
13 that were suspended, certainly contained a transparency requirement that would have
14 prompted official findings going to the board. And with the leverage that publication and
15 the press can provide, HLC contacted the institutes once again to share that their
16 disclosures were inaccurate, and they responded promptly.

17 But I will say that this is a pattern with the institutes. They had exhibited a
18 pattern. If you look at November 13th, 2019, our response on page 19, speaks about, as
19 an example, October 20th, 2017, Sweeney wrote to EDMC, then still the corporate parent
20 of the institutes, to express concerns about the, quote/unquote, spotlight section of
21 EDMC's website that included a purported disclosure related to the transaction that yet
22 remained incomplete.

1 [12:47 p.m.]

2 BY MR. SINOFF:

3 Q And in that case, as I recall, it was a large banner across the website that
4 says we are going nonprofit. This is before the transaction would be consummated or
5 even approved for that matter in 2017.

6 Even after the initial compliance, once the institutes announced that they were
7 closing, we would periodically check because we understood that this had been a pattern.
8 And we saw that an enlarged square or oblong had been placed across the websites, that
9 signaled that the institutes had ceased enrolling students but failed to disclose that they
10 were actually closing.

11 And so it was this particular latest violation with respect to transparency that
12 along with the teach out documents that we had received prompted HLC's July 12th
13 letter, which you see referenced as HLC OPE 12562-12580 to Presidents Monday, and
14 Ramey, and CEO Richardson where we indicate to them in no uncertain terms our
15 displeasure with their continued and flagrant frustration of meaningful disclosures to
16 students.

17 And we brought the fact that we were sending this letter or that we had
18 dispatched this letter to the attention of Diane Auer Jones at that time. And expressed
19 our frustration with repeated attempts, I mean, starting all the way from January in my
20 capacity as staff liaison to the institutes through to this time. This issue of disclosures and
21 accurate disclosures would come up and she indicated that she would use her leverage to
22 get them to comply. And so we took the extraordinary step in this letter of requiring the
23 institutions to actually post the link to our public disclosure notice directly on their
24 website.

25 And it was a moment when we were appreciative of Dr. Jones' collaboration,

1 because it is not usual for an institution to consent to having HLC's own language
2 verbatim linked on its website in a very prominent way. The result of that was a hyper
3 link directly to our public disclosure notice featured in the large oblong that was
4 obscuring links to, about us or accreditation information on the institution's websites.

5 Q Now I only have a couple of minutes left. So I just want to go back briefly.
6 You said that you spoke with director Mike Frola on March 9th regarding --

7 A Yes.

8 Q -- the institutions? Do you know who else was on that call? If you don't
9 recall now, would you mind following up with that information, if you have it?

10 A It.

11 Ms. Kohart. HLC side or from the --

12 Mr. Sinoff. From department side.

13 Ms. Sweeney. There were a number of individuals on the call. The difficulty is I
14 don't have their names. I only have the names of the individuals who were intended to
15 be on the originally scheduled call, which was intended to take place on March 5th and
16 which I asked Mr. Frola to postpone to March 9th.

17 BY MR. SINOFF:

18 Q Understood. And my understanding of that call from your November 13th
19 letter was that Mr. Frola indicated that schools may have issues with Title IV funding due
20 to their tax status. Did you indicate to Mr. Frola that HLC does not have a role in
21 determining tax status?

22 A In unequivocal terms, I stated emphatically, because he asked directly
23 whether we had made or whether our board, to be more precise, had made an
24 independent determination as to the institute's eligibility for Title IV funding.

25 Q And did he voice any concerns with that say that that is in fact HLC's role or

1 anything like that?

2 A He did not.

3 Q That will be the last question.

4 Anyone else on the phone call say anything like that?

5 A They did not.

6 Q Okay.

7 Mr. Sinoff. That is my time. So I will --

8 Ms. Kohart. So we are going to do a half hour with minority counsel? Is that how
9 it works?

10 Mr. Sinoff. No, no, no. Sorry I thought we would just --

11 Ms. Kohart. I am sorry. I was just confused. So we're done?

12 Mr. Sinoff. No. No. No.

13 Ms. Sweeney. No, they have a second round?

14 Ms. Kohart. That is what I thought. Okay. So let's just walk the hallways and
15 wake up a little bit before we get started with the next round. Because it is tough to sit
16 and --

17 [Recess.]

18 BY MS. SCHAUMBURG:

19 Q I am just going to pick up kind of where we left off an hour ago.

20 A Yes.

21 Q And again, some of this might be duplicative again. And my sincere
22 apologies.

23 A That is okay.

24 Q A lot of this is just trying to clarify some things to make sure we have it
25 straight.

1 So going back to the public disclosure notices, you had mentioned that those were
2 made public. But I had a question of whose responsibility is it to actually put the notice
3 out. Does that fall on the HLC to get that notice out to everybody or is it the institution's
4 responsibility?

5 A The public disclosure notice is a HLC document.

6 Q Okay.

7 A And it is HLC's responsibility to get it out.

8 Q Okay. And how do you do that? How does HLC do that?

9 A We have a communications department. And it is a collaborative process.
10 The legal affairs office will review it. There is language that the communications
11 department takes from the respective action letter and essentially renders it in laymen's
12 terms so that a reasonable individual in the public can understand what is being talked
13 about.

14 It is circulated to the liaison who is assigned to the institution, the vice president
15 for accreditation relations who is assigned to the institution. And ultimately once
16 everyone is satisfied that becomes the final public disclosure notice that is attached to
17 the action letter that is first transmitted to the institution and then published on the
18 website 24 hours later.

19 Q Published on the institution's website?

20 A On HLC's website.

21 Q On HLC's website. Okay.

22 A So let me take a moment here to explain our website. Anyone in the public
23 can search for an HLC accredited institution or and HLC candidate institution on our
24 website and find its profile. In appropriate cases, find the action letter that the institution
25 received where there are is a sanction involved for example and also find a hyperlink to

1 the public disclosure notice.

2 Separate from HLC's website, institutions that are affiliated with HLC have a mark
3 of affiliation on their website. So if you go to say the University of Chicago's website and
4 you go to that portion of their website that references their accreditations you will see a
5 mark of affiliation which is actually an active link that hyperlinks the reader to HLC's
6 website where they can read more detail.

7 But the graphic itself is interactive and dynamic, it changes when the status of the
8 institution changes. So for example, if an institution were to be placed on probation, a
9 bar would appear on the mark of affiliation that indicated accredited on probation.

10 Q Okay. And when you say affiliated, does that mean those are institutions
11 that are accredited by HLC or is there something else that affiliated with HLC could mean?

12 A Affiliated also means institutions that have candidate status.

13 Q Okay. Okay.

14 You had discussed that you now -- HLC now requires if an institution is in show
15 cause order that HLC requires them to have a teach out plan. Is that accurate?

16 A That is right.

17 Q Does HLC help develop that teach out plan? Does HLC approve that plan or
18 what is HLC's involvement with that plan at that point in time?

19 A HLC informs the institution as I mentioned earlier of the requirements under
20 policy. The vice president for accreditation relations assigned to an institution will field
21 any questions coming from staff at that institution about the provisional plan that it is
22 developing. And ultimately once the plan is submitted, the Institutional Actions Council
23 or IAC will approve the plan and any teach out agreements that might accompany it.

24 Q Okay. So there is a formal process for HLC to say yes --

25 A Yes.

1 Q -- this is an acceptable plan?

2 A That is correct.

3 Q Okay. You had mentioned that you had spoke with Members of
4 Congress -- it sounded infrequently to me -- and that you had gotten some
5 communications from Mr. Durbin's staff -- or Senator Durbin's staff, sorry, regarding
6 some schools that have closed or some schools that are precipitously about to close?

7 A I would say occasionally, yes. That's correct.

8 Q What would that interaction be like, just phone calls, or were there letters
9 back and forth? And did you respond? I know you had created a position to have
10 somebody else respond, but when you were doing it what were those interactions like?

11 A And these were on occasion. I wouldn't represent that these were frequent
12 interactions, even when they were coming directly to me.

13 Q Okay.

14 A But they would usually take the format of impromptu phone calls or calls
15 requested on very short notice. Can I speak with you some time today? And usually what
16 would prompt the call would be a press release of an institution that is closing. A recent
17 example that I can think of regarding an institution would have been in relation to an
18 institution in our portfolio where the news of the institution not being a going concern
19 was disclosed in its SEC filing. And because this information is public, it came to the
20 attention of Brad Middleton in Dick Durbin's office --

21 Q Okay.

22 A Senator Durbin's staffer, Brad Middleton. And he called within 24 to 48
23 hours to learn what, if anything, HLC was doing to make sure that this institution if it were
24 to close was appropriately making disclosures to students and actively preparing a
25 provisional plan and if appropriate teach out agreements. In other words, I think there is

1 general concern whenever these closures are announced.

2 Q Were there any other Members of Congress that would reach out or have
3 you spoken with any other Member's staff?

4 A I have not.

5 Q Okay. Speaking of the closures, you had talked earlier about how we have
6 seen a couple of big school -- or institution system closures recently namely ITT and
7 Corinthian. Is that the ones you are familiar with that you were referencing?

8 A I was not referencing those. I have some passing familiarity with those, but
9 we have had some more recent large scale closures. Argosy was the one that came to
10 mind.

11 Q Okay. It is our understanding that when Corinthian and ITT closed
12 specifically that the department tried to help a few students, but for the most part the
13 schools and students were kind of lost to try to figure that out. Is that your
14 understanding of what was happening then?

15 A I can't claim deep understanding of those.

16 Q Okay.

17 A I did not have any associated institutions in my portfolio. I have the
18 laymen's understanding of what occurred there. And my understanding is a lot of
19 students were harmed. It is very public, it is very clear to everyone that those scenarios
20 were disasters for students on a very large scale.

21 Q Okay. And did HLC have any -- HLC accredited some Corinthian schools, is
22 that accurate or no?

23 A Not to my knowledge.

24 Q Not to your knowledge? Okay.

25 A I can't claim to have knowledge of that.

1 Q Okay. So HLC is one of the six accreditors involved with the Dream Center
2 institutions. That is correct, Right? There are six accreditors in total in this system?

3 A Seven. If you -- it depends on how you count --

4 Q Okay.

5 A -- ACCJC which used to be known as WSCUC Jr.

6 Q Okay.

7 A And people would just say WSCUC and count it as one.

8 Q Okay. So six, seven.

9 A Yeah.

10 Q Based on the closures of these schools, the department -- our understanding
11 is the department decided to try something new, some are saying innovative, and help
12 orchestrate orderly process to help the students to complete their programs. Are you
13 familiar with that work and that effort?

14 A Can you repeat the question?

15 Q The department decided to try to help students who were facing their
16 institutions closing and to orchestrate an orderly process to help the students complete
17 their programs?

18 A With respect to these institutions?

19 Q With these institutions.

20 A Yes. I am familiar with that.

21 Q Now speaking about the Dream Center institutions, To do this work Diane
22 Jones met with several of the accreditors involved with these institutions to help them
23 figure out how to best help students.

24 Is that your understanding?

25 A She convened a number of calls, that is my understanding.

1 Q Were you a participant in any of those calls?

2 A I was a participant on the earliest of the calls.

3 Q Okay.

4 A Barbara Gellman-Danley and I alternated until we realized that there was
5 limited utility in the calls.

6 Q Okay. Can you describe what -- a little bit about what happened on the
7 calls?

8 A It was in fact a coordination, a large scale coordination of Dr. Jones's
9 solicited information from the Art Institutes and shared that information with the
10 respective accreditors. The vast majority of Art Institutes in the conglomerate, if you will,
11 were accredited by other accreditors.

12 And so the vast majority of the calls would concern issues affecting those
13 institutions and their accreditors. Very little information was shared with us. We
14 accredited two of the institutions. And most often information was not being shared with
15 us, rather information was being solicited from us. And we were very much interested in
16 getting provisional plans that we could approve.

17 At this time, the provisional plans that we first received, rather than having come
18 to the accreditor in the ordinary course through a substantive change process that would
19 ultimately go to the Institutional Actions Council, had first been approved first been
20 provided to the Department of Education directly. And provided to HLC subsequently in
21 quote, unquote final form. Yet, they were bereft of all the details and all the protections
22 that an accreditor would expect to see in a provisional plan.

23 And after the first few calls that HLC participated on, we understood that there
24 was limited understanding at the department level for what a provisional plan was, what
25 it should contain, and what were the appropriate criteria for selecting teach out receiving

1 partners or partner institutions, and the best individuals in the position to provide the
2 highest quality provisional plans and teach out agreements were at the institutions
3 themselves and we focused our energies on getting the information that we needed.

4 That was the whole purpose of our July 12, 2018 letter. It was part of the reason
5 why we leveraged Diane Auer Jones' authority in the way that we did. Separate from the
6 calls, the identification of teach out receiving institutions was handled primarily via email
7 in a coordinated fashion, not by the department but by Dream Center itself.

8 Essentially we would receive an email with a hyperlink to a sharepoint site with a
9 list of several institutions nationally that would be serving as teach out receiving
10 institutions. But operationally at HLC we still had final responsibility for ultimately getting
11 Dream Center and its institutes to produce a provisional plan our IAC would approve.
12 There are criteria for these documents to be approved. They aren't simply accepted
13 because they are submitted and that is what we spent our time doing.

14 Q Did bringing everybody together, though, did that help speed up the process
15 of finalizing the plans or finding alternative programs for the students to help them
16 complete their programs?

17 A HLC received the documentation that it needed shortly after the receipt
18 of -- by the institutes of the July 12 letter.

19 Ms. Morgen. May I interject? Could you check the date of that letter?

20 Ms. Sweeney. Yes. Let's see here. I probably will have to ask you to repeat your
21 question in a moment. I'm sorry.

22 Ms. Schaumburg. I hope I can.

23 Ms. Sweeney. You asked whether it would have --

24 Ms. Kohart. She -- you were asked to check the date of the letter.

25 Ms. Morgen. Just the date of the letter that you are referring to

1 about -- regarding the teach out agreement and the disclosures.

2 Ms. Sweeney. June 12, 2018.

3 Ms. Morgen. I believe it is July 12, 2018. Is that correct?

4 Okay, okay. All right.

5 Ms. Kohart. Whatever it is it is. It will speak for itself like many of these
6 documents.

7 Ms. Sweeney. It may be a typo, but I --

8 Ms. Morgen. Okay. I didn't mean to interrupt you.

9 Ms. Sweeney. I apologize. That's okay.

10 HLC's view after internal discussion about the fastest way to get provisional plans
11 that we could approve, and this was of greatest importance to us, because we wanted to
12 be able to share with our board, prior to the conducting of a board hearing that would
13 occur in the early fall, that we had in fact received, reviewed, and approved viable
14 provisional plans and teach out receiving institutions that could or would accept these
15 students and that is what we did.

16 BY MS. SCHAUMBURG:

17 Q And did HLC work with any of the other accreditors or was it all just the
18 department putting folks in touch?

19 A Well, we worked with the other accreditors. Barbara Gellman-Danley chairs
20 the Council for Regional Accrediting Commissions. She was the chair at the time.

21 And certainly in her capacity as president had regular calls among all the
22 presidents of the regional accrediting commissions who had certainly been in
23 communication prior to the announcement of the closure. Remember that this was a
24 joint fact-finding visit for this change of control application. And subsequent to the
25 announcement of closure, those coordinating conversations occurred at the presidential

1 level.

2 Q Okay. Going back to some of the conversation from earlier today, just to
3 kind of clear up some points. You referenced a November 29th I believe it was an email
4 of the acknowledgment of Dream Center accepting the conditions but you had wanted
5 the additional letter.

6 Ms. Kohart. I am not sure those dates are correct.

7 Ms. Sweeney. The November 29, 2017 Dream Center affirmation of
8 understanding and this is by Bates stamp number HLC-OCE 7740-7741 and 7738-7739?

9 Ms. Schaumburg. And that is it an email, correct?

10 Ms. Morgen. No, that is incorrect.

11 Ms. Sweeney. This is a letter.

12 BY MS. SCHAUMBURG:

13 Q Okay.

14 A This is a letter from Illinois Institute of Art, dated November 29, 2017. And it
15 enumerates in bullets by bulleted statements several understandings. And it is cosigned
16 even though it is from the Illinois of institute of Art letterhead it is cosigned by Elden,
17 Monday the interim president. Elden, E-l-d-e-n Monday. Of the Art Institute of Colorado
18 and Josh Pond, the President of the Illinois Institute of Art and Brent Richardson, chief
19 executive officer of Dream Center Education Programs, LLC.

20 Q Okay. Thank you very much. You had talked -- there was a conversation
21 about some communications between Karen Peterson Solinski and Ron Holt about what
22 candidacy the change in control candidacy meant. But just to clarify you, had said you
23 can't speak to that because you were not on those, you were not privy to those
24 communications. Is that accurate?

25 A I was not privy to those conversations at the time. We certainly have

1 documentation of those conversations. I learned of them after the fact.

2 Q But you were not a first person participant in these conversation?

3 A I was not a first person participant.

4 Q Okay. In the --

5 A Can I make a friendly amendment?

6 Q Yes.

7 A I am looking at the document and I see that I am copied, but again, I am
8 not -- I was not at the time the primary or even the person who communicated with Ron
9 Holt on a one-on-one basis or negotiated conditions or anything like that.

10 Q Okay. Thank you very much. You mentioned that you emailed Elizabeth
11 Daggett?

12 A Daggett.

13 Q Daggett?

14 A Daggett.

15 Q Regarding whether or not you could cancel the site visit?

16 A Yes.

17 Q In that you had mentioned that you discussed -- that she had asked about
18 the appeal process and why it was so long and you had indicated at one point in time that
19 because there was no adverse action there was actually no right to appeal, but because
20 they had mentioned legal action HLC had decided to grant that. Am I --

21 Ms. Kohart. I don't think that is what she answered.

22 Ms. Sweeney. No.

23 Ms. Schaumburg. Okay.

24 Ms. Sweeney. What I indicated was there had been an instance during December
25 of 2017 when my predecessor, Karen Peterson Solinski attended a conference off site. It

1 was actually a Federal student aid conference in December of 2017. It also happened
2 that Ron Holt and one or more of his colleagues were at the same conference. And he
3 reached out and they had conversations at that conference.

4 And so that is the instance that I am speaking of where there is a gap in HLC's
5 ability to validate what exactly transpired during those conversations. And because the
6 May 21, 2018 letter references -- and I will point you to the top of page 2 of that letter,
7 and I will quote, quite honestly, DCEH feels that it was misled by HLC to its detriment and
8 the detriment of its students. And that DCEH has actionable legal claims again HLC.

9 To the extent that HLC had a gap in its understanding of firsthand communications
10 between HLC and Dream Center, it was of concern to us that there was this allegation of
11 having been misled. No one but Karen Solinski from HLC attended that conference. All
12 we had was a record of Ron Holt having reached out to her via email in anticipation of the
13 conference, their having determined that they would meet, his having written back to her
14 to confirm and summarize the content of their conversation from his perspective and her
15 friendly amendment via email.

16 That is all we have. We have no idea what she actually said to him during that
17 conference. And so it is this allegation of misleading Dream Center that concerned us
18 most, because it had the greatest potential, if it occurred, to nullify their consent.

19 Ms. Schaumburg. Okay.

20 So I am referring to your email between Elizabeth and yourself, your Bates stamp
21 numbers are 15312 --

22 Ms. Kohart. Is that the same book that we had before? Separate tab number?

23 Oh okay --

24 Ms. Schaumburg. Yes.

25 Exhibit 21. And if you go to page 15313.

1 Ms. Sweeney. Thank you so much. 15313?

2 BY MS. SCHAUMBURG:

3 Q Yes.

4 A I have it.

5 Q So in that last paragraph there, they had accepted the conditions they have
6 openly threatened litigation asking access to the HLC appeal process, it says they are
7 specifically claiming they were misled, which places the effectiveness of their consent in
8 doubt and the full record of Karen's communication with the external counsel are not
9 completely known. Some conversations took place in person or by phone without other
10 HLC in attendance. We thought to provide the institutions access to the appeal process
11 though not required.

12 A Correct.

13 Q So. Okay. So you had said earlier that you had specifically mentioned the
14 idea of whether or not it was an adverse action or not. I am just clarifying that you had
15 agreed to do this because of the threat of litigation?

16 A Let me be clear, this language here saying "though not required," I was
17 making a clear statement that there was no requirement for an appeal because there had
18 been no adverse action.

19 Q Okay. So you were making --

20 A It wasn't merely the threat of litigation, but the allegation that they had
21 been misled by HLC that concerned us.

22 Q Okay. Thank you.

23 And just to clarify, I don't see that Elizabeth actually acknowledged any of that
24 other than to say I understand what you are saying or thanks for the additional
25 information, correct? She did not --

1 A She did not in her writing acknowledge the substance of my email.

2 Q Okay. Thank you.

3 You had discussed the issue of retroactive accreditation and made a comment
4 that it was not explicit but Mr. Harpool meant retroactive accreditation and you made a
5 comment that that email was unsolicited. Can you tell us why you were noting that it was
6 unsolicited?

7 A While we had received a request for a meeting and offered a call in lieu of it,
8 we simply indicated -- the nature of the communication was simply to set up the
9 mechanics for the communication to occur and essentially to learn what, if anything, else
10 needed to supplement our ever increasing list of updates that would be provided to the
11 board in late June at its board meeting.

12 And his early communication with us in that thread suggested and I am not
13 quoting, that they thought they had a way to avoid litigation. And my response was in
14 the nature of anything you want to say, we would want to hear so that our update to the
15 board could be complete. So the word proposal in my email is not a solicitation for what
16 followed in any way.

17 Q But in noting that it was not solicited, are you implying that -- or I am sorry, I
18 am going to start over.

19 In noting that it was not solicited, are you implying that it was inappropriate at
20 that time or are you just noting that that was not what you were expecting from them at
21 that time?

22 A I am noting both, that the content of this email was not what I was
23 expecting. And I am noting that it was inappropriate because particularly in paragraph 2,
24 a number of requests or I would call them demands are made that are inconsistent with
25 HLC policy.

1 Q So parsing that a little bit further, the not appropriate getting to the actual
2 content of the request is what you are saying is not appropriate. The idea that he sent
3 that at that time was not expected, but it was not not appropriate?

4 A It would have been inappropriate at any time because it was making
5 requests that are not consistent with policy.

6 Q The content?

7 A The content of the request.

8 Q Okay. Okay. You noted that Beth, when she -- when you had contacted
9 Beth regarding the retroactive accreditation and they sent you the memo, the Bounds
10 memo, you noted that you would have expected her to note it was going to be
11 overturned. Why do you say -- why would you expect her to note that?

12 A Given the proximity between my communications with her on retroactive
13 accreditation and Diane Auer Jones outreach to President Barbara Gellman-Danley. And
14 given that the office of post secondary education is directly within Diane Auer Jones'
15 authority, I would have expected that Beth Daggett would either be aware and would
16 certainly inform me if she expected that this guidance was very shortly going to be invalid
17 or alternatively she simply did not know that it was about to be invalid.

18 Q But you are not aware of any rules or protocols at the department that
19 would have required her to do that in any way?

20 A I am not.

21 Q Okay. In this conversation as well, Elizabeth and Herman got on the phone
22 to you to explain what the new policy was. Is that correct?

23 A That is incorrect.

24 Q Okay, sorry. What did they explain to you?

25 A Beth Daggett apologized for sharing the Bounds memo as guidance in this

1 context based on our conversation. And that was the sum total of her contribution to the
2 call.

3 Q Okay.

4 A Herman Bounds' contribution to the call, as the author of the memo, was to
5 explain why it was inapplicable in this context, even though it was good guidance. He
6 basically characterized the memo as applying to a very narrow set of circumstances by its
7 very terms, even though the understanding HLC had had to that date was to extrapolate
8 from that memo that retroactive accreditation was anathema essentially.

9 Q Okay. Moving into the first time -- you answered some questions about the
10 first time HLC had any reason to know there was concern.

11 A Uh-huh.

12 Q You had discussed that as early as November 2017 the department was
13 aware?

14 A What I said was the department had reason to be aware. Reasonably should
15 have known. Change of control candidacy short form for the policy that we are speaking
16 about, had been on HLC's books since 2009. HLC underwent two recognition cycles 5
17 years apart, and in the most recent of those cycles the only precedent case, other than
18 Dream Center, where change of control candidacy had any applicability had been
19 provided to the department as an actual case study.

20 And so, it came as something of a surprise to us that we were learning for the first
21 time on the eve of the November 1, 2018 board meeting where this very policy and its
22 impact on two institutions were going to be considered that the almost decade old policy
23 was inconsistent with Federal regulations.

24 Q Okay. And specific to these institutions, the Dream Center institutions, the
25 department would have been copied on the letter that went to the institutions about

1 this?

2 A They would have and were.

3 Q Who were they sent to at the department?

4 Ms. Kohart. You are talking about the 11/17 letters?

5 Ms. Schaumburg. Correct.

6 Ms. Sweeney. Michael Frola division director of the multi regional and foreign
7 schools participation division of the U.S. Department of Education was copied, and
8 Herman Bounds, director of the accreditation group U.S. Department of Education.

9 BY MS. SCHAUMBURG:

10 Q Okay. So to your knowledge Diane was not actually at the Department of Ed
11 at that point?

12 A To my knowledge, she was not.

13 Q Okay. In discussing the February 7, 2018 letter and the February 23rd letter
14 and whether or not or what the response was to that, I believe you made a comment that
15 said the February 23rd letter was considered to be adversarial, because -- I am not sure
16 my notes are right -- because they were no longer confused about what the status was.

17 Explain what that meant, please.

18 A What I stated was it was HLC's perception that there was no authentic
19 confusion on the part of Dream Center or the Art Institutes on that date.

20 Q Okay. And why do you characterize that letter as adversarial? And does it
21 that have any actual meaning in terms of process for HLC?

22 A I see what you are saying. Let me go to the letter, number 17. So the letter
23 is viewed as adversarial only because it restates some misstatements that had long since
24 in our view been corrected, clarified, debunked, particularly both the institutions remain
25 accredited.

1 A It did not trigger any action in terms of an adverse action or anything like
2 that. We just understood that this was not an authentic description of what, from HLC's
3 perspective based on the course of communications, the long period of time even prior to
4 the consummation of the transaction in communicating what change of control candidacy
5 would mean.

6 There was no reasonable basis for these statements to be in this letter as a
7 representation of what they quote unquote "correctly understand" by our response.

8 Q So adversarial is what you interpreted it to be. And is that you personally or
9 HLC?

10 A It was adverse in the sense that it was not aligned with HLC's --
11 Ms. Kohart. Also she's not here as a 30(b)(6) for the Higher Learning Commission.

12 BY MS. SCHAUMBURG:

13 Q Okay. Moving on to the appeal. It is just a matter of policy, you said that
14 you never received a written copy of the policy and your outside counsel did not receive a
15 written mailed copy of the appeal -- sorry not the policy, the appeal from Dream Center is
16 that accurate neither of you received --

17 A That is correct.

18 Q Okay. And they misspelled commission in the email address so the email
19 never got to you or President --

20 A That is correct.

21 Q Okay. But it did get you counsel that was caught in the spam filter, is that
22 accurate?

23 A That is correct.

24 Q Okay. Even if that had gotten through, according to HLC's policies, because
25 they did not provide a written appeal, would that have been -- would HLC have treated

1 that as sufficient enough to appeal or would you have had to have received the written --

2 Ms. Kohart. I think to the extent -- this is hypothetical and it might fall within
3 attorney-client, because that is not what happened. So it is an issue that has never been
4 really addressed.

5 Ms. Schaumburg. Generally speaking.

6 Ms. Kohart. It is just never happened period to the best of my knowledge.

7 Ms. Sweeney. Generally speaking, HLC -- yes, we have procedures, but if an
8 institution is substantially compliant, we call, we communicate, we give them an
9 opportunity, would you like to supplement. That is our habit. That is the way that we
10 deal with our members, including our candidate institutions.

11 I would also like to offer that there is also a very good reason that the transmitted
12 email never reached or I would say got caught in a spam filter. There is no reason for that
13 email address to have been white listed. We had had zero contact from anyone named
14 Chris Richardson at the extension on that email address.

15 Ms. Schaumburg. And to clarify, Chris Richardson is one of the attorneys for
16 Dream Center in some of these actions?

17 Ms. Kohart. I think in that email he was from Lopes Capital. I don't even know if
18 he is an attorney.

19 Ms. Sweeney. He is the brother of Brent Richardson --

20 BY MS. SCHAUMBURG:

21 Q Correct.

22 A -- the CEO of Dream Center Education Holdings and none of the historical
23 communications with Dream Center, not even the fact-finding visit, none of the
24 negotiation involved a Chris Richardson. Unfamiliar name, unfamiliar company, likely to
25 get caught in a spam filter.

1 Q Okay. Thank you. You had mentioned that Diane had -- Dr. Jones had
2 helped you, HLC, get Dream Center to actually link to your decision to provide clear
3 information to the students. Can you just clarify the dates of those in general of that
4 interaction?

5 A I am sorry, I don't have the exact dates at my fingertips mentally --

6 Q Do you know if these were over email or over phone calls from HLC and
7 Diane to get that information or was that communicated --

8 A There was a phone call with follow-up emails.

9 Q Okay. And Diane did get them to -- did Diane talk to Dream Center to get
10 them to do that and acted as I will call it an intermediary or provide you with some
11 statement that you could share with Dream Center to get them to do it?

12 A There were a couple of things and yes, in this instance, again we were
13 gratified that she did appear to be acting as an intermediary. She mentioned on the
14 phone call that she -- she referenced a letter of credit that she had to use as leverage.
15 And at this point we recalled that we had already dispatched our letter.

16 A I want to double-check. I do believe that we -- there is a typo in our
17 document --

18 Ms. Morgen. May I interject?

19 Ms. Sweeney. Yes.

20 Ms. Morgen. There were emails on June 12th but the letter you are referring to
21 was on July 12th so it is not a typo.

22 Ms. Sweeney. Thank you.

23 Ms. Morgen. Those are two different documents so the letter you have been
24 referring to is July 12th.

25 Ms. Sweeney. July 12th.

1 Ms. Kohart. The documents she is talking about are all in our production so they
2 may not be in your notebook there.

3 Ms. Sweeney. Thank you very much. So that July 12th letter, the conversation
4 with Dr. Jones allowed us to have confidence in ccing her on the July 12th letter because
5 we understood, one, we wanted them to know that we are in contact with the
6 Department of Education. And she had said to us on the phone that she was going to use
7 the letter of credit as leverage.

8 BY MS. SCHAUMBURG:

9 Q Going back to a more general sense, it seems like HLC tries to be pretty
10 helpful with their institutions in getting them to understand stuff and making it clear.

11 Is it general policy of HLC that you will communicate in email, over phone and
12 then have that standard? Is there typically an understanding that things will be
13 memorialized in some type of writing or communication with an institution so the record
14 is clear.

15 A We don't have a formal policy on this. We are -- we have I think an internal
16 expectation that there is a level of responsiveness, but there aren't restrictions on how
17 that communication may take place.

18 The onus for reaching out to communicate is on an institution. If it has questions,
19 it reaches out. But HLC staff do not make a habit and frankly are discouraged from calling
20 up and checking on an institution, it has sort of a heavy handed -- it can frustrate what is
21 meant to be a voluntary accreditation process and relationship.

22 And some institutions are very hands on with their liaison and call them on a
23 monthly basis with regularly scheduled calls. Other institutions call you only when they
24 have questions or when they need help. But there are no restrictions on how an
25 institution may communicate on lesson particular procedures or on how a liaison would

1 communicate or accept communication.

2 Q Is there any type of policy in place either formal or informally when an
3 institution is starting to show signs of problems that HLC for instance you had mentioned
4 that in your portfolio in your previous job you got some of the troubled institutions. Was
5 there any more formal process that was initiated to make sure that everything was clear
6 and things were in writing or documented in some capacity and those situations are the
7 same process.

8 A Those situations, none of those institutions that I had had ever threatened
9 an appeal so I was never in the situation previous to this case. Where it became clear
10 that creating a record was going to be important. And we do have an informal
11 understanding when it appears that creating a record is important that its important that
12 communications as far as possible would be in writing.

13 Q And does that typically generally speaking from your policy does HLC directly
14 send most communications or is there an understanding of when you involve your
15 outside counsel to send communications to your institutions? Do you have to be in a
16 certain process?

17 Ms. Kohart. I caution you about the attorney-client privilege in how you respond
18 to that since she included how you deal with your outside lawyers.

19 Ms. Sweeney. Correct.

20 I can only speak to practice.

21 BY MS. SCHAUMBURG:

22 Q Okay. And there is a lot of latitude in day-to-day practice. There are no
23 formal policies that state what communications must be directed in which directions.
24 These are very complex relationships largely intended to be collegial in order to be as
25 effective as possible. And I will state that part of the reason why in my dual role I

1 redirected some communications was so that the institutions could benefit from the long
2 time collegial relationship that they had enjoyed for several years with their liaison whose
3 title had suddenly changed.

4 Q Okay. Thank you. One final thing. In your November 13, 2019 letter, and
5 this is on page 18 of that letter, if you have it in front of you, HLC discusses some
6 elements of the sale that had some concern and then said one of those elements, quote it
7 would merely quote predatory practices it goes on and then unquote.

8 Given that HLC gave the institutes in question the status of accredited prior to the
9 sale, does HLC typically engage with schools that have these predatory practices? Or
10 what does that provision mean that you included it in that letter like and considering that
11 these schools were accredited by HLC prior to?

12 A I am very sorry, but I need you to repeat the date of that letter.

13 Q It is the November 13, 2019 letter.

14 A And what page are you on?

15 Q Eighteen.

16 A Okay. And where are you?

17 Q It is towards -- so the letter says you needed to set forth a monitoring
18 protocol to quote "lay that subterfuge bare." unquote. Can you explain to us how they
19 were accredited before if they had this practice that you were worried about and what
20 that means?

21 A So this is a statement about what is more fully explained in the summary
22 report that was developed as a result of the fact-finding visit prior to the transaction
23 being consummated, and that should be in your materials.

24 The fact is while in most cases the ethos is trust, but verify, and institutions are
25 assumed to be acting in good faith at all times. There was a record of EDMC's dealings

1 validated by parties other than HLC, multiple attorneys general, a very public settlement.
2 Of course it is understood without characterizing what did or did not occur at the
3 institution that every settlement is going to make no statements of wrongdoing.

4 But to the extent that Dream Center, not Dream Center Education Holdings or
5 Dream Center foundation, but Dream Center the church with community organizations
6 serving homeless veterans, former drug addicts, victims of human trafficking, indigent
7 individuals seeking to enter the higher education space so that these individuals lives
8 could be transformed in a meaningful way, to the extent that that corporation had no
9 experience with higher education and would rely to an extent on individuals from a
10 predatory, a known predatory organization within higher ed, then protections would
11 need to be in place.

12 Trust but verify would have to be a -- would mean something else in this context.
13 If the accreditor was going to be a responsible accreditor worth its salt, its policies and
14 procedures are intended to protect students. And here it is we had gone to the Dream
15 Center, we knew who the prospective students were intended to be. We were concerned
16 that an organization with little experience in higher Ed was aligning itself with a known
17 entity in the higher Ed space that did not have a good reputation, and further that after
18 the transaction it was not going to be a clean break.

19 We heard lift and shift more times during that fact-finding visit than we can count.
20 Lift and shift was their shorthand for describing how personnel from EDMC would be
21 lifted and shifted, migrated into this structure bearing Dream Center's name and allowed
22 access to some of the most vulnerable populations I dare say we have ever seen.

23 Q And so, and to clarify -- thank you, that helps explain some of that language.
24 To clarify, did HLC have any findings, open findings, previous findings against EDMC, these
25 two institutions for these practices?

1 Ms. Kohart. At what point in time?

2 Ms. Schaumburg. Prior to the transaction.

3 Ms. Kohart. Prior to January 20, 2018?

4 BY MS. SCHAUMBURG:

5 Q Yes.

6 A I am not familiar with the detailed terms of the settlement. I do know that
7 these institutes were subject to some of the practices in the -- to the extent that
8 recruitment and marketing practices were being monitored by a settlement administrator
9 and that sort of thing. But I cannot speak to all the details of the settlement or whether
10 the findings of the various State attorneys general had to do with actual practices at these
11 particular institutions.

12 Q But these two institutions were accredited at the time of the transaction,
13 prior to the transaction?

14 A Yes, they were.

15 Q Without any status notice, change, anything, no qualifications to that,
16 correct? They were accredited institutions?

17 A They were accredited, but they had a history. Illinois Institute of Art had
18 been on notice for 2 years and actually was removed from notice at the same board
19 meeting minutes before the board took up the matter of the Dream Center-EDMC
20 transaction.

21 Q Meaning they were accredited at the time?

22 A They were accredited at the time.

23 Q Okay.

24 A But not without issues.

25 Ms. Schaumburg. Okay. I don't have anything else.

- 1 Ms. Kohart. Look at you, 6 minutes in.
- 2 Ms. Schaumburg. See, I can save you time.
- 3 Thank you very much for coming today. I appreciate it.
- 4 Ms. Sweeney. Thank you.
- 5 Ms. Schaumburg. I'm sure I speak for all of us in saying that.
- 6 Ms. Sweeney. Thank you.
- 7 Ms. Kohart. You don't have any followup for your colleague? Thank you,
- 8 everybody, for your hospitality.
- 9 Mr. Sinoff. Thank you for coming.
- 10 [Whereupon, at 1:54 p.m., the interview was concluded.]

**Anthea Sweeney Transcribed
Interview Exhibit 1**



November 13, 2019

VIA EMAIL AND OVERNIGHT CARRIER

Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Dr. Mahaffie:

Thank you for your letter of October 24, 2019 ("October 24 Letter"). As always, the Higher Learning Commission ("HLC" or the "Commission") appreciates the opportunity to provide the U.S. Department of Education (the "Department" (the term "the Department" is used to refer to both the Accreditation group and the Federal Student Aid (FSA) group)) with information regarding its policies and procedures, as well as its actions related to the Illinois Institute of Art ("ILIA") and the Art Institute of Colorado ("AIC") (or collectively, the "Institutions" or the "Institutes").

HLC has at all times been committed to promptly and completely addressing any requests made of it by the Department, including any requests relating to HLC's policies and practices, and will do so with respect to the Department's questions in its October 24 Letter. However, as a preliminary matter, HLC must correct the Department's misapprehension regarding HLC's lack of response to a letter sent to it on October 31, 2018 by Principal Deputy Under Secretary Diane Auer Jones (see October 31, 2018 Jones to Gellman-Danley at [HLC-OPE 15163-15167](#)). Jones' letter did not inform HLC regarding the kind of response sought by the Department (e.g., documents, written explanations, attendance at a meeting etc.).

On the evening of October 31, 2018, HLC staff spoke to Jones regarding the letter in two phone conversations. In the second of those phone conversations, Jones informed HLC that the only response needed was a brief statement from HLC acknowledging receipt of the October 31, 2018 letter and confirming for the Department that HLC intended to review its policies in light of the concerns contained in the letter.

In reliance on Jones' specific instructions, HLC sent its response on November 7, 2018 and, even before that letter was sent, began an internal policy review focused on the concerns raised by Jones in her October 31, 2018 letter (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)). Jones promptly acknowledged receipt of HLC's response on November 7, 2018 without further request for clarification (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)).

Since November 2018, Jones and other representatives of the Department have communicated on numerous occasions with HLC regarding the Institutions. Not once did they ask for a status report on the policy analysis or suggest that HLC's response to the October 31, 2018 letter was inadequate.

Indeed, when Jones wrote to Senator Durbin on May 9, 2019 she indicated that the Department prospectively intended to review HLC's policies and actions with the respect to the Institutes, *and yet did not mention the October 31, 2018 letter or any deficiency in HLC's response to that letter* (see May 9, 2019 Jones to Durbin at [HLC-OPE 15366-15368](#)).

In short, HLC appreciates the opportunity to now respond to any questions the Department may have regarding accrediting decisions relating to the Institutes and would have happily done so previously if it had been asked to do so.

This letter sets forth narrative responses to each of the 21 requests in the October 24 Letter with additional contextualizing information as needed. The following documents are also being provided for the Department's review (via separate link and password provided by email to Dr. Mahaffie and Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education), indicated as HLC-OPE 1-15429:

- (1) The HLC administrative records for ILIA and AIC from August 1, 2016 to the present. Where duplicative documents appear in the HLC administrative record for both Institutes, only a single copy of the document is provided.
- (2) Applicable HLC policies and procedures.
- (3) Other documents related to the requests. Where email threads span multiple days, the thread is referenced by the earliest date in the thread.

Where these documents may be helpful to further explain HLC's narrative responses to the requests, the documents are referenced in the responses and linked.

In order to respond to these requests, HLC reviewed applicable agency records. The following individuals also contemporaneously provided additional information:

- Barbara Gellman-Danley, President, HLC.
- Mary Kohart, Partner, Elliott Greenleaf.
- Lisa Noack, Assistant to the President and the Board, HLC.
- Robert Rucker, Manager for Compliance and Complex Evaluations, HLC.
- Anthea Sweeney, Vice President for Legal and Governmental Affairs, HLC. Prior to March 1, 2018, Sweeney served as Vice President for Accreditation Relations. In that role, she served as the HLC staff liaison to the Institutes. As staff liaison, Sweeney was the primary point of contact for HLC with the Institutes and would regularly communicate with personnel of the Institutes by email and phone. On March 1, 2018, Sweeney transitioned from her previous role to Vice President for Legal and Governmental Affairs. In order to assure continuity, Sweeney remained as the staff liaison to the Institutes until December 13, 2018, when HLC Chief of Staff Dr. Eric Martin was assigned as the Institutes' staff liaison (see December 13, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15199](#) and Gellman-Danley to Ramey at [HLC-OPE 15200](#)).

On November 1, 2019, Bounds informed Gellman-Danley and Sweeney that the Department intended to publish the October 24 Letter in the Federal Register as a "Notice of Investigation and Records Request." When asked whether this type of publication was standard, Bounds indicated that this type of publication was uncommon for an inquiry of this nature. As of the date of this response, this publication has not occurred. If the Department does choose to publish the October 24 Letter, HLC would expect the Department will likewise make the narrative portion of HLC's response public in its entirety out of fairness to HLC. The Department did issue a press release on November 8, 2019 (<https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures>) that incorrectly characterizes HLC's actions with respect to the Institutes. HLC's responses herein also clarify the incorrect statements made by the Department in that press release.

Narrative Response

As initial matters, and as further explained below in detail, it is essential that the Department understand the following:

- The HLC Board (hereinafter the "Board") did not "place" the Institutes on Change of Control candidacy status. Nor did the Board "move" the Institutes from accredited status to candidate status. Rather, as a condition of HLC's approval of the proposed transaction in which Dream Center Education Holdings (DCEH) was purchasing the Institutes from Education Management Corporation (EDMC), the Institutes—after full consideration and extensive negotiation with HLC on various issues other than candidacy—voluntarily accepted Change of Control candidacy status and proceeded with the transaction. When the transaction closed, on a date in the middle of an academic term as chosen by the parties, rather than the date originally proposed, the Institutes automatically assumed candidacy status. Only after this date did the parties begin to complain about the fact of their status as candidates. See HLC Responses #1, #4, #10-12.
- The Board did not take any adverse action with respect to the Institutes in November 2017 (or November 2018). As such, the actions of the Board were not subject to appeal. Nonetheless, in response to a letter from DCEH legal counsel in May 2018, and well after the time period in which even an adverse action could be appealed, HLC afforded the Institutes an opportunity to proceed with an appeal. The Institutes did not follow through with their appeal efforts until several months later. In lieu of an appeal, DCEH legal counsel attempted to directly negotiate the Institutes' status with HLC staff in a manner that was not supported by HLC policy or procedures. See HLC Responses #1, #2, #3, #4, #10-12.
- HLC has consistently been clear to all constituencies—including the Institutes, students, and the Department that candidacy status (including Change of Control candidacy status) is a pre-accreditation status as understood within HLC policies. HLC communicated this in policy, letters to the Institutes and their counsel, Public Disclosure Notices, and communications with the Department. Any "misunderstandings" to the contrary by the Institutes or the Department simply are not supported by HLC's clear and consistent communication on this point. That said, the Department, not HLC, is responsible for determining an institution's eligibility for Title IV funding. HLC does not make determinations as to eligibility for Title IV funding and does not

make any representations to institutions or the public regarding an institution's eligibility for Title IV funding. See HLC Responses #1, #4, #5, #7, #8, #9, #10-12, #15, #17.

- As early as June 2018, Jones began actively discussing the possibility of retroactive accreditation for the Institutes with HLC, at times seemingly in contradiction to the statements being made by other representatives of the Department. In October 2018, in response to concerns from HLC that retroactive accreditation, even if permissible under new federal guidance, was not consistent with HLC policy, Jones indicated, as she had previously indicated in July 2018, that she would provide HLC with a letter indicating that applying retroactive accreditation to the Institutes was acceptable to the Department in this situation. While still noting that such an approach was not aligned with current HLC policy, HLC indicated that it would certainly review anything that Jones provided. The resulting communication from Jones was the October 31, 2018 letter. In this letter, the Department raised, for the first time, serious concerns about HLC's actions with respect to long-standing HLC policy and HLC's actions with respect to the Institutes. In evening and then late night phone calls on the night before the November 1, 2018 Board meeting the next day in which the Board was slated to take action with respect to the Institutes, Jones offered to retract the letter and then, indicating that she could not retract the letter, specified that all HLC needed to do in response to the letter was provide a very short response stating that HLC would review its policies. HLC provided this response on November 7, 2018 and Jones acknowledged the response without further request for clarification. HLC did not receive any further communication from the Department regarding the October 31 letter or its November 7, 2018 response until receiving the October 24 Letter. See HLC Responses #10-12, #19.

In addition, HLC's responses to the Department's individual inquiries are as follows:

1. On November 2-3, 2017, the Board of Trustees of HLC voted to allow the Institutions to be placed on "Change of Control Candidate for Accreditation" status ("CCC-status"), with the written assent (within 14 days) of the Institutions. HLC sent a formal letter on November 16, 2017, to Dream Center Education Holdings, LLC ("DCEH") notifying it about the Board's action and laying out the terms for complying with CCC-status, which would become effective on January 20, 2018 upon agreement. *See Letter from HLC to the Art Institute of Colorado, Illinois Institute of Art, and Dream Center Education Holdings, LLC, Board vote to approve the application for Change of Control, Structure, or Organization.* (Nov. 16, 2017) (Exhibit 3). Is Exhibit 3 the official accreditation notice from HLC to the Institutions? If not, then identify the official notice. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) the Institutions and (b) CCC-status. The time frame for this request is August 1, 2016 to the present.

HLC Response #1:

HLC's November 16, 2017 action letter was the first communication to the Institutes and DCEH indicating the Board's conditional approval of the proposed transaction (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)). In the action letter, the Board's approval

was expressly contingent upon the Institutes' explicit acceptance of several conditions listed, including the acceptance of Change of Control candidacy status.

The November 16, 2017 action letter is incorporated by reference in a second action letter issued on January 12, 2018, after the Board voted by mail ballot (upon the Institutes' express request) to extend its original conditional approval related to the Change of Control application to accommodate a later closing date (see January 12, 2018 Change of Control Action Letter at [HLC-OPE7769-7771](#)).

Neither action letter sets forth a specific effective date certain for the Institutes' change in status from accredited to candidate. This is for two important reasons. First, confirmation of the Institutes' acceptance of all conditions in writing was required; otherwise the Board's approval would be null and void. Second, the conditions the Board articulated, including Change of Control candidacy, would be triggered, if at all, only upon the parties' consummation of the proposed transaction. If the Institutes and the buyers did not accept the conditions (and thus likely chose not to pursue the proposed transaction), the Board made clear that "[i]n that event, the Institutes will remain accredited institutions" (see November 16, 2017 Change of Control Action Letter at [HLC-OPE7726-7732](#), page 2 and page 4).

Each of these two factors then, whether to accept the conditions at all and when precisely to consummate the proposed transaction, was entirely within the control of, and remained to be determined by, the parties to the transaction—not HLC.

To be clear, the November 16, 2017 action letter set forth that while the Institutes had not demonstrated that the five Change of Control "Approval Factors" were met without issue for purposes of continuing their accreditation post-transaction as required by HLC policy (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)), they had demonstrated sufficient compliance to be considered for "pre-accreditation status identified as 'Change of Control Candidate for Accreditation'...." Correspondingly, the letter set forth a significant monitoring protocol that would need to be satisfied during the period of candidacy, including the submission of quarterly interim reports and Eligibility Filings by each Institute, an onsite visit at each Institute within six months of the transaction date consistent with HLC policy and federal regulations, and a second onsite visit no later than June 2019. Each condition outlined by the Board illustrated the Board's concerns with discrete aspects of the Institutes' compliance with specific HLC requirements after the transaction. If at the time of the second onsite visit, the Institutes were able to demonstrate to the satisfaction of the Board that following the transaction they were in compliance with the host of HLC requirements that had been called into question in the course of evaluating the Change of Control application, then the Board would "reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action" (see November 16, 2017 Change of Control Action Letter at [HLC-OPE7726-7732](#), page 4).

The second action letter dated January 12, 2018 (see January 12, 2018 Change of Control Action Letter at [HLC-OPE 7769-7771](#)), was issued at the Institutes' request and only after the parties indicated their acceptance of the conditions in writing on January 4, 2018 (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)). See also HLC Response #4. This second action letter also did not specify an effective date beyond reiterating that Change of Control candidacy would be "effective immediately upon the closing of the transaction." The letter went on to express HLC's

expectations that the Institutes would properly notify their students of the acceptance of the Board's condition of Change of Control candidacy, as well as the implications and impact of that status once the transaction closed, and that the Institutes would provide students with advisement and accommodations, including financial accommodations or transfer as needed.

When HLC's November 16, 2017 action letter was transmitted to the Institutes, a simultaneous courtesy copy was transmitted to Michael Frola, Director, Multi-Regional and Foreign Schools Participation Division, U.S. Department of Education, and Bounds (see November 16, 2017 Noack to Frola, Bounds at [HLC-OPE 15284](#)).

Courtesy copies of the January 12, 2018 action letter were also transmitted to Frola and Bounds on January 23, 2018 (see January 23, 2018 Noack to Frola, Bounds at [HLC-OPE 15291](#)). These copies of the January 12, 2018 action letter were belatedly transmitted to the Department precisely because they would only become necessary if the parties consummated the proposed transaction. The transaction closed on January 20, 2018 (see January 20, 2018 Pond to Sweeney at [HLC-OPE 7776-7777](#)) and the Department was provided a courtesy communication by HLC three days later.

At all times the Institutes, whether through their respective governing boards or otherwise, remained exclusively responsible to make reasonable inquiry of the Department of the implications of accepting candidacy status as a condition of Board approval, and further, to inform the Department that they had, in fact, accepted such conditions and closed the transaction.

2. Did HLC regard the accreditation action referenced in Exhibit 3 as an "adverse action" under either the Department's definition or HLC's definition of that term? If so, what duties did HLC have upon taking such an action? Describe the agency's definitions of "candidacy status" and "adverse action" in effect at that time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's definition of "candidacy status" and "adverse action", and/or (b) application of those definitions to the Institutes. The time frame for this request is August 1, 2016 to the present

HLC Response #2:

No, the Board actions described in the November 16, 2017 action letter did not meet the definition of an "adverse action" as defined in either federal regulations or HLC policy.

First, under federal regulations, an "[a]dverse accrediting action or adverse action means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program" (see 34 CFR §602.3).

Additionally, HLC policy in effect at that time defined "adverse action" as "those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status" (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE15252-15255](#)).

Had the Board in November 2017 approved the transaction and moved the Institutes from accredited to candidate status against their will without seeking consent in advance, this would be an adverse action. But that was not what occurred in this situation. Rather, the Institutes consented to the condition and subsequently consummated a transaction they knew would trigger the change in their accreditation status. See also HLC Response #4.

In addition to the plain language of the definition of "adverse action" in regulations and HLC policy, the Board's November 2017 actions are not appropriately characterized as adverse actions because the defining characteristic of an adverse action is that it is forced. Adverse actions do not depend on voluntary cooperation, acceptance, or acquiescence. HLC did not immediately effectuate Change of Control candidacy status, nor did it set a date certain when the change in status would inevitably take effect. That is because the consummation of the transaction, which was the key step necessary to trigger Change of Control candidacy status and the accompanying loss of accreditation, was exclusively within the control of the parties to the transaction themselves, and not HLC. In consummating the transaction, the Institutes voluntarily accepted candidacy status, and relinquished their accreditation, on the transaction date in order to pursue new ownership under DCEH. While the end result was the loss of accreditation, this voluntary action on the part of the Institutes is inconsistent with the definition of an adverse action under HLC policy or federal regulations.

HLC's November 2017 action, including the offering of the condition of Change of Control candidacy, was designed to permit an unproven, inexperienced entity the opportunity, if it was willing, to prove its ability to properly manage institutions of higher education, without completely terminating the Institutes' affiliation with HLC. If the condition of Change of Control candidacy was unacceptable to the parties, then the parties could have signaled their rejection of the conditions and the Board's approval of the transaction would have been null and void. Presumably, the parties would have then abandoned their plans to consummate the proposed transaction, and the Institutes would have continued to be accredited while remaining subsidiaries of their original corporate parent, EDMC. This choice was made abundantly clear in the November 16, 2017 action letter: the parties were free to reject the conditions.

Instead, after a reasonable period for consideration, research and inquiry that lasted almost two months (November 16, 2017 to January 4, 2018), during which the parties made several inquiries to HLC, including through their legal counsel, as to the significance of the conditions in the Board's November 16, 2017 action letter, the parties accepted the conditions for approval set forth by the Board (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)). See also HLC Response #4. The parties then automatically triggered the effective date of those conditions when they consummated the transaction on January 20, 2018 (see January 20, 2018 Pond to Sweeney at [HLC-OPE 7776-7777](#)), while aware of the implications, even though they could have abandoned the proposed transaction at any time.

An explanation of "candidacy," as of November 2017, can be found in HLC Policy INST B.20.020, Candidacy (see HLC Policy INST.B.20.020, Candidacy—current version/last revised November 2012 at [HLC-OPE 15229-15235](#)), with further explanation as to the concept of Change of Control candidacy found in HLC Policy INST.E.50.010, Accredited to Candidate Status (see HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#)). See also HLC Response #17.

3. Did HLC consider the accreditation action referenced in Exhibit 3 to trigger an opportunity to appeal? If so, please describe HLC's notice to the Institutions. If not, please explain why HLC believed that to be the case. Describe HLC's policy describing the accreditation actions that could be appealed, and the agency's appeal policy in effect at the time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's policy regarding appeals of accreditation actions, (b) its definitions of relevant terms, and/or (b) application of those definitions to the Institutions. The time frame for this request is August 1, 2016 to the present.

HLC Response #3:

No, the actions described in the November 16, 2017 action letter did not trigger an opportunity to appeal because they were not adverse actions. HLC's policy on Appeals contemplates that only those actions specifically defined as "adverse actions" may be appealed (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15264](#)). Because no adverse action had taken place, no opportunity to appeal was triggered. Correspondingly, no action of the Board raised a due process concern pursuant to 34 CFR §602.25. See also HLC Responses #2, #10-12.

4. Did the Institutions agree to the terms of Exhibit 3 in writing? If so, please provide records demonstrating such acceptance. If not, did the institutions reject the conditions or otherwise indicate their intention to refuse to comply? Please provide records indicating such intent.

HLC Response #4:

Yes, after extensive discussion between HLC and the Institutes, DCEH voluntarily and affirmatively accepted the conditions in the November 16, 2017 action letter, with minor modifications, in writing on January 4, 2018 (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)).

This acceptance was well past the 14-day time frame for acceptance articulated in the November 16, 2017 action letter. The delay was, at least in part, the result of extensive conversations between HLC and the parties regarding the proposed conditions.

First, in a November 29, 2017 institutional response to the November 16, 2017 action letter, the Institutes expressed that they understood that "both AIC and ILIA will undergo a period of candidacy beginning with the close of the transaction," in addition to confirming their understanding of several other conditions. The communications made several requests. For example:

- The parties requested an extension of the date by which the transaction would close (after which they consummated what was never expected to be a closing in the middle of an academic term);
- The parties requested an extension from February 1, 2018 to March 1, 2018 for delivery of their respective Eligibility Filings;
- The parties requested that certain interim reports be jointly filed; and

- The parties requested that the substantive requirements for reports related to a previous Consent Judgment be modified. HLC was aware that the appointment of the Settlement Administrator originally appointed as part of the referenced Consent Judgment would expire in 2018. Dissatisfied with the fact that several EDMC employees would migrate to DCEH or its related entities in what had been described repeatedly as a "lift and shift" by representatives of the Institutes representatives during the Fact-Finding Visit (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)), HLC sought assurances that an independent third-part entity would continue monitoring the Institutes at least for some period to ensure ongoing compliance with the Consent Judgment, notwithstanding that the Institutes would be under new ownership;

(see November 29, 2017 Richardson, et al. to Gellman-Danley at [HLC-OPE 7740-7741](#); November 29, 2017 Pond to Sweeney at [HLC-OPE 7738-7739](#)).

Notably, however, *the institutional response expressed no desires or objections related to candidacy status.*

On December 1, 2017, HLC's former Executive Vice President for Legal and Governmental Affairs, Karen Peterson Solinski, attended a Federal Student Aid conference. There, she met in person with external legal counsel for EDMC, Devitt Kramer; DCEH General Counsel, Chris Richardson (the brother of Brent Richardson, then CEO of DCEH); and Ron Holt, external counsel to DCEH. In a series of emails following up on this conversation, Solinski and Holt continued to discuss the possibility of making several modifications to the November 2017 action (see December 2017 Solinski-Holt Email Exchanges at [HLC-OPE 7742-7761](#)). Solinski indicated that some of the requests would require separate Board approval, while some could be managed through staff action (see HLC Policy COMM.B.10.020, Staff Authority for Minor Changes Related to an Institution's Relationship with the Commission—current version/last revised November 2012 at [HLC-OPE 15219-15220](#)). *Again, none of Holt's requests during December 2017 conversations addressed candidacy status or otherwise suggested that there was any objection to the candidacy condition.*

On January 3, 2018, HLC informed the Institutes that a clear acceptance of the conditions in the November 16, 2017 action letter had still not been received from the Institutes—and was still required (see January 3, 2018 Sweeney, Pond Emails at [HLC-OPE 15285-15287](#)). Such a clear acceptance was all the more essential given the ongoing conversations regarding the particulars of the conditions in the November 16, 2017 action letter (see January 3, 2018 Richardson to Solinski at [HLC-OPE 7762](#)).

Finally, on January 4, 2018, the Institutes, in a letter signed by DCEH CEO Brent Richardson, formally accepted the conditions with the one modification that would allow quarterly financial statements to be delivered within 45 days after the end of the quarter (see January 4, 2018 Richardson et al. to Gellman-Danley at [HLC-OPE 7763-7764](#)).

With the receipt on January 4, 2018 of an explicit acceptance that referenced only the non-substantive change regarding delivery of quarterly financials, HLC interpreted this as the parties having concluded any substantive negotiations. The second January 12, 2018 action letter therefore incorporated by reference the Board's original November 16, 2017 action letter, while indicating the single non-substantive modification (see January 12, 2018 Change of Control Action Letter at [HLC-OPE 7769-7771](#)). *Remarkably, modifications to the Change of Control candidacy condition had not been discussed throughout the negotiations.*

Even after the issuance of the second letter, HLC would continue to grant courtesies such as allowing the Institutes to submit their respective Eligibility Filings on March 1, 2018, rather than February 1, 2018 (see January 8, 2018 Sweeney, Pond Emails at [HLC-OPE 15288-15290](#)).

This type of interactive process culminating in affirmative acceptance by the Institutes is exactly the type of due process contemplated by 34 CFR §602.25.

While the Institutes knowingly and voluntarily accepted the conditions as set forth in the November 16, 2017 action letter, subsequent to closing, the Institutes and the new parent corporation, DCEH, began engaging in actions that indicated a belated refusal to comply with conditions the parties had accepted. See also HLC Response #10-12.

5. Did HLC conduct a financial analysis of the Institutions prior to issuing Exhibit 3? Did this analysis account for the likelihood or possibility the Institutions would lose Title IV funding eligibility? Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control (a) regarding its financial analysis processes and procedures, and/or (b) application of those processes and procedures to the Institutions. The time frame for this request is August 1, 2016 to the present.

HLC Response #5:

Yes, in accordance with its policies and procedures, HLC reviewed financial aspects of the Institutes and the transaction, prior to taking action in November 2017. Based on information provided to the Institutes by the Department, HLC was aware of the Institutes' status with respect to Title IV. Critically, however, no part of the Board's decision was predicated upon an analysis of prospective or continued Title IV funding eligibility.

HLC policy in effect at the time related to Change of Control contemplated the analysis of five "Approval Factors." Those factors included Approval Factor 3: "[s]ubstantial likelihood that [after the transaction] the institution...will continue to meet the...Eligibility Requirements and Criteria for Accreditation" and Approval Factor 4: "sufficiency of financial support for the transaction" (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)).

Related to Approval Factor 3, Criterion Five, Core Component 5.A states: "The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future" (see HLC Policy CRRT.B.10.010, Criteria for Accreditation—current version/last revised June 2014 at [HLC-OPE 15221-15228](#)). The Board's analysis entailed determining the likelihood that after the transaction the Institutes would be able to remain in compliance with Criterion Five, Core Component 5.A.

Related to Approval Factor 4, the Board's analysis entailed understanding the financial underpinnings of the transaction itself, while not second-guessing the parties' decision to engage in the transaction.

In conducting its analysis, the Board applied *de novo* review, consistent with HLC policy and due process, in evaluating the evidence as uncovered by the Fact-Finding Visit team and as explicated in

the Staff Summary Report (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)).

The Board did additionally review the pre-acquisition review letter supplied by the Department to the Institutes, as this was an official prerequisite to Board consideration under HLC policy at that time (see October 9, 2017 DOE Pre-acquisition Information at [HLC-OPE 7081-7106](#); HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)). Generally, the Board's focus in reviewing pre-acquisition letters was to gain insight into the Department's orientation toward a transaction and to learn, preliminarily, what if any conditions the Department might impose, including, for example, limitations on enrollment or the posting of a letter of credit.

While the Board had general familiarity with the fact that non-profit institutions in candidacy are afforded the opportunity to participate in Title IV, the Board was not intimately familiar with all the procedural steps required to convert from for-profit to non-profit status. It simply knew more steps needed to be taken according to the pre-acquisition letter and proceeded with its decision-making based on the Approval Factors articulated in HLC policy.

Again, however, the Board's November 2017 actions in no way hinged on a determination regarding the Institutes' continued Title IV funding eligibility. Participation in, or eligibility for, Title IV funding is not a requirement of any aspect of HLC affiliation or any HLC evaluation processes, including as related to candidacy, accreditation, or the approval of a Change of Control application.

Rather, the Board's November 16, 2017 action letter expressed significant doubt about the Institutes' compliance with Core Component 5.A after the transaction for several reasons, including that their underlying financial assumptions appeared to heavily rely on the desired change in tax status when there were no guarantees from the Department that this change would occur (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 6).

6. Please describe the matters raised, discussions during, activities undertaken and/or decisions made at the November 2-3, 2017 HLC board meeting. Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing matters raised, discussions during, activities undertaken and/or decisions made at that board meeting. The time frame for this request is October 1, 2017 to the present.

HLC Response #6:

The November 16, 2017 change of control action letter describes the matters raised during the November 2-3, 2017 Board meeting pertaining to the Institutes' proposed Change of Control (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)).

A second action letter issued on the same date, pertaining solely to ILIA, describes the outcome of a separate review of ILIA's progress after a period spent on the sanction of Notice (see November 16, 2017 HLC Letter to ILIA [HLC-OPE 7733-7736](#)). The Board removed ILIA from the Notice sanction during the November 2017 meeting prior to its conditional approval of the Change of Control application pertaining to both Institutes.

Consistent with HLC policy, the Commission publishes within 30 days of each Board meeting a notice of the actions taken (see HLC Policy COMM.A.10.010, Commission Public Notices and Statements—current version/last revised August 2016 at [HLC-OPE 15216-15218](#)). This list of all institutional actions taken by the Board at the November 2017 Board meeting remains publicly available at: <https://www.hlcommission.org/Student-Resources/november-2017-actions.html>.

7. Please provide the Department with the HLC's change of control policy in effect between October 1, 2016 and October 31, 2018, include at least HLC policies INST.F.20.070, INST.B.20.040, and INST.E.50.010. Please also provide the summary report made by Commission staff prior to the Board's decision on November 2-3, 2017. Did the Institutions respond to the staff summary report? If so, describe the response. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its change of control policy. The time frame for this request is August 1, 2016 to the present.

