

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
NATIONAL ADVISORY COMMITTEE ON
INSTITUTIONAL QUALITY AND INTEGRITY [NACIQI]

MEETING
VOLUME II

Friday, June 7, 2013

9:00 a.m.

Hyatt Arlington Hotel
Senate Ballroom
1325 Wilson Boulevard
Arlington, Virginia 22209

P A R T I C I P A N T S

COMMITTEE MEMBERS PRESENT:

JAMIENNE S. STUDLEY, J.D., Chair
MR. ARTHUR J. ROTHKOPF, J.D., Vice Chair

DR. JILL DERBY
DR. GEORGE T. FRENCH
DR. ARTHUR E. KEISER
DR. WILLIAM "BRIT" E. KIRWAN
MS. ANNE D. NEAL, J.D.
MR. RICHARD F. O'DONNELL
DR. SUSAN D. PHILLIPS
MR. CAMERON C. STAPLES, J.D.
DR. LARRY N. VANDERHOEF
DR. FEDERICO ZARAGOZA

COMMITTEE MEMBERS ABSENT:

DR. WILLIAM L. ARMSTRONG
DR. EARL LEWIS
DR. WILLIAM PEPICELLO
MR. BETER-ARON (ARON) SHIMELES
DR. CAROLYN WILLIAMS
MR. FRANK H. WU, J.D.

U.S. DEPARTMENT OF EDUCATION STAFF PRESENT:

MS. CAROL GRIFFITHS, Executive Director, NACIQI
MS. KAY GILCHER, Director, Accreditation Division
MS. SALLY WANNER, General Attorney, Postsecondary
Division, OGC

MR. HERMAN BOUNDS, Ed.S.
MS. KAREN DUKE
DR. JENNIFER HONG-SILWANY
MR. CHUCK MULA
MR. STEPHEN PORCELLI
MS. CATHLEEN SHEFFIELD
DR. RACHAEL SHULTZ
MS. PATRICIA HOWES
MS. KAREN AKINS

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Representatives of the Agency:
 Dr. T. Paul Boatner, President, TRACS
 Dr. James Flanagan, President
 Luther Rice University, and Chair, TRACS
 Dr. Benson Karanja, President,
 Beulah Heights University, and
 Vice Chair, TRACS

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 Dr. William Kirwan

Department Staff:
 Dr. Herman Bounds, Ed.S.

Representatives of the Agency:
 Mr. Roger J. Williams, Executive Director
 ACCET
 Ms. Tibby Loveman, Commission Chair, ACCET
 Mr. David Wilson, Past-Chair, ACCET

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 Mr. Richard O'Donnell

Department Staff:
 Mr. Steve Porcelli

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 Ms. Joyce L. Urbeck, Administrative
 Director, ACOE

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NACIQI Primary Readers:
Dr. Arthur Keiser
Mr. Cameron Staples

Department Staff:
Dr. Herman Bounds, Ed.S.

Representatives of the Agency:
Dr. Gary Puckett, Executive Director/
President, COE
Mr. Gregory Garrett, Director (Retired)
South Central Louisiana Technical
College, and Commission Chair, COE
Mr. Al Salazar, Administrator, Home Life
& Community Services, Inc., and
Commission Vice Chair, COE
Ms. Cynthia Sheldon, Associate Executive
Director, COE
Mr. Kenneth J. Ingram, Partner, Whiteford,
Taylor & Preston LLP, and COE General
Counsel
Mr. Derin Dickerson, Partner, Alson & Bird
LLP, and COE Special Counsel

Third Party Oral Comment:
Michael B. Goldstein
Practice Leader, Dow Lohnes

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Ms. Anne Neal
Dr. Larry Vanderhoef

Department Staff:
Mr. Chuck Mula

Representatives of the Agency:
Mr. William Miller, Director,
Accreditation and Institutional
Evaluation, ATSUSC
Dr. Tom Tanner, Director, Accreditation
and Institutional Evaluation, ATSUSC

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P R O C E E D I N G S

CHAIRPERSON STUDLEY: Good morning. Thank you very much for being here for the second day of our meetings of the National Advisory Committee on Institutional Quality and Integrity.

Let's begin with introductions. I am Jamienne Studley, the Chair of the Committee and with Public Advocates in San Francisco.

We have some departures, some arrivals, so let's go quickly around the Committee table. Arthur.

MR. ROTHKOPF: Yeah. Arthur Rothkopf. I'm the Vice Chair of the Committee.

MS. NEAL: Anne Neal, President of American Council of Trustees and Alumni.

DR. KIRWAN: Brit Kirwan, Chancellor of the University System of Maryland.

DR. KEISER: Art Keiser, Chancellor, Keiser University in Florida.

DR. VANDERHOEF: Larry Vanderhoef, Chancellor Emeritus of the University of California at Davis.

DR. DERBY: Jill Derby, Governance Consultant with the Association of Governing Boards.

DR. ZARAGOZA: Federico Zaragoza, Vice Chancellor of Economic and Workforce Development, Alamo Colleges.

MR. STAPLES: Cam Staples, President of the New England Association of Schools and Colleges.

MR. O'DONNELL: Rick O'Donnell, Chief Revenue Officer of the Fullbridge Program.

MS. WANNER: I'm Sally Wanner. I'm a member of the Department of Education and as such not a Committee member, but I am with the Office of General Counsel.

MS. GILCHER: I'm Kay Gilcher, the Director of Accreditation in the Office of Postsecondary Education.

MS. GRIFFITHS: Carol Griffiths, U.S. Department of Education, NACIQI Executive Director.

DR. FRENCH: Good morning. George French, President, Miles College, Birmingham, Alabama.

CHAIRPERSON STUDLEY: Thank you.

We welcome at this meeting Rick O'Donnell as a new member of the Committee. He joined us yesterday, and we also had with us Senator Bill Armstrong, who is a new member who was here yesterday and not today. And we thank for their participation two members who have left the Committee, Dr. Wilfred McClay and Bruce Cole.

With that, I will give you a quick overview of the Procedures for Committee Review of Petitions that will apply to today's agencies, and then we will dive into the first commission, the Commission on Accreditation of Healthcare Management Education.

The procedure, as many of you are well aware through deep experience, is that the agency petition is introduced by one of the two primary Committee readers, a member of the Committee. We are briefed by the Department staff on their report on the review of the agency. We invite remarks from the agency representatives. Then presentations by any third-party representatives

who want to speak to that agency's renewal or participation. Then the agency has an opportunity to respond to any third-party presentations. The Department, in turn, has an opportunity to respond to agency or third-party comments, and at that point, the Committee discusses the agency's matter and proceeds to a vote.

Is there anything, Carol, that would be helpful for you to announce at this point?

MS. GRIFFITHS: No, not at this time.

Thank you.

CHAIRPERSON STUDLEY: Okay. Let me just add, as to third-party comments--we mentioned this yesterday--we accept third-party commenters' indications of intent to participate up until the time that we begin on that agency. So you just need to identify yourselves to the staff outside the conference room.

COMMISSION ON ACCREDITATION OF HEALTHCARE
MANAGEMENT EDUCATION [CAHME]

CHAIRPERSON STUDLEY: With that, let's begin with the Commission on Accreditation of Healthcare Management Education. The primary readers are Dr. Kirwan and Dr. Zaragoza. Which of you has the honors?

DR. ZARAGOZA: Madam Chair.

CHAIRPERSON STUDLEY: Thank you.

DR. ZARAGOZA: The Commission on Accreditation of Healthcare Management Education, CAHME, was formed in 1968 by several professional health-related organizations and was formerly known as the Accrediting Commission on Education for Health Services Administration.

The agency adopted its current name in October 2004 and revised its scope of recognition in 2007 from health services administration to healthcare management to reflect the name change.

CAHME accreditation enables the programs it accredits to award increased amounts of unsubsidized Stafford loans through the

Department's Direct Loan Program to health professionals. CAHME accreditation allows its programs to establish eligibility to participate in non-Higher Education Act Federal Programs, such as Tuition Benefits Program for military students afforded by the U.S. Department of Veterans Affairs.

Graduate students of CAHME accreditation programs in health management also are eligible to participate in VA fellowship programs.

CAHME accredits 77 master's degree programs in healthcare management in the United States, Puerto Rico, and the District of Columbia.

In preparing the current review of the agency for continued recognition, Department staff reviewed the agency's petition and supporting documentation and observed an Accreditation Council meeting in Arlington, Virginia, on April 19-20, 2013.

There were nine areas of compliance cited by staff, and at this point, I would defer to staff for their review.

CHAIRPERSON STUDLEY: Thank you.

Welcome, Jennifer.

DR. HONG-SILWANY: Thank you.

Good morning, Madam Chair and Committee members. For the record, my name is Jennifer Hong-Silwany, and I'll be providing a summary of the staff recommendation for the Commission on Accreditation of Healthcare Management Education.

The staff recommendation to the Senior Department Official is to continue the agency's current recognition and require the agency to come into compliance within 12 months and submit a compliance report that demonstrates the agency's compliance with the issues identified in the staff analysis.

This recommendation is based on our review of the agency's petition, supporting documentation, and an observation of an Accreditation Council meeting on April 19th through 20th in Arlington, Virginia.

The outstanding issues in the staff analysis consist of the need for documentation

regarding the agency's application of its policies, as well as evidence of final revisions to policies in accordance with the staff analysis.

Therefore, as I stated earlier, we are recommending to the Senior Department Official to continue the agency's recognition but require the agency to come into compliance within 12 months and submit a compliance report that demonstrates the agency's compliance with the issues identified in the staff analysis.

Thank you.

CHAIRPERSON STUDLEY: Thank you very much.

Are there any questions for Jennifer?

Thank you very much.

We'd like now to hear from the representatives. Would you please come forward? And we invite you to introduce yourselves.

DR. SCHULTE: Thank you, Madam Chair and Committee members.

I'm Dr. Margaret Schulte. I am the CEO of CAHME. I will allow my colleagues to introduce themselves.

CHAIRPERSON STUDLEY: Press the little bar across the bottom.

MR. BRICHTO: Good morning. My name is Eric Brichto.

CHAIRPERSON STUDLEY: Could you speak up?

MR. BRICHTO: I'm a Manager and Counsel with CAHME.

MS. SHEARER: I'm Stephanie Shearer. I am Manager and Counsel of CAHME.

DR. SCHULTE: Thank you, and thank you for the opportunity that you present us to come before you.

I want to point out that our remarks are prepared with the active collaboration of Dr. Dan West. He was meant to be here, couldn't make it this morning. He's Professor and Chair of the Department of Health Administration and Human Resources at the University of Scranton and the Chair of our Accreditation Council. He sends his regrets, but he was very actively involved in preparing our remarks.

Our remarks are brief. We'd first of all

like to thank Ms. Jennifer Hong-Silwany for her thorough review and her very helpful demeanor leading up to today. For the most part, we feel that making the suggested changes in her report will strengthen the integrity of CAHME's accreditation process and thereby strengthen the field of healthcare management education. We have, in fact, already made some of those changes and others are in process.

There is one important area, however, that we would like to address in response to Section 602.20(a), Enforcement Standards. The analysis addresses CAHME's practice of granting initial accreditation to programs which have not fully met all of CAHME's criteria for accreditation. As it stands now, CAHME grants an initial accreditation if all are requirements for accreditation are met and all of our criteria for accreditation or nearly all of our criteria for accreditation are met.

A program with a small number of "partially met" findings can become accredited in our practice, but it only remains accredited by

coming into complete compliance with all criteria within two years. This creates an incentive, we feel, for programs to make immediate positive changes and to engage in continuous quality improvement to inculturate that into their program.

An important strength of CAHME, of our accreditation model, is the outcome assessment focus that uses continuous quality improvement to develop key competencies across all courses in a well-conceived graduate level curriculum. The competency-based CQI model ties in nicely with the regional accreditation standards in higher education, especially in the area of student assessment and program improvement.

This CAHME model aligns with the healthcare industry demand to produce graduates who are competent to practice in management positions in a variety of healthcare settings. By maintaining very high standards and making continued accreditation contingent on meeting those standards, we can instill continuous quality improvement and inculturation of that in all of our

programs.

For CAHME to only grant an initial accreditation when a program has fully met 100 percent of our criteria for accreditation effectively shuts down our progress reporting for that time following their accreditation. We're concerned that this will send a message to those programs that they do not have to work on continuous quality improvement after they receive their decision letter.

This will impede CAHME's mission to serve the public interest by advancing the quality of healthcare management education through continuous improvement, and we feel it will negatively impact the quality of healthcare management education.

Thank you so much.

CHAIRPERSON STUDLEY: Are there any questions for the agency representatives?

DR. KIRWAN: Yes. First of all, let me say I was dismayed by the number of citations brought to focus with regard to CAHME, and you know it's not as if this is a new organization. You've

been around since 1970. You know how the rules are played. Presumably, you have processes to be sure that you're up to date in following the rules and regulations that are put forth. So I would first like to just hear some comment on how it is that an ongoing, long-term accrediting body could be so out of compliance in so many areas?

DR. SCHULTE: The past few years, we have worked on changing, modifying our approach to a competency-based model, and I can't address all that. I've been here for three weeks. So I'm--in terms of addressing those issues, we are focused on addressing those issues.

That focus--and Eric or Stephanie having been there a little bit longer than me may have some comment on that history. It is our determination to bring us fully in compliance with those findings that we had, and as we said, we have already implemented a number of them.

I appreciate that concern, and it is our determination to get back to that point where you want to see us.

DR. KIRWAN: I don't know if anybody else is going to comment or not? I have another question.

MR. BRICHTO: Sure. An issue with many of these items were we were in compliance in practice, but it was not formally codified in our policies and procedures, so we're working with our board of directors to make those changes, make sure our compliant practices are codified in our policies and procedures.

DR. KIRWAN: But I mean the rules of the game are you're supposed to codify them in written documentation. That's not a new requirement. So the fact that you're doing it in practice, but it's not codified, it's just hard to understand how a professional organization could be so lax in living up to the expectations and the rules that we operate by.

There is one other provision that I think maybe the staff can help us with, but my understanding is that if the rules promulgated by the Secretary are that if, if you do not, if an

entity does not meet all the requirements for accreditation, they can't be accredited.

Now, there is a category called preaccreditation, but what I'm hearing is you all have decided on your own that you're going to have a different category, you're not going to play by the rules that the Secretary has laid down, and you're allowing entities to be accredited that haven't met all the standards.

So I mean, and maybe the staff member has to clarify this for me, but what, if I'm right in what I'm reading, what gives you the authority to decide that you can operate in a different way?

DR. HONG-SILWANY: That's correct, Dr. Kirwan. We have a definition for accreditation and preaccreditation.