HLC Response #7:

HLC's policies related to change of control in effect between October 1, 2016 and October 31, 2018 can be found as follows:

- HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)
- HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#)
- HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#)
- HLC Policy INST.F.20.060, Monitoring Related to Change of Control, Structure or Organization—version effective at all relevant times/last revised November 2019 at [HLC-OPE 15265-15267](#)

The Staff Summary Report and Fact-Finding Visit Report can be found at [HLC-OPE 7030-7080](#). The Institutes' response to the Staff Summary Report and Fact-Finding Visit Report can be found at [HLC-OPE 7109-7551](#).

8. On January 20, 2018, HLC published its decision to move the Institutions to CCC-status. HLC, *Public Disclosure: Illinois Institute of Art and Art Institute of Colorado from "Accredited" to "Candidate"* (Jan. 20, 2018) (Exhibit 4). The public disclosure seems inconsistent with the letter sent to DCEH on November 16, 2017, outlining the terms of CCC-status. The letter does not mention that CCC-status is a final adverse action, while the public notice reads as if it is a final action. Describe why HLC believed the November 16, 2017 letter and the January 20, 2018 public notice were consistent and correct. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) Exhibit 4 and/or (b) the CCC-status of the Institutions. The time frame for this request is December 1, 2017 to the present.

HLC Response #8:

The November 16, 2017 action letter and subsequent public disclosures issued by HLC regarding the actions taken by the Board were consistent and correct. On January 29, 2018, following the consummation of the transaction on January 20, 2018, HLC published a disclosure on HLC's website, primarily to apprise students and the public of the change in ownership as well as the change in the Institutes' status from "Accredited" to "Candidate for Accreditation" (see January 20, 2018 Public Disclosure Notice (January 20 Version) at [HLC-OPE 7780-7781](#)). As a technical matter, the document actually constituted a "Public Statement" under HLC policy and thus was not previewed to the Institutes (see HLC Policy COMM.A.10.010, Commission Public Notices and Statements—current version/last revised August 2016 at [HLC-OPE 15216-15218](#)). The term "Public Disclosure Notice" is used herein.

HLC routinely issues Public Disclosure Notices in various circumstances. HLC's Public Disclosure Notices are intended for the general public and are written, as far as possible, in layman's terms. Public Disclosure Notices are meant to provide an institution's stakeholders, primarily current and prospective students, with accurate information concerning matters that may be of significance to them in deciding whether to enroll or remain enrolled. As a result, Public Disclosure Notices typically do not provide all the details provided to an institution in an action letter.

Public Disclosure Notices are typically silent on matters related to Title IV participation or eligibility as those matters are beyond HLC's purview. See also HLC Responses #5, #9, #10-12.

The actions outlined in the November 16, 2017 action letter were not adverse actions. Rather, the actions were "final actions" (see HLC Policy INST.D.10.010, Board of Trustees—version effective at all relevant times/last revised February 2019 at [HLC-OPE 15243-15244](#)). The term "final adverse action" in the October 24 Letter conflates these two terms. In actuality, in HLC policy the terms "adverse action" and "final action" have exactly opposite meanings: Adverse actions are subject to appeal; final actions are not subject to appeal. See also HLC Response #2.

Although no action had been taken that would require a Public Disclosure Notice per HLC policy, HLC determined that, in the interest of transparency to students, it should affirmatively inform students of the change in the accreditation status of the Institutes they attended, and explain in plain English the significance of that change. Students had a right to know that they were no longer attending an accredited institution and that, depending on other institutions' transfer and admissions policies, their credits *may or may not* be accepted for transfer by an institution (as determined by that institution, not an accreditor) or be recognized by prospective employers.

See also HLC Response #10-12.

9. Did HLC conduct a financial analysis of the Institutions contemplating the potential loss of Title IV eligibility prior to issuing Exhibit 4? If so, describe that analysis. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing the Institutes' Title IV eligibility. The time frame for this request is October 1, 2016 to the present.

HLC Response #9:

No, HLC did not conduct a financial analysis of the Institutes related to the potential loss of Title IV eligibility between November 2017 and January 2018.

As further detailed above in HLC Response #5, in accordance with its policies and procedures, HLC reviewed financial aspects of the Institutes and the transaction prior to taking action in November 2017. Based on information provided to the Institutes by the Department, HLC was aware of the Institutes' status with respect to Title IV. Critically, however, no part of the Board's decision was predicated upon an analysis of prospective or continued Title IV funding eligibility.

The January 20, 2018 Public Disclosure Notice was silent on the matter of Title IV because this was not within HLC's purview, although the Board did review the Department's pre-acquisition review letter.

It was expected and understood that the question of Title IV eligibility would be communicated *by the Institutes themselves* following the final determination of their tax status. All affiliated institutions (whether fully accredited member institutions or candidates for accreditation) are under an ongoing obligation to accurately disclose their status to their constituents at all times in accordance with various HLC requirements. This includes, for example, being transparent as to whether or not such institutions remain eligible for, or currently participate in, Title IV programs.

On January 26, 2018, Josh Pond, then President of ILIA, and Sweeney had a telephone call in which Sweeney reinforced the need for the Institutes to be transparent in their disclosures to their students. During the call, at Pond's request, Sweeney committed to reviewing the Institutes' proposed language, which it had sent to her, but made clear that any language she provided would be assuming a final determination had been reached that the Institutes were now non-profit entities. The language provided by Pond contained several phrases that were inaccurate in terms of fairly representing the Institutes' status. (see January 25, 2018 Sweeney, Pond Emails at [HLC-OPE 15292-15296](#)). It later became clear that the Institutes never implemented the guidance provided. See HLC Response #10-12.

Between November 16, 2017 and January 20, 2018, HLC did conduct a *non*-financial indicator (NFI) analysis with respect to ILIA. The NFI process serves as an early warning system related to an institution's current compliance with the Criteria for Accreditation, but the Institute's response to that analysis was entirely separate from and came after the Board's decision (see November 20, 2017 ILIA Non-Financial Indicators Letter at [HLC-OPE 7737](#); January 16, 2018 ILIA Non-Financial Indicators Report at [HLC-OPE 7772-7775](#)).

10. On February 2, 2018, DCEH, through its legal counsel, sent to HLC a response to the January 20, 2018 public disclosure. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 2, 2018) ([Exhibit 5](#)). Did HLC provide to the Institutions an opportunity to appeal the decision as requested? If not, explain why this was the case. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) [Exhibit 5](#) and/or (b) any appeal by the Institutions. The time frame for this request is February 2, 2018 to the present.

11. On February 7, 2018, HLC sent a response that seemingly reaffirms statements made in the January 20, 2018 public disclosure. *See* Letter from HLC to Rouse Frets Gentile Rhodes, LLC (Feb. 7, 2018) ([Exhibit 6](#)). Between November 16, 2017, and January 20, 2018, did HLC modify the terms and conditions of the accreditation action taken on November 16, 2017? If so, what prompted the modification? Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the action taken or described in the November 16, 2017 letter, and/or (b) Exhibit 6. The time frame for this request is February 7, 2018 to the present.
12. On February 23, 2018, DCEH, through its legal counsel, sent HLC a response to its February 7, 2018 letter. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 23, 2018) ([Exhibit 7](#)). It appears that, based upon our review of the aforementioned correspondence, there was significant confusion among HLC and DCEH officials regarding the accreditation status of the Institutes. Please provide to the Department all correspondence between DCEH and HLC between November 2, 2017, and December 31, 2018, including HLC's response to the February 23, 2018 letter and any further communication HLC had with DCEH regarding this letter. If HLC did not respond to the February 23, 2018 letter from DCEH please provide a written narrative explaining why. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing Exhibit 7.

HLC Response #10-12:

Note: In order to most effectively respond to the inquiries posed in a contextualized manner, HLC has combined its responses to inquiries #10-12. As initial matters, please note that (a) although not required to do so by HLC policy, HLC did provide the Institutes an opportunity to appeal, of which they then did not avail themselves; and (b) as further described in HLC Response #4, very minor modifications to timing and reporting requirements detailed in the November 16, 2017 action letter were made prior to January 20, 2018, all of which were made at the request of the Institutes. As further described below, HLC is not aware of any reasonable basis for confusion on the part of the Institutes or DCEH with respect to the accreditation status of the Institutes following their consummation of the transaction on January 20, 2018.

February 2, 2018 Letter and Related Events

On February 2, 2018, external counsel for DCEH and the Institutes wrote to HLC's President with what was the first indication of a negative response to the previously agreed-upon conditions (see February 2, 2018 Rouse Frets to HLC at [HLC-OPE 7782-7783](#)). See also HLC Response #4.

As far as HLC could tell, the objections came because the language in the Public Disclosure Notice, which set forth that Eligibility Filings were being required of the Institutes, among other next steps, could, according to the Institutes and DCEH, be interpreted by the public to suggest that the Institutes were "essentially in pre-candidacy, not candidacy" because the Eligibility Filings are "documents normally required to achieve candidacy" (see January 20, 2018 Public Disclosure Notice (January 20 version) at [HLC-OPE 7780-7781](#); February 2, 2018 Rouse Frets to HLC at [HLC-OPE 7782-7783](#)).

The Public Disclosure Notice included significant details about HLC's monitoring of the Institutes, including the requirement that the Institutes would need to submit Eligibility Filings. HLC had required these documents, not because the Institutes were being treated as institutions yet to seek candidacy status, but rather, as a relatively simple way of satisfying HLC that concerns that had been raised related to potential compliance with the Eligibility Requirements after the transaction had been resolved. The submission of Eligibility Filings would allow peer reviewers to conduct what was expected to be a routine review culminating in a determination that each Eligibility Requirement was "Met" or "Not Met."

The source of the Institutes' confusion was not clear to HLC. First, the header to the Public Disclosure Notice included the words "From Accredited to Candidate." Second, the Public Disclosure Notice stated: "During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards of candidacy....Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC...." (see January 20, 2018 Public Disclosure Notice (January 20 version) at [HLC-OPE 7780-7781](#)).

Moreover, the concerns articulated by the Institutes *had never before been raised, despite ample opportunity through active conversations prior to their January 4 acceptance*. If the Institutes believed, as stated in the February 2, 2018 letter, that "they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e. they would be immediately placed in candidacy (already approved)," this is exactly what Change of Control candidacy achieved, and what the Institutes had agreed to in their January 4, 2018 letter. See also HLC Response #4.

HLC responded by letter on February 7, 2018 (see February 7, 2018 Gellman-Danley to Rouse Frets at [HLC-OPE 7784-7785](#)). In this letter, HLC clarified that none of the terms of the most recent agreement between the Institutes and HLC had been modified by the Public Disclosure Notice. Eligibility Filings had been originally required in the November 16, 2017 action letter (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 2). Indeed, as stated above, the Institutes had asked for an extension of the deadline to file the Eligibility Requirements in their November 29, 2017 letter, a request that was granted by the Commission (see November 29, 2017 Richardson, et al. to Gellman-Danley at [HLC-OPE 7740-7741](#); January 8, 2018 Sweeney, Pond Emails at [HLC-OPE 15288-15290](#)).

HLC also clarified that it had no status known as "pre-candidacy."

Nevertheless, without changing the underlying substance, HLC promptly published a revised disclosure that same day to further clarify the issues that were concerning to the Institutes and DCEH (see January 20, 2018 Public Disclosure Notice (February 2 Version) at [HLC-OPE 7778-7779](#)). (The updated Public Disclosure Notice does not reflect an updated date.) This version of the Public Disclosure Notice omitted any reference to the Eligibility Filings (though the Institutes would still be responsible for preparing and submitting those documents until the requirements were suspended).

With the new Public Disclosure Notice, HLC was confident that the concerns expressed by the Institutes in the February 2, 2018 letter were adequately addressed.

Though not listed as a copied party on the February 2, 2018 letter, Frola from FSA was copied on the email transmission (see February 2, 2018 Frola, Solinski Emails at [HLC-OPE 15297](#)). On February 5,

2018, Frola then emailed Solinski requesting a copy of the published statement referenced in the February 2, 2018 letter (see February 2, 2018 Frola, Solinski Emails at [HLC-OPE 15297](#)). HLC records do not indicate whether Solinski responded.

February 23, 2018 Letter and Related Events

On February 23, 2018, external legal counsel for the Institutes and DCEH again wrote to HLC (see February 23, 2018 Rouse Frets to Gellman-Danley at [HLC-OPE 7786-7787](#)).

The letter set forth several assumptions that the Institutes wished to "confir[m]." One assumption was that the Institutes "remain eligible for Title IV." The letter indicated that it was the Institutes' position that they had "relied in good faith" on HLC's use of the term "preaccreditation" in its November 16, 2017 action letter to come to a conclusion that that the Institutes remained eligible for Title IV as non-profit institutions.

Curiously, on the issue of Title IV eligibility, the February 23, 2018 letter referred to 34 CFR §600.2, which contains the definition of "preaccredited," and 34 CFR §600.4(a)(5)(i), which defines "Institution of Higher Education" as a "public or private nonprofit educational institution that...is... [a]ccredited or preaccredited." However, the letter does not acknowledge that the definition of "Nonprofit institution," appearing just prior to "[p]reaccredited" in 34 CFR §600.2, explicitly states that the U.S. Internal Revenue Service ("IRS") makes determinations related to any organization's tax status.

To be clear, HLC does not play a role in determining an institution's eligibility for Title IV funding. The IRS makes determinations related to any organization's tax status and, in turn, the Department's FSA office makes any determination related to Title IV eligibility. See also HLC Responses #5 and #9.

This division of responsibilities would have been clearly known to the Institutes not only based on the plain language of the federal regulations but also based on previous dealings regarding Title IV. First, on September 12, 2017, the Department issued a letter to Brent Richardson, CEO of DCEH, setting forth in detail the Department's Pre-acquisition Review of the Proposed Change in Ownership and Conversion to Nonprofit Status. The pre-acquisition letter made clear that, although the Department "ha[d] not identified any known or present impediments to the Institutes' requested conversion to nonprofit status, following the CIO, and as described herein, [the Dream Center Foundation would] have to submit additional documentation and information to confirm the other elements of nonprofit status" (see October 9, 2017 DOE Pre-acquisition Information at [HLC-OPE 7081-7106](#)). The conditional nature of the pre-acquisition letter, including, of course, the fact that the letter and any potential determinations regarding Title IV were coming from the Department and not HLC, was reinforced to the Institutes in HLC's report regarding its evaluation of the transaction (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), page 8).

Second, the February 23 letter makes the completely erroneous statement that the Institutes "remain accredited, in the status of Change of Control Candidate for Accreditation...and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review." This statement was incorrect as to the meaning of Change of Control candidacy based on the language of the November 16, 2017 and January 12, 2018 action letters. See also HLC Responses #1, 4.

Moreover, with respect to timing, by the explicit terms of the November 16, 2017 action letter, the Institutes would only have the opportunity to regain accreditation after they had demonstrated to the Board's satisfaction that they met several HLC requirements. The Board anticipated that fully evaluating an evidence-based resolution of these concerns would take time and therefore indicated it would not consider granting accreditation until after the second on-site focused evaluation, which would take place no later than June 2019.

Third, the February 23 letter demands assurances that the Institutes "will receive an objective review...with team members who have the requisite skill and experience to render an unbiased decision." HLC's standard practice is to conduct objective reviews and to seek out peer reviewers with the requisite skill, experience, and expertise to meaningfully evaluate its institutions. Among other measures of skill and experience, peer review teams typically include individuals who hail from institutions that are representative of the sector, Carnegie classification, and mission of the institution to be evaluated. In any event, peer review teams do not render any decision; they make recommendations to formal HLC decision-making bodies who then render decisions. In this case, based on its concerns, the Board had taken the added step of routing the outcomes of the Eligibility Reviews (which were later suspended) and the on-site focused evaluations (which were not suspended) directly back to the Board itself, rather than delegating to any other decision-making body.

In stating their third demand "for an objective review for continued accreditation," DCEH and the Institutes appeared to preview a future argument to be made that HLC was irrationally biased against for-profit institutions. As was widely published, EDMC had produced a very significant and negative record of dealings with students, prompting multiple investigations from numerous State Attorneys General plus the District of Columbia, resulting in an almost \$100 million settlement and Consent Judgment that could not responsibly be ignored. HLC's careful scrutiny through monitoring was objectively justified on EDMC's record, a record that also came to the attention of members of Congress (see June 22, 2017 US Senate to HLC at [HLC-OPE 5332-5336](#); July 13, 2017 Gellman-Danley to Senators at [HLC-OPE 5372-5373](#)). Even more, during the Change of Control Fact Finding Visit, EDMC employees repeatedly referred to the transaction as a "lift and shift" transaction, in which EDMC employees would become DCEH employees (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#)). If the so-called "lift and shift" meant the migration of key EDMC personnel to DCEH (or its related entities) and would merely cloak predatory practices in what they believed to be a preferable non-profit status, thereby placing students whose backgrounds rendered them vulnerable, then HLC needed to set forth a monitoring protocol, and deliver a team of peer reviewers with the requisite skill, experience and expertise, to lay that subterfuge bare.

Finally, the February 23 letter indicates—again erroneously—that the Institutes would "communicate to their students that [the Institutes] remain accredited in the capacity of Change of Control Candidate for Accreditation." With this, the parties essentially previewed their intention to make incorrect disclosures that were inconsistent with HLC's aforementioned action letters, as well as the express guidance offered by Sweeney on January 26, 2018 (see January 25, 2018 Sweeney, Pond emails at [HLC-OPE 15292-15296](#)). The internal analysis at the Institutes and DCEH that led to this choice was later revealed in a series of email threads provided to HLC in the form of a complaint (see September 14, 2018 Sweeney to Mesecar, Ramey at [HLC-OPE 14816-14857](#); October 11, 2018 Ramey, Mesecar to Sweeney at [HLC-OPE 14988-14989](#)).

Inaccurate disclosures by the Institutes would continue to be a concern moving forward. Over the course of the next several months, HLC would have repeated conversations with the Institutes in

which HLC insisted that the Institutes accurately disclose their accreditation status (see June 12, 2018 Sweeney, Ramey, Monday Emails at [HLC-OPE 15316-15319](#); July 12, 2018 Sweeney to Monday, Ramey, Richardson at [HLC-OPE 12562-12580](#); July 12, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15343-15346](#); August 23, 2018 Sweeney, Gellman-Danley, Jones Emails at [HLC-OPE 15356-15358](#)).

(The Institutes had also previously exhibited a pattern of conduct showing an inability to make appropriate disclosures with respect to this transaction. For example, on October 20, 2017, Sweeney wrote to EDMC, then still the parent of the Institutes, to express concerns about the "Spotlight" section of EDMC's website that included a purported disclosure related to the transaction that remained incomplete (see October 20, 2017 Sweeney, Kramer Emails at [HLC-OPE 15281-15283](#)).

The February 23 letter closed with a statement that the parties wished "to avoid pursuit of an appeal and possible litigation." Given the circumstances, Solinski shared the letter with HLC's external legal counsel, Mary Kohart, Partner at the law firm of Elliott Greenleaf. Solinski's employment with HLC ended shortly thereafter and Sweeney assumed the role of Vice President for Legal and Governmental Affairs on March 1, 2018. Once situated, Sweeney specifically instructed Kohart in March 2018 to follow up with the Institutes' counsel regarding the February 23, 2018 letter. Kohart made attempts to contact the parties' counsel, but they did not respond to the outreach. As such, it appeared to HLC that the Institutes did not wish to communicate further about the matter.

Involvement of the Department's FSA Office

On the same day that the Institutes transmitted the February 23, 2018 letter, Frola emailed Solinski, indicating that "the candidacy status that HLC has Dream Center on following the CIO could be problematic for the schools title IV [sic] eligibility" (see February 23, 2018 Sweeney, Solinski, Frola Emails at [HLC-OPE 15298-15299](#)). Frola had received copies of both HLC's action letters dated November 16, 2017 and January 12, 2018 (see November 16, 2017 Noack to Frola, Bounds at [HLC-OPE 15284](#); January 23, 2018 Noack to Frola, Bounds at [HLC-OPE 15291](#)). However, February 23, 2018 was the first time that Frola reached out to Solinski indicating that candidacy status could be problematic for the Institutes. Solinski responded on February 24 that a call should be scheduled on Monday, February 26, 2018. She copied Sweeney and indicated that she expected Sweeney, as staff liaison, would join the call (see February 23, 2018 Sweeney, Solinski, Frola Emails at [HLC-OPE 15298-15299](#)).

The anticipated February 26 call took place on March 9, 2018—following postponements by Frola and the personnel transitions at HLC (see March 8, 2018 Sweeney, Frola Emails at [HLC-OPE 15300-15301](#)).

On the call, Frola, who was accompanied by numerous Department officials, including legal counsel, specifically asked Sweeney whether candidacy was considered accredited status and whether the Board "had made an independent determination that the Institutes were non-profit institutions." Sweeney responded that under HLC policy, candidacy is a formally recognized status that, insofar as it precedes accreditation, is considered a pre-accreditation status, *but it is NOT accredited status*. Further, Sweeney unequivocally informed Frola and those on the call *that the Board had made no*

independent determination as to the Institutes' tax status, as that was the rightful purview of the IRS and that the Board had made no independent determination as to the Institutes' eligibility for Title IV funding, as that was the rightful purview of the Department.

This apparent confusion on the part of the Department regarding the respective role of accreditors vs. the Department regarding determinations for Title IV eligibility would re-emerge in Jones' October 31, 2018 letter to HLC. See also HLC Response #19.

May 21, 2018 Intent to Appeal/Further Communications with the Department's FSA Office

On May 21, 2018, HLC received a formal letter of intent to appeal on behalf of both Institutes (see May 21, 2018 Rouse Frets to HLC at [HLC-OPE 12264-12266](#)).

Given the references in the letter to Title IV eligibility, and remembering the phone conversation with Frola on March 9, Sweeney telephoned Frola on May 22, 2018 to learn what, if any, final determination had been made by the Department regarding the Institutes' eligibility for Title IV funding. Frola informed her of what he termed the Department's "extraordinary measure" to grant "temporary interim non-profit status" as described in May 3, 2018 letters separately issued by the Department to each Institute (see May 3, 2018 ILIA DOE Grant of Temp Interim NFP Status at [HLC-OPE 12261-12263](#); May 3, 2018 AIC DOE Grant of Temp Interim NFP Status at [HLC-OPE 12258-12260](#)). Frola insisted HLC had been copied on the May 3 letters. After the phone call, Sweeney reviewed agency records (including Solinski's emails) to determine that HLC had not received the letters and reiterated to Frola via email that HLC had not received copies. Frola then forwarded the requested letters (see May 22, 2018 Sweeney, Frola Emails at [HLC-OPE 15302-15311](#)). (On June 14, 2018, Sweeney would then provide copies of the May 3, 2018 letters granting the Institutes temporary interim non-profit status to Bounds after a passing reference to them during a phone conversation on a separate matter indicated that Bounds may not have been aware of the determinations (see June 14, 2018 Sweeney to Bounds at [HLC-OPE 15320-15321](#))).

HLC responded to the May 21, 2018 letter on May 30, 2018 (see May 30, 2018 Sweeney to Rouse Frets at [HLC-OPE 12267-12268](#)). No adverse action had occurred that would trigger an opportunity to appeal. See also HLC Responses #2, #3. Moreover, the tardiness of any appeal was inconsistent with the timing in HLC's published Appeals Procedures, which require an appeal to be initiated within two weeks of Commission action (see HLC Policy INST.E.90.010, Appeals—version effective at all relevant times/last revised February 2019 and Appeals procedure at [HLC-OPE 15252-15264](#)). Nonetheless, HLC informed the parties in the May 30 letter that, while not required under HLC policy, an appeal on behalf of both Institutes would be considered, and attached HLC's Appeals Procedures to the letter. In offering this appeal, HLC continued to provide the Institutes all manner of due process, as generally contemplated by 34CFR §602.25.

The Institutes ultimately failed to timely submit an Appellate document in accordance with the Appeals Procedures and the opportunity lapsed.

Simultaneously, upon receipt of the May 21 letter, HLC immediately suspended ongoing evaluative activity in an effort to minimize embroiling its volunteer peer reviewers in a potential appeal situation. This meant, among other things, that the review of the required Eligibility Filings, which was all but complete, was suspended along with the requirement that the Institutes submit quarterly financial

reports. The peer reviewers' analysis of the respective Eligibility Filings almost certainly would have resulted in official HLC findings that improper disclosures to students had been made.

There was only one exception to the suspended activities: the on-site evaluations required of each Institute within six months of the transaction date would go on as planned. No exception was allowed under federal regulations, a fact confirmed by Department analyst Elizabeth Daggett to Sweeney in writing on May 30, 2018 (see Sweeney, Daggett emails May 30, 2018 at [HLC-OPE 15312-15315](#)).

In November 2018, the Institutes would again attempt to renew their efforts to appeal both the November 2017 actions and subsequent November 2018 actions by the Board continuing the Institutes' candidacy until their planned December 2018 closures. These attempts to appeal were improper both as to timing and the continued fact that the Board had not taken an adverse action with respect to the Institutes in November 2017 or November 2018 (see November 7, 2018 AIC Action Letter at [HLC-OPE 15172-15179](#); November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#); November 20, 2018 Ramey to Gellman-Danley at [HLC-OPE 15187-15189](#); November 21, 2018 Mesecar to Gellman-Danley at [HLC-OPE 15190-15191](#); November 28, 2018 Gellman-Danley to Ramey at [HLC-OPE 15195-15198](#); November 28, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15192-15194](#)).

Initial Interactions with DCEH and the Department Regarding Retroactive Accreditation

The Institutes were not on the agenda of the Board's June 2018 meeting as institutional action items. However, Commission staff were scheduled to provide a full update to the Board regarding the Institutes at the meeting.

By that time, not only were the previously established evaluation efforts overtaken by the prospect of an appeal, but external counsel for the Institutes had contacted HLC with a new proposal that would allow for "[a]ll students who earned credits or graduated, from the time of the Schools respective initial accreditation through [its closing date], will be deemed to have attended or graduated from an accredited institution" (see June 20, 2018 Rouse Frets, Gellman-Danley, Sweeney Emails at [HLC-OPE 15322-15324](#)). Although not explicitly using the term "retroactive accreditation," this proposal was tantamount to retroactive reinstatement of accreditation.

Certainly, it was unusual for HLC to receive such a proposal from an institution at all. Even more, however, the substance of the proposal appeared to be suggesting an outcome that was not contemplated by HLC policy and one that HLC also understood to be prohibited by federal regulations and Department guidance.

First, retroactive accreditation, as proposed, was not permitted under current HLC policy. HLC policy does allow students who graduate 30 days prior to the grant of accreditation to an institution to benefit from that accreditation, notwithstanding the fact that the institution had been unaccredited as a candidate at the time they attended (see HLC Policy INST.B.20.030, Accreditation—current version/last revised November 2015 at [HLC-OPE 15236-15238](#)). The same would be true for students graduating from the Institutes within 30 days prior to any Board decision to grant accreditation. Otherwise, however, HLC policy did not provide for retroactive accreditation and any change in HLC policy would need to adhere to other established policies governing policy revisions (see HLC Policy PPAR.A.10.010, Dating of Policies—current/never revised at [HLC-OPE 15276](#); HLC Policy PPAR.A.10.030, Program for Review of Institutional Accreditation Policies—current

version/last revised November 2012 at [HLC-OPE 15277](#); HLC Policy PPAR.A.10.040, Revision of Accreditation Policy—current version/last revised November 2012 at [HLC-OPE 15278](#)).

Moreover, HLC had operated for some time under a general understanding that back-dating any substantive change approval was frowned upon under the federal regulations (see, for example, 34 CFR §602.22(b)) as well as Departmental guidance. In fact, when Sweeney sought to confirm HLC's prevailing understanding of retroactive accreditation with Daggett on June 26, 2018, Daggett specifically provided Sweeney a June 6, 2017 Memorandum on the issue ("2017 Memorandum") (see June 26, 2018 Daggett to Sweeney (2017 DOE Memo) at [HLC-OPE 15325-15327](#)). The 2017 Memorandum, with the subject line "Accreditation Effective Date," clearly stated that "The Department of Education requires an accreditation decision to be effective on the date an accrediting agency's decision-making body makes the decision. It cannot be made retroactive, except to the limited extent provided in 34 C.F.R. §602.22(b) with respect to changes in ownership" (see June 26, 2018 Daggett to Sweeney (2017 DOE Memo) at [HLC-OPE 15325-15327](#)). The exception refers to the fact that an agency may designate the date of a change in ownership as the effective date of its approval of a substantive change to be included in the institution's accreditation, if the substantive change decision is made within 30 days of the change in ownership.

Almost immediately thereafter, however, Jones reached out to Gellman-Danley. As Sweeney described to Daggett: "[Jones]...has now reached out to our President with different ideas about the [application of retroactive accreditation to the Institutes], despite Herman's memo" (see June 27, 2018 Daggett, Sweeney Emails at [HLC-OPE 15328-15330](#)).

This is at odds with the implications of what Jones indicated in her Congressional testimony in May 2019 when she said that "somebody from HLC called me to ask me about retroactive accreditation..." (see May 22, 2019 Congressional Hearing Before the Subcommittee on Economic and Consumer Policy of the Committee on Oversight at <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109532>). To be clear, HLC did not initiate contact with Jones on this issue. Rather, Jones initiated the conversation with HLC by calling Gellman-Danley.

In subsequent emails and phone conversations on June 27, 2018:

- (1) Jones informed Sweeney and Gellman-Danley by email that the "guidance document [2017 Memorandum] was issued in error and we will be releasing corrected guidance." Jones indicated that she was "disappointed" that the 2017 Memorandum had been sent "since it is known that we are retracting that policy" (see June 27, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15331-15332](#));
- (2) Daggett and Bounds informed Sweeney by phone that the 2017 Memorandum was not applicable to the Institutes in this situation, but reminded Sweeney that, as Sweeney would then reiterate to Jones later that afternoon, HLC "should be mindful of current federal regulations on ensuring consistency in decision making (34 CFR §602.18)" (see June 27, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15331-15332](#));
- (3) In an evening phone call between Jones and Sweeney, Jones reiterated to Sweeney her disappointment that Daggett and Bounds had shared the 2017 Memorandum, again indicated that

the Department would be releasing additional guidance on the issue of retroactive accreditation, and specifically asked Sweeney to work exclusively with her at the Department on this issue.

This new information from the Department regarding its position on retroactive accreditation was included in the already-planned update that Commission staff would deliver to the Board at the June 2018 meeting.

Communications with the Department continued following the June 2018 Board meeting. On July 3, 2018, in an email addressing several topics related to the Institutes, Sweeney indicated to Jones on behalf of HLC that "[w]hat we would like to request is written assurance from the Department of Education that an HLC Board decision to have the Institutes' accredited status reinstated effective as of January 19, 2018 through December 31, 2018 (in other words ensuring continuous accredited status and eliminating the period of Change of Control candidacy) will be acceptable to the Department of Education and will not jeopardize HLC's recognition" (see July 3, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15333-15335](#)).

In response, Jones indicated that the Department would be issuing "guidance to address the retroactive accreditation date more generally, but I will also be happy to provide a written letter to HLC on this specific issue to make sure that you don't need to worry about how this might impact your own recognition at a later time" (see July 3, 2018 Gellman-Danley, Sweeney, Jones Emails at [HLC-OPE 15333-15335](#)). See also HLC Response #19.

Indeed, on July 25, 2018 the Department issued a memorandum that effectively superseded the 2017 Memorandum (see July 25, 2018 DOE Memo at [HLC-OPE 15354-15355](#)).

To be clear, retroactive accreditation was still generally prohibited by HLC policy, and a letter from the Department would not change HLC's usual process for making any such policy revisions. Rather, the letter would inform HLC's understanding as to whether retroactive accreditation was problematic under federal regulations and Department guidance.

Communications about retroactive accreditation continued throughout July 2018. In an email exchange on July 29-30, 2018, Sweeney once again explained to Jones that, other than in the thirty days prior to accreditation being granted, students graduating from a candidate institution were graduating from an unaccredited institution (see July 12, 2018 Gellman-Danley, Sweeney, Jones Emails (with additional emails from 7.29-7.30) at [HLC-OPE 15347-15353](#)).

Yet, despite all of these communications, as recently as May 2019, Jones continued to state that:

- "[T]he letter that the Department received from HLC described change-of-control candidacy status as a pre-accredited status, and pre accredited status is accredited status;" and
- "Let me be clear that it is the Department's position that [the Institutes] were accredited throughout the period between the change of control in January, and the closure in December 2018. Otherwise, the schools could not have participated in Title IV programs"

(see October 22, 2019 Committee on Education and Labor to Secretary DeVos at [HLC-OPE 15369-15412](#), FN 29; May 22, 2019 Congressional Hearing Before the Subcommittee on Economic and

Consumer Policy of the Committee on Oversight at:

<https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109532>).

The current federal definition of "preaccredited" under 34 CFR §600.2 is unambiguous that such status is accorded to unaccredited institutions. That definition is silent on Title IV eligibility.

13. The public notice issued on January 20, 2018, states that HLC's action meant that courses or degrees offered by the Institutions were not accredited, even though the Institutions would enjoy a "recognized status" with HLC. Yet, on July 16, 2018, HLC conducted a site visit at the Illinois Institute of Art in which the site reviewer told students and faculty that it was possible for accreditation to be retroactively restored. Please explain (a) why the site visitor conveyed this message to students and faculty, and (b) whether HLC was considering rescinding its action to place the Institutions on CCC-status at the time of the site visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the site visit, (b) the report that was produced by the site visitors and sent to HLC's Board, and/or (c) HLC deliberations regarding the Institutions accreditation status. The time frame for this request is April 1, 2018 to the present.

HLC Response #13:

As further described below, an HLC peer reviewer faced with a very chaotic and difficult situation made unnuanced comments regarding next steps. HLC was not—in July 2018 or at any time—considering "rescinding" its November 2017 actions, as such rescission is not contemplated by HLC policy. (Indeed, the only time the Board may "rescind" an action is if the parties to a change of control that has been conditionally approved "do not respond in writing or decline to accept the conditions" (see HLC Policy INST.F.20.070, Processes for Seeking Approval of Change of Control—versions (2) effective at all relevant times/last revised November 2019 at [HLC-OPE 15268-15275](#))).

HLC first learned of the existence of the video of the July 16, 2018 ILIA site visit meeting through Jones directly when she emailed a link to the video to Gellman-Danley on October 15, 2018, approximately two weeks before the Board would take action on the Institutes (October 15, 2018 Jones email to Gellman-Danley and Sweeney at [HLC-OPE 15359-15360](#)).

It is important to note that at no time was the site visitor (which HLC refers to as a "peer reviewer") authorized, instructed, or trained by anyone at HLC to provide any indication to ILIA students, faculty or administrators, regarding what the Board would ultimately decide. Peer reviewers are explicitly trained not to make any statements that might be interpreted as a prediction of any future action by HLC's decision-making bodies (see HLC Procedure Exit Session Protocol for Commission Visits: Commission Procedure at [HLC-OPE 15279-15280](#)). HLC's formal decision-making bodies, in this case, the Board, which held final decision-making authority, had the authority of *de novo* review. Therefore, as in all other cases, the Board could choose to agree or disagree with any aspect of the peer reviewers' evaluation of the evidence, including their findings on specific HLC requirements and/or their ultimate recommendation. In addition, the Board could take into account additional information, including publicly available information, or weigh the absence of certain evidence in its decision. The authority of peer reviewers involved in evaluative activity extends only as far as making recommendations that are aligned with HLC policy, not ultimate accreditation decisions. These

procedures are also generally consistent with HLC's due process obligations pursuant to 34 CFR §602.25.

That said, it had always been contemplated that, if the Institutes satisfied the conditions set forth in the November 16, 2017 action letter and were otherwise in compliance with HLC requirements, accreditation would be reinstated (but not retroactively, for the reasons described in HLC Responses #10-12 and #19) (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#), page 2 and page 4).

The peer reviewer whose statements about retroactive accreditation are now being questioned was aware of the limited HLC rule regarding the extension of accreditation to graduations that occur 30 days prior to accreditation being granted (see HLC Policy INST.B.20.030, Accreditation—current version/last revised November 2015 at [HLC-OPE 15236-15238](#), as further described in HLC Response #10-12), and likely gave over-generalized responses to the rapid fire inquiries. His unnuanced responses, given hurriedly in a well-intentioned attempt to reassure a large group of very upset students in a fast-paced, chaotic, and high pressure situation, did not change the fact that any accreditation decision would be made by the Board solely on the basis of evidence and evaluation and in a manner consistent with HLC policy.

Importantly, the second peer reviewer who was present at the same ILIA meeting made it abundantly clear, while demonstrating compassion for the students' plight, that the scope of the peer review team's work was not to serve as the outlet for student frustration regarding the recent announcement of closure and revelation regarding loss of accredited status, but to validate through thoughtful inquiry the evidence presented by ILIA related to its operations since the consummation of the transaction on January 20, 2018 (see <https://www.youtube.com/watch?v=-Bn0qKMNqIM> at 31.29-32.24).

Much had changed since January 20, and by mid-July 2018, the Institutes' closure announcement meant circumstances were now present that were dramatically different from anything the Board contemplated in November 2017. HLC was now in the process of evaluating separately the Institutes' respective Teach-Out Plans. As a result, the HLC peer reviewers assigned to the ILIA visit were asked by Sweeney, in addition to their original charge, to obtain on-site a preliminary sense of ILIA's apparent capacity to responsibly conduct a teach-out through its initially stated closure date of December 31, 2018. It was during their attempt to gather additional information on behalf of HLC from ILIA constituents that these interactions took place.

Ultimately, the decision by the Institutes and DCEH to consummate the proposed transaction in the middle of an academic term on January 20, 2018 rather than after a graduation, knowing it would automatically trigger a change in ILIA's accreditation status, and then to withhold information regarding that change in status for several months, only to release this critical information at the time of its closure announcement (see September 14, 2018 Sweeney to Mesecar, Ramey at [HLC-OPE 14816-14857](#); October 11, 2018 Ramey, Mesecar to Sweeney at [HLC-OPE 14988-14989](#)), created a perfect storm of confusion just days before the peer review team's arrival.

A false narrative quickly developed, which remained uncorrected by officials of the Institutes or DCEH, that on January 20, 2018, HLC withdrew ILIA's accreditation thereby precipitating the Institute's closure. In stark contrast to this narrative, CEO Brent Richardson revealed during a transcribed Board Committee Hearing for AIC that a \$95 million hole, discovered after the fact, in DCEH's own due diligence, actually precipitated the Institutes' closure (see October 8, 2018 AIC

Board Committee Hearing Transcript at [HLC-OPE 14862-14980](#), page 11 lines 2-9). In addition, as each peer review team informally and separately reported to HLC days before the respective on-site visits (see July 6, 2018 Sweeney, Koch Emails at [HLC-OPE 15336-15339](#); July 6, 2018 Sweeney, Nolan Emails at [HLC-OPE 15340-15342](#)), significant doubt appeared to exist at each Institute regarding whether the planned on-site evaluations would occur at all, despite explicit communication to the contrary that under no circumstances would these evaluations be waived (see May 30, 2018 Sweeney, Daggett Emails at [HLC-OPE 15312-15315](#); May 30, 2018 Sweeney to Rouse Frets at [HLC-OPE 12267-12268](#)).

As a result of all these events, the HLC peer review team was inevitably greeted by a frantic and somewhat hostile environment. The meeting represented in the video was atypical of on-site evaluations owing to students and faculty who were, quite understandably, extremely distraught and at times, verbally aggressive. The very short lead-time between ILIA's closure announcement and the peer reviewers' arrival on-site meant that, despite their careful advance review, in-depth briefing with HLC staff, and trained analysis of documentation available, they could not respond succinctly to every nuanced, hypothetical question that arose from these extremely unique circumstances. Most of all, they simply could not explain to students why they were just learning their institutions were not accredited. The peer reviewers did make clear to all, however, that they were an evaluation body and not the final decision-making authority.

14. Please provide a list of all site visits conducted by HLC to the Institutions from January 1, 2017, to the date of their closure. Describe each such visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing each such site visit. The time frame for this request is December 1, 2016 to the present.

HLC Response #14:

The site visits conducted by HLC to the Institutes from January 1, 2017 to their closure at the end of December 2018 are as follows:

- AIC Midcycle Standard Pathway Comprehensive Evaluation with Embedded Substantive Change Request—Comprehensive evaluation conducted in 2016. Official action by the Institutional Actions Council (an HLC decision-making body) on January 30, 2017. Outcome: Interim monitoring and approval of two new programs (see January 30, 2017 AIC IAC Mid-Cycle Review Standard Action Letter at [HLC-OPE 1877](#); January 30, 2017 AIC IAC Substantive Change Action Letter at [HLC-OPE 1878](#)).
- ILIA Notice Visit—Focused Visit (Notice Visit) conducted in May 2017. Official action by the Board in November 2017. Outcome: Removal of Notice (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)).
- AIC and ILIA Change of Control Fact Finding Visit—Fact Finding Visit conducted in August 2017. Official action by the Board in November 2017. Outcome: Approval of Transaction with Conditions (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)).

- AIC and ILIA Post-Transaction Focused Visits—Focused Visits conducted in July 2018. Recommendation from ILIA visit was that adequate progress was being made and that accreditation should be reinstated. Recommendation from AIC visit was that evidence was insufficient and candidacy should be withdrawn. AIC afforded a Board Committee Hearing based on team recommendation. Outcome: Both Institutes' candidacy continued through anticipated close date of December 28, 2018, with various requirements (see July 16, 2018 AIC Focused Visit Team Report at [HLC-OPE 13276-13317](#); July 16, 2018 ILIA Focused Visit Team Report at [HLC-OPE 14316-14355](#); October 8, 2018 AIC Board Committee Hearing Transcript at [HLC-OPE 14862-14980](#); November 7, 2018 AIC Action Letter at [HLC-OPE 15172-15179](#); November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#)).

Full materials related to all of these site visits are included in the Institutes' administrative records.

15. On March 9, 2018, Department officials had a conference call with Anthea Sweeney, Vice President for Legal and Governmental Affairs at HLC, to inquire about the nature of its CCC-status. On the call, Ms. Sweeney told the Department that HLC viewed CCC-status to be the equivalent of a preaccredited status. Does HLC view CCC-status as being the equivalent of a preaccredited status? If not, why was that assertion made on the March 9, 2018 phone call? Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its communications with the Department regarding (a) CCC-status, (b) pre-accreditation, and/or (c) the Institutes. The time frame for this request is February 1, 2018 to the present.

HLC Response #15:

Yes, HLC has consistently been clear to all constituencies that Change of Control candidacy is a pre-accreditation status. See also HLC Responses #1, #4, #7, #8 and #10-12. See also 34 CFR §600.2.

16. Has HLC ever placed any other institution on CCC-status? If so, describe the Board's decision to place such institutions on that status. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such decision and the public notice given therewith.

HLC Response #16:

No, to the best of current HLC employees' knowledge, HLC has never "placed" *any* institution on Change of Control candidacy status, including the Institutes.

HLC did not "place" the Institutes on Change of Control candidacy status. Rather, the Institutes voluntarily and knowingly accepted that status as a condition of HLC approving the Change of Control transaction and automatically triggered the status upon choosing to close the transaction. See HLC Response #1, #2, and #4.

In one previous case very similar to the one currently under review, the parties to a transaction, though initially willing to accept Change of Control candidacy as a condition of approval, ultimately found themselves unwilling and abandoned their plans to consummate the transaction. The relevant institution remains accredited by HLC to date.

17. INST.E.50.010 states that "Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal." However, INST.E.50.010 fails to provide details on whether candidacy status is the equivalent to preaccredited status or should be considered a loss of accreditation. Describe why INST.E.50.010 does not address the issue and provide the agency's definition of "candidacy status."

HLC Response #17:

HLC Policy INST.E.50.010, Accredited to Candidate Status does not elaborate on this aspect of candidacy because the policy cross-references other related policies in a footer titled Related Policies. In turn, the cross-referenced HLC Policy INST B.20.020, Candidacy is clear that candidacy is a status that precedes accredited status (see HLC Policy INST.E.50.010, Accredited to Candidate Status—version effective at all relevant times/last revised (eliminated) November 2019 at [HLC-OPE 15250-15251](#); HLC Policy INST.B.20.020, Candidacy—current version/last revised November 2012 at [HLC-OPE 15229-15235](#)). See also HLC Response #7.

18. INST.B.20.040 provides that "An institution shall apply for Commission approval of a proposed Change of Control, Structure or Organization transaction through processes outlined in this policy and must demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that approval of the proposed Change of Control, Structure or Organization is in the best interest of the Commission." Please describe how HLC defines "best interest of the Commission." Please also describe how HLC ensures that this "best interest" standard does not result in arbitrary and capricious decision-making.

HLC Response #18:

HLC holistically considers "the best interest of the Commission." The best interest of HLC, first and foremost, is to consistently take actions that align with the Commission's almost 125-year history of "serving the common good by assuring and advancing the quality of higher education." In the context of Change of Control, Structure or Organization, HLC's decision to extend its accreditation to an institution after any proposed change governed by HLC policy represents the agency's affirmation that the resulting institution, exhibits sufficient indicia of quality justifying HLC's trusted imprimatur. Indeed, when need be, such endorsement is qualified in some way, whether by public sanction or otherwise. Particularly given the prospective nature of any Change of Control review, HLC's scrutiny is necessarily enhanced (see HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)).

The best interests of the Commission align with HLC's deep commitment to serving members of the public—chief among them, students—who invest in pursuing whatever academic goals matter most to them at quality institutions of higher education. HLC's Mark of Affiliation represents a significant institutional achievement. It is necessarily enhanced by the success of its institutions, but also challenged by institutions that fall short. Thus, it serves HLC's best interests to be of assistance to students and the public through rigor and transparency when for any number of reasons (including, for example, poor governance, insufficient resources, poor outcomes or lack of fundamental integrity) students may be exposed to a significant risk of harm at an institution bearing HLC's imprimatur.

Additionally, given that HLC's status as a federally recognized accreditor makes it a gatekeeper for Title IV funds, HLC takes seriously its obligation in that capacity to serve the public and most significantly, taxpayers, by preventing fraud, waste and abuse of taxpayer monies.

Finally, HLC prevents arbitrary and capricious actions, and ensures due process as required by 34 CFR §602.25, through a variety of means. These include, for example:

- Pursuing its evaluation and decision-making activities with utmost integrity;
- Ensuring robust training and professional development of its peer corps, staff and decision-making bodies;
- Adhering rigorously to the mechanisms of due process, including checks and balances through *de novo* review;
- Protecting against conflicts of interest and undue influence;
- Cultivating transparency with its member institutions concerning the rationales and underpinnings for its decisions and the steps needed to remedy concerns; and
- Adhering, in all respects, to the ideal of quality improvement for itself and its voluntary member institutions.

19. Please provide the results of HLC's review of the concerns raised by the Department in the October 31, 2018 letter from Diane Jones and include any policy or procedural changes made in response to the results of the review. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) Exhibit 1 or (b) Diane Jones. The time frame for this request is March 1, 2018 to the present.

HLC Response #19:

Events of October-November 2018

On October 29, 2018, Jones reached out to Gellman-Danley numerous times by phone. Building on the conversations from June and July 2018 (see also HLC Response #10-12), once Jones was able to connect with Gellman-Danley, she informed Gellman-Danley that she had identified a way for the Board to retroactively reinstate the Institutes' accredited status. Much like she had mentioned in July 2018, she stated that she would be sending HLC a letter indicating that such a decision by HLC would not be problematic to the Department. Gellman-Danley indicated that while HLC's own policies did

not currently allow for retroactive accreditation, the Board would certainly review anything provided by the Department in anticipation of its meeting later that week on November 1-2, 2018.

At 4:56pm Central time on October 31, 2018, HLC received the letter in question (see October 31, 2018 Gellman-Danley, Jones Emails at [HLC-OPE 15361-15362](#); October 31, 2018 Jones to Gellman-Danley at [HLC-OPE 15163-15167](#)).

As an initial matter, HLC was puzzled that none of the critiques raised by Jones in her letter of October 31, 2018 had been previously raised in March 2018, June-July 2018, or during any other previous conversations between HLC and the Department. Specifically, at no point prior had Jones or anyone else at the Department raised concerns about the legitimacy of Change of Control candidacy generally, HLC's alleged failure to provide the Institutes' appropriate due process, or HLC's alleged responsibility for the Institutes' eligibility for Title IV funds as a result of their choice to accept candidacy status. See also HLC Response #10-12.

Among other things, HLC had participated in two successful recognition processes with the Department, subsequent to the Board's 2009 adoption of Change of Control candidacy, in which Change of Control candidacy featured clearly as one of the Board's decision-making options under HLC policy. This acceptance of HLC policy through the recognition process clearly signifies that the simple concept of Change of Control candidacy was not problematic *per se* under the current regulations.

Moreover, new language in the federal regulations recently published on November 1, 2019 would entirely prohibit Change of Control candidacy (see 34 CFR §602.23(f)(iv), effective July 1, 2020). Logically, this change would not be needed if such an action was already clearly prohibited under previous regulations.

Additionally, given the receipt of the letter on the night before the meeting at which the Board was scheduled to take further action regarding the Institutes, the timing of the letter failed to supply HLC with sufficient and meaningful advance notice to consider any Department position that was contrary to established HLC policy. To the extent that the Department, separately, was bound to adhere to federal regulations related to the issuance of Title IV, these limitations were not relevant to HLC.

Following HLC's receipt of the letter, Jones spoke with Sweeney and Gellman-Danley by phone after close of business on October 31, 2018. Gellman-Danley commented that the letter was very different from what Jones had indicated the Department would provide in the phone conversation on October 29. Gellman-Danley expressed deep concerns that the letter was both inaccurate and highly inappropriate in terms of timing. Jones said that the letter was certainly full of language that lawyers would use. She told Sweeney and Gellman-Danley that no one else, other than herself and "the lawyers" had seen the letter, and that it would be retracted. Neither Sweeney nor Gellman-Danley had requested that the letter be retracted. Sweeney asserted that as a matter of ethical obligations to the Board, the letter would certainly need to be shared and Gellman-Danley informed Jones that in fact the letter had already been shared with the Board (see October 31, 2018 Noack to Board at [HLC-OPE 15363](#)).

On that same phone call, Jones also indicated another option that the Board could potentially consider regarding the Institutes. Jones suggested that perhaps the Board could rescind its November 2017 action entirely, and place the Institutes on a sanction or issue a Show-Cause Order. She reminded

Sweeney and Gellman-Danley (who were already aware) that the Middle States Commission on Higher Education (MSCHE) had issued a Show-Cause order to one of the DCEH institutions that it accredited. Sweeney and Gellman-Danley did not specifically respond to Jones, but instead simply reiterated that the Board would evaluate each Institute based on the evidence available and in accordance with HLC policies.

In a second telephone call much later in the night on October 31, 2018, Jones then informed Gellman-Danley (Sweeney was not on the call) that the Department could not retract the letter (again, neither Sweeney nor Gellman-Danley had requested a retraction), but Jones specifically indicated that the only thing that HLC needed to do in response to the letter was inform the Department via a brief response that HLC intended to review its policies (see October 31, 2018 Gellman-Danley, Jones Emails at [HLC-OPE 15361-15362](#)).

HLC promptly sent the requested response on November 7, 2018 (see November 7, 2018 Gellman-Danley to Jones (and Emails) at [HLC-OPE 15364-15365](#)). Within an hour of receiving the response, Jones replied "Thanks, Barbara!" (see November 7, 2018 Gellman-Danley, Jones (and Emails) at [HLC-OPE 15364-15365](#)). HLC understood Jones's response to mean that the response HLC had provided was acceptable to the Department.

Lack of Further Interactions Regarding the October 31 Letter or Policy Concerns

Following November 7, 2018, HLC did not hear anything further from the Department indicating that its timely response was somehow deficient, or that a further response to the October 31, 2018 letter was requested, until receiving the October 24 Letter.

Indeed, in November-December 2018 and then again in March 2019, Jones was in regular communication with HLC, and other accreditors, regarding next steps for various DCEH-owned institutions. For example, Jones reached out to HLC to discuss the possibility of an HLC institution that might want to "take over" a DCEH institution that was not accredited by HLC. HLC indicated that its usual policies and procedures, which would need to be initiated by the HLC institution itself, would need to be followed (see November 30, 2018 Gellman-Danley, Jones, et al. Emails at [HLC-OPE 15418-15429](#)). At no point during these conversations were the matters in the October 31, 2018 letter discussed.

Yet, in May 2019, Jones indicated in a letter to Senator Durbin that the Department intended to initiate a review into HLC's policies, but did not mention the existence of the October 31, 2018 letter to HLC and Jones' acceptance of HLC's initial response to it (see May 9, 2019 Jones to Durbin at [HLC-OPE 15366-15368](#)).

HLC's Policy Review Efforts

That said, HLC takes seriously its responsibility to continuously scrutinize its policies and procedures (see HLC Policy PPAR.A.10.030, Program for Review of Institutional Accreditation Policies—current version/last revised November 2012 at [HLC-OPE 15277](#)). As such, as part of this ongoing process, and additionally in light of the October 31, 2018 letter from the Department, HLC took the opportunity over the past year to carefully review its policies related to Change of Control generally, and Change of Control candidacy status more specifically.

HLC policy provides that the Board may modify HLC policies through a two-meeting process that involves the opportunity for member comment between the two meetings (see HLC Policy PPAR.A.10.040, Revision of Accreditation Policy—current version/last revised November 2012 at [HLC-OPE15278](#)).

At its most recent Board meeting in November 2019, the Board adopted several policy changes on "second reading" related to candidacy and Change of Control candidacy. Specifically, (1) the Board voted to entirely eliminate the option of Change of Control candidacy from HLC policy; and (2) the Board revised the Change of Control evaluative framework, among other things, to emphasize that the factors listed are "key factors," not an exhaustive list of factors to be considered (see November 2019 Board Resolution with adopted changes at [HLC-OPE_15413-15417](#)). Corresponding conforming changes are also being made to other HLC policies to eliminate any references to Change of Control candidacy. The Board's determinations regarding policy revisions were made based on its own independent analysis and in accordance with its customary practices, not because of the October 31, 2018 letter or the reasons articulated therein.

These changes to HLC policy will also be consistent with the newly adopted regulations (see 34 CFR §602.23(f)(iv), effective July 1, 2020).

20. During the time period of the proposed change of control, or any time through January 20, 2018, did HLC discover any evidence that degree requirements, course requirements, syllabi, faculty locations of educational offerings, or other academically relevant conditions had changed at the institutions to such an extent that the Institutions accreditation would be jeopardized? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such change. The time frame for this request is July 1, 2016 to the present.

HLC Response #20:

During its review of the proposed transaction, HLC identified myriad evidence that, based on its Criteria for Accreditation and other HLC requirements, would impact the Institutes' accreditation post-transaction.

As an institutional accreditor, HLC is responsible for assuring the quality of the institution as a whole and therefore conducts its evaluations, in accordance with established policies and the Criteria for Accreditation, by reviewing all aspects of its member institutions, recognizing their impact on the academic enterprise (see HLC Policy CRRT.B.10.010, Criteria for Accreditation—current version/last revised June 2014 at [HLC-OPE15221-15228](#)).

A historical review of ILIA and AIC as member institutions reveals that each Institute had at some point previously been placed on the sanction of Notice. AIC was on Notice from June 2013 to February 2015. ILIA was on Notice from November 2015 to November 2017. At the time that AIC was placed on Notice, Notice indicated that an institution was "pursuing a course of action that if continued would cause it to be out of compliance" with HLC requirements (see HLC Policy INST.E.10.010, Notice—version effective in June 2013 at [HLC-OPE 15245-15246](#)). At the time that ILIA was placed on Notice, Notice indicated that an institution is "at risk of being out of compliance"

with HLC requirements (see HLC Policy INST.E.10.010, Notice—version effective in November 2015 at [HLC-OPE 15247-15249](#)). Each Institute worked to address the concerns articulated by the Board and had succeeded in having its sanction removed.

While a history that includes a sanction is certainly taken into account as a concerning part of an institution's overall record with HLC, neither ILIA's nor AIC's sanction ultimately presented a barrier to the Board's consideration of the Change of Control transaction in November 2017 (see HLC Policy INST.B.20.040, Change of Control, Structure or Organization—version effective at all relevant times/last revised June 2019 at [HLC-OPE 15239-15242](#)). ILIA's record was before the Board as a separate matter bearing a recommendation to remove the sanction of Notice based on evidence and evaluation that supported that recommendation. After thoroughly reviewing the record *de novo*, the Board removed the sanction (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)).

That said, unlike sanction reviews that assess the extent of an institution's current compliance with the Criteria for Accreditation, Change of Control reviews are prospective in nature and seek to make a reasonable prediction about an institution's future compliance.

The Summary Report generated as a result of HLC's Change of Control Fact Finding Visit identified uncertainty related to ongoing compliance based on significant challenges anticipated if the transaction was consummated. The Summary Report raised questions related to the Institutes' post-transaction compliance with HLC's Eligibility Requirements due to underlying questions concerning governance, mission, educational programs, information to the public, finances, administration, policies and procedures. The Summary Report also anticipated that four Eligibility Requirements in particular would not be met, related to stability, planning, integrity of operations and accreditation record. While acknowledging that many of these issues might be remedied through and after the transaction, the Summary Report indicated HLC would need to "monitor the situation carefully to be sure they are remedied" (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), pages 37-38).

In addition, HLC anticipated that after the transaction the Institutes would meet the Criteria for Accreditation, but with concerns related to several Core Components related to demonstrating a commitment to the public good; operating with integrity in their financial, academic, personnel and auxiliary functions; presenting themselves clearly and completely to students and the public; maintaining sufficiently autonomous governing boards; demonstrating responsibility for the quality of educational programs; having sufficient resources; and engaging in systematic and integrated planning. Specifically related to academic programs, the Summary Report highlighted several concerns related to Criterion Four, Core Component 4.A, ("the institution demonstrates responsibility for the quality of its educational programs") (see October 3, 2017 Staff Summary Report and FFV Report at [HLC-OPE 7030-7080](#), pages 27-29).

While these concerns did not warrant the Board declining to approve the proposed transaction, they were significant enough to qualify the Board's approval of the transaction in November 2017.

21. In HLC's letter of November 16, 2018, to the Institutes, HLC found full compliance but did not make a final accreditation decision due to "procedural error." What was/were the/those error/errors? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all

records in HLC's possession or control regarding or referencing HLC's actions memorialized in Exhibit 3. The time frame for this request is July 1, 2017 to the present.

HLC Response #21:

HLC did not issue a letter to the Institutes on November 16, 2018. HLC issued a joint letter to the Institutes on November 16, 2017 regarding Change of Control (see November 16, 2017 Change of Control Action Letter at [HLC-OPE 7726-7732](#)) and a letter to ILIA regarding removal of the sanction of Notice (see November 16, 2017 ILIA Notice Action Letter at [HLC-OPE 7733-7736](#)). HLC did not reference any procedural error in those letters.

HLC issued letters to each Institute on November 7, 2018 (see November 7, 2018 AIC Action Letter at HLC-OPE 15172-15179; November 7, 2018 ILIA Action Letter at [HLC-OPE 15180-15186](#)). HLC did not reference any procedural error in those letters.

Finally, HLC issued a letter to each Institute on November 28, 2018 (see November 28, 2018 Gellman-Danley to Mesecar at [HLC-OPE 15192-15194](#); November 28, 2018 Gellman-Danley to Ramey at [HLC-OPE 15195-15198](#)) in response to their respective last requests for an appeal. The only reference to a procedural error in those letters is in standard policy language outlining potential grounds for appeal as listed in current HLC policy. The letters would go on to explain why an appeal would not be considered in either case. See also HLC Response #10-12.

Again, HLC appreciates the opportunity to provide this information to the Department. Please do not hesitate to let me know if you have any additional questions.

Sincerely,



Barbara Gellman-Danley
President

CC (via email only): Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education
Elizabeth Daggett, Analyst, U.S. Department of Education

**Anthea Sweeney Transcribed
Interview Exhibit 2**

Re: DCEH and The Art Institutes

Anthea Sweeney

Mon 6/25/2018 4:27 PM

To: David Harpool [REDACTED]

Cc: Barbara Gellman-Danley [REDACTED]; Mary E. Kohart [REDACTED];

Sensitivity Confidential

Good Afternoon,

We do indeed believe a call tomorrow would still be helpful. Please refer to the dial-in information previously provided by the external counsel's office.

Thanks,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: David Harpool <[REDACTED]>
Sent: Sunday, June 24, 2018 8:16 PM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley; Mary E. Kohart
Subject: RE: DCEH and The Art Institutes

I have my client's authority to agree to the following. Here is their request, which I believe to be in the best interest of the Commission, their students and my clients.

1. My clients will, through their ordinary course of business, provide a three-option teach-out plan, for each school within the Commission's region. Each of the schools, will provide their students, three paths/options to degree completion. Path one, is to complete the required course work for graduation, on their current campus, by 12/31/2018. We anticipate, based on our analysis that 1/3 of the students will graduate through the on-campus teach out. Path two, is the option for students to transfer to our online offering. Based on the number of students who have taken online courses, we anticipate 1/3 of the students will complete their degree online. Path three, is to transfer to other regionally accredited institutions, receiving credit for all courses taken and

permitted to pay for their remaining courses, at or below, our institutions current tuition. All three options, will be designed and implemented according to the Commission's teach-out plan guidelines and submitted for approval, no later than 30 days from your agreement, to this proposal. Ordinary course of business means, my client will continue to provide and adequately staff all services required to carry out the teach-out as they have provided prior to the teach-out.

2. All students who earned credits or graduated, from the time of the Schools respective initial accreditation through 12/31/2018, will be deemed to have attended or graduated from an accredited institution Further, that the schools are, have and will continue, to be accredited through 12/31/2018. These statements will be made clear and unambiguous, in our Statement of Affiliation and any required disclosure.

3. My client will, immediately upon approval of this agreement, cease to admit new students to any of the impacted schools.

Please let me know if this proposal is accepted, and whether or not you believe the call, scheduled for Tuesday, is necessary or beneficial.

From: Anthea Sweeney [REDACTED]
Sent: Thursday, June 21, 2018 4:37 PM
To: David Harpool
Cc: Barbara Gellman-Danley; Mary E. Kohart
Subject: Re: DCEH and The Art Institutes

Mr. Harpool,

Thank you for your message. I am responding on behalf of President Barbara Gellman-Danley who is currently away on HLC business. As you may be aware our Board of Trustees will be meeting soon. As a result, this is a very busy time and we are unable to accommodate an in-person meeting. Nevertheless, we would like the opportunity to provide our Board a full update regarding this matter and any proposal you wish to make may benefit from the Board's input.

For that reason, we are proposing a conference call, in lieu of a meeting at one of the following times in advance of our Board meeting:

Monday June 25 - 11:30 a.m. - 12:45 p.m. Central
Tuesday June 26 - 9:30 a.m. - 10:45 a.m. Central

Our external counsel, Mary Kohart Esq., will also be in attendance. A prompt response to this message confirming your availability and who else will be participating on the call would be greatly appreciated. I will then send out dial-in information.

Thanks in advance.

Best Wishes,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

-----Original Message-----

From: David Harpool [REDACTED]
Sent: Wednesday, June 20, 2018 3:08 PM
To: President [REDACTED]
Subject: DCEH and The Art Institutes

Dr. Barbara Gellman-Hanley

I am writing on behalf of our client, DCEH to request a meeting as soon as possible, to discuss the matters raised in our May 21, 2018 letter.

My clients are considering their options in terms of the Art Institutes and I believe a meeting may help us resolve this matter and avoid litigation.