DR. KIRWAN: Right.

DR. HONG-SILWANY: Under 602, and so the Department advised the agency that they were applying their initial accreditation as a preaccreditation status, which they can certainly come and expand their scope to include

preaccreditation.

DR. KIRWAN: Right.

DR. HONG-SILWANY: And we would review it. So I mean it's something that can be remedied, but the way that they're playing it right now is noncompliant. Expectation is that programs are fully compliant prior to--

DR. KIRWAN: Right.

DR. HONG-SILWANY: --being granted initial accreditation. That's why we have a preaccreditation status for which they can remain on for five years.

DR. KIRWAN: Right, right. So could you comment on why you decide to operate by rules outside those promulgated by the Secretary?

DR. SCHULTE: This has been our practice that we've been reviewed on in the past. And we have internally had extensive discussion about bringing our initial accreditation into compliance. This was the one concern that we have relative to the continuous quality improvement that we've tried to inculcate.

But we have conversation about this underway right now about how we are going to do this. We also felt we wanted to bring this point back to the Committee, understanding that there is the perspective that we saw in the staff comments. So we will work on this to make this change.

DR. KIRWAN: And with all due respect, working on it isn't good enough. I mean that's the rule.

DR. SCHULTE: We will change it.

DR. KIRWAN: So you're saying today that you will change it?

DR. SCHULTE: We will change it.

DR. KIRWAN: Okay. Then there's another area here where you seem to have some conflicting rules of operation regarding early accreditation versus correcting deficiencies. I mean there seem to be two processes at work here which our analysts commented on, and maybe if you wouldn't mind, Jennifer, could you illuminate that issue for us a little bit?

DR. HONG-SILWANY: Sure. I think you're

referring to the agency's enforcement standard.

DR. KIRWAN: Yes.

DR. HONG-SILWANY: Previously when the draft came back, it was not clear whether the agency was applying its two-year timeframe because they had--one of the punitive measures they use was that they would shorten the accreditation cycle, I believe, if they looked at a progress report that still remained noncompliant.

DR. KIRWAN: Right.

DR. HONG-SILWANY: And so instead of saying at this point this is how much time you have left to come into compliance, it wasn't clear to me if they were applying the shortened accreditation cycle or whether they were applying a timeframe.

DR. KIRWAN: Right.

DR. HONG-SILWANY: So they explained that they were still issuing a shortened accreditation cycle, and if they were compelled to apply the timeframe, that the application--the timeframe would take precedence over the shortened accreditation cycle. That's how I understood it.

DR. KIRWAN: Right.

DR. HONG-SILWANY: So we accepted that.

DR. KIRWAN: Okay.

DR. HONG-SILWANY: But still it was confusing short of their clarification.

DR. KIRWAN: Okay. Thank you.

CHAIRPERSON STUDLEY: Did you want to speak to any of those comments?

DR. SCHULTE: We do understand that confusion there, and I think that in the way that we present this, we need more clarity in the way we explain this in our procedures.

The principle is that if a program is reaccredited, and there are issues, and they're not coming into compliance with those issues, that to shorten that cycle and press them into compliance is essentially the approach that we're using there.

Eric, you've been involved in this. Any other comments on that?

MR. BRICHTO: A situation where this could occur is if we granted a program a seven-year accreditation with a couple of areas they needed to

work on, and at the first year progress reporting time, they were grossly unresponsive and noncompliant, at that point, we would shorten the accreditation cycle to three years with the understanding that they need to be in full compliance by the second year.

If they're not in full compliance by the second year, we then remove their accreditation, but they would be on the clock for a review so they could become reaccredited on the third year.

DR. KIRWAN: And, Jennifer, I understand, you find that acceptable?

DR. HONG-SILWANY: Yes, once they clarified that, we did find it acceptable. What was confusing was that they awarded the three years so when the draft came back, we had, it wasn't clear whether then the program would exceed the timeframe, but they're saying, well, we'll still award the three years. If by the second year, which is the deadline, if they're not in compliance, they'll still revoke accreditation, or their timeframe is still in effect, is what they

clarified, so--

DR. KIRWAN: Jennifer, there was one other, another issue I wanted you to comment on, and that is some indication that the reviewers didn't have full information, the historical information, when they were making their decisions about accreditation.

DR. HONG-SILWANY: Do you know what section that applied to, Dr. Kirwan? Oh, yes, 602.17(e), I believe.

DR. KIRWAN: Right.

DR. HONG-SILWANY: Yeah. Right. And the way that we have been applying this section of the criteria is that we are requiring agencies to have written policies to ensure that all of the information, all the record--

DR. KIRWAN: Right.

DR. HONG-SILWANY: --is available to decision-makers prior to making a decision. Whether they avail themselves of that, it's not something we can enforce.

DR. KIRWAN: Right.

DR. HONG-SILWANY: But just to ensure that the agency has provisions to ensure that decision-makers have all the information available to them prior to making a decision, and that's the spirit of how we're applying this criterion, and it wasn't, I believe the agency has to change its policy to ensure that that happens.

DR. KIRWAN: And is the agency doing that at this time?

MR. BRICHTO: Yes, we've already changed our policy to make sure that the decision-makers have access to the full and complete record.

DR. KIRWAN: Right. My final question has to do with the collection of data on job placement and grades, et cetera, and there was some indication that you were in a transition to develop an e-online version of this data collection, and once you did that, you would have all the information that is required by the Secretary's rules. What I'm wondering is, is that going to happen in the near-term, the long-term? I mean where are you in that process?

MR. BRICHTO: We've already established the electronic system and have successfully gone through an annual reporting cycle with that system.

MR. ROTHKOPF: Could you get closer to the mic? I'm having trouble.

MR. BRICHTO: I apologize. We've already gone through a full cycle of annual reporting through our e-system. The only issue is what levels our board of directors decides should trigger additional review for those areas.

DR. KIRWAN: Jennifer, do you want to comment on your degree of satisfaction with that?

DR. HONG-SILWANY: Yeah, I mean the agency has been following up and demonstrating its due diligence. I think we'll have to see when the compliance report comes because the issue in the final report was that while the agency has identified triggers, it never had to do interim visits based on a program hitting a trigger. But in the evidence they provided, it appeared that some programs had met the triggers, but that they didn't have any--but the agency didn't provide any

evidence of how it followed up with that.

So we'll see based on the review of the compliance report how the agency is doing, but the agency thus far as been responsive to the Department. I mean they expressed their concern about the whole initial accreditation issue, which we discussed face-to-face prior to this meeting as well.

DR. KIRWAN: Okay. Thank you.

CHAIRPERSON STUDLEY: Do any other members of the Committee have questions? George.

DR. FRENCH: Yes. Madam Chair, to follow up on Dr. Kirwan's, one of his questions, 602--and this is to the staff--602.15 and 602.17, they indicate that policy changes will be made. 602.25 indicates that the policy changes have been made, and they have been provided to, basically to staff.

Are we saying that the policy changes that will be made in one section--it's very clear. It says they will be made. Other sections it says that the policy changes have been made and provided to us. Are the policy changes in .15 and .17, have

they, in fact, been made and given a copy to you?

DR. HONG-SILWANY: No, they have not. I think under 602.25, they did address one piece and provided that in the draft. There was still an outstanding piece which made them noncompliant. They're still noncompliant under 602.25 because they have to address the compositional requirements on their appeal panel, although they did provide a revised policy stating the authority of the appeal panel. So they're kind of halfway there. They still have to make changes to their policy.

So if they're found noncompliant in the final report--I'm still waiting for changes to the final policies, which I hope to receive with the compliance report.

DR. FRENCH: So you just noted that they still have some policy changes to make?

DR. HONG-SILWANY: Correct.

DR. FRENCH: And Dr. Kirwan was asking earlier, have they been made, so if they've not been made, when will they be made?

DR. HONG-SILWANY: Right. We were giving

them the 12 months.

DR. FRENCH: But I mean when do they anticipate actually having the board meeting where it will happen though? I understand the reporting period.

DR. HONG-SILWANY: Yeah.

DR. FRENCH: But I'm asking when they anticipate it happening?

DR. HONG-SILWANY: I'll pass that over to the agency.

DR. FRENCH: Thank you.

DR. SCHULTE: Our board is meeting in July, and we will address a number of these points that we're able to address at that point. Some of them we may need to do a bit of work on with a committee or such. And the next board meeting, we will bring these, which is in the fall, I believe is our next board meeting. We will bring these to the board for change.

DR. FRENCH: I didn't hear. You said three--how long have you been in the position did you say?

DR. SCHULTE: Three weeks. Three weeks.

DR. FRENCH: Three weeks; right.

DR. SCHULTE: Three weeks; right.

DR. FRENCH: Wow.

[Laughter.]

DR. FRENCH: Well, let me ask you a question. Based on your initial analysis because I'm going to be frank with you, I really didn't hear a justification for why we are in the shape we're in. Based on you being so new and just doing an overall assessment, why do you think that the policies--I heard the practices were followed but not codified. What's your assessment of that?

DR. SCHULTE: I'm not real sure that we gave the leadership to our board to tie those down as they should be in the policies, written in the policies, and these are the things that we know we need to address. I have to say I'm very glad for the report that we received because it gives us direction for some of these things that really are needed and that will make us better.

DR. FRENCH: Thank you.

DR. SCHULTE: So, yeah, I can only say going forward what our intention is.

DR. FRENCH: Thank you.

CHAIRPERSON STUDLEY: Any other Committee questions or comments? I have two questions. One, and maybe it would be--I'll start with you, Jennifer. There was an item related to enrollment growth and adequate procedures for evaluating enrollment growth. While I don't know whether that's a specific issue for the programs in this area, given health management as a front-page national issue, I'm wondering whether that is something that an agency in this field might be particularly, need to be particularly alert to?

I'm not asking you to answer that question. That's a speculation. The question for you is what's the nature of the deficiency and what do they have to do to come into compliance on that score?

DR. HONG-SILWANY: Sure. You're referring to 602.19(c), which states that each agency must monitor overall growth of the institutions or

programs it accredits and at least annually collect headcount enrollment data from those institutions or programs. So we found that while they have policies that require it to do just that, it wasn't clear to us whether they reviewed the data, what triggers a review, you know, additional scrutiny of the data. There were no triggers identified.

So in its response, the agency stated that it was in the process of setting those triggers, and that in this transition toward the e-accreditation system that they would be able to better identify them and respond in a compliance report accordingly.

CHAIRPERSON STUDLEY: And then just one more question, and then I'd be interested in the agency's comment on that.

I'm not sure I was reading the materials correctly, but they indicated not applicable for the substantive change provisions. Why not? There's something I just don't know about why those don't apply to this agency.

DR. HONG-SILWANY: Sure. The substantive

change provisions only apply to institutional accrediting agencies.

CHAIRPERSON STUDLEY: Would any of you like to comment on the enrollment growth issues?

MR. BRICHTO: That's another area that we have to put to the board to figure out exactly what level of enrollment growth is healthy versus unhealthy and what will trigger additional review.

We have the e-equipment in place to follow up on that. We just need some guidance from our board.

CHAIRPERSON STUDLEY: Arthur.

MR. ROTHKOPF: I'd like to, I guess, ask the agency representatives are there current applications in the pipeline right now for accreditation? I see someone shaking their head yes. If so, how many? And perhaps a further question, in light of all the uncertainty and concerns and backs and forths here, do you feel that you're in a position to make a good and thoughtful decision on those applications, again, in light of the uncertainty that exists with so

many of these items?

MR. BRICHTO: We have 17 programs that are in some stage of applying for accreditation. We have initial site visits this fall at I believe two programs and another two in the spring.

MR. ROTHKOPF: Could you address the second part of my comment? Do you believe that in light of the questions that have been raised and the sort of uncertainties on some of these, are you in a position to make decisions consistent with the requirements of the statute and the regulations?

MR. BRICHTO: We're very confident in our ability to comply and come fully into compliance within one year.

DR. SCHULTE: And I would add to your question, are we prepared to review those particular programs, I believe, yes, we are. Our process, while we appreciate the concerns, and we need to make the changes that you're recommending here to bring us into compliance, the people who are engaged in the process, who are engaged in this, are very thoughtful, and these are points we

will bring to their attention before those reviews occur so that we can feel confident that those reviews are within the purview that we're required to do them.

So I think we can do this. I think we can make very thoughtful and productive reviews of these programs that are coming in with giving them, giving our whole review process the input of what we need to do here to be in compliance with the Secretary's requirements.

MR. ROTHKOPF: Jennifer, what do you think? Do you think they're in a position in this period in which they're let's say transitioning into full compliance, that it's an agency that can make decisions that we should feel comfortable with and the Department should feel comfortable with?

DR. HONG-SILWANY: I appreciate the question, Dr. Rothkopf, because as is evident today, the agency has undergone some significant staff changes recently. And it was, Dr. Schulte, she just came on board, as she just said, a couple weeks ago. So they are in a transition with their

staff, I think, with the direction where the agency is headed. Prior to coming to this meeting, we met face-to-face a couple weeks ago, and they did inquire about initial accreditation issues, which we used direct language in the report that they must cease that practice.

And I did provide guidance that it's something that could be easily remedied by coming in for an expansion of scope to include preaccreditation, which is, I mean we could review that in an expeditious manner.

So that they're challenging that issue, again, here at NACIQI, I was surprised, but I think so long as they are on board, that we can get all this within the timeframe, but it does raise a question about the programs that are in the pipeline, how are they going to be reviewed? Are they going to be reviewed under their current policies or how soon can we get this squared away?

CHAIRPERSON STUDLEY: Do you want to respond to that?

DR. SCHULTE: Yes, I do. To say that,

yes, this has been our practice and, as I mentioned, we're already in discussion with--I've had discussion with a number of people on our board, our Accreditation Council, about understanding the requirement and putting a policy, a procedure in place that brings us into compliance.

We've looked at the way we need to do that. We had a great conversation with Jennifer, and her suggestion in talking about preaccreditation. We're working with this yet. Once we work through the way we need to do this, I think we can do it with some facility, and move it through the process so that we are prepared and well prepared for the reviews that are coming up.

CHAIRPERSON STUDLEY: George, did you have another question?

DR. FRENCH: No.

CHAIRPERSON STUDLEY: Any other Committee members have questions? I have two so you have a moment to think about that. One is since the materials, at least as I saw them, did not have

information about your background, and you're new, can you tell us your experience in higher education and accreditation?

DR. SCHULTE: Yes, in higher education, I have taught at the graduate level on an adjunct basis and a full-time basis since the early 1990s. I currently teach with Northwestern University in their master's in medical informatics in their School of Continuing Studies.