David Harpool, J.D., PHD
Attorney at Law

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**Anthea Sweeney Transcribed
Interview Exhibit 3**

FW: Memo from Herman Bounds

Daggett, Elizabeth

Tue 6/26/2018 2:14 PM

To: Anthea Sweeney

1 attachments (856 KB)

Memo to agencies re accreditation effective date.pdf;

FYI

Elizabeth Daggett

Tel:

From: Sheffield, Cathy

Sent: Tuesday, June 06, 2017 12:36 PM

To: New York Board of Regents-5; 'Accreditation Commission for Acupuncture and Oriental Medicine'; Accreditation Commission for Education in Nursing; Accreditation Commission for Midwifery Education'-2; Accreditation Council for Education in Nutrition and Dietetics; 'Accrediting Bureau of Health Education Schools'; 'Accrediting Commission of Career Schools and Colleges'; 'Accrediting Council for Continuing Education and Training'; 'American Bar Association'; 'American Board of Funeral Service Education'; 'American Council on Pharmaceutical Education'; 'American Dental Association'; American Occupational Therapy Association; 'American Optometric Association'; 'American Osteopathic Association (E-mail)'; 'American Physical Therapy Association'; 'American Podiatric Medical Association'; 'American Psychological Association'; 'American Speech-Language-Hearing Association'; 'American Veterinary Medical Association'; 'Association for Biblical Higher Education (E-mail)'; 'Association for Clinical Pastoral Education Inc'; 'Association for Clinical Pastoral Education Inc'; Association of Advanced Rabbinical and Talmudic Schools; Association of Institutions of Jewish Studies; Commission on Accreditation of Healthcare; Commission on Accrediting of the Association of Theological Schools (ats@ats.edu); 'Commission on Collegiate Nursing Education'; 'Commission on English Language Program Accreditation (E-mail)'; 'Commission on Massage Therapy Accreditation (E-mail)'; 'Council on Accreditation of Nurse Anesthesia Educational Programs (E-mail)'; Council on Chiropractic Education; Council on Education for Public Health; 'Council on Naturopathic Medical Education (E-mail)'; 'Council on Occupational Education (E-mail)'; 'Distance Education Accrediting Commission'; 'Joint Review Committee on Education in Radiologic Technology'; Karen Moynahan; 'Liaison Committee on Medical Education'; Middle States Commission on Higher Education; Middle States Commission on Secondary Schools; Middle States Commission on Secondary Schools; Midwifery Education Accreditation

Council [REDACTED]; 'Montessori Accreditation Council for Teacher Education' [REDACTED]; 'National Accrediting Commission of Career Arts & Sciences (NACCAS) (E-mail) ' [REDACTED]; 'National Asso of Schools of Art & Design' [REDACTED]; 'National Association of Nurse Practitioners in Women's Health' [REDACTED]; New England Association of Schools and Colleges Commission Institutions of Higher Education [REDACTED]; New York Board of Regents --2 [REDACTED]; New York State Board of Regents and Commissioner [REDACTED]; North Central Association of Colleges and Schools HLC [REDACTED]; North Central Association of Colleges and Schools The Higher Learning Commission [REDACTED]; Northwest Commission on Colleges and Universities [REDACTED]; Southern Association of Colleges and Schools Commission on Colleges [REDACTED]; 'Transnational Association of Christain Colleges and Schools (E-mail) ' [REDACTED]; Western Association of Schools and Colleges AccreditingCommission for Community and Junior Colleges [REDACTED]; Western Association of Schools and Colleges AccreditingCommission for Senior Colleges and Universities; [REDACTED]; Kansas Board of Nursing; Maryland State Board of Nursing [REDACTED]; Maryland State Board of Nursing 1 [REDACTED]; [REDACTED]; [REDACTED]; Missouri Board of Nursing 1 [REDACTED]; 'New York State Board of Regents public postsecondary(E-mail) ' [REDACTED]; North Dakota Board of Nursing [REDACTED]; Oklahoma Board of Career and Technology [REDACTED]; Oklahoma Board of Career and Technology Education [REDACTED]; Pennsylvania BCT [REDACTED]; Pennsylvania St BD VT [REDACTED]; Puerto Rico State Approval Agency ([REDACTED]); Puerto Rico Voc Ed ([REDACTED])

Cc: Bounds, Herman; Daggett, Elizabeth; Mula, Chuck; Harris, Nicole S.; Shultz, Rachael; McKissic, Stephanie; Lefor, Valerie

Subject: Memo from Herman Bounds

Dear Executive Directors:

The purpose of this correspondence is to clarify the Department of Education's expectation regarding the accreditation effective date used by accrediting agencies.

Thank you

Cathy Sheffield

Staff Assistant
Accreditation Group
LBJ 6W243

E-mail: [REDACTED]



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

DATE: June 6, 2017

TO: Executive Directors and Presidents,
Recognized Accrediting Agencies

FROM: Herman Bounds Jr. 
Director
Accreditation Division

SUBJECT: Accreditation Effective Date

The purpose of this correspondence is to clarify the U.S. Department of Education's (Department) expectation regarding the accreditation effective date used by accrediting agencies.

The Department of Education requires an accreditation decision to be effective on the date an accrediting agency's decision-making body makes the decision. It cannot be made retroactive, except to the limited extent provided in 34 C.F.R. § 602.22(b) with respect to changes in ownership.

Some questions have arisen as to whether the accreditation effective date can be the date of the on-site review. The answer is no. Sections 602.15(a) (3-6) of the Secretary's Criteria for Recognition (Criteria) clearly reference and distinguish an evaluation body and a decision-making body. The team that conducts the on-site review is an evaluation body and does not have decision-making authority. Establishing the accreditation date as the date of the on-site review is essentially giving that team decision-making authority, which is not in accordance with the Criteria.

As noted in 34 C.F.R. § 602.18, the Department expects the decision-making body to review the entire record, which includes information and documentation other than the on-site review team report, when making its accreditation decision. The on-site review team does not have the information necessary to make an accreditation decision for an accrediting agency, nor is it authorized to do so by the Criteria.

Therefore, any accrediting agency that does not use the date that an accrediting agency's decision-making body makes the decision as the accreditation effective date must amend its policies and cease this practice going forward.

My staff and I are available, as always, to respond to any questions you may have.

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

HLC-OPE 15327

**Anthea Sweeney Transcribed
Interview Exhibit 4**



Policy Title: Accreditation

Number: INST.B.20.030

Grant of Initial Accreditation

The Board of Trustees reviews an institution's application for initial accreditation and all related materials after the institution has undergone evaluation by a team of peer reviewers and an Institutional Actions Council hearing, as defined in Commission policy. Only institutions that have completed candidacy, or been exempted from candidacy by the Board of Trustees following Commission policies on Candidacy, shall be eligible for initial accreditation. The Board of Trustees may grant or deny initial accreditation based on its determination of whether the institution meets the Eligibility Requirements, Criteria for Accreditation, Core Components, and Federal Compliance Requirements. If the Board of Trustees grants initial accreditation, it may grant such accreditation subject to interim monitoring, restrictions on institutional growth or substantive change, or other contingency.

Early Initial Accreditation

An institution may apply for early initial accreditation after two or three years of candidacy following Commission policies on candidacy. The Board of Trustees shall have the discretion to continue candidacy, instead of granting early initial accreditation, in circumstances including, but not limited to, the following: if the Board determines that one or more of the Core Components are not met or met with concerns; if a recommendation for early initial accreditation is conditioned on the scheduling of interim monitoring; or in other circumstances where the Board concludes that a continuation of candidacy, or extension of candidacy to a fifth year, is warranted. Any extension of candidacy to a fifth year shall be granted following Commission policies on extension of candidacy. Such actions to continue candidacy, thereby denying early initial accreditation, or to extend candidacy to a fifth year shall not be considered denial of status and are not subject to appeal.

Accreditation Cycle

Institutions must have accreditation reaffirmed not later than four years following initial accreditation, and not later than ten years following a reaffirmation action. The time for the next reaffirmation is made a part of the accreditation decision, but may be changed if the institution experiences or plans changes. The Commission may extend the period of accreditation not more than one year beyond the decennial cycle or one year beyond the initial accreditation cycle for institutions that present good and sufficient reason for such extension.

Effective Date of Accreditation

The effective date of initial accreditation or reaffirmation of accreditation or other Commission action will be the date the action was taken.

The Commission's Board may grant initial accreditation, with the contingency noted in this subsection, to an institution that applies for accreditation and is determined by the Commission to have met the Criteria for Accreditation but has not yet graduated a class of students in at least one of its degree programs, as required by the Eligibility Requirements. Institutions shall have completed the two-year required minimum candidacy period or received a waiver from the Commission's Board of Trustees. Such action shall be contingent on the institution's graduation of its first graduating class in at least one of its degree programs within no more than thirty days of the Board's action. In such cases, the effective date of accreditation will be the date of this graduating class.

Assumed Practices in the Evaluative Framework for Initial and Reaffirmation of Accreditation

An institution seeking initial accreditation, accredited to candidate status, or removal of Probation or Show-Cause, must explicitly address these requirements when addressing the Criteria. The institution must demonstrate conformity with these Practices as evidence of demonstrating compliance with the Criteria. Institutions undergoing reaffirmation of accreditation will not explicitly address the Assumed Practices except as identified in section INST.A.10.030. Any exemptions from these Assumed Practices must be granted by the Board and only in exceptional circumstances.

Policy Number Key

Section INST: Institutional Processes

Chapter B: Requirements for Achieving and Maintaining Affiliation

Part 20: Defining the Affiliated Entity

Last Revised: November 2015

First Adopted: August 1987

Revision History: renumbered November 2010, revised February 2012, June 2015, November 2015

Notes: Policies combined November 2012 - 1.1(a)1, 1.1(a)2, 1.1(a)3, 1.4, 2013 – 1.1(a)1.2, 1.1(a)1.3, 1.1(a)1.4. The Revised Criteria for Accreditation, Assumed Practices, and other new and revised related policies adopted February 2012 are effective for all accredited institutions on January 1, 2013.

Related Policies:

**Anthea Sweeney Transcribed
Interview Exhibit 5**



User Name: Ben Sinoff

Date and Time: Friday, February 14, 2020 12:16:00 PM EST

Job Number: 110082716

Document (1)

1. [34 CFR 602.22](#)

Client/Matter: -None-

34 CFR 602.22:

Search Type: Natural Language

Narrowed by:

Content Type
Administrative Codes and
Regulations

Narrowed by
-None-

[34 CFR 602.22](#)

This document is current through the February 12, 2020 issue of the Federal Register. Title 3 is current through January 31, 2020.

Code of Federal Regulations > TITLE 34 -- EDUCATION > SUBTITLE B -- REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION > CHAPTER VI -- OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION > PART 602 -- THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES > SUBPART B -- THE CRITERIA FOR RECOGNITION > REQUIRED OPERATING POLICIES AND PROCEDURES

Notice

 There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 602.22 Substantive change. [Effective until July 1, 2020.]

[PUBLISHER'S NOTE: This section was revised at [84 FR 58834, 58922](#), Nov. 1, 2019, effective July 1, 2020. For the convenience of the user, the section has been set out twice. The version effective until July 1, 2020, immediately follows this note. For the version effective July 1, 2020, see the version following this section, also numbered § 602.22.]

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

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

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

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

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

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

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

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

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

(vii)If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or

34 CFR 602.22

organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

(viii)

(A)If the agency's accreditation of an institution enables it to seek eligibility to participate in title IV, HEA programs, the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has--

(1)Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;

(2)At least three additional locations that the agency has approved; and

(3)Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes--

(i)Clearly identified academic control;

(ii)Regular evaluation of the locations;

(iii)Adequate faculty, facilities, resources, and academic and student support systems;

(iv)Financial stability; and

(v)Long-range planning for expansion.

(B)The agency's procedures for approval of an additional location, pursuant to paragraph (a)(2)(viii)(A) of this section, must require timely reporting to the agency of every additional location established under this approval.

(C)Each agency determination or redetermination to preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section may not exceed five years.

(D)The agency may not preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in *34 CFR 600.31* until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.

(E)The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraph (a)(2)(viii)(A) of this section.

(ix)The acquisition of any other institution or any program or location of another institution.

(x)The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

(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.

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

(c) Except as provided in paragraph (a)(2)(viii)(A) of this section, if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location where at least 50 percent of an educational program is offered must provide for a determination of the institution's fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include--

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) An effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

(3) An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

Statutory Authority

([20 U.S.C. 1099b](#))

History

[[59 FR 22258](#), Apr. 29, 1994; [64 FR 55612, 55621](#), Oct. 20, 1999; [74 FR 55414, 55428](#), Oct. 27, 2009]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[74 FR 55414, 55428](#), Oct. 27, 2009, amended this section, effective July 1, 2010.]

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

34 CFR 602.22

CROSS-REFERENCE: Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for increasing the Access of all Students to That Instruction, 34 CFR Part 208.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Final priorities, see: 78 FR 5036, Jan. 23, 2013; [79 FR 17035](#), Mar. 27, 2014; [79 FR 31028, May 30, 2014](#); [79 FR 31031, May 30, 2014](#); [79 FR 31870, June 3, 2014](#); [79 FR 32651, June 6, 2014](#); [79 FR 33432, June 11, 2014](#); [80 FR 27036, May 11, 2015](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Interpretation, see: [83 FR 10619](#), Mar. 12, 2018.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 602 Clarification, see: [80 FR 73991](#), Nov. 27, 2015.]

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End of Document

**Anthea Sweeney Transcribed
Interview Exhibit 6**

Re: Dream Center/Art Institutes Follow-Up

Anthea Sweeney

Tue 7/3/2018 7:52 PM

To: Jones, Diane [REDACTED];

Cc: Barbara Gellman-Danley [REDACTED];

Dear Diane,

We can certainly connect on Thursday or Friday this week. My schedule offers the most flexibility on in the afternoons on both days. However, feel free to call my direct line at your convenience.

Thanks so much for your response. Have a Happy 4th.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Jones, Diane [REDACTED]
Sent: Tuesday, July 3, 2018 1:36 PM
To: Anthea Sweeney
Cc: Barbara Gellman-Danley
Subject: RE: Dream Center/Art Institutes Follow-Up

Thanks so much, Anthea, for the update. We will be issuing guidance to address the retroactive accreditation date more generally, but I will also be happy to provide a written letter to HLC on this specific issue to make sure that you don't need to worry about how this might impact your own recognition at a later time. I've been on the receiving end of enough ED decisions to know that having things in writing is critically important!!!

We agree that this is a challenging situation, and are grateful that HLC and other accreditors are willing to work with us to make sure that these are high quality teach-outs that serve the best interests of students.

I have meetings until around 5pm, so if we don't connect today, can we touch base later this week?

Thanks,
Diane

From: Anthea Sweeney [REDACTED]
Sent: Tuesday, July 03, 2018 2:08 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Dream Center/Art Institutes Follow-Up
Importance: High

Dear Under-Secretary-Jones,

I write to follow up on our recent telephone conversation on June 28 and at the request of Dr. Gellman-Danley concerning the Art Institutes. This morning a working group met to discuss the recent developments with the institutions. We appreciate your desire to coordinate required teach-out processes to ensure consistency across the multiple regional accreditors.

Here is our current status:

- 1) The Institutes will both very shortly host focused visits that are required by federal regulation after their recent transaction on July 16-17, 2018.
- 2) We believe our Board can consider an earlier reinstatement of accreditation than initially contemplated in its original action letter based on the best interests of students.
- 3) What we would like to request is written assurance from the Department of Education that an HLC Board decision to have the Institutes' accredited status reinstated effective as of January 19, 2018 through December 31, 2018 (in other words ensuring continuous accredited status and eliminating the period of Change of Control candidacy) will be acceptable to the Department of Education and will not jeopardize HLC's recognition.

As you can appreciate, these are highly extraordinary circumstances and we want to be sure our Board is fully apprised of the Department's unequivocal support for what will be a unique action. At the same time, we share your concern for the welfare of students currently enrolled at the Institutes.

I am available through close of business today at my direct line below and will reach out by phone to follow up later this afternoon.

Thank you.

Best Regards,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

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**Anthea Sweeney Transcribed
Interview Exhibit 7**

Re: Art Institutes

Anthea Sweeney

Wed 6/27/2018 9:22 PM

To: Jones, Diane [REDACTED];

Cc: Barbara Gellman-Danley [REDACTED];

Thanks. I am available anytime tonight or between 6.00 a.m. and 7.30 a.m. Central tomorrow. I will watch for your call. Our Board meeting begins at 8.00 a.m. Central. Same cell number [REDACTED]. Thank you.

Anthea

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From: Jones, Diane
Sent: Wednesday, June 27, 7:51 PM
Subject: RE: Art Institutes
To: Anthea Sweeney
Cc: Barbara Gellman-Danley

Hi Anthea,

I am finally back in the office – lots of detours along the way....sorry about that. If you are available and wish to chat tonight, I am happy to speak now, and if not, when might be a good time to call you tomorrow?

Diane

From: Anthea Sweeney [mailto:[REDACTED]]
Sent: Wednesday, June 27, 2018 4:45 PM
To: Jones, Diane
Cc: Barbara Gellman-Danley
Subject: Re: Art Institutes

Dr. Jones,

Thanks so much for your message. I will wait for your call. I just also got off the phone with both Beth Daggett and Herman Bounds, who called me together and indicated (similarly) that the memo is not applicable in this particular situation.

They have advised that HLC should be mindful of current federal regulations on ensuring consistency in decisionmaking (34 CFR 602.18) and that the cleanest way to do this is to look at our reconsideration policy, which is a policy that already exists and is available already to all institutions.

I am free and stand ready to speak with you at your convenience at [REDACTED].

Thank you,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604

Main Tel.: [REDACTED]

Direct Line: [REDACTED]

Fax: [REDACTED]

From: Jones, Diane [REDACTED]

Sent: Wednesday, June 27, 2018 3:32 PM

To: Anthea Sweeney

Cc: Barbara Gellman-Danley

Subject: Re: Art Institutes

Hi Anthea,

I am on my way back from meetings and will call you as soon as I get back. The guidance document was issued in error and we will be releasing corrected guidance. We've actually been working on a document to rescind that guidance and we were planning to issue it this week. I'm disappointed that it got sent to you since it is known that we are retracting that policy because it creates a catch 22 for students who enroll in programs that won't issue accreditation until the first class graduates. That accreditation should apply to the students enrolled in the cohort that led to accreditation.

The main point is that we want students who are graduating to be able to graduate from an accredited program since it was accredited when they enrolled and during their enrollment. It would be limited to students in the teach out plan as well as those who are transferring credits earned at AI until this point or who are transitioning to the accredited on-line campus. AI would not be allowed to enroll new students and the teach out would be carefully monitored, but the goal is to make students whole and close the school.

I'll call you ASAP.

Diane

Sent from my iPhone

On Jun 27, 2018, at 3:47 PM, Anthea Sweeney [REDACTED] wrote:

Dear Under-Secretary Jones,

I write urgently to follow up on my voicemail earlier this afternoon. I understand from President Gellman-Danley that the Art Institutes have reached out to your office seeking support for a confidential proposal which they presented to HLC this week, in lieu of proceeding with HLC's established processes, to seek reinstatement of accreditation.

The proposal in short indicates that with agreement by HLC to nullify its Board's previous action, which was based on evaluation and evidence, to move the Institutes from Accredited to Candidate status after approving their transaction with the Dream Center, they would cease enrolling students and teach-out currently enrolled students through 12/31/2018, except for those students who transfer to their online Division which is accredited by Middle States. Such an action would involve our Board deeming the Institutes "accredited" retroactive to the date of action (January 20, 2018).

Yesterday we listened and clarified the salient points of the proposal. We were already scheduled to provide our Board an update this week and committed only to proceeding with that update. We also received guidance (attached) from our analyst at the U.S. Department of Education, Beth Daggett, regarding retroactive actions by accreditors, as authored by Herman Bounds. We would greatly appreciate having clarity from the Department for purposes of our Board update as to how any decision they may make at a later date will be viewed by the Department.

I am available by cell at [REDACTED] and look forward to speaking with you.

Best Wishes,

Anthea M. Sweeney

Vice President for Legal and Governmental Affairs

Higher Learning Commission

230 South LaSalle Street, Suite 7-500

Chicago, IL 60604

**Anthea Sweeney Transcribed
Interview Exhibit 8**



User Name: Ben Sinoff

Date and Time: Friday, February 14, 2020 12:24:00 PM EST

Job Number: 110083794

Document (1)

1. [34 CFR 602.18](#)

Client/Matter: -None-

34 CFR 602.22:

Search Type: Natural Language

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Content Type

Administrative Codes and
Regulations

Narrowed by

-None-

[34 CFR 602.18](#)

This document is current through the February 12, 2020 issue of the Federal Register. Title 3 is current through January 31, 2020.

Code of Federal Regulations > TITLE 34 -- EDUCATION > SUBTITLE B -- REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION > CHAPTER VI -- OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION > PART 602 -- THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES > SUBPART B -- THE CRITERIA FOR RECOGNITION > REQUIRED STANDARDS AND THEIR APPLICATION

Notice

 There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 602.18 Ensuring consistency in decision-making. [Effective until July 1, 2020.]

[PUBLISHER'S NOTE: This section was revised at [84 FR 58834, 58920](#), Nov. 1, 2019, effective July 1, 2020. For the convenience of the user, the section has been set out twice. The version effective until July 1, 2020, immediately follows this note. For the version effective July 1, 2020, see the version following this section, also numbered § 602.18.]

The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency--

- (a) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited;
- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards;
- (d) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate; and
- (e) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards.

Statutory Authority

[\(20 U.S.C. 1099b\)](#)

History

[[64 FR 55612, 55620](#), Oct. 20, 1999; [74 FR 55414, 55427](#), Oct. 27, 2009]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[74 FR 55414, 55427](#), Oct. 27, 2009, amended this section, effective July 1, 2010.]

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

CROSS-REFERENCE: Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for increasing the Access of all Students to That Instruction, 34 CFR Part 208.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Final priorities, see: 78 FR 5036, Jan. 23, 2013; [79 FR 17035](#), Mar. 27, 2014; [79 FR 31028, May 30, 2014](#); [79 FR 31031, May 30, 2014](#); [79 FR 31870, June 3, 2014](#); [79 FR 32651, June 6, 2014](#); [79 FR 33432, June 11, 2014](#); [80 FR 27036, May 11, 2015](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Interpretation, see: [83 FR 10619](#), Mar. 12, 2018.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 602 Clarification, see: [80 FR 73991](#), Nov. 27, 2015.]

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**Anthea Sweeney Transcribed
Interview Exhibit 9**

Re: Cmte on Accreditation Notes

Anthea Sweeney

Wed 6/27/2018 2:55 PM

To: Daggett, Elizabeth [REDACTED]

Cc: Bounds, Herman [REDACTED]

Perfect. Thank you so much. I have not heard back from Under-Secretary Jones as of yet. I look forward very much to speaking with you both.

Anthea

From: Daggett, Elizabeth [REDACTED] >
Sent: Wednesday, June 27, 2018 2:29 PM
To: Anthea Sweeney
Cc: Bounds, Herman
Subject: RE: Cmte on Accreditation Notes

Herman and I will call you at 4pm ET. Thanks.

Elizabeth Daggett

Tel: [REDACTED]

[REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, June 27, 2018 2:52 PM
To: Daggett, Elizabeth
Subject: Re: Cmte on Accreditation Notes

Yes. Please call my cell at [REDACTED] after 3.30p.m. your time. I am offsite. I need to speak with you too as Diane Auer Jones (new Under-Secretary) has now reached out to our President with different ideas about the Art Institutes, despite Herman's memo. I am urgently asked to reach her asap. I will look to connect with you after.

Thanks, Beth.

Anthea

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From: Daggett, Elizabeth [REDACTED]
Sent: Wednesday, June 27, 2018 8:23:59 AM

To: Anthea Sweeney
Subject: RE: Cmte on Accreditation Notes

Hi, Anthea. I've taken a look at your proposal and have some questions. Do you have time this afternoon?
Beth

Elizabeth Daggett

Tel: ([REDACTED])
[REDACTED]

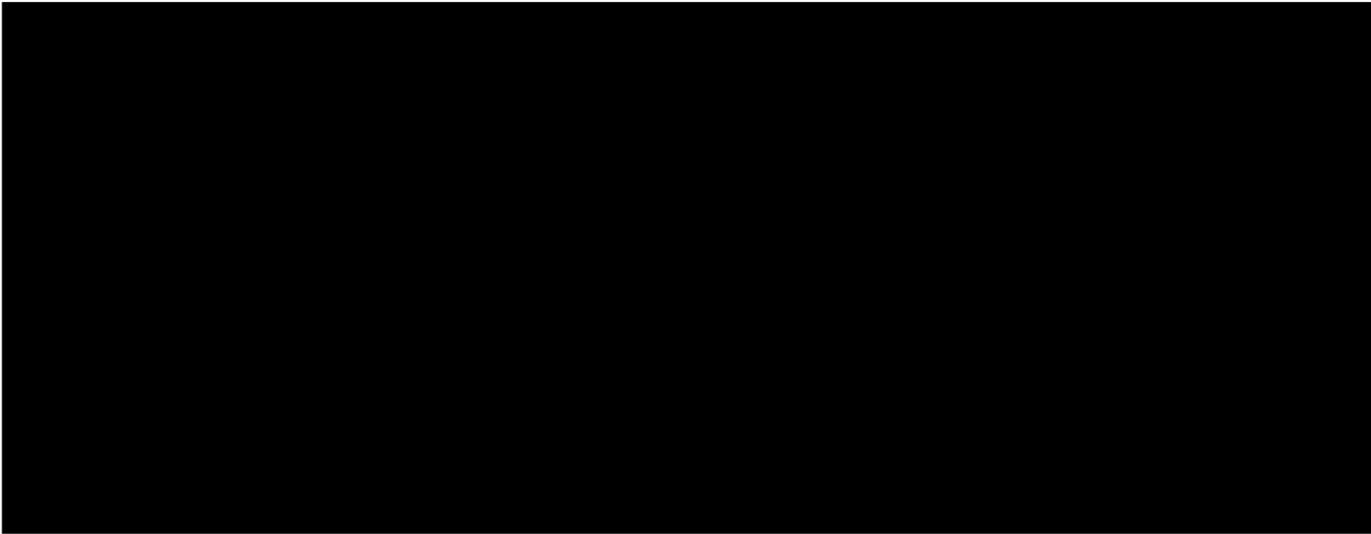
From: Anthea Sweeney [mailto:[REDACTED]]
Sent: Tuesday, June 26, 2018 3:28 PM
To: Daggett, Elizabeth
Subject: Fw: Cmte on Accreditation Notes

Beth,

Here is the concept as I described to the Committee on Accreditation (a subcommittee of our Board). They're still thinking it over. I would greatly value your opinion on such a policy before Thursday morning.
Thanks,
Anthea

From: Anthea Sweeney
Sent: Saturday, June 23, 2018 11:30 AM
To: [REDACTED]; John Richman [REDACTED]; [REDACTED]; [REDACTED]
Cc: Barbara Gellman-Danley
Subject: Re: Cmte on Accreditation Notes

Greetings All,



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for your consideration.

Very Respectfully,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

**Anthea Sweeney Transcribed
Interview Exhibit 10**



Policy Title: Criteria for Accreditation

Number: CRRT.B.10.010

HLC's Board of Trustees adopted [revised Criteria for Accreditation](#) at its February 2019 meeting. The revised Criteria will go into effect on September 1, 2020.

The Criteria for Accreditation are the standards of quality by which the Commission determines whether an institution merits accreditation or reaffirmation of accreditation. They are as follows:

Criterion 1. Mission

The institution's mission is clear and articulated publicly; it guides the institution's operations.

Core Components

1.A. The institution's mission is broadly understood within the institution and guides its operations.

1. The mission statement is developed through a process suited to the nature and culture of the institution and is adopted by the governing board.
2. The institution's academic programs, student support services, and enrollment profile are consistent with its stated mission.
3. The institution's planning and budgeting priorities align with and support the mission. (This sub-component may be addressed by reference to the response to Criterion 5.C.1.)

1.B. The mission is articulated publicly.

1. The institution clearly articulates its mission through one or more public documents, such as statements of purpose, vision, values, goals, plans, or institutional priorities.
2. The mission document or documents are current and explain the extent of the institution's emphasis on the various aspects of its mission, such as instruction, scholarship, research, application of research, creative works, clinical service, public service, economic development, and religious or cultural purpose.

3. The mission document or documents identify the nature, scope, and intended constituents of the higher education programs and services the institution provides.
- 1.C. The institution understands the relationship between its mission and the diversity of society.
 1. The institution addresses its role in a multicultural society.
 2. The institution's processes and activities reflect attention to human diversity as appropriate within its mission and for the constituencies it serves.
 - 1.D. The institution's mission demonstrates commitment to the public good.
 1. Actions and decisions reflect an understanding that in its educational role the institution serves the public, not solely the institution, and thus entails a public obligation.
 2. The institution's educational responsibilities take primacy over other purposes, such as generating financial returns for investors, contributing to a related or parent organization, or supporting external interests.
 3. The institution engages with its identified external constituencies and communities of interest and responds to their needs as its mission and capacity allow.

Criterion 2. Integrity: Ethical and Responsible Conduct

The institution acts with integrity; its conduct is ethical and responsible.

Core Components

- 2.A. The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff.
- 2.B. The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships.
- 2.C. The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.
 1. The governing board's deliberations reflect priorities to preserve and enhance the institution.
 2. The governing board reviews and considers the reasonable and relevant interests of the institution's internal and external constituencies during its decision-making deliberations.

3. The governing board preserves its independence from undue influence on the part of donors, elected officials, ownership interests, or other external parties when such influence would not be in the best interest of the institution.
4. The governing board delegates day-to-day management of the institution to the administration and expects the faculty to oversee academic matters.

2.D. The institution is committed to freedom of expression and the pursuit of truth in teaching and learning.

2.E. The institution's policies and procedures call for responsible acquisition, discovery and application of knowledge by its faculty, students and staff.

1. The institution provides effective oversight and support services to ensure the integrity of research and scholarly practice conducted by its faculty, staff, and students.
2. Students are offered guidance in the ethical use of information resources.
3. The institution has and enforces policies on academic honesty and integrity.

Criterion 3. Teaching and Learning: Quality, Resources, and Support

The institution provides high quality education, wherever and however its offerings are delivered.

Core Components

3.A. The institution's degree programs are appropriate to higher education.

1. Courses and programs are current and require levels of performance by students appropriate to the degree or certificate awarded.
2. The institution articulates and differentiates learning goals for its undergraduate, graduate, post-baccalaureate, post-graduate, and certificate programs.
3. The institution's program quality and learning goals are consistent across all modes of delivery and all locations (on the main campus, at additional locations, by distance delivery, as dual credit, through contractual or consortial arrangements, or any other modality).

3.B The institution demonstrates that the exercise of intellectual inquiry and the acquisition, application, and integration of broad learning and skills are integral to its educational programs.

1. The general education program is appropriate to the mission, educational offerings, and degree levels of the institution.

2. The institution articulates the purposes, content, and intended learning outcomes of its undergraduate general education requirements. The program of general education is grounded in a philosophy or framework developed by the institution or adopted from an established framework. It imparts broad knowledge and intellectual concepts to students and develops skills and attitudes that the institution believes every college-educated person should possess.
3. Every degree program offered by the institution engages students in collecting, analyzing, and communicating information; in mastering modes of inquiry or creative work; and in developing skills adaptable to changing environments.
4. The education offered by the institution recognizes the human and cultural diversity of the world in which students live and work.
5. The faculty and students contribute to scholarship, creative work, and the discovery of knowledge to the extent appropriate to their programs and the institution's mission.

3.C. The institution has the faculty and staff needed for effective, high-quality programs and student services.

1. The institution has sufficient numbers and continuity of faculty members to carry out both the classroom and the non-classroom roles of faculty, including oversight of the curriculum and expectations for student performance; establishment of academic credentials for instructional staff; involvement in assessment of student learning.
2. All instructors are appropriately qualified, including those in dual credit, contractual, and consortial programs.
3. Instructors are evaluated regularly in accordance with established institutional policies and procedures.
4. The institution has processes and resources for assuring that instructors are current in their disciplines and adept in their teaching roles; it supports their professional development.
5. Instructors are accessible for student inquiry.
6. Staff members providing student support services, such as tutoring, financial aid advising, academic advising, and co-curricular activities, are appropriately qualified, trained, and supported in their professional development.

3.D. The institution provides support for student learning and effective teaching.

1. The institution provides student support services suited to the needs of its student populations.

2. The institution provides for learning support and preparatory instruction to address the academic needs of its students. It has a process for directing entering students to courses and programs for which the students are adequately prepared.
3. The institution provides academic advising suited to its programs and the needs of its students.
4. The institution provides to students and instructors the infrastructure and resources necessary to support effective teaching and learning (technological infrastructure, scientific laboratories, libraries, performance spaces, clinical practice sites, museum collections, as appropriate to the institution's offerings).
5. The institution provides to students guidance in the effective use of research and information resources.

3.E. The institution fulfills the claims it makes for an enriched educational environment.

1. Co-curricular programs are suited to the institution's mission and contribute to the educational experience of its students.
2. The institution demonstrates any claims it makes about contributions to its students' educational experience by virtue of aspects of its mission, such as research, community engagement, service learning, religious or spiritual purpose, and economic development.

Criterion 4. Teaching and Learning: Evaluation and Improvement

The institution demonstrates responsibility for the quality of its educational programs, learning environments, and support services, and it evaluates their effectiveness for student learning through processes designed to promote continuous improvement.

Core Components

- 4.A. The institution demonstrates responsibility for the quality of its educational programs.
 1. The institution maintains a practice of regular program reviews.
 2. The institution evaluates all the credit that it transcripts, including what it awards for experiential learning or other forms of prior learning, or relies on the evaluation of responsible third parties.
 3. The institution has policies that assure the quality of the credit it accepts in transfer.
 4. The institution maintains and exercises authority over the prerequisites for courses, rigor of courses, expectations for student learning, access to learning resources, and faculty

qualifications for all its programs, including dual credit programs. It assures that its dual credit courses or programs for high school students are equivalent in learning outcomes and levels of achievement to its higher education curriculum.

5. The institution maintains specialized accreditation for its programs as appropriate to its educational purposes.
6. The institution evaluates the success of its graduates. The institution assures that the degree or certificate programs it represents as preparation for advanced study or employment accomplish these purposes. For all programs, the institution looks to indicators it deems appropriate to its mission, such as employment rates, admission rates to advanced degree programs, and participation rates in fellowships, internships, and special programs (e.g., Peace Corps and Americorps).

4.B. The institution demonstrates a commitment to educational achievement and improvement through ongoing assessment of student learning.

1. The institution has clearly stated goals for student learning and effective processes for assessment of student learning and achievement of learning goals.
2. The institution assesses achievement of the learning outcomes that it claims for its curricular and co-curricular programs.
3. The institution uses the information gained from assessment to improve student learning.
4. The institution's processes and methodologies to assess student learning reflect good practice, including the substantial participation of faculty and other instructional staff members.

4.C. The institution demonstrates a commitment to educational improvement through ongoing attention to retention, persistence, and completion rates in its degree and certificate programs.

1. The institution has defined goals for student retention, persistence, and completion that are ambitious but attainable and appropriate to its mission, student populations, and educational offerings.
2. The institution collects and analyzes information on student retention, persistence, and completion of its programs.
3. The institution uses information on student retention, persistence, and completion of programs to make improvements as warranted by the data.

4. The institution's processes and methodologies for collecting and analyzing information on student retention, persistence, and completion of programs reflect good practice. (Institutions are not required to use IPEDS definitions in their determination of persistence or completion rates. Institutions are encouraged to choose measures that are suitable to their student populations, but institutions are accountable for the validity of their measures.)

Criterion 5. Resources, Planning, and Institutional Effectiveness

The institution's resources, structures, and processes are sufficient to fulfill its mission, improve the quality of its educational offerings, and respond to future challenges and opportunities. The institution plans for the future.

Core Components

- 5.A. The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future.
 1. The institution has the fiscal and human resources and physical and technological infrastructure sufficient to support its operations wherever and however programs are delivered.
 2. The institution's resource allocation process ensures that its educational purposes are not adversely affected by elective resource allocations to other areas or disbursement of revenue to a superordinate entity.
 3. The goals incorporated into mission statements or elaborations of mission statements are realistic in light of the institution's organization, resources, and opportunities.
 4. The institution's staff in all areas are appropriately qualified and trained.
 5. The institution has a well-developed process in place for budgeting and for monitoring expense.
- 5.B. The institution's governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.
 1. The governing board is knowledgeable about the institution; it provides oversight of the institution's financial and academic policies and practices and meets its legal and fiduciary responsibilities.

2. The institution has and employs policies and procedures to engage its internal constituencies—including its governing board, administration, faculty, staff, and students—in the institution’s governance.
 3. Administration, faculty, staff, and students are involved in setting academic requirements, policy, and processes through effective structures for contribution and collaborative effort.
- 5.C. The institution engages in systematic and integrated planning.
1. The institution allocates its resources in alignment with its mission and priorities.
 2. The institution links its processes for assessment of student learning, evaluation of operations, planning, and budgeting.
 3. The planning process encompasses the institution as a whole and considers the perspectives of internal and external constituent groups.
 4. The institution plans on the basis of a sound understanding of its current capacity. Institutional plans anticipate the possible impact of fluctuations in the institution’s sources of revenue, such as enrollment, the economy, and state support.
 5. Institutional planning anticipates emerging factors, such as technology, demographic shifts, and globalization.
- 5.D. The institution works systematically to improve its performance.
1. The institution develops and documents evidence of performance in its operations.
 2. The institution learns from its operational experience and applies that learning to improve its institutional effectiveness, capabilities, and sustainability, overall and in its component parts.

Policy Number Key

Section CRRT: Criteria and Requirements

Chapter B: Criteria for Accreditation

Part 10: General

Last Revised: June 2014

First Adopted: August 1992

Revision History: Criterion Three revised August 1998; revised February 2002; revised February 2007. New Criteria for Accreditation adopted February 2003, effective January 2005; New Criteria for Accreditation adopted February 2012, effective January 2013; Revised June 2013, June 2014.

**Anthea Sweeney Transcribed
Interview Exhibit 11**



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

October 31, 2018

By E-mail Transmission Only

Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, Illinois 60604

**Re: Art Institute of Colorado and the Illinois Institute of Art – Change of Control
Candidacy Status**

Dear Barbara:

The Department understands that the Higher Learning Commission (“HLC”) will consider the accreditation status of the Art Institute of Colorado (“AI Colorado”) and the Illinois Institute of Art (“AI Illinois”) (collectively, the “Art Institutes”) at its upcoming meeting in November. These two institutions were formerly owned by Education Management Corporation (“EDMC”) and were sold to Dream Center Education Holdings, Inc. (“DCEH”) in a transaction that closed on January 20, 2018. By action taken by its Board of Trustees (“Board”) during its meeting on November 2-3, 2017, HLC moved the Art Institutes to Change of Control Candidacy Status (“CCC-Status”) effective on the closing date of the transaction with DCEH. This decision was communicated to DCEH in a letter dated November 16, 2017 (“CCC-Status Letter” or “Ltr.”).

The Department is concerned that CCC-Status has caused disruption and confusion for students, graduates and the Department. This confusion was further exacerbated by information provided by an HLC site visitor during a meeting with students on July 16, 2018, in which the site visitor assured students that should accreditation be awarded, which he said was likely given all of the evidence he reviewed in preparation for and during the site visit, it would be given a “retroactive” effective date concurrent with the date of change of control.

It appears that this is the first time that HLC has placed an institution on CCC-Status. Even the Department did not understand until recently that HLC considered CCC-Status an adverse action that resulted in the withdrawal of accreditation for the Art Institutes. However, under

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Department regulations, an “adverse action” is a denial, withdrawal, suspension, revocation, or termination of accreditation or pre-accreditation, or a comparable action. 34 C.F.R. § 602.03. The Department’s regulations do not include an adverse action that would take an institution from accredited to non-accredited status and potentially back to accredited status within a period of time of less than one year and based on the results of a focused review. Once an agency takes a withdrawal action, short of rescinding that action (at which time the rescission would date back to the date of the action), the institution must undergo the full initial accreditation review process pursuant to the agency’s published standards, policies and processes. Absent rescission, an institution that has had its accreditation withdrawn for cause is Title IV ineligible for two years. 34 C.F.R. § 600.11(c).

The Department has several concerns regarding CCC-Status, and how it was implemented and communicated in regard to AI Illinois and AI Colorado. As noted above, the Department’s regulations define “adverse action” as “the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution.” *See* at 34 C.F.R. § 602.3(definitions). The HLC Policy Book (“Policy”) identifies “Accredited to Candidate Status” as an adverse action that is not a final action and is subject to appeal (INST.E.50.010). However, the CCC-Status Letter does not state that the change to CCC-Status is an adverse action, nor did it advise the Art Institutes or DCEH that it had a right to appeal. Rather, the CCC-Status Letter conveyed that the status constituted “conditions” upon which HLC would approve the change of ownership, and those conditions could be accepted or not. Ltr. at 4, 7. The Art Institutes apparently “accepted” the conditions so that the change of ownership would be approved, and as a result – seemingly inadvertently – acquiesced to a non-accredited status. There is no basis in the Department’s regulations for such a status. In addition, the CCC-Status Letter is in conflict with HLC’s policy regarding change of control status which lists the “conditions” of approval to include limitations on enrollment growth, new programs or the establishment of branch campuses. *See* INST.F.20.070. These conditions do not include forfeiture of accreditation. Subsequent communications between HLC and counsel for DCEH that have been shared with the Department, as well as our review of the videotaped conversation between the HLC site visitor and students at AI Illinois, only further muddied the situation.

The confusion about the status is not cleared up by a review of the related Policies. In INST.F.20.070, HLC states that “the Board may approve the change, thereby authorizing accreditation subsequent to the close of the transaction, or it may deny approval for the change.” This suggests that if HLC approves a change in control status, accreditation will continue beyond the close of the transaction. The policy goes on to state that upon approval of change of control,

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the Board may impose certain conditions upon the institution, such as limitations on new programs, enrollment growth, or the establishment of branch campuses. It does not list loss of accreditation as a possible “condition” of the change of control. Later, the policy states that “if the Board votes to approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction...,” which similarly suggests that if the Board approves the change of control, accreditation continues, though is subject to further review and the application of the limitations described above. INST.F.20.070 also states that if the Board determines that the transaction does not meet its five requirements, it will not approve the transaction.

In addition, if the Board determines that a proposed change of ownership and control constitutes the creation of a new institution (the parameters of which are not defined), the institution is moved to CCC-Status. *See* INST.B.20.040 and INST.F.20.070. No such finding is reflected in the CCC-Status Letter. Further, INST.E.50.010 states that the Board may move an institution to CCC-Status only if it meets all of the Eligibility Requirements and conforms with Assumed Practices “but *no longer meets* all of the Criteria for Accreditation and Federal Compliance Requirements.” The CCC-Status Letter does not indicate that the Art Institutes “no longer meet” all of the Criteria or Compliance Requirements. Instead, in regard to the basis upon which the Board based its action, the CCC-Status Letter indicates that approval factors were “met” or were “Met with Concerns.” Ltr. at 4-6. Similarly, INST.F.20.080 provides that if the post-transaction evaluation determines that if the Eligibility Requirements are met, “but not the Criteria for Accreditation,” the institution may be recommended “to be continued in status only as a candidate for accreditation.” The situation is further confused by INST.B.20.040, which states that HLC’s approval of a change in control is necessary prior to its consummation to *effectuate the continued accreditation of the institution*. Indeed, the CCC-Status Letter reads more like a probation or show cause notification, neither of which would have constituted a withdrawal, loss, or termination of accreditation.

Nor does CCC-Status comport with the requirements for withdrawal of accreditation set forth in INST.B.60.010, although the effect of CCC-Status appears to be the same. There has been no finding that the Art Institutes do not meet one or more Criteria or HLC’s Federal Compliance Requirements, that they failed to conform with the Assumed Practices, or that they failed to meet the Obligations of Affiliation. In fact, as noted above, the CCC-Status Letter indicates that the approval factors were “met” or “Met with Concerns” and that the Art Institutes were required to provide additional documentation and complete a focused on-site review.

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When the Board takes an action, INST.D.40.010 requires the action letter to provide information about opportunities for institutional response. Here, the only information provided was for the Art Institutes to accept or reject the conditions. The CCC-Status Letter did not advise the institutions that the decision to impose CCC-Status could be appealed.

Only in INST.E.50.010, but not in its other policies regarding change of control review, does HLC define change of control candidacy as an adverse action, but it refers back to INST. B.20.040, where change of control status is the result of the Board's determination that the transaction effectively "builds a new institution" bypassing the Eligibility Process and initial status review by means of a comprehensive evaluation. However, INST.B.20.040 states that under such circumstances, the Board will not approve the change of control. That the Board approved the change of control suggests that it did not determine that the change of control resulted in the building of a new institution.

There is no provision in the Department's regulations for an adverse action that would revoke accreditation and at the same time award candidacy status, which the Department assumes is the equivalent of preaccreditation. Indeed, the CCC-Status Letter refers to CCC-Status as a "preaccreditation status." However, there is no adverse action that would automatically transition an accredited institution to a preaccredited institution rather than a non-accredited institution.

An adverse action that immediately removed accreditation status would require the agency to follow its normal due process requirements, including the imposition of its published wait-out period prior to considering a new application for Eligibility or accreditation. HLC's Eligibility Requirements (CRR.T.A.10.010 -18) state that an institution may not have had its accreditation revoked within five years of the initiation of the Eligibility Process. Therefore, HLC could not take an adverse action (such as withdrawal of accreditation) at the time of change of control, and then propose to consider a new award of accreditation within a period of less than five years and without requiring the institution to submit a new application for accreditation. Doing so would violate the Department's regulations regarding due process and the consistent application of the agency's standards.

Having now seen the first example of HLC's application of CCC-Status, the Department has grave concerns as to whether the Policy itself, and as applied to the Art Institutes, is in compliance with the Department's requirements. As set forth in 34 C.F.R. § 602.25, the Department requires the agency's standards to be written clearly and applied consistently, which is not the case here since neither the Department, the HLC site visitor, nor apparently DCEH fully understood what CCC-Status meant. The policy appears to create a new accreditation

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category that is not listed in the Department's regulations, and that creates an accreditation "no man's land." Neither the Department's regulations nor HLC Policy provide a basis upon which the Art Institutes could have been moved to an unaccredited status between the date of the approved change of control (January 20, 2018) and the date of the Board's decision.

Separate from this case, the Department would like to point out its concern about the statement in INST. B. 20.040 which suggests that change of control status will be granted only when such a change is in the best interest of the Commission. It is unclear to the Department how the Commission would determine what is or is not in its best interest, but the point of accreditation reviews and determinations is to do what is in the best interest of the student. Allowing a previously accredited institution to continue educating students for ten months, knowing that credits or degrees earned during that time would not be accredited absent a retroactive "re-accreditation," simply does not serve the students' or the Commission's best interests.

Sincerely,



Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of the Under
Secretary and the Assistant Secretary for
Postsecondary Education

**Anthea Sweeney Transcribed
Interview Exhibit 12**



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November 16, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
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Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
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Chicago, IL 60654

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC
7135 East Camelback Road
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Dear President Monday, President Pond, and Mr. Richardson:

This letter is formal notification of action taken by the Higher Learning Commission (“HLC” or “the Commission”) Board of Trustees (“the Board”) concerning Illinois Institute of Art (“IIA”) and the Art Institute of Colorado (“AIC”) (“the Institutes” or “the institutions,” collectively). During its meeting on November 2-3, 2017, the Board voted to approve the application for Change of Control, Structure, or Organization wherein the Dream Center Foundation (“DCF”), through Dream Center Education Holdings LLC (“DCEH” or “the buyers”) and related intermediaries, acquires certain assets currently held by Education Management Corporation (“EDMC”), including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below. In taking this action, the Board considered materials submitted to the Commission including: the Change of Control, Structure or Organization application, the Summary Report and its attachments, the additional information provided by the Institutes throughout the review process, and the Institutes’ responses to the Summary Report.

As noted under policy, the Commission considers five factors in determining whether to approve a requested Change of Control, Structure, or Organization. It is the applying institution’s burden, in its request and submission of related information, to demonstrate with clear and convincing evidence that the transaction meets these five factors and to resolve any concerns or ambiguities regarding the transaction and its impact on the institution and its ability to meet Commission

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requirements. The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future.

The conditions set forth by the Board in its approval of the application subject to Change of Control Candidate for Accreditation are as follows:

The institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.

The institutions submit an interim report every 90 days following the date of the consummation of the transaction until their next comprehensive evaluations on the following topics:

- Current term enrollment at the institutions. This should include the number of full- and part-time students, as well as comparisons to planned enrollment numbers. The institutions should also provide revised enrollment projections based on enrollments at the time of submission;
- Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institutions;
- Information regarding any complaints received by DCF, DCEH or any of the institutions;
- Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, (“DCEM”), or any of the institutions;
- Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions;
- Information regarding reductions in faculty and/or staff at any of the institutions;
- Updated student retention and completion measures for each of the institutions;
- Copies of any information sent to the U.S. Department of Education (“USDE”), including any information sent in response to the USDE’s September 11, 2017 letter (or any updates to that letter); and
- An update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator.

The institutions submit separate Eligibility Filings no later than February 1, 2018, providing detailed documentation that each institution meets the Eligibility Requirements

and Assumed Practices, as well as a highly detailed plan with timelines, action steps, and personnel assignments to remedy issues related to Core Components 1.D, regarding commitment to the public good; 2.A, regarding integrity and ethical behavior; 2.B, regarding public disclosure and transparency; 2.C, regarding the autonomy of board governance; 4.A, regarding improving program outcomes; 5.A, regarding financial resources; and 5.C, regarding planning, with specific focus on enrollment and financial planning. The outcome of this process shall be reported to the HLC Board of Trustees at its spring 2018 meeting.

The institutions host a visit within six months of the transaction date, as required by HLC policy and federal regulation, focused on ascertaining the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.

The institutions host a focused visit no later than June 2019, to include a visit to the Dream Center Foundation and Dream Center Education Holdings, on the following topics:

- Core Component 1.D:
 - The institutions should provide evidence that the missions of the institutions demonstrate a commitment to public good. Specifically, that the institutions' operations align to the pursuit of the stated missions in terms of recruiting, marketing, advertising, and retention.
- Core Component 2.A:
 - The institutions should demonstrate that they possess effective policies and procedures for assuring integrity and transparency.
 - DCEH and the institutions should provide evidence that the parent company and the institutions are continuing to perform voluntarily the obligations of the Consent Agreement, as assured by DCEH to the Higher Learning Commission in writing.
- Core Component 2.B:
 - DCEH and the institutions must demonstrate that policies and procedures following the Consent Judgment have been fully implemented and are effective in ensuring the proper training and oversight of personnel.
- Core Component 2.C:
 - Evidence that the DCF, DCEH, DCEM and the Art Institutes organizations, as well as related corporations, demonstrate that they have organizational documents and have engaged in a pattern of behavior that indicates the respective boards of the institutions have been able to engage in appropriately autonomous oversight of their institutions.
- Core Component 4.A:
 - Evidence that the institutions have engaged in effective planning processes to address programs that have failed the USDE's gainful employment requirements (when those requirements were still applicable), as well as those that are "in the zone." The institutions should also provide any plans that have been implemented to improve program outcomes.

- Core Component 5.A:
 - Evidence that the institutions have increased enrollments to the levels set forth in the application for Change of Control, Structure, or Organization. This should include any revised budgetary projections and evidence of when the institutions intend to achieve balanced budgets.
- Core Component 5.C:
 - The institutions should provide any revised plans or projections that occur following consummation of the transaction.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action.

The Board will receive and review the Eligibility Filing, related staff comments, and the report of the first focused visit team to determine whether to continue the Change of Control Candidacy status. If the Eligibility Filing and focused evaluation does not provide clear, convincing and complete evidence of each institution meeting each Eligibility Requirement and of making substantial progress towards meeting the Criteria for Accreditation in the maximum period allotted for such Change of Control Candidacy as indicated in this letter, the Board may withdraw Change of Control Candidate for Accreditation status at its June 2018 meeting.

The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation.

Assuming acceptance of these conditions, the Institutes and buyers must provide written notice of the closing date within 24 hours after the transaction has closed. The Institutes are also obligated to notify the Commission prior to closing if any of the material terms of this transaction have changed or appear likely to change. By Commission policy the closing must take place within no more than thirty days from the date of the Board's approval. If there is any delay such that the transaction cannot close within this time frame, the Institutes must notify the Commission as soon as possible so alternate arrangements can be identified to ensure that the Board's approval remains in effect.

The Board based its action on the following findings made in regard to the Institutes:

In reference to the first, second, and fourth approval factors and, related to the continuity of the institutions accredited by the Commission and sufficiency of financial support for

the transaction, the institutions and the buyers have provided reasonable evidence that these factors have been met.

In reference to the third approval factor, the substantial likelihood that following consummation of the transaction the institutions will meet the Commission's Criteria for Accreditation, with specific reference to governance, mission, programs, disclosures, administration, policies and procedures, finances, and integrity, the institutions and the buyers have provided reasonable evidence that this factor is met, although the following Criteria for Accreditation are Met with Concerns:

- Criterion One, Core Component 1.D: "The institution's mission demonstrates commitment to the public good," for the following reasons:
 - Neither institution has demonstrated evidence that its underlying operations, in addition to its tax status, will be transformed to reflect a non-profit mission;
 - Neither institution has demonstrated significant planning required to undertake a mission that includes the responsibility of educating a potentially very different student population represented by the Dream Center clientele; and
 - The buyers have not provided evidence that the institutions' educational purposes will take primacy over contributing to a related or parent organization, which will be struggling in its initial years to improve the enrollment and financial wherewithal of a large number of institutions purchased from EDMC.
- Criterion Two, Core Component 2.A: "The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff," for the following reason:
 - Although each institution is making changes to procedures specifically identified in the November 2015 Consent Judgment, neither institution has yet established a long-term track record of integrity in its auxiliary functions.
- Criterion Two, Core Component 2.B: "The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships," for the following reasons:
 - Changes being made by the institutions to ensure transparency, particularly with students, are recent in nature and have yet to fully penetrate the complex organizational structure of which the institutions are a part; and
 - Given the replication of that operational structure and the continuity of personnel following the transaction, the potential for continuing challenges is of concern.
- Criterion Two, Core Component 2.C: "The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity," for the following reasons:
 - There remain questions about how the governance of DCEH, its related service provider Dream Center Education Management, and the Art Institutes will take place after the transaction and how that governance will affect the governance of the AIC and IIA, and the mere replication of the EDMC corporate structure with new non-profit corporations does not resolve the

- question of how these new corporations will function in the future to assure autonomy and governance in the best interest of the institutions;
- An apparent conflict of interest exists owing to an investment by the DCEH CEO of 10% in the purchase price for which limited documentation exists; and
 - No evidence was provided indicating that either institution’s board had yet engaged in significant consideration of the role that typifies non-profit boards.
 - Criterion Four, Core Component 4.A: “The institution demonstrates responsibility for the quality of its educational programs,” for the following reasons:
 - Neither institution has demonstrated that improvements have been made to academic programs identified since January 2017 by the USDE as having poor outcomes, or that such programs have been eliminated; and
 - The risk of harm to students admitted to such programs absent such improvement or elimination is of concern, regardless of the institutions’ tax-status or whether they are subject to gainful employment regulations.
 - Criterion Five, Core Component 5.A: “The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future,” for the following reasons:
 - Despite the adoption of certain cost-reducing and related measures, the impact of which are yet to be determined, the ability of each institution to sustain its resource base and improve enrollment beyond 2019 depends on the occurrence of several contingencies, most of which are assumptions tied to the institutions’ change in tax status, and none of which are guaranteed;
 - The ability of the buyers to provide the cash flow infusions necessary to sustain the institutions over the next five years are also linked to assumptions related to the institutions’ change in tax status and the long-term debt taken on by DCEH and DCF in addition to the debt acquired for the purchase price; and
 - Although the buyers are expected to have \$35 million in cash at closing (based on debt as noted above), these funds are intended to support multiple transactions within Argosy University, South University and the Art Institutes, and the potential need for and access to additional debt financing on the part of the buyers is of concern.
 - Criterion Five, Core Component 5.C: “The institution engages in systematic and integrated planning,” for the following reasons:
 - Neither institution has demonstrated that the impacts of the transaction have been accounted for in their strategic planning; and
 - IIA’s strategic planning process is still in the process of maturing.

In reference to the fifth approval factor, the experience of the buyers, administration, and board with higher education, the officers (CEO and CDO) of the buyers have some experience in higher education but do not have any experience as chief officers of a large system of non-profit institutions or with the specific challenges pertinent to EDMC institutions, including challenges related to marketing and recruitment policies, governance, administration, and student outcomes across institutions with many campuses and programs operating across the United States.

The Board action, if the conditions are accepted by the Institutes and the buyers, resulted in changes to the affiliation of the Institutes. These changes will be reflected on the Institutional Status and Requirements Report. Some of the information on that document, such as the dates of the last and next comprehensive evaluation visits, will be posted to the HLC website.

Commission policy COMM.A.10.010, Commission Public Notices and Statements, requires that HLC prepare a summary of actions to be sent to appropriate state and federal agencies and accrediting associations and published on its website within thirty days of any action. The summary will include HLC Board action regarding the Institutes. The Commission will also simultaneously inform the U.S. Department of Education of this action by copy of this letter. As further explained in policy, HLC may publish a Public Statement regarding this action and the transaction following the institutions' and the buyer's decision of whether to accept the conditions outlined above. Please note that any public announcement by the buyers about this action must include the information that any approval provided by the Commission is subject to the condition of the buyers accepting Change of Control candidacy for not less than six months up to a maximum of four years.

On behalf of the Board of Trustees, I thank you and your associates for your cooperation. If you have questions about any of the information in this letter, please contact Dr. Anthea Sweeney.

Sincerely,



Barbara Gellman-Danley
President

cc: Chair of the Board of Trustees, Illinois Institute of Art
Chair of the Board of Trustees, Art Institute of Colorado
Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, the Art Institute of Colorado
Diane Duffy, Interim Executive Director, Colorado Department of Higher Education
Stephanie Bernoteit, Senior Associate Director, Academic Affairs, Illinois Board of
Higher Education
Evaluation team members
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning
Commission
Karen Peterson Solinski, Vice President for Legal and Governmental Affairs, Higher
Learning Commission
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Herman Bounds, Director, Accreditation Group, U.S. Department of Education

**Anthea Sweeney Transcribed
Interview Exhibit 13**

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions

**Anthea Sweeney Transcribed
Interview Exhibit 14**



Policy Title: Accredited to Candidate Status

Number: INST.E.50.010

The Board of Trustees may determine that an institution be moved from accredited to candidate status subsequent to the close of a Change of Control, Structure or Organization transaction as a result of the findings of an on-site team, including either a Fact-Finding or other team, visiting the institution or the findings in a summary report. The Board must find that the institution, as a result of or related to the Change of Control, Structure or Organization, meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices but no longer meets all of the Criteria for Accreditation and Federal Compliance Requirements. It must also find that the institution meets the requirements of the candidacy program. Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.

Process for Moving an Institution From Accredited to Candidate Status

The Board of Trustees may take an action to move an institution from accredited to candidate status in conjunction with a Change of Control, Structure or Organization, as outlined in [Commission policy INST.B.20.040](#). In addition, a team recommendation arising out of a comprehensive or focused evaluation within six (6) months of the close of a transaction approved under [INST.B.20.040](#) to move the institution from accredited to candidate status, will automatically be referred to an Institutional Actions Council Hearing Committee. The Board will consider both the team recommendation and the Institutional Actions Council Hearing Committee recommendations in its deliberations. In all cases, the Board of Trustees will act on a recommendation to move an institution from accredited to candidate status only if the institution's chief executive officer has been given at least two weeks to place before the Board of Trustees a written response to the recommendation of the team or Institutional Actions Council Hearing Committee.

Public Disclosure of Accredited to Candidate Status

A Public Disclosure Notice for an institution whose status has shifted under this policy will be available on the Commission's website shortly after, but not more than twenty-four (24) hours after, the Commission notifies the institution of the action moving the institution from accredited to candidate status. An

institution moved from accredited to candidate status must notify its Board members, administrators, faculty, staff, students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the institution must also disclose this new status whenever it refers to its Commission affiliation.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 50: Accredited to Candidate Status

Last Revised: February 2014

First Adopted: June 2009

Revision History: February 2011, February 2014

Notes: Policies combined November 2012 – 2.5(e), 2.5(e)1, 2.5(e)2

Related Policies: INST.B.20.020 Candidacy, INST.B.20.040 Change of Control, Structure, or Organization

**Anthea Sweeney Transcribed
Interview Exhibit 15**

staff liaison – One of HLC’s Vice Presidents for Accreditation Relations who serves as a resource for affiliated institutions.

Eligibility and Candidacy

candidacy – Preaccreditation status offering affiliation, not membership, with HLC.

Candidate for Accreditation – An institution with the preaccredited candidacy status that has met HLC’s Eligibility Requirements and shows evidence that it is making progress toward meeting all the Criteria for Accreditation.

Candidacy Program – The steps an institution must follow to gain candidacy with HLC.

Eligibility Filing – Documentation submitted by an institution considering affiliation with HLC that demonstrates that it meets the Eligibility Requirements.

Eligibility Process – The process by which HLC determines whether a non-affiliated institution is ready to begin the Candidacy Program.

Eligibility Requirements – A set of requirements an institution must meet before it is granted candidacy.

Initial Accreditation – An accreditation status for institutions in their first years of accreditation. Institutions in candidacy must undergo a comprehensive evaluation to ensure they meet the Assumed Practices and the Criteria for Accreditation in full to move to Initial Accreditation.

**Anthea Sweeney Transcribed
Interview Exhibit 16**



User Name: Ben Sinoff

Date and Time: Friday, February 14, 2020 1:39:00 PM EST

Job Number: 110093708

Document (1)

1. [34 CFR 600.2](#)

Client/Matter: -None-

34 CFR 600.2:

Search Type: Natural Language

Narrowed by:

Content Type

Administrative Codes and
Regulations

Narrowed by

-None-

[34 CFR 600.2](#)

This document is current through the February 12, 2020 issue of the Federal Register. Title 3 is current through January 31, 2020.

Code of Federal Regulations > TITLE 34 -- EDUCATION > SUBTITLE B -- REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION > CHAPTER VI -- OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION > PART 600 -- INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED > SUBPART A -- GENERAL

Notice

 There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 600.2 Definitions. [Effective until July 1, 2020.]

[PUBLISHER'S NOTE: This section was amended at [84 FR 58834, 58914](#), Nov. 1, 2019, effective July 1, 2020. For the convenience of the user, the section has been set out twice. The version effective until July 1, 2020, immediately follows this note. For the version effective July 1, 2020, see the version following this section, also numbered § 600.2.]

The following definitions apply to terms used in this part:

Accredited: The status of public recognition that a nationally recognized accrediting agency grants to an institution or educational program that meets the agency's established requirements.

Award year: The period of time from July 1 of one year through June 30 of the following year.

Branch Campus: A location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location --

- (1) Is permanent in nature;
- (2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
- (3) Has its own faculty and administrative or supervisory organization; and
- (4) Has its own budgetary and hiring authority.

Clock hour: A period of time consisting of --

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or
- (3) Sixty minutes of preparation in a correspondence course.

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.

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(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

(3) A correspondence course is not distance education.

Credit hour: Except as provided in [34 CFR 668.8\(k\)](#) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than--

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

Direct assessment program: A program as described in [34 CFR 668.10](#).

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include--

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

Educational program: (1) A legally authorized postsecondary program of organized instruction or study that:

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in [34 CFR part 668](#), subpart O; and

(ii) May, in lieu of credit hours or clock hours as a measure of student learning, utilize direct assessment of student learning, or recognize the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment and with the provisions of § 668.10.

(2) The Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: Instruction provided by other institutions or schools; examinations or direct assessments provided by agencies or organizations; or other accomplishments such as "life experience."

Eligible institution: An institution that --

(1) Qualifies as --

(i) An institution of higher education, as defined in § 600.4;

(ii) A proprietary institution of higher education, as defined in § 600.5; or

(iii) A postsecondary vocational institution, as defined in § 600.6; and

(2) Meets all the other applicable provisions of this part.

Federal Family Education Loan (FFEL) Programs: The loan programs (formerly called the Guaranteed Student Loan (GSL) programs) authorized by title IV-B of the HEA, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (Federal SLS), and Federal Consolidation Loan

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programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the students' attendance at eligible institutions. The Federal Stafford Loan, Federal PLUS, Federal SLS, and Federal Consolidation Loan programs are defined in [34 CFR part 668](#).

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency: An agency or association that the Secretary recognizes as a reliable authority to determine the quality of education or training offered by an institution or a program offered by an institution. The Secretary recognizes these agencies and associations under the provisions of [34 CFR part 602](#) and publishes a list of the recognized agencies in the FEDERAL REGISTER.

Nonprofit institution: An institution that --

(1)

(i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(iii) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with [section 501\(c\)\(3\) of the Internal Revenue Code \(26 U.S.C. 501\(c\)\(3\)\)](#); or

(2) For a foreign institution--

(i) An institution that is owned and operated only by one or more nonprofit corporations or associations; and

(ii)

(A) If a recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, is determined by that tax authority to be a nonprofit educational institution; or

(B) If no recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, the foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

(3) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with [section 501\(c\)\(3\) of the Internal Revenue Code \(26 U.S.C. 501\(c\)\(3\)\)](#).