I served on the Commission as an accreditation commissioner for six years until from 2001 to 2007, and have continued to be engaged with CAHME in their strategic planning activity and such since that time. So I've had the opportunity to continue to stay engaged with CAHME.

And when I was asked about this position, it was fairly quickly. It happened quickly. I was enthused about it because my commitment is to graduate programs and the graduates who come out of our programs in health administration. We've seen programs that are not necessarily where they need to be, and CAHME is the organization that can put

the quality criteria in front of our programs, call them to account for it, and to meet those quality criteria, and we need to do that. So I'm very committed to this and to graduate management education for healthcare.

So if that's enough of my background.

CHAIRPERSON STUDLEY: Yes. Thank you. I appreciate that just given the transition and the fact that we had outdated information.

The other is an observation. You can comment if you like, and it may well be that if I looked at every agency before us with this lens, I would see it in many other places, but as we all work toward defining student learning outcomes and looking at expectations in terms of student development, I noticed that there seemed to be a mix of maybe call them apples and oranges, but in the area about student outcomes, in addition to student accomplishments, what I would think are learning goals, there are also references, and this related to curriculum and so forth, there were also references to provide an opportunity to participate

in team-based activities that seemed to be processed oriented or encouragements or good practice, but not on the same par as a result in skill or knowledge development for students.

And it's as much an observation as we all struggle to transform to those kinds of measures to be alert for them. It's not that they're unacceptable, but are we putting things in the right places? Are we correctly understanding where we want results and what accreditors and institutions want to do in terms of distinguishing results from process suggestions or guidance about good ways to get to a learning capacity?

If you have a problem-solving objective or standard for learning, it may be a good thing for people to use team-based learning or draw on the institution's full range of resources to get there, but what's a requirement from you or a standard and what's a suggestion, I think is a conversation that popped out of yours because it was written so clearly. I will give you credit that it was an accessible, understandable, crisply presented

document. So it's not that I mean to pick on you. It's an occasion for something that I think we see generally as we are migrating from the how to the what, the destination.

So if you want to comment, you can, but it just was a learning that came out of reading your materials.

DR. SCHULTE: Thank you. No particular comment on that, but thank you for that observation.

CHAIRPERSON STUDLEY: Anyone else on the Committee? We did not have any third-party comments on this agency; did we? In that case, is there anything that you wanted to add to the full discussion?

In that case, are you gentlemen prepared to make a motion?

DR. KIRWAN: We are.

CHAIRPERSON STUDLEY: Okay.

DR. KIRWAN: Would you like a motion?

CHAIRPERSON STUDLEY: Yes, sir.

DR. KIRWAN: Okay. I move that NACIQI

recommend that the agency recognition be granted to permit the agency an opportunity to within a 12-month period bring itself into compliance with the criteria cited in the staff report and that it submit for review within 30 days thereafter a compliance report demonstrating compliance with the cited criteria and their effective application. Such continuation shall be effective until the Department reaches a final decision.

I further move based upon the concerns identified that the NACIQI recommendation that a limitation to not recognize the agency's accreditation of any new institutions and/or programs, including those accredited via substantive change request, be placed on the agency's recognition. The continuation of the agency's recognition and this limitation shall be effective until the Department reaches a final decision.

DR. ZARAGOZA: Can I second that?

[Motion made and seconded.]

CHAIRPERSON STUDLEY: Is there any

discussion by the Committee?

MR. ROTHKOPF: I guess I would strongly urge that we adopt that motion. I think it reflects the concerns expressed and frankly addresses some of the points that I was making after having heard the discussion. So I think it's entirely appropriate.

CHAIRPERSON STUDLEY: May I just ask, was the agency aware that this was a possibility--

DR. SCHULTE: No.

CHAIRPERSON STUDLEY: --that we might--

DR. SCHULTE: No.

CHAIRPERSON STUDLEY: --act in this regard?

DR. SCHULTE: No.

MS. NEAL: Could we hear from the agency on it?

CHAIRPERSON STUDLEY: That's just what I was pondering. Yes. Could you tell us what the consequences of that limitation might be for you? I apologize for doing this after a motion has been put on the floor, but I certainly saw us going in

that possible direction, but I think we'd like to hear from the agency about the consequences.

DR. SCHULTE: My concern is that mostly for the programs that are out there that have gone through a long process to get to the point of their accreditation review, and not, and I think as I understand, we would not be reviewing them until we were determined to be in compliance with, if I'm understanding this correctly, with all of the criteria?

CHAIRPERSON STUDLEY: Yes. I'd like to turn to staff. It may be that you can review them but not approve, but not recognize them until a year has passed, but let's--Kay--Jennifer, you want to explain how that would operate? Or the options available to the agency if we passed this motion.

DR. HONG-SILWANY: I'm sorry. The question was with regard to the expansion of scope or--

CHAIRPERSON STUDLEY: As to the restriction on scope. The agency is wondering what the effect would be on their ability to process and

when they could act on new programs that are seeking approval? Is that a fair summary of the question?

DR. SCHULTE: Yes, yes, right.

DR. HONG-SILWANY: Right, and from what I understand, the limitation is imposed until the compliance report is reviewed.

MS. GILCHER: You could still go through the process of reviewing and granting accreditation to those programs. However, those would not be under the current recognized scope of the agency. So you would have to make it clear to those programs that your action is not, does not give them the right to claim that they're accredited by a recognized accreditor. Is that--

MS. WANNER: Yes, that's correct. In other words, to the extent your programs use your accreditation for purposes of eligibility in any Federal program, those programs would not be recognized for purposes of establishing their eligibility for participation in a Federal program.

CHAIRPERSON STUDLEY: Brit, then Cam, then

Art.

DR. KIRWAN: Let me also point out that we mentioned 12 months, but there's nothing to prevent the agency for getting this work done in six months and coming back at our next meeting.

CHAIRPERSON STUDLEY: I think, Brit, that is a staff and internal schedule issue as much as it is the agency's proceeding.

Cam and then Art and Anne.

MR. STAPLES: Thank you, Madam Chair. I just want to clarify that this refers to new institutions or programs. So the extent to which they are in the process of renewing in their cycle existing institutions or programs during the next 12 months, is it a fair reading of that that they would continue to serve as a recognized accreditor for existing programs that are renewed?

CHAIRPERSON STUDLEY: Jennifer?

DR. HONG-SILWANY: Right. I understand that this only applies to new programs; is that right, Dr. Kirwan?

MR. STAPLES: Is that clear? I want to

make sure that the agency understands that that's--

DR. HONG-SILWANY: So this would apply to new programs that are in the pipeline for CAHME that would be--

MS. SHEARER: My question is where is the end of the pipeline? I mean we have two programs that have already gone through their self-study and are completed. All we have is the site visit. Is that still considered--is that still considered a new program then? Or it would be just entering, like applying for our accreditation?

DR. HONG-SILWANY: This would become a final decision when the Senior Department Official issues the decision letter. So wherever programs are in the process at that time upon receipt of the decision letter from the Senior Department Official. At this point, the staff has made its recommendation, and NACIQI is acting on a recommendation.

So once CAHME receives the letter, within 90 days after this meeting, it would apply to those new programs that are in the pipeline that have

not--there have been no accreditation decision made on their accreditation.

CHAIRPERSON STUDLEY: If I could just clarify one element of what Jennifer said. The staff has made its recommendation, which will go to the Senior Department Official, which does not include the limitation in this motion.

Therefore, the Department Official would have to make a determination whether to accept the recommendation of the staff, the recommendation of NACIQI, or make another decision different from either of those two.

So I had Art and then Anne.

DR. KEISER: Is CAHME a gatekeeper? It's unclear from the introduction.

MS. WANNER: They're not a gatekeeper.

DR. HONG-SILWANY: Yeah, they're not--

MS. WANNER: They might be a gatekeeper for other--they will be a gatekeeper for other Federal programs, not Title IV.

DR. KEISER: So most of their programs are accredited by either a regional or national

accrediting agency?

DR. HONG-SILWANY: Yes, that's right for Title IV purposes, but their gatekeeping role is for other Federal programs, including graduate students can get increased amounts of unsubsidized loans, for example.

DR. KEISER: But wouldn't the regional accreditation also provide that access? Is there a financial impact on the institutions that are currently in the pipeline, or to the students, more importantly?

DR. HONG-SILWANY: Right.

DR. KEISER: I forgot the students.

DR. HONG-SILWANY: Insofar as they're applying for specific healthcare related--

DR. KEISER: VA benefits.

DR. HONG-SILWANY: Exactly. Exactly.

DR. KEISER: I mean I'm looking at yours, and it says increased amounts, but would it prohibit or prevent students who are currently in a program that are going through the process of accreditation, would they be impacted by our

decision?

DR. HONG-SILWANY: No, because again we're talking about those that are only seeking initial accreditation.

DR. KEISER: Yeah, but if we don't, if they're through the pipe, almost through the pipeline, and we are now--the next 12 months, these students would not have access to funds they would otherwise have access to?

DR. HONG-SILWANY: That's conceivable, yes. Yeah, because from what I understand with the Direct Loan Program, the increased amounts of unsubsidized loans are specifically for healthcare professions, and they have stipulated CAHME-accredited programs as part of that.

DR. KEISER: I was unaware of that. Is that actual fact? Is that a fact?

DR. HONG-SILWANY: That was provided by CAHME under their link, their Federal link.

DR. KEISER: Does anybody--that doesn't sound right to me, but is that accurate?

CHAIRPERSON STUDLEY: Would the agency

like to explain that relationship?

DR. SCHULTE: I'm not sure about that at this point quite frankly.

CHAIRPERSON STUDLEY: Okay.

MS. WANNER: I don't understand how there could be a link under the Higher Education Act, period. It's not an institutional accreditor. The staff analysis says that there's also a link with VA benefits. That's certainly conceivable.

DR. KEISER: Again, I would think their regional accreditation or the national accreditation of the institution would provide that access. I mean that's important on how I vote. That's information I need to know.

DR. HONG-SILWANY: We can--I don't know if, I mean we could pull it up from the review. I don't know if you want to indulge the time here to pull it up, but in terms of it was part of the documentation that the agency provided. So--

DR. KEISER: I don't mind placing a limitation upon the agency if it doesn't affect students. Because these are procedural matters

that can be worked out, and we've done that before for other agencies.

To place a limitation on these, which are, I think much more procedural than some that I have seen before, that if it affects students, then I would vote against the motion. So I don't know the answer.

CHAIRPERSON STUDLEY: Are the programs that you accredit all housed within institutions that have an overall institutional accreditation eligibility for Title IV programs, as far as you know?

DR. SCHULTE: Yes.

CHAIRPERSON STUDLEY: Okay. So the question is whether there are any other programs that are reliant on this, on CAHME's approval beyond Title IV that would make people eligible, students in those programs eligible for some other kind of funding? Susan seems to have a relevant comment.

DR. PHILLIPS: I'm just pulling up the submitted documents and wanted to underscore

Jennifer's comment that some of the non-Title IV Federal funding requires eligibility via an accredited health profession program. So for students who are enrolled at least half-time in the following accredited health professions disciplines, being identified as being in an accredited health profession discipline wouldn't be an institutional accreditation matter. It would be a program accreditation matter.

So that's just pulling up one of them. There are three of them--VA. Bear with me, you folks hold on. Air Force instruction and VA are the other two that are--that ask for not just institutional accreditation but accreditation of a particular discipline program. So that would imply to CAHME.

DR. SCHULTE: Right.

DR. PHILLIPS: I'm hardly an expert on this, but just looking at the materials.

CHAIRPERSON STUDLEY: Do either of you want to add something, Dr. Schulte or Dr. Hong-Silwany?

DR. HONG-SILWANY: I don't know if the agency has more insight on it, but the stipulation for the healthcare professions was handled by the HHS, by Health and Human Services. From what I understand, they had ceased that function, and then that function got passed over to Direct Loans. So that was my understanding of it, and it is stipulated for healthcare professions, specifically those programs accredited by CAHME, including others. So it is at the specialized programmatic level.

CHAIRPERSON STUDLEY: Would it--I mean I think Art makes a good point about the effect on students. If it's parallel to Title IV, students in those programs would know that it was not yet approved in this way if they were in a program that was still in process. So they either would not be counting on it or would know that there was some risk that that would--as they considered which programs to attend.

DR. KEISER: That's correct. But it still seems on the procedural matters, which I think seem

to be a problem of, interesting enough, management than, you know, structural issues, that these problems can be solved in 12 months, and to affect students in any way on issues that we had not in the past. At least be consistent with other measures that we've taken. I think limitation would be problematic for me.

CHAIRPERSON STUDLEY: Anne and then please let me know if anyone else would like to speak to the motion. Anne and then George.

MS. NEAL: Yeah. I guess my questions are along the same line because I'm just concerned about consistent application by us to the accreditors in front of us.

Jennifer, you did not advise this restriction. Obviously, we have some other materials here where options for restriction on new candidates were set forth, but it was not here and you did not advise. Could you explain why you did not feel that that was necessary in this case?

DR. HONG-SILWANY: While it's true that the agency has undergone staff transitions, the

person I worked with initially on the petition, they've since left. There was a new CEO. He has since left. Margaret is just recently on board. The people at this meeting are relatively new to their positions, but they've displayed utmost professionalism, competence in what they do.

I didn't have any concerns regarding the operation of the agency when I went for the site visit. Again, we met face-to-face. They seemed on board. They did challenge the initial accreditation issue. When they left the meeting, I thought they were going to commence work on getting the preaccreditation accreditation issue straightened out.

Again, I was a bit surprised that they raised it again at this meeting, but all that being said, it's not an issue of the competence of the staff or anything like that. Just coming into this meeting, I had the idea that they were on board and they would address these issues expeditiously and that there wouldn't be a threat to the overall quality of the programs, I guess, to answer your

questions.

MS. NEAL: Two more questions. I know we had this debate yesterday in terms of whether or not we want accreditors to immediately agree to what we say or whether we want to give them the opportunity to disagree, and I think I hear what you say, but I also understand that you all have against your will apparently, but you will certainly comply in terms of the preaccreditation issues.

DR. SCHULTE: Yes, as I said, we've already had discussion of this with our leadership. And the sense in that discussion was let's bring this back. We had a concern. They had a concern. Let's bring it back to this forum.

We also have begun the discussion of what do we do? What are those alternatives? We have the preaccreditation that Jennifer explained to us very well and encouraged us to. So we've talked about that. Now, it's a matter of us taking this, and I think readily, you know, to make the change that is needed.

But as you said, you know, we have a large group of people that are involved that wanted us to bring this point, only this point, back, and agreement with everything else. And even with this, the discussion is underway. So I think we can do this with some facility. We just have to do it.