One-academic-year training program: An educational program that is at least one academic year as defined under [34 CFR 668.2](#).

Preaccredited: A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

Recognized equivalent of a high school diploma: The following are the equivalent of a high school diploma --

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

Recognized occupation: An occupation that is--

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O*Net-SOC code established by the Department of Labor, which is available at www.onetonline.org or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

[Effective July 1, 2020.] State authorization reciprocity agreement: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

Title IV, HEA program: Any of the student financial assistance programs listed in [34 CFR 668.1\(c\)](#).

Statutory Authority

([20 U.S.C. 1001](#), [1002](#), [1071](#), et seq., [1078-2](#), [1088](#), [1091](#), [1094](#), [1099b](#), [1099c](#), [1141](#); [26 U.S.C. 501\(c\)](#))

History

[[53 FR 11210](#), Apr. 5, 1988; [58 FR 39620](#), [July 23, 1993](#); [59 FR 22336](#), Apr. 29, 1994; [59 FR 32656](#), [32657](#), [June 24, 1994](#); [63 FR 40622](#), [July 29, 1998](#); [64 FR 58608](#), [58615](#), Oct. 29, 1999; [71 FR 45666](#), [45692](#), Aug. 9, 2006; [74 FR 55414](#), [55425](#), Oct. 27, 2009; [74 FR 55902](#), [55932](#), Oct. 29, 2009; [75 FR 66832](#), [66946](#), Oct. 29, 2010; [75 FR 67170](#), [67192](#), Nov. 1, 2010; [79 FR 64890](#), [65006](#), Oct. 31, 2014; [81 FR 92232](#), [92262](#), Dec. 19, 2016; [83 FR 31296](#), [31303](#), [July 3, 2018](#); [84 FR 36471](#), [July 29, 2019](#)]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[79 FR 64890, 65006](#), Oct. 31, 2014, amended this section, effective July 1, 2015; [81 FR 92232, 92262](#), Dec. 19, 2016, added definition of "State authorization reciprocity agreement", effective July 1, 2018; [83 FR 31296, 31303, July 3, 2018](#), delayed the effective date of the amendment appearing at [81 FR 92232](#), until July 1, 2020; [84 FR 36471, July 29, 2019](#), provides: "In *National Education Association v. DeVos*, No. 18--cv-- 05173--LB (N.D. CA April 26, 2019), the court vacated the rule amending [34 CFR 600.2, 600.9\(c\), 668.2](#), and the addition of [34 CFR 668.50](#), published December 19, 2016 at [81 FR 92236](#), and delayed [June 29, 2018 \(83 FR 31296\)](#), is effective May 26, 2019."]

Case Notes

LexisNexis® Notes

Education Law : Administration & Operation : Student Financial Aid : Eligibility
 Education Law : Departments of Education : U.S. Department of Education : General Overview
 Governments : Federal Government : Employees & Officials

Education Law : Administration & Operation : Student Financial Aid : Eligibility

[Instituto De Educacion Universal Corp. v. Riley, 973 F. Supp. 95, 1997 U.S. Dist. LEXIS 12825 \(D PR Aug. 15, 1997\).](#)

Overview: *Although the United States Department of Education was entitled to summary judgment with regard to a school's claims regarding reimbursement and eligibility to receive funds under Title IV of the Higher Education Act of 1965, the court dismissed without prejudice the school's clock-hour claim because judicial intervention was premature.*

- The United States Secretary of Education has a regulatory formula to determine whether an educational program qualifies in credit hours as an eligible Title IV program, and the amount of Title IV program assistance that a student who is enrolled in that eligible program may receive. The formula requires that a semester, trimester, or quarter hour contain a specific minimum number of clock hours of instruction. A clock hour of instruction is a period of time consisting of: (1) a 50- to 60-minute class, lecture, or recitation in a 60-minute period; (2) a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or (3) 60 minutes of preparation in a correspondence course. [34 C.F.R. § 600.2 \(1994\)](#).
[Go To Headnote](#)

Education Law : Departments of Education : U.S. Department of Education : General Overview

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[Go To Headnote](#)

Governments : Federal Government : Employees & Officials

[Instituto De Educacion Universal Corp. v. Riley, 973 F. Supp. 95, 1997 U.S. Dist. LEXIS 12825 \(D PR Aug. 15, 1997\).](#)

Overview: *Although the United States Department of Education was entitled to summary judgment with regard to a school's claims regarding reimbursement and eligibility to receive funds under Title IV of the Higher Education Act of 1965, the court dismissed without prejudice the school's clock-hour claim because judicial intervention was premature.*

- The United States Secretary of Education has a regulatory formula to determine whether an educational program qualifies in credit hours as an eligible Title IV program, and the amount of Title IV program assistance that a student who is enrolled in that eligible program may receive. The formula requires that a semester, trimester, or quarter hour contain a specific minimum number of clock hours of instruction. A clock hour of instruction is a period of time consisting of: (1) a 50- to 60-minute class, lecture, or recitation in a 60-minute period; (2) a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or (3) 60 minutes of preparation in a correspondence course. 34 C.F.R. § 600.2 (1994).
[Go To Headnote](#)

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

CROSS-REFERENCE: Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for increasing the Access of all Students to That Instruction, 34 CFR Part 208.

34 CFR 600.2

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Final priorities, see: 78 FR 5036, Jan. 23, 2013; [79 FR 17035](#), Mar. 27, 2014; [79 FR 31028, May 30, 2014](#); [79 FR 31031, May 30, 2014](#); [79 FR 31870, June 3, 2014](#); [79 FR 32651, June 6, 2014](#); [79 FR 33432, June 11, 2014](#); [80 FR 27036, May 11, 2015](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter VI Interpretation, see: [83 FR 10619](#), Mar. 12, 2018.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 600 Clarification, see: [80 FR 73991](#), Nov. 27, 2015.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 600 Identification of inapplicable regulatory provisions, see: [82 FR 48424](#), Oct. 18, 2017.]

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End of Document

**Anthea Sweeney Transcribed
Interview Exhibit 17**

November 29, 2017

Barbara Gellman-Danley, President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

Dear President Gellman-Danley,

The Art Institute of Colorado (AiC), Illinois Institute of Art (ILIA), and Dream Center Education Holdings, LLC (DCEH) jointly acknowledge receipt of conditional HLC approval of the two applications for Change of Control, Structure, or Organization. Per the approval letter, AiC and ILIA will proceed with completion of the transaction and change of institutional ownership from Education Management Corporation (EDMC) to the Dream Center Foundation (DCF). We will advise the Commission immediately upon the close of the transaction.

With regard to the specific conditions articulated with the November 16 letter, we respond as follows:

- We understand that both AiC and ILIA will undergo a period of candidacy beginning with the close of the transaction.
- We understand that the two institutions must complete separate Eligibility Filings accompanied by an action plan pertaining to Core Components 1.D, 2.A, 2.B, 2.C, 4.A, 5.A, and 5.C. Respectfully, we ask that the submission deadline for the Eligibility Filings be extended from February 1, 2018 to March 1, 2018. The extension will allow sufficient time for the institutions to closely review each of the Eligibility Requirements in consideration of a change of ownership and legal status, which has not yet occurred. The extension will also provide the time needed for the institutions to simultaneously develop the requested action plan.
- We understand that the two institutions will be required to submit an interim report every 90 days to include the specified data and documentation. We understand the financial and complaint, dispute and settlement information to be included in such interim reports shall be that which applies to the two HLC institutions (AiC and ILIA). Respectfully, we request that the interim report be submitted as single report to be jointly prepared by the two institutions. A combined report will include the requested data and information for the two HLC institutions (AiC and ILIA), as well as include any data and information pertaining to DCF and DCEH, where required.
- We understand that AiC and ILIA will each host a site visit within six months of the close of the transaction. We further understand that both institutions will host a site visit by June 2019 to include visits to DCF and DCEH facilities.
- While the November 17 letter stipulates closure of the transaction within 30 days of the conditional approval (i.e., by December 2 or 3), in accordance with the email request sent to HLC by The Illinois

Institute of Art's Institutional President, Josh Pond on November 29, we respectfully ask that the deadline for the close of the transaction be extended to January 15. As detailed in Mr. Pond's email, extension of the transaction deadline will allow DCF to better coordinate the purchase of the two HLC institutions with the timeline of the purchase of other non-HLC institutions, which, due to requirements imposed on those institutions by the Pennsylvania Department of Education, cannot be transferred until the second week of January. Requiring separate closings for these acquisitions will result in significant expense to DCEH, as the U.S. Department of Education has stated it will require an opening day balance sheet audit of DCEH for any subsequent closings of its acquisition of the post-secondary institutions owned by EDMC. In addition, an extension will allow time for receipt of formal approval of the transaction from the Illinois Board of Higher Education, which meets on December 12 (the IBHE staff has recommended approval), and for AiC, ILIA and DCF to discuss the conditions to approval with HLC, as set forth in this letter.

- In order for HLC to be assured of continuing compliance with the Consent Judgment, we will promptly deliver to HLC all periodic reports received by DCF and DCEH from the Settlement Administrator, who is acting as an independent third party agent on behalf of 39 states and the District of Columbia charged with the duty of overseeing and ensuring compliance of EDMC and now DCEH with the terms of the Consent Judgment. We do not believe any further reports would be any more meaningful, as the Settlement Administrator is acting as an expert independent third party agent.

AiC, ILIA, and DCF appreciate the review and conditional HLC approval of the institutional applications for Change of Control, Structure, or Organization. Thank you for the guidance and support provided throughout this process.

Sincerely,



Elden Monday, Interim President
The Art Institute of Colorado



Josh Pond, Institutional President
The Illinois Institute of Art

Brent Richardson, Chief Executive Officer
Dream Center Education Holdings, LLC

**Anthea Sweeney Transcribed
Interview Exhibit 18**

Ai The Illinois Institute of Art®—Chicago

January 4, 2018

Barbara Gellman-Danley, President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411

Dear President Gellman-Danley,

The Art Institute of Colorado (AiC), The Illinois Institute of Art (ILIA), and Dream Center Education Holdings, LLC (DCEH) jointly acknowledge receipt of conditional HLC approval of the two applications for Change of Control, Structure, or Organization. AiC and ILiA agree to accept Change of Control candidacy status set forth in the Higher Learning Commission's approval letter dated November 16, 2017, and, as indicated in our November 29, 2017 letter, the institutions also accept the conditions stated in the November 16, 2017 letter, as modified by non-substantive revisions set forth in Karen Solinski's email to Ron Holt on December 22, 2017 (we understand that details concerning implementation of third-party monitoring in 2019 can be provided later).

We confirm that the terms of the transaction, through which ownership of AiC and ILiA will be transferred to subsidiaries of DCEH, remain unchanged from the terms set forth in the parties Amended and Restated Asset Purchase Agreement entered February 24, 2017, as amended by the Second Amendment dated October 13, 2017, copies of which have been previously furnished to HLC. As we have previously shared with Ms. Solinski, the parties were not able to carry out the closing of the transaction within 30 days of receipt of the HLC approval letter, due to pending state agency approvals for AiC and ILiA and for other institutions involved in the transaction. DCEH plans to effectuate the transfer no later than January 15, 2018.

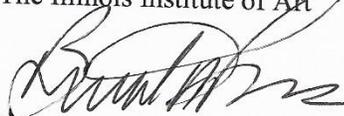
Sincerely yours,



Elden Monday, Interim President
The Art Institute of Colorado



Josh Pond, Institutional President
The Illinois Institute of Art



Brent Richardson, Chief Executive Officer
Dream Center Education Holdings, LLC



cc: Karen Solinski
Anthea Sweeney

**Anthea Sweeney Transcribed
Interview Exhibit 19**

Re: Important Notification: Formal Letter Required

Anthea Sweeney

Fri 1/5/2018 12:39 PM

To: Pond, Josh [REDACTED];

Cc: Monday, Elden [REDACTED]; Karen Solinski [REDACTED];

President Pond,

I write to acknowledge receipt and thank you for your email and letter. I have forwarded the same to our president as well. We will be in touch with next steps soon.

Best,

Anthea M. Sweeney, Ed.D.
Vice President for Accreditation Relations and Eligibility
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Pond, Josh [REDACTED]
Sent: Friday, January 5, 2018 12:27 PM
To: Anthea Sweeney
Cc: Monday, Elden; Karen Solinski
Subject: Re: Important Notification: Formal Letter Required

Dr. Sweeney,

Please find the attached response.

Regards,

Josh Pond
Institutional President

The Illinois Institute of Art
350 N Orleans St.
Suite 136
Chicago, IL 60654

From: Anthea Sweeney [REDACTED]
Date: Wednesday, January 3, 2018 at 3:04 PM
To: Josh Pond [REDACTED]
Cc: "Monday, Elden" [REDACTED]
Subject: Important Notification: Formal Letter Required

Good Afternoon President Pond,

I am writing to inform you that HLC staff conferred internally regarding the response to the action letter received via email on November 29, 2017. Because we have since received requested modifications related to certain conditions of the HLC Board's recent approval, requests that go beyond merely technical modifications to substantive changes, and because HLC staff have no authority to respond to those requests, we will need to communicate with the HLC Board so it can make a determination of its own on whether and how to address the parties' concerns.

However, as a prerequisite, we will require a formal letter from the institutions, cosigned by DCEH, providing a formal indication of whether the parties accept the **Change of Control candidacy status** indicated in the HLC Board's action letter of November 16, 2017, before we can determine how best to proceed with communicating with our Board concerning the requested modifications. We anticipate the HLC Board will want to know whether there has, at least, been a clear and formal statement of acceptance by the parties of Change of Control candidacy status for the institutions prior to considering the aforementioned requests. That statement is notably absent from the letter we received on November 29, 2017. (Only a minimal statement acknowledging the existence of that particular condition, among others, has been set forth.)

The sooner we receive a formal indication that Change of Control candidacy status is accepted by both ILIA and Art Institute of Colorado, cosigned by both institutional presidents and DCEH, the sooner HLC Staff can determine how best to proceed with the HLC Board. Karen Solinski is in contact separately with internal counsel at DCEH; her message is essentially the same. Please feel free to address the requested letter to President Barbara Gellman-Danley and transmit the letter to me at this email address as soon as possible and no later than close of business on Friday January 5. There is some potential for Board consideration in January, so time is of the essence. Thank you.

Best Wishes,

Anthea M. Sweeney, Ed.D.
Vice President for Accreditation Relations and Eligibility



Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

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**Anthea Sweeney Transcribed
Interview Exhibit 20**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Monday, December 11, 2017 8:38 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

On behalf of The Dream Center Foundation (DCF) and its subsidiary Dream Center Education Holdings (DCEH) and its indirect subsidiaries, The Illinois Institute of Art, LLC, The Illinois Institute of Art at Schaumburg, LLC, The Art Institute of Michigan, LLC and The Art Institute of Colorado, LLC (collectively Buyers), which plan to acquire the two institutions currently owned by subsidiaries of Education Management Corporation (EDMC) – The Illinois Art Institute with campuses in Chicago, Schaumburg and Detroit and The Art Institute of Colorado with a campus in Denver (Institutions) – that are accredited by the Higher Learning Commission (HLC), I am writing to respond further to several of the conditions set forth in HLC’s November 16, 2017 letter notifying the Institutions of HLC’s conditional approval of the proposed change in ownership.

The Institutions responded in a November 29, 2017 letter sent by Josh Pond, Elden Monday and Brent Richardson (Clarifying Letter), setting forth their understanding with respect to certain proposed reporting conditions and a condition concerning monitoring of compliance under the Consent Judgment into which EDMC and the Attorneys General of 39 States and the District of Columbia entered effective January 1, 2016. In response to the Institutions’ Clarifying Letter, email messages were sent on December 5, 2017 by you and Dr. Anthea Sweeney which indicate that the quarterly reports made by the Institutions must contain financial and other information not only

for the Institutions but also for their parent and related entities, including DCEH and DCF.

While we agree that certain information about the Institutions and their parent entities is relevant to the Institutions and their accreditation by HLC, we also believe that information dealing only with other 'sister' institutions also owned by parent entities – which is not reasonably likely to have any material impact on the Institutions – is not relevant and has not been reported to HLC by EDMC on a regular basis. We, therefore, propose that the bullet points quoted below from page 2 of HLC's November 16, 2017 letter be modified as provided in boldface and italicized type beneath each HLC point:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

Information regarding any complaints received by DCF, DCEH or any of the institutions

Information received by DCF or DCEH regarding any complaints about any of the Institutions

Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, ("DCEM"), or any of the institutions

Information received by DCF or DCEH regarding any governmental investigation, enforcement actions, settlements, etc. involving the Institutions or any information received by DCF, DCEH, or its related service provider Dream Center Education Management, ("DCEM"), regarding any governmental investigation, enforcement actions, settlements, etc. which could materially affect the Institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the Institutions, or any information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the institutions DCF or DCEH which could materially affect the institutions

In addition, regarding the request for “audit processes” (by a third party entity acceptable to HLC) following the conclusion of the work of the Settlement Administrator under the Consent Judgment, we respectfully submit that any decision at this time concerning the extent of any need for such further audit processes is premature and should be deferred until early 2019. As HLC no doubt is aware, section 49 of the Consent Judgment envisions a review being done by the Attorneys General, at the end of the Settlement Administrator’s three-year term, of the nature of the compliance by the affected institutions with the requirements of the Consent Judgment and a determination as to the extent to which any further oversight is needed:

“49. If, at the conclusion of the Administrator’s three-year term, the Attorneys General determine in good faith and in consultation with the Administrator that justifiable cause exists, the Administrator’s engagement shall be extended for an additional term of up to two (2) years, subject to the right of EDMC to commence legal proceedings for the purpose of challenging the decision of the Attorneys General and to seek preliminary and permanent injunctive relief with respect thereto. For purposes of this paragraph, ‘justifiable cause’ means a failure by EDMC to achieve and maintain substantial compliance with the substantive provisions of the Consent Judgment.”

If the Attorneys General, who imposed the Consent Judgment requirements on EDMC as a condition to settling their various legal actions and who certainly are independent qualified third parties that are highly motivated to protect students, conclude in early 2019 that the EDMC institutions acquired by DCF and DCEH have made and maintained substantial compliance with the requirements and there is no need to extend the term of the Settlement Administrator, we believe that determination should be reviewed by HLC and, barring any substantial credible reason to believe that the Attorneys General have overlooked any material facts that are of concern to HLC with respect to its accrediting oversight of the Institutions, should be accepted by HLC, meaning the Institutions should not be required by HLC to arrange for further monitoring or audit processes. And, to the extent that HLC in early 2019 – after reviewing the determination of the Attorneys General and receiving input from the Institutions – concludes there is some substantial credible reason to not accept the conclusion of the Attorneys General and to require further oversight of Consent

Judgment compliance by the Institutions accredited by HLC, the nature of such further oversight should be discussed, evaluated and determined at that time.

Between now and early 2019 when the Attorneys General make their determinations, DCF, DCEH and the Institutions, of course, will promptly provide HLC with copies of all reports issued by the Settlement Administrator, just as EDMC has done.

We appreciate all the time and consideration that HLC has given to the proposed change in the ownership of the Institutions and to the conditions relating to HLC's approval of that change and we look forward to hearing from HLC with confirmation that our proposed clarifications are acceptable.

Regards, Ron Holt, Regulatory Counsel to DCF and DCEH and Subsidiaries

Ronald L. Holt, Attorney

██████████@rousefrets.com | Direct: (██████████) | Cell: ██████████ | Phone: ██████████ | Fax: ██████████



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

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From: Karen Solinski [mailto:ksolinski@hlcommission.org]

Sent: Tuesday, December 05, 2017 12:03 PM

To: Ronald L. Holt

Cc: crichardson@dcedh.org; Kramer, Devitt (devitt.kramer@edmc.edu); Megan R. Banks

Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for this summary of our conversation and think it fairly describes that conversation. I do want to provide an additional clarification. While it is accurate the Commission is not requiring that financial and other data for, for example, South University, be included in the interim reports, the reports must contain financial and other information for the parent and related entities, including DCEH and DCF. Please let me know if there are additional questions subsequent to this e-mail

Best regards,

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]@rousefrets.com>
Sent: Friday, December 1, 2017 7:19:27 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

Thanks you for taking time out of your FSA Conference schedule this afternoon to talk to Devitt Kramer (EDMC General Counsel), Chris Richardson (DCEH General Counsel) and me about the request made by The Illinois Art Institute and The Art Institute of Colorado, on behalf of Dream Center Education Holdings, for an extension of the closing deadline to the second week of January, due to the timetable for state approvals of the transfer of these institutions and uncertainties at the present time as to the extent and nature of any USDOE audit requirements.

Per our discussion, we understand that, given the factors we discussed which (were also outlined in Dr. Josh Pond's November 29 email message), HLC does not expect the closing on the transfer of these schools to occur within 30 days of the Commission's decision at its November 2-3 meeting and that EDMC and DCEH must submit written confirmation to HLC, no later than 30 days before the planned closing, that no material changes have been made to the terms of the transaction. We will be sending that letter by next Friday, as we are anticipating that the closing will occur between January 8 and 15.

We also discussed the letter that was sent by Dr. Pond and others concerning the conditions set forth in HLC's November 16 letter. While the letter from Dr. Pond largely provides our understanding of the conditions, it does also propose that no third party report be provided concerning the institutions' compliance with requirements of the November 2015 Consent Judgment because the Settlement Administrator is charged with oversight duties and he issues reports that can be sent to HLC. You clarified that the Commission's direction for a third party review and report is focused on the time period, beginning in 2019, when the Administrator will no longer be serving in that capacity, and I told you that DCEH will further evaluate that condition in light of this clarification and provide a further response in the next few weeks.

Thank you again for your time and input. Regards, Ron

Ronald L. Holt, Attorney
[REDACTED]@rousefrets.com | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
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From: Karen Solinski
Sent: Friday, December 22, 2017 11:10 AM
To: Ronald L. Holt
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for your e-mail. We have had an opportunity to review and discuss it internally. HLC staff has concluded that it can make the following amendment without Board review and approval:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

HLC Response: HLC has concluded that it make this non-substantive adjustment in the action.

The other proposed amendments, we believe, would require the Board's approval. In several cases the proposed language would appear to undercut the intent of the original wording. While HLC does not necessarily need information about other institutions such as South or Argosy, which are accredited by other accreditors, it does need sufficient information about DCF, DCEH and the institutions that have status with HLC to ensure that it is monitoring effectively. While Commission staff could clarify the language to ensure that it does not appear to include other institutions not accredited by HLC, we do not believe we could go beyond such changes without Board authorization. Finally, your e-mail proposes a material modification to the Board's action related to review of the recruiting and admissions processes to begin after the work of the administrator concludes.

To summarize, HLC staff can make the modification with regard to the quarterly financials and clarify

that information about institutions NOT accredited by HLC is not being required in this action. If these changes are sufficient, your clients can notify us in writing by January 2, 2018 that they accept the conditions in the letter with these modifications and would like authorization to close on or around the middle of January. The Board will consider the revised action date via a mail ballot process, and you will be notified as soon as it concludes. It will likely take about seven (7) days.

If these changes are not sufficient, and your clients believe they must press forward with the other proposed changes noted in your e-mail, they should notify us in writing by January 2, 2018. HLC staff in consultation with the Board chair will determine when the Board can discuss and act on the requested changes. The next scheduled meeting is on February 22-23, 2018. The Board does have telephonic meetings from time to time. However, such consideration and subsequent notification of any revised action would be unlikely to take place in time for the parties to close by the date requested.

Please let me know if you have any questions. I hope everyone's holidays are happy and joyful.

Karen

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]@rousefrets.com>
Sent: Monday, December 11, 2017 8:38:28 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

On behalf of The Dream Center Foundation (DCF) and its subsidiary Dream Center Education Holdings (DCEH) and its indirect subsidiaries, The Illinois Institute of Art, LLC, The Illinois Institute of Art at Schaumburg, LLC, The Art Institute of Michigan, LLC and The Art Institute of Colorado, LLC (collectively Buyers), which plan to acquire the two institutions currently owned by subsidiaries of Education Management Corporation (EDMC) – The Illinois Art Institute with campuses in Chicago, Schaumburg and Detroit and The Art Institute of Colorado with a campus in Denver (Institutions) – that are accredited by the Higher Learning Commission (HLC), I am writing to respond further to several of the conditions set forth in HLC's November 16, 2017 letter

notifying the Institutions of HLC's conditional approval of the proposed change in ownership.

The Institutions responded in a November 29, 2017 letter sent by Josh Pond, Elden Monday and Brent Richardson (Clarifying Letter), setting forth their understanding with respect to certain proposed reporting conditions and a condition concerning monitoring of compliance under the Consent Judgment into which EDMC and the Attorneys General of 39 States and the District of Columbia entered effective January 1, 2016. In response to the Institutions' Clarifying Letter, email messages were sent on December 5, 2017 by you and Dr. Anthea Sweeney which indicate that the quarterly reports made by the Institutions must contain financial and other information not only for the Institutions but also for their parent and related entities, including DCEH and DCF.

While we agree that certain information about the Institutions and their parent entities is relevant to the Institutions and their accreditation by HLC, we also believe that information dealing only with other 'sister' institutions also owned by parent entities – which is not reasonably likely to have any material impact on the Institutions – is not relevant and has not been reported to HLC by EDMC on a regular basis. We, therefore, propose that the bullet points quoted below from page 2 of HLC's November 16, 2017 letter be modified as provided in boldface and italicized type beneath each HLC point:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

Information regarding any complaints received by DCF, DCEH or any of the institutions

Information received by DCF or DCEH regarding any complaints about any of the Institutions

Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, ("DCEM"), or any of the institutions

Information received by DCF or DCEH regarding any governmental investigation, enforcement actions, settlements, etc. involving the Institutions or any information received by DCF, DCEH, or its related service provider Dream Center Education Management, (“DCEM”), regarding any governmental investigation, enforcement actions, settlements, etc. which could materially affect the Institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the Institutions, or any information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the institutions DCF or DCEH which could materially affect the institutions

In addition, regarding the request for “audit processes” (by a third party entity acceptable to HLC) following the conclusion of the work of the Settlement Administrator under the Consent Judgment, we respectfully submit that any decision at this time concerning the extent of any need for such further audit processes is premature and should be deferred until early 2019. As HLC no doubt is aware, section 49 of the Consent Judgment envisions a review being done by the Attorneys General, at the end of the Settlement Administrator’s three-year term, of the nature of the compliance by the affected institutions with the requirements of the Consent Judgment and a determination as to the extent to which any further oversight is needed:

“49. If, at the conclusion of the Administrator’s three-year term, the Attorneys General determine in good faith and in consultation with the Administrator that justifiable cause exists, the Administrator’s engagement shall be extended for an additional term of up to two (2) years, subject to the right of EDMC to commence legal proceedings for the purpose of challenging the decision of the Attorneys General and to seek preliminary and permanent injunctive relief with respect thereto. For purposes of this paragraph, ‘justifiable cause’ means a failure by EDMC to achieve and maintain substantial compliance with the substantive provisions of the Consent Judgment.”

If the Attorneys General, who imposed the Consent Judgment requirements on EDMC as a condition to settling their various legal actions and who certainly are independent qualified third parties that are highly motivated to protect students, conclude in early 2019 that the EDMC institutions acquired by DCF and DCEH have made and maintained substantial compliance with the requirements and there is no need to

extend the term of the Settlement Administrator, we believe that determination should be reviewed by HLC and, barring any substantial credible reason to believe that the Attorneys General have overlooked any material facts that are of concern to HLC with respect to its accrediting oversight of the Institutions, should be accepted by HLC, meaning the Institutions should not be required by HLC to arrange for further monitoring or audit processes. And, to the extent that HLC in early 2019 – after reviewing the determination of the Attorneys General and receiving input from the Institutions – concludes there is some substantial credible reason to not accept the conclusion of the Attorneys General and to require further oversight of Consent Judgment compliance by the Institutions accredited by HLC, the nature of such further oversight should be discussed, evaluated and determined at that time.

Between now and early 2019 when the Attorneys General make their determinations, DCF, DCEH and the Institutions, of course, will promptly provide HLC with copies of all reports issued by the Settlement Administrator, just as EDMC has done.

We appreciate all the time and consideration that HLC has given to the proposed change in the ownership of the Institutions and to the conditions relating to HLC's approval of that change and we look forward to hearing from HLC with confirmation that our proposed clarifications are acceptable.

Regards, Ron Holt, Regulatory Counsel to DCF and DCEH and Subsidiaries

Ronald L. Holt, Attorney

rlh@rousefrets.com | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



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From: Karen Solinski [REDACTED]@hlcommission.org]

Sent: Tuesday, December 05, 2017 12:03 PM

To: Ronald L. Holt

Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for this summary of our conversation and think it fairly describes that conversation. I do want to provide an additional clarification. While it is accurate the Commission is not requiring that financial and other data for, for example, South University, be included in the interim reports, the reports must contain financial and other information for the parent and related entities, including DCEH and DCF. Please let me know if there are additional questions subsequent to this e-mail

Best regards,

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Friday, December 1, 2017 7:19:27 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

Thanks you for taking time out of your FSA Conference schedule this afternoon to talk to Devitt Kramer (EDMC General Counsel), Chris Richardson (DCEH General Counsel) and me about the request made by The Illinois Art Institute and The Art Institute of Colorado, on behalf of Dream Center Education Holdings, for an extension of the closing deadline to the second week of January, due to the timetable for state approvals of the transfer of these institutions and uncertainties at the present time as to the extent and nature of any USDOE audit requirements.

Per our discussion, we understand that, given the factors we discussed which (were also outlined in Dr. Josh Pond's November 29 email message), HLC does not expect the closing on the transfer of these schools to occur within 30 days of the Commission's decision at its November 2-3 meeting and that EDMC and DCEH must submit written confirmation to HLC, no later than 30 days before the planned closing, that no material changes have been made to the terms of the transaction. We will be sending that letter by next Friday, as we are anticipating that the closing will occur between January 8 and 15.

We also discussed the letter that was sent by Dr. Pond and others concerning the conditions set forth in HLC's November 16 letter. While the letter from Dr. Pond largely provides our understanding of the conditions, it does also propose that no third party report be provided concerning the institutions' compliance with requirements of the November 2015 Consent Judgment because the Settlement Administrator is charged with oversight duties and he issues reports that can be sent to HLC. You clarified that the Commission's direction for a third party review and report is focused on the time period, beginning in 2019, when the Administrator will no longer be serving in that capacity, and I told you that DCEH will further evaluate that condition in light of this clarification and provide a further response in the next few weeks.

Thank you again for your time and input. Regards, Ron

Ronald L. Holt, Attorney

[@rousefrets.com](mailto:ron@rousefrets.com) | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



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[REDACTED]

From: Karen Solinski
Sent: Friday, December 22, 2017 11:10 AM
To: Ronald L. Holt
Cc: [REDACTED]@dcedh.org; Kramer, Devitt ([REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for your e-mail. We have had an opportunity to review and discuss it internally. HLC staff has concluded that it can make the following amendment without Board review and approval:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

HLC Response: HLC has concluded that it make this non-substantive adjustment in the action.

The other proposed amendments, we believe, would require the Board's approval. In several cases the proposed language would appear to undercut the intent of the original wording. While HLC does not necessarily need information about other institutions such as South or Argosy, which are accredited by other accreditors, it does need sufficient information about DCF, DCEH and the institutions that have status with HLC to ensure that it is monitoring effectively. While Commission staff could clarify the language to ensure that it does not appear to include other institutions not accredited by HLC, we do not believe we could go beyond such changes without Board authorization. Finally, your e-mail proposes a material modification to the Board's action related to review of the recruiting and admissions processes to begin after the work of the administrator concludes.

To summarize, HLC staff can make the modification with regard to the quarterly financials and clarify

that information about institutions NOT accredited by HLC is not being required in this action. If these changes are sufficient, your clients can notify us in writing by January 2, 2018 that they accept the conditions in the letter with these modifications and would like authorization to close on or around the middle of January. The Board will consider the revised action date via a mail ballot process, and you will be notified as soon as it concludes. It will likely take about seven (7) days.

If these changes are not sufficient, and your clients believe they must press forward with the other proposed changes noted in your e-mail, they should notify us in writing by January 2, 2018. HLC staff in consultation with the Board chair will determine when the Board can discuss and act on the requested changes. The next scheduled meeting is on February 22-23, 2018. The Board does have telephonic meetings from time to time. However, such consideration and subsequent notification of any revised action would be unlikely to take place in time for the parties to close by the date requested.

Please let me know if you have any questions. I hope everyone's holidays are happy and joyful.

Karen

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Monday, December 11, 2017 8:38:28 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt ([REDACTED]@edmc.edu); Megan R. Banks; Anthea Sweeney; David Harpool
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

On behalf of The Dream Center Foundation (DCF) and its subsidiary Dream Center Education Holdings (DCEH) and its indirect subsidiaries, The Illinois Institute of Art, LLC, The Illinois Institute of Art at Schaumburg, LLC, The Art Institute of Michigan, LLC and The Art Institute of Colorado, LLC (collectively Buyers), which plan to acquire the two institutions currently owned by subsidiaries of Education Management Corporation (EDMC) – The Illinois Art Institute with campuses in Chicago, Schaumburg and Detroit and The Art Institute of Colorado with a campus in Denver (Institutions) – that are accredited by the Higher Learning Commission (HLC), I am writing to respond further to several of the conditions set forth in HLC's November 16, 2017 letter

notifying the Institutions of HLC's conditional approval of the proposed change in ownership.

The Institutions responded in a November 29, 2017 letter sent by Josh Pond, Elden Monday and Brent Richardson (Clarifying Letter), setting forth their understanding with respect to certain proposed reporting conditions and a condition concerning monitoring of compliance under the Consent Judgment into which EDMC and the Attorneys General of 39 States and the District of Columbia entered effective January 1, 2016. In response to the Institutions' Clarifying Letter, email messages were sent on December 5, 2017 by you and Dr. Anthea Sweeney which indicate that the quarterly reports made by the Institutions must contain financial and other information not only for the Institutions but also for their parent and related entities, including DCEH and DCF.

While we agree that certain information about the Institutions and their parent entities is relevant to the Institutions and their accreditation by HLC, we also believe that information dealing only with other 'sister' institutions also owned by parent entities – which is not reasonably likely to have any material impact on the Institutions – is not relevant and has not been reported to HLC by EDMC on a regular basis. We, therefore, propose that the bullet points quoted below from page 2 of HLC's November 16, 2017 letter be modified as provided in boldface and italicized type beneath each HLC point:

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institution

Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each Institution, as a means to ensure adequate operating resources at each entity and at the Institutions, will be provided within 45 days of the close of the quarter

Information regarding any complaints received by DCF, DCEH or any of the institutions

Information received by DCF or DCEH regarding any complaints about any of the Institutions

Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, ("DCEM"), or any of the institutions

Information received by DCF or DCEH regarding any governmental investigation, enforcement actions, settlements, etc. involving the Institutions or any information received by DCF, DCEH, or its related service provider Dream Center Education Management, (“DCEM”), regarding any governmental investigation, enforcement actions, settlements, etc. which could materially affect the Institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions

Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the Institutions, or any information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving the institutions DCF or DCEH which could materially affect the institutions

In addition, regarding the request for “audit processes” (by a third party entity acceptable to HLC) following the conclusion of the work of the Settlement Administrator under the Consent Judgment, we respectfully submit that any decision at this time concerning the extent of any need for such further audit processes is premature and should be deferred until early 2019. As HLC no doubt is aware, section 49 of the Consent Judgment envisions a review being done by the Attorneys General, at the end of the Settlement Administrator’s three-year term, of the nature of the compliance by the affected institutions with the requirements of the Consent Judgment and a determination as to the extent to which any further oversight is needed:

“49. If, at the conclusion of the Administrator’s three-year term, the Attorneys General determine in good faith and in consultation with the Administrator that justifiable cause exists, the Administrator’s engagement shall be extended for an additional term of up to two (2) years, subject to the right of EDMC to commence legal proceedings for the purpose of challenging the decision of the Attorneys General and to seek preliminary and permanent injunctive relief with respect thereto. For purposes of this paragraph, ‘justifiable cause’ means a failure by EDMC to achieve and maintain substantial compliance with the substantive provisions of the Consent Judgment.”

If the Attorneys General, who imposed the Consent Judgment requirements on EDMC as a condition to settling their various legal actions and who certainly are independent qualified third parties that are highly motivated to protect students, conclude in early 2019 that the EDMC institutions acquired by DCF and DCEH have made and maintained substantial compliance with the requirements and there is no need to

extend the term of the Settlement Administrator, we believe that determination should be reviewed by HLC and, barring any substantial credible reason to believe that the Attorneys General have overlooked any material facts that are of concern to HLC with respect to its accrediting oversight of the Institutions, should be accepted by HLC, meaning the Institutions should not be required by HLC to arrange for further monitoring or audit processes. And, to the extent that HLC in early 2019 – after reviewing the determination of the Attorneys General and receiving input from the Institutions – concludes there is some substantial credible reason to not accept the conclusion of the Attorneys General and to require further oversight of Consent Judgment compliance by the Institutions accredited by HLC, the nature of such further oversight should be discussed, evaluated and determined at that time.

Between now and early 2019 when the Attorneys General make their determinations, DCF, DCEH and the Institutions, of course, will promptly provide HLC with copies of all reports issued by the Settlement Administrator, just as EDMC has done.

We appreciate all the time and consideration that HLC has given to the proposed change in the ownership of the Institutions and to the conditions relating to HLC's approval of that change and we look forward to hearing from HLC with confirmation that our proposed clarifications are acceptable.

Regards, Ron Holt, Regulatory Counsel to DCF and DCEH and Subsidiaries

Ronald L. Holt, Attorney

[@rousefrets.com](mailto:ron@rousefrets.com) | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



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From: Karen Solinski [REDACTED]@hlcommission.org]

Sent: Tuesday, December 05, 2017 12:03 PM

To: Ronald L. Holt

Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: Re: The Illinois Art Institute and The Art Institute of Colorado

Dear Ron:

Thanks for this summary of our conversation and think it fairly describes that conversation. I do want to provide an additional clarification. While it is accurate the Commission is not requiring that financial and other data for, for example, South University, be included in the interim reports, the reports must contain financial and other information for the parent and related entities, including DCEH and DCF. Please let me know if there are additional questions subsequent to this e-mail

Best regards,

Karen Peterson Solinski
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt [REDACTED]@rousefrets.com>
Sent: Friday, December 1, 2017 7:19:27 PM
To: Karen Solinski
Cc: [REDACTED]@dcedh.org; Kramer, Devitt [REDACTED]@edmc.edu); Megan R. Banks
Subject: The Illinois Art Institute and The Art Institute of Colorado

Dear Karen:

Thanks you for taking time out of your FSA Conference schedule this afternoon to talk to Devitt Kramer (EDMC General Counsel), Chris Richardson (DCEH General Counsel) and me about the request made by The Illinois Art Institute and The Art Institute of Colorado, on behalf of Dream Center Education Holdings, for an extension of the closing deadline to the second week of January, due to the timetable for state approvals of the transfer of these institutions and uncertainties at the present time as to the extent and nature of any USDOE audit requirements.

Per our discussion, we understand that, given the factors we discussed which (were also outlined in Dr. Josh Pond's November 29 email message), HLC does not expect the closing on the transfer of these schools to occur within 30 days of the Commission's decision at its November 2-3 meeting and that EDMC and DCEH must submit written confirmation to HLC, no later than 30 days before the planned closing, that no material changes have been made to the terms of the transaction. We will be sending that letter by next Friday, as we are anticipating that the closing will occur between January 8 and 15.

We also discussed the letter that was sent by Dr. Pond and others concerning the conditions set forth in HLC's November 16 letter. While the letter from Dr. Pond largely provides our understanding of the conditions, it does also propose that no third party report be provided concerning the institutions' compliance with requirements of the November 2015 Consent Judgment because the Settlement Administrator is charged with oversight duties and he issues reports that can be sent to HLC. You clarified that the Commission's direction for a third party review and report is focused on the time period, beginning in 2019, when the Administrator will no longer be serving in that capacity, and I told you that DCEH will further evaluate that condition in light of this clarification and provide a further response in the next few weeks.

Thank you again for your time and input. Regards, Ron

Ronald L. Holt, Attorney

[@rousefrets.com](mailto:ron@rousefrets.com) | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



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**Anthea Sweeney Transcribed
Interview Exhibit 21**

Re: Urgent Question regarding Suspending a Required Evaluation

Anthea Sweeney

Thu 5/31/2018 8:15 AM

To: Daggett, Elizabeth [REDACTED];

Sensitivity Confidential

You too, Beth. I deeply appreciate your attentiveness at what was a critical decisionmaking moment yesterday.

Have a wonderful day.

Anthea Sweeney

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From: Daggett, Elizabeth [REDACTED]
Sent: Thursday, May 31, 2018 8:11:15 AM
To: Anthea Sweeney
Subject: RE: Urgent Question regarding Suspending a Required Evaluation

Thank you for this additional information, Anthea. I have not shared this information and understand the need for discretion. Please keep me posted and let me know if you have any other questions. Thanks again and have a good day.
Beth

Elizabeth Daggett
Tel: [REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, May 30, 2018 1:52 PM
To: Daggett, Elizabeth
Subject: Re: Urgent Question regarding Suspending a Required Evaluation
Sensitivity: Confidential

Hi Beth,

I've been in meetings this morning, but thank you for this swift and clear response. I suspected there were no exceptions to the regulation, so we will continue our planning for the evaluations in July. I should add that we have not yet responded to the institutions request for Appeal, but plan to do so later today. I am asking that this information not be shared with the institutions by the Department.

The Commission agreed to extend the Board's conditional approval on the transaction when the institutions made it clear the transaction would not close within 30 days of initial Board action (due to pending state agency approvals for the subject institutions, as well as other non-HLC accredited

institutions involved in the transaction.) However, LGA at the time made it clear it would only seek that extension following acceptance by the institutions of the Board's conditions.

- The institutions accepted the Board's conditions via letter on January 4, 2018.
- HLC issued a second action letter extending the Board's approval on January 12, 2018.
- The transaction was finalized on January 20, 2018 (which explains the evaluation occurring this summer.)

The institutions first sent a "Letter of Protest" via email on February 2nd, 2018 to HLC, three weeks after the second Board action largely focused on language in HLC's Public Disclosure Notice. Our Appeals Procedure, which is available on our website, requires a letter of intent to appeal within two weeks of Commission action. HLC's response to the institutions' letter of February 2nd was silent on the matter of appeal. However, at that time HLC considered the immediate matter resolved rather simply by a modification to the institutions' Public Disclosure Notices, which while technically accurate in their original form, set forth a level of detail to which the institutions vigorously objected at the time.

Last week we received this recent letter demanding response by today regarding access to HLC's Appeal process. This comes as we are discovering the following problematic text on the institutions' websites:

"We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. Higher Learning Commission (230 S. LaSalle Street, Suite 7-500, Chicago, IL 60604-1413, 1.800.621.7440, www.hlcommission.org/)." (HLC's Mark of Affiliation is then correctly displayed.)

Despite language in the HLC Board's action letter of November 16, 2017 and repeated communications between Karen Peterson Solinski and their external counsel in early December 2017 and beyond, that acceptance of the Change of Control candidacy condition imposed by the HLC Board in its action letter would represent a form of status, *but not accredited status*, the institutions are now alleging that they did not fully understand what Change of Control candidacy would signify at the time they accepted the Board's condition. They have openly threatened litigation, absent access to the HLC Appeal process. Since they are specifically claiming they were "misled" (which places the effectiveness of their consent in doubt) and the full record of Karen's communications with the external counsel are not completely known, (some conversations took place in person or by phone without other HLC staff in attendance), we thought to provide the institutions' access to the Appeal process, though not required, might assist in limiting any ensuing litigation to arbitration (under HLC's Obligations of Affiliation).

I hope this additional background is helpful.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Daggett, Elizabeth [REDACTED]
Sent: Wednesday, May 30, 2018 7:50 AM
To: Anthea Sweeney
Subject: RE: Urgent Question regarding Suspending a Required Evaluation

Good morning, Anthea. Unfortunately, Section 602.24(b) does not provide any leeway for delaying the site visit for a change of ownership. The regulation is quite clear that the site visit must occur "as soon as practicable, but no later than six months after the change of ownership." There is no language related to the *approval* of the change of ownership by the agency in this section, so the appeal of such approval would not affect this requirement. Therefore, I do not see a way for HLC to delay the site visit and meet the regulations. Please let me know if you have any further questions.

In addition to your question, I guess I would have a question as to how the institution still has the opportunity to appeal a decision that occurred in November 2017? That seems like a very long window for the intent to appeal of any agency decision.

Beth

Elizabeth Daggett
Tel [REDACTED]
[REDACTED]

From: Anthea Sweeney [REDACTED]
Sent: Wednesday, May 30, 2018 6:43 AM
To: Daggett, Elizabeth
Subject: Urgent Question regarding Suspending a Required Evaluation
Importance: High

Good Morning Beth,

I have an urgent question regarding whether HLC is allowed to suspend an evaluation that is required by federal regulations following an approval of a Change of Control transaction, if the reason for the suspension is the institutions have appealed an aspect of the HLC Board's decision. I believe you may be familiar with the case more generally: The Dream Center's acquisition of Art Institute of Colorado and Illinois Institute of Art (EDMC subsidiaries). As you may be aware, while HLC's Board approved the transaction, it did so with several conditions, one of which was to move the Institutes from Accredited to Candidate status under HLC policy. Such a decision is subject to appeal under our policies. The Institutes have indicated their intent to appeal.

In its November 16, 2017 action letter, among several other monitoring requirements, the HLC Board required a focused visit within six months to "*ascertain the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.*"

HLC understands the Institutes' appeal to rest on concerns related to being moved from Accredited to Candidate status. Meanwhile the HLC Board thought this condition was a necessary condition of its approval based on several factors, some of which are indicated above. **Do we have the ability to suspend this evaluation on the basis of the pending appeal and not run afoul of Department expectations? Is an exception even possible?** Since the transaction closed earlier this year, we had been planning for this required evaluation to occur in July. Please advise as soon as possible today.

Thank you,
Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
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The information contained in this communication is confidential and intended only for the use of the recipient named above, and may be legally privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please resend it to the sender and delete the original message and copy of it from your computer system. Opinions, conclusions and other information in this message that do not relate to our official business should be understood as neither given nor endorsed by the organization.

**Anthea Sweeney Transcribed
Interview Exhibit 22**

**Public Disclosure:
Illinois Institute of Art and
Art Institute of Colorado
From “Accredited” to “Candidate”
Effective: January 20, 2018**

The Illinois Institute of Art located in Chicago, Illinois, and the Art Institute of Colorado located in Denver, Colorado, have transitioned to being a candidate for accreditation after previously being accredited. The Higher Learning Commission Board of Trustees voted to impose “Change of Control-Candidacy” on the Institutes as of the January 20 close of their sale by Education Management Corp. to the Dream Center Foundation through Dream Center Education Holdings.

This new status also applies to the Illinois Institute of Art campus in Schaumburg and its Art Institute of Michigan campus in Novi, Michigan.

In spring 2017 EDMC requested approval of a Change of Control seeking the extension of the accreditation of these institutions after their proposed sale to the Dream Center Foundation. During its review process of the Change of Control, HLC evaluated the potential for the institutions to continue to ensure a quality education to students after the change of ownership took place. The period of Change of Control-Candidacy status lasts from a minimum of six months to a maximum of four years. During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards for candidacy.

What This Means for Students

Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC and may not be accepted in transfer to other colleges and universities or recognized by prospective employers. Institute courses completed and degrees earning prior to this January 20, 2018, change of status remain accredited. In most cases, other institutions of higher education will accept those credits in transfer or for admission to a higher degree program as they were earned during an HLC accreditation period.

All colleges and universities define their own transfer and admission policies. Students should contact any institution they plan to attend in the future so they are knowledgeable about the admission and transfer policies for that institution.

Next Steps

HLC requires that the Institutes provide proper advisement and accommodations to students in light of this action, which may include, if necessary, assisting students with financial accommodations or transfer arrangements if requested.

Dream Center Education Holdings and Dream Center Foundation are required to submit a report to HLC every 90 days detailing quarterly financials to assess adequate operating resources at each entity and both Institutes.

The Institutes will each submit Eligibility Filings no later than March 1, 2018 providing documentation that each institution meets the HLC Eligibility Requirements and Assumed Practices. The Institutes will also host a campus visit within six months of the transaction date as required by HLC policy and regulation. The HLC Board will consider reinstatement of Accredited status at a future meeting.

About the Higher Learning Commission

The Higher Learning Commission accredits approximately 1,000 colleges and universities that have a home base in one of 19 states that stretch from West Virginia to Arizona. HLC is a private, nonprofit accrediting agency. It is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation. Questions? Contact info@hlcommission.org or call 312.263.0456.

**Anthea Sweeney Transcribed
Interview Exhibit 23**



Policy Title: Board of Trustees

Number: INST.D.10.010

The composition, selection, and term of the Board of Trustees are defined in the Bylaws of the Higher Learning Commission and subject to additional expectations outlined herein.

Decision-Making Authority

The Board of Trustees shall hold final responsibility for all accreditation actions taken by the Higher Learning Commission. The Board of Trustees shall retain its authority for deliberation and actions regarding accreditation decisions to:

1. grant or deny initial status, including initial candidacy and initial accreditation;
2. issue or withdraw a sanction, including on-notice or probation;
3. withdraw status, including candidacy or accreditation;
4. issue or remove a show-cause order;
5. initiate a reconsideration process;
6. approve or deny an application for Change of Control, Structure or Organization;
7. approve moving an institution from accredited to candidate status; and
8. approve exemptions, if any, from the Assumed Practices.

All such decisions, once issued by the Board, shall become the final action, except for those decisions that are subject to appeal. Such decisions shall become the final accreditation action as outlined in Commission policy INST.E.90.010 Appeals.

For all other accreditation decisions the Board authorizes the Institutional Actions Council, as constituted in this policy, to conduct reviews and to take actions, provided that such structure is recognized as such by the U.S. Department of Education.

Academics and Administrators

The Commission through its Nominating Committee as outlined in Commission Bylaws will assure that among those Trustees on its Board of Trustees who represent institutions there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

Policy Number Key

Section INST: Institutional Processes

Chapter D: Decision-Making Bodies and Process

Part 10: Board of Trustees

Last Revised: April 2013

First Adopted: June 2011

Revision History: February 2012, April 2013

Notes: Policies combined November 2012 - 2.2(d)1.1, 2.2(d)1.1a, 2.2(d)1.1b

Related Policies: INST.E.90.010 Appeals (Conflict of Interest, Confidentiality), Trustee Policies, Chapter III. Board Authority and Responsibility, Section C, Confidentiality and D, Objectivity and Conflict of Interest.

**Anthea Sweeney Transcribed
Interview Exhibit 24**



Policy Title: Appeals

Number: INST.E.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.040, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board's decision whether the information is significant and

material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission's Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:



INSTITUTIONAL APPEALS

An institution that has received an action by the Commission's Board of Trustees that denies either candidacy or accreditation or that withdraws candidacy or accreditation may appeal that action. The appeals process is governed by a policy adopted by the Commission's Board of Trustees and a procedure outlining the required steps and materials.

The Commission develops a public statement, a Public Disclosure Notice, about an institution that has received an appealable action that states the action, the reasons for the action, and the next steps in the process. This statement is available in the directory of institutions on the Commission's Web site. An institution under withdrawal is required to inform its board, administrators, faculty, students, staff and other constituencies of this change in its relationship with the Commission and how to contact the Commission for information about the institution's status.

COMMISSION POLICIES ON APPEALS OF BOARD ACTIONS

NUMBER: INST.D.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest

or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.010, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board's decision whether the information is significant and material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission's Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Policies

Chapter D: Sanctions and Adverse Actions

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:

COMMISSION PROCEDURE FOR APPEAL OF BOARD ACTIONS

The Appeals Process will consist of the following procedures, timetables, and documents:

Institution's Filing of Intent to Appeal

The institution will file a letter of intent within two weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The institution will also receive a copy of the action letter by certified mail. Although the letter of intent may be transmitted to the Commission electronically, the institution's letter must also be filed with the Commission by certified or expedited mail requiring signature of receipt. The Commission will acknowledge the letter within two business days of receipt of the electronic or certified transmission, whichever it receives first, and will outline in its response the specific timeline for the appeal.

Institution's Filing of the Appellate Document

The institution will file the appellate document with the Commission within six weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The appellate document shall consist of the institution's written argument supporting its appeal along with evidence and other relevant written information that will establish the institution's asserted grounds for appeal. The institution may submit the appellate document electronically but must also submit two copies of the entire submission in paper form. (Note that the institution must submit all documents related to its appeal either with the appellate document or with the rebuttal.)

Teach-Out Plan: The institution may also be required to file a teach-out plan subsequent to the Board action according to a timetable set by the Commission President in the action letter. The Appeal will move forward once the institution has filed a Teach-Out Plan that meets Commission requirements.

The Commission's Response

The Commission's written response to the institution's appellate document will be filed by the Commission with the institution ten weeks after the date of electronic transmission of the official action letter from the Commission, or typically four weeks after receipt of the institution's document, whichever is later. (The Commission may adjust the deadline to account for holidays or Commission events. Note that the timing of this event may be altered if the institution also files a financial appeal as outlined in the next section of this document.)

Institution's Filing of the Rebuttal

The institution's rebuttal, if any, to the Commission's response shall be filed by the institution with the Commission twelve weeks after the date of electronic transmission of the action letter, or typically two weeks after receipt of the Commission's response, whichever is later. This is the final opportunity for the institution to submit any other documents, relevant to the grounds for appeal that it wants to make available to the Appeals Panel.

Establishing the Appeals Panel

The Commission will finalize the membership of the Appeals Panel and make the arrangements for the hearing. The Appeals Panel members will largely be drawn from the Appeals Body, a group of experienced peer reviewers who are not current or recent Trustees. At least one of the Appeals Panel members will be a public member as defined in Commission policy. However, the President of the Commission has the discretion to appoint as Panel members individuals who are not currently members of the Appeals Body; in

some cases, such Panel members may not be peer reviewers. The institution will receive a roster of the Panel members and institutions about the date, time and location of the hearing once the hearing arrangements are complete.

The Appeal Hearing

The Hearing may take place as soon as thirteen weeks after the date of electronic transmission of the official action but no later than seventeen weeks after that date. The Hearing is conducted according to the protocol outlined below.

Hearing Protocol

- All documents will be forwarded by the Commission President to the Appeals Panel members at least one week before the Appeals hearing. The institution sends no documents or communications directly to Panel members.
- The hearing will be conducted by the Appeals Panel at a site and time set by the Commission's President.
- Each party may have legal counsel present to advise and, when recognized by the Chair, to speak on behalf of that party.
- The institution may present no written evidence or documents at the hearing. The institution's presentation to the Appeals Panel shall be confined to oral statements and responses to questions by Panel members.
- The hearing is not public, and attendees at the hearing are confined to representatives participating in the hearing on behalf of the institution, Panel members, Commission staff, legal counsel, and a court reporter who will transcribe the session.
- A transcript of the hearing, arranged for by the President, will be prepared and sent to each party.

Findings

The Appeals Panel may affirm the Board of Trustees' action or it may amend or reverse the action. If the Appeals Panel acts to affirm the Board of Trustees' action, the action of the Board becomes final and shall not be further appealable. If the Appeals Panel amends the grounds for the action but sustains the decision, the action of the Appeals Panel becomes final and shall not be further appealable. If the Appeals Panel reverses the Board's action, the Panel then conveys its decision to the Board of Trustees for implementation in a manner consistent with the outcome of the appeal. The Appeals Panel will inform the institution and the Board of the Panel findings and decision in writing within four weeks of the hearing. The Appeals Panel's decision is final, and the institution does not have the opportunity to appeal again.

Alternatively, the Appeals Panel has the authority to remand the adverse action to the Board of Trustees for additional consideration after the Appeals Panel has completed its consideration. The Appeals Panel provides the Board with a letter of explanation of its decision to remand. The Board, after receiving the letter and taking into account the Appeals Panel's explanation of its reasons for remanding the action, will affirm, amend, or reverse its previous action within sixty (60) days of receiving the Appeals Panel's remand. The Board will inform the institution of its final action. In this situation, the Board's decision is final, and the institution does not have the opportunity to appeal again.

If the Appeals Panel has made a final decision, the Board will review and act to implement the Panel's decision no later than sixty (60) days from the transmission of the Panel's findings. The Board may consider the Panel's decision at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. If the Panel has recommended that the action be reversed or if the Panel remands the action with a letter of explanation, the Board has the discretion to define the terms and conditions (e.g., date of next evaluation, monitoring, sanction, etc.) of

the institution’s accredited or candidate status in conjunction with its implementation of the reversal. The institution makes no appearance before the Board in conjunction with this or any action subsequent to the appeals hearing.

OVERVIEW OF THE STEPS OUTLINED ABOVE

Timeline	Party Responsible	Detail
following Board action	Commission	sends institution official Commission action letter
within two weeks after the date of electronic transmission of the official action letter	Institution	files a Letter of Intent with the Commission
within two business days of receipt of letter	Commission	acknowledges the Letter of Intent and outlines the timetable for the appeal
within six weeks after the date of electronic transmission of the official action letter	Institution	submits its appellate document to the Commission; any required teach-out plan should have been provided to the Commission and determined to merit approval.
within ten weeks after the date of electronic transmission of the official action letter	Commission	files a response with the institution to the appellate document
within twelve weeks after the date of electronic transmission of the official action letter	Institution	submits to the Commission an optional rebuttal to the Commission’s response and any other new materials relevant to the grounds for appeal that the institution wants made available to the Appeals Panel (optional)
seven days or more prior to the hearing	Commission	finalizes the Appeals Panel and forwards materials to the Panel
within 13-17 weeks of the Commission action	Commission and Institution	attend Appeals Hearing
within four weeks of the hearing	Commission	informs the Board and the institution in writing of the Appeals Panel findings

Financial Reconsideration Provision

If the Commission's Board of Trustees took the adverse action based on or partly based on financial grounds, the institution may submit new financial information in lieu of an appeal OR in addition to an appeal. New financial information consists of information regarding improvements or changes in the financial situation of the institution subsequent to the action of the Board.

Letter of Intent

The new financial information must be submitted within two weeks of electronic transmission to the institution of the official action letter from the Commission. The financial information must clearly indicate whether the institution is submitting the information in addition to OR in lieu of an appeal. If the institution is submitting the information in lieu of an appeal, the institution must include a cover letter, signed by the president of the institution or other corporate officer, clearly stating that the institution is waiving its right to appeal. If the institution is pursuing an appeal in addition to filing new financial information, the institution must also file a Letter of Intent and meet all the other deadlines for the appeals process identified in this Procedure and in the Commission's acknowledgement of the Letter of Intent. The institution may submit the new financial information electronically but must also submit two copies of the entire submission in paper form.

If the institution intends to appeal the action in addition to submitting new financial information and has so stated in its initial response to the Commission's action letter, the appellate document should then be submitted within six weeks of the electronic transmission of the action letter. The appeals process will be suspended after receipt of the appellate document until the Financial Reconsideration Process has concluded.

Review of Information

The Commission's Board of Trustees will review the new financial information. The Board will review and make a decision regarding the new financial information no later than ninety days from its transmission. The Board may consider the information at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. The institution will make no appearance in conjunction with the Board's review. The Board will consider the following three questions in consideration of the new financial information: 1) Is the financial information indeed new?; 2) Is the financial information material?; and 3) Would the information have caused the Board to take a different action had it been available at the time of the accrediting action?

Outcome of the Financial Reconsideration — Negative

If the Board decides against the institution on any of the questions outlined under "Review of Information" above, then the financial reconsideration will result in a negative conclusion. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final. If the institution did file an appeal, the appeal will recommence.

The Board will issue a written notification to the institution of its decision within two weeks of the decision having been made. It will include a revised timetable to complete the appeal, if applicable. Because the Board's original action stands without modification, there will not be an opportunity for the institution to revise the appeal document that it previously filed.

Outcome of the Financial Reconsideration — Affirmative

If the Board decides affirmatively on each question outlined under “Review of Information” above, then the Board must decide whether it will take a different action or reissue its previous action.

- If the Board sustains its original action on the same grounds, with or without the grounds related to finances, and the institution had filed an appeal, the appeal will recommence. The letter will include a revised timetable to continue the appeal previously filed. Because the Board’s original action stands, the institution’s appeals document will move forward in the process, and there will not be an opportunity for the institution to revise that document. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final.
- If the Board decides that it will take a different action, it may then immediately act to place the institution in status, which may be candidate for accreditation, accreditation, or accreditation subject to sanction or show-cause or monitoring.

Alternatively, the Board may define a process to evaluate the institution to make a recommendation as to the appropriate status.

- The Board will issue a written notification to the institution of its decision within two weeks of the date the decision was made. That letter will identify the institution’s status, as identified by the Board in its action, or it will outline a timetable for any evaluation the Board determines is necessary to establish an appropriate status and accrediting cycle for the institution. Any appeal previously filed by the institution will be permanently closed.

If the Board has called for an evaluative process to help establish an appropriate status for the institution or the terms and conditions related to that status (e.g., evaluation dates, monitoring, sanctions, etc.), then the institution will remain accredited on appeal until that process is concluded, and the Board takes action. The Board will act to establish the institution’s status and any terms or conditions related to that status no later than 120 days after its decision to call for an evaluative process to advise the Board on determining the institution’s status. The Board may take action at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission’s Bylaws. The Board will issue a written notification to the institution of the final action within two weeks of the action having been taken.

Intent to Appeal Reconsidered Action

If for any reason the Board in its reconsideration on finances acts to deny or withdraw status on other grounds, not identified in the original action, the institution has two weeks from the date of its receipt of the reconsideration action to file a Letter of Intent to appeal if it did not previously file an appeal, and the appeals timetable will be set from that reconsideration action. If the institution has already filed an appeal, it will have two weeks from receipt of the letter conveying the reconsideration action to revise its appellate document and related materials to address the new grounds, and the appeals timetable will be reset from that reconsideration action.

If the Board acts in its reconsideration to continue status with monitoring, sanction, or show-cause or to place the institution in candidate for accreditation status, rather than denial or withdrawal, this action is not appealable. Any pending institutional appeal regarding the original Commission action to deny or withdraw status will be closed.

Teach-Out

An institution that has received a denial or withdrawal action must file a teach-out plan with the Commission. This plan must be determined to meet Commission expectations regarding teach-out prior to the Commission initiating or proceeding with an appeals process.

Institutional Fees for Appeals of Board Action

The fees for an appeal are outlined in the Commission Dues and Fees Schedule, which is updated annually and posted on the Commission's Web site. The fees include a flat fee as well as all costs of conducting and transcribing the hearing and assembling and supporting the panel members. The institution shall include a deposit check in the amount stipulated in the Commission dues and fees schedule when it submits its appeals materials. Subsequent to the hearing, the direct expenses will be tallied and the Commission will bill the institution for its remaining share or will refund any overage as appropriate. The institution must be current regarding all dues and fees owed to the Commission at or before the adverse action before the Commission will initiate any appeal.

**Anthea Sweeney Transcribed
Interview Exhibit 25**

February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions



February 7, 2018

VIA ELECTRONIC MAIL

Dr. David Harpool and Ronald L. Holt
Rouse Frets Gentile Rhodes, LLC
1100 Walnut St.
Suite 2900
Kansas City, MO 64106

Dear Dr. Harpool and Mr. Holt:

I am writing in response to your letter of February 2, 2018, to confirm that the Art Institute of Colorado (“AIC”) and Illinois Institute of Art (“IIA”) are in Change of Control Candidate for Accreditation status with the Higher Learning Commission as of January 20, 2018. Your letter reaffirms their voluntary consent to such status as earlier indicated in a letter from Presidents Josh Pond of IIA and Elden Monday of AIC on January 4, 2018. As such, both institutions are eligible to seek accredited status following the requirements outlined in the November 16, 2017 Action Letter, as modified by the January 12, 2018 Action Letter, which confirmed again that approval of the extension of status was subject to a Change of Control Candidacy and clarified the schedule for the filing of an Eligibility Filing to confirm the institutions’ compliance with the Eligibility Requirements and the schedule for subsequent focused evaluations.

None of the terms outlined in these letters have changed or been modified based on any language in the Public Disclosure Notice (“PDN”). The institutions are not in pre-candidacy status, as your letter indicates; the Commission has no such status. As noted above, the institutions remain eligible to apply for accredited status based on the terms outlined in the November 16, 2017 Action Letter. I would note that your clients had a lengthy opportunity (early November 2017 to early January 2018) to review the November Action Letter, to determine the implications for their institutions prior to filing their consent on January 4, 2018, and to ask questions to their HLC staff liaison if anything in the November action was unclear.

While the Commission believes that the Public Disclosure Notice as previously published, accurately represented the terms of the November 16, 2017 Action Letter, Commission staff has modified the PDN on the HLC website to remove certain procedural language that was questioned in your letter of protest. I trust that these modifications will allay any concerns that you have that the PDN modified in some way the terms of the November 16, 2017 letter to which your clients specifically consented.

Thank you. If you have any further questions, please contact Karen Peterson, Executive Vice President for Legal and Governmental Affairs.

Dr. Harpool and Mr. Holt, February 7, 2018 2

Sincerely,

A handwritten signature in black ink that reads "Barbara Gellman-Danley". The signature is written in a cursive, flowing style.

Barbara Gellman-Danley
President

Cc: Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
Karen Peterson, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission

**Anthea Sweeney Transcribed
Interview Exhibit 26**

February 23, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
Bgellman-danley@hlcommission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley,

We have discussed your letter of response and the proposed Public Notice Disclosure with our clients. To ensure that we correctly understand your response and the status of our client schools (Illinois Institute of Art and the Art Institute of Colorado), we are confirming that:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in “preaccreditation status,” a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution. *See* 34 C.F.R. §§ 600.2 & 600.4 (a)(5)(i). (We and our clients, in determining that we could accept the conditions of the November 16, 2017 letter, as modified by the Commission’s January 12, 2018 letter, and could continue to serve our students and meet their expectations, relied in good faith on this understanding.).
2. Both institutions remain accredited, in the status of Change of Control Candidate for Accreditation, per their change of ownership, and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.
3. Both institutions will receive an objective review for continued accreditation, with team members who have the requisite skill and experience to render an unbiased decision.
4. Both institutions will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.

Please confirm that our understandings, as stated above, are correct. It is our clients’ desire to avoid pursuit of an appeal and possible litigation, a goal that we trust the Commission shares, and the foregoing understandings are essential to that objective.

Higher Learning Commission
Page 2
February 23, 2018

Very truly yours,

ROUSE FRETS GENTILE RHODES, LLC

_____/s/_____
Ronald L. Holt

_____/s/_____
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc:

Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
brichardson@dcedh.org

Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Michael.frola@ed.gov

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
asweeney@hlcommission.org

Karen Solinski, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission
ksolinski@hlcommission.org

**Anthea Sweeney Transcribed
Interview Exhibit 27**

From: [David Harpool](#)
To: [Ronald L. Holt](#)
Cc: [Richardson, Brent D.](#); [Richardson, Chris C.](#); [Randall Barton \[REDACTED\]@gmail.com](#); [\[REDACTED\]@gmail.com](#); [Murphy, Shelly M.](#); [Megan R. Banks](#)
Subject: Re: HLC - Call from Outside Counsel
Date: Thursday, April 19, 2018 3:56:23 PM

I'd let it sit. Provides more runway to operate. I'd have you engage a week from now. I wouldn't have clients on so you can't commit to anything immediately.

David Harpool, J.D., PHD

On Apr 19, 2018, at 12:51 PM, Ronald L. Holt [\[REDACTED\]@rousefrets.com](#)> wrote:

Hi All, just wanted to briefly follow up on this. [\[REDACTED\]](#)
[\[REDACTED\]](#), but just wanted to see if one of you will follow up on this and reach out to [\[REDACTED\]](#), outside counsel for HLC, or if, instead, you think we should, for now, just let the matter lie silent, as HLC did for some 2 months. I defer to your judgment on that. Ron

Ronald L. Holt, Attorney
[\[REDACTED\]](#)

1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

<image002.jpg>

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From: Ronald L. Holt
Sent: Tuesday, April 17, 2018 6:12 PM

[\[REDACTED\]](#)
[\[REDACTED\]](#)
Subject: HLC - Call from Outside Counsel

Hi All, I received the attached voicemail message on my office phone, earlier today, from outside counsel to HLC, [\[REDACTED\]](#), offering to discuss the February 23 letter that Dr. David Harpool and I sent her in response to HLC's public notice about the

nature of the accreditation status, following the closing of the DCEH transaction, of The Art Institute of Colorado and The Illinois Art Institute. I have attached the February 23 letter, and the earlier HLC February 7 letter, for convenient reference. Given the passage of time, without any apparent adverse impact on the two Art Institutes from HLC's faulty and unfair characterization of the accreditation status of these two schools, I am wondering how much of an attack we want to make here, assuming that USDOE treats the schools as being in "pre-accreditation" status and therefore remaining eligible for Title IV aid? I recognize HLC's inappropriate characterization of status could impact the timetable for the schools to achieve full accreditation. I think we should have a call tomorrow to discuss this before I and/or others (David Harpool? Chris Richardson? Shelley Murphy?) call back [REDACTED]. Please advise. Ron

Ronald L. Holt, Attorney
[REDACTED]

1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

<image003.jpg>

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**Anthea Sweeney Transcribed
Interview Exhibit 28**

May 21, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission

bgdanley@hlcommission.org

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission

asweeney@hlcomission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”).

We wrote on February 2, 2018 to express our concern that the January 20, 2018 Commission's Public Disclosure (“Disclosure”) is not consistent with the terms extended to the Institutions by the Commission (following applications filed by the Institutions in late 2016 and supplemented in 2017) in the Commission’s November 16, 2017 letter with respect the planned change in ownership of the Institutions (the “Transactions”) involving their acquisition by subsidiaries of the nonprofit Dream Center Foundation.

While the Institutions regarded being placed in the status of Change of Control Candidate for Accreditation, which the Commission’s November 16, 2017 letter had described as pre-accreditation candidacy status, as an unwarranted response to the planned change in ownership, the Institutions, through letters dated November 29, 2017 and January 4, 2018, confirmed (with only a few modifications) that they would accept candidacy status, believing that they would be treated as pre-approved candidates on a fast-track needing to only address the issues raised in the November 16, 2017 letter, and they proceeded to close the Transactions on January 19, 2018 (the “Closing”) on that basis. The next day, however, the Commission issued its Disclosure describing the Institutions’ status to mean something far different from what the Institutions believed candidacy and pre-accreditation status would mean here.

As we stated in our February 2, 2018 letter, the issue here is not solely maintaining Title IV eligibility of these institutions; it is also meeting the reasonable expectations and interests of our students, a goal which should be shared by the Commission. To be frank, had the Commission plainly stated in its November 16, 2017 letter what it later said in the Disclosure, DCEH would not have carried out the Closing of the Transactions because the necessary regulatory consent would not have existed and the Transactions would not have been in the best interests of the

Higher Learning Commission
Page 2
May 21, 2018

students. Quite honestly, DCEH feels that it was misled by HLC to its detriment and the detriment of its students and that DCEH has actionable legal claims against HLC.

In an effort to avoid a legal battle, in our February 2, 2018 letter, we informed you that we believe that, pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action that is subject to appeal, we informed you of the Institutions' refusal to accept the Commission's decision as stated in the Disclosure and the Institutions' desire to appeal that decision, and we requested your input on how we should proceed with the appeal.

While President Gellman-Danley sent correspondence on February 7, 2018 indicating that a change was being made to the Disclosure, she maintained in her letter that the Institutions were not in pre-accreditation status (she indicated that HLC does not have such a status) and that the Institutions need to apply for and establish their candidacy for accreditation. She noted that some changes had been made to some of the language in the Disclosure concerning certain procedural matters. But those changes do not allay the concerns that the Institutions have about the expectations and interests of their students, as the Disclosure continues to state that all students who did not graduate prior to January 19, 2018 are attending institutions not accredited by HLC and taking programs not accredited by HLC and will be earning credentials not accredited by HLC. This, quite simply, is unacceptable. Moreover, President Gellman-Danley's letter does not acknowledge the Institutions' decision to appeal the Commission's decision to place the Institutions in the status of Change of Control Candidate for Accreditation, nor does it provide them with any directions on how to pursue their appeal, as we had requested in our February 2, 2018 letter.

Thus, to date, we have not received any guidance on how we can pursue our appeal with HLC. If such guidance is not given to us in writing within the next ten (10) days, we will assume that HLC is unwilling to allow DCEH to pursue an internal appeal, and DCEH will proceed with a legal action. We trust this can be avoided and we again repeat our request for instructions on the pursuit of an appeal.

Sincerely

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc: Mary E. Kohart, Esq.
Counsel to HLC
mek@elliottgreenleaf.com

Mr. Brent Richardson
brichardson@dcedh.org

Chris Richardson, Esq.
crichardson@dcedh.org

Mr. David Ray
dray@dcedh.org

Mr. Elden Monday
emonday@dcedh.org

Ms. Shelley Murphy
smurphy@dcedh.org

**Anthea Sweeney Transcribed
Interview Exhibit 29**



May 30, 2018

VIA ELECTRONIC MAIL

Ronald L. Holt, Esq.
David Harpool, Esq.
Rouse Frets Gentile Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106

Messrs. Holt and Harpool:

I am writing on behalf of the Higher Learning Commission (HLC) in response to your letter dated May 21, 2018 on behalf of Art Institute of Colorado and Illinois Institute of Art (“the Institutes”) in which you inquire about HLC’s Appeal process. HLC has reviewed your request and will proceed to convene an Appeals Panel to hear the Institutes’ appeal in accordance with the Commission’s Appeal Procedures document which is enclosed.

We believe in the integrity of our Appeals process and we will work to develop a timeline that brings swift resolution to this matter. In order for specific dates to be determined however, an Appellate Document on behalf of the Institutes must be provided in accordance with the enclosed Appeal Procedures document as soon as possible. (A single Appellate Document may be filed.) As an overview of the timeline, HLC will respond to the Appellate Document no later than 4 weeks from the date of receipt, after which the Institutes may provide, at their option, a rebuttal to HLC’s response within two weeks. Based on the time needed for an Appeals Panel to review the materials, we anticipate a hearing could proceed under these assumptions as early as August with final resolution to follow. Commission Staff will then provide an update to the Board of Trustees of the Higher Learning Commission at its November 2018 meeting.

Pending the outcome of the Institutes’ appeal of the November 2017 Board action, certain review activities related to the Institutes which were anticipated to occur in the interim will be suspended immediately. Specifically, the Commission’s ongoing review of interim reports which had been required every 90 days by the HLC Board’s action letter of November 16, 2017 will be suspended; the Institutes will not be required to provide any additional 90-day reports pending the final outcome of the appeal. Likewise, HLC’s review of the Institutes’ respective Eligibility Filings submitted on February 1, 2018 will be suspended.

In its November 16, 2017 action letter, however, the HLC Board also required a focused visit to “ascertain the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.” Because the timing of this particular evaluation is intended to satisfy the requirements of Title 34 of the Code of Federal Regulations, Section 602.24(b) following approval

of a Change of Ownership, HLC is not able to suspend this focused visit on the basis of a pending appeal. Therefore, Commission staff will continue preparations to finalize arrangements and will continue to communicate with the institutions accordingly.

Except as otherwise specifically limited by the Appeals Procedure document, routine HLC activities will continue without interruption. Thank you in advance for your cooperation. If you have questions concerning this letter, please feel free to contact me directly at asweeney@hlcommission.org or 312-881-8128.

Best Regards,



Anthea M. Sweeney
Vice President for Legal and Governmental Affairs

Enc.: HLC Appeals Procedure

Cc: Elden Monday, Interim President, Art Institute of Colorado
Dr. Ben Yohe, Accreditation Liaison Officer, Art Institute of Colorado
Jennifer Ramey, President, Illinois Institute of Art
Deann Surdo, Accreditation Liaison Officer, Illinois Institute of Art
Dr. Barbara Gellman-Danley, President, Higher Learning Commission
Executive Leadership Team, Higher Learning Commission

**Anthea Sweeney Transcribed
Interview Exhibit 30**



Policy Title: Appeals

Number: INST.E.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.040, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board's decision whether the information is significant and

material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission's Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:



INSTITUTIONAL APPEALS

An institution that has received an action by the Commission's Board of Trustees that denies either candidacy or accreditation or that withdraws candidacy or accreditation may appeal that action. The appeals process is governed by a policy adopted by the Commission's Board of Trustees and a procedure outlining the required steps and materials.

The Commission develops a public statement, a Public Disclosure Notice, about an institution that has received an appealable action that states the action, the reasons for the action, and the next steps in the process. This statement is available in the directory of institutions on the Commission's Web site. An institution under withdrawal is required to inform its board, administrators, faculty, students, staff and other constituencies of this change in its relationship with the Commission and how to contact the Commission for information about the institution's status.

COMMISSION POLICIES ON APPEALS OF BOARD ACTIONS NUMBER: INST.D.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, (2) withdraw or deny candidacy, or (3) moves the institution from accredited to candidate status.

Grounds for Appeal

The grounds for such an appeal shall be (a) that the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action; or (b) that the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and practices, and that procedural error prejudiced the Board's consideration. The appeal will be limited to only such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of ten persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the Panel will include no current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal. One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. Members of the Appeals Panel will receive training prior to the Appeals Panel hearing. The Appeals Panel will receive appropriate training regarding its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.

The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest

or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Panel members. One member of the Panel will be designated as the chair. The President shall notify the institution of the individuals selected for the Panel and shall afford the institution the opportunity to present objections regarding conflict of interest; the President reserves final responsibility and authority for setting all Appeals Panels. The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The Board of Trustees shall approve an APPEALS PROCEDURE that identifies the materials for, and sets out the required timetables and procedures of, an appeal. This document will be available on the Commission Web site. Throughout the appeals process, the institution shall have the right to representation of, and participation by, counsel at its own expense.

The Appeals Panel has the authority to make a decision to affirm, amend or reverse the adverse action. The Appeals Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. The Appeals Panel also has the authority to remand the adverse action to the Board of Trustees for additional consideration with an explanation of its decision to remand; the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand. The Commission will notify the institution of the result of the appeal and of the final action by the Board of Trustees and the reason for that result.

Academics and Administrators

The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

Confidentiality

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission’s decision-making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.010, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board’s decision whether the information is significant and material and whether to continue with its action subsequent to reviewing this material is final and not appealable.

An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.

The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission’s Web site.

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy Number Key

Section INST: Institutional Policies

Chapter D: Sanctions and Adverse Actions

Part 90: Appeals

Last Revised: April 2013

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:

COMMISSION PROCEDURE FOR APPEAL OF BOARD ACTIONS

The Appeals Process will consist of the following procedures, timetables, and documents:

Institution's Filing of Intent to Appeal

The institution will file a letter of intent within two weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The institution will also receive a copy of the action letter by certified mail. Although the letter of intent may be transmitted to the Commission electronically, the institution's letter must also be filed with the Commission by certified or expedited mail requiring signature of receipt. The Commission will acknowledge the letter within two business days of receipt of the electronic or certified transmission, whichever it receives first, and will outline in its response the specific timeline for the appeal.

Institution's Filing of the Appellate Document

The institution will file the appellate document with the Commission within six weeks of the date of electronic transmission of the official action letter from the Commission. (The Commission may adjust the deadline to account for holidays or Commission events.) The appellate document shall consist of the institution's written argument supporting its appeal along with evidence and other relevant written information that will establish the institution's asserted grounds for appeal. The institution may submit the appellate document electronically but must also submit two copies of the entire submission in paper form. (Note that the institution must submit all documents related to its appeal either with the appellate document or with the rebuttal.)

Teach-Out Plan: The institution may also be required to file a teach-out plan subsequent to the Board action according to a timetable set by the Commission President in the action letter. The Appeal will move forward once the institution has filed a Teach-Out Plan that meets Commission requirements.

The Commission's Response

The Commission's written response to the institution's appellate document will be filed by the Commission with the institution ten weeks after the date of electronic transmission of the official action letter from the Commission, or typically four weeks after receipt of the institution's document, whichever is later. (The Commission may adjust the deadline to account for holidays or Commission events. Note that the timing of this event may be altered if the institution also files a financial appeal as outlined in the next section of this document.)

Institution's Filing of the Rebuttal

The institution's rebuttal, if any, to the Commission's response shall be filed by the institution with the Commission twelve weeks after the date of electronic transmission of the action letter, or typically two weeks after receipt of the Commission's response, whichever is later. This is the final opportunity for the institution to submit any other documents, relevant to the grounds for appeal that it wants to make available to the Appeals Panel.

Establishing the Appeals Panel

The Commission will finalize the membership of the Appeals Panel and make the arrangements for the hearing. The Appeals Panel members will largely be drawn from the Appeals Body, a group of experienced peer reviewers who are not current or recent Trustees. At least one of the Appeals Panel members will be a public member as defined in Commission policy. However, the President of the Commission has the discretion to appoint as Panel members individuals who are not currently members of the Appeals Body; in

some cases, such Panel members may not be peer reviewers. The institution will receive a roster of the Panel members and institutions about the date, time and location of the hearing once the hearing arrangements are complete.

The Appeal Hearing

The Hearing may take place as soon as thirteen weeks after the date of electronic transmission of the official action but no later than seventeen weeks after that date. The Hearing is conducted according to the protocol outlined below.

Hearing Protocol

- All documents will be forwarded by the Commission President to the Appeals Panel members at least one week before the Appeals hearing. The institution sends no documents or communications directly to Panel members.
- The hearing will be conducted by the Appeals Panel at a site and time set by the Commission's President.
- Each party may have legal counsel present to advise and, when recognized by the Chair, to speak on behalf of that party.
- The institution may present no written evidence or documents at the hearing. The institution's presentation to the Appeals Panel shall be confined to oral statements and responses to questions by Panel members.
- The hearing is not public, and attendees at the hearing are confined to representatives participating in the hearing on behalf of the institution, Panel members, Commission staff, legal counsel, and a court reporter who will transcribe the session.
- A transcript of the hearing, arranged for by the President, will be prepared and sent to each party.

Findings

The Appeals Panel may affirm the Board of Trustees' action or it may amend or reverse the action. If the Appeals Panel acts to affirm the Board of Trustees' action, the action of the Board becomes final and shall not be further appealable. If the Appeals Panel amends the grounds for the action but sustains the decision, the action of the Appeals Panel becomes final and shall not be further appealable. If the Appeals Panel reverses the Board's action, the Panel then conveys its decision to the Board of Trustees for implementation in a manner consistent with the outcome of the appeal. The Appeals Panel will inform the institution and the Board of the Panel findings and decision in writing within four weeks of the hearing. The Appeals Panel's decision is final, and the institution does not have the opportunity to appeal again.

Alternatively, the Appeals Panel has the authority to remand the adverse action to the Board of Trustees for additional consideration after the Appeals Panel has completed its consideration. The Appeals Panel provides the Board with a letter of explanation of its decision to remand. The Board, after receiving the letter and taking into account the Appeals Panel's explanation of its reasons for remanding the action, will affirm, amend, or reverse its previous action within sixty (60) days of receiving the Appeals Panel's remand. The Board will inform the institution of its final action. In this situation, the Board's decision is final, and the institution does not have the opportunity to appeal again.

If the Appeals Panel has made a final decision, the Board will review and act to implement the Panel's decision no later than sixty (60) days from the transmission of the Panel's findings. The Board may consider the Panel's decision at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. If the Panel has recommended that the action be reversed or if the Panel remands the action with a letter of explanation, the Board has the discretion to define the terms and conditions (e.g., date of next evaluation, monitoring, sanction, etc.) of

the institution’s accredited or candidate status in conjunction with its implementation of the reversal. The institution makes no appearance before the Board in conjunction with this or any action subsequent to the appeals hearing.

OVERVIEW OF THE STEPS OUTLINED ABOVE

Timeline	Party Responsible	Detail
following Board action	Commission	sends institution official Commission action letter
within two weeks after the date of electronic transmission of the official action letter	Institution	files a Letter of Intent with the Commission
within two business days of receipt of letter	Commission	acknowledges the Letter of Intent and outlines the timetable for the appeal
within six weeks after the date of electronic transmission of the official action letter	Institution	submits its appellate document to the Commission; any required teach-out plan should have been provided to the Commission and determined to merit approval.
within ten weeks after the date of electronic transmission of the official action letter	Commission	files a response with the institution to the appellate document
within twelve weeks after the date of electronic transmission of the official action letter	Institution	submits to the Commission an optional rebuttal to the Commission’s response and any other new materials relevant to the grounds for appeal that the institution wants made available to the Appeals Panel (optional)
seven days or more prior to the hearing	Commission	finalizes the Appeals Panel and forwards materials to the Panel
within 13-17 weeks of the Commission action	Commission and Institution	attend Appeals Hearing
within four weeks of the hearing	Commission	informs the Board and the institution in writing of the Appeals Panel findings

Financial Reconsideration Provision

If the Commission's Board of Trustees took the adverse action based on or partly based on financial grounds, the institution may submit new financial information in lieu of an appeal OR in addition to an appeal. New financial information consists of information regarding improvements or changes in the financial situation of the institution subsequent to the action of the Board.

Letter of Intent

The new financial information must be submitted within two weeks of electronic transmission to the institution of the official action letter from the Commission. The financial information must clearly indicate whether the institution is submitting the information in addition to OR in lieu of an appeal. If the institution is submitting the information in lieu of an appeal, the institution must include a cover letter, signed by the president of the institution or other corporate officer, clearly stating that the institution is waiving its right to appeal. If the institution is pursuing an appeal in addition to filing new financial information, the institution must also file a Letter of Intent and meet all the other deadlines for the appeals process identified in this Procedure and in the Commission's acknowledgement of the Letter of Intent. The institution may submit the new financial information electronically but must also submit two copies of the entire submission in paper form.

If the institution intends to appeal the action in addition to submitting new financial information and has so stated in its initial response to the Commission's action letter, the appellate document should then be submitted within six weeks of the electronic transmission of the action letter. The appeals process will be suspended after receipt of the appellate document until the Financial Reconsideration Process has concluded.

Review of Information

The Commission's Board of Trustees will review the new financial information. The Board will review and make a decision regarding the new financial information no later than ninety days from its transmission. The Board may consider the information at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission's Bylaws. The institution will make no appearance in conjunction with the Board's review. The Board will consider the following three questions in consideration of the new financial information: 1) Is the financial information indeed new?; 2) Is the financial information material?; and 3) Would the information have caused the Board to take a different action had it been available at the time of the accrediting action?

Outcome of the Financial Reconsideration — Negative

If the Board decides against the institution on any of the questions outlined under "Review of Information" above, then the financial reconsideration will result in a negative conclusion. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final. If the institution did file an appeal, the appeal will recommence.

The Board will issue a written notification to the institution of its decision within two weeks of the decision having been made. It will include a revised timetable to complete the appeal, if applicable. Because the Board's original action stands without modification, there will not be an opportunity for the institution to revise the appeal document that it previously filed.

Outcome of the Financial Reconsideration — Affirmative

If the Board decides affirmatively on each question outlined under “Review of Information” above, then the Board must decide whether it will take a different action or reissue its previous action.

- If the Board sustains its original action on the same grounds, with or without the grounds related to finances, and the institution had filed an appeal, the appeal will recommence. The letter will include a revised timetable to continue the appeal previously filed. Because the Board’s original action stands, the institution’s appeals document will move forward in the process, and there will not be an opportunity for the institution to revise that document. If the institution did not file an appeal, the accrediting action to deny or withdraw status becomes final.
- If the Board decides that it will take a different action, it may then immediately act to place the institution in status, which may be candidate for accreditation, accreditation, or accreditation subject to sanction or show-cause or monitoring.

Alternatively, the Board may define a process to evaluate the institution to make a recommendation as to the appropriate status.

- The Board will issue a written notification to the institution of its decision within two weeks of the date the decision was made. That letter will identify the institution’s status, as identified by the Board in its action, or it will outline a timetable for any evaluation the Board determines is necessary to establish an appropriate status and accrediting cycle for the institution. Any appeal previously filed by the institution will be permanently closed.

If the Board has called for an evaluative process to help establish an appropriate status for the institution or the terms and conditions related to that status (e.g., evaluation dates, monitoring, sanctions, etc.), then the institution will remain accredited on appeal until that process is concluded, and the Board takes action. The Board will act to establish the institution’s status and any terms or conditions related to that status no later than 120 days after its decision to call for an evaluative process to advise the Board on determining the institution’s status. The Board may take action at its next regularly scheduled meeting or make use of any process for considering institutional actions provided for in the Commission’s Bylaws. The Board will issue a written notification to the institution of the final action within two weeks of the action having been taken.

Intent to Appeal Reconsidered Action

If for any reason the Board in its reconsideration on finances acts to deny or withdraw status on other grounds, not identified in the original action, the institution has two weeks from the date of its receipt of the reconsideration action to file a Letter of Intent to appeal if it did not previously file an appeal, and the appeals timetable will be set from that reconsideration action. If the institution has already filed an appeal, it will have two weeks from receipt of the letter conveying the reconsideration action to revise its appellate document and related materials to address the new grounds, and the appeals timetable will be reset from that reconsideration action.

If the Board acts in its reconsideration to continue status with monitoring, sanction, or show-cause or to place the institution in candidate for accreditation status, rather than denial or withdrawal, this action is not appealable. Any pending institutional appeal regarding the original Commission action to deny or withdraw status will be closed.

Teach-Out

An institution that has received a denial or withdrawal action must file a teach-out plan with the Commission. This plan must be determined to meet Commission expectations regarding teach-out prior to the Commission initiating or proceeding with an appeals process.

Institutional Fees for Appeals of Board Action

The fees for an appeal are outlined in the Commission Dues and Fees Schedule, which is updated annually and posted on the Commission's Web site. The fees include a flat fee as well as all costs of conducting and transcribing the hearing and assembling and supporting the panel members. The institution shall include a deposit check in the amount stipulated in the Commission dues and fees schedule when it submits its appeals materials. Subsequent to the hearing, the direct expenses will be tallied and the Commission will bill the institution for its remaining share or will refund any overage as appropriate. The institution must be current regarding all dues and fees owed to the Commission at or before the adverse action before the Commission will initiate any appeal.

**Anthea Sweeney Transcribed
Interview Exhibit 31**



January 13, 2020

VIA EMAIL

Dr. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and Innovation
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Lynn.mahaffie@ed.gov

Dear Dr. Mahaffie:

This letter follows up on a telephone conference that you and other staff from the U.S. Department of Education ("the Department") had with Higher Learning Commission (HLC) Associate Vice President of Legal and Regulatory Affairs Marla Morgen on December 19, 2019.

On that call, you and Department staff asked HLC to provide additional information and documentation regarding two specific issues associated with HLC's November 13, 2019 response ("November 13 Response") to the Department's October 24, 2019 letter related to the Illinois Institute of Art (ILIA), the Art Institute of Colorado (AIC) (collectively "the Institutes") and Dream Center Education Holdings (DCEH).

First, you asked for information about a June 27, 2018 letter from Brent Richardson, then CEO of DCEH, allegedly sent to HLC President Barbara Gellman-Danley, HLC Vice President of Legal and Regulatory Affairs Anthea Sweeney, and Mary Kohart, of the law firm Elliott Greenleaf, on or about that date ("June 27 Letter"). When Morgen indicated on the call that she was not familiar with the June 27 Letter, the Department indicated it would provide the letter to HLC.

Second, you asked for additional information related to the other HLC member institution that HLC indicated in its November 13 Response had previously been offered the condition of accepting Change of Control candidacy as part of a Change of Control application approval by the HLC Board of Trustees ("the Board").

Following the call, also on December 19, 2019, Department analyst Elizabeth Daggett sent an email to Morgen reiterating the requests made by the Department and attaching the June 27 Letter. Specifically, Daggett stated:

I have attached the letter from DCEH to HLC dated June 27, 2018. Please let us know if HLC received this letter and any response it provided. If in that review, HLC finds any other correspondence that was not included in the November 13, 2019 submission

by HLC to the Department, we request submission of that correspondence as well and any explanation for why it was initially excluded. Finally, we are requesting a redacted copy of the other institution that was offered the Change of Control Candidacy status as a condition of a change of control, as noted in HLC's submission.

HLC's responses to each of these supplemental requests is below.

Supplemental Request #1: June 27, 2018 Letter from Richardson to Gellman-Danley, et al.

You inquired about, and provided HLC with a copy of, a letter dated June 27, 2018 from Brent Richardson, then CEO of DCEH, that was allegedly sent by email to HLC President Barbara Gellman-Danley, and, while not expressly stated in the letter, was allegedly sent by email to HLC Vice President of Legal and Regulatory Affairs Anthea Sweeney and Mary Kohart, of the law firm Elliott Greenleaf, on or about that date ("June 27 Letter") ([HLC-OPE 15430-15433](#), watermark added by HLC).

Although the Department has the June 27 Letter itself, you indicated on the December 19, 2019 call that, to the best of your knowledge, you were not in possession of any accompanying documents related to the transmission of the June 27 Letter, such as a transmittal email or confirmation of delivery.

To begin with, on May 21, 2018, DCEH and the Institutes indicated their intent to "pursue an appeal" ([HLC-OPE 12264-12266](#)). On, May 30, 2018, HLC provided DCEH and the Institutes with HLC's Appeal Procedures (which were also at all times available on HLC's website) and outlined next steps for pursuing an appeal ([HLC-OPE 12267-12268](#) and [HLC-OPE 15252-15264](#)). For example, HLC asked DCEH to submit its Appellate Document promptly and proposed a schedule that would have allowed for an appeal hearing to be held sometime in August 2018.

HLC's Appeal Procedures permitted DCEH to submit an Appellate Document electronically but required it to "also submit two copies in paper form" ([HLC-OPE 15252-15264](#) at pg.15259).

The June 27 Letter purports to be a "formal appeal." Presumably, the June 27 Letter is the "Appellate Document" required by HLC procedures, as explained by HLC in its May 30 letter and the associated procedures that were attached.

After speaking to the Department in December 2019, HLC conducted a thorough investigation to determine whether the June 27 Letter had been attached to any email received by Gellman-Danley or Sweeney or whether paper copies had been delivered to HLC.

As further explained below, upon completion of this investigation, **HLC has not located any information indicating that HLC received the June 27 Letter in either electronic form or hard copy at any time prior to December 2019.** To the contrary, as further explained below, HLC's investigation suggests that the June 27 Letter was incorrectly transmitted to HLC ([HLC-](#)

[OPE 15434](#)). Moreover, while an email attaching the June 27 Letter was received by Kohart's law firm, HLC's external counsel, on or about June 27, 2018 ([HLC-OPE 15434](#)), the email was filtered by the law firm's software into a spam folder. It therefore never appeared in Kohart's email inbox and was never seen by her until the December 2019 searches were performed.

As also further explained below, HLC also reviewed whether there were any communications between HLC and DCEH or the Institutes that should have put HLC on notice of the June 27 Letter or a pending appeal as a result of the June 27 Letter. HLC could not identify any such communications. To the contrary, the communications between HLC and DCEH and the Institutes make plain that neither DCEH, the Institutes, nor HLC thereafter referenced the June 27 Letter, which HLC did not know existed, or otherwise thought any appeal process was underway as a result of the June 27 Letter. In fact, as further explained below, HLC's representatives participated in a June 26 conference call with representatives of DCEH and the Institutes that led HLC to believe that DCEH no longer intended to follow up with any appeal.

A. HLC's investigation indicates that HLC did not receive the June 27 Letter

The June 27 Letter states that it was sent to Gellman-Danley by email and implies that the same mode of transmission was used for Sweeney and Kohart ([HLC-OPE 15430-15433](#)). As such, HLC first thoroughly checked its email systems to see if Gellman-Danley or Sweeney received an email on or about June 27, 2018 which attached the June 27 Letter. HLC located no such email during this search.

A close examination of the transmittal email accompanying the June 27 Letter, which, as further explained below, was recently provided to HLC by Kohart, may explain why no such email was received by HLC. The transmittal email indicates that it was sent by email to bgdanley@hlcommission.org and asweeney@hlcommission.org ([HLC-OPE 15434](#)). Both email addresses for Gellman-Danley and Sweeney are incorrect. The email suffix required was "hlcommission.org" not "hlcomission.org" (incorrectly spelled with one "M" instead of two "Ms"). To the best of HLC's knowledge, an email sent to these incorrect email addresses would not reach either individual's inbox or otherwise be received by HLC, and, in this instance, did not reach HLC's email system or either individual's email inbox.

HLC also searched to see if, as required by its Appeals Procedure, DCEH or the Institutes had sent, and HLC had received, hard copies of the June 27 Letter. There is no record that HLC received the June 27 Letter prior to receiving it from the Department in December 2019.

Whether received electronically or in hard copy, HLC would have placed any document like the June 27 Letter into the administrative records it maintains relating to AIC and ILIA. HLC has confirmed that the June 27 Letter does not appear in either institution's administrative record, which once again confirms that the June 27 Letter was not received by HLC prior to December 2019.

HLC also asked Kohart, its external counsel for this matter throughout the relevant time period, to conduct the same search. Kohart found no record that she received a hard copy of the June 27

Letter. Kohart also searched the emails she had received and did not locate any email attaching the June 27 Letter. She then expanded her search to include emails not delivered to her inbox but that might have been filtered into a spam folder by the software used by her law firm. This search uncovered an unfamiliar email sent by a "crichardson@lopescapital.com" to Kohart, bgdanley@hlcommission.org and asweeney@hlcommission.org ([HLC-OPE 15434](#)). Kohart provided this email to HLC.

Ultimately, it is HLC's reasonable belief that no HLC employee received an email attaching the June 27 Letter, that the email sent to its external counsel was never received in her email inbox but treated as spam, and that neither HLC nor its external counsel received the mandated paper copies. Thus, Gellman-Danley, Sweeney, and Kohart at no time believed that any Appellate Document had been sent by DCEH or the Institutes to HLC in June 2018 and were not aware of the June 27 Letter prior to December 2019.

B. All information available to HLC indicates that HLC had no reason to know that the June 27 Letter existed and that neither HLC, DCEH, nor the Institutes was under the belief that an appeal was underway as a result of the June 27 Letter

Upon receipt of DCEH and the Institutes' May 21, 2018 intent to appeal letter, HLC provided DCEH and the Institutes with detailed information regarding next steps in the appeal process ([HLC-OPE 12264-12266](#), [HLC-OPE 12267-12268](#), and [HLC-OPE 15252-15264](#)). Specifically, among other things, HLC asked DCEH and the Institutes to submit an Appellate Document "as soon as possible" and indicated that HLC would respond to that Appellate Document "no later than 4 weeks from the date of receipt." HLC also sketched out a timeline for an appeal process that would include "a hearing...as early as August with final resolution to follow." Finally, HLC indicated that, with one limited exception as required by federal regulations, it would suspend evaluation activities for the Institutes "pending the final outcome of the appeal." Correspondingly, HLC promptly began preparing for an appeal. These preparations included gathering the names of potential individuals to serve on the Appeal Panel.

In response to a series of emails from late June 2018 from David Harpool, counsel to DCEH and the Institutes ([HLC-OPE 15322-15324](#)), the parties participated in a conference call on June 26, 2018. Gellman-Danley and Sweeney participated for HLC, accompanied by Kohart. To the best of HLC's knowledge, Harpool and attorney Ronald Holt participated on behalf of DCEH and the Institutes.

On the call, HLC and its external counsel were led to believe that DCEH and the Institutes had abandoned an appeal in light of their intention, which had not yet been publicly announced, to close the Institutes. In other words, DCEH and the Institutes indicated that they would not further follow up on their intent to appeal.

Instead, on the call, DCEH and the Institutes wanted to explore the possibility of retroactive accreditation. Indeed, in keeping with the new direction raised by DCEH and the Institutes on the June 26 call regarding retroactive accreditation, HLC almost immediately received a call from

Principal Deputy Under Secretary Diane Auer Jones ("Jones") regarding the possibility of retroactive accreditation. See November 13 Response #10-12 at pgs. 20-23.

On the call, HLC indicated three things in response to the information conveyed by DCEH and the Institutes. First, HLC indicated that retroactive accreditation was not allowable under HLC policy and therefore, no commitments could be made in that regard. Second, HLC reminded DCEH and the Institutes that the Institutes were on the agenda of the upcoming Board meeting, taking place on June 28-29, 2018, as an "update" item, rather than an "action" item, and therefore no Board action affecting the Institutes should be expected at the upcoming meeting. Third, HLC assured DCEH and the Institutes that the update to the Board regarding the Institutes would include the fact that this call had taken place.

Following the June 26, 2018 call, numerous communications and events indicate that neither HLC, DCEH, nor the Institutes believed any appeal was in process as a result of the June 27 Letter.

First, based on the information provided by DCEH and the Institutes on the June 26 call, HLC stopped its appeal preparations, such as discussion regarding scheduling and the identification of potential members of the Appeal Panel.

Additionally, in providing an update to the Board at its meeting on June 28-29, 2018, no mention was made of the June 27 Letter. Rather, the update provided by HLC staff referenced the June 26, 2018 call. In contrast, when HLC received a letter from Jones on the evening of the October 31, 2018, the night before its Board meeting, HLC staff promptly informed the Board of this letter ([HLC-OPE 15363](#)). See November 13 Response #19 at pg. 30.

Second, at no point following June 27 did anyone at the Institutes or DCEH follow up with HLC regarding the June 27 Letter in any manner whatsoever. In its letter of May 30, 2018, HLC stated it would respond to an Appellate Document within four weeks after its receipt. Assuming that the June 27 Letter was intended as the requested Appellate Document, HLC did not provide DCEH or the Institutes with such a response to the June 27 Letter (because it did not receive the June 27 Letter). Yet neither DCEH nor the Institutes contacted HLC at any time to ask why they had not received the expected responsive document from HLC. The May 30 letter also indicates that an Appeal Hearing could be held as early as August. No such hearing was scheduled. Yet, neither DCEH nor the Institutes communicated with HLC to follow up on the scheduling of such a hearing or regarding the identity of those who would serve on the Appeal Panel. Finally, the June 27 Letter included a statement that DCEH and the Institutes would commence litigation if no response was received by noon "on Friday" (June 29). Yet, that day came and went without any further mention of litigation by DCEH or the Institutes as a result of HLC's failure to respond to the June 27 Letter.

Third, in October 2018, Brent Richardson, the signatory of the June 27 Letter, along with other DCEH representatives and representatives of AIC, appeared at a hearing to address issues relating to whether AIC met HLC's Criteria for Accreditation and other HLC requirements following a recent site visit ([HLC-OPE 14862-14980](#)). At no point during the course of planning

for or conducting that hearing was any mention made of the June 27 Letter or any ongoing appeal.

Finally, in November 2018, the Institutes each submitted letters to HLC seeking to appeal actions taken by HLC's Board in November 2017 and November 2018 ([HLC-OPE 15187-15189](#) and [HLC-OPE 15190-15191](#)). HLC responded to these letters later in November 2018 ([HLC-OPE 15192-15194](#) and [HLC-OPE 15195-15198](#)). Critically, none of these letters—neither the appeal requests from the Institutes nor HLC's responses—mention the June 27 Letter or indicate that the Institutes or DCEH had previously attempted to appeal the portion of their current appeal requests related to the Board's November 2017 actions through the June 27 Letter.

Taken together, the collective conduct of all the involved parties clearly demonstrates that none of the parties were proceeding under the belief that the June 27 Letter had started an appeal process, and nothing occurred after June 27, 2018 that would have lead HLC to believe that the June 27 Letter, which it still did not know existed, had begun an appeal process.

Supplemental Request #2: Previous Institution Offered Change of Control Candidacy

In item #16 of the November 13 Response, HLC provided:

In one previous case very similar to the one currently under review, the parties to a transaction, though initially willing to accept Change of Control candidacy as a condition of approval, ultimately found themselves unwilling and abandoned their plans to consummate the transaction. The relevant institution remains accredited by HLC to date.

The Department has requested that HLC provide a redacted version of the action letter pertaining to the institution referenced in item #16 of the November 13 Response.

In 2015, the Board approved a member institution's Change of Control application with the condition that the institution accept the status of Change of Control candidacy ([HLC-OPE 15435-15440](#)). This action letter involves the institution referenced in item #16 of the November 13 Response. (Note that there were also two additional action letters pertaining to this institution's Change of Control application subsequent to this action letter; one extending the time period in which the institution could complete the transaction and one denying a request by the institution to modify the conditions of the Board's approval. However, the above-referenced action letter indicates that the Board offered Change of Control candidacy as a condition of approval of a Change of Control application.)

As further described in the November 13 Response, the member institution ultimately chose not to pursue the relevant transaction. As such, the institution remained accredited. HLC would like to take this opportunity to clarify and amend its initial response to item #16 in the November 13 Response. Although the institution remained accredited at the time of Board action, it voluntarily withdrew its accreditation thereafter and as a result is no longer accredited by HLC.

HLC appreciates the opportunity to provide this additional information and documentation.

Enclosed, please find the three documents linked in this supplemental response that were not previously provided to the Department with the November 13 Response ([HLC-OPE 15430-15433](#); [HLC-OPE 15434](#); and [HLC-OPE 15435-15440](#)).

Please do not hesitate to let me know if you have any additional questions.

Sincerely,



Barbara Gellman-Danley
President

CC (via email): Herman Bounds, Director, Accreditation Group, Office of Postsecondary
Education, U.S. Department of Education
Elizabeth Daggett, Analyst, U.S. Department of Education

Enclosures: HLC-OPE 15430-15433
HLC-OPE 15434
HLC-OPE 15435-15440

**Anthea Sweeney Transcribed
Interview Exhibit 32**

From: [Ronald L. Holt](#)
To: [Richardson, Chris C.](#)
Cc: [Randall Barton \(rbarton4953@gmail.com\) \(rbarton4953@gmail.com\)](#); [Murphy, Shelly M.](#); [Richardson, Brent D.](#); [David Harpool](#)
Subject: HLC Schools: Proposed Student Notice
Date: Thursday, May 31, 2018 8:24:44 PM
Attachments: [image003.jpg](#)
[Notice About Accreditation Status - AiCO and AiIL.docx](#)

Hi Chris, attached for your review and consideration is the proposed notice to be given to students concerning DCEH's plan to pursue an appeal of the actions that HLC has taken. This Notice, as you know, follows the response that we have drafted to the memo from the Consent Judgment Settlement Administrator, who, among other things, has called out DCEH on the fact that we have told the students of the HLC schools that the schools remain accredited but HLC on its website says they do not. So, our response to the Administrator explains we were misled by HLC and are now appealing HLC's actions and that we will be issuing notice to the students to inform them of the appeal we are taking. I think that, even if all we do is set up a meeting with the HLC Executive Committee in Chicago to get them to 'stand down' to some extent on their position, we are still 'appealing' or challenging the HLC position, so sending out the notice now, but later not actually pursuing a full-blown internal appeal would not be inconsistent. But that is something that you and Randy will have to weigh. Certainly, for now, we have told HLC that we are challenging their action, their action is adverse to our students, these HLS schools are still open and we have to take action to serve the interests of these students. Regards, Ron

Ronald L. Holt, Attorney

rholt@rousefrets.com | Direct: (816) 292-7604 | Cell: (816) 509-5194 | Phone: (913) 387-1600 | Fax: (913) 928-6739

RFGR_Logo



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
www.rousefrets.com

NOTICE OF CONFIDENTIALITY: The information contained in this e-mail, including any attachments, is confidential and intended only for the above-listed recipient(s). This e-mail (including any attachments) is protected by the attorney-client privilege, the work-product doctrine(s) and/or other similar protections. If you are not the intended recipient, please do not read, rely upon, save, copy, print or retransmit this e-mail. Instead, please permanently delete the e-mail from your computer and computer system. Any unauthorized use of this e-mail and/or any attachments is strictly prohibited. If you have received this e-mail in error, please immediately contact the sender. Thank you.

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Circular 230 Disclosure: Any advice contained in this email (including any attachments unless expressly stated otherwise) is not intended or written to be used, and cannot be used, for purposes of avoiding tax penalties that may be imposed on any taxpayer.

**Anthea Sweeney Transcribed
Interview Exhibit 33**

Huston, John

From: Jones, Diane
Sent: Thursday, April 18, 2019 7:34 PM
To: Huston, John
Subject: FW: list
Attachments: Updates 7.18.18.docx

From: Jones, Diane
Sent: Thursday, August 2, 2018 11:46 PM
To: Murphy, Shelly M. <smurphy@dcedh.org>
Subject: list

Hi Shelly,
I'm sorry for giving you the wrong list. Here is the correct one.
Diane

Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of Under Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202
202-453-7333
Diane.jones@ed.gov

Phone Call 7/18/18

- Accreditors need to be hearing from the presidents and board chairs of each educational group as well as from campus leaders. Accreditors want to hear from campus leaders, not corporate entities, and they want to hear from leaders of the institutional boards.
- DCHC must be forthcoming and honest with accreditors. This is critical.
- DCHC and the institutions must provide students with accurate information about each institution's accreditation status. Institutions that are candidates for accreditation must be clear with students candidacy status does not guarantee that the institution will be accredited, and that if the campus becomes accredited, the campus does not know whether or not that accreditation will be restored retroactively to the change of control. Note that HLC's policy for retroactive accreditation is limited to 30 days prior to the board's decision. Campus and organizational leaders may not comment on the likelihood of gaining accreditation. Campus leaders must inform students that in the event the institution does not gain accreditation status, other campuses are still permitted by their accreditors to accept these credits in transfer, but the teaching-out campus cannot guarantee that an institution will do so. Campus leaders must be working with other institutions to try to negotiate transfer agreements with institutions that agree to accept credits awarded subsequent to the change of control, while the institution was a candidate for accreditation but was not accredited. It is critical that the HLC campuses have well-developed contingency plans in the event that HLC does not accredit one or more of those campuses.
- Campus leaders, faculty and staff must have all of the information about the planned teach-out: the timeline, the date of closure, the funding that will be available to the school to complete the teach-out, who/how student records will be maintained after closure, what retention incentives are in place to retain faculty and staff, continuing student services, and ultimately the physical closure of the campus including disposal/distribution of furniture, books, supplies, etc.
- Accreditors need a complete list of campus leaders, key faculty members (program directors, department chairs, etc.), and members of each institution's BOD. These lists must be updated when personnel changes occur, which includes notifying the accreditor if and when presidents and chief academic officers leave the institution, and providing the name and credentials of the individual acting in those roles while a permanent replacement is identified. Individuals who are acting in campus leadership roles must understand the responsibilities of their new role, and ideally should be partnered with a leader at a continuing campus who can provide mentorship.
- Students must be provided with the link to FSA's website about school closures, and must be made aware of their opportunity to apply for a closed school loan discharge.
- Institutions must provide accreditors with the names of teach-out partner institutions and provide copies of formal teach-out agreements.
- Institutions must provide accreditors with names of partners for articulation agreements and with copies of those agreements.

- Institutions must be working with other institutions in their local area to assist students who wish to transfer. This includes holding transfer fairs on the closing campus, providing students with a list of comparable programs at local institutions, and working with leaders at those campuses to be sure that student credits are accepted in transfer. This includes working with local institutions to encourage them to accept credits from a campus that has candidacy status. Accreditors do not prevent institutions from accepting credits from an institution that has lost accreditation or is a candidate for accreditation.
- If the Pittsburgh campus is going to be used as the on-line teach-out campus, students must be told that this campus is on probation with its accreditor. The campus must also immediately resolve all problems associated with probation. (Note- this was updated with DCHC when Middle States put Pittsburgh on show cause such that DCHC can no longer use AI online as a teach-out option and must find a different online transfer institution if it wishes to offer an online teach-out option).
- DCHC should refrain from threatening accreditors with legal action. **Note that the Department does not need to recognize the accreditation of an institution that pursues legal action rather than arbitration in the event of a negative action.** In the case of HLC, DCHC should be aware that they missed their opportunity to file an appeal and subsequently the campuses did not provide the information HLC requested to take to their board based on the timeline provided to the campuses by HLC prior to their June board meeting.
- In the case of the HLC campuses, DCHC campuses should start immediately looking for transfer partners and teach-out partners to help students concerned about accreditation status transfer to a new institution and have their credits earned after the change of control accepted by those institutions.
- Accreditors need a complete list, by student, of the teach-out plans selected by the student, including the name of the institution to which the student will transfer or the name of the teach-out partner. Note that the difference between a transfer partner and a teach-out partner is that accreditors typically waive the 25% rule for students who enroll with a teach-out partner institution.
- It is recommended that the campus leaders of each teach-out campus provide regular and accurate communication to students about their options and the progress of the teach-out plan. For example, as new articulation, transfer or teach-out agreements are negotiated with other institutions; students must be made aware of those options and any financial support that DCHC is offering to those students to help with the transition. The website should also be updated regularly, and Facebook streamed information should be linked to the website. It is critically important that in one-on-one conversations, students be given exactly the same information as they are provided during the group discussions and through written communication.
- Students must be kept informed. We cannot overemphasize the importance of keeping students and campus staff informed.

Anthea Sweeney Transcribed

Interview Exhibit 34

Foxx Exhibit 1



Policy Title: Accreditation

Number: INST.B.20.030

Grant of Initial Accreditation

The Board of Trustees reviews an institution's application for initial accreditation and all related materials after the institution has undergone evaluation by a team of peer reviewers and an Institutional Actions Council hearing, as defined in Commission policy. Only institutions that have completed candidacy, or been exempted from candidacy by the Board of Trustees following Commission policies on Candidacy, shall be eligible for initial accreditation. The Board of Trustees may grant or deny initial accreditation based on its determination of whether the institution meets the Eligibility Requirements, Criteria for Accreditation, Core Components, and Federal Compliance Requirements. If the Board of Trustees grants initial accreditation, it may grant such accreditation subject to interim monitoring, restrictions on institutional growth or substantive change, or other contingency.

Early Initial Accreditation

An institution may apply for early initial accreditation after two or three years of candidacy following Commission policies on candidacy. The Board of Trustees shall have the discretion to continue candidacy, instead of granting early initial accreditation, in circumstances including, but not limited to, the following: if the Board determines that one or more of the Core Components are not met or met with concerns; if a recommendation for early initial accreditation is conditioned on the scheduling of interim monitoring; or in other circumstances where the Board concludes that a continuation of candidacy, or extension of candidacy to a fifth year, is warranted. Any extension of candidacy to a fifth year shall be granted following Commission policies on extension of candidacy. Such actions to continue candidacy, thereby denying early initial accreditation, or to extend candidacy to a fifth year shall not be considered denial of status and are not subject to appeal.

Accreditation Cycle

Institutions must have accreditation reaffirmed not later than four years following initial accreditation, and not later than ten years following a reaffirmation action. The time for the next reaffirmation is made a part of the accreditation decision, but may be changed if the institution experiences or plans changes. The Commission may extend the period of accreditation not more than one year beyond the decennial cycle or one year beyond the initial accreditation cycle for institutions that present good and sufficient reason for such extension.

Effective Date of Accreditation

The effective date of initial accreditation or reaffirmation of accreditation or other Commission action will be the date the action was taken.

The Commission's Board may grant initial accreditation, with the contingency noted in this subsection, to an institution that applies for accreditation and is determined by the Commission to have met the Criteria for Accreditation but has not yet graduated a class of students in at least one of its degree programs, as required by the Eligibility Requirements. Institutions shall have completed the two-year required minimum candidacy period or received a waiver from the Commission's Board of Trustees. Such action shall be contingent on the institution's graduation of its first graduating class in at least one of its degree programs within no more than thirty days of the Board's action. In such cases, the effective date of accreditation will be the date of this graduating class.

Assumed Practices in the Evaluative Framework for Initial and Reaffirmation of Accreditation

An institution seeking initial accreditation, accredited to candidate status, or removal of Probation or Show-Cause, must explicitly address these requirements when addressing the Criteria. The institution must demonstrate conformity with these Practices as evidence of demonstrating compliance with the Criteria. Institutions undergoing reaffirmation of accreditation will not explicitly address the Assumed Practices except as identified in section INST.A.10.030. Any exemptions from these Assumed Practices must be granted by the Board and only in exceptional circumstances.

Policy Number Key

Section INST: Institutional Processes

Chapter B: Requirements for Achieving and Maintaining Affiliation

Part 20: Defining the Affiliated Entity

Last Revised: November 2015

First Adopted: August 1987

Revision History: renumbered November 2010, revised February 2012, June 2015, November 2015

Notes: Policies combined November 2012 - 1.1(a)1, 1.1(a)2, 1.1(a)3, 1.4, 2013 – 1.1(a)1.2, 1.1(a)1.3, 1.1(a)1.4. The Revised Criteria for Accreditation, Assumed Practices, and other new and revised related policies adopted February 2012 are effective for all accredited institutions on January 1, 2013.

Related Policies:

Anthea Sweeney Transcribed

Interview Exhibit 35

Foxx Exhibit 2



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

July 14, 2016

Jennifer L. Butlin, Executive Director
One Dupont Circle NW, Suite 530
Washington, D.C. 20036-1120
Tel. (202) 887-6791, Fax (202) 887-8476
E-Mail address: jbutlin@aacn.nche.edu
Web address: www.aacn.nche.edu/accreditation/index.htm

Dear Dr. Butlin:

This letter serves as follow-up to our conference call held on March 10, 2016, on the Commission on Collegiate Nursing Education's use of retroactive decisions. As discussed on the call and per the American Association of Colleges of Nursing, Commission on Collegiate Nursing Education (CCNE) Baccalaureate & Graduate Nursing Programs requirements on the website, which states, "CCNE accreditation actions are retroactive to the first day of the program's most recent CCNE on-site evaluation" (<http://www.aacn.nche.edu/ccne-accreditation/new-applicant-process/baccalaureate-graduate>). This requirement is non-compliant with the Secretary's Criteria for Recognition in Subpart C of 34 CFR 602. Although, the Substantive Change section 602.22 (b) Change in Ownership criteria is applicable to Title IV gatekeepers, it is the only criteria within the Secretary's Criteria for Recognition that allows the use of a retroactive approval date. Specifically, §602.22(b) states:

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

Except as provided with respect to changes of ownership, substantive change approvals cannot be applied retroactively.

During the March conference call, it was mentioned that there was prior approval given to your agency to allow for such retroactive actions. However, documentation of such approval is not included in the agency's recognition files and will not be substantiated moving forward. With the upcoming review of your renewal petition, it is imperative that CCNE demonstrate to the Department that all decisions made by the Commission are effective on the date the Commission makes the decision and that decisions cannot be made retroactive to the day of the site visit since

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
www.ed.gov

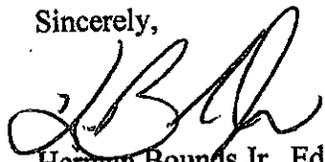
The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

000001

the on-site evaluators are not a recognized decision making body. The agency must amend its policy and procedures to cease this action immediately.

Please contact me if you have any questions regarding this information or if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Bounds Jr.', written in a cursive style.

Herman Bounds Jr., Ed.S.
Director, Accreditation Group



September 16, 2016

Herman Bounds Jr., Ed.S.
Director, Accreditation Group
United States Department of Education
Office of Postsecondary Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Bounds:

This is in response to your letter of July 14, 2016. The Commission on Collegiate Nursing Education (CCNE) disagrees with the letter's assertion that CCNE's effective date policy for accreditation is "non-compliant with the Secretary's Criteria for Recognition in Subpart C of 34 CFR 602" and that documentation of Department of Education approval of this policy is not "included in the agency's recognition files.

CCNE's effective date of accreditation policy has stated continuously since April 23, 2009, that CCNE accreditation decisions "are retroactive to the first day of the program's most recent CCNE on-site evaluation."

In your July 14, 2016 letter, you state, referring to the CCNE effective date policy,

This requirement is non-compliant with the Secretary's Criteria for Recognition in Subpart C of 34 CFR 602. Although, the Substantive Change section 602.22 (b) Change in Ownership criteria is applicable to Title IV gatekeepers, it is the only criteria within the Secretary's Criteria for Recognition that allows the use of a retroactive approval date. Specifically, §602.22(b) states:

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

Except as provided with respect to changes of ownership, substantive change approvals cannot be applied retroactively.

During the March conference call, it was mentioned that there was prior approval given to your agency to allow for such retroactive actions. However, documentation of such approval is not included in the agency's recognition files and will not be substantiated moving forward. With the upcoming review of your renewal petition, it is imperative that CCNE demonstrate to the Department that all decisions made by the Commission are effective on the date the Commission makes the decision and that decisions cannot be made retroactive to the day of the site visit since the on-site evaluators are not a recognized decision making body. The agency must amend its policy and procedures to cease this action immediately.

CCNE first received Department of Education recognition by letter, dated February 22, 2000. More than eight years later, on October 14, 2008, I sent an email to Carol A. Griffiths, Chief, Accrediting Agency Evaluation, Office of Postsecondary Education, US Department of Education, stating in part,

Also, CCNE is engaged in a revision of its accreditation procedures. For years, CCNE's policy has been that the effective date of accreditation is the date on which the CCNE Board of Commissioners acts to accredit the program. However, some brand new programs less than two years in length have expressed some concerns to us that the Board decision is made after the first class of students graduates. The Board has determined that we will only conduct a site visit to a program that has been up and running at least one year because visiting the program any earlier than that would not allow the team to do a comprehensive evaluation of the entire curriculum. As a result, these programs are inquiring as to whether CCNE can amend its policy to allow the accreditation decision for new programs to be retroactive/back dated by several months to the date of the comprehensive site visit. Doing so would allow the first class of students to graduate from a CCNE-accredited program (if the accreditation decision is a positive one, of course). I am aware of other accrediting agencies that do back-date the decision for new programs to help protect the first class of students, but before we amend our policies, I wanted to check with Department staff to make sure this is not in violation of the Secretary's criteria (or the staff's interpretation of those criteria). (Emphasis added)

In response, Ms. Griffiths sent an email to me, dated October 22, 2008, which states in part,

As to your question regarding retroactive/backdating grants of accreditation, you may recall that it was raised at the time of CCNE's initial recognition. A determination was made at that time (1999) "that the Secretary does not accept any accrediting decisions made by the agency for which the beginning of the term of accreditation granted by the agency predates the date of the site visit conducted by the agency." We are comfortable with a process by which a recognized agency establishes the date of the comprehensive site visit as the effective date for the accreditation granted, assuming that the vote on accreditation is made no later than the next regular decision meeting. (Emphasis added)

On February 20, 2009, I sent Ms. Griffiths an email stating,

As we have discussed the possible policy change to make accreditation decisions retroactive to the date of the last site visit, we are thinking it would be best to apply this policy consistently to all programs (and not just to new applicant programs, as I had proposed below). I have also verified that doing this consistently for all degree programs is a common practice among other USDE-recognized specialized accreditors. Before proposing this policy change to our constituents for comment, I wanted to verify with you that the Department would have no concerns about this. From an administrative perspective, it seems much cleaner to make actions retroactive to the most recent visit for all programs and not just the new ones. I hope to hear back from you soon as we hope to move forward with this policy change asap. (Emphasis added)

Ms. Griffiths replied by email of February 23, 2009, stating,

I see no problem with applying this policy to all reaccreditations.
(Emphasis added)

Following this good faith inquiry and the subsequent approval by the Department, CCNE revised its policy regarding effective date of accreditation on April 23, 2009. CCNE has applied this effective date policy to accreditation decisions made no later than the next regular decision meeting after the site evaluation.

Since that revision, CCNE has submitted its policies, including its effective date policy, to the Department of Education in its recognition renewal applications. By letters of August 2, 2012 and August 26, 2014, the Department renewed its recognition of CCNE without any reference to or concern about the effective date policy.

To summarize, in your July 14, 2016 letter, you assert that the CCNE effective date policy (in effect since April 23, 2009) is non-compliant with the Secretary's Criteria for Recognition. This is the first time that the Department has made this assertion since the Department specifically informed CCNE in 2008 and 2009 of its approval of the policy. As stated by Ms. Griffiths, then Chief, Accrediting Agency Evaluation, Office of Postsecondary Education, US Department of Education: "We are comfortable with a process by which a recognized agency establishes the date of the comprehensive site visit as the effective date for the accreditation granted, assuming that the vote on accreditation is made no later than the next regular decision meeting" (email correspondence to J. Butlin on October 22, 2008) and "I see no problem with applying this policy to all reaccreditations" (email correspondence to J. Butlin on February 23, 2009).

In your letter, you cite no statute or regulation as authority for your assertion. Instead, you point to §602.22(b) in support of your assertion. For at least two reasons, that section does not support your assertion. In fact, the section supports the CCNE effective date policy.

First, you concede that the section is applicable only to Title IV gatekeepers, and yet, as you know, CCNE is not a Title IV gatekeeper. You then state that, "it is the only criteria within the Secretary's Criteria for Recognition that allows the use of a retroactive approval date." This regulation's existence demonstrates that the Secretary knows how to prohibit retroactive application of an accrediting agency decision. The Secretary did so only in the setting of substantive change. The fact that the Secretary did not do so relating to any other setting supports the position that this is the only setting in which the Secretary intends to prohibit retroactive application of an accrediting agency decision.

Second, consider the history of §602.22(b). It was first published in the Federal Register on October 27, 2009 (74 FR 55414, 55428), effective July 1, 2010. But it resulted from a negotiated rule-making process beginning with a Federal Register announcement of September 8, 2008 (73 FR 51990); six public hearings from September 19, 2008 to October 15, 2008 to discuss the agenda for the negotiated rule-making sessions (73 FR 51990, 51991, September 8, 2008); another Federal Register announcement of December 31, 2008 declaring that "substantive change" would be a topic included in the negotiated rule-making process (73 FR 80314, 80316); and negotiated rule-making meetings of the "Accreditation Committee" on March 4-6, 2009, April 21-23, 2009, and May 18-19, 2009 ("substantive change" on the agenda for each of these meetings) (74 FR 39498, 39499, August 6, 2009).

The email exchanges between Ms. Griffiths and me occurred from October 14, 2008 to February 23, 2009, right in the middle of the Department of Education's rule-making process resulting in the creation of §602.22(b). If, as you propose, §602.22(b) supports your assertion that the CCNE policy is non-compliant with the Secretary's Criteria for Recognition, (1) surely the Department would not have unequivocally approved a CCNE effective date policy in 2008 and 2009 while §602.22(b) was in mid-development by the Office that Ms. Griffiths headed within the Department, and (2) that Office would have

objected to the effective date policy when CCNE was considered for continued re-recognition in 2012 (reapplication submitted January 24, 2012; action letter sent August 2, 2012; interim progress report submitted August 20, 2013; response to draft staff analysis on interim report submitted on May 15, 2014; action letter sent August 26, 2014), after the effective date of §602.22(b) on July 1, 2010. This did not occur, because the CCNE effective date policy was approved by the Department, and §602.22(b) was, and continues to be, consistent with that approval.

As you are aware, CCNE on-site evaluators visit a program to verify information previously submitted by the program and to determine compliance with accreditation standards. At its next scheduled meeting, the CCNE Board makes an accreditation decision based on (1) a written accreditation team report from the on-site evaluators, (2) the program's written response to the on-site evaluation report, and (3) a written recommendation from the Accreditation Review Committee (ARC).

It makes sense that the effective date of the accreditation decision is the date of the on-site evaluation, which is when the trained CCNE evaluation team makes on-site factual verifications and determinations about the program, including, in particular, assessments about the program's compliance with each accreditation standard.

The date of the on-site evaluation as an effective date is what Ms. Griffiths approved on behalf of the Department in her emails of October 22, 2008 and February 23, 2009. It is also consistent with the determination made by the Department at the time of CCNE's initial recognition as quoted by Ms. Griffith in her October 22, 2008 email.

Contrary to your assertion during your call of March 10, 2016, that CCNE is the only one doing this, CCNE has since verified that there are multiple Department of Education-recognized specialized accrediting agencies that are currently engaged in retroactive decision-making similar to CCNE's practice. Most (but not all) of these agencies, like CCNE, are not Title IV gatekeepers, and they have engaged in these practices for decades and are in "good standing" with the Department. While these agencies may or may not use the word "retroactive" in their written policies or specifically refer to the effective date of the decision in their action letters, their policies clearly establish that the effective date of accreditation predates the decision-making meeting. CCNE is unclear why it has been singled out when this is an accepted industry practice.

The Department of Education has failed to justify a required change in the CCNE effective date policy previously approved by the Department in 2008 and 2009, and unchallenged by the Department since then. In the absence of any contradicting statutory or regulatory authority, the Department should continue to honor its written approval of the CCNE effective date policy, as it has beginning in 2008.