MS. NEAL: And Jennifer, would you characterize the problems that are presented as more procedural than substantive, 50/50 substantive versus providing evidence? I mean we often are looking at just documentation issues versus more substantive issues. How would you characterize these particular deficiencies?

And then my last question would be in the case of imposing limitations, it would be helpful for me to understand when that has been done, other circumstances that brought on the limitations?

DR. HONG-SILWANY: I mean except for the whole initial accreditation/preaccreditation issue, the rest of the issues are primarily procedural. We are concerned about the initial accreditation

because there isn't a whole lot of room for interpretation in that because we define it. We define what accreditation is, and we define what preaccreditation is so there isn't a whole lot of room there.

So that is a substantive issue. The others are providing evidence, changing policy, that kind of thing.

CHAIRPERSON STUDLEY: Yes, George, and then Art.

DR. FRENCH: Mine is very brief. I think Anne really already set the stage for it. I'm wondering, Madam Chair, and to the staff, do we have occasion for staff making a recommendation, but when the agency arrives at a hearing, such as this, and, for example, 602.20, where we're talking about the initial accreditation and granting accreditation when all the requirements have not been met, do we have occasion for staff to reconsider their recommendation if there was an agreement, as Jennifer indicated, that they would be compliant with 602.20, and she's even surprised

to get here, and there's a different consideration? Would the staff at any time reconsider their recommendation?

MS. GILCHER: I think our recommendation would stand. Now, there is a provision in the regulations after the NACIQI meeting if NACIQI and the staff are making different recommendations. There's provision for the agency to comment and provide that as part of the record that goes forward, and for the staff to comment, and then to comment on each other's comments.

So it's conceivable in that process that we might say, you know, based on reconsideration, we agree with the NACIQI or some such thing.

DR. FRENCH: So the other follow-up was the two--we have two in the pipeline now that are, essentially all they need would be the site visit?

MS. SHEARER: Excuse me. There are two in the fall and I believe three in the spring--so with our next two cycles of visits--that are initial accreditations.

DR. FRENCH: The three are initial. Total

five initial?

MS. SHEARER: Total five, yes.

DR. FRENCH: Okay. So the students would be affected; is that what we're saying? We're saying that Jennifer's response was when the final decision is made, dependent on where those reviews are, that would determine the fate of that accreditation; correct? And we have five in the pipeline now.

DR. KIRWAN: I think in clarification, it's not clear that any students are affected. There is the possibility that students might be affected; is that correct?

DR. FRENCH: I think so.

CHAIRPERSON STUDLEY: Just one moment. Carol has asked to make a comment, then Art, then I have a partial answer to Anne's question.

MS. GRIFFITHS: Yes. I just wanted to add some clarification to your question, George, and that is that there have been occasions where the staff has come to the table with a different recommendation than they had made on a final staff

report. That has happened. That may not be necessary in this case or the intention of staff in this case, but it has happened.

CHAIRPERSON STUDLEY: Arthur. Art.

DR. KEISER: I have a procedural question. I think yesterday we had one agency that it was a long-term process to change bylaws or to change the procedures. Is the process at your agency one that it can be done because usually prior to coming to the meeting, agencies have already taken the steps necessary to make the change?

In your case, you'll be starting from scratch in your process. Will you be able to change your standards quickly enough going through the appropriate processes and procedures that in 12 months you would be able to deal with the preaccreditation status?

MR. BRICHTO: I think we definitely can. Administratively, administratively, we can make, we can recommend to our board changes very quickly. The longest thing on our end will be applying for this expansion of scope. We're not sure how long

that will take.

CHAIRPERSON STUDLEY: In short-term response to Anne's question, NACIQI recommended limitations in the reapprovals of recognitions of the Puerto Rico agency and the Middle States Commission on Schools. In neither of those cases were the limitations implemented by the Senior Agency Official.

With respect to NCA CASI, we recommended limitations. The limitations imposed by the Senior Agency Official were more stringent than those recommended by either NACIQI or the staff.

MS. NEAL: What was the cause of imposing the limitations?

CHAIRPERSON STUDLEY: They were different in each case, and, Kay, as somebody who sees them all, are you--can you give an answer?

MS. GILCHER: Well, I think that in all three of those cases, there were extensive problems with the agencies and really lack of confidence that the decisions that would be made by the agency were really to be relied upon.

CHAIRPERSON STUDLEY: Sally.

MS. WANNER: I just wanted to mention--I'm obviously not taking a position on this--but one thing you could do to narrow your limitation would be so that it was--it was imposed initial accreditation of noncompliant programs. In other words, if they found these programs completely compliant, we wouldn't have an issue here.

It would just be if they, applying their process, they found them noncompliant, but then we're going to accredit them anyway, that that recognition wouldn't extend.

CHAIRPERSON STUDLEY: I'd like to hear from the maker of the motion. I am not sure that--that could be one reason for the limitation. But you might want to speak to it. I heard a sense of is their agency, in terms of all that they need to do, about their capacity to add even fully compliant programs during this cycle.

But the movants may want to tell us the reasoning in case it's worth discussing this alternative.

DR. KIRWAN: Well, my concern was what I perceived to be a very cavalier attitude within the agency about adhering to established policies and practices. And if we have, I think I felt and still feel that it's important to send not only them but others a real signal that this is a serious process and people have to take the rules and regulations seriously.

And so I don't see if they have the competence and the goodwill, I don't see that this imposes any great difficulty on anybody. I mean this could be resolved, depending upon scheduling, in six months if it was possible for them to come back, and they do what they say they're going to do. So I think it, you know, I just feel that the agency has not acted in good faith and has taken, as I say, a very cavalier attitude toward adhering to the rules and regulations.

CHAIRPERSON STUDLEY: Is there any further discussion on the motion? Okay. Let's vote on this motion. All in favor please say aye.

[Chorus of ayes.]

CHAIRPERSON STUDLEY: Opposed?

DR. KEISER: Opposed.

[Show of hands.]

CHAIRPERSON STUDLEY: Two. Okay. The motion carries with that limitation. Thank you very much for the diligent readers. Thank you very much to the agency. We do respect that you are a new team, and thank you very much for pursuing these questions with us. And thank you, Jennifer, for helping us and the rest of the staff for helping us understand these issues.

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TRANSNATIONAL ASSOCIATION OF CHRISTIAN
COLLEGES AND SCHOOLS [TRACS]

CHAIRPERSON STUDLEY: We will move to the next agency now. Let me call forward the team and call in a moment upon our readers, but do you want to make that announcement right now of the fire drill.

MS. GRIFFITHS: Yes. This is an administrative issue in a way. When the Committee has their break after this next review, the hotel is going to conduct a fire alarm test. I don't want anyone to be concerned. You don't have to leave the building or anything like that, but the fire alarm will go off. It's part of the hotel requirement to test their alarms to make sure we're all safe.

CHAIRPERSON STUDLEY: Thank you very much. I think that's helpful in case anybody steps out of the meeting, doesn't hear the announcement, but does hear the fire alarm.

With that we move to the next agency, the Transnational Association of Christian Colleges and

Schools. The acronym is TRACS. The primary readers are Dr. Zaragoza and Dr. French.

DR. ZARAGOZA: Madam Chair, the Transnational Association of Christian Colleges and Schools, TRACS, is an institutional accreditor. Its current scope of recognition is the accreditation and preaccreditation for candidate status of Christian postsecondary institutions that offer certificates, diplomas, and associate's, bachelor's and graduate's degrees, including institutions that offer distance learning or distance education.

TRACS accredits or preaccredits 54 institutions in 22 States. TRACS' accreditation provides a link to Title IV funding for 35 institutions and a link to Title III funding for three of its Historical Black Colleges and Universities, HBCU institutions.

TRACS received initial recognition in July 1991 and has maintained continued recognition since that time. The agency last appeared before NACIQI at the Committee's Spring 2011 meeting. At the

time, the Committee considered the agency's petition for renewal of recognition, continued the agency's current grant of recognition, and requested that the agency submit a compliance report on several issues identified in the staff report, and there were 17 in that criteria.

That compliance report is the subject of the current review. Staff identified the need to validate two policy actions to determine compliance on all required items.

Madam Chair, I will defer to staff for their report.

CHAIRPERSON STUDLEY: Thank you very much. Rachael.

DR. SHULTZ: Good morning. I am Rachael Shultz, and I will be presenting information regarding the report submitted by the Transnational Association of Christian Colleges and Schools, or TRACS.

As was noted in the staff analysis, in order to state that the agency had no remaining findings, we were awaiting confirmation of proposed

revisions to the agency's policies. These policy revisions were related to monitoring and the approval of substantive changes and were scheduled for discussion at the agency's May 31, 2013 Commission meeting.

This week the agency submitted the necessary documentation from last week's meeting showing that the proposed revisions had been accepted by the Commission. So as a result of our review of the agency's report and the material submitted following last week's meeting, we have found that TRACS is now in full compliance with all of the Criteria for Recognition.

Therefore, we are recommending to the Senior Department Official that TRACS' report be accepted and that its recognition be continued for a period of three years.

So by way of clarification, the reason that the agency was not on yesterday's Consent Agenda was that at the time of the final staff analysis, they had policy revisions that were out for comment but had not been officially accepted.

Their Commission met last Friday, accepted the revisions, as they had been presented to us; sent us the documentation related to that. On Monday we reviewed it, and at this point, there are no outstanding issues.

There are agency representatives present today, and we'll be happy to answer your questions. Thank you.

CHAIRPERSON STUDLEY: Thank you very much.

Would the agency representatives please come forward? Thank you. I invite you to introduce yourselves to the Committee. Thank you very much.

DR. KARANJA: Madam Chair and Advisory Committee, Dr. Shultz and Dr. Gilcher, before I continue I would like to introduce my colleagues. On my left is the Chair of TRACS, who is Dr. James Flanagan, and also the President of Luther Rice, which is a university which is in Atlanta, Georgia; Dr. Paul Boatner, who is the President of TRACS; and I am Benson Karanja, and I'm the Vice Chair of TRACS and the President of Beulah Heights

University, also based in Atlanta.

I want to take this opportunity to thank you and for your time and efforts to improve higher education in the United States. We at Transnational Association of Christian Colleges and Schools, TRACS, have found this reauthorization process to be valuable to our agency and to those institutions that we represent.

We have viewed the thorough analysis of our agency provided by this review of each area governing accreditation as an opportunity much like the accreditation process we use with our institutions to look at ways to improve ourselves and the universities we review.

We thank the DOE staff and particularly Dr. Shultz for the critical, yet instructive, method of evaluation and feel that our agency is better because of your direction. We know that the insights received will continue in the future.

Dr. Boatner, who is the President of TRACS, will give a brief discussion of the process which has gone on since we last appeared before

your Committee.

DR. BOATNER: Yes, good morning, and I would also like to add our thanks to you as an organization for taking time as volunteers to come and review institutions.

I just wanted to take just a few minutes to address the three--pardon me--the policies that were submitted most recently and had to be reviewed by our Commission and just make the statement that we had, in one case, we had to modify a policy at the direction of DOE. It had to do with the wording of how we reviewed substantive changes. And we made that correction.

The other two policies that we needed to carry forward, we had existing policies, but our feeling--on our own--we felt that it did not carry the detail that was necessary in policy. We had processes for addressing those two areas, but the policy was not as detailed as the process, and so what we submitted to the Department in our response to their draft report were the policies that we had already written before we got their draft response,

but our policy requires that they go through our Review Committee, which is a subcommittee of the Commission, that they be approved by the Commission to go out for public comment for a minimum of 30 days, and that they come back then before the Commission.

So the timeline for us to meet the deadline for DOE was during that period of time when we needed to have it out for public comment, but we did get it in to you immediately after their approval.

CHAIRPERSON STUDLEY: Thank you very much.

Are there any comments or questions from the Committee members? George.

DR. FRENCH: Madam Chair.

Thank you for being here. Two quick questions. TRACS accredits three HBCUs; correct?

DR. BOATNER: Yes.

DR. FRENCH: What would those be? Which institutions?

DR. BOATNER: Paul Quinn, Clinton College, and Shorter College. Clinton is in South Carolina.

DR. FRENCH: Shorter in Arkansas.

DR. BOATNER: Shorter is in Arkansas. And Paul Quinn is in Texas.

DR. FRENCH: What would be the definition of a Christian college?

DR. BOATNER: Basically there are tenets of faith that we present as a part of--it's our doctrinal statement, and then it's up to an institution makes a decision that they feel that they fall into that category, and so it's kind of a self-defining thing although when an institution applies, we do, in the discussions that we have with them, is to make certain that they feel comfortable with what is our definition.

DR. FRENCH: And finally, you're the gatekeeper for those institutions, those three institutions for Title III funds.

DR. BOATNER: Yes.

DR. FRENCH: What would preclude you from being the gatekeeper for Title IV funds?

DR. BOATNER: We are the gatekeeper for Title IV for all of our institutions.

DR. FRENCH: I thought I read in the--

DR. BOATNER: No, it was those three.

Those are the three that get Title III funds, but we are also a gatekeeper for Title IV funds for those institutions as well as all of our institutions.

DR. FRENCH: Let me make sure I'm understanding. Title III and Title IV, you're the gatekeeper for those HBCUs for both of those?

DR. BOATNER: Yes, yes, uh-huh, we are an institutional accreditor.

DR. FRENCH: Thank you.

CHAIRPERSON STUDLEY: And just to round that out, and the Title IV gatekeeper for about 35 total institutions?

DR. BOATNER: Yes.

CHAIRPERSON STUDLEY: Okay. Any other questions from the Committee? Thank you very much.

Would the staff like to add anything based on the comments that they made? Would the reviewers like to offer a motion?

DR. FRENCH: Madam Chair, I move that the

NACIQI recommend that the Transnational Association of Christian Colleges and Schools' recognition be renewed for three years.

DR. ZARAGOZA: Second.

[Motion made and seconded.]

CHAIRPERSON STUDLEY: Thank you.

Is there any discussion from the Committee on that motion? All in favor, please say aye.

[Chorus of ayes.]

CHAIRPERSON STUDLEY: Opposed?

[No response.]

CHAIRPERSON STUDLEY: Thank you very much.

We're going to continue through to the next agency at this point. Thank you very much, gentlemen. We appreciate your participation.

DR. KEISER: We're not scheduled for lunch?

CHAIRPERSON STUDLEY: That's correct. We're not scheduled for lunch. We thought that this agenda was a hard one to predict, and that I don't want to presume because I want the Committee to have all the time it wants to take with various

agencies, but we thought we would judge shortly whether we either want to take one break that's longer, add a lunch break, or go straight through and conclude our business.