Sincerely,



Jennifer Butlin, EdD
Executive Director



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

November 17, 2016

Dr. Jennifer L. Butlin
Executive Director
Commission on Collegiate Nurse Education
One Dupont Circle NW, Suite 530
Washington, D.C. 20036-1120

Dear Dr. Butlin:

Thank you for responding to the issue of retroactive accreditation discussed in my July 14, 2016, letter to the Commission on Collegiate Nurse Education (CCNE). As I stated in that letter, the accreditation decision is effective on the date that an accrediting agency's decision making body makes the accreditation decision and cannot be made retroactive. In addition, 602.15(a) (3-6) clearly references and distinguishes an evaluation body and a decision-making body. The site visit team is an evaluation body and does not have decision-making authority. Therefore, establishing the accreditation date as the day of the site visit is essentially giving the site visit team decision-making authority which is not in accordance with the Secretary's Criteria for Recognition (Criteria). The U.S. Secretary of Education recognizes the accrediting agency's decision-making body. In the case of CCNE, that would be the "Commission"; the Secretary does not recognize the site visit team. In addition, as your letter states, the Commission looks at materials other than the team report in making its decision. The site team does not have the information necessary to make an accrediting decision for the Commission, nor is it authorized to do so.

It is unfortunate that a former Accreditation Group director provided the guidance you referenced in your previous letter. However, that guidance does not change the fact that retroactively awarding accreditation to an institution or program is not in accordance with the Criteria. As stated in the July 14, 2016, letter, CCNE must amend its policies and cease this practice going forward.

CCNE is scheduled to appear at the June 2017 National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting. CCNE's petition for recognition is due to the Department of Education in early January 2017. It is critical that CCNE provide in the petition documentary evidence that it has amended its policies, and no longer awards accreditation retroactive to the date of the site visit.

Thank you for addressing this matter.

Sincerely,

Herman Bounds, Jr., Ed.S.

Director, Accreditation Group

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

000007

From: Nancy.DeBasio@researchcollege.edu
To: [Third Party Comments](#)
Subject: Written Comments: Commission on Collegiate Nursing Education
Date: Tuesday, March 07, 2017 4:20:27 PM

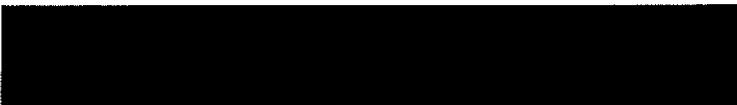
Nancy O. DeBasio, PhD, RN, FAAN
President
Research College of Nursing
2525 East Meyer Boulevard
Kansas City, Missouri 64132
Nancy.debasio@researchcollege.edu
816-995-2810

This email is submitted in support of the Commission on Collegiate Nursing Education's (CCNE) petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in nursing. As President of Research College of Nursing, a specialized institution of health care, I can speak to the importance of CCNE. The College chose to seek accreditation from CCNE because it is the premier accrediting body and represents a level of quality in baccalaureate and higher degree education that is consistent with our mission, goals and expected outcomes. Prior to the College's decision to seek CCNE accreditation, the College was accredited by another nursing accrediting body. In my review of the CCNE accreditation process, I found that CCNE provided comprehensive workshops for programs to assist in the preparation of the self-study document and the onsite evaluation which had not been available through our previous accrediting body. We have hosted three onsite evaluations during my tenure with the most recent in April 2013. The faculty team attended two of the workshops and found them to be invaluable to the preparation of our self-study document and to the successful outcome of the continuation of our accreditation for the full ten years. Our faculty, staff and students noted the onsite evaluation to be professional, rigorous yet fair and honest, and collegial in nature. The team was well-qualified and had an understanding of the type of institution the College is. They followed CCNE standards and procedures so there were no surprises during the onsite evaluation. It was also clear the team valued our desire to create a more innovative approach to the curriculum for our second degree students. The process afforded us the opportunity to celebrate our strengths and to develop strategies to address opportunities for further growth.

The CCNE staff are well-qualified and were very responsive to our faculty team during the preparation of the self-study document. Our team had questions regarding presentation of data in Standard IV which were readily addressed by CCNE staff. Through all phases of the process, the staff exemplified the CCNE values of integrity, accountability, inclusivity, and support for ongoing continuous improvement and program innovation and growth. CCNE also values the education of its team leaders and members. Comprehensive workshops are provided to ensure teams are well-informed about the standards and the process of accreditation. In addition, CCNE is currently reviewing and revising its own standards to assure it continues to be a relevant, rigorous and professional process.

In summary I fully support the Commission on Collegiate Nursing Education's petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in

Sincerely,



Nancy Spector, PhD, RN, FAAN
Director, Regulatory Innovations
National Council of State Boards of Nursing

UNIVERSITY OF SOUTH ALABAMA

7 March 2017

Re: Written comments-Commission on Collegiate Nursing Education

To whom it may concern:

Thank you for the opportunity to offer third party comments in support of the recognition renewal of the Commission on Collegiate Nursing Education by the US Department of Education. I am the dean of the College of Nursing at the University of South Alabama (USA) in Mobile, Alabama. The nursing programs at the USA College of Nursing have a long standing history of holding accreditation by CCNE. Our baccalaureate and master's programs were initially accredited by CCNE in 2001. Our Doctor of Nursing Practice program received initial accreditation in 2011 and our Post-Graduate APRN Certificate programs were accredited in 2016.

The reason my faculty and I continue to seek accreditation for our programs by CCNE is because of the acknowledgement within the profession that CCNE accreditation is a true reflection of the quality of a program. CCNE's values ensure that the accreditation standards and processes are thorough, transparent, fair, and congruent with professional nursing standards. The accreditation procedures which includes annual reporting, substantive change reporting, and mid-accreditation evaluation reporting etc. promotes oversight of our nursing programs and facilitates continuous quality improvement.

We consider CCNE to be the premier accrediting body for baccalaureate and higher degree nursing programs. We are especially pleased that CCNE is accrediting post-graduate APRN certificate programs as this task is very important to ensuring quality in these programs.

Thank you again for the opportunity to offer my strong support for the continued recognition of CCNE by the US Department of Education.

Sincerely,

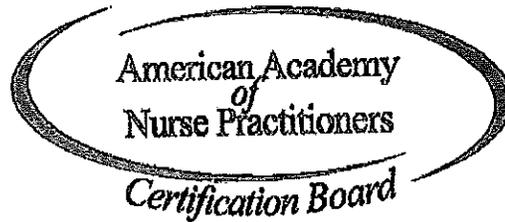

Debra C. Davis, PhD, RN
Dean and Professor

COLLEGE OF NURSING,
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nursing. CCNE assures that our students receive the highest quality of nursing education which prepares them to provide safe, quality care to our patients.

Sincerely,

Nancy O. DeBasio, PhD, RN, FAAN
President, Research College of Nursing



March 8, 2017

Thank you for the opportunity to comment on the Commission on Collegiate Nursing Education's (CCNE) application for recognition renewal by the U.S. Department of Education and expansion of scope request to include the accreditation of certificate programs in nursing. As the Chief Executive Officer of the American Academy of Nurse Practitioners Certification Board (AANPCB), I am writing to express my support of CCNE's application.

The purpose of the AANPCB is to provide a valid and reliable program for entry-level nurse practitioners that recognizes their education, knowledge, and professional expertise. AANPCB provides a psychometrically sound and legally defensible process for validation of an advanced practice registered nurse's qualifications and knowledge for practice as a primary care nurse practitioner. This certification process assures the public that the individual certified has met and maintains the entry level requirements for licensure and practice as a primary care provider.

AANPCB and CCNE have worked collaboratively in the nursing credentialing community since CCNE was established and began its accreditation activities in 1998. For example, AANPCB and CCNE participate, with numerous other national nursing organizations, on the LACE (Licensing-Accreditation-Certification-Education) Network, which meets monthly to discuss matters related to advanced practice nursing. CCNE's Executive Director, Dr. Jennifer Butlin, and I also have regular exchanges about the educational preparation of nurses and the need to protect the public through the accreditation and certification services that our two organizations offer.

AANPCB values CCNE's good accreditation practices and sound decision-making process, and AANPCB has determined that CCNE accreditation is a valid indicator of quality in a nursing program. Importantly, AANPCB considers the accreditation status of graduate degree and certificate programs when determining whether the graduate of a nurse practitioner program is eligible to sit for AANPCB's certification examinations. AANPCB relies on CCNE as a nationally recognized accrediting agency to assess the quality and effectiveness of nursing programs nationally. Students who graduate from a non-accredited nursing program are at risk of being denied eligibility to sit for certification examinations, and CCNE works diligently with new programs on setting their accreditation timelines so that students are protected by having the ability to graduate from an accredited program.

The staff at AANPCB rely on information provided by CCNE on its website regarding the accreditation status of programs and have found such information to be accurate and current. Additionally, we have found the CCNE staff to be responsive and knowledgeable about the accreditation process and the complexities of credentialing in the nursing profession.

Finally, I consider it noteworthy that CCNE a) invites AANPCB to submit comments about programs that are scheduled for accreditation evaluation, b) considers certification pass rate data in making accreditation decisions, and c) sends us "Board Action Notifications" after final accreditation decisions are made. CCNE has a history of consulting with AANPCB and other stakeholders about the metrics it sets in its accreditation standards related to student achievement. Such exchanges serve as a model for how organizations with different purposes -- but a common goal to produce high quality nurses and protect consumers -- can collaborate and share information.

I appreciate this opportunity to comment in support of CCNE's application.

Sincerely,


Richard F. Meadows, MS, RN, NP-C, FAANP
Chief Executive Officer
American Academy of Nurse Practitioners Certification Board



NCSBN

National Council of State Boards of Nursing

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March 9, 2017

Dear U.S. Department of Education:

I am in receipt of the Federal Register, issued February 13, 2017, and send this letter to express my support of the Commission on Collegiate Nursing Education (CCNE) application for renewal of recognition by the U.S. Department of Education (USDE) and expansion of scope request to include the accreditation of certificate programs in nursing.

As the Director Regulatory Innovations at the National Council of State Boards of Nursing (NCSBN), I provide our boards of nursing (BONs) with information and expertise in nursing education, for their roles in nursing program approval to promote public protection. Additionally, I am a NCSBN's liaison to nurse educators, nursing organizations and accreditors. NCSBN is an independent, not-for profit organization whose mission is to promote evidence-based regulatory excellence for patient safety and public protection.

CCNE and NCSBN have a strong history of collaboration. As a USDE-recognized accrediting agency, CCNE conducts joint site visits with BONs when reviewing nursing programs for accreditation/approval. CCNE teams and BONs' education consultants have a common interest in assessing program quality. They work together during the site visits to interview students, employers, faculty, administrators, and others, which helps reduce redundancy in the program assessment and evaluation process. In fact, a number of BONs accept reports that programs prepare for CCNE accreditation in lieu of requiring a separate report. Additionally, some BONs send education consultants to observe the CCNE site visit rather than requiring a separate site visit. Such activities have increased over the years as the BONs streamline work, avoid duplication, and help contain costs for the educational institutions/programs and the BONs alike.

NCSBN regularly engages with CCNE and other organizations through the *Licensing-Accreditation-Certification-Education Network*, and it is not unusual for NCSBN to invite representatives from CCNE to serve as accreditation content experts when an NCSBN committee or task force is charged to look at matters related to education program quality. In fact, just last week, leaders from the CCNE Board, Standards Committee, and staff joined the NCSBN *Nursing Education Outcomes and Metrics Committee* (a committee that I staff) for a rich discussion about outcomes and associated metrics related to the assessment of nursing education programs, including, in particular, program completion rates, NCLEX-RN (licensure) pass rates, and employment rates. I believe that the nursing profession is stronger when organizations like ours collaborate and keep open lines of communication.

NCSBN and CCNE have worked collaboratively in other settings, as well, e.g., by serving together on task forces and panels at national meetings. We share information related to licensure pass rates and invite comments from one another when position statements, standards, and procedures are drafted or revised. When CCNE was called upon by its community of interest to accredit doctoral programs and certificate programs in nursing, CCNE responded by developing a rigorous and comprehensive accreditation process.

I appreciate the work CCNE does to assure high quality not only in pre-licensure nursing programs, but also in advanced practice nursing. Thank you for receiving my comments in support of CCNE.

GNSA



March 9, 2017

I am writing on behalf of the Graduate Nursing Student Academy (GNSA) to express strong support for the application submitted by the Commission on Collegiate Nursing Education (CCNE) for renewal of its recognition by the U.S. Department of Education, as well as its request for an expansion of scope to include the accreditation of certificate programs in nursing.

Graduate nursing students are future leaders in transforming and improving health care. GNSA was created to provide high value programs, services, and resources to nursing students enrolled in master's and doctoral programs. As the collective voice for graduate nursing students, the GNSA fosters collaboration, innovation, and excellence in academic nursing and health care. Currently, there are 11,000 members in the GNSA. CCNE's continued recognition by the U.S. Department of Education, and the approval of CCNE's expansion of scope request, is important to tens of thousands of nursing students nationally.

With regard to CCNE practices, the GNSA appreciates the ways in which CCNE engages its community of interest in the accreditation of nursing programs nationally. For example, CCNE invites the GNSA, as well as our colleagues at the National Student Nurses Association (NSNA), to participate in a dialogue with the CCNE Board of Commissioners at its annual meeting. The most recent of these meetings occurred in September 2016. These discussions have proven to be a valuable opportunity for the GNSA to provide input into the CCNE accreditation process and to receive and provide updates on topics that are of interest to nursing students.

It is clear from CCNE's outreach to student groups and others in its community of interest that CCNE values and considers student involvement and input into the accreditation process. For instance, GNSA receives periodic announcements from CCNE inviting students to submit third-party comments about nursing programs that are under accreditation review. CCNE also shares Calls for Comment with GNSA when the accreditation standards and procedures are under revision.

The fact that CCNE's written policies and procedures enable a new nursing program to receive accreditation prior to the graduation of its first class/cohort is especially important to nursing students as it helps protect students who otherwise may be at risk. Risks to students who graduate from a non-accredited nursing program include limited employability, ineligibility to sit for licensing and certification examinations, and failure to meet admissions requirements when pursuing higher education.

Thank you for this opportunity to comment in support of CCNE's application for recognition renewal and request for an expansion of scope by the U.S. Department of Education.

Sincerely,


Tonya Smith, MSN, RN
Chair, Graduate Nursing Student Academy

From: Babington, Lynn M.
To: Third Party Comments
Subject: Commission on Collegiate Nursing Education
Date: Friday, March 10, 2017 12:56:23 PM
Attachments: 95748728-3895-459A-9D50-16DB94615DC2(3).png
8F048BCE-426F-4ABD-9A58-6005D460D53A(3).png
8F4245E0-2CDF-40AD-95F2-63B1168A8FE0(3).png
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March 10, 2017

This email is submitted in support of the Commission on Collegiate Nursing Education's (CCNE) petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in nursing. As President of Fairfield University, a private, Jesuit university where I have held various positions- as dean for the school of nursing, vice president for academic affairs, provost and now interim president. I can speak to the importance of CCNE. The school of nursing at Fairfield University chose to seek accreditation from CCNE because it is the premier accrediting body and represents a level of quality in baccalaureate and higher degree education that is consistent with the University's mission, goals and expected outcomes. CCNE protects the integrity of nursing education and hold programs accountable for excellence, thereby protecting our students. As a Jesuit, Catholic institution, it is especially important to us that the CCNE standards and processes respect the individual mission of each institution of higher education where nursing education is provided. CCNE is a well-respected accrediting agency deserving of continued USDE recognition.

In my review of the CCNE accreditation process, I found that CCNE provided comprehensive workshops for programs to assist in the preparation of the self-study document and the onsite evaluation and the entire process was supported centrally by CCNE staff. This week, we hosted an onsite evaluation for our baccalaureate, master's and doctoral programs in nursing at Fairfield University. The dean and faculty team attended two of the workshops and found them to be invaluable to the preparation of our self-study document and to hopefully the successful outcome of the continuation of our accreditation for the full ten years. Our faculty, staff and students noted the onsite evaluation to be professional, rigorous yet fair and honest, and collegial in nature. The team was well qualified and had an understanding and appreciation of the mission and values of Fairfield University. The process afforded us the opportunity to celebrate our strengths and to develop strategies to address opportunities for further growth.

The CCNE staff is well-qualified and were very responsive to our faculty team during the preparation of the self-study document. Through all phases of the process, the staff exemplified the CCNE values of integrity, accountability, inclusivity, and support for ongoing continuous improvement and program innovation and growth. CCNE also values the education of its team leaders and members. Comprehensive workshops are provided to ensure teams are well informed about the standards and the process of accreditation. In addition, CCNE is currently reviewing and revising its own standards to assure it continues to be a relevant, rigorous and professional process.

In summary I fully support the Commission on Collegiate Nursing Education's petition for recognition renewal and to expand its scope to include the accreditation of certificate programs in nursing. CCNE assures that our students receive the highest quality of nursing education, which prepares them to provide safe, quality care to our patients.

Sincerely,

Lynn Babington, PhD, RN
Interim President, Fairfield University

Lynn Babington, PhD, RN
Interim President

[cid:F18C4620-273E-4CDS-A2AC-66F19415DDBE]

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Council on Education for Public Health

1010 Wayne Avenue, Suite 220 • Silver Spring, MD 20910
Phone: (202) 789-1050 • Fax: (202) 789-1895 • www.ceph.org

May 8, 2017

By email to herman.bounds@ed.gov

Herman Bounds, Ed.S
Director
Accreditation Group
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C.

Dear Mr. Bounds:

I am the Executive Director of The Council on Education for Public Health (CEPH). As you know, CEPH is an independent agency, recognized by the US Department of Education (ED) to accredit schools and programs in public health at the baccalaureate, master's and doctoral levels, including those offered via distance education. I also have served as the Chair of the Association of Specialized and Professional Accreditors (ASPA) for the last three years and have been active as an accreditation professional for the past 18 years. In these roles I have been active in accreditation policy as it relates to specialized and professional accreditors and have advocated for good practice in accreditation. I have had the privilege of working with you and other ED staff on many important issues over the last several years in an effort to ensure that professional programs are producing students who are competent practitioners to safely serve the public.

Recently I was informed that the Accreditation Group of the Department of Education is taking the position that accreditation actions may be effective only on the date of the actual vote by a decision-making body. I write because I believe the latest Accreditation Group position runs counter not only to the Department's previously stated position, but also to long-established public policy interests, good practice in specialized and professional accreditation and poses a serious risk of harm to students.

As you know, many accrediting agencies require applicant institutions and programs to have students enrolled and actively engaged in their programs before they will conduct an on-site evaluation. In other cases, accrediting agencies require that at least one class of students has completed the program in its entirety before an on-site evaluation can be done. This is so that site visit teams can evaluate programs in operation and gather valuable information about the quality of the student experience from interviews and observations, validating the information presented in the self-study document. The accrediting body makes a decision about accreditation based on student experience, performance and outcomes data (including the graduation and job placement rates) of the students who were enrolled at the time of the self-study and on-site visit. Excluding those students, whose successes helped earn their program accreditation, from the benefit of graduating from an accredited program is not reasonable or fair, and it harms students. In addition, in many disciplines, students must graduate from an accredited program in order to sit for licensure or certification exams required for employment in the field. The practice of establishing an earlier effective date of accreditation permits a thorough evaluation of program effectiveness, while reasonably assuring that students will be eligible for licensure, certification and employment in the discipline upon graduation.

filing. In such circumstances, the Board would clearly establish the effective date of initial accreditation in an Action Letter made available to the public.

HLC respects CCNE's longstanding track record of compliance with the Department of Education's recognition criteria. HLC-accredited institutions benefit from the rigor of CCNE's standards and accreditation process as a specialized accreditor assuring the quality of its programs. We hope this information is helpful to your consideration of CCNE's petition for renewal of recognition by the Secretary of Education.

Sincerely,



Barbara Gellman-Danley, Ph.D.
President

Cc: Dr. Jennifer Butlin, Executive Director, Commission on Collegiate Nursing Education



DEPARTMENT OF VETERANS AFFAIRS

VA Boston Healthcare System

1400 VFW Parkway

West Roxbury, MA 02132

May 5, 2017

Jennifer Butlin, EdD
Commission on Collegiate Nursing Education
1 Dupont Circle NW, Suite 530
Washington, DC 20036

Dear Dr. Butlin:

I am writing to support the petition for continued recognition that the Commission on Collegiate Nursing Education (CCNE) has submitted to the U.S. Department of Education. As you know, the U.S. Department of Veterans Affairs, Veterans Health Administration is the largest integrated healthcare system in the country, and the VA is entrusted with caring for those who have served in our nation's military. As the Assistant Director of Nursing/Patient Care Services at the VA Boston Healthcare System (VA Boston), I am responsible for nursing and patient care at the system's three main campuses (592 inpatient beds) and five community-based outpatient clinics within a 20-mile radius of greater Boston. In total, the VA Boston employs 885 nurses and has the largest healthcare educational program in the entire VA.

VA Boston, like all Veterans Health Administration facilities, depends on a constant supply of newly educated nurses to support our mission. Our nurses come from all types of colleges and universities and all types of educational programs. This includes traditional four-year programs, accelerated format programs, and those designed for second degree students. Accelerated format programs and those designed for second degree students are often short in length and are designed to meet nursing workforce demands. These shorter programs provide a sound education and have become a much needed pipeline to alleviate the strains on our nation's healthcare. The federal government has determined that federal agencies, in an effort to protect the public health, must only employ nurses who have graduated from accredited programs. CCNE's policy of establishing the effective date of the accreditation of nursing education programs as the first day of the most recent on-site evaluation is an appropriate and reasonable policy, and one that was put into place with great care and only after consulting with other USDE-recognized accreditors and with the Department staff. It allows new programs, especially those that are shorter in length, to gain accreditation before their first class of students graduate. This accreditation allows these nurses to be employed at the VA Boston and throughout the federal government. If accreditors' policies were forced to be changed by the Department when there has been no change to statute or regulation in this regard, students enrolled in shorter programs (such as accelerated programs for nurses with degrees in other fields or programs preparing nurses for advanced practice) would be at risk in that they would not be eligible to take certification examinations or eligible for federal hire, and the pool of potential candidates would be reduced and the care to patients would be compromised.

As stated above, graduation from an accredited Advanced Practice Registered Nursing (APRN) educational program is required for program graduates to sit for APRN certification. The Veterans Health Administration employs more than 5,300 nurses who are certified APRNs. For instance, at VA Boston, Psychiatric/Mental Health Nurse Practitioners provide care to our veterans with mental health needs, and the recent wars in Iraq and Afghanistan have resulted in increased mental health

May 5, 2017

Page 2.

needs in the veteran population. If new APRN programs -- often shorter in length -- are precluded from receiving accreditation prior to graduating their first class, the ready availability of highly-skilled advanced practice providers will be impacted.

In summary, I support CCNE's practice of making the effective date of accreditation the first day of a program's most recent on-site evaluation. This policy encapsulates an appropriate review period for accreditation, ensures that an on-site evaluation occurs when there is sufficient program history upon which to base a decision, and protects the public interest and well-being. Further, I am unaware of any harm that has occurred as a result of such policies and practices.

Sincerely,

A black rectangular redaction box covering the signature of Cecilia McVey.

Cecilia McVey 
Associate Director for Nursing/PCS



Jefferson.

Hospital Administration

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T 215-955-6235
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mary.a.mcginley@jefferson.edu

May 4, 2017

Jennifer Butlin, EdD
Commission on Collegiate Nursing Education
1 Dupont Circle NW, Suite 530
Washington, DC 20036

Dear Dr. Butlin,

I am the Senior Vice President of Patient Care Services and Chief Nursing Officer at Thomas Jefferson University Hospitals (TJUH) in Pennsylvania and have served in this role for 32 years, and have practiced in nursing for 43 years. TJUH provides care to individuals throughout the metropolitan Philadelphia area. As Chief Nursing Officer, I employ 2,000 nurses who provide care to over 142,000 individuals on an annual basis. I am writing to support the Commission on Collegiate Nursing Education (CCNE) petition for continued recognition by the U.S. Department of Education.

TJUH employs nurses who are educated in colleges and universities that reflect the diversity of higher education in the United States. Some of these nursing programs educate large numbers of students, while others have small cohort sizes. Some are traditional educational programs, while others are designed to educate nurses in a compressed time period. These time-compressed programs are a vital means for ensuring that our healthcare systems have a steady supply of newly educated and certified nurses to fill the staffing needs in our hospitals, clinics, home health agencies, and other settings. While wanting to ensure that there are sufficient nurses to fill the available jobs, nursing employers such as myself also want to ensure that our applicants come from well-respected educational programs. Accreditation by a nationally-recognized accreditor such as CCNE fills this need by conducting quality assessments based on nationally accepted standards and practices.

I fully support CCNE's practice of establishing the effective date of accreditation as the first day of a program's on-site evaluation. In doing so, students enrolled in shorter programs are able to graduate from accredited programs and are eligible for certification. TJUH, like many comprehensive healthcare systems, requires that nurses must have graduated from an accredited nursing program to be eligible for employment and promotion. If programs that are



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May 10, 2017

Dr. Jennifer Butlin
Commission on Collegiate Nursing Education
1 Dupont Circle, NW
Suite 530
Washington, D.C. 20036

Dear Dr. Butlin,

I am sending this letter to you for inclusion with the Commission on Collegiate Nursing Education's (CCNE) official response to the U.S. Department of Education draft staff report. I urge the Department staff and members of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) to accept CCNE policy and practices with respect to the effective date of accreditation being the first day of the program's most recent site visit, as similar practices are held among other institutional and specialized accrediting agencies in order to protect students and the public.

I write this letter as the Dean of the College of Health Professions and Lienhard School of Nursing at Pace University in Pleasantville, New York. I have also held the position of Interim Provost and Executive Vice President for Academic Affairs at Pace University, and have spent 52 years as a nurse and 42 years as an educator and/or administrator in higher education.

As background, Pace University currently enrolls approximately 12,000 students. Our College of Health Professions and Lienhard School of Nursing currently enrolls approximately 920 nursing students at the baccalaureate and graduate levels. Our baccalaureate and graduate level nursing programs are accredited by CCNE. Because of CCNE's policy, many graduates of Pace University have been able to further their education in graduate studies; have qualified to achieve advanced practice nursing certification, which is a requirement to practice in many states; and have been hired as nurses not only in the state of New York but across the nation. Our reputation is stellar and is known for our excellent program outcomes.

CCNE's policy – to make the Board's accreditation decision effective as of the recent site visit – is common practice and common sense. This practice protects hundreds of nursing students *every year*. Many other accrediting agencies engage in similar practices and have done so for many decades, without being cited or challenged by the Department of Education.

shorter in length were not eligible for accreditation, their graduates would not be eligible for employment at TJUH, and they would not be eligible for certification and therefore could not practice to their full extent of their education. At a national level, such restrictions would result in greater stresses on the nursing workforce and a reduction in appropriate patient care.

From my knowledge of the health professions, establishing the effective date of accreditation prior to an accrediting board's decision making meeting is commonly accepted practice. If the U.S. Department of Education were to oppose this long-standing public policy, and one that the Department has accepted to date, I fear the unintended consequences. I am confident that accrediting bodies can make sound judgments on educational quality while establishing the effective date of accreditation as the on-site evaluation since that is when a team of trained and qualified peer reviewers has assessed the program and made determinations about compliance with the standards.

Sincerely,



Mary Ann McGinley, Ph.D., R.N.
Senior Vice President for Patient Services
and Chief Nursing Officer



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St. Augustine, Florida

May 10, 2017

Dr. Jennifer Butlin
Executive Director
Commission on Collegiate Nursing Education
One Dupont Circle, NW, Suite 530
Washington, DC 20036

Dear Dr. Butlin:

As the Chief Executive Officer of the Accreditation Commission for Education in Nursing, Inc. (ACEN), which is recognized by the U.S. Department of Education to accredit all levels of nursing education programs, I am submitting this letter to express support for the Commission on Collegiate Nursing Education (CCNE) and, specifically, its long-standing policy on the effective date related to the initial accreditation of nursing education programs.

ACEN and CCNE share a common mission to accredit quality nursing programs in order to protect nursing students, recipients of care and services provided by nurses, and other stakeholders. As I understand CCNE's policy, the accreditation decision of the Board is effective as of the first day of a program's on-site evaluation. Working for more than 35 years in higher education and for more than 9 years at two different Department-recognized accrediting agencies, I believe that CCNE's policy is reasonable. I believe it was designed to protect students who would otherwise be at risk, and that such practices are common among both institutional and specialized accrediting agencies that are recognized by the Department. I am also unaware of any statute or regulation that precludes recognized accrediting agencies from making such determinations about the effective date related to the initial accreditation of nursing education programs.

If CCNE and other accrediting agencies are forced to change their policies based on the **current Department staff's interpretation of what is not actually written in statute or regulation**, the consequences to thousands of nursing students and tens of thousands of students in other disciplines would be severe.

ACEN

Commission on Collegiate Nursing Education

PAGE 2

Specific ways that students would be at risk if they were to graduate from a non-accredited nursing program are:

1. they could be denied eligibility to take the national nursing certification examinations, and passing such an examination is a requirement for an advanced practice nurse to practice in many states;
2. their employment applications could be denied because many employers, including the U.S. Department of Veterans Affairs (which is the largest employer of nurses nationally) and U.S. Armed Forces, require graduation from an ACEN- or CCNE-accredited nursing program for employment as a nurse; and
3. they could be denied admission to continue their education at higher level of nursing education (e.g., associate, baccalaureate, master's, or doctorate degree in nursing) since many colleges and universities nationally require graduation from an accredited nursing program for admission into graduate school.

ACEN fully supports and joins in CCNE's request to the Department of Education staff to reconsider its recently revised position on this important matter of public policy. We believe the Department and the National Advisory Committee on Institutional Quality and Integrity must carefully consider the potential consequences to students should accrediting agencies be forced to change their policies in the way that is being suggested by the Department staff.

Sincerely,



Marsal P. Stoll, EdD, MSN
Chief Executive Officer



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Office of the Provost and Vice President

May 10, 2017

Jennifer Butlin, EdD
Commission on Collegiate Nursing Education
One Dupont Circle, NW
Suite 530
Washington, DC 20036

Dear Dr. Butlin,

Please accept this letter of support for the Commission on Collegiate Nursing Education's (CCNE) petition for renewal of recognition by the U.S. Department of Education, and its expansion of scope request for recognition for the accreditation of certificate programs in nursing. I am the Provost and Vice President for Academic Affairs at Georgia Southern University (GSU), located in Statesboro, Georgia. I have also served as Interim President of GSU and have served as the chief nursing administrator at two institutions during my 33-year career in higher education.

It is my understanding that the Department staff have raised concerns over CCNE's policy and practices with respect to the effective date of accreditation being the first day of the program's most recent on-site evaluation. As I understand it, assigning a specific date prior to the accrediting Board's decision-making meeting as the effective date of accreditation is not an uncommon practice among institutional and specialized accreditors and is allowable by the federal regulations.

In fact, the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), which accredits GSU, has a similar policy and practice that is specifically designed to protect students graduating from new colleges and universities in the southern region of the United States. As stated in the SACSCOC *Handbook for Institutions Seeking Initial Accreditation* (March 2011 edition), publicly accessible at <http://www.sacscoc.org/pdf/handbooks/Initial%20Accreditation%202011%20edition.pdf>:

To award Initial Accreditation - Awarded for a five-year period, Initial Accreditation is retroactive to January 1 of the year in which accreditation is awarded by the Commission and is granted only for those purposes and programs in place at the time of the Accreditation Committee's visit. (p. 70)

Other regional and specialized accreditors with which I am familiar have similar policies intended to protect students.

Georgia Southern University currently enrolls more than 22,000 students. Our School of Nursing enrolls about 400 nursing students at the baccalaureate and graduate levels. CCNE accredits our baccalaureate and graduate nursing programs, and many of our students have benefited from CCNE's policy, which was put into place with student protection in mind. Because of CCNE's policy, our graduates were deemed eligible for admission to graduate schools across the country. Additionally, because the first class of students was able to graduate from an accredited program, they were eligible to take national nursing certification exams and seek employment from hospitals that require job candidates to hold a degree

Dr. Jennifer Butlin

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May 10, 2017

If the Department were to force CCNE to change its policy, hundreds of nursing students in new applicant programs throughout the United States would be severely and adversely impacted each year. This causes great concern to me both as a higher education administrator and as a health care consumer. For example, graduate programs almost universally require that students are educated in accredited undergraduate programs in nursing. Likewise, doctoral programs expect that students are graduates of accredited master's programs.

Also, as a university administrator, it is my understanding that it is not the role of the Department of Education staff to create new regulations. I would hope that the Department of Education would consult with the higher education community before changing its position on such an important and long-standing public policy issue that has dire consequences to institutions, students, employers, patients, and the public.

Please let me know if I can provide any additional information or be of further assistance.

Sincerely,

A solid black rectangular box redacting the signature of Harriet R. Feldman.

Harriet R. Feldman, PhD, RN, FAAN

Dean and Professor

College of Health Professions and Lienhard School of Nursing

from an accredited nursing program. What possible harm comes out of such a policy is unclear from my perspective as a university official.

If accreditors were forced to change their current policies and practices that protect the first classes of graduating students, thousands of students across the nation would be harmed, and the impact on their families, careers, and society at large would be detrimental.

In closing, I urge the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and the Department of Education to accept CCNE's effective date policy and also to consider the importance of treating accrediting agencies fairly and consistently in the recognition process.

Thank you for considering these comments. Please do not hesitate to contact me if I can be of assistance or answer any questions.

Sincerely,

A solid black rectangular box redacting the signature of Jean E. Bartels.

Jean E. Bartels, PhD, RN
Provost and Vice President for Academic Affairs
Professor of Nursing
Georgia Southern University



HIGHER LEARNING COMMISSION

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May 12, 2017

VIA ELECTRONIC MAIL

Mr. Herman Bounds
Director
Accreditation Group
United States Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Mr. Bounds:

On behalf of the Higher Learning Commission (HLC), I write to provide information that may be relevant for your consideration of the petition for renewal of recognition from the Commission on Collegiate Nursing Education (CCNE). It is my understanding that the U.S. Department of Education (USDE) and the National Advisory Committee on Institutional Quality and Integrity (NACIQI) are scheduled to review CCNE's petition at the June 2017 meeting.

As you know, HLC is one of six regional institutional accreditors in the United States. HLC accredits degree-granting post-secondary educational institutions in 19 states comprising the North Central region. Many of HLC's accredited institutions offer nursing programs that are programmatically accredited by the CCNE. States and employers, including major healthcare systems, require nurses to have graduated from a program accredited by an organization such as CCNE. According to CCNE, in order to protect students' ability to become licensed, the programmatic accreditor has a longstanding practice of establishing the effective date of accreditation as the first day of a program's on-site evaluation. CCNE thought it would be useful if, as an institutional accreditor, HLC would provide information on its policy with respect to establishing the effective date of initial accreditation.

HLC policy INST.B.20.030, Accreditation, includes the following:

The Commission's Board may grant initial accreditation, with the contingency noted in this subsection, to an institution that applies for accreditation and is determined by the Commission to have met the Criteria for Accreditation but has not yet graduated a class of students in at least one of its degree programs, as required by the Eligibility Requirements. Institutions shall have completed the two-year required minimum candidacy period or received a waiver from the Commission's Board of Trustees. Such action shall be contingent on the institution's graduation of its first graduating class in at least one of its degree programs within no more than thirty days of the Board's action. In such cases, the effective date of accreditation will be the date of this graduating class [Emphasis added].

Therefore, if the effective date of initial accreditation differs from the date of the HLC Board's decision to grant initial accreditation, it is because the candidate institution's first graduating class has graduated within the preceding 30 days or will do so in the next 30 days. HLC's policy was developed in consultation with the U.S. Department of Education, and it was formally reviewed by the Department in HLC's 2012 recognition

Mr. Herman Bounds
May 8, 2017
Page 2

The Accreditation Group's position on the effective date of accreditation presents a conundrum to these agencies. If the agencies preserve good accreditation practice and continue to require students to be enrolled or even graduated by the time of the site visit, it is unavoidable that some students, especially those in shorter programs, will graduate from a program that is not yet accredited and therefore will not be eligible for licensure or certification. On the other hand, conducting earlier site visits, without students enrolled, will produce a less meaningful review with less data upon which the accreditor can make an informed decision. Neither of these options works in the interest of students or supports the value of accreditation.

It is unclear to me when the current position on effective dates was first adopted by the Accreditation Group or the Department. We are unaware of any public announcement by the Department or opportunity for the community to weigh in through public comment. We urge further study and engagement with the accreditation community by the Department and hope that, for the important public policy reasons described above, the Accreditation Group will reconsider its position.

I believe that when the Department and the specialized and professional accreditation community have worked together in the past, we have been able to arrive at reasonable compromises that alleviate ED's concerns while also allowing the specialized and professional accreditation community to protect student and public interests in our unique fields of practice. I would welcome the opportunity to meet with you and your colleagues to better understand your position and to help identify a solution that satisfies all of our needs.

Sincerely,



Laura Rasar King, MPH, MCHES
Executive Director
Council on Education for Public Health

Cc: Jennifer Butlin, EdD
Executive Director
Commission on Collegiate Nursing Education

Joseph Vibert
Executive Director
Association of Specialized and Professional Accreditors

Anthea Sweeney Transcribed

Interview Exhibit 36

Foxx Exhibit 3



HIGHER LEARNING COMMISSION

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November 7, 2018

Diane Auer Jones
Principal Deputy Under Secretary Delegated to Perform the Duties of the Under Secretary
and the Assistant Secretary for Postsecondary Education
United States Department of Education
Office of the Under Secretary
400 Maryland Ave. SW
Washington, DC 20202

Dear Diane,

I write to acknowledge receipt of your correspondence of October 31, 2018 in which you raised concerns regarding a decision by the HLC Board of Trustees on November 16, 2017 to approve the extension of accreditation following a Change of Control transaction for Art Institute of Colorado and Illinois Institute of Art upon the parties' acceptance of certain conditions, including Change of Control Candidacy status. The Higher Learning Commission takes seriously the integrity of its policies as well as their alignment with federal regulations. We will review in detail the concerns you raised to determine if revisions are warranted in accordance with HLC's established policy on Revision of Accreditation Policy (PPAR.a.10.040).

Sincerely,

Barbara Gellman-Danley
President

HLC-DCEH-014374

Anthea Sweeney Transcribed

Interview Exhibit 37

Foxx Exhibit 4



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

January 31, 2020

VIA EMAIL AND UPS OVERNIGHT

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604

Dr. Gellman-Danley:

The U.S. Department of Education (Department) is in receipt of the letter from the Higher Learning Commission (herein referred to as “HLC” or “the Agency”) dated November 13, 2019, as well as its supplemental letter dated January 13, 2020, all responding to the Department’s letter to HLC dated October 24, 2019. As you are aware, the Department has significant concerns about the process used by the HLC Board to move the Art Institute of Colorado (OPEID: 02078900)¹ and the Illinois Institute of Art (OPEID: 01258400)² (collectively the “Institutions”) to “Change of Control Candidate for Accreditation” status.

In the course of our review, the Department reviewed documents provided by HLC, other documents pertaining to the inquiry and conducted interviews with individuals involved in the transaction. Now, based on our review of the facts and pursuant to 34 C.F.R. § 602.33(c),³ the

¹ The Art Institute of Colorado (OPEID: 02078900), including the campuses located at: 1200 Lincoln Street, Denver CO (Extension: 02078900); and 675 South Broadway Street, Denver, CO (Extension: 02078904).

² The Illinois Institute of Art (OPEID: 01258400), including the campuses located at: 350 North Orleans Street, Suite 136-L, Chicago, IL (Extension: 01258400); 1000 Plaza Drive, Suite 100, Schaumburg, IL (Extension: 01258401); and 28175 Cabot Drive, Novi, MI (Extension: 01258405).

³ If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff notes that one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria, it -
(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern. The draft analysis reflects the results of the review and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or

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HLC-DCEH-014445

Department finds that HLC was not compliant with its own policy under INST.E.50.010;⁴ 34 C.F.R. § 602.18(c) (pertaining to consistency in decision making);⁵ and 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f) (due process);⁶ in moving the Institutions to Change of Control Candidate for accreditation status.

I. Noncompliance with the HLC Policy INST.E.50.010 and Department Regulations Pertaining to Consistency in Decision-Making under 34 C.F.R. § 602.18(c)

On May 1, 2017, the Institutions submitted an Application for Change of Control, Structure, or Organization to HLC under INST.B.20.040 and INST.F.20.070. After conducting an extensive review of the application, including several site visits, HLC sent a letter to the Presidents of the Institutions and the CEO of DCEH on November 16, 2017 (“the November 16, 2017 letter”). The November 16, 2017 letter states that the HLC Board “voted to approve the application for Change of Control, Structure, or Organization ... however, this approval is subject to change of control candidacy status.” The letter does not explicitly provide notice that, rather than approving or denying the application under INST.B.20.040, the Board decided to invoke its authority under INST.E.50.010 to move the institutions to “candidacy” status. Nor does the letter explicitly state that the Institutions must give up their accredited status as a condition of the HLC approving the sale of the Institutions.

terminate recognition, or require the submission of a compliance report and to continue recognition pending a final decision on compliance;

(2) Sends the draft analysis including any identified areas of non-compliance, and a proposed recognition recommendation, and all supporting documentation to the agency; and

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation, specifying a deadline that provides at least 30 days for the agency's response.

34 C.F.R. § 602.33(c).

⁴See HLC's policy INST.E.50.010 in effect at the time of the transaction on (Jan. 18, 2019) (Exhibit 1).

⁵The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency -

(c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards;

34 C.F.R. § 602.18(c).

⁶ The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.

(d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.

(e) Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(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.

34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f).

INST.E.50.010 did provide the Board with the authority to move an institution from an accredited status to candidacy status “subsequent to the close of a Change of Control, Structure or Organization,” if certain conditions are met and the Board finds that “all of the Criteria for Accreditation and Federal Compliance Requirements” are no longer met without issue. However, INST.E.50.010 clearly states that “moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.”

The November 16, 2017 letter does not provide any notice to DCEH of its right to appeal the requirement that accreditation be forfeited. As set forth in greater detail below, this failure to provide notice of the right to appeal provided evidence to support DCEH’s assumption that accreditation was not being withdrawn as a condition of the sale being approved at the time the transaction closed.

HLC now contends that the Board did not need to advise DCEH of its right to appeal because it did not “act” in approving the Institution’s application. HLC also contends that DCEH voluntarily consummated the transaction and thus absolved HLC of its duty to allow for an appeal as required by INST.E.50.010. The Department disagrees. First, Department regulations require accreditors to approve or disapprove substantive changes by an accredited institution, including changes in ownership. 34 C.F.R. §§ 602.22(a)(1) and 602.22(a)(2)(ii).⁷ The Institutions were, at the time of the transaction, fully accredited by HLC. The Agency’s approval of the sale, subject to certain conditions, clearly was an “action” within the meaning of the regulations. Second, conditioning the sale transaction upon the withdrawal of accreditation is clearly an “adverse action” as defined within the context of INST.E.50.010. As such, it required the timely provision of a notice of a right to appeal.⁸

The Department finds that HLC did not follow its published policy under INST.E.50.010 when it acted to place the Institutions on this status without providing for an opportunity to appeal. This, in turn, means that HLC’s actions were not in compliance with 34 C.F.R. § 602.18(c) as it failed to base its decision on HLC’s published standards.

⁷ If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if --

- (1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution;
- (2) The agency's definition of substantive change includes at least the following types of change:
 - (ii) Any change in the legal status, form of control, or ownership of the institution.

34 C.F.R. §§ 602.22(a)(1) and 602.22(a)(2)(ii).

⁸ HLC’s contention that it merely used Change of Control Candidate for Accreditation status as a passive condition of approval also conflicts with its own internal policy set forth in INST.B.20.040 that the purpose of approval by HLC is “to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction.”

II. Failure to Provide Due Process under 34 C.F.R. §§ 602.25(a), 602.25(d), 602.25(e), and 602.25(f)

The Institutions have asserted in documents provided to the Department by HLC that the Agency misled them regarding the true nature of Change of Control Candidacy status. To assess the legitimacy of these assertions, the Department conducted an extensive review of the communications between HLC and the Institutions regarding this status. The Department finds that HLC’s communication with the Institutions, at best, obfuscated the true nature of change of control candidacy status—namely that such status required an institution to give up or otherwise lose accreditation. The excerpts and analysis detailed below regarding the communications between HLC and the Institutions illustrate this obfuscation.

On October 3, 2017, HLC sent the presidents of the Institutions and the Executive Chairman of DCEH a letter with the Staff Summary Report and Fact-finding Visit Report for the Change of Control Structure, or Organization. In the letter, HLC described the following options the Board may take in response to the Institutions’ applications for Change of Control Candidacy status: “(1) to approve the extension of accreditation following the consummation of the transaction; (2) to approve the extension of accreditation subject to certain conditions, as determined necessary by the Board; (3) to deny the extension of accreditation following the transaction; or (4) to approve the extension of accreditation following the transaction subject to a period of candidacy.”

The fourth item in the list above is the option that HLC ultimately decided to use when processing the Institutions’ applications; however, the letter describes that option as an “[approval of] the extension of accreditation,” which suggests that using that option would keep accreditation intact, rather than withdrawing accreditation, while HLC evaluated the actual performance of the new owners following the closing of the proposed transaction.

The Board met November 2-3, 2017, and then sent the November 16, 2017 letter to the Institutions. HLC contends that this letter describes the terms and conditions for the Institutions’ voluntary forfeiture of accreditation. Relevant excerpts from the letter are listed below to provide context:

During its meeting on November 2-3,2017, the Board voted to approve the application (emphasis added) for Change of Control, Structure, or Organization wherein the Dream Center Foundation, through Dream Center Education Holdings LLC and related intermediaries, acquires certain assets currently held by Education Management Corporation , including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below [. . .]

The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance (emphasis added) with the Eligibility Requirements

to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance (emphasis added) with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future [...]

The institutions undergo a period of candidacy (emphasis added) known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months (emphasis added) but shall not exceed the maximum period of four years.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway (emphasis added) and identify the date of the next comprehensive evaluation, which shall be no more than five years from the date of this action.

In the course of the review, Assistant Secretary for Postsecondary Education, Robert King, and Department staff conducted an interview with Mr. Ron Holt, Esq., outside counsel for DCEH on December 9, 2019, and with Dr. Karen Peterson Solinski, former Executive Vice President at HLC who oversaw the Education Management Corporation (EDMC) and DCEH transaction for HLC during her employment on December 23, 2019. Mr. Holt advised the Department that while representing DCEH in the larger transaction involving over forty schools and five separate accreditors, his experience with HLC was remarkably unique. Holt told the Department that until HLC published the public disclosure on January 20, 2018, advising students that accreditation had been lost, he did not believe that the approval of the sale transaction required giving up accreditation of the two institutions involved. Further, Holt stated that if DCEH understood that the schools would lose accreditation as a condition of the sale, DCEH would not have completed the transaction.^{9, 10}

Ms. Solinski told the Assistant Secretary that she believed both institutions would remain accredited during the six-month period beginning on the date of the transaction. She believed that HLC would begin monitoring the Institutions closely after the transaction to ascertain whether or not they were implementing the various requirements HLC had set forth as expectations in the letter approving the transaction. She stated in a written email to Department staff:¹¹

“...that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions ... The purpose of the Change of Control Candidacy

⁹ See transcript of Department call with Ron Holt, Esq., outside counsel for DCEH (Dec. 9, 2019) (Exhibit 2).

¹⁰ See emails between Department staff and Ron Holt (December 2019) (Exhibits 3.1-3.4).

¹¹ See e-mail from Dr. Karen Peterson Solinski, former Executive Vice President at HLC (Dec. 26, 2019) (Exhibit 4).

was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC criteria for Accreditation and other policies of the Commission going forward..."

Several additional factors compounded HLC's failure to provide clear, accurate information regarding the putative loss of accreditation:

- i. Nowhere in the November 16, 2017 letter does HLC explicitly state accreditation must be forfeited or lost if the transaction is completed.
- ii. Within the site visit report dated October 3, 2017, and the letter from the HLC Board dated November 16, 2017, extensive commentary was included regarding the capabilities of DCEH to meet the financial needs of the Institutions. The report referenced specific revenue projections, a pro forma financial statement, and an array of strategies to increase enrollment by improving the reputation of the Institutions, engaging in new advertising, expanding access to scholarships and state grants, achieving not for profit status, expanding development efforts to raise funds for scholarship programs, and "implementing cost savings in payroll, bad debts, property and excise taxes, facilities related expenses and outside services."

Nowhere in the report or in the letter from the Board did HLC mention that, if the Institutions lost access to Title IV funding as a result of the transaction, it could create a critical financial obstacle that would need to be overcome for the Institutions to remain financially viable. In the absence of such an observation or other clear statements to the contrary, it was reasonable that DCEH would not be aware that HLC was removing accreditation.

- iii. Shortly after the publication of the formal Disclosure describing the loss of accreditation, Mr. Ron Holt, attorney for DCEH, sent a letter to HLC in which he stated: "... we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the institutions for one year ... as the Commission has done for dozens of other institutions going through a Change of Control ..."

Holt wrote a letter to HLC dated February 23, 2018, in which he sought confirmation from HLC that the following statements were accurate:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in 'pre-accreditation status,' a term of art that is defined in federal regulations...

2. Both institutions remain accredited, in the status of change of Control Candidate for Accreditation ... and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.

In response to the Holt letter, Dr. Karen Peterson Solinski, former Executive Vice President at HLC, sent an email dated February 24, 2018, acknowledging receipt and advised DCEH that HLC was “reviewing it and will be in touch early next week.” For reasons unknown to the Department, Dr. Solinski’s employment with HLC ended shortly thereafter. In the November 13, 2019 HLC response to the Department, Dr. Gellman-Danley wrote that another HLC employee, Dr. Anthea Sweeney, assumed the responsibilities of managing the DCEH proceedings (Dr. Sweeney is reported to have directed an outside attorney to respond to the Holt letter). HLC’s letter states that “Kohart (outside counsel for HLC) made attempts to contact the parties’ counsel, but they did not respond to the outreach. As such, it appeared to HLC that the institutes did not wish to communicate further about the matter.”

These statements are not consistent with the facts or sound practice. If, in fact, HLC’s attorney was unable to reach anyone representing DCEH, standard practice would call for a specific, written response to the Holt letter conveying that his understandings were incorrect, if HLC’s position was that accreditation had been forfeited. No such letter was written. Further, the notion that DCEH had lost interest in further communicating is contradicted by their actions demanding an appeal.

34 C.F.R. § 602.25(a) requires accrediting agencies to provide institutions with “adequate written specification[s] of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.” Regulatory ‘adequacy’ is judged based on all of the facts and circumstances of each individual case, but at a minimum requires clear standards, fairly communicated. In this case, the Department finds that HLC’s November 16, 2017 letter and subsequent communication with the Institutions failed to provide adequate notice or written specifications, including clear standards, regarding the accreditation status described in the letter. The letter does not include clear statements that accreditation was being withdrawn, which is required when an agency removes or withdraws accreditation. Instead, it cloaked its action within the vague and ambiguous term “Change of Control Candidacy” status. Understanding the precise meaning of that term requires reference to multiple sections of HLC policy manual that are not identified in the November 16, 2017 letter. In addition, that letter describes the accreditation status using four different terms,¹² without clearly delineating the difference among them, further obfuscating the true nature and meaning of that status. Accordingly, the Department finds that HLC violated the Institutions’ due process rights under 34 C.F.R. § 602.25(a) for failure to provide clear standards regarding institutional accreditation and preaccreditation.

¹² Change of Control, Structure, or Organization; Change of Control Candidacy Status; Change of Control Candidate for Accreditation; and Change of Control Candidacy.

The Department finds that HLC did not “provide sufficient opportunity for a written response...regarding any deficiencies identified by the agency... before any adverse action is taken.” No such opportunity was afforded DCEH in the November 16, 2017 letter. Absence of this opportunity violates 34 C.F.R. § 602.25(d), further depriving DCEH of due process required by Department regulations.

In addition, the November 16, 2017 letter fails to describe the Board’s action as an adverse action, which it clearly was under INST.E.50.010. HLC has maintained that the action of the Board was not an adverse action, because the Institutions consented to having the conditions of Change of Control Candidacy Status imposed on them. In this instance, the Institutions had applied for Change of Control, Structure or Organization approval. The Board processed the application and provided the Institutions with two options: accept Change of Control Candidacy Status, meaning forfeit accreditation status in order to proceed with the purchase of the EDMC assets; or do not proceed with the transaction.

Department regulations do not allow agencies to force institutions to give up their due process rights when processing a change in ownership resulting in a change in control. Accordingly, the Department finds HLC violated the Institutions’ due process rights under INST.E.50.010 and 34 C.F.R. §§ 602.25(e) and 602.25(f).

Further, the November 16, 2017 letter indicates that a site visit would be scheduled within six months of the sale transaction being closed “focused on ascertaining the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements...” The letter further states a second focused evaluation must occur “no later than June 2019” after which the Board “shall reinstate accreditation and place the institutions on the Standard Pathway...” (at p. 4). This *ad hoc* sequence of events by the Board ignored applicable Departmental regulations.

Finally, 34 C.F.R. § 600.11(c)¹³ prohibits an institution from being considered for accreditation “for 24 months after it has had its accreditation or pre-accreditation withdrawn, revoked, or otherwise terminated for cause, unless the accreditation agency ... rescinds that action.” This regulation also prohibits agencies from moving an institution from accredited to pre-accredited status. In contrast, INST.E.50.010 allowed the Board to take an institution from accredited to candidacy status, defines such an action as an adverse action, and allows for apparent re-instatement within 6 to 18 months, contrary to the requirements of 34 C.F.R. §600.11(c). Accreditor policies that promise accreditation to institutions on terms that would not allow the institutions to meet the Department’s eligibility requirements are counterproductive at best. An

¹³ Loss of accreditation or preaccreditation.

(1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

34 C.F.R. § 600.11(c).

accreditor applying such a policy should at a minimum inform the institution of any such obvious inconsistency between its provision of accreditation to the institution and the institution's subsequent ability to use that accreditation to meet Departmental eligibility requirements. HLC did not do so here.

34 C.F.R. § 602.25(a) required HLC to provide the institutions with "adequate written specifications of its requirements, including clear standards" for accreditation. Accrediting agency policies promising accreditation to institutions on terms the accreditor knew, or should have known, would not allow subject institutions to meet the Department's eligibility requirements plainly fails this test, absent disclosure of the implications to institutions.

III. HLC's Remedial Actions in Response to its Noncompliance

As stated above, the Department finds HLC in noncompliance with 34 C.F.R. §§ 602.18(c), 602.25(a), 602.25(d), 602.25(e), and 602.25(f),¹⁴ and with its own policy under INST.E.50.010.¹⁵ As provided under 34 C.F.R. § 602.33(c)(3), HLC has 30 days to respond in writing to this report. In addition to responding to each of the Department's findings of noncompliance, HLC should also provide (1) a narrative response, including any supporting documentation, on steps it has or will take to prevent due process failures in the future; and (2) a detailed plan on how HLC intends to assist in any effort to correct the academic transcripts of those students who attended the Institutions¹⁶ on or after January 20, 2018, such that those transcripts show that the students earned credits and credentials from an accredited institution.

In addition, HLC is advised that it should provide Department staff with 60 days' advance notice before its Board plans to take action to rescind, modify, revise, or change in any way its policies

¹⁴ The text for each of these regulations is provided in prior footnotes.

¹⁵ The Department is aware of the action of HLC's Board to repeal INST.E.50.010 in its entirety; however, it remains concerned about HLC's future compliance with Department regulations. *See* HLC Change of Control, Structure or Organization Policy Change published November 2019, available at http://download.hlcommission.org/policy/updates/AdoptedPolicies-ChangeofControl_2019-11_POL.pdf. In addition, it did not go unnoticed by the Department that HLC decided to use a punitive provision under its policies that it had never previously used after receiving a letter from five Members of Congress on June 22, 2017, scrutinizing the proposed EDMC/DCEH transaction. The Department would like to remind HLC that all accreditation agencies should maintain independence from undue influence from elected officials so not to run afoul with 34 C.F.R. § 602.18(c) and to ensure public confidence in the accreditation process. In addition, HLC's institutional standards under Criterion 2, Integrity: Ethical and Responsible Conduct 2.C.(3) require institutions to maintain independence from undue influence on the part of elected officials. Accordingly, it would seem antithetical to that policy if HLC's Board would not also hold itself to the same ethical standard.

¹⁶ The Art Institute of Colorado (OPEID: 02078900), the Illinois Institute of Art (OPEID: 01258400), including all of the locations, as referenced in footnote 1 and 2 of this document.

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authorized under 34 C.F.R. § 602.22(a)(2)(ii)¹⁷ relating to change in ownership or control, so the Department may review any proposals as authorized under 34 C.F.R. § 602.33(a)(2).¹⁸

The Department will evaluate HLC's response and may present its findings, as provided under 34 C.F.R. § 602.33(e),¹⁹ at the National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting in July 2020. If, however, the Department staff are satisfied with HLC's response to this letter (including by showing adequate steps have been taken to prevent due process failures and to assist in any efforts to correct the relevant transcripts of those students who attended the Institutions), then the Department staff would have a reasoned basis for finding that HLC has demonstrated compliance and for notifying NACIQI accordingly, as authorized by 34 C.F.R. § 602.33(d).²⁰

If you have any questions about this letter, please contact Herman Bounds, Director of Accreditation, at (202) 453-6128 or Herman.Bounds@ed.gov.

¹⁷ If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if -

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

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

34 C.F.R. § 602.22(a)(2)(ii).

¹⁸ Department staff may review the compliance of a recognized agency with the criteria for recognition at any time -

(2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.

34 C.F.R. § 602.33(a)(2).

¹⁹ If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has not demonstrated compliance, the staff -

(1) Notifies the agency that the draft analysis will be finalized for presentation to the Advisory Committee;

(2) Publishes a notice in the Federal Register including, if practicable, an invitation to the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(3) Provides the agency with a copy of all public comments received and, if practicable, invites a written response from the agency;

(4) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received; and

(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c).

34 C.F.R. § 602.33(e).

²⁰ If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, the staff notifies the agency in writing of the results of the review. If the review was requested by the Advisory Committee, staff also provides the Advisory Committee with the results of the review.

34 C.F.R. § 602.33(d).

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Sincerely,



Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and
Innovation

**Policy Title: Accredited to Candidate Status****Number: INST.E.50.010**

The Board of Trustees may determine that an institution be moved from accredited to candidate status subsequent to the close of a Change of Control, Structure or Organization transaction as a result of the findings of an on-site team, including either a Fact-Finding or other team, visiting the institution or the findings in a summary report. The Board must find that the institution, as a result of or related to the Change of Control, Structure or Organization, meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices but no longer meets all of the Criteria for Accreditation and Federal Compliance Requirements. It must also find that the institution meets the requirements of the candidacy program. Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.

Process for Moving an Institution From Accredited to Candidate Status

The Board of Trustees may take an action to move an institution from accredited to candidate status in conjunction with a Change of Control, Structure or Organization, as outlined in [Commission policy INST.B.20.040](#). In addition, a team recommendation arising out of a comprehensive or focused evaluation within six (6) months of the close of a transaction approved under [INST.B.20.040](#) to move the institution from accredited to candidate status, will automatically be referred to an Institutional Actions Council Hearing Committee. The Board will consider both the team recommendation and the Institutional Actions Council Hearing Committee recommendations in its deliberations. In all cases, the Board of Trustees will act on a recommendation to move an institution from accredited to candidate status only if the institution's chief executive officer has been given at least two weeks to place before the Board of Trustees a written response to the recommendation of the team or Institutional Actions Council Hearing Committee.

Public Disclosure of Accredited to Candidate Status

A Public Disclosure Notice for an institution whose status has shifted under this policy will be available on the Commission's website shortly after, but not more than twenty-four (24) hours after, the Commission notifies the institution of the action moving the institution from accredited to candidate status. An

institution moved from accredited to candidate status must notify its Board members, administrators, faculty, staff, students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the institution must also disclose this new status whenever it refers to its Commission affiliation.

Policy Number Key

Section INST: Institutional Processes

Chapter E: Sanctions, Adverse Actions, and Appeals

Part 50: Accredited to Candidate Status

Last Revised: February 2014

First Adopted: June 2009

Revision History: February 2011, February 2014

Notes: Policies combined November 2012 – 2.5(e), 2.5(e)1, 2.5(e)2

Related Policies: INST.B.20.020 Candidacy, INST.B.20.040 Change of Control, Structure, or Organization

EXHIBIT 2



UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF POSTSECONDARY EDUCATION

Date: December 9, 2019; 3:30 PM to 4:00 PM EST

Subject: Substantially Verbatim Transcript of Phone Call between Robert King, Assistant Secretary for Postsecondary Education, and Ron Holt, attorney at Rouse Frets White Goss Gentile Rhodes, P.C. and former outside council for Dream Center Education Holdings (DCEH)

Robert King: First, thank you for making time for this call, I trust it was unexpected. We are doing an assessment of decisions made by HLC [Higher Learning Commission] as it pertained to your clients AIC [Art Institute of Colorado] and AII [Illinois Institute of Art] and DCEH. First question – do you feel comfortable discussing this? We’d like to understand what your thinking is and what concerns you might have.

Ron Holt: Yes, Mr. King, I’m certainly willing to talk to you about HLC’s actions with respect to those institutions. There may be a point where you may ask things that are within attorney client privilege.

Robert King: I totally understand, and I leave it to you to define what you can and can’t talk about.

Ron Holt: Let me give you some current history, as you know there was an effort made in second half of 2017 to transition ownership of those two schools from for-profit organizations to Dream Center and that eventually a request was made to approve the sale to HLC. They published a letter in 2017 saying the transaction can go forward, subject to a number of conditions, and embedded was the loss of accreditation, although the new enterprise would be able to have accreditation restored. That’s not how we understood it.

Robert King: I understand, but at some point, Dream Center, through you, conveyed their surprise. On February 2nd you drafted a letter on behalf of Dream Center indicating essentially shock that accreditation had been withdrawn. The reason I’m calling is there was a subsequent letter in February to Barbara Gellman-Danley seemingly indicating that an agreement had been reached that both institutions are eligible for title IV funding and are accredited. So, what prompted the writing of that letter? We sent HLC a very detailed set of questions, asking them to provide documentation, preceding and following November 2017, January 2018, and your letter on February 23rd, which never generated a written response from HLC. If you recall, what prompted the February 23rd letter, either written or oral communication?

Ron Holt: I don’t remember any communication with HLC; however, there was a communication that David Harpool and I had with our client, and I don’t remember the exact

nature of that communication. We had a conversation with Randy Barton, and he had a discussion with Brent Richardson and with someone at the Department [The U.S. Department of Education]. Because of that conversation, we wrote the letter. These two worked for Dream Center, Richardson was CEO and Barton was Chairman of the Board.

Robert King: When you said Department did you mean Department of Education?

Ron Holt: Yes. At some point in time, I had been interviewed by the staff of Bobby Scott's committee, and I shared with them that at some point in time, February or later, after that initial surprise on our part, seeing what was described as a disclosure, I was involved in both of those closing. I worked on the deal from the start throughout all of 2017. We were surprised after we closed the second closing on January 19, 2018. We saw that notice the following day and it was contrary to our understanding. We talked it through and sent out the letter. At some point we were led to understand that the executives at Dream Center were discussing this with people from the Department. We heard this through our clients, verbally. I don't think we had email communications about that, but I'm not 100 percent sure who they were with. We believe it might've been Michael Frola and maybe Donna Mangold and maybe Diane Jones. Long and short of it was the Department, specifically one or more of these individuals, were going to intervene with HLC and encourage them to change position. We never would have closed the transaction without the accreditation part. The way the closing of the transfer of these EDMC schools - that were to be sold - it was for the very purpose of getting the approval of HLC. That approval had been for October 2017, by Middle States one and HLC for the other one - for four schools. The irony is this application took a year. Initial contact was made by EDMC with HLC in November 2016, and it was a long, arduous process. HLC made visits to Dream Center in Los Angeles and made visits to Pittsburgh. They gathered a lot of information, there wasn't any reason anyone would have believed, at Dream Center, that accreditation would've been gone by the closing of this. Everyone felt betrayed and shocked - every other accreditor approved the transfer of the schools with the accreditation intact. We didn't believe that they meant what they said. That perspective informed what we did from then on, we didn't tell students because we didn't believe it to be true. In terms of that letter, I can't tell you what we heard or what I heard but there must have been our client sharing something they had heard from the Department.

Robert King: In terms of a response, we asked HLC what they did. They claimed in their response to us that they attempted to reach someone from Dream Center by phone and were unable to do so. Assuming that was correct, receiving a letter like yours, if I were unable to reach you with that content, I would've drafted a letter stating that each of your points were incorrect. Did you get such letter back from HLC?