There will be at least one break of a length to be determined. But we thought we'd watch our pace--and we'll try and do it when the fire drill is not going on, in part because we know some people are traveling, and we didn't want to lose participation.

DR. KEISER: There's a tropical storm coming.

CHAIRPERSON STUDLEY: That's another reason for people--

MR. ROTHKOPF: Only in Florida.

CHAIRPERSON STUDLEY: No, here. Here. There are very heavy rains predicted. So those of us who are the beneficiaries of Cam's umbrella distribution program might be very grateful. It's an inside joke.

Thank you very much.

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ACCREDITING COUNCIL OF CONTINUING
EDUCATION AND TRAINING [ACCET]

CHAIRPERSON STUDLEY: The next agency before us is the Accrediting Council for Continuing Education and Training, and the primary readers are Cam Staples and Bill Kirwan.

DR. KIRWAN: Brit.

CHAIRPERSON STUDLEY: I apologize. I looked at William. Brit Kirwan. I know the right answer. Which of you is going to present? Cam. Earn your per diem.

MR. STAPLES: Good morning. The Accrediting Council on Continuing Education and Training is a national institutional accreditor. It accredits institutions of higher education that provide continuing education and training programs. They have 229 accredited institutions. 81 vocational institutions are eligible to participate in Title IV programs. They classify 148 accredited institutions as vocational non-Title IV, or avocational.

It was originally recognized in 1974. In

December 2001, the scope was expanded to include the accreditation of institutions offering occupational associate degree programs, including those programs offered via distance education.

The last review was in December 2007. There was also a site visit in February of this year at Focus: HOPE's Information Technologies Center, in Detroit, Michigan, and this agency is a rare agency these days in that there were no issues or problems, and the staff has recommended five year renewal of their recognition.

At this time, I would ask the staff to come forward and make their report.

MR. STAPLES: Thank you very much, Cam.

DR. BOUNDS: Again, good morning, Madam Chair and Committee members.

For the record, my name is Herman Bounds, and I will be providing a brief summary of the staff recommendation for the Accrediting Council for Continuing Education and Training.

The staff recommendation to the Senior Department Official is to renew the agency's

recognition for a period of five years. The agency is in full compliance with the Criteria for Recognition.

Our recommendation is based on our review of the agency's petition, all supporting documentation, and the observation of a site visit.

This concludes my report. The agency representatives are here today and thank you.

CHAIRPERSON STUDLEY: Thank you very much.

Would the agency representatives please come forward? Oh, I'm sorry. I apologize. Are there any questions for Dr. Bounds? Committee members? Thank you. I apologize. Now, we invite the committee representatives. Thank you.

Thank you very much.

MR. WILLIAMS: Good morning, Madam Chair and members of the Committee. My name is Roger Williams. I am the Executive Director of ACCET, and I'm pleased to be here this morning with the staff report to you.

On either side of me, I have the past Chair of the Accrediting Commission David Wilson,

and our current Chair, Tibby Loveman, both of whom would like to provide a short introductory statement.

MS. LOVEMAN: I am Tibby Loveman. I am a public commissioner and the current Chair of the Commission. We thank you for your consideration of our petition, and we feel like we have wonderful processes and procedures in place to oversee our institutions, and we thank you for your consideration.

MR. WILSON: My name is David Wilson. I'm an institutional member and the past Chair of the Commission, and I will echo Tibby's comments and thank you all for your time and oversight and review of this process. It's very gratifying.

MR. WILLIAMS: I'd like to just begin with thanks to Dr. Bounds and to Dr. Gilcher.

In the course of preparing our petition, a number of issues did arise. The vast majority of them I think were fully satisfied initially. ACCET has embraced, I believe, this process and has from its very start. But in the course of its review of

the draft, we did have a few issues for which Kay and Herman were very helpful in providing us with a few ideas that we could look at and approach things differently, and in their case, they did as well. So it was very helpful to us.

This will be my sixth and final visit to the National Advisory Committee meetings. They haven't all been five-year approvals, but in the early days, which ACCET, and many agencies, for that matter, in the early '90s were in a bit of a dark cloud.

For those who remember the '92 HEA, and I'm sure there are people here, particularly in the traditional sector, that remember things like SPREs, that still make you shudder, and also outcomes being introduced as a very significant factor for the first time, and refunds and unannounced visits and a variety of issues, and I believe ACCET really embraced those, and I think one of the things that I find to be most proud about ACCET is I believe they have embraced the process in spirit, not just in terms of the letter

of the law.

And so when the '97 Amendments came out, we actually continued almost all of those things. We still do to this day unannounced visits to all of our schools. We have a pro rata refund policy. We believe that's fair to all students, regardless of how States set up their processes and practices. We have, I believe, really maintained our status as an agency that believes in and supports accreditation.

In looking back over 25 years, where I've been on the front row seat, very often wishing I were in the back row, looking on, personally it has been a great pleasure, and it is an honor to be here with you all today.

CHAIRPERSON STUDLEY: Are there any questions from the Committee for this agency? Federico, yes.

DR. ZARAGOZA: A quick one. I noticed that you're an ISO-9000 certified organization; is that correct?

MR. WILLIAMS: Yes.

DR. ZARAGOZA: And I'm just wondering with those type of processes, how has that helped you deal kind of with the benchmarking and the data collection side of the organization?

MR. WILLIAMS: Well, the policy was written back in 1988, by me, coming out of school, on the basis of my own experience, and it's a credit I think to the membership because it's a very rigorous process that they have accepted and supported all these years.

Sometimes we forget that accreditation is a voluntary process, and the members do have to be considered in terms of developing standards, policies and procedures, and I think it's a great compliment to the membership that they have supported high standards, particularly things like unannounced visits and the very rigorous review process for completion and placement rates.

Those take, I think, years to really develop properly. I would like to say that even now I believe we're still fine-tuning some of our policies and procedures, but I think we have it

down pretty well, and I'm quite confident that there are those who are perhaps in the early stages of that development, could well take our materials, and I think benefit from it.

CHAIRPERSON STUDLEY: Other questions?

Anne.

MS. NEAL: I don't have any questions. I must confess when I saw this application, I couldn't understand why it wasn't on the Consent Agenda, but having the opportunity to see you, Roger, and I guess your retiring gives me an opportunity to say thank you because I remember when I first came on this Committee, your proposal, I think, in 2007 or whenever it was, was one of the first I looked at, and I was really quite blown away by what I thought was an exceptional application and really very thoughtful standards.

And you talked today about rigorous application of completion and placement rates, and when I compare that to what I heard yesterday from some of the regionals where there is really no standard, it's just whatever seems right at the

time, I must confess to you that I appreciate what you've done and congratulations and enjoy your retirement.

MR. WILLIAMS: Well, thank you for those kind remarks. August 30th will be my passing on the baton.

CHAIRPERSON STUDLEY: Does anyone else have questions or comments? I have two brief ones. It may not be unprecedented, but I was interested that a public member is the Chair of the Board of your Commission. I just wonder if you could tell us what your background is and your interest in accreditation in this field?

MS. LOVEMAN: Certainly. I did my first accreditation visit in 1992, yeah, '92. I've been doing accreditation visits for ACCET for 21 years. I also have done probably close to 400 visits for two other accreditors as well--national accreditors.

So I have quite a background in--

CHAIRPERSON STUDLEY: So you're in the sweepstakes with Art Keiser for most schools

visited.

[Laughter.]

MS. LOVEMAN: I don't know what number he has. I have been to Art's schools. I have been to some of Art's schools, in fact, yes. So my background is in nursing, nursing education primarily, but I have a number of years in the field of accreditation as a specialist.

CHAIRPERSON STUDLEY: I've been a little inconsistent about inviting agencies to comment on the questions, but in light both of the time of your presentation here and, Mr. Williams, your retirement, the questions have been significant issues your agency has faced since the last review, the thorniest challenges related to the Criteria for Recognition, and is there anything that your agency does that you think might be a model of interest to us or others?

Art?

DR. KEISER: Shouldn't we vote before he speaks because we may have questions that might ruin his day.

CHAIRPERSON STUDLEY: Absolutely.

[Laughter.]

MR. WILLIAMS: Good point.

CHAIRPERSON STUDLEY: Good point. Thank you. See that's what happens with inconsistency. Is there a motion with regard to this agency? Cam?

MR. STAPLES: Thank you, Madam Chair.

I move that NACIQI recommend that the agency's recognition be renewed for an additional five years.

CHAIRPERSON STUDLEY: Second, please?
Art?

DR. KEISER: Second.

[Motion made and seconded.]

CHAIRPERSON STUDLEY: Thank you.

Any discussion on the motion? All in favor, please say aye.

[Chorus of ayes.]

CHAIRPERSON STUDLEY: Opposed?

[No response.]

CHAIRPERSON STUDLEY: The motion is passed. Thank you very much.

Is there anything you would like to say with regard to those? Any brief comments? Obviously not--

MR. WILLIAMS: Yes, Madam Chair.

CHAIRPERSON STUDLEY: --all of your wisdom over the years.

MR. WILLIAMS: And I will make them brief because I know you still have a full agenda ahead of you. I did not get the memo until just this morning, apparently overlooking it in my overloaded e-mail box. But having looked at it this morning, I think we have a couple of observations that might be of interest.

On the first one, and something somewhat unique to ACCET and perhaps one other agency, the CEA, relative to intensive English programs, which a law was passed effective December 13th of 2010 requiring all institutions that operate intensive English programs, thereby bringing in international students on I-20 visas, student visas, that they had to be accredited.

Unfortunately, no one bothered in the

Congress or anywhere else that we know of to ask the accrediting agency what was a reasonable period of time. And so on December 13th of 2013, the end of this year, any of those institutions that did not make application timely and are not accredited could well be in great danger of essentially losing their I-20 authorization, which would probably close many places.

The impact on ACCET, though, is that we have this year received probably, or the past two years rather, probably three times the number of applications we normally would receive. We have a very broad spectrum of vocational institutions, corporate training and a lot of IEPs, but we're literally almost overwhelmed and trying our best to keep up with it, but that has really been a burden that we're hoping that the Student Exchange Visitors Program will come out with some memorandum of understanding that will perhaps provide some relief on that to extend the timeframe a bit.

On the second issue, relative to the agency's one or two thorniest challenges relating

to the recognition criteria, I can't say that we have found any of them to be particularly thorny. There were a number where we would find some disagreement. There are times, of course, where accreditors, just like the schools we accredit, feel like they're being micromanaged a bit.

In this case, I suppose micro-regulated. Two issues did come up that I think that Kay and Herman were very helpful on relative to appeals, and another one that slips my mind momentarily, but two issues that left us somewhat wondering why. One of them has to do with avocational institutions having to meet any of the specific criteria, other than meeting all of the standards, policies and policies, of course, established by ACCET.

We have over 50 percent of our schools are not Title IV and are not IEPs, which we have now brought in the IEPs, by the way, as if they were required under the HEA. But why they would have to undergo, for instance, a change of ownership visit within six months following?

We've made an accommodation, and the

Department made an accommodation as well relative to a fairly sizable group of those Dale Carnegies. But the question still remains for us if it's really purposeful? We have a lot of very tiny continuing education providers of which a change of ownership visit is probably going to be visiting one person at a local school.

And the other, again, somewhat minor, I think in some people's mind, but the constituency of public and institutional members, for ACCET, while one in seven is required on the Commission, we have five of 11, and yet we have to treat a public member exclusively as a public member. We can't have a dual representation there, i.e., an academic public member satisfying the academic requirement, which is somewhat problematic for us.

It's always difficult, frankly, to find good people on the public side. We don't pay them anything. They work hard, and so for our perspective, it would have been helpful, but I know a fruitful discussion took place, and at the end of it, we have what we have, and we've adapted to it.

But of all of the issues that come before us relative to criteria, I suppose those are relatively minor in the big picture, and we certainly appreciate the hard work that Herman and Kay both put into the conversations.

And the last issue on those things that we do exceptionally well, I think the outcomes focus from the very start has been a guiding light for ACCET. I took it over under a dark cloud, almost immediately going before the Nunn Committee for Permanent Investigations in the Senate to explain why, and so many other schools were doing such a bad job, or why the accrediting agencies were, and rightfully so, frankly.

I didn't build it. I did inherit it, but it was mine to try and guide from that point forward, and that guidance I think by virtue of constantly keeping your eye on outcomes. Student benefit ultimately is what every agency should be ultimately about.

And I think specifically if we kept in mind more carefully or more closely the fact that

the student is the ultimate customer of everything that we do here, and their best interests when resolved and when taken care of is the best thing that we could hope for.

And the final issue is that I think that our commissions and our membership and our staff, for that matter, have really been made up of very, very capable and very dedicated people, and this is over an extraordinary period of time.

Extraordinary, I suppose, because I somehow managed to survive 23 years of that, and it is a great credit to them, particularly the membership, I believe, for being supportive of very rigorous processes, even when they don't like them, and I often hear what they don't like.

But having said that, they have supported it sufficiently to allow us to do the kind of work that we've done, and I think we can all be very proud of. Thank you very much.

CHAIRPERSON STUDLEY: Arthur.

MR. ROTHKOPF: Yeah. I'd be interested in your perspective on an issue that we hear a good

deal about from accrediting agencies, and that's I'd be interested to know your take on whether you think that the Federal government has too heavy a hand, is micromanaging your activities and those of the other accrediting bodies, or have they got it right? Have they got it wrong?

MR. WILLIAMS: Well, that's an interesting question, of course. There is no question that compared to 20 years ago that there is far more micro-regulation that is in front of us. One of the things that you can't help but to feel is that we're being used increasingly as a proxy for what the Federal government would like to do, and, on the one hand, I understand it and respect it because there's billions of dollars flowing as a consequence of what we do or don't do, unfortunately, and so therefore to allow us to be a gateway is understandable.

But I don't think it's as balanced as it should be sometimes, and I do think that some better discussion--I think one of the things that benefited greatly for us in conversations with Kay

is something that often is missed in dialogue, and that I think we both listened to each other, which was quite refreshing. Sometimes people get the speaking part, but they forget about the listening part, and I think that would go a long ways when the next HEA comes up, and certainly when the negotiated rulemaking comes up because to the extent we use accrediting agencies as pawns, I don't think it really serves the national interest.

To the extent that I think it's used as a true measure of the quality, that is important for us for education purposes, I think we will go a long way to making it better for both sides, both the accrediting side and for the Federal government side.

MR. ROTHKOPF: Thank you. That's very helpful.

CHAIRPERSON STUDLEY: Anyone else? Thank you very much.

Do staff have any--we appreciate your being here. Thank you. Do staff have any comment at this time that you want to add? In that case,

is there a motion with regard--

DR. KEISER: We already voted.

CHAIRPERSON STUDLEY: I'm sorry. Good morning. Okay. That was your finale. Thank you very much.

After putting my head together with Carol, we're going to do one more agency now before we break.

DR. FRENCH: Question?

CHAIRPERSON STUDLEY: George. Yes.

DR. FRENCH: This is just for my knowledge. I just don't know the answer. How do we determine how many years these agencies--like this one received five. The last one received three. How do we make that determination?

MS. GILCHER: The statute provides for a five-year renewal of recognition so we are supposed to review every five years. The lesser periods are the five years less the amount of time that they have been under the compliance report. In some cases, agencies come back a little faster than the 12-month.

DR. FRENCH: Thank you.

CHAIRPERSON STUDLEY: Okay.

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ACCREDITING COUNCIL ON OPTOMETRIC
EDUCATION [ACOE]

CHAIRPERSON STUDLEY: We're going to move to the next agency, which is the Accreditation Council on Optometric Education. The primary readers are Cam Staples and Rick O'Donnell. Thank you. Cam.

MR. STAPLES: Thank you, Madam Chair.

The American Optometric Association, Accreditation Council on Optometric Education, accredits professional optometric degree programs, optometric technician associate degree programs, and optometric residency programs.

They currently accredit 17 professional optometric degree programs, five optometric technician programs, and 178 optometric residency programs. In addition, the agency preaccredits four professional optometric and two optometric residency programs.

The ACOE is a programmatic accreditor and consequently is not required to meet the Secretary's separate and independent requirements.

They were first recognized by the U.S. Commissioner of Education in 1952 and came before NACIQI in December 2007 for its latest review and approval.

After the review by the staff, there are still seven compliance issues remaining, and I would now ask the staff to step forward and to give his report.

MR. PORCELLI: Thank you.

Good morning. I am Steve Porcelli of the Department's Accreditation Staff. The staff recommendation to the Senior Department Official regarding the Accreditation Council on Optometric Education, or ACOE, is to continue the agency's current recognition and require the agency to come into compliance within 12 months and submit a compliance report that demonstrates the agency's compliance with the issues identified in the staff report.

The staff recommendation is based on our review of the agency's petition, supporting documentation, and observation of an ACOE decision-

making meeting.

Our review of the agency's petition found that ACOE is substantially in compliance with the Criteria for Recognition. However, there are a few issues that the agency needs to address.

In summary, ACOE needs to examine its policies and/or practices to ensure that its site teams have both educators and practitioners, and that those individuals are consistently identified;

That ACOE clarify how it evaluates institutionally established student achievement benchmarks against the agency's own benchmarks, and to clearly establish the authority of the agency's benchmarks for professional programs;

That student complaints received directly by ACOE are made available to the on-site visiting team;

That the ACOE preaccreditation standards are appropriately related to the agency's accreditation standards, and that preaccreditation is clearly limited to five years total;

That clear guidance is provided regarding

the significant changes that must be reported and reviewed by the agency's Council;

That any extensions for good cause are limited;

And last, that the appeal panel instructions support the panel's authority to reverse an ACOE decision.

Therefore, as stated earlier, we are recommending that the Senior Department Official continue the agency's current recognition and require the agency to come into compliance within 12 months, and submit a compliance report that demonstrates the agency's compliance with the issues identified in the staff report.

And there are representatives of the agency here today, and I am happy to answer your questions. Thank you.

CHAIRPERSON STUDLEY: Thank you very much.

Are there any questions for Steve at this time? Thank you.

Let's hear from the agency representatives. Would you please come forward and

introduce yourselves?

DR. CAMPBELL: Madam Chair, members of the Committee, good morning. I'm Dr. Bart Campbell, the current Chair of the Accreditation Council on Optometric Education. I'm completing my second year as Chair, and I have actively served the ACOE as a committee member and evaluation team member for many years. I'm also a Professor and Chair of the Department of Optometric Education at Southern College of Optometry, in Memphis, Tennessee.

My colleague will introduce herself.

MS. URBECK: I'm Joyce Urbeck, the Administrative Director of the ACOE. For the last 25 years, I've been the Chief Staff Executive of the Council and am based in the St. Louis office.

DR. CAMPBELL: We welcome this opportunity to appear before the Committee today to represent the Council on the renewal of this important recognition for the ACOE.

The ACOE accredits, as you have heard, professional optometric degree programs, which are doctoral level; optometric residency programs,

which are one-year postdoctoral clinical programs; and optometric technician programs, which are typically one or two years in length.

We appreciate the observations of Mr. Porcelli, and we thank him for his assistance during the petition process. The ACOE will be holding our next meeting in about three weeks, and each of the concerns in the USDE staff report has been placed on the ACOE agenda for discussion.

We will also at that time be meeting with representatives from other optometric organizations, including the deans and presidents of the schools and colleges of optometry, so we will brief on the matters at hand and make them aware that they will be receiving some proposed language to address the concerns, which will give them the opportunity to comment prior to the adoption of any changes.

We are confident that we will be able to resolve all of the remaining issues in the timeframe the staff is recommending.

At this point, we'd be happy to answer any

questions that the Committee might have.

CHAIRPERSON STUDLEY: Thank you very much.

Do Committee members have any questions for this agency? Cam and then Rick.

MR. STAPLES: Thank you, Madam Chair.

I have a question about the student achievement expectations for your professional optometric programs, and you, I'm sure, remember that you were cited in the report for that by the staff. Some concerns were raised about how you evaluate the institutionally-based benchmarks and about the decision-making process in implementing those standards, whether that's done with input from the constituencies of your agency or whether it was done in sort of an internal mechanism without any outside input, and how that process seems to conflict, or contrast anyway, with the way you handle achievement measures for your other programs.

So if you could respond to that and if you plan on addressing that, how you intend to address it, I would appreciate it.

DR. CAMPBELL: Yes, absolutely. Actually, this area has been the topic of many discussions by the ACOE, including our Professional Optometric Degree Committee, and interchanges we've had with the schools and colleges of optometry. As I mentioned, we'll be meeting with the Association of Schools and Colleges of Optometry later this month at our next meeting.

What our Executive Committee plans to do is propose to the full ACOE that the Council's policy--that it will conduct a full evaluation review of any professional optometric degree program that achieves less than 70 percent passage rate for two consecutive years or which experiences a 20 percent drop in its ultimate passage rate, which is what you're referring to about the conference call--be published in our accreditation manual. And, obviously, any changes of that sort will be distributed to the community of interest, as well as shared with the USDE for feedback prior to its final implementation.

We also plan to better document in our

reports and in our annual report review process for the evaluation of institutionally-established student achievement benchmarks against the benchmarks established by the ACOE in our Monitoring Protocols for Professional Optometric Degree Programs.

Out Standard 1.3 in our Professional Optometric Program Standards requires the programs to identify and use outcomes measures to evaluate the program's effectiveness by documenting the extent to which its goals and objectives have been met.

Our site evaluation teams do evaluate this during site visits, and if there are any disparities noted between that and the program's missions, goals and objectives and established outcomes in the ACOE's benchmarks for NBEO scores-- that's National Board of Examiners in Optometry-- the programs are required to address those shortcomings.

MR. STAPLES: Thank you very much.

CHAIRPERSON STUDLEY: Rick.

MR. O'DONNELL: Good morning. There was quite a bit in the staff report around the difference between an educator and a practitioner and the need for you to clarify that and consistently apply standards, which I think makes sense, but my question is how difficult is it to find an education member or a site visitor versus a practitioner? Because my sense is most medical educators are also great practitioners, and that it's hard. So I'm just curious because Roger Williams before you in the previous session talked about the difficulty in finding a public member.

So I'm really asking is this standard that we're asking you to apply a difficult standard to meet because there really aren't--educators and practitioners are one in your field?

DR. CAMPBELL: Well, that's an excellent observation, and you're exactly right. I mean ACOE classifies me as an educator because my primary employment is an educator. But I'm also a clinician. There is no such thing as an optometrist who is not trained as a clinician, and

in fact a large part of my education is teaching in the clinical setting.

So the way we've approached it is the person's primary activity, and so if we have someone who is a private practitioner as their primary activity, you know, they have a practice, that's where they spend most of their time, that's essentially what we use.

To specifically address your question, it's not especially difficult when you look at it in the way I've just described. If you tried to look at it in terms of, well, we need to find an optometrist who is a solely an educator, that is, that would be very difficult to do, but as long as we have clear definitions, which we do intend to address that concern raised by the staff and make sure that we have very clear definitions, it shouldn't be something that we're unable to do. We think we'll be able to meet that.

MR. O'DONNELL: Great. Thank you.

CHAIRPERSON STUDLEY: Any other questions?

Motion?

MR. STAPLES: Yes, thank you, Madam Chair.

I move that NACIQI recommend that the agency recognition be continued to permit the agency an opportunity to within a 12-month period bring itself into compliance with the criteria cited in the staff report and submit for review within 30 days thereafter a compliance report demonstrating compliance with the cited criteria and their effective application.

Such continuation shall be effective until the Department reaches a final decision.

MR. O'DONNELL: Second.

[Motion made and seconded.]

CHAIRPERSON STUDLEY: Thank you.

Any discussion among the Committee members? All in favor, please say aye.

[Chorus of ayes.]

CHAIRPERSON STUDLEY: Opposed?

[No response.]

CHAIRPERSON STUDLEY: Would you like to add anything at this time on the questions that we invite but do not require you to comment on--

thorniest challenges; suggestions? You have the option of submitting those in writing or passing all together.

DR. CAMPBELL: Actually, Madam Chair, we would defer that at this time. We do appreciate the opportunity, but really we have found this process educational and enlightening, and we appreciate the efforts of the Committee and the staff.

CHAIRPERSON STUDLEY: Thank you very much.

With that, we will take a 15-minute break starting now, and let me remind you that the fire drill signals will go off during this break, but you just need to understand that it's only a test, a test of the system, and you need not evacuate the building.

We will reconvene at a quarter past.
Thank you.

[Whereupon, a short break was taken.]

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COUNCIL ON OCCUPATIONAL EDUCATION [COE]

CHAIRPERSON STUDLEY: We're missing a Commissioner, but I think we can resume. Yes, the next agency before us is the Council on Occupational Education, and the readers are Art Keiser and Cam Staples. Whose turn is it? Art. Thank you.

DR. KEISER: The Council on Occupational Education is a national institutional accreditor. Its current scope of recognition is for the accreditation and preaccreditation throughout the United States of postsecondary occupational educational institutions offering non-degree and applied associate degree programs in specific career and technical education fields including institutions that offer programs via distance learning.

COE was originally established in 1968 as a Commission of the Southern Association of Colleges and Schools.

COE currently accredits 389 institutions and 50 candidate institutions in 31 States, the

District of Columbia, and Puerto Rico.

COE's accreditation enables the institution it accredits to establish eligibility to participate in Title IV programs; thus, it must meet the Secretary's separate and independent requirements.

The last full review of the agency was conducted in June 2011, a Committee hearing with us, and the Department staff and Committee both recommended, and the Secretary concurred, that the agency's recognition be continued; that it submit a compliance report addressing the issues identified in the staff analysis.

This analysis is a review of the compliance report which demonstrates no outstanding issues.

CHAIRPERSON STUDLEY: Thank you very much, Art.

Herman.

DR. BOUNDS: Again, good morning, Madam Chair and Committee members. Again, for the record, my name is Herman Bounds, and I will be

providing a brief summary of the compliance report for the Council on Occupational Education, or COE.

The staff recommendation to the Senior Department Official is to renew the agency's recognition for a period of three years. This recommendation is based on our review of COE's compliance report and supporting documentation. COE has addressed each of the compliance issues.

There was one third-party written comment received in conjunction with the Council on Occupational Education's compliance report. I will provide a brief summary of the analysis of the third-party comments.

The commenter discusses an issue regarding COE's accreditation of the school named in the report. The commenter maintains that COE's grant of accreditation for this school included distance education for its construction trades program. The commenter maintains that when questioned by the Department of Education in 2005, COE informed the Department that its grant of accreditation for the school did not include distance education.

The commenter maintains that this action by COE led to the closing of the school as students enrolled in the construction trades program were no longer eligible to receive Federal student aid.

As stated in the analysis of the written comments, the staff concluded its own thorough investigation of this matter prior to the litigation and concluded that COE had not approved the offering of distance education by the school in question.

In 2007, Department staff and the NACIQI recommended COE's recognition be renewed. Again, in 2011, both Department staff and the NACIQI recommended that COE's recognition be continued and required the agency to come into compliance within 12 months and submit a compliance report demonstrating the agency's compliance.

As I stated previously, the agency has addressed each of the compliance issues. The commenter's submission has not changed the staff's current recommendation to the Senior Department Official. Therefore, as I stated earlier, our

recommendation to the Senior Department Official is to renew the agency's recognition for a period of three years.

Thank you. This concludes my report and agency officials are here today.

CHAIRPERSON STUDLEY: Thank you very much.

Do we have any questions for Dr. Bounds at this point? Thank you.

I'd like to call the agency representatives forward at this time. Let me say I need to step out. Please come forward. I need to step out very briefly, and the Vice Chair, Arthur Rothkopf, will chair the meeting during my brief absence. Take your time. Don't rush.

For those of you who did not hear a fire drill signal, your hearing is not in danger. The fire drill was canceled. Better to be warned than otherwise.

Thank you very much, and Arthur, would you like to take over? Thank you.

MR. ROTHKOPF: Yes. Would you please identify yourselves and proceed with any comments

you may have on the staff's report.

MR. GARRETT: Good morning. My name is Greg Garrett. I'm the Commission Chair. I'd like to introduce the table. To my far left is Cindy Sheldon, the COE Associate Executive Director. Next to her is Al Salazar, who is the Vice Chair of the Commission. To my far right is Ken Ingram who is the General Counsel for COE. Next to him is Derin Dickerson, who is the Special Counsel for COE; and then to my right is Dr. Gary Puckett who will make comments to the board.

Thank you.

DR. PUCKETT: Thank you, Mr. Chair, and Committee, and other staff members.

My comments will be initially short, but we want to thank you for the opportunity to appear, and most of my comments have to do with thank-yous. We started out with Jennifer as our staff analyst, and she discovered several issues and helped us through that stage, and we improved greatly from that, and then Herman then was assigned the work, and we cleared up the final issues with him, and

then I've talked to Kay two or three different times, and I talked to Carol about our scheduling, and I'm just saying all that to say that I was really pleased with the staff support and customer service, if you will.

Every e-mail, every call, every discussion was helpful and moved us another step forward, and finally I'd like to thank the individuals in the NACIQI group. We know how hard it is to read and analyze and understand what is submitted from different agencies and schools. So we thank you for that, and I appreciate the staff findings, especially on the third-party comment.