Ron Holt: I believe we heard back from them in May - seems to me there was letter in May - I don't recall anything any sooner. Do you have the documents in front of you?

Robert King: I don't have everything but let me go back and find the section.

Ron Holt: I just found this May letter. I'll take a look at it.

Robert King: It says May 21st. That was a letter from you, and they responded on May the 30th and it's about granting you an appeal if you wanted to take advantage of it.

Ron Holt: We were trying to figure out how to take out an appeal, and we were trying to figure out in the February 23rd letter for them to give us some guidance.

Robert King: You made four points – the Institutions will remain eligible for Title IV, remain accredited, will have an objective review for continued accreditation, and that the institutions will convey to their students that they will remain accredited and undergo the reaccreditation process...So that's what you asked for.

Ron Holt: They are telling you that they responded to this letter?

Robert King: Their response says on the same day the Institutes transmitted the February letter, Frola emailed Solinski, employed at HLC, although her employment ended shortly thereafter, after this 23rd letter. On the same day, Frola emailed Solinski indicating the status could be problematic for the schools' Title IV eligibility. Frola had received the January letters, and then it says, let's see, it says February 23rd was the first time Frola reached out to Solinski indicating CCC status [Change of Control Candidacy status] could be problematic. A call was contemplated, but didn't take place until March 9th, due to postponements by Frola and Solinski. On the call it says Frola was accompanied by Department officials and legal counsel, and Frola asked Sweeney whether CCC was accredited status. Sweeney responded that candidacy is a formally recognized status, but it's not accredited status. Sweeney informed Frola that the board had made no independent determination about tax status or Title IV status, since it is under the purview of the IRS and Department of Education. Apparent confusion would reemerge in Jones' October 31st, 2018 letter to HLC. The point here is that I don't see in their response any effort to respond to your February 23rd letter – it says, Sweeney, who is an HLC employee specifically instructed Mary Kohart in March 2018 to follow up with institutes' counsel, and they made attempts but they didn't respond to the outreach. It seemed to HLC that they didn't seem to want to reach out.

Ron Holt: Here's the May 21st letter – I'm going to forward this May 21st letter to you [all follow up correspondence between Mr. Holt and Department officials is included in Exhibit 2].

Okay, this is not an excuse, but I'll put things in context. I was in and out of the picture in this time period in terms of my involvement with matters here for DCEH [Dream Center Education Holdings]. I'd have to talk to Harpool, he actually was accreditation counsel advisor to our firm, but he's now no longer with us, he's the president of a college. What happened to me was that on February 8th I went to hospital with cardiac problems – I had a minor heart attack and had some issues - I wasn't the guy that was answering all of these emails. Clients took over some of this directly, including Randy Barton, who also was an attorney. In my absence, I may have fielded some of these inquiries, as I followed up with some of these things, but I was out in March and April, so it is possible that Mary tried to reach me. I feel confident that any message that I couldn't answer I would have passed on to Harpool or Barton. We wouldn't let it go unanswered.

Robert King: Even if the statement here is accurate, they tried and no one responded, having received the February 23rd letter, HLC should've responded back to you and expressed disagreement, whether they were right or wrong. I find it remarkable given your letter stating your understanding, that they would not have made a more vigorous effort to reach out.

Ron Holt: I don't have any letter in my file from that time period. Just our May 21st letter, asking for appeal and processes for appeal. At that point, there's a lot more pressure from students and others on clarification and the status of these institutions. It still says not accredited online and HLC hasn't changed their position. By this time there was executive leadership and maybe Diane Jones suggesting an effort be made by the Department with HLC to get them to change their position. It was a position that they took, and instead they could recognize that we had accreditation provisional to these conditions and 6 months to meet these conditions, and we had negotiations with them from November to the January closing, so we debated some of those positions. There was a condition about continuing to monitor the schools, where 39 state attorneys general had an agreement to monitor that went to court for 3 years. At the end it might or might not be extended. HLC wanted us to agree that we would continue that monitoring for another 2 years. We were saying, why should we do that unless all 39 states agree to it. Never once did they bring up, through Karen, the idea that you won't be accredited anyways for 6 months. No one said you won't be accredited. The schools would have stayed with EDMC and retained their accreditation. EDMC would have taught them out which is better than what HLC did.

Robert King: The only language in the November letter - and I've read it backwards and forwards - is on page 4 after it was identified that institutions host a focused visit "on the following topics" and states all of those common things for accreditation efforts. At the end it says: "If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action."

Two paragraphs later they say: "The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation."

I find it bizarre - because in one paragraph accreditation will need to be reinstated, but they don't say they are withdrawing accreditation, which makes this insufficient - and second, if you go

ahead without approval, they might withdraw accreditation. My question – how did you interpret that paragraph on page 4?

Ron Holt: We interpreted from the lens of looking at earlier statements. On the first page they cite they've taken formal action in response to the application, filed by institution, and at the bottom, they've considered 5 factors...and it looked as if they had been met them...top of the second, board found institutions hadn't met these factors without issue but demonstrated sufficient compliance, and CCC status can rebuild full compliance....so we read that and understood it to mean that we had demonstrated probable compliance, and were on path toward compliance and demonstrated sufficient compliance, and that we were CCC which was a new category they had created. Because of that we figured it was in accreditation category, even though they make statements later, we figured that meant change into normal accreditation and out of this pre-accreditation. Honestly because it was a new status, we found ourselves to be confused, and we thought it was part of the status to be accredited.

You could read it to mean - oh what they really mean here is you're not accredited - but obviously this letter wasn't a model of communication and maybe we should have insisted on more clarity, in hindsight obviously, given what HLC did to us. It never occurred to us that what was up here was we were headed to no accreditation post-closing. It had never happened to anybody. We've never had any accreditor do this to us - write you a letter saying we have approved the deal, satisfy these conditions, and when you change owners you lose it. It was extraordinary, unique, and it's hard to find words.

Robert King: It strikes us the behavior of HLC was insufficient. The one question I asked and got a rambling answer out of them was the question of during the time this transaction was going on, above the fray, did the faculty change, curriculum change, anything change? While this stuff was going on in the boardrooms, my sense is that nothing changed in the classrooms. The kinds of things that would ordinarily lead to loss of accreditation, didn't happen here.

Ron Holt: Nothing changed but the c-suite, a small group of people that were exited. Brent and Crowley from Grand Canyon and Randy Barton coming on board and becoming part of this team, and you had a small group of people running EDMC that were leaving, everyone else stayed the same.

Robert King: Seems to me HLC lost sight of students here and got overwhelmed by other forces. I'm going to have to go, but I'm very thankful, I didn't know what to expect, and we might prevail upon you for other information, but what you have provided has been very helpful. Our expectation is to issue some sort of findings regarding HLC's conduct during this. Whether it may have consequence I don't know but it will highlight insufficiency on their part. But who knows? We want accreditors to behave appropriately and we think here that didn't happen.

Ron Holt: We did file an internal complaint in June of 2018, and I don't know if you have that, but I'd be happy to email that to you as well.

Robert King: Have they responded?

Ron Holt: I don't think they did, but shortly after they decided to teach out these schools. The Department was made aware of the teach out - Diane Jones knew and DCEH tried to right it but accreditation was never resolved in a satisfactory manner.

EXHIBIT 3.1, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf

From: Ronald L. Holt <RHolt@rousepc.com>

Sent: Monday, December 9, 2019 3:55 PM

To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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FAX 913.928.6739	FAX 816.292.7601

May 21, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
[REDACTED]

Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
[REDACTED]

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings ("DCEH") and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the "Institutions").

We wrote on February 2, 2018 to express our concern that the January 20, 2018 Commission's Public Disclosure ("Disclosure") is not consistent with the terms extended to the Institutions by the Commission (following applications filed by the Institutions in late 2016 and supplemented in 2017) in the Commission's November 16, 2017 letter with respect the planned change in ownership of the Institutions (the "Transactions") involving their acquisition by subsidiaries of the nonprofit Dream Center Foundation.

While the Institutions regarded being placed in the status of Change of Control Candidate for Accreditation, which the Commission's November 16, 2017 letter had described as pre-accreditation candidacy status, as an unwarranted response to the planned change in ownership, the Institutions, through letters dated November 29, 2017 and January 4, 2018, confirmed (with only a few modifications) that they would accept candidacy status, believing that they would be treated as pre-approved candidates on a fast-track needing to only address the issues raised in the November 16, 2017 letter, and they proceeded to close the Transactions on January 19, 2018 (the "Closing") on that basis. The next day, however, the Commission issued its Disclosure describing the Institutions' status to mean something far different from what the Institutions believed candidacy and pre-accreditation status would mean here.

As we stated in our February 2, 2018 letter, the issue here is not solely maintaining Title IV eligibility of these institutions; it is also meeting the reasonable expectations and interests of our students, a goal which should be shared by the Commission. To be frank, had the Commission plainly stated in its November 16, 2017 letter what it later said in the Disclosure, DCEH would not have carried out the Closing of the Transactions because the necessary regulatory consent would not have existed and the Transactions would not have been in the best interests of the

students. Quite honestly, DCEH feels that it was misled by HLC to its detriment and the detriment of its students and that DCEH has actionable legal claims against HLC.

In an effort to avoid a legal battle, in our February 2, 2018 letter, we informed you that we believe that, pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action that is subject to appeal, we informed you of the Institutions' refusal to accept the Commission's decision as stated in the Disclosure and the Institutions' desire to appeal that decision, and we requested your input on how we should proceed with the appeal.

While President Gellman-Danley sent correspondence on February 7, 2018 indicating that a change was being made to the Disclosure, she maintained in her letter that the Institutions were not in pre-accreditation status (she indicated that HLC does not have such a status) and that the Institutions need to apply for and establish their candidacy for accreditation. She noted that some changes had been made to some of the language in the Disclosure concerning certain procedural matters. But those changes do not allay the concerns that the Institutions have about the expectations and interests of their students, as the Disclosure continues to state that all students who did not graduate prior to January 19, 2018 are attending institutions not accredited by HLC and taking programs not accredited by HLC and will be earning credentials not accredited by HLC. This, quite simply, is unacceptable. Moreover, President Gellman-Danley's letter does not acknowledge the Institutions' decision to appeal the Commission's decision to place the Institutions in the status of Change of Control Candidate for Accreditation, nor does it provide them with any directions on how to pursue their appeal, as we had requested in our February 2, 2018 letter.

Thus, to date, we have not received any guidance on how we can pursue our appeal with HLC. If such guidance is not given to us in writing within the next ten (10) days, we will assume that HLC is unwilling to allow DCEH to pursue an internal appeal, and DCEH will proceed with a legal action. We trust this can be avoided and we again repeat our request for instructions on the pursuit of an appeal.

Sincerely

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt
Dr. David Harpool

Regulatory Counsel to DCEH and the Institutions

cc: Mary E. Kohart, Esq.
Counsel to HLC



Higher Learning Commission
Page 3
May 21, 2018

Mr. Brent Richardson
[REDACTED]

Chris Richardson, Esq.
[REDACTED]

Mr. David Ray
[REDACTED]

Mr. Elden Monday
[REDACTED]

Ms. Shelley Murphy
[REDACTED]

EXHIBIT 3.2, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: HLC Letter
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM
To: [REDACTED]; [REDACTED]; [REDACTED]
Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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June 27, 2018

Ms. Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Subject: Appeal of HLC Decision to Remove Accreditation from The Art Institute of Colorado and Illinois Institute of Art

Via: Email

Dear President Gellman-Danley:

The letter represents a formal appeal prepared by Dream Center Education Holdings, LLC (DCEH), parent of The Art Institute of Colorado (AIC) and Illinois Institute of Art (ILIA). The appeal concerns the January 19, 2018 decision of the Higher Learning Commission (HLC) to remove accreditation of AIC and ILIA and place the institutions in Change of Control Candidacy Status.

This appeal of the HLC decision is founded on the following arguments:

Institutional Histories

AIC was established in 1952 and first accredited by HLC in 2008. ILIA was established in 1916 and first accredited by HLC in 2004. Since achieving HLC accreditation, both institutions have operated in accordance with the criteria, policies, and assumed practices established by HLC. At the time of the change of ownership on January 19, 2018, both institutions were in good standing and operating in compliance with all HLC expectations. Prior to January 19, 2018, HLC had never revoked nor suspended the accreditation of either institution. Following the change of ownership, there were no modifications to operational processes or academic programs and both institutions have continued to be governed by independent Boards of Trustees, which operate in accordance with established bylaws.

In other words, the institutions on January 20, 2018 were the same institutions that existed on January 19, yet the Commission announced they ceased to hold accreditation. Moreover, our review of Commission actions has confirmed removal of accreditation from an institution on the sole basis of a change of ownership is unprecedented among HLC decisions.

Discriminatory Practice

The decision of the Commission is arbitrary and capricious, unfair to the new owner who purchased the institution with good intentions, punitive to the students, and an inconsistent application of policy and practice. As the Commission is aware, it is unprecedented that the Commission would take an accredited institution, and solely on the basis of change of ownership, strip it of its accreditation. The compliance of the institution with Commission standards was the same the day before, of and after the closing of the sale. If the Commission had desired or intended to remove accreditation from the institution, it should have acted prior to the sale but not on the basis of the sale. This is especially true in light of the fact that it is well known that other HLC-accredited institutions, which have previously gone through change of ownership, including transition from for-profit to non-profit status, have not been placed in Change of Control Candidacy Status following approval of their change of control applications. By placing AIC and ILIA in Change in Control Candidacy Status, HLC has violated the consistency requirement stipulated within US Department of Education 34 CFR § 602.18. Obligations under 34 CFR § 602.18 require that HLC maintain controls that ensure the consistent application of the agency's standards across all institutions.

Ambiguous and Misleading Communications

The HLC action letter of November 16, 2017, which initially responded to the change of control applications filed by the two HLC-accredited institutions, was ambiguous and misleading. While the communication stated that the institutions would be placed in the position of candidates for accreditation, DCEH understood and assumed that the institutions were effectively pre-approved and remain accredited as candidates. The November 16 letter made no mention that accreditation would be immediately removed upon the change in ownership and during the time period while the institutions completed Eligibility Filings; if that statement had been made, DCEH would not have closed the transaction. Instead the letter stated that the institutions had demonstrated sufficient compliance to be considered for preaccreditation status; but latter HLC claimed it did not have preaccreditation status, further illustrating the confusing nature of the November 16 letter. Given that neither institution was under a show cause or probation sanction at the time of change of control, it was logical that accreditation would be extended for a customary transitional period to be followed by a site visit aimed at verifying operations and practices (which is what happened with all of the other accrediting agencies for the other institutions involved in the DCEH – EDMC transactions). Importantly, this assumption stemmed directly from HLC's own guiding framework, which attests that the commission will “[work] within the context of its

expectations for accredited institutions [to] streamline processes and procedures for member institutions.”¹

Acting in Good Faith

Being new to the higher education arena, DCEH entered into the change of control process with a somewhat limited understanding of certain protocols and practices. Throughout the entire change of control process, the entire organization (i.e., parent and institutions) acted in good faith to comply with all requests for information and evidentiary materials. Simply put, DCEH set forth on the venture with a goal to sustain the success of all acquired institutions, including AIC and ILIA. In no way did DCEH seek to disrupt student success or bring harm to the institutions, particularly with regard to the longstanding accreditation status of the two HLC-accredited institutions. In fact, the acquisition of the institutions by DCEH was intended to relieve HLC of concerns about the prior owner.

Irreparable Harm to Students

Declaring the institutions unaccredited after January 19, 2018 and further declaring all coursework completed and credentials earned after that date to lack accreditation (even when earned prior to January 19, 2018) would inappropriately harm AIC and ILIA students, especially for students graduating in the term immediately following accreditation removal. A decision to remove accreditation during their final term will cause irreparable harm to their professional and academic futures. Since learning of the Commission’s Disclosure issued on January 20, DCEH has been in communication with HLC to urge it to reconsider its position and the impact that position will have on students if it is not revised.

Limited Request

As the Commission is now aware, DCHE has made the decision to carry out an orderly closure of both institutions with a planned closure date of September 30, 2018. Therefore, the request for reinstatement of accreditation is for a very limited period through the conclusion of the teach-out (i.e., through September 30, 2018). Eligibility Filings were made on March 1, 2018, and demonstrate current compliance with all criteria, policies, and assumed practices.

With this appeal, DCEH respectfully requests that HLC reconsider their decision regarding accreditation of AIC and ILIA. DCEH requests that accreditation of the two institutions be immediately reinstated and made retroactive to the date of January 19, 2018 and be extended through closure of the institutions on September 30, 2018. Reinstatement of accreditation is

¹ VISTA: HLC’s Strategic Directions. Value to Members – Guiding Framework Item 3.



in the best interest of the students who attend the institutions. The lack of accreditation for their work and effort would have a significant adverse impact on their professional, academic, and financial lives.

DCEH has been working in good faith with the Commission for over five months to resolve this matter in an equitable manner that is to the benefit of the students and AIC and ILIA. DCEH would encourage the Commission to take this appeal up at its meeting tomorrow and do the right the thing for the students at these schools. If DCEH does not hear from the Commission by 12:00 PM CST on Friday, it will file suit to protect itself and its students. We understand this is a short time frame but unfortunately time is a luxury we cannot afford.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brent Richardson', written over a light blue horizontal line.

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC

CC

Dr. Anthea Sweeney,
Vice President
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

Mary E. Kohart, Esq.
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
[REDACTED]

EXHIBIT 3.3, INCLUDING ATTACHMENTS

Huston, John

From: Cox, Jack
Sent: Monday, January 27, 2020 2:43 PM
To: Huston, John
Subject: FW: DCEH - HLC Communications
Attachments: Harpool-Holt Letter to HLC, 5-21-18.pdf; Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf; Peterson 2-24-18 Email to Holt.pdf; HLC Response to DCEH Letter of Intent to Appeal - May 30 2018.pdf; Letter of Appeal_HLC_Final.doc

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 8:04 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Cc: Mary K Whitmer <[REDACTED]>
Subject: DCEH - HLC Communications

Dear Assistant Secretary King, I write one more time to let you know that, since you raised the issue of what kind of response we (DCEH counsel) might have received to our February 23, 2018 letter to HLC, I reviewed my files and also touched base by email with Dr. David Harpool (my former colleague who had worked with me on representing DCEH on its accreditation matters with HLC and other accreditors), and the only communication that we believe we received from HLC, after February 23, 2018 and prior to late May 2018, is the attached February 24, 2018 email message from Karen Peterson at HLC promising that somebody from HLC would be in touch with us within the next week, which, to our recollection, did not happen. We do not recall hearing again from HLC until late May, after we had sent HLC our May 21, 2018 follow up letter, which prompted a May 30, 2018 letter from Anthea Sweeney, a copy of which is attached. As mentioned in my prior email, DCEH filed a formal appeal with HLC in late June 2018. While David Harpool and I have not been able to identify any communications with HLC during the interval from late February to late May 2018, as I mentioned during our call, it is possible that during this time period there may have been verbal communications about the HLC problem between DCEH executives and senior officials at the Department, who, in turn, might have had communications with representatives of HLC. Regards, Ron

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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ATTACHMENT "Anthea Sweeney 5-30-18 Email to DCEH Parties.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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ATTACHMENT "Peterson 2-24-18 Email to Holt.pdf"

Ronald L. Holt

From: Karen L. Peterson <[REDACTED]>
Sent: Saturday, February 24, 2018 1:48 PM
To: Ronald L. Holt
Cc: Lisa Noack; Anthea Sweeney; Robert Rucker; Robert Helmer
Subject: Re: The Art Institute of Colorado and The Illinois Art Institute

Dear Mr. Holt,

I am writing to acknowledge your letter. We are reviewing it and will be in touch early next week.

I am copying as an FYI one of our Board member who was been engaged in this case.

Best regards,

Karen Peterson
Executive Vice President for Legal and Governmental Affairs, HLC

From: Ronald L. Holt <[REDACTED]>
Sent: Friday, February 23, 2018 6:41 PM
To: [REDACTED]
Cc: Karen L. Peterson; Anthea Sweeney; [REDACTED]; [REDACTED]; [REDACTED]; Randall Barton ([REDACTED]); [REDACTED]; David Harpool; Frola, Michael ([REDACTED]); Megan R. Banks
Subject: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley, attached please find a letter from me and Dr. David Harpool concerning our clients, The Art Institute of Colorado and The Illinois Art Institute. Regards, Ron Holt

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106
[REDACTED]

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Ronald L. Holt

From: Anthea Sweeney <[REDACTED]>
Sent: Wednesday, May 30, 2018 3:14 PM
To: Ronald L. Holt; David Harpool; Monday, Elden; Ramey, Jennifer A.; byohe; [REDACTED]
Cc: Barbara Gellman-Danley; Andrew Lootens-White; Eric Martin; Jim Meyer; Michael Seuring; Mary E. Kohart
Subject: Re: The Illinois Institute of Art and The Art Instiute of Colorado
Attachments: HLC Response to EDMC Letter of Intent to Appeal - May 30 2018.pdf
Importance: High

Dear All,

Attached is HLC's response to your recent correspondence received on May 21, 2018. Thank you.

Best,

Anthea M. Sweeney, J.D. Ed.D.
Vice President for Legal and Governmental Affairs
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604
Main Tel.: [REDACTED]
Direct Line: [REDACTED]
Fax: [REDACTED]

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, May 21, 2018 8:24 AM
To: Barbara Gellman-Danley; Anthea Sweeney
Cc: [REDACTED]; David Harpool; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: The Illinois Institute of Art and The Art Instiute of Colorado

Dear President Gellman-Danley and Vice President Sweeney:

Attached please find a letter from Dr. David Harpool and me sent on behalf of our clients, The Illinois Art Institute and The Art Institute of Colorado. We have copied Mary Kohart, whom we understand to be outside counsel for HLC.

Regards, Ron Holt

Ronald L. Holt, Attorney
[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]

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HIGHER LEARNING COMMISSION

230 South LaSalle Street, Suite 7-500
Chicago, IL 60604-1411
312.263.0456 | 800.621.7440
Fax: 312.263.7462 | hlcommission.org

May 30, 2018

VIA ELECTRONIC MAIL

Ronald L. Holt, Esq.
David Harpool, Esq.
Rouse Frets Gentile Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106

Messrs. Holt and Harpool:

I am writing on behalf of the Higher Learning Commission (HLC) in response to your letter dated May 21, 2018 on behalf of Art Institute of Colorado and Illinois Institute of Art (“the Institutes”) in which you inquire about HLC’s Appeal process. HLC has reviewed your request and will proceed to convene an Appeals Panel to hear the Institutes’ appeal in accordance with the Commission’s Appeal Procedures document which is enclosed.

We believe in the integrity of our Appeals process and we will work to develop a timeline that brings swift resolution to this matter. In order for specific dates to be determined however, an Appellate Document on behalf of the Institutes must be provided in accordance with the enclosed Appeal Procedures document as soon as possible. (A single Appellate Document may be filed.) As an overview of the timeline, HLC will respond to the Appellate Document no later than 4 weeks from the date of receipt, after which the Institutes may provide, at their option, a rebuttal to HLC’s response within two weeks. Based on the time needed for an Appeals Panel to review the materials, we anticipate a hearing could proceed under these assumptions as early as August with final resolution to follow. Commission Staff will then provide an update to the Board of Trustees of the Higher Learning Commission at its November 2018 meeting.

Pending the outcome of the Institutes’ appeal of the November 2017 Board action, certain review activities related to the Institutes which were anticipated to occur in the interim will be suspended immediately. Specifically, the Commission’s ongoing review of interim reports which had been required every 90 days by the HLC Board’s action letter of November 16, 2017 will be suspended; the Institutes will not be required to provide any additional 90-day reports pending the final outcome of the appeal. Likewise, HLC’s review of the Institutes’ respective Eligibility Filings submitted on February 1, 2018 will be suspended.

In its November 16, 2017 action letter, however, the HLC Board also required a focused visit to “ascertain the appropriateness of the approval and the institutions’ compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.” Because the timing of this particular evaluation is intended to satisfy the requirements of Title 34 of the Code of Federal Regulations, Section 602.24(b) following approval

HLC-DCEH-014481

Holt and Harpool, May 30, 2018 2

of a Change of Ownership, HLC is not able to suspend this focused visit on the basis of a pending appeal. Therefore, Commission staff will continue preparations to finalize arrangements and will continue to communicate with the institutions accordingly.

Except as otherwise specifically limited by the Appeals Procedure document, routine HLC activities will continue without interruption. Thank you in advance for your cooperation. If you have questions concerning this letter, please feel free to contact me directly at [REDACTED] or 312-881-8128.

Best Regards,



Anthea M. Sweeney
Vice President for Legal and Governmental Affairs

Enc.: HLC Appeals Procedure

Cc: Elden Monday, Interim President, Art Institute of Colorado
Dr. Ben Yohe, Accreditation Liaison Officer, Art Institute of Colorado
Jennifer Ramey, President, Illinois Institute of Art
Deann Surdo, Accreditation Liaison Officer, Illinois Institute of Art
Dr. Barbara Gellman-Danley, President, Higher Learning Commission
Executive Leadership Team, Higher Learning Commission

EXHIBIT 3.4, INCLUDING ATTACHMENTS

Huston, John

From: Ronald L. Holt <[REDACTED]>
Sent: Thursday, December 12, 2019 4:48 PM
To: Huston, John
Cc: Cox, Jack; King, Robert
Subject: RE: HLC Letter
Attachments: Barton 7-3-18 Email to Holt re Conversation with DOE re HLC Retro Accreditation.pdf; Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf; DCEH Letter of Appeal_HLC_Final_6_27_2018.pdf

Hi John, I have a copy of the June 27, 2018 email message (attached) sent by Chris Richardson, then DECH General Counsel, to convey Brent Richardson's appeal letter to HLC. But I do not have a copy of any email acknowledgement that DCEH may have received from HLC. I also do not know what subsequent email, phone or other communications HLC may have had with DCEH executives, as I was not party to any such communications and they were not forwarded to me. I was made aware, through a July 3, 2018 email message from Randy Barton, DCEH Board Chairman, that he had heard that officials at the U.S. Department of Education had discussed this matter with senior management at HLC and there apparently then was a belief by the Department's officials that HLC was going to reverse its position on the 4 institutions that DCEH had acquired from EDMC and reinstate their accreditation retroactive to the January 19, 2018 closing by DECH on the purchase from EDMC of the 4 schools (the July 3, 2018 email is attached; while originally privileged, somebody earlier this year, without the knowledge of approval of DCEH's Receiver or me, disclosed it to Congressman Scott's Committee, whose staff provided a copy of it to a NY Times reporter, who later quoted it in a late July story about DCEH's collapse; so the email is no longer privileged). But, as we now know, HLC apparently reversed course and never carried out the reinstatement. The former DCEH executives who most likely would have had subsequent communications with HLC, following submission of the June 27, 2018 appeal letter, were Brent Richardson and Shelly Murphy and possibly also Randy Barton. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Huston, John <[REDACTED]>
Sent: Thursday, December 12, 2019 2:38 PM
To: Ronald L. Holt <[REDACTED]>

Cc: Cox, Jack <[REDACTED]>; King, Robert <[REDACTED]>
Subject: RE: HLC Letter

Hi Mr. Holt,

Thank you for this information. Would you be able to forward the email that was sent to HLC on June 27, 2018 delivering the appeal? Did they acknowledge receipt of the appeal or otherwise follow up to process the appeal?

Regards,

--
John Huston
Office of Postsecondary Education
U.S. Department of Education
[REDACTED]

From: Cox, Jack <[REDACTED]>
Sent: Thursday, December 12, 2019 3:29 PM
To: Huston, John <[REDACTED]>
Subject: FW: HLC Letter

From: Ronald L. Holt <[REDACTED]>
Sent: Monday, December 9, 2019 5:08 PM
To: King, Robert <[REDACTED]>; Cox, Jack <[REDACTED]>; [REDACTED]
Subject: RE: HLC Letter

Dear Mr. King, in further follow up to our conversation, attached is the formal complaint that DCEH filed with HLC concerning its determination to withdraw the accreditation of the four institutions that EDMC transferred to DCEH on January 19, 2018. Regards, Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106
O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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From: Ronald L. Holt
Sent: Monday, December 9, 2019 2:55 PM

To: [REDACTED]; [REDACTED]; [REDACTED]

Subject: HLC Letter

Dear Mr. King, attached is my May 21, 2018 letter to HLC letter. Ron Holt

Ronald L. Holt
Attorney

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

1100 Walnut Street, Suite 2900 || Kansas City, Missouri 64106

O 816-292-7600 || D [REDACTED] || C [REDACTED] || F [REDACTED] || [REDACTED]

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Ronald L. Holt

From: Randall Barton <[REDACTED]>
Sent: Tuesday, July 3, 2018 4:37 PM
To: Ronald L. Holt
Cc: Crowley, John E. ([REDACTED]); David Harpool; Garrett, Chad ([REDACTED]); [REDACTED]; [REDACTED]; [REDACTED]
Subject: Re: HLC - Any News?

We just got off the phone with DOE. It appears HLC is in sync with retro accreditation and teach out plans. Dianne at all 3 accreditors on and they will all agree to one plan with Department blessing and hopefully funding from the LOC.

On Tue, Jul 3, 2018 at 2:27 PM Ronald L. Holt <[REDACTED]> wrote:

Hi All, based on the media stories, I am sure you are quite busy dealing with lender issues and other ramifications of moving forward on plans to close 30 campuses. My only purpose in writing is to ask whether we have heard from DOE about its efforts to get HLC to accept our proposal to reinstate accreditation for ILIA and AIC? Ron

Ronald L. Holt, Attorney

[REDACTED] | Direct: [REDACTED] | Cell: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]



**Rouse Frets
Gentile Rhodes, LLC**

[1100 Walnut Street, Suite 2900
Kansas City, Missouri 64106](http://www.rousefrets.com)
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--

Randall K. Barton

Mobile: [REDACTED]

ATTACHMENT "Richardson 6-27-18 Email to Dr. Gellman-Danley at HLC re DCEH Appeal.pdf"

(HLC contends it never received this email as it was sent to the incorrect email address)

Ronald L. Holt

From: [REDACTED]
Sent: Wednesday, June 27, 2018 6:49 PM
To: Ronald L. Holt; David Harpool
Subject: FW: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art
Attachments: Letter of Appeal_HLC_Final_6_27_2018_Final.pdf

FYI

From: [REDACTED]
Sent: Wednesday, June 27, 2018 4:48 PM
To: 'bgdanley@hlcommission.org'; 'asweeney@hlcommission.org'; '[REDACTED]'
Cc: [REDACTED]; Murphy, Shelly M. ([REDACTED])
Subject: Appeal of HLC Decision regarding The Art Institute of Colorado and Illinois Institute of Art

President Gellman-Danley:

Please find attached a follow up communication based on the call between DCEH and the commission yesterday. Feel free to reach out to Brent directly with any questions or to David Harpool at Rouse Frets.

Regards

Chris Richardson
General Counsel

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EXHIBIT 4

Huston, John

From: Karen Peterson <[REDACTED]>
Sent: Thursday, December 26, 2019 3:52 PM
To: King, Robert
Cc: Huston, John
Subject: Re: HLC/Dream Center transaction

Bob: Thank you for our conversation on Monday. I am writing to confirm that you have accurately described my understanding of the transaction based on my long familiarity as HLC Vice President (then Executive Vice President until 3/2018) of Legal & Governmental Affairs with oversight of Change of Control and policy development/implementation and based on the understanding of the HLC Board that adopted the Change of Control policies in 2009 and 2010. You correctly indicated in our conversation, and I agree, that HLC did not, either in November 2017 or January 2018, act to withdraw the accreditation of the two institutions identified in your e-mail. The purpose of the Change of Control Candidacy was to signal to the institutions and to the public that HLC would need to reconfirm after the closing of the transaction and in short order based on evidence current at that time the institutions' ability to meet the HLC Criteria for Accreditation and other policies of the Commission going forward because at the time of these actions there was not certainty in this regard and, as you indicated, the November 2017 letter outlining the proposed action identified significant compliance issues arising from the evaluation of the proposed transaction. As I indicated, I was not privy to conversations in November and December 2017 between HLC staff and DCEH personnel to ensure all parties had a correct understanding of either the status or the next steps from a practical implementation perspective nor do I know enough about those communications to understand whether DCEH personnel achieved sufficient understanding to consent meaningfully to the action as they attempted to do in a letter addressed to HLC in January 2018 or to provide meaningful and accurate disclosures to current and prospective students.

Please let me know if you have additional questions and the next steps in your process.

Best regards, Karen

Karen Peterson Solinski

On Monday, December 23, 2019 01:19:15 PM CST, King, Robert <[REDACTED]> wrote:

Karen: thank you, once again, for making the time to speak with us, and for filling in information we think vital to our analysis of HLC managing the request to approve the sale of a large group of educational institutions from a for profit ownership group to a non-profit group called Dream Center Education Holdings (DCEH).

I wanted to take this moment to once again confirm your understanding of the transaction with respect to the question of the accreditation of the two institutions located within the HLC jurisdiction. We understood you to say that both institutions remained accredited during a six month period following the sale during which the HLC would monitor the actions and behavior of DCEH, ascertain whether they could remain accredited (because they were progressing toward meeting each of the items that had raised "concerns" during the site visits in the fall of 2017, and then outlined in the November 16, 2017 letter), or in the alternative, to withdraw their accreditation (because they were not meeting the expectations set out in the November 16 letter).

Could you either confirm that I have accurately described your understanding as communicated to us this morning, or if not, please correct what I have written in a response email. Thanks so much, Bob

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Robert L. King
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Sweeney Appendix of Edits

Appendix of Edits
Interview of Anthea M. Sweeney
Tuesday, February 18, 2020

Page Number, Line Number	Edited Text (new text noted with <u>underline</u> , omitted text noted with strikethrough)
Page 20, line 1	"And so, not wanting to leave it to chance, <u>HLC</u> wanted to make sure..."
Page 31, line 12	" assure that the institutes were progressing well <u>toward</u> compliance"
Page 54, line 12	" <u>Public Disclosure</u> Notices"
Page 76, lines 16-17	" February <u>2nd</u> amendment to the PDN"

HLC February 21, 2020
Follow Up Letter to
Committee

Elliott Greenleaf

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Blue Bell, Pennsylvania 19422
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MARY E. KOHART
DIRECT DIAL: 215-977-1073
EMAIL: MEK@ELLIOTTGREENLEAF.COM

February 21, 2020

E-mail and First Class Mail

Ms. Tylease Alli
Chief Clerk
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515-6100

Re: Higher Learning Commission –witness interviews on February 18 and 19, 2020 of
Barbara Gellman-Danley, PhD and Anthea Sweeney, PhD.

Dear Ms. Alli:

Thank you for your help in coordinating the logistics for the interviews conducted by the House of Representatives Committee on Education and Labor of Dr. Barbara Gellman-Danley and Dr. Anthea Sweeney from the Higher Learning Commission regarding Dream Center Education Holdings (DCEH) on February 19 and 18, 2020.

I am writing to follow up on a few issues. Please direct this letter to the appropriate people involved with the interviews of Dr. Gellman-Danley and Dr. Sweeney.

First, we asked whether the transcript of Dr. Gellman-Danley's interview could be redacted to remove the name of the institution that had declined the Commission's conditional approval of its change of control application. Because this institution did not accept the Board's conditional change of control approval, the Commission's offer of conditional approval was not made public under Commission policy and we ask that the Committee cooperate with us in maintaining as non-public the name of the institution involved. Please let us know what the Committee's final decision is on this matter as soon as possible.

Second, during her interview, Dr. Sweeney was asked to provide the names of those from the Department of Education who participated in a call held on March 9, 2018 with Michael Frola in the Department's Office of Federal Student Aid. Dr. Sweeney has no record of those actually on the call with Mr. Frola. However, Mr. Frola's original call invitation was sent to Department employees Tara Sikora, Donna Mangold, Julie Arthur, Shein Dossal, Steve Finley, and Joseph Smith. Dr. Sweeney does specifically recall that Mr. Frola indicated that the Department's legal counsel was on the call.

Third, we asked for the opportunity to review the transcripts created of the interviews and to inform the Committee of any technical or other errors in the transcript. As you know, Dr. Gellman-Danley and Dr. Sweeney were interviewed when other matters were on-going in other venues involving the DCEH schools, the Department, and the Commission; and were asked about events which occurred in some instances more than two years ago. We also have no control over how the Committee may use the transcripts in the future or whether it will one day decide to make the transcripts part of a public record. In light of this combination of circumstances, fundamental fairness requires that the witnesses be given an opportunity to inform the Committee if their testimony is incorrect because, for example, they failed accurately to remember a date or a name. I would appreciate hearing back from the Committee promptly regarding this request to review transcripts.

During their interviews, both Dr. Gellman-Danley and Dr. Sweeney were asked about their communications with Congressional representatives or Congressional staff regarding the DCEH schools. After her interview, Dr. Gellman-Danley recalled that in November 2019, she spoke by phone to Bryce McKibbon, Senior Policy Administrator to the Senate's HELP Committee, who contacted Dr. Gellman-Danley regarding a press release issued by the Department of Education involving the DCEH schools. In response, Dr. Gellman-Danley caused a copy of the Commission's public statement regarding that press release to be delivered to Mr. McKibbon. In addition, Dr. Gellman-Danley recalled she had received and responded to two letters from Senators regarding the DCEH schools. *See, e.g., HLC-OPE 5372-5373.*

Dr. Sweeney also recalled after her interview that in May 2019, Benjamin Sinoff, Director of Education Oversight for the Committee, contacted her by email regarding DCEH. In response, Dr. Sweeney provided him with various contact information she had for the DCEH Receiver and others involved with the Art Institutes, as well as links to materials on the Commission's web site and certain other documents. All of these documents were subsequently produced again to the Committee (or linked to documents produced to the Committee) as part of the Commission's response to the Committee's requests for documents.

Finally, Dr. Sweeney also asked me to correct her the statement that the Commission did not accredit any institutions owned by Corinthian Colleges, Inc. (CCI). Dr. Sweeney recalled after she left the interview that the Commission accredited Everest College Phoenix, which was owned by a division of CCI. Everest College Phoenix was the only CCI institution accredited by the Commission.

Thank you once again for the kindness you showed to us while we were in Washington, D.C. It was a pleasure meeting you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MEK', with a stylized flourish extending to the right.

Mary E. Kohart

MEK/las

Exhibit 54

Date Transmitted: June 12, 2018

From: Michael Frola

Subject: *RE: DCEH DoE Presentations*

From: [Frola, Michael](#)
To: [Murphy, Shelly M.](#)
Cc: [Richardson, Brent D.](#); [Shelly Murphy](#)
Subject: RE: DCEH DoE Presentations
Date: Tuesday, June 12, 2018 8:07:17 AM

Good morning,
I'm confirming receipt of email with attachments.
Thanks,
Mike

From: Murphy, Shelly M. [mailto:smurphy@dcedh.org]
Sent: Tuesday, June 12, 2018 12:03 AM
To: Frola, Michael
Cc: Richardson, Brent D.; Shelly Murphy
Subject: Fwd: DCEH DoE Presentations

Hi Mike,

Please find attached DCEH presentation for Thursday's meeting. Please let me know if you have any questions. Looking forward to our discussions on Thursday.

Shelly Murphy
Dream Center Education Holdings
Regulatory and Government Affairs
480-650-4249

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Exhibit 55

Date Transmitted: Aug. 4, 2018

From: Stacy Sweeney

Subject: *RE: Teach-out update and DOE Communication*

From: [Sweeney, Stacy L.](#)
To: [Murphy, Shelly M.](#); [Dillon-Hogan, Kathryn](#); [Crowley, John E.](#); [Paul, Robert A.](#)
Cc: [Richardson, Brent D.](#); [Richardson, Chris C.](#); [Shelly Murphy](#)
Subject: RE: Teach-out update and DOE Communication
Date: Saturday, August 4, 2018 5:16:41 PM
Attachments: [image002.png](#)
[image004.jpg](#)

Hi Shelly,

Thanks so much for the details below! Oh boy, so much to summarize for us and it is greatly appreciated! I have put my comments/questions below after your bullet points and look forward to discussing more in the next few days, especially knowing that there is a response that the DOE needs from us. I will work on reviewing the attachment as well and Kate and I will get back to you with any questions.

Really hoping you can help us with this one...

One of major issues we are facing is the mode of communication between DOE and DCEH. Without any official letters or emails from the DOE to DCEH on the teach out in particular, we are not able to adequately respond to requests from our regulators outside of the DOE and this is one of the reasons we are on show cause right now with MSCHE.

MSCHE is angry with us about not sending them correspondence that we have received from the DOE and they made that clear in our meeting this past week. I guess there was some DOE correspondence on the ownership change that they never received from us until they had to send us (AiP/AiPH) a written request. We are now in the process of sending out notifications to our state regulators and our accreditors on the show cause status of AiP/AiPO, specifically on the topic of not offering AiO as an option for the transfer students. I delayed sending that out yesterday hoping we can secure something in writing from the DOE on the teach out requirements/ this AiO mandate, to send along.

Beth Sibolski is certain that DOE sent us written documentation on the teach outs at the end of June/ beginning of July and in so many words, demanded that we send that written correspondence as part of the August 31st report. Good times!
This would seem like a reasonable request, so our issue becomes when we respond to our regulators that we had a conversation with DOE with no written back up, unfortunately, they think we are not being forthcoming.

It would seem that they are sending the accreditors information about this in writing (WSCUC). If DOE can just send us a brief letter outlining the teach out requirements...not to send our transfer students to AiO, what about new students? Other requirements?... that would go a long way to ensure we are all on the same page and show our accreditors we are being forthcoming in sharing communication. Heck, even something in email format from one of your DOE contacts would work, as long as we can show it came directly from the DOE. Hope that makes sense! Thanks so much for your help!

Have a great weekend!
Stacy

Stacy L. Sweeney, Ed.D.
Chief Officer of Academic Excellence



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From: Murphy, Shelly M.
Sent: Saturday, August 04, 2018 9:50 AM
To: Dillon-Hogan, Kathryn <kdillon-hogan@dcedh.org>; Crowley, John E. <jcrowley@dcedh.org>; Sweeney, Stacy L. <slsweeney@dcedh.org>; Paul, Robert A. <rapaul@dcedh.org>
Cc: Richardson, Brent D. <brichardson@dcedh.org>; Richardson, Chris C. <crichardson@dcedh.org>; Shelly Murphy <smurphy600@gmail.com>
Subject: Teach-out update and DOE Communication

To All,

Hope everyone is having a great weekend given all the accreditation stress/issues. I had a lengthy conversation with my contacts at the DOE. Attached are the “take away” notes from their conversations with all of the accrediting bodies. This document is not for distribution, but for internal DCEH ONLY to be made aware of the key common factors and/or concerns raised among all the accreditors during a call. We have not received any formal communication for the DOE in regards to the teach-outs. We need to prepare a response next to each of the items that indicates how we are managing or addressing each area that I will in return need to send back to DOE no later than Wed.

Additionally, there was a conversation on Thursday with Beth from Middle States after our meeting. AGAIN, this is confidential. One last note**Don't shoot the messenger** I'm only communicating the message.

- Middle States does not want to pull accreditation, or see the school close.
 - Yes indeed, accreditors never want to see their institutions fail as that is also looked upon as their failure. We also have to hope that they are focused on the students' welfare. Beth alluded to this when we met, although she didn't want to show all of her cards. 😊
- They do not want teach-out/ transfer students to go to AIO. They have huge concerns about the campus leaderships ability to sustain both teach-out and potential new growth volume
 - I can understand not sending the teach out students to AiO as going from one issue to another. MSCHE has not mentioned this yet to AiP or sent anything specific in writing on this topic. We have only heard from WSCUC that they received something from the DOE and are researching what that looks like. I would think they will bring it up during the AiP

- visit.
- How DCEH handles this will largely depend on what happens with next steps on “show cause”. They feel that the message is clear and we should act in good faith **to use the online campus to rebuild**
 - Any intel on new students? Taking on new students is normally allowed during show cause as long as we are fully disclosing the situation to these students. Kind of conflicting as rebuilding means enrollment growth.
- DCEH should be seeking an online partner, other than AIO
 - We have SU and AU and frankly, when this show cause occurred, I moved our Nano programs for Ai out to AU/Ai and we are working on setting those up with AU’s online platform. Also, we were going to have many of our gen eds across the Ai system go online but are now pulling back on that and just looking at what we have been typically doing the past few months with moving low enrolled sections online.
- DCEH should keep executive staff off of campuses during accreditation visits. The visits should be conducted with campus leadership to gain full confidence in their ability to lead independently. Keep in mind that the accrediting bodies need to be able to conduct their reviews in accordance and be able to state clearly that all measures were achieved. If DCEH’s executive team is on site and/or meetings are held, this has to go on the “public” agenda. Accreditors need cover and be able to say they were not influenced by DCEH and that campus leadership felt free to conduct the visit.
 - Right! During evaluation visits (the ones we have coming up in September at AiPH and AiP), the parent organizations’ leadership and staff should never be on campus UNLESS the visiting team requests it. The accreditor has to know the campus can survive independently without much help besides the managed services that we are providing.
 - This past week’s meeting was different as it was not an evaluation visit and the MSCHE staff made that clear to us and were encouraged that we were in attendance. Beth and her team were adamant that we continue to reach out to them with concerns or questions as their role is to help and support. The way we do so is through the campus president. For example, Elden requested approval from the MSCHE staff for me to join him for the call he had this past week with them so he could ensure MSCHE would approve and they did. Moving forward we do need to ensure that both Bob Kane and Elden Monday are really prepared for the visits and with any resources needed. I plan to visit the campuses again at some point before the evaluation visits to ensure they are feeling that they have everything the need for a successful visit.
- DOE will notified all accreditors that they requested to meet with DCEH, prior to notifying the commissions of the teach-outs This should really help with our issue around transparency and following proper protocol if DOE is going to let the accreditors know that they asked us to meet with them first before informing the accrediting bodies. If they can CC us on those letters/emails to our accreditors, that would really help so we can all be simpatico!

Non-related to Middle States items

- No confidence in HLC, certain that they are generating discussions behind our backs (DCEH & DOE) with the other accreditor. HLC is looking for cover to justify their position. **Not fun!**
- We need to officially announce ALL CLOSE DATES AND LOCATIONS **Helpful, so we can now officially talk about teach-outs?**
- Limit our online transfers **Got it!**
- Move students and close all HLC schools as quickly as possible. This will show the other accreditors we are acting in good faith on behalf of the students and should stop HLC’s backdoor campaign. We need to get HLC out of the loop! **Got it!**
- Need a list of all transfer partners provided to HLC for their schools **will do! Jen Ramey at ILiC has a very robust list with already having 8 articulation agreements signed. Not sure what AiC’s list looks like but will work on that one.**
- Provide our Record Management Policy to all accreditors ASAP, if we have not done so yet **Got it!**
- Focus on keeping WASC and SACCS in order **Indeed!**
- In an effort to close HLC schools quickly we could consider seeking partner campus that would allow our faculty to teach-out programs on their campus. This has been done before and was successful. **YES! I have seen that in the past as well.**

Again, these comments are intended to help and guide DCEH as we move through this teach-out

period. I would recommend that we take their guidance with serious consideration as to how we make our decisions and move forward. The DOE is here to help us and ultimately want a successful outcome. They also see a lot of opportunity once we are past the teach-outs.

Kate and Stacy, thank you both for all the help and support in working through the accreditation issues. I realize it's not an easy task and a lot of work. Your experience and expertise is greatly appreciated. I will continue to cover the government and legislative affairs and will be available to help as you need me. I think with all of us working together we have a very successful future.

Thanks Shelly!!

I will continue to keep everyone updated as we move ahead. Thanks-sm

Shelly Murphy
Chief Officer Regulatory and Government Affairs



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Exhibit 56

Date Transmitted: Sept. 20, 2017

From: Holly Ham

Subject: *Letter to Jennifer Butin*



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

September 20, 2017

Dr. Jennifer L. Butlin
Executive Director
Commission on Collegiate Nursing Education
655 K Street NW
Washington, DC 20001

Dear Dr. Butlin,

I am writing to inform you of my decision on the renewal of recognition of the Commission on Collegiate Nursing Education (CCNE). U.S. Department of Education (Department) staff and the National Advisory Committee on Institutional Quality and Integrity (NACIQI) have each made recommendations to me. These recommendations were made under Sections 114 and 496 of the Higher Education Act of 1965, as amended, and pursuant to relevant statutory and regulatory provisions.

Department staff recommended that I continue CCNE's recognition as a nationally recognized accrediting agency and approve CCNE's change in scope, but found the agency out of compliance on multiple criteria. Department staff, therefore, also recommended that I require the agency to come into compliance within 12 months of the date of this letter, and to submit a compliance report due 30 days thereafter that demonstrates CCNE took the following actions and is subsequently in compliance with the corresponding sections of the Secretary's Criteria for Recognition:

The agency must amend agency procedures and any standards and policies that reference or reflect the use of retroactive dating of accreditation actions back to the first day of the program's most recent on-site evaluation and demonstrate training has occurred for all entities involved in accreditation activities on this amendment. §602.15(a)(2).

The agency must amend procedures and any standards and policies that reference or reflect the use of retroactive dates of accreditation actions back to the first day of the program's most recent on-site evaluation and demonstrate with evidence of full cycles of review of this change for a compliance determination to be made for enforcement timelines. §602.20(a).

The agency must provide evidence of the implementation of its good cause policy. §602.20(b).

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The agency needs to demonstrate with documentation that the standards, procedures and websites it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation that the agency grants is compliant with the Secretary's criteria as well as maintained and made available to the public. §602.23(a).

The NACIQI recommended CCNE be required to submit necessary documentation to come into compliance with §602.20(b) within ten days following the NACIQI meeting, but otherwise recommended that I find CCNE in compliance with the other Department staff noted criteria. NACIQI recommended that I grant renewed recognition.

I have carefully reviewed all the records, including letters from the previous Executive Director, counsel from the Office of Postsecondary Education, etc. and have come to the following conclusions.

I approve CCNE's change in scope and now recognize the following:

Scope of Recognition: The accreditation of nursing education programs in the United States, at the baccalaureate, master's, doctoral, and certificate levels, including programs offering distance education.

However, I concur with the recommendations of the Department staff that CCNE's admitted practice of retroactive accreditation places it out of compliance with the Secretary's criteria for recognition and CCNE must take the actions as recommended by Department staff. I appreciate the NACIQI's perspective on the use and impacts of accreditation effective dates, but the Department has a current and clear policy with respect to retroactive effective dates of accreditation. *See Letter from Herman Bounds, Director, Accreditation Division to Executive Directors and Presidents, Recognized Accreditation Agencies (June 6, 2017).*

While Department policy is clear and there is ample evidence in the record to support the Department's staff recommendation, ultimately, the definition of "accreditation" found in Department regulations requires its status to apply only prospectively. Accreditation is the "status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements." 34 C.F.R. §602.3. Department staff points out the requirement of a final adjudication by CCNE's Board and the prospective application of accreditation in its July 1, 2017 correspondence:

Until the agency's decision making body makes that grant, based on the information it has as to the institution or program's current level of academic quality, by definition no accreditation exists. A program that has received a grant of accreditation is accredited; a program that has not is not, and it cannot say otherwise. Letter from Sarah Morgan, Counsel for the Staff of the Office of Postsecondary Education, to Holly Ham (July 1, 2017), at 13.

The Board of Commissioners, not its on-site evaluation team, is CCNE's decision making body. While I have every confidence that CCNE's on-site evaluators perform thorough reviews

and provide reliable recommendations, they are not to substitute for its Board who has sole authority to grant recognition after determining a program meets CCNE’s criteria for accreditation.

CCNE must cease the practice of retroactive accreditation and I am providing CCNE 120 days, instead of the Department staff recommended 60 days, to remove all references from its website, policies, procedures, and accreditation standards. CCNE must achieve compliance within 12 months of this letter and submit a compliance report within 30 days following the 12-month period. The Department will review and make a final recognition decision upon receipt of the compliance report under the procedures set forth in 34 C.F.R. Part 602, Subpart C.

Finally, I also concur with the NACIQI’s recommendation consented to by Department staff and CCNE under §602.20(b). I require CCNE to promptly submit necessary documentation to come into compliance with §602.20(b) if it has not already.

Please work with Department staff and submit CCNE’s compliance report using the Department’s electronic submission system, which can be accessed at opeweb.ed.gov/aslweb. Material that cannot be submitted electronically may be forwarded in hard copy. Please submit four copies of any hard copy material to: Accreditation Group, U.S. Department of Education, 400 Maryland Avenue SW, #6W243, Washington, D.C., 20202.

I trust that CCNE will be able to come into full compliance by the deadline. Please convey my best wishes to the members of CCNE. We appreciate the work that the agency does to improve the quality and success of U.S. postsecondary education.

Sincerely,



Holly L. Ham
Assistant Secretary
Office of Management

Exhibit 57

Date Transmitted: July 1, 2020

From: President Gellman-Danley

Subject: *Letter to Annmarie Weisman*



HIGHER LEARNING COMMISSION

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July 1, 2020

VIA ELECTRONIC MAIL

Annmarie Weisman
Senior Director
Policy Development, Analysis, and Accreditation Services
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Annmarie.Weisman@ed.gov

Dear Ms. Weisman,

The Higher Learning Commission (“HLC”) has received your June 17, 2020 letter providing notice that the Department of Education’s (“Department”) draft staff analysis of HLC’s compliance with, or effective application of, the criteria for recognition, will be finalized for presentation to the National Advisory Committee on Institutional Quality and Integrity (“NACIQI” or the “Committee”). We have also received your June 30, 2020 letter, constituting the Department’s final staff analysis pursuant to 34 C.F.R. 603.33(e). Additionally, we received a subsequent email later in the day from the Department’s ASL system informing us that the “Department’s staff report” (presumably the final staff analysis forwarded earlier that day) had been forwarded to NACIQI and will become part of the agency record. Finally, this afternoon we received an email from George Smith, Acting Executive Director/Designated Federal Official of NACIQI requesting the names and titles of HLC staff members who will be participating in the NACIQI meeting. With this letter, HLC seeks immediate clarification and certain action related to this referral to NACIQI.

Request for Transmission of HLC’s Full Response to the Draft Analysis

As an initial matter, and in compliance with 34 CFR 602.34(c)(3), HLC respectfully requests that the Department staff transmit the full substance of its October 24, 2019 compliance inquiry and HLC’s subsequent responses submitted on November 13, 2019 and January 13, 2020 in addition to HLC’s *full* written response to the draft staff analysis to NACIQI. As you are aware, both the Department’s draft staff analysis and HLC’s written response to the draft staff analysis exist in two parts; please ensure that NACIQI is given the [Initial Written Response](#)¹ and the [Supplemental Written Response](#) (inclusive of exhibits A-D).² Both response parts cite to

¹ Letter from Barbara Gellman-Danley, President, Higher Learning Commission, to Dr. Lynn B. Mahaffie, Deputy Assistant Secretary for Policy, Planning and Innovation, U.S. Department of Education (March 20, 2020), <https://tinyurl.com/y7uvh2tc>.

² Letter from Barbara Gellman-Danley, President, Higher Learning Commission, to Annmarie Weisman, Senior Director, Policy Development, Analysis, and Accreditation Services, U.S. Department of Education (June 1, 2020), <https://tinyurl.com/ya7taxw8>.

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narrative responses to specific questions posed by the Department and documents provided by HLC to the Department on [November 13, 2019](#)³ and [January 13, 2020](#).⁴ While some of these documents are hyperlinked in HLC's Initial Written Response, neither HLC's narrative responses nor all of the documents were included in the Department's final staff analysis transmitted to NACIQI, and should have been. Please advise immediately if there is a different individual at the Department to whom this request under § 602.34(c)(3) should be directed.

In addition, in order to facilitate the Committee members' ease of access to the cited documents, all documents cited in HLC's responses can be accessed through the hyperlinks in the November 13 letter, January 13 letter, and Initial Written Response; no password is required. So as to not deactivate the hyperlinks, please ensure that the version sent to the Committee is the same version that was transmitted by HLC to the Department. The written responses, including HLC's two letters not included in the final staff analysis, may also be accessed from the hyperlinks in this letter. If any Committee member is unable to access the responses or cited documents, please direct them to contact Robert Rucker, Manager for Compliance and Complex Evaluations, at rrucker@hlcommission.org for logistical support.

The Department is in Error in Precluding Public Comment on This Issue

HLC is troubled by the Department's decision to not provide an opportunity, ***to the public***, for written comment on the issue of HLC's compliance prior to the NACIQI meeting. Public comment in anticipation of a NACIQI meeting under HLC's circumstance is invited "if practicable." 34 C.F.R. § 602.33(e)(2). The Department's determination that inviting public comment is not practicable here is in error.

Indeed, the practicability standard in this context is akin to the "good cause" standard in the context of notice and comment rulemaking. In that context, the courts have determined that "good cause" exceptions to public notice and comment requirements are reserved for "true emergencies". See *U.S. v. Rainbow Family*, 695 F.Supp. 294, 305 (E.D. Tex. 1988). Likewise and within this same context, "impracticable" has been held to mean a situation wherein an agency's functions would be unavoidably prevented were it to engage in public rule-making proceedings. *Id.* Circumstances warranting the application of a "good cause" exception to public comment are rare. *Council of Southern Mountains v. Donovan*, 653 F.2d 573, 580 (D.C. Cir. 1981). This case is not an emergency and allowing public comment in accordance with long-established precedent would not impair the Department's core functions. The current matter is well short of qualifying as the rare exception that would warrant the elimination of an opportunity for public comment, which is clearly contemplated in 34 C.F.R. § 602.33(e).

To the contrary, the Department simply asserted in its June 17 letter that written public comment on this topic was not practicable because HLC was provided multiple extensions during the

³ Letter from Barbara Gellman-Danley, President, Higher Learning Commission, to Lynn Mahaffie, Deputy Assistant Secretary for Policy, Planning, and Innovation, U.S. Department of Education (November 13, 2019), <https://tinyurl.com/ybx15nu6>.

⁴ Letter from Barbara Gellman-Danley, President, Higher Learning Commission, to Lynn Mahaffie, Deputy Assistant Secretary for Policy, Planning, and Innovation, U.S. Department of Education (January 13, 2020), <https://tinyurl.com/y9ztz796>.

Department's compliance review. HLC's extensions—totaling 22 calendar days—should have no bearing on whether *the public* is given an opportunity to provide written comments to NACIQI on this matter.⁵ Of further concern, the Department, in granting HLC's extension requests, never informed HLC of any penalty the Department would impose *on the public*, as a result.

There is little precedent in the last ten years of NACIQI meetings to exclude the public from submitting written comments. Moreover, there is more than adequate time to allow for written public comment, as there are 34 days between the June 25 meeting notice and the actual meeting which starts on July 29. In reviewing the meeting agendas and announcements for the last ten years of NACIQI meetings, the Department provides an opportunity for written public comment on all NACIQI agenda items—often through multiple comment opportunities—for at least a two-week period prior to each meeting, with hardly any exception. It is disingenuous for the Department to assert that written public comment is not practicable in the time before the July 29 meeting, when the public comment window could easily occur *twice over* in the same time period. The Department's decision to exclude written public comment relating to its compliance review of HLC is inconsistent with NACIQI's past practice and antithetical to the foundation of NACIQI set forth by the Federal Advisory Committee Act ("FACA") and principles of open government.⁶ See 5a U.S.C. § 1 *et seq.*⁷

The Department seems to be disadvantaging *the public*, for whom the written public comment process exists, for actions taken by the Department itself in granting the extensions. Even if the Department puts the responsibility for the extensions on HLC—which were notably granted to allow time *for the Department* to provide input on options to resolve the instant compliance review—the public deserves the ability to comment in writing. For this reason, HLC requests that the Department reissue its meeting notice and provide a two-week written public comment opportunity on this compliance review in advance of its July 29 virtual meeting. If the Department is unable to publish its notice letter in advance of the July 29 meeting, HLC requests that the Department reschedule this virtual meeting—which involves no travel or reservation of room space—to allow for such opportunity.

The Department Must Respond to HLC's Outstanding Questions

HLC restates its prior requests for clarification as to issues that are substantively consequential to HLC's preparation before NACIQI, which remain unanswered:

⁵ As detailed in HLC's responses, the Department's initial draft analysis was procedurally flawed, necessitating the production of a supplemental draft analysis (which failed to remedy all deficiencies). The Department failed to respond to HLC's March 20, 2020 written response, in which these deficiencies were raised, until May 1, 2020; as such, any extended process in this review is not HLC's responsibility. Indeed, the Department first became aware of the action underlying its proffered concerns on or about November 16, 2017—nearly 3 years ago—yet did not, to HLC's knowledge, begin the instant compliance review until October 24, 2019, and did not issue a draft analysis until January 31, 2020.

⁶ See *Alabama-Tombigbee Rivers Coalition v. Department of Interior*, 26 F.3d 1103, 1106 (11th Cir. 1994) (stating that FACA requires public observation and comment that is contemporaneous to the advisory committee process itself rather than retrospective scrutiny) (additional citations omitted).

⁷ The FACA regulations state, "In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible." 41 C.F.R. § 102-3.95(d) (emphasis added). The regulations also state that any member of the public is permitted to file a written statement with the advisory committee. *Id.* at 102-3.140(c).

- 1. How should HLC, and NACIQI for that matter, interpret the Department’s ambiguous recognition recommendation?** In its Supplemental Written Response, HLC sought clarification of the Department’s three-pronged recognition recommendation. The Department provided clarification relating to portions of its recommendation in its June 30 final staff analysis, but HLC continues to struggle to understand exactly how to achieve what the Department is requiring with regard to coming into compliance with certain regulations and taking steps, beyond those already taken, to support former students of the Institutes.⁸ Specifically, how does HLC “come into compliance” with the five cited regulations with the prescribed 12-month period? HLC has changed its policies to be consistent with new regulations such that this issue will not present itself again. The Department demands that HLC accept its interpretation of events. Setting aside the curious nature of such a demand which calls for HLC to set aside its own argument on the merits, HLC needs specific guidance on what further action the Department believes HLC needs to take in order to come into compliance if the Department's position is that HLC is not currently in compliance.
- 2. If not “retroactive accreditation,” which is not possible in this case, what action can HLC take to satisfy the Department’s concerns relating to HLC’s compliance?** In an effort to assist any students with any ongoing adverse effect caused by the Institutes’ inaccurate disclosures and subsequent closure, HLC sent a letter to its member institutions in Illinois, Colorado, and Michigan encouraging them to consider accepting transfer credits from former students of the Institutes. A similar letter was then sent to all other HLC member institutions. In addition, HLC executed against its “Enhancing Transfer Opportunities – Communications Plan,” which outlines numerous communication vehicles to inform all member institutions and stakeholders about transfer opportunities for students impacted by the Institutes’ closure. Despite its letter of October 24, 2019, the Department has repeatedly failed to describe any effort it is engaged in (outside of this compliance inquiry) to mitigate harm caused by the Institutes’ inaccurate disclosures with which it wishes HLC to cooperate. Without clarity from the Department in response to HLC’s question, it appears the Department is only interested in having HLC retroactively accredit the Institutes, an action that would only ratify the Institutes’ inaccurate disclosures after the fact. Such action is inconsistent with HLC’s initial decision to offer the candidacy condition and its own policies and standards – and, moreover, to the detriment of some affected students.
- 3. Is the Department in possession of information relevant to this compliance review that has not yet been provided to HLC?** The Department has provided no documentation of a phone interview with a former HLC employee it interviewed, yet relies upon that information in its draft analysis identifying alleged noncompliance. The

⁸ With regard to the second prong of the recommendation, the Department stated, “In HLC’s response to the draft staff analysis, it asked for the Department for clarity regarding the precise impact of this limitation. Specifically, HLC stated that it ‘does not interpret this recommendation to prohibit HLC from granting candidacy to new institutions or from granting accreditation to institutions that, prior to the initiation of the relevant 12-month period, were in candidacy status with HLC.’” The Department confirms that HLC’s interpretation, as stated in its June 1, 2020 letter, is correct.” June 20, 2020 letter from Ann Marie Weisman to HLC.

Department's continued assertions, including in its June 30 letter, that it did not rely on the contents of this conversation simply do not align with the facts of the situation. Moreover, the Department's assurance in its final staff analysis that it has relied only a subsequent email relating to that discussion does not cure HLC's disadvantage. Indeed, providing any documentation relating to the Department's decision is required by the Department's own regulations and is essential for HLC's ability to respond to the final staff analysis, because the credibility, objectivity, and consistency, of these statements is in question. On May 21, HLC filed a [Freedom of Information Act \("FOIA"\) request](#) seeking additional documentation not provided to HLC and reserving the right to amend its Written Response with any information it learns through the request.⁹ To date, despite timely payment of the associated fee, HLC has received no documents in response to that request and the Department has determined that no such "privilege" to supplement based on any information received will be afforded. Despite the Department's assertions to the contrary, without this additional documentation, HLC is at an enormous disadvantage in being able to respond effectively to the Department's recommendation. To the extent the Department in its final staff analysis described its prioritization of this matter as being responsive to complaints from institutions or others, HLC is also entitled to an opportunity to review any such complaints.