I hope you had a chance to read that very last page, and at this point, we thank you and we think we're a better agency for the process.

MR. ROTHKOPF: Just to make it clear, you're in agreement with all of the recommendations that have been made, and there is no space, if you will, between you and the Department at this point?

DR. PUCKETT: No. Some of it was, I thought of it like tough love. One or two I didn't

appreciate, but after looking back, it's what we needed.

MR. ROTHKOPF: Comments? Any questions or comments? Art, do you have anything?

DR. KEISER: No.

MR. ROTHKOPF: Cam?

MR. STAPLES: No.

MR. ROTHKOPF: Now before we go to a motion, I got a note that Mr. Keats, who had requested the ability to appear, is not going to appear. Anne, you have a point?

MS. NEAL: Yes. I have just one question. I see here that a third-party comment--you were advised the third-party comments should be solicited by all institutions, not those just participating in Federal student aid programs, which suggests to me that the staff is suggesting requirements on you, notwithstanding they don't fall within Title IV.

What is your thinking in this regard?

DR. PUCKETT: You know, generally speaking, I agree with that because if you accredit

institutions that are not Title IV, the same courtesy and rigor should be applied to the institutions that are accepting students no matter how it's paid for. So I would agree with that.

MS. NEAL: But is that your judgment or is that the Department of Education's judgment?

DR. PUCKETT: No, I agree with that.

MR. ROTHKOPF: I've been told that Mr. Keats, who had requested the opportunity to appear, is not here. And is there anyone else who might? There's an indication that Mr. Keats could not make it, but that Michael Goldstein of the law firm of Dow Lohnes might appear. Is Michael Goldstein here?

MR. THOMPSON: I think he's on his way.

MR. ROTHKOPF: Can't hear what's being said back there.

MR. THOMPSON: I believe he's on his way.

MR. ROTHKOPF: Well, I don't know that we can wait. The process is moving forward. It's been on the agenda, and if Mr. Goldstein is not here, I don't know that we can hold the process

open. Anyone on the Committee feel otherwise?

MR. THOMPSON: I think he did expect--

MS. GILCHER: Please come to a microphone.

MR. ROTHKOPF: Sir, could you come up to a microphone, please.

DR. VANDERHOEF: While he's working his way forward, he's on the agenda for 12:30, and it's only 11:30 right now.

MR. THOMPSON: I just wanted to explain. I think--

MR. ROTHKOPF: Can you go to a microphone, please?

MR. THOMPSON: I'm sorry. I'm Paul Thompson. I'm an associate at Dow Lohnes. I think that the miscommunication is, or why he's not here is he was expecting this to take place at 12:30. So he's on his way. I alerted him that you guys were ahead of schedule, but he is on his way.

MR. ROTHKOPF: Any thoughts from Committee members as to whether we hold this up for that or not?

DR. KIRWAN: Well, I think we are

obligated to hold it up. Maybe we could move on to the final item on our agenda and come back to this when he arrives, just as a suggestion.

MR. ROTHKOPF: Okay. Any other thoughts of Committee members? Cam.

MR. STAPLES: I think holding it until we do the next item would be fine. I think, though, if we then only have this item left, that we ought to proceed and finish our business.

I think agencies are on notice that we might proceed out of sequence so I think as a courtesy, I wouldn't personally mind if we went to the next and came back, but then I wouldn't wait any longer than that.

MR. ROTHKOPF: Yes, Art.

DR. KEISER: What is the process because I would have a problem potentially because I have a flight, and I had notified because with the storm coming, I need to get out of here. I have a graduation tonight in Lakeland. So as the primary reader, it puts me in a tough position. So I don't know.

Normally we just, the agenda is fluid. We're not necessarily bound--because yesterday we discussed that, and it was based on the day, not necessarily on the particular issue.

MR. ROTHKOPF: Let me ask you, Sally, is there any requirement here that we wait? I know in my own experience, we have moved processes. We have moved people along.

MS. WANNER: There is no requirement. It's up to the Committee. I do think that it puts you at a certain disadvantage if you allow your schedule to be dictated by a third-party commenter. There is, you know, we've never said that, guaranteed that agencies were going to be heard at the precise time on the agenda. We can't.

DR. FRENCH: Mr. Chairman.

MR. ROTHKOPF: Yes.

DR. FRENCH: I would concur with Cam that considering it's the last--we only have one more item on the agenda. All things being equal, we should end at the same time we if we just switch the two.

MR. ROTHKOPF: I think I'll rule this way, that if you excuse yourselves, we'll go to the next item, and whenever that concludes, if Mr. Goldstein is here, fine. If he's not here, we will move to a motion on this item. So we'll put this in abeyance.

MS. GRIFFITHS: We have a quorum.

DR. KEISER: Eight is not a quorum; is it?

MS. GRIFFITHS: Yes, we do have a quorum.

Ten is a quorum. We do.

MR. ROTHKOPF: We do have a quorum.

MS. GRIFFITHS: We do.

MR. ROTHKOPF: We do have a quorum. So why don't we move on--if you will excuse yourselves, then we'll move on to the next group.

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COMMISSION ON ACCREDITING OF THE
ASSOCIATION OF THEOLOGICAL SCHOOLS [ATSUSC]

MR. ROTHKOPF: The next group is the Commission on Accrediting of the Association of Theological Schools, and the primary readers are Larry Vanderhoef and Anne Neal. Department staff is Chuck Mula. So who is going to be the primary one? Is it you, Larry, or Anne?

DR. VANDERHOEF: Go ahead, Anne.

MS. NEAL: The U.S. Commissioner of Education first granted recognition to the Commission on Accrediting of the Association of Theological Schools in the United States and Canada as a nationally-recognized institutional accrediting agency in 1952.

At its June 2004 meeting, NACIQI recommended, and the Secretary concurred, that it be granted continued recognition.

In June 2011, NACIQI reviewed the agency's petition for renewal. It recommended, and the Senior Department Official concurred, that the agency's recognition be continued for 12 months,

and that the agency submit a compliance report. The agency's compliance report has been submitted, and the staff has concluded that there are no issues or problems.

MR. ROTHKOPF: Chuck.

MR. MULA: Good afternoon, Mr. Chair and members of the Committee. For the record, my name is Chuck Mula, and I will be presenting a brief summary of the analysis of the compliance report for the Accrediting Commission of the Association of Theological Schools, which I will refer to as ATS, or the agency.

The staff recommendation to the Senior Department Official for the ATS is to accept the report, revise the agency's scope of recognition to remove preaccreditation, and renew the agency's recognition for a period of three years.

In June 2011, the NACIQI reviewed the agency's petition for renewal of recognition. The NACIQI and the staff recommended, and the Senior Department Official concurred, that the agency recognition be continued for 12 months and have the

agency submit a compliance report that demonstrates the agency's compliance with the issues identified in the staff report.

The agency's compliance report is the subject of this review. This recommendation is based on my review of the agency's compliance report and supporting documentation, along with meeting with agency representatives. My review of the agency's compliance report found that the agency had addressed the NACIQI's and the Department's concerns satisfactorily, and the Department has no further issues with the agency.

As I mentioned, the staff recommendation to the Senior Department Official for ATS is to accept the report, revise the agency's scope of recognition to remove preaccreditation, and renew the agency's recognition for a period of three years.

Thank you, Mr. Chair. That concludes my report. Representatives of the agency are here, and I am willing to answer any questions you may have.

MR. ROTHKOPF: I would want to note that the staff report indicates there are no third-party comments, but someone has signed up to give a third-party comment. It's Carol Nye-Wilson, and that will take place in regular order.

Any Committee members have questions or comments for Chuck? If not, thank you, Chuck.

And I'd ask the representatives of the agency to please come forward and identify yourselves.

MR. MILLER: Thank you, Mr. Chairman.

I'm William Miller. I'm a Senior Accreditation Officer with the Association of Theological Schools Commission on Accrediting. With me today is Dr. Tom Tanner, who is one of my colleagues on the staff in the area of accrediting.

I wish to thank the Committee for its careful attention to our compliance report and to the Criteria for Recognition. I wish also to thank Steve Porcelli and Chuck Mula on the staff for their assistance and support and guidance as we've moved through this process.

Concurrent with the process for re-recognition, the Commission has undergone a review for recognition by CHEA and also has engaged in a complete review of our standards of accreditation, procedures and policies. So it's been a busy three years for us. So we're looking forward to a little bit of a respite before renewing our endeavors with the re-recognition process.

We have found the process to be particularly helpful to us. There was a slight change in the last cycle of re-recognition. Previously, we had been viewed solely as an institutional accreditor, and for this round, we're both an institutional accreditor and a programmatic special accreditor, which has required some adjustments in our policies and procedures, and there have been several other changes that were brought about by changes in the statute.

We have also strengthened our ability to provide the type of evidence that the Department wishes to receive to demonstrate our compliance. So all of those are very positive results of this

process and should and has strengthened our ability to serve both our institutions, their students and their varied publics.

So at this time, in light of the time, I'll keep this short, and I'm willing to take any questions you wish to pose.

MR. ROTHKOPF: Questions or comments from Committee members? Anne.

MS. NEAL: Am I correct in understanding that you've implemented an expedited process within the system--the comprehensive--the Evaluative Guideline for Special Comprehensive Evaluations? Or is that not an expedited?

MR. MILLER: It's not expedited to grant the accreditation, but in looking at the criteria and the ability of the agency to review a member institution that's in crisis, what we have done is rather than require the school to do a self-study process before we do the on-site visit, we've eliminated any need for a self-study because that would normally take 18 months to two years, and we wished to be able to move more quickly.

So we've adopted a procedure. The Commission members have adopted a procedure that would permit us, permit the Board of Commissioners to authorize a comprehensive review on an expedited timeframe.

MS. NEAL: I see. Thank you.

MR. ROTHKOPF: Any other questions or comments from Committee members? If not, thank you.

What I'm going to ask is that you go back to the audience, and I'll ask Carol Nye-Wilson to--

MR. MILLER: Thank you, Mr. Chairman.

MR. ROTHKOPF: --to come forward and make her comments. Welcome, and look forward to receiving your comments on this item, and I should note that the time for your comments is limited to five minutes.

MS. NYE-WILSON: I understand. I want to thank you for this opportunity. It's democratic. I have appreciated listening to what's going on.

My name is Carol Nye-Wilson. I'm a concerned citizen, a retired school teacher and a

mother of a student who attended a school, Western Seminary, who is accredited by ATS. There was an extensive lawsuit. We did depositions of Western Seminary's administrators who testified under oath ATS used unpublished policies to say that these programs that this school offered to my son were approved.

Randall Roberts was one of the people who testified. He is the president. The other person who testified was Rob Wiggins, the registrar. They both said the exceptions policy of ATS was unpublished. So when I read your NACIQI 20 citations of ATS and saw that one of the problems of noncompliance was unpublished policies, 602.18(b)(c), whichever, use of unpublished policies without giving dates of approval on letters, we experienced all of those things. Conflict of interest between the school and ATS. I feel victimized by a failed system.

My son's life hangs by threads because of this failed system. So after reading your report, I felt encouraged. I wrote to ATS and asked if

they had a policy for cause or good cause, and that started the communication going. That was at the end of April. It continued up through two weeks ago, and we advanced from cause to exceptions to reasonable exceptions, and I discovered in the conversation more unpublished policies were taking place.

Now, right after you cited ATS, I think three weeks, three months after, they did publish a policy for exceptions. It doesn't say reasonable exceptions, and it also doesn't say that that exception policy supersedes and exempts ATS of all of its other standards. What I observed ATS doing was using their unpublished exception policy to avert taking action against Western Seminary for violations of other ATS standards and policies.

I found 39 policies and standards that could have applied and do apply that were not applied because they got the blanket exceptions thing.

But I'm very pleased that the communication opened and that ATS communicated and

said "reasonable exceptions" now because I'm telling you the things that Western Seminary qualified under their term "exceptions" are not reasonable, and something needs to be done. They need to go back to the drawing board--we're educators--back to the drawing board, fix this, correct it, and I'm more than happy to volunteer to help them.

But the way it is right now, it has set a precedent. It is unlawful, violates the U.S. Constitution, violates Section 504 of the Rehabilitation Act, violates Title IV. I don't know if you know who Denise Miller is. She works in FAFSA, the FAFSA arm of the Department. I wrote her beginning in 2007. She said a statement cannot be caused to waive the right to complain to government. That's right there in Western's settlement agreement.

ATS said that's okay. ATS is not superior to the U.S. Constitution. Okay. They need to be reined in. There is not effective outcomes happening that follow quality education standards.

Okay. And my family is proof of it. What has happened to us is proof of it.

MR. ROTHKOPF: May I ask if you're not finished, maybe just take another 30 seconds to conclude, and then we'll open it up to any questions or comments that people may have on the panel.

MS. NYE-WILSON: All right. The settlement agreement, Rob Wiggins, the registrar, testified was the enrollment agreement for my son. You know and I know enrollment agreements are student services. Those come under FERPA regulations. It's a student record. Okay. So this student record that Western Seminary has for my son, they required me to sign it along with my son, and if I picket, if I complain to the government, they could withhold my son's benefits of his education.

That's the enrollment agreement. It also requires that we not complain or bring up all of the unlawfulness that has taken place. The settlement agreement in itself is retaliation. My

son was a whistleblower. He reported the school for having no Section 504 program. Okay.

So they were corrected on it, but they got us. They said you have to dismiss this enrollment agreement settlement agreement. It required us to dismiss all prior complaints to the government.

MR. ROTHKOPF: Let me ask if anyone on the Committee has comments or questions of Ms. Nye-Wilson?

MS. NYE-WILSON: May I say one last thing, pretty please? Here's the censure.

MR. ROTHKOPF: Well, we've got to conclude now. Your five minutes are up.

MS. NYE-WILSON: May I say one last thing?

MR. ROTHKOPF: I'm sorry. Okay. Are there any questions? Thank you very much.

I now ask the representatives of the agency to come up and give any response that they wish to give. You have a question?

DR. KEISER: Do we need to ask questions of her first?

MR. ROTHKOPF: I'm sorry. I can't hear

you.

DR. KEISER: Should we not have an opportunity to ask her questions first?

MR. ROTHKOPF: Yeah, I just wanted to know if you had any. Yeah, please. Any member of the Committee have a question or comment? Yeah.

DR. KEISER: Am I understanding there was a lawsuit, and the lawsuit has already been settled?

MS. NYE-WILSON: It was settled unlawfully based on ATS letters that were based on unpublished policies.

DR. KEISER: But there's been a settlement in the courts?