Additional Critical Procedural Questions

HLC is also seeking clarification on several process-related matters about the NACIQI meeting, particularly given that it will occur virtually. These issues are not insignificant, as they will directly impact HLC's ability to present and respond to NACIQI's questions.

- 1) How will the virtual meeting be run? What opportunities for technological/logistical support might exist, both before and during the meeting?
- 2) Will HLC's matter be considered on July 29th or July 30th? What time of day?
- 3) How long will HLC have to present?
- 4) Is there any limitation on how many representatives from HLC can present or limitations as to whom those representatives may be?
- 5) Can counsel for HLC provide remarks?
- 6) Will HLC have the opportunity to provide visual aids (screen share) during its presentation?
- 7) Will HLC's representatives be allowed to take brief breaks to consult with one another?
- 8) Who will be presenting the case for the Department?

⁹ HLC Freedom of Information Act request to U.S. Department of Education (May 21, 2020), <https://tinyurl.com/y95nw4tq>.

- 9) Will the Department be presenting any witnesses? If so, will HLC receive the names of those individuals in advance?
- 10) Will HLC have the opportunity to know the identities of the individuals who have registered to make public comments in advance?
- 11) HLC is not seeing the final analysis in the ASL system. Can someone from the Department help us access the documents and information in the system prior to the meeting? Please provide full contact information for this individual.
- 12) Is HLC required to submit anything through the ASL system as this time?
- 13) HLC staff – in particular, Dr. Anthea Sweeney, Vice President of Legal and Regulatory Affairs – received two automated notifications on June 25, 2020, each providing that HLC’s “ASL e-recognition Response submission” was successful. Dr. Sweeney had not submitted anything on HLC's behalf through this portal at that time. HLC is seeking clarification as to what these automated notices indicate.

In conclusion, in addition to requesting that the Department forward HLC’s *full* response to the draft analysis to NACIQI, we also request that the Department follow standard procedure and allow the public the opportunity to provide written comment on the issue of HLC’s compliance. Not doing so is inconsistent with the intent of FACA and its implementing regulations, and completely unnecessary in this case. In addition, HLC seeks clearer answers to its substantive questions regarding the Department’s processes in connection with this matter. Without these answers, HLC is significantly limited in its ability to respond to the Department, to provide necessary information to NACIQI, and to further assist students affected by the closure of the Institutes. Finally, HLC requests procedural and logistical information regarding the upcoming meeting in light of the revised meeting format due to COVID-19.

We appreciate your assistance with these matters, and we look forward to a prompt response.

Sincerely,



Barbara Gellman-Danley
President

Cc: Herman Bounds, Director of Accreditation, U.S. Department of Education
George Alan Smith, Acting Executive Director/Designated Federal Official, NACIQI
Anthea Sweeney, Vice President of Legal and Regulatory Affairs, Higher Learning
Commission

Ms. Weisman, July 1, 2020 7

Marla Morgen, Associate Vice President of Legal and Regulatory Affairs, Higher
Learning Commission
Julie Miceli, Partner, Husch Blackwell
Jed Briton, Deputy General Counsel, U.S. Department of Education

Exhibit 58

Date Transmitted: Nov. 8, 2019

From: Reed D. Rubinstein

Subject: *Dream Center Initial Investigatory Letter*



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

November 8, 2019

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Scott:

Thank you for your letter of October 22, 2019, to Secretary DeVos. She has shared your letter with me, and I am pleased to respond on her behalf.

To begin, the Department takes issue with claims that it has failed to respond substantively to your July 17, 2019 letter. First, our response dated July 22, 2019, included hundreds of pages of records demonstrating that many critical aspects of the Committee's allegations were simply false. Second, the Committee's original demand was for many tens of thousands of records, only a very few of which had any bearing on the substantive issues, and hence was too broad to serve any legitimate oversight interest. Nevertheless, the Department's staff has worked hard to carry out its constitutional accommodation duty to provide responsive and relevant information for the Committee to review. The Department very recently delivered its third major production to Committee staff and will continue to produce documents to the Committee on a rolling basis. We look forward to our continued collaboration.

Nevertheless, the Department believes the Committee's October 22 letter is based on a fundamental misapprehension regarding the referenced transaction. It is important to set the facts straight.

Under the Department's regulations, the Department has the authority to continue an institution's participation in Title IV HEA programs on a provisional basis if the new ownership submits a "materially complete application" to the Secretary within ten business days of the change of ownership. *See* 34 C.F.R. § 600.20(g), (h). After Dream Center submitted a "materially complete application" to the Secretary, the Department issued a Temporary Provisional Program Participation Agreement (TPPPA) to Dream Center as a for-profit entity. Although Dream Center was a non-profit entity, because the schools it acquired were previously owned by Education Management Corporation (EDMC), a for-profit company, it was necessary to review its application before any final approval was made regarding its designation as a non-profit organization under the Department's regulations.

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In early February 2018, the Department became aware of accreditation confusion involving two of the Dream Center owned institutions. As a part of the change of ownership review, one Illinois-based accrediting agency took the unprecedented action of placing the two schools it accredited in "change of control-candidacy" status. Unlike the other four accreditors of Dream Center owned schools who simply continued the previous accreditation status, this accreditor changed the two schools from fully accredited to "change of control-candidacy." There is nothing in the Department's regulations describing or referring to "change of control candidacy status." Once the Department became aware of the confusion resulting from the change in accreditation status, career staff began internal deliberations, and spoke with the accreditor to attempt to clarify the situation. After that call, it became clear to Department staff the change of control candidacy status was akin to pre-accreditation status, and that it was subject to a site visit from the accreditor within 6 months following the change of ownership. This change from fully accredited to change of control status appears to have been inconsistent with Department regulations. Since the Department's temporary approval had continued to recognize those institutions as for-profit, this produced the seemingly unintended consequence of students losing their loans mid-semester, because only non-profit institutions may participate in Title IV programs in pre-accredited status.

Career staff who were working on the Dream Center change of ownership applications continued internal discussions to determine the Department's course of action. The staff believed there were only two options flowing from the change of accreditation status for those institutions: (1) revoking Title IV participation and funds to the two schools while the pending Change of Ownership application was reviewed, presumably causing significant student harm pending a Department decision on the application, or (2) amending the TPPPA to temporarily approve the two schools in question as non-profits until the Change of Ownership application review process was completed. Staff's view was that the Department's regulations authorized amending the TPPPA since the pending application included consideration of whether the institutions Dream Center acquired would be recognized by the Department as non-profit institutions. *See* 34 C.F.R. § 600.20(g), (h) (outlining the Department's authority to issue provisional Program Participation Agreements after a change of ownership has occurred). Furthermore, their view was the Department had the sole authority in determining if an institution qualifies as a non-profit Institution under 34 C.F.R. § 600.2.¹

¹ The Department regulations define a non-profit institution as an institution that:

- (i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual; and
- (ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
- (iii) Is determined by the Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

At that time, staff were reviewing Dream Center's application for non-profit status, and saw no impediments to the Department approving the transaction. Staff were concerned that if the TPPPA was not amended, both schools may have closed. The result would have been unwarranted harm to students flowing from a temporary delay if the Department's approval of the change of ownership included recognition of the Dream Center institutions as non-profits. Thus, cautioned by the catastrophic consequences of the previous Administration's approach to precipitous closures in the Corinthian and ITT matters, the Department accepted the staff recommendation to temporarily change the status of these two institutions. The idea was to avoid mass student hardship triggered by one accreditor's unprecedented and confusing conduct.

In summary:

- The Department's May 3 determination letter was the result of deliberations amongst and decisions made by Federal Student Aid and Department career staff responsible for construing applicable regulatory requirements and exercising program authority in February and March of 2018. Nothing in the Department's regulations prohibited the May 3 determination. If, as the Committee's letter suggests, staff misconstrued the Department's authority and should have decided otherwise, then students would have faced significant hardships and a possible precipitous closure of those institutions even though the final approval of the pending change of ownership applications could have subsequently recognized all of the Dream Center institutions as non-profits.
- The career staff view, informed by the human harm and economic dislocation caused by the previous Administration's mishandling of the Corinthian and ITT matters, was that the Department had the authority to grant temporary non-profit status and that it was appropriate to do so to prevent students from suffering mid-semester disruption, especially when this disruption was apparently due to accreditor inconsistency and confusion.
- As your letter acknowledges, the Dream Center transaction involved many schools nationwide, but Departmental action authorizing the temporary nonprofit status was needed to protect students attending only the two schools supervised by one Illinois-based accreditor. The Department has opened an inquiry to determine all the facts and circumstances behind the accreditor's facially contradictory and inexplicable actions. *See Letter from Department of Education Deputy Assistant Secretary for Policy, Planning and Innovation to the President of the Higher Learning Commission (October 24, 2019) (Exhibit 1).*

The Department notes the Committee's publication of claims alleging that the Department acted improperly in its decision to authorize the temporary status because it allowed the two schools to continue to receive Title IV taxpayer funds. The Department is concerned by the Committee's publication of these allegations without any corresponding analysis why this was improper under the Department's relevant legal authorities.

Also, the Committee's efforts by inuendo to connect Acting Undersecretary Jones with a career staff recommendation made before she assumed the role of Acting Undersecretary, is telling and troubling. The documents provided by the Department on July 22, 2019, conclusively refuted

the Committee's charges that special treatment was given to Dream Center management by Acting Undersecretary Jones and the Department with respect to "retroactive accreditation." Here too, the chronology refutes the Committee's allegations. Nevertheless, your staff continues to push the false, unsubstantiated narrative that the Department and Ms. Jones played a willing role in "misconduct perpetrated by a predatory for-profit college against students and taxpayers" by "providing 'special treatment' [allowing] more students to become entangled in Dream Center, magnifying the abrupt closure of the schools and the displacement of thousands of students."

The bases for the allegations made against the Department and the personal attacks made against its officials appear to be predicated on unverified statements from the very "predatory for-profit" that the Committee states "perpetrated misconduct against students and taxpayers." See *Letter from the Hon. Robert "Bobby" Scott to the Hon. Betsy DeVos* at 1. (October 22, 2019). Although the Committee has selectively released to the press a handful of statements and Dream Center e-mail communications, it has not publicly disclosed all statements the Committee has obtained from the very organization that the Committee calls "predatory." Nor has the Committee shown the steps it has taken to independently test or verify these statements and records before they were injected into the public sphere. Apparently, the Committee seems to have missed the self-evident proposition that the "predatory" Dream Center it has relied on to smear the Department's dedicated and hard-working employees might be lying. Therefore, by copy of this letter the Department requests the Committee make available and publicly disclose *all* statements and records it has obtained from Dream Center, and report to the public on the steps it has taken to verify the claims made and contained therein before making allegations against the Department or its officials.

To be clear, the Department has the greatest respect for you and for our constitutional principles of the separation of powers and the rule of law that keep American citizens free. Congressional investigations of the Executive Branch often directly implicate these principles in complicated ways. Compared to a criminal prosecution, a congressional investigation is usually sweeping; its issues are seldom narrowly defined, and the inquiry is not restricted by the rules of evidence. Finally, when Congress is investigating, it is by its own account often in an adversarial position to the Executive Branch and initiating action to override judgments made thereby. See *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 156-57 (June 19, 1989) (citations omitted). Therefore, where conflicts in authority arise between the coordinate branches, a spirit of dynamic compromise promotes resolution of disputes in the manner most likely to result in efficient and effective functioning of our government. *United States v. AT&T*, 567 F.2d 121, 127, 130 (D.C. Cir. 1977) (citations omitted). Each branch must take cognizance of an implicit constitutional mandate to work with the other for our system to function. *Comm. on Oversight & Gov't Reform v. Lynch*, 156 F. Supp. 3d 101 (D.D.C. 2016).

The combination of unbridled partisanship with inquisitorial powers is problematic within our constitutional frame. Oversight of course has a political dimension. But without robust respect for applicable legal, factual, procedural, and prudential guardrails, the possibility for abuse cannot be discounted.

The Honorable Robert C. "Bobby" Scott, Chairman

November 8, 2019

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Going forward, we hope you will work with us to ensure this matter is resolved appropriately, in keeping with both the spirit and the letter of our constitutional obligations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reed D. Rubinstein". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Reed D. Rubinstein

Principal Deputy General Counsel delegated
the authority and duties of the General Counsel

EXHIBIT 1



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION**

October 24, 2019

VIA EMAIL AND UPS OVERNIGHT

Barbara Gellman-Danley, Ph.D.
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, IL 60604

Dr. Gellman-Danley:

On October 31, 2018, the U.S. Department of Education (the “Department”), through Diane Jones, requested information from the Higher Learning Commission (“HLC”) regarding HLC’s conduct with respect to the Art Institute of Colorado (OPEID: 02078900) and the Illinois Institute of Art (OPEID: 01258400) (collectively the “Institutions”). *See* Letter from Diane Jones to HLC re: “Art Institute of Colorado and Illinois Institute of Art—Change of Control Candidacy Status” (Exhibit 1). On November 7, 2018, HLC promised to “review in detail the concerns you raised to determine if revisions are warranted in accordance with HLC’s established policy on Revision of Accreditation Policy (PPAR.a.10.040).” *See* Letter from HLC to the U.S. Department of Education. (Nov. 7, 2018) (Exhibit 2). The Department has not been informed of the results of HLC’s review, and the questions raised in our letter have not been answered.

Consequently, the Department formally requests HLC respond in writing to each of the information requests listed below and provide responsive records. The Department is requesting narrative information and responsive records because, as it explained in its October 31, 2018, letter, it is concerned HLC may not have complied with applicable laws and regulations, including 34 CFR 602.18, 602.22, 602.25, and 602.26. *See, e.g., U.S. v. Morton Salt*, 338 U.S. 632, 642-43 (1950). Please respond no later than November 25, 2019.

1. On November 2-3, 2017, the Board of Trustees of HLC voted to allow the Institutions to be placed on “Change of Control Candidate for Accreditation” status (“CCC-status”), with the written assent (within 14 days) of the Institutions. HLC sent a formal letter on November 16, 2017, to Dream Center Education Holdings, LLC (“DCEH”) notifying it about the Board’s action and laying out the terms for complying with CCC-status, which would become effective on January 20, 2018 upon agreement. *See* Letter from HLC to the Art Institute of Colorado, Illinois Institute of Art, and Dream Center Education Holdings,

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- LLC, *Board vote to approve the application for Change of Control, Structure, or Organization*. (Nov. 16, 2017) (Exhibit 3). Is Exhibit 3 the official accreditation notice from HLC to the Institutions? If not, then identify the official notice. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) the Institutions and (b) CCC-status. The time frame for this request is August 1, 2016 to the present.
2. Did HLC regard the accreditation action referenced in Exhibit 3 as an "adverse action" under either the Department's definition or HLC's definition of that term? If so, what duties did HLC have upon taking such an action? Describe the agency's definitions of "candidacy status" and "adverse action" in effect at that time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's definition of "candidacy status" and "adverse action", and/or (b) application of those definitions to the Institutions. The time frame for this request is August 1, 2016 to the present.
 3. Did HLC consider the accreditation action referenced in Exhibit 3 to trigger an opportunity to appeal? If so, please describe HLC's notice to the Institutions. If not, please explain why HLC believed that to be the case. Describe HLC's policy describing the accreditation actions that could be appealed, and the agency's appeal policy in effect at the time. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) HLC's policy regarding appeals of accreditation actions, (b) its definitions of relevant terms, and/or (b) application of those definitions to the Institutions. The time frame for this request is August 1, 2016 to the present.
 4. Did the Institutions agree to the terms of Exhibit 3 in writing? If so, please provide records demonstrating such acceptance. If not, did the institutions reject the conditions or otherwise indicate their intention to refuse to comply? Please provide records indicating such intent.
 5. Did HLC conduct a financial analysis of the Institutions prior to issuing Exhibit 3? Did this analysis account for the likelihood or possibility the Institutions would lose Title IV funding eligibility? Please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control (a) regarding its financial analysis processes and procedures, and/or (b) application of those processes and procedures to the Institutions. The time frame for this request is August 1, 2016 to the present.
 6. Please describe the matters raised, discussions during, activities undertaken and/or decisions made at the November 2-3, 2017 HLC board meeting. Please identify each HLC

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- employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing matters raised, discussions during, activities undertaken and/or decisions made at that board meeting. The time frame for this request is October 1, 2017 to the present.
7. Please provide the Department with the HLC's change of control policy in effect between October 1, 2016 and October 31, 2018, include at least HLC policies INST.F.20.070, INST.B.20.040, and INST.E.50.010. Please also provide the summary report made by Commission staff prior to the Board's decision on November 2-3, 2017. Did the Institutions respond to the staff summary report? If so, describe the response. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its change of control policy. The time frame for this request is August 1, 2016 to the present.
 8. On January 20, 2018, HLC published its decision to move the Institutions to CCC-status. HLC, *Public Disclosure: Illinois Institute of Art and Art Institute of Colorado from "Accredited" to "Candidate"* (Jan. 20, 2018) (Exhibit 4). The public disclosure seems inconsistent with the letter sent to DCEH on November 16, 2017, outlining the terms of CCC-status. The letter does not mention that CCC-status is a final adverse action, while the public notice reads as if it is a final action. Describe why HLC believed the November 16, 2017 letter and the January 20, 2018 public notice were consistent and correct. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing (a) Exhibit 4 and/or (b) the CCC-status of the Institutions. The time frame for this request is December 1, 2017 to the present.
 9. Did HLC conduct a financial analysis of the Institutions contemplating the potential loss of Title IV eligibility prior to issuing Exhibit 4? If so, describe that analysis. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and please produce all records in HLC's possession or control regarding or referencing the Institutions' Title IV eligibility. The time frame for this request is October 1, 2016 to the present.
 10. On February 2, 2018, DCEH, through its legal counsel, sent to HLC a response to the January 20, 2018 public disclosure. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 2, 2018) (Exhibit 5). Did HLC provide to the Institutions an opportunity to appeal the decision as requested? If not, explain why this was the case. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or

- control regarding or referencing (a) Exhibit 5 and/or (b) any appeal by the Institutions. The time frame for this request is February 2, 2018 to the present.
11. On February 7, 2018, HLC sent a response that seemingly reaffirms statements made in the January 20, 2018 public disclosure. *See* Letter from HLC to Rouse Frets Gentile Rhodes, LLC (Feb. 7, 2018) (Exhibit 6) Between November 16, 2017, and January 20, 2018, did HLC modify the terms and conditions of the accreditation action taken on November 16, 2017? If so, what prompted the modification? Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the action taken or described in the November 16, 2017 letter, and/or (b) Exhibit 6. The time frame for this request is February 7, 2018 to the present.
 12. On February 23, 2018, DCEH, through its legal counsel, sent HLC a response to its February 7, 2018 letter. *See* Letter from Rouse Frets Gentile Rhodes, LLC to HLC (Feb. 23, 2018) (Exhibit 7). It appears that, based upon our review of the aforementioned correspondence, there was significant confusion among HLC and DCEH officials regarding the accreditation status of the Institutions. Please provide to the Department all correspondence between DCEH and HLC between November 2, 2017, and December 31, 2018, including HLC's response to the February 23, 2018 letter and any further communication HLC had with DCEH regarding this letter. If HLC did not respond to the February 23, 2018 letter from DCEH, please provide a written narrative explaining why. Also, please identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing Exhibit 7.
 13. The public notice issued on January 20, 2018, states that HLC's action meant that courses or degrees offered by the Institutions were not accredited, even though the Institutions would enjoy a "recognized status" with HLC. Yet, on July 16, 2018, HLC conducted a site visit at the Illinois Institute of Art in which the site reviewer told students and faculty that it was possible for accreditation to be retroactively restored.¹ Please explain (a) why the site visitor conveyed this message to students and faculty, and (b) whether HLC was considering rescinding its action to place the Institutions on CCC-status at the time of the site visit. Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing (a) the site visit, (b) the report that was produced by the site visitors and sent to HLC's Board, and/or (c) HLC deliberations regarding the Institutions accreditation status. The time frame for this request is April 1, 2018 to the present.
 14. Please provide a list of all site visits conducted by HLC to the Institutions from January 1, 2017, to the date of their closure. Describe each such visit. Also, identify each HLC

¹ HLC, *Site visitor meeting with students and faculty Art Institute of Chicago*, available at <https://www.youtube.com/watch?v=-Bn0qKMNqIM> (July 16, 2018).

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employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing each such site visit. The time frame for this request is December 1, 2016 to the present.

15. On March 9, 2018, Department officials had a conference call with Anthea Sweeney, Vice President for Legal and Governmental Affairs at HLC, to inquire about the nature of its CCC-status.² On the call, Ms. Sweeney told the Department that HLC viewed CCC-status to be the equivalent of a preaccredited status. Does HLC view CCC-status as being the equivalent of a preaccredited status? If not, why was that assertion made on the March 9, 2018 phone call? Also, identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing its communications with the Department regarding (a) CCC-status, (b) pre-accreditation, and/or (c) the Institutions. The time frame for this request is February 1, 2018 to the present.
16. Has HLC ever placed any other institution on CCC-status? If so, describe the Board's decision to place such institutions on that status. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC's possession or control regarding or referencing any such decision and the public notice given therewith.
17. INST.E.50.010 states that "Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal."³ However, INST.E.50.010 fails to provide details on whether candidacy status is the equivalent to preaccredited status or should be considered a loss of accreditation. Describe why INST.E.50.010 does not address the issue and provide the agency's definition of "candidacy status."
18. INST.B.20.040 provides that "An institution shall apply for Commission approval of a proposed Change of Control, Structure or Organization transaction through processes outlined in this policy and must demonstrate to the satisfaction of the Commission's Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that approval of the proposed Change of Control, Structure or Organization is in the best interest of the Commission."⁴ Please describe how HLC defines "best interest of the Commission."

² The Department officials that participated in the call were Donna Mangold (Office of the General Counsel), Steve Finley (Office of the General Counsel), and Mike Frola (Federal Student Aid).

³ Higher Learning Commission, *Policy Book* at 136. (June 2018).

⁴ *Id.* at 79 and 161.

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Please also describe how HLC ensures that this “best interest” standard does not result in arbitrary and capricious decision-making.

19. Please provide the results of HLC’s review of the concerns raised by the Department in the October 31, 2018 letter from Diane Jones and include any policy or procedural changes made in response to the results of the review. Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC’s possession or control regarding or referencing (a) Exhibit 1 or (b) Diane Jones. The time frame for this request is March 1, 2018 to the present.
20. During the time period of the proposed change of control, or any time through January 20, 2018, did HLC discover any evidence that degree requirements, course requirements, syllabi, faculty locations of educational offerings, or other academically relevant conditions had changed at the institutions to such an extent that the Institutions accreditation would be jeopardized? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC’s possession or control regarding or referencing any such change. The time frame for this request is July 1, 2016 to the present.
21. In HLC’s letter of November 16, 2018, to the Institutes, HLC found full compliance but did not make a final accreditation decision due to “procedural error.” What was/were the/those error/errors? Identify each HLC employee, official, former employee, or representative who provided information used to answer this request and produce all records in HLC’s possession or control regarding or referencing HLC’s actions memorialized in Exhibit 3. The time frame for this request is July 1, 2017 to the present.

“Record” and/or “correspondence” as used in this information request means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “recorded information” also includes all traditional forms of records, regardless of physical form or characteristics.

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it

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so the Department may assess your claim's validity. Please note no other privileges apply here. Finally, your record and data preservation obligations appear at Appendix A.

If you have any questions about this letter, please contact Herman Bounds, Director of Accreditation. He can be reached at (202) 453-6128 or Herman.Bounds@ed.gov. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn B. Mahaffie", with a long horizontal flourish extending to the right.

Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning and
Innovation

EXHIBIT 1

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

October 31, 2018

By E-mail Transmission Only

Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, Illinois 60604

**Re: Art Institute of Colorado and the Illinois Institute of Art – Change of Control
Candidacy Status**

Dear Barbara:

The Department understands that the Higher Learning Commission (“HLC”) will consider the accreditation status of the Art Institute of Colorado (“AI Colorado”) and the Illinois Institute of Art (“AI Illinois”) (collectively, the “Art Institutes”) at its upcoming meeting in November. These two institutions were formerly owned by Education Management Corporation (“EDMC”) and were sold to Dream Center Education Holdings, Inc. (“DCEH”) in a transaction that closed on January 20, 2018. By action taken by its Board of Trustees (“Board”) during its meeting on November 2-3, 2017, HLC moved the Art Institutes to Change of Control Candidacy Status (“CCC-Status”) effective on the closing date of the transaction with DCEH. This decision was communicated to DCEH in a letter dated November 16, 2017 (“CCC-Status Letter” or “Ltr.”).

The Department is concerned that CCC-Status has caused disruption and confusion for students, graduates and the Department. This confusion was further exacerbated by information provided by an HLC site visitor during a meeting with students on July 16, 2018, in which the site visitor assured students that should accreditation be awarded, which he said was likely given all of the evidence he reviewed in preparation for and during the site visit, it would be given a “retroactive” effective date concurrent with the date of change of control.

It appears that this is the first time that HLC has placed an institution on CCC-Status. Even the Department did not understand until recently that HLC considered CCC-Status an adverse action that resulted in the withdrawal of accreditation for the Art Institutes. However, under

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Department regulations, an “adverse action” is a denial, withdrawal, suspension, revocation, or termination of accreditation or pre-accreditation, or a comparable action. 34 C.F.R. § 602.03. The Department’s regulations do not include an adverse action that would take an institution from accredited to non-accredited status and potentially back to accredited status within a period of time of less than one year and based on the results of a focused review. Once an agency takes a withdrawal action, short of rescinding that action (at which time the rescission would date back to the date of the action), the institution must undergo the full initial accreditation review process pursuant to the agency’s published standards, policies and processes. Absent rescission, an institution that has had its accreditation withdrawn for cause is Title IV ineligible for two years. 34 C.F.R. § 600.11(c).

The Department has several concerns regarding CCC-Status, and how it was implemented and communicated in regard to AI Illinois and AI Colorado. As noted above, the Department’s regulations define “adverse action” as “the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution.” See at 34 C.F.R. § 602.3(definitions). The HLC Policy Book (“Policy”) identifies “Accredited to Candidate Status” as an adverse action that is not a final action and is subject to appeal (INST.E.50.010). However, the CCC-Status Letter does not state that the change to CCC-Status is an adverse action, nor did it advise the Art Institutes or DCEH that it had a right to appeal. Rather, the CCC-Status Letter conveyed that the status constituted “conditions” upon which HLC would approve the change of ownership, and those conditions could be accepted or not. Ltr. at 4, 7. The Art Institutes apparently “accepted” the conditions so that the change of ownership would be approved, and as a result – seemingly inadvertently – acquiesced to a non-accredited status. There is no basis in the Department’s regulations for such a status. In addition, the CCC-Status Letter is in conflict with HLC’s policy regarding change of control status which lists the “conditions” of approval to include limitations on enrollment growth, new programs or the establishment of branch campuses. See INST.F.20.070. These conditions do not include forfeiture of accreditation. Subsequent communications between HLC and counsel for DCEH that have been shared with the Department, as well as our review of the videotaped conversation between the HLC site visitor and students at AI Illinois, only further muddled the situation.

The confusion about the status is not cleared up by a review of the related Policies. In INST.F.20.070, HLC states that “the Board may approve the change, thereby authorizing accreditation subsequent to the close of the transaction, or it may deny approval for the change.” This suggests that if HLC approves a change in control status, accreditation will continue beyond the close of the transaction. The policy goes on to state that upon approval of change of control,

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the Board may impose certain conditions upon the institution, such as limitations on new programs, enrollment growth, or the establishment of branch campuses. It does not list loss of accreditation as a possible "condition" of the change of control. Later, the policy states that "if the Board votes to approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction..." which similarly suggests that if the Board approves the change of control, accreditation continues, though is subject to further review and the application of the limitations described above. INST.F.20.070 also states that if the Board determines that the transaction does not meet its five requirements, it will not approve the transaction.

In addition, if the Board determines that a proposed change of ownership and control constitutes the creation of a new institution (the parameters of which are not defined), the institution is moved to CCC-Status. See INST.B.20.040 and INST.F.20.070. No such finding is reflected in the CCC-Status Letter. Further, INST.E.50.010 states that the Board may move an institution to CCC-Status only if it meets all of the Eligibility Requirements and conforms with Assumed Practices "but *no longer meets* all of the Criteria for Accreditation and Federal Compliance Requirements." The CCC-Status Letter does not indicate that the Art Institutes "no longer meet" all of the Criteria or Compliance Requirements. Instead, in regard to the basis upon which the Board based its action, the CCC-Status Letter indicates that approval factors were "met" or were "Met with Concerns." Ltr. at 4-6. Similarly, INST.F.20.080 provides that if the post-transaction evaluation determines that if the Eligibility Requirements are met, "but not the Criteria for Accreditation," the institution may be recommended "to be continued in status only as a candidate for accreditation." The situation is further confused by INST.B.20.040, which states that HLC's approval of a change in control is necessary prior to its consummation to *effectuate the continued accreditation of the institution*. Indeed, the CCC-Status Letter reads more like a probation or show cause notification, neither of which would have constituted a withdrawal, loss, or termination of accreditation.

Nor does CCC-Status comport with the requirements for withdrawal of accreditation set forth in INST.B.60.010, although the effect of CCC-Status appears to be the same. There has been no finding that the Art Institutes do not meet one or more Criteria or HLC's Federal Compliance Requirements, that they failed to conform with the Assumed Practices, or that they failed to meet the Obligations of Affiliation. In fact, as noted above, the CCC-Status Letter indicates that the approval factors were "met" or "Met with Concerns" and that the Art Institutes were required to provide additional documentation and complete a focused on-site review.

Barbara Gellman-Danley
President
October 31, 2018
Page 4

When the Board takes an action, INST.D.40.010 requires the action letter to provide information about opportunities for institutional response. Here, the only information provided was for the Art Institutes to accept or reject the conditions. The CCC-Status Letter did not advise the institutions that the decision to impose CCC-Status could be appealed.

Only in INST.E.50.010, but not in its other policies regarding change of control review, does HLC define change of control candidacy as an adverse action, but it refers back to INST. B.20.040, where change of control status is the result of the Board's determination that the transaction effectively "builds a new institution" bypassing the Eligibility Process and initial status review by means of a comprehensive evaluation. However, INST.B.20.040 states that under such circumstances, the Board will not approve the change of control. That the Board approved the change of control suggests that it did not determine that the change of control resulted in the building of a new institution.

There is no provision in the Department's regulations for an adverse action that would revoke accreditation and at the same time award candidacy status, which the Department assumes is the equivalent of preaccreditation. Indeed, the CCC-Status Letter refers to CCC-Status as a "preaccreditation status." However, there is no adverse action that would automatically transition an accredited institution to a preaccredited institution rather than a non-accredited institution.

An adverse action that immediately removed accreditation status would require the agency to follow its normal due process requirements, including the imposition of its published wait-out period prior to considering a new application for Eligibility or accreditation. HLC's Eligibility Requirements (CRRT.A.10.010 -18) state that an institution may not have had its accreditation revoked within five years of the initiation of the Eligibility Process. Therefore, HLC could not take an adverse action (such as withdrawal of accreditation) at the time of change of control, and then propose to consider a new award of accreditation within a period of less than five years and without requiring the institution to submit a new application for accreditation. Doing so would violate the Department's regulations regarding due process and the consistent application of the agency's standards.

Having now seen the first example of HLC's application of CCC-Status, the Department has grave concerns as to whether the Policy itself, and as applied to the Art Institutes, is in compliance with the Department's requirements. As set forth in 34 C.F.R. § 602.25, the Department requires the agency's standards to be written clearly and applied consistently, which is not the case here since neither the Department, the HLC site visitor, nor apparently DCEH fully understood what CCC-Status meant. The policy appears to create a new accreditation

Barbara Gellman-Danley

President

October 31, 2018

Page 5

category that is not listed in the Department's regulations, and that creates an accreditation "no man's land." Neither the Department's regulations nor HLC Policy provide a basis upon which the Art Institutes could have been moved to an unaccredited status between the date of the approved change of control (January 20, 2018) and the date of the Board's decision.

Separate from this case, the Department would like to point out its concern about the statement in INST. B. 20.040 which suggests that change of control status will be granted only when such a change is in the best interest of the Commission. It is unclear to the Department how the Commission would determine what is or is not in its best interest, but the point of accreditation reviews and determinations is to do what is in the best interest of the student. Allowing a previously accredited institution to continue educating students for ten months, knowing that credits or degrees earned during that time would not be accredited absent a retroactive "re-accreditation," simply does not serve the students' or the Commission's best interests.

Sincerely,



Diane Auer Jones

Principal Deputy Under Secretary

Delegated to Perform the Duties of the Under
Secretary and the Assistant Secretary for
Postsecondary Education



HIGHER LEARNING COMMISSION

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November 7, 2018

Diane Auer Jones
Principal Deputy Under Secretary Delegated to Perform the Duties of the Under Secretary
and the Assistant Secretary for Postsecondary Education
United States Department of Education
Office of the Under Secretary
400 Maryland Ave. SW
Washington, DC 20202

Dear Diane,

I write to acknowledge receipt of your correspondence of October 31, 2018 in which you raised concerns regarding a decision by the HLC Board of Trustees on November 16, 2017 to approve the extension of accreditation following a Change of Control transaction for Art Institute of Colorado and Illinois Institute of Art upon the parties' acceptance of certain conditions, including Change of Control Candidacy status. The Higher Learning Commission takes seriously the integrity of its policies as well as their alignment with federal regulations. We will review in detail the concerns you raised to determine if revisions are warranted in accordance with HLC's established policy on Revision of Accreditation Policy (PPAR.a.10.040).

Sincerely,

Barbara Gellman-Danley
President



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November 16, 2017

VIA ELECTRONIC MAIL

Elden Monday, Interim President
The Art Institute of Colorado
1200 Lincoln St.
Denver, CO 80203

Josh Pond, President
Illinois Institute of Art
350 N. Orleans St.
Suite 136
Chicago, IL 60654

Brent Richardson
Chief Executive Officer
Dream Center Education Holdings, LLC
7135 East Camelback Road
Phoenix, AZ 85251

Dear President Monday, President Pond, and Mr. Richardson:

This letter is formal notification of action taken by the Higher Learning Commission (“HLC” or “the Commission”) Board of Trustees (“the Board”) concerning Illinois Institute of Art (“IIA”) and the Art Institute of Colorado (“AIC”) (“the Institutes” or “the institutions,” collectively). During its meeting on November 2-3, 2017, the Board voted to approve the application for Change of Control, Structure, or Organization wherein the Dream Center Foundation (“DCF”), through Dream Center Education Holdings LLC (“DCEH” or “the buyers”) and related intermediaries, acquires certain assets currently held by Education Management Corporation (“EDMC”), including the assets of the Institutes; however, this approval is subject to the requirement of Change of Control Candidacy Status. The requirements of Change of Control Candidacy Status are outlined below. In taking this action, the Board considered materials submitted to the Commission including: the Change of Control, Structure or Organization application, the Summary Report and its attachments, the additional information provided by the Institutes throughout the review process, and the Institutes’ responses to the Summary Report.

As noted under policy, the Commission considers five factors in determining whether to approve a requested Change of Control, Structure, or Organization. It is the applying institution’s burden, in its request and submission of related information, to demonstrate with clear and convincing evidence that the transaction meets these five factors and to resolve any concerns or ambiguities regarding the transaction and its impact on the institution and its ability to meet Commission

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President Monday, President Pond, and Mr. Richardson, November 16, 2017 2

requirements. The Board found that the Institutes did not demonstrate that the five approval factors were met without issue, as outlined in its findings below, but found that the Institutes demonstrated sufficient compliance with the Eligibility Requirements to be considered for pre-accreditation status identified as “Change of Control Candidate for Accreditation,” during which time each Institute can rebuild its full compliance with all the Eligibility Requirements and Criteria for Accreditation and can develop evidence that each Institute is likely to be operationally and academically successful in the future.

The conditions set forth by the Board in its approval of the application subject to Change of Control Candidate for Accreditation are as follows:

The institutions undergo a period of candidacy known as a Change of Control Candidacy that is effective as of the date of the close of the transaction; the period of candidacy may be as short as six months but shall not exceed the maximum period of four years for candidacy.

The institutions submit an interim report every 90 days following the date of the consummation of the transaction until their next comprehensive evaluations on the following topics:

- Current term enrollment at the institutions. This should include the number of full- and part-time students, as well as comparisons to planned enrollment numbers. The institutions should also provide revised enrollment projections based on enrollments at the time of submission;
- Quarterly financials, to include a balance sheet and cash flow statement for DCF, DCEH and each institution, as a means to ensure adequate operating resources at each entity and at the institutions;
- Information regarding any complaints received by DCF, DCEH or any of the institutions;
- Information regarding any governmental investigation, enforcement actions, settlements, etc. involving DCF, DCEH, its related service provider Dream Center Education Management, (“DCEM”), or any of the institutions;
- Information regarding any stockholder, student, or consumer protection litigation, settlement, judgment, etc. involving DCF, DCEH, DCEM or any of the institutions;
- Information regarding reductions in faculty and/or staff at any of the institutions;
- Updated student retention and completion measures for each of the institutions;
- Copies of any information sent to the U.S. Department of Education (“USDE”), including any information sent in response to the USDE’s September 11, 2017 letter (or any updates to that letter); and
- An update on the activities and findings of the Settlement Administrator through 2018, and on findings from audit processes conducted by an independent third-party entity acceptable to HLC subsequently implemented after the conclusion of the work of the Settlement Administrator.

The institutions submit separate Eligibility Filings no later than February 1, 2018, providing detailed documentation that each institution meets the Eligibility Requirements

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President Monday, President Pond, and Mr. Richardson, November 16, 2017 3

and Assumed Practices, as well as a highly detailed plan with timelines, action steps, and personnel assignments to remedy issues related to Core Components 1.D, regarding commitment to the public good; 2.A, regarding integrity and ethical behavior; 2.B, regarding public disclosure and transparency; 2.C, regarding the autonomy of board governance; 4.A, regarding improving program outcomes; 5.A, regarding financial resources; and 5.C, regarding planning, with specific focus on enrollment and financial planning. The outcome of this process shall be reported to the HLC Board of Trustees at its spring 2018 meeting.

The institutions host a visit within six months of the transaction date, as required by HLC policy and federal regulation, focused on ascertaining the appropriateness of the approval and the institutions' compliance with any commitments made in the Change of Control application and with the Eligibility Requirements and the Criteria for Accreditation, with specific focus on Core Component 2.C, as it relates to the institutions incorporating in the state of Arizona, and Eligibility Requirements #3, 4, 5, 6, 7, 8, 9, 13, 14, 16 and 18.

The institutions host a focused visit no later than June 2019, to include a visit to the Dream Center Foundation and Dream Center Education Holdings, on the following topics:

- Core Component 1.D:
 - The institutions should provide evidence that the missions of the institutions demonstrate a commitment to public good. Specifically, that the institutions' operations align to the pursuit of the stated missions in terms of recruiting, marketing, advertising, and retention.
- Core Component 2.A:
 - The institutions should demonstrate that they possess effective policies and procedures for assuring integrity and transparency.
 - DCEH and the institutions should provide evidence that the parent company and the institutions are continuing to perform voluntarily the obligations of the Consent Agreement, as assured by DCEH to the Higher Learning Commission in writing.
- Core Component 2.B:
 - DCEH and the institutions must demonstrate that policies and procedures following the Consent Judgment have been fully implemented and are effective in ensuring the proper training and oversight of personnel.
- Core Component 2.C:
 - Evidence that the DCF, DCEH, DCEM and the Art Institutes organizations, as well as related corporations, demonstrate that they have organizational documents and have engaged in a pattern of behavior that indicates the respective boards of the institutions have been able to engage in appropriately autonomous oversight of their institutions.
- Core Component 4.A:
 - Evidence that the institutions have engaged in effective planning processes to address programs that have failed the USDE's gainful employment requirements (when those requirements were still applicable), as well as those that are "in the zone." The institutions should also provide any plans that have been implemented to improve program outcomes.

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President Monday, President Pond, and Mr. Richardson, November 16, 2017 4

- **Core Component 5.A:**
 - Evidence that the institutions have increased enrollments to the levels set forth in the application for Change of Control, Structure, or Organization. This should include any revised budgetary projections and evidence of when the institutions intend to achieve balanced budgets.
- **Core Component 5.C:**
 - The institutions should provide any revised plans or projections that occur following consummation of the transaction.

If at the time of the second focused evaluation, the institutions are able to demonstrate to the satisfaction of the Board that they meet the Eligibility Requirements, Criteria for Accreditation and Assumed Practices without concerns, the Board shall reinstate accreditation and place the institutions on the Standard Pathway and identify the date of the next comprehensive evaluation, which shall be in no more than five years from the date of this action.

The Board will receive and review the Eligibility Filing, related staff comments, and the report of the first focused visit team to determine whether to continue the Change of Control Candidacy status. If the Eligibility Filing and focused evaluation does not provide clear, convincing and complete evidence of each institution meeting each Eligibility Requirement and of making substantial progress towards meeting the Criteria for Accreditation in the maximum period allotted for such Change of Control Candidacy as indicated in this letter, the Board may withdraw Change of Control Candidate for Accreditation status at its June 2018 meeting.

The Board provided the Institutes and the buyers with fourteen days from the date of receipt of this action letter to accept these conditions in writing. If the institutions and the buyers do not accept these conditions in writing within fourteen days, the approval of the Board will become null and void, and the institutions will need to submit a new application for Change of Control, Structure, or Organization if they choose to proceed with this transaction or another transaction in the future. In that event, the Institutes will remain accredited institutions. However, if the Institutes proceed with the Change of Control, Structure or Organization without Commission approval, the Commission Board of Trustees has the authority to withdraw accreditation.

Assuming acceptance of these conditions, the Institutes and buyers must provide written notice of the closing date within 24 hours after the transaction has closed. The Institutes are also obligated to notify the Commission prior to closing if any of the material terms of this transaction have changed or appear likely to change. By Commission policy the closing must take place within no more than thirty days from the date of the Board's approval. If there is any delay such that the transaction cannot close within this time frame, the Institutes must notify the Commission as soon as possible so alternate arrangements can be identified to ensure that the Board's approval remains in effect.

The Board based its action on the following findings made in regard to the Institutes:

In reference to the first, second, and fourth approval factors and, related to the continuity of the institutions accredited by the Commission and sufficiency of financial support for

the transaction, the institutions and the buyers have provided reasonable evidence that these factors have been met.

In reference to the third approval factor, the substantial likelihood that following consummation of the transaction the institutions will meet the Commission's Criteria for Accreditation, with specific reference to governance, mission, programs, disclosures, administration, policies and procedures, finances, and integrity, the institutions and the buyers have provided reasonable evidence that this factor is met, although the following Criteria for Accreditation are Met with Concerns:

- Criterion One, Core Component 1.D: "The institution's mission demonstrates commitment to the public good," for the following reasons:
 - Neither institution has demonstrated evidence that its underlying operations, in addition to its tax status, will be transformed to reflect a non-profit mission;
 - Neither institution has demonstrated significant planning required to undertake a mission that includes the responsibility of educating a potentially very different student population represented by the Dream Center clientele; and
 - The buyers have not provided evidence that the institutions' educational purposes will take primacy over contributing to a related or parent organization, which will be struggling in its initial years to improve the enrollment and financial wherewithal of a large number of institutions purchased from EDMC.
- Criterion Two, Core Component 2.A: "The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff," for the following reason:
 - Although each institution is making changes to procedures specifically identified in the November 2015 Consent Judgment, neither institution has yet established a long-term track record of integrity in its auxiliary functions.
- Criterion Two, Core Component 2.B: "The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships," for the following reasons:
 - Changes being made by the institutions to ensure transparency, particularly with students, are recent in nature and have yet to fully penetrate the complex organizational structure of which the institutions are a part; and
 - Given the replication of that operational structure and the continuity of personnel following the transaction, the potential for continuing challenges is of concern.
- Criterion Two, Core Component 2.C: "The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity," for the following reasons:
 - There remain questions about how the governance of DCEH, its related service provider Dream Center Education Management, and the Art Institutes will take place after the transaction and how that governance will affect the governance of the AIC and IIA, and the mere replication of the EDMC corporate structure with new non-profit corporations does not resolve the

EXHIBIT 1

President Monday, President Pond, and Mr. Richardson, November 16, 2017 6

- question of how these new corporations will function in the future to assure autonomy and governance in the best interest of the institutions;
- An apparent conflict of interest exists owing to an investment by the DCEH CEO of 10% in the purchase price for which limited documentation exists; and
 - No evidence was provided indicating that either institution's board had yet engaged in significant consideration of the role that typifies non-profit boards.
 - Criterion Four, Core Component 4.A: "The institution demonstrates responsibility for the quality of its educational programs," for the following reasons:
 - Neither institution has demonstrated that improvements have been made to academic programs identified since January 2017 by the USDE as having poor outcomes, or that such programs have been eliminated; and
 - The risk of harm to students admitted to such programs absent such improvement or elimination is of concern, regardless of the institutions' tax-status or whether they are subject to gainful employment regulations.
 - Criterion Five, Core Component 5.A: "The institution's resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future," for the following reasons:
 - Despite the adoption of certain cost-reducing and related measures, the impact of which are yet to be determined, the ability of each institution to sustain its resource base and improve enrollment beyond 2019 depends on the occurrence of several contingencies, most of which are assumptions tied to the institutions' change in tax status, and none of which are guaranteed;
 - The ability of the buyers to provide the cash flow infusions necessary to sustain the institutions over the next five years are also linked to assumptions related to the institutions' change in tax status and the long-term debt taken on by DCEH and DCF in addition to the debt acquired for the purchase price; and
 - Although the buyers are expected to have \$35 million in cash at closing (based on debt as noted above), these funds are intended to support multiple transactions within Argosy University, South University and the Art Institutes, and the potential need for and access to additional debt financing on the part of the buyers is of concern.
 - Criterion Five, Core Component 5.C: "The institution engages in systematic and integrated planning," for the following reasons:
 - Neither institution has demonstrated that the impacts of the transaction have been accounted for in their strategic planning; and
 - IIA's strategic planning process is still in the process of maturing.

In reference to the fifth approval factor, the experience of the buyers, administration, and board with higher education, the officers (CEO and CDO) of the buyers have some experience in higher education but do not have any experience as chief officers of a large system of non-profit institutions or with the specific challenges pertinent to EDMC institutions, including challenges related to marketing and recruitment policies, governance, administration, and student outcomes across institutions with many campuses and programs operating across the United States.

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President Monday, President Pond, and Mr. Richardson, November 16, 2017 7

The Board action, if the conditions are accepted by the Institutes and the buyers, resulted in changes to the affiliation of the Institutes. These changes will be reflected on the Institutional Status and Requirements Report. Some of the information on that document, such as the dates of the last and next comprehensive evaluation visits, will be posted to the HLC website.

Commission policy COMM.A.10.010, Commission Public Notices and Statements, requires that HLC prepare a summary of actions to be sent to appropriate state and federal agencies and accrediting associations and published on its website within thirty days of any action. The summary will include HLC Board action regarding the Institutes. The Commission will also simultaneously inform the U.S. Department of Education of this action by copy of this letter. As further explained in policy, HLC may publish a Public Statement regarding this action and the transaction following the institutions' and the buyer's decision of whether to accept the conditions outlined above. Please note that any public announcement by the buyers about this action must include the information that any approval provided by the Commission is subject to the condition of the buyers accepting Change of Control candidacy for not less than six months up to a maximum of four years.

On behalf of the Board of Trustees, I thank you and your associates for your cooperation. If you have questions about any of the information in this letter, please contact Dr. Anthea Sweeney.

Sincerely,



Barbara Gellman-Danley
President

cc: Chair of the Board of Trustees, Illinois Institute of Art
Chair of the Board of Trustees, Art Institute of Colorado
Deann Grossi, Director of Institutional Effectiveness, Illinois Institute of Art
Ben Yohe, Director of General Education, the Art Institute of Colorado
Diane Duffy, Interim Executive Director, Colorado Department of Higher Education
Stephanie Bernoteit, Senior Associate Director, Academic Affairs, Illinois Board of
Higher Education
Evaluation team members
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning
Commission
Karen Peterson Solinski, Vice President for Legal and Governmental Affairs, Higher
Learning Commission
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Herman Bounds, Director, Accreditation Group, U.S. Department of Education



**Public Disclosure:
Illinois Institute of Art and
Art Institute of Colorado
From “Accredited” to “Candidate”
Effective: January 20, 2018**

The Illinois Institute of Art located in Chicago, Illinois, and the Art Institute of Colorado located in Denver, Colorado, have transitioned to being a candidate for accreditation after previously being accredited. The Higher Learning Commission Board of Trustees voted to impose “Change of Control-Candidacy” on the Institutes as of the January 20 close of their sale by Education Management Corp. to the Dream Center Foundation through Dream Center Education Holdings.

This new status also applies to the Illinois Institute of Art campus in Schaumburg and its Art Institute of Michigan campus in Novi, Michigan.

In spring 2017 EDMC requested approval of a Change of Control seeking the extension of the accreditation of these institutions after their proposed sale to the Dream Center Foundation. During its review process of the Change of Control, HLC evaluated the potential for the institutions to continue to ensure a quality education to students after the change of ownership took place. The period of Change of Control-Candidacy status lasts from a minimum of six months to a maximum of four years. During candidacy status, an institution is not accredited but holds a recognized status with HLC indicating the institution meets the standards for candidacy.

What This Means for Students

Students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC and may not be accepted in transfer to other colleges and universities or recognized by prospective employers. Institute courses completed and degrees earned prior to this January 20, 2018, change of status remain accredited. In most cases, other institutions of higher education will accept those credits in transfer or for admission to a higher degree program as they were earned during an HLC accreditation period.

All colleges and universities define their own transfer and admission policies. Students should contact any institution they plan to attend in the future so they are knowledgeable about the admission and transfer policies for that institution.

Next Steps

HLC requires that the Institutes provide proper advisement and accommodations to students in light of this action, which may include, if necessary, assisting students with financial accommodations or transfer arrangements if requested.

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Higher Learning Commission Public Disclosure Notice
Illinois Institute of Art/Art Institute of Colorado/Page 2

Dream Center Education Holdings and Dream Center Foundation are required to submit a report to HLC every 90 days detailing quarterly financials to assess adequate operating resources at each entity and both Institutes.

The Institutes will each submit Eligibility Filings no later than March 1, 2018 providing documentation that each institution meets the HLC Eligibility Requirements and Assumed Practices. The Institutes will also host a campus visit within six months of the transaction date as required by HLC policy and regulation. The HLC Board will consider reinstatement of Accredited status at a future meeting.

About the Higher Learning Commission

The Higher Learning Commission accredits approximately 1,000 colleges and universities that have a home base in one of 19 states that stretch from West Virginia to Arizona. HLC is a private, nonprofit accrediting agency. It is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation. Questions? Contact info@hlcommission.org or call 312.263.0456.



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February 2, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission,
President Anthea Sweeney, Vice President for Accreditation Relations,
Higher Learning Commission
Karen Peterson Solinski, Vice President
for Legal and Governmental Affairs, Higher Learning Commission

Re: The Art Institute of Colorado and The Illinois Art Institute

We represent Dream Center Education Holdings (“DCEH”) and its postsecondary institutions, and specifically The Art Institute of Colorado, established in 1952 and first accredited by HLC in 2008, and the Illinois Institute of Art, established in 1916 and first accredited by HLC in 2004 (the “Institutions”). We are in receipt of the Commission's proposed Public Disclosure dated January 20, 2018 (“Disclosure”). We believe the Public Disclosure, as drafted, is either an inaccurate description of our agreement or that the parties are in complete and total disagreement as to the terms of the final resolution with respect the recent change in ownership of the Institutions, which occurred on January 19, 2018, following the Commission’s issuance of letters on January 12, 2018 and November 16, 2017 in response to the application filed by the Institutions in late 2016 and supplemented in 2017.

Admittedly, given that the Institutions were not under show cause or probation and the proposed Change in Control was for a transfer to an established nonprofit organization, we were shocked that the Commission placed the Institutions in candidacy status and did not simply extend the accreditation of the Institutions for one year, with or without conditions or sanctions and conduct a visit within the year, as the Commission has for done dozens of other institutions going through a Change of Control.¹ In this regard, we are confident that the Commission is aware of its obligations under 34 CFR 602.18 - Ensuring consistency in decision-making which states, in part:

- (b) Has effective controls against the inconsistent application of the agency's standards;
- (c) Bases decisions regarding accreditation and pre-accreditation on the agency's published standards.

¹ While not controlling on HLC, it is significant that none of the agencies which accredit the other postsecondary institutions acquired by DCEH from Education Management Corporation placed those institutions in candidacy status following the closing of the transactions.

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Higher Learning Commission

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February 2, 2018

However, rather than litigate the Commission's decision concerning the Institutions' status, our client, in good faith, were led by the Commission to believe that, if they accepted the terms proposed by the Commission, they would immediately be put on a path to regaining/maintaining accreditation under the new ownership, i.e., they would be immediately placed in candidacy (already approved), meaning they would immediately complete a self-study and schedule a comprehensive visit for full accreditation. While even this result seemed inconsistent and punitive, as compared with the Commission's application of its policy with other institutions, our client, rather than litigating, accepted immediate and unconditional candidacy with the assurance of a quick and objective review of the institutions for accreditation within six months.

Much to our dismay, however, after accepting the terms of Commission's November 16, 2017 letter (with a few modifications) and closing on the Transfer of Control, our clients received a Disclosure that states they are essentially in pre-candidacy, not candidacy, which is completely unacceptable because of the unfair and adverse impact this would have on the 2,138 students of the Institutions and the glaring inconsistency between these terms and the agreement we had reached with the Commission pursuant to its November 16, 2017 letter. The Disclosure suggests that we must file documents normally required to achieve candidacy and a visit to determine candidacy eligibility. Further, it requests that we communicate to our students that, although the Institutions, where they were enrolled and earning credits, prior to January 19, 2018 had been accredited by HLC for 9 years (The Art Institute of Colorado) and 13 years (The Illinois Art Institute), now somehow those credits may "not be accepted in transfer to other colleges and universities or recognized by prospective employers."

This interpretation is not only harmful to students, but inconsistent with the Commission's decision to continue the accreditation of the institutions through January 19, 2018. The institutions were accredited on January 19, 2018 and should still be eligible for accreditation on January 19 and thereafter. There is no rational objective reason for the sudden change of status when the Commission could use a self-study and comprehensive visit to conduct its normal review.

DCEH and the Institutions did not and do not accept the Commission's decision as interpreted in proposed Disclosure. Pursuant to Commission Policy INST.E. 50 010, moving an institution from accredited to candidate status is an adverse action, and thus not a final action and is subject to appeal. Please promptly provide us with your policy on how to formally appeal the Commission's decision. Please consider this a request for an appeal.

ROUSE FRETS GENTILE RHODES, LLC

Ronald L. Holt

Dr. David Harpool
Regulatory Counsel to DCEH and the Institutions



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February 7, 2018

VIA ELECTRONIC MAIL

Dr. David Harpool and Ronald L. Holt
Rouse Frets Gentile Rhodes, LLC
1100 Walnut St.
Suite 2900
Kansas City, MO 64106

Dear Dr. Harpool and Mr. Holt:

I am writing in response to your letter of February 2, 2018, to confirm that the Art Institute of Colorado ("AIC") and Illinois Institute of Art ("IIA") are in Change of Control Candidate for Accreditation status with the Higher Learning Commission as of January 20, 2018. Your letter reaffirms their voluntary consent to such status as earlier indicated in a letter from Presidents Josh Pond of IIA and Elden Monday of AIC on January 4, 2018. As such, both institutions are eligible to seek accredited status following the requirements outlined in the November 16, 2017 Action Letter, as modified by the January 12, 2018 Action Letter, which confirmed again that approval of the extension of status was subject to a Change of Control Candidacy and clarified the schedule for the filing of an Eligibility Filing to confirm the institutions' compliance with the Eligibility Requirements and the schedule for subsequent focused evaluations.

None of the terms outlined in these letters have changed or been modified based on any language in the Public Disclosure Notice ("PDN"). The institutions are not in pre-candidacy status, as your letter indicates; the Commission has no such status. As noted above, the institutions remain eligible to apply for accredited status based on the terms outlined in the November 16, 2017 Action Letter. I would note that your clients had a lengthy opportunity (early November 2017 to early January 2018) to review the November Action Letter, to determine the implications for their institutions prior to filing their consent on January 4, 2018, and to ask questions to their HLC staff liaison if anything in the November action was unclear.

While the Commission believes that the Public Disclosure Notice as previously published, accurately represented the terms of the November 16, 2017 Action Letter, Commission staff has modified the PDN on the HLC website to remove certain procedural language that was questioned in your letter of protest. I trust that these modifications will allay any concerns that you have that the PDN modified in some way the terms of the November 16, 2017 letter to which your clients specifically consented.

Thank you. If you have any further questions, please contact Karen Peterson, Executive Vice President for Legal and Governmental Affairs.

Dr. Harpool and Mr. Holt, February 7, 2018 2

Sincerely,

A handwritten signature in cursive script that reads "Barbara Gellman-Danley".

Barbara Gellman-Danley
President

Cc: Brent Richardson, Chief Executive Officer, Dream Center Education Holdings, LLC
Michael Frola, Division Director, Multi-Regional and Foreign Schools Participation
Division, U.S. Department of Education
Anthea Sweeney, Vice President for Accreditation Relations, Higher Learning Commission
Karen Peterson, Executive Vice President for Legal and Governmental Affairs, Higher
Learning Commission



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February 23, 2018

Via Email

Barbara Gellman-Danley, President, Higher Learning Commission
Bgellman-danley@hlcommission.org

Re: The Art Institute of Colorado and The Illinois Art Institute

Dear President Gellman-Danley,

We have discussed your letter of response and the proposed Public Notice Disclosure with our clients. To ensure that we correctly understand your response and the status of our client schools (Illinois Institute of Art and the Art Institute of Colorado), we are confirming that:

1. Both institutions remain eligible for Title IV, as the Commission clearly suggested in its letter to our clients dated November 16, 2017, referring to the institutions as being in “preaccreditation status,” a term of art that is defined in federal regulations as a qualifying status for Title IV eligibility for a nonprofit institution. *See* 34 C.F.R. §§ 600.2 & 600.4 (a)(5)(i). (We and our clients, in determining that we could accept the conditions of the November 16, 2017 letter, as modified by the Commission’s January 12, 2018 letter, and could continue to serve our students and meet their expectations, relied in good faith on this understanding.)
2. Both institutions remain accredited, in the status of Change of Control Candidate for Accreditation, per their change of ownership, and are eligible to apply for renewal/extension of their accreditation on March 1, 2018, pending their eligibility review.
3. Both institutions will receive an objective review for continued accreditation, with team members who have the requisite skill and experience to render an unbiased decision.
4. Both institutions will communicate to their students that they remain accredited in the capacity of Change of Control Candidate for Accreditation, as a result of their recent change of ownership and conversion to non-profit institutions, and that they are undergoing the re-accreditation process.

Please confirm that our understandings, as stated above, are correct. It is our clients’ desire to avoid pursuit of an appeal and possible litigation, a goal that we trust the Commission shares, and the foregoing understandings are essential to that objective.

Exhibit 59

Date Transmitted: July 22, 2019

From: Reed D. Rubinstein

Subject: *Letter to Chairman Robert C. "Bobby" Scott*



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

July 22, 2019

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Scott:

Thank you for your letter of July 16, 2019 to Secretary DeVos. She has shared your letter with me, and I am pleased to respond on her behalf.

The Department of Education is committed to working cooperatively with Congress to accommodate your lawful oversight requests. Separation of powers, and the rule of law, constrain government power to protect America's citizens. Properly viewed, these are the essential objects of the Federal enterprise, not mere procedural impediments. Consequently, we take seriously our obligation to seek an optimal balance of Congress's oversight concerns and the Executive Branch's strong constitutional interests. *See generally Comm. on Oversight and Gov't Reform v. Lynch*, 156 F.Supp.3d 101, 110-12 (D.D.C. 2016); *United States v. Nixon*, 418 U.S. 683, 705-06, 708 (1974); *United States v. AT&T*, 567 F.2d 121, 127, 130 (D.C. Cir. 1977); *see also NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 448-50 (1977); *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 156-57 (June 19, 1989).

Our understanding is the Committee's oversight concerns are (1) the actions of Dream Center, (2) whether the Department properly exercised its regulatory authority, and (3) whether Department staff were "forthcoming" with Congress regarding the information it had on Dream Center. *See* Letter from the Hon. Robert "Bobby" Scott to the Hon. Betsy DeVos at 1, 2 (July 16, 2019) (Exhibit 1) (the "Committee Letter"). To address these concerns, the Committee has requested the production of all "emails and text records, internal and external" relating to seven different business concerns from nine Department officials. The Committee has also requested four transcribed interviews. *Id.* at 6.

To protect the public fisc and facilitate the timely resolution of this matter, the Department suggests a staged response – first, production of the requested emails and text records, and then such transcribed interviews as may be necessary and appropriate. This approach provides the most efficient and appropriate path forward. Department staff will reach out to your staff and begin discussions of a mutually acceptable accommodation process, including the timing of email and text record production.

At the same time, it does not appear that you have had an opportunity to receive and review materials contradicting the Committee staff's unfair suggestions that the Department tailored the Department's policy on retroactive accreditation to assist Dream Center and, accordingly, that its staff may have been less than entirely forthcoming before Congress. The Department categorically

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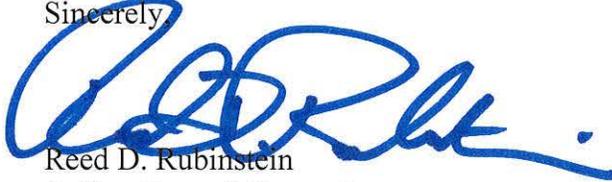
The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

rejects these allegations. As the attached documents demonstrate, the Department has engaged in policy deliberations about retroactive accreditation since at least 2008. Most recently, in 2016, Department staff and the Commission on Collegiate Nursing Education (CCNE) exchanged views on this issue. CCNE's application for continued recognition triggered Department staff to issue a memorandum on June 6, 2017, directing accreditation agencies to discontinue long-standing retroactive accreditation policies. These documents also show that the National Advisory Committee on Institutional Quality and Integrity (NACIQI) – at the urging of several accreditation agencies and institutions -- *rejected* the policy set forth in the June 6, 2017, memorandum, argued in favor of CCNE and accreditor use of retroactive accreditation policies, and recommended that the Senior Department Official (SDO) adjudicating the matter reject the staff recommendation against CCNE on this issue. This issue continued to percolate within the Department throughout 2017 as the SDO issued her decision rejecting NACIQI's recommendation, as CCNE filed a notice of appeal of the SDO's decision, and as CCNE briefed the issue on appeal. The Department was thus already reviewing and working to change the policy set forth in the June 6, 2017, memorandum when Acting Under Secretary Jones came to the Department in February 2018. After deliberating on the issues presented by retroactive accreditation, the Office of the Under Secretary adopted NACIQI's view and issued its policy decision on July 25, 2018.

The Department worked tirelessly with the accreditation agencies to ensure that students could complete their educational programs, preventing a repeat of the catastrophic Obama Administration Corinthian College collapse that spilled 30,000 students on the street. As one might expect, the Department's work-out activities included communications with Dream Center management. However, the documents demonstrate that Dream Center's management received no special treatment from the Department, and as it advised Congress, the decision to restore the *status quo* regarding retroactive accreditation had nothing to do with Dream Center.¹

We understand the retroactive accreditation issue is particularly complex and that there were extensive administrative proceedings. Therefore, we appreciate this opportunity to address your questions and are happy to clarify any additional issues of concern that you or your staff may have. Please contact Jordan Harding, Principal Deputy Assistant Secretary delegated the duties of Assistant Secretary for Legislation and Congressional Affairs at (202) 401-0020, if you have additional questions.

Sincerely,



Reed D. Rubinstein
Acting General Counsel

¹The Department notes Committee staff at once allege Dream Center executives mislead students and mismanaged institutions but also rely on emails from those very same executives to suggest the Department's review of the retroactive accreditation issue was somehow done for them and that the Department's representations to Congress were somehow questionable. *See* Committee Letter at 5-6 (citations omitted).