MS. NYE-WILSON: Yes, and we're going back. But ATS is the official. They're the authorities over accreditation.

DR. KEISER: So is there an active lawsuit occurring currently?

MS. NYE-WILSON: There are two that are open to be appealed, yes.

MR. ROTHKOPF: Any other questions or

comments from Committee members?

MS. WANNER: We understand that there is no current litigation between the agency and Ms. Nye-Wilson. If there were a matter of current litigation, we would not require or entertain any further discussion.

MR. ROTHKOPF: Thank you.

And let me ask if the representatives of the agency would come up to the table?

MS. NYE-WILSON: Do you want me to stay here?

MR. ROTHKOPF: No. One last comment, please, yeah.

MS. NYE-WILSON: Okay. All of these things that I've just told you are criteria content for two master's degrees. They're criteria--it's part of the objectives, the outcomes, the standards for those degrees. I see absolutely no way educationally, morally, ethically, or legally that that could stand.

And what I was going to say is the lady at FAFSA that I spoke with four days ago told me it

would--she said a program would not and could not be approved that is all of these things that you've just described.

MR. ROTHKOPF: Okay. Thank you.

Would the representatives come up?

MS. NYE-WILSON: Do you want me to leave?

MR. ROTHKOPF: We're finished. Thank you.

MS. NYE-WILSON: Thank you.

MR. ROTHKOPF: Thank you very much.

Let me just ask do you have anything to say in response to the comments just made?

MR. MILLER: Yes, just a brief comment, that all of the third-party commenters' allegations against the Commission on Accrediting have been vetted, aired, litigated and dealt with over a series of lawsuits and complaints covering a period of six to seven years.

These have included the Freedom of Information Act lawsuits against the Department of Education, a Federal Torts Claim Act lawsuit against the Department of Education and the Commission on Accrediting, complaints filed with

and against the Commission on Accrediting, lawsuits and arbitration against Western Seminary, and complaints to and about the Department of Education.

And all of these allegations have been raised and dealt with to the Department's satisfaction.

MR. ROTHKOPF: Any questions or comments from Committee members on this response? If not, thank you.

Maybe, Chuck, could you come up for a minute?

DR. FRENCH: I do have one question.

MR. ROTHKOPF: Oh, you have one. There's a question from Mr. French.

MR. MILLER: Yes, sir.

DR. FRENCH: You made reference really in the plural. How many lawsuits are we talking about?

MR. MILLER: Well, the agency has been subject, I believe, to two, the most recent being the Federal Tort.

DR. FRENCH: Two.

MR. MILLER: Two, yeah.

DR. FRENCH: Thank you.

MR. MILLER: And the Federal Tort one was dismissed last year.

MR. ROTHKOPF: Chuck, could you just come up and indicate whether you have or the Department has any comments on the third-party commenter and the points about the litigation?

MR. MULA: Mr. Chair, in the original complaint that we received from Mr. Chapel, we were asked to intervene with the agencies to make sure that they continued his complaint. We were concerned because his complaint was that the agencies were not handling his complaints because of lawsuits that were going on.

It was a Department's concern because we did not believe that because there's a civil lawsuit in process that the agencies would not have the ability under the criteria or the responsibility under the criteria to continue the complaint process.

We cited both parties that were in the complaint for not continuing the complaint process. They did pick up the challenge, revised their policies and did finish the complaint, reported to the Department on their complaint findings. We reviewed their complaint findings as far as their compliance with the Secretary's criteria which the Department has only the responsibility of ensuring that the agencies are in compliance with the Secretary's criteria.

We were not able to get involved in the civil lawsuit or the ability to arbitrate or intervene in the client's, Mr. Chapel's dealings with the institutions because our criteria does not allow us to do that.

Our criteria does not allow the agencies to do that. As far as our investigation was concerned, the agencies were in compliance with our criteria after they revised their policies, and we closed the initial investigation after that time.

MR. ROTHKOPF: Any questions or comments from Committee members of Chuck? If not, thank

you. Anne or Larry, do you wish to make a motion?

MS. NEAL: I move that the NACIQI recommend that the Commission on Accrediting of the Association of Theological Schools be renewed for three years, and that the agency's scope be revised to remove preaccreditation.

MR. ROTHKOPF: Is there a second?

DR. VANDERHOEF: Second.

[Motion made and seconded.]

MR. ROTHKOPF: Any discussion? If not, I will call for the vote. All in favor of the motion signify by saying aye.

[Chorus of ayes.]

MR. ROTHKOPF: Opposed?

[No response.]

MR. ROTHKOPF: Motion is adopted. Thank you very much.

CHAIRPERSON STUDLEY: Thank you very much, Arthur. I appreciate you handling that.

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COUNCIL ON OCCUPATIONAL EDUCATION [COE]

[continued]

CHAIRPERSON STUDLEY: I understand that we paused in the consideration of the previous agency, and we'll pick up. Could you advise me whether we should be calling the agency representatives, Carol, or are we ready for the third-party comment?

MS. GRIFFITHS: If the Committee had any further questions for the agency representatives, let us know.

CHAIRPERSON STUDLEY: Okay. We might, but let's hear the third-party comment at this time. Mr. Goldstein. You have no more than five minutes, please.

MR. GOLDSTEIN: Thank you.

Good afternoon. I apologize for not being here at the hour that this agency began its discussion. I was working off the agenda, and I was advised by my colleague who was here that you were moving more quickly, which I commend you for the swiftness of the organization.

I'm here representing the trustee in

bankruptcy of Decker College, that was formally an institution that was accredited by the COE, and Decker was forced into bankruptcy and forced into dissolution, specifically as a result of a declaration made by the COE that a major program that it was offering was not, in fact, within the scope of accreditation, at which point the Department of Education initiated an emergency action, withheld Federal funds, refused to provide the institution with several millions of dollars of Federal funds that were in process, and terminated its ability to secure the further Federal funds.

The amount that the trustee estimates is due from the Department of Education is in the tens of millions of dollars. The Department is seeking the return of several tens of millions of dollars that were disbursed with regard to this particular program.

The entire issue turns upon the question of whether or not the program was accredited, was within the scope of accreditation of the COE, and the trustee, whose obligation is to protect the

interests of the creditors of the institution, and those accreditors are the former students, the former faculty, the former employees, vendors, a dozen State tuition reimbursement funds.

The trustee's obligation is to identify sources of funds, a major source of which are Federal funds that are queued up and would be paid if this matter was resolved, and the other aspect is to protect the assets from the claim of the Department of Education for several tens of millions of dollars.

The Department of Education has agreed to stay the proceeding with regard to the funds that it claims are due the institution pending the outcome of judicial proceedings in Bankruptcy Court for the Western District of Kentucky, regarding whether or not the declaration of the COE was truthful. The trustee brought the action in bankruptcy court for a finding of fact, and that is whether or not the declaration made by the agency was truthful or whether it was untruthful?

The Federal bankruptcy judge after an

evidentiary trial at which witnesses under oath were examined found unambiguously that the COE was untruthful in its statements to the Department of Education. The COE, as was its right, appealed that decision to the United States District Court for the Western District of Kentucky, and the Federal judge hearing that appeal determined that the bankruptcy judge made a correct finding of fact.

He went a step further. He said that he had reviewed the record of the case, and that he concurred as a matter of fact that the agency was untruthful in its declaration to the United States Department of Education. The COE, as is its right, has appealed that decision to the United States Court of Appeals.

This matter is in litigation. It is in litigation with the Department of Education, and it is in litigation in Federal court. If, in fact, the Federal court sustains the finding of the bankruptcy court and the Federal District Court, that COE was untruthful, and the term "lied" was

used in the court proceedings, but I will just use the word "untruthful," to the Department of Education in informing it whether or not a major program is within the scope of accreditation, then this agency cannot be found to be a reliable, a reliable source for determining the quality and integrity of institutions because it will have been found to lack integrity.

Now there are "if's" there. This is pending litigation. The court may reverse the ruling, but until, until there is a determination as to whether or not this agency, as a matter of fact, was untruthful to the agency, that it is bound to provide accurate complete information, this Committee cannot recommend to the Secretary any action continuing the accreditation.

The trustee asks that this Committee defer action, awaiting a determination of the Federal judicial process, and at that time when there is a determination, the Committee will then have information available to it sufficient to make an informed finding.

Finally, the trustee was shocked at the staff report that basically said we, the staff, have done a thorough investigation, and we find no basis whatsoever for any concerns regarding the agency.

That is in the face of two Federal courts having found exactly the opposite after an evidentiary trial. The trustee is sufficiently shocked by that conduct that he has filed a formal complaint with the Inspector General of the United States Department of Education to look into the nature of the work performed by the staff in coming to a conclusion that is totally unwarranted by the facts and does not, in fact, even represent to this Committee that there is this pending action.

I understand I've gone a few moments over. I apologize to the Committee. I will be happy to answer any questions.

CHAIRPERSON STUDLEY: Thank you very much.

The NACIQI, as you understand in your comments, cannot comment on or take account of pending litigation. I do have a question for our

staff that I think might be helpful to all of us, and then I will ask if anyone has questions for the witness.

Under what conditions can NACIQI reopen an agency recognition, and let's be specific, if, for example, there were a final court determination that went to any of the criteria for agency approval, could you just walk us through what we can do--an explosion, you know, of some new information that goes to the merits of the approval basis?

MS. WANNER: At any time if an agency is recognized, at any time, if there comes information that the agency is out of compliance, the staff can initiate an action under 602.33, investigate it, get response from the agency, and if they're not satisfied with the response, bring it before NACIQI.

CHAIRPERSON STUDLEY: Okay. Do any members of the Committee have questions for Mr. Goldstein?

DR. KIRWAN: I do.

CHAIRPERSON STUDLEY: Brit.

DR. KIRWAN: I think I have the picture, but I just want to be sure that I have this accurately. The concern of your client is that the institution was under the impression it had been accredited to offer online education programs; is that correct?

MR. GOLDSTEIN: It was found, it fully understood that the programs were, in fact, included within the scope of accreditation. The programs were reviewed--

DR. KIRWAN: The online programs?

MR. GOLDSTEIN: The online programs--

DR. KIRWAN: Right.

MR. GOLDSTEIN: --were included within the scope of accreditation. It had undergone a review, which encompassed the online programs, and that was the finding of the Federal courts.

DR. KIRWAN: Okay. And so the issue is that students then got Federal financial aid to participate in those programs, and now the claim is that they weren't accredited, and so the

institution owes the Federal--is that what the issue is?

MR. GOLDSTEIN: Precisely.

DR. KIRWAN: Okay.

MR. GOLDSTEIN: That the institution, that the students were enrolled in an ineligible program.

DR. KIRWAN: I see. Okay.

MR. GOLDSTEIN: Because it was not within the scope of accreditation, and therefore all the Federal funds disbursed by virtue--

DR. KIRWAN: I understand.

MR. GOLDSTEIN: --of not being accredited were either cut off or have to be returned.

DR. KIRWAN: Okay.

MR. GOLDSTEIN: That is correct.

DR. KIRWAN: I understand. Thank you very much.

CHAIRPERSON STUDLEY: Just one moment. Carol has asked to add one more point to my previous question.

MS. GRIFFITHS: Right. To add on to what

Sally shared with you, under 602.33, it says procedures for review of agencies during the period of recognition. Department staff may review the compliance of a recognized agency with the Criteria for Recognition at any time--(1) at the request of the Advisory Committee.

So just be aware that you, too, may make that request of Department staff. You don't have to wait for Department staff to identify situations.

CHAIRPERSON STUDLEY: Anne.

MS. NEAL: Again, for a matter of clarification, so Department of Education is on the opposite of Decker; am I correct in understanding this?

MR. GOLDSTEIN: The Department of Education is seeking the repayment of funds, and the trustee is opposing that because those are funds of the estate. The Department of Education is seeking funds from the Department of Education that were withheld from Decker. That proceeding has been stayed by the consent of both parties,

Decker and the Department of Education, pending the outcome of the current proceeding to determine the truth or falsity of the action taken by COE.

MS. NEAL: Point of clarification. The trustee has recommended deferring the action awaiting determination. Is there anything that precludes us from doing that?

MS. GRIFFITHS: The NACIQI can come to whatever recommendation they choose, and deferral is one of many options.

CHAIRPERSON STUDLEY: And, remember, we will have the agency returning to us to ask questions about the consequences. Cam.

MR. STAPLES: Because the actions are stayed right now, and it's already in bankruptcy, what harm is there for the court or for the institution or for the students if this Committee were to continue the recognition awaiting notification about the final proceedings of the court, and at that time make a decision as to whether to revisit the recognition?

MR. GOLDSTEIN: Let me make clear that

because this matter is in litigation, and there is a dispute as to the facts, that we are not recommending that the agency's recognition be lifted at this point in time. This is a matter in litigation. It has not been finally determined.

We are asking that the approval be maintained in a pending status so that it is clear, the recommendation of this Committee, that upon such time as the court decides, and if the court decides in favor of COE, that it was truthful, then this matter goes away.

If the court decides that COE was untruthful, which then will open the proceeding at the Department of Education, then the Secretary should be advised, and at that point, he should take appropriate action.

MR. STAPLES: Can I follow up? I guess the question I would have for staff--I don't know--these appeals obviously take time, and there is potential of a further appeal after the Court of Appeals decision--what's the effect of deferring action as the accreditation is going to continue or

the recognition is going to continue sort of for an unlimited basis beyond any sort of five-year or other limitation until such time as we then revisit the recognition?

CHAIRPERSON STUDLEY: Kay, can you answer that question?

MS. GILCHER: No.

[Laughter.]

MS. GILCHER: It's a little bit complicated for me as to what the agency's status is under that deferral. I mean we have a means of continuing on the basis of outstanding compliance considerations.

Now, we, at this point, have no outstanding compliance considerations. But I'll defer to--I'll defer the deferral question to Sally.

MS. WANNER: I agree if there are no outstanding issues, and if the finding--if the Committee were to conclude in the future that the finding, whatever it is, of this court affects the Criteria for Recognition, that's in the future.

The judgment is not final now. So we don't have any determination whatsoever.

CHAIRPERSON STUDLEY: Thank you. Let's let Cam finish up, and then I've got Art Keiser, Arthur Rothkopf and Brit.

MR. STAPLES: Okay. And I'll stop. So it sounds to me, I guess the question I'm asking is not whether we can revisit it, but if we defer, as has been requested, it's not clear that the agency's recognition continues unabated during this deferral. If it were to go on to a year or two years or--I mean appeals could go on for quite a long time. So I'm concerned if we were to defer that, at some point the agency's recognition would lapse. And I guess that's what I'm asking.

CHAIRPERSON STUDLEY: I think I heard Sally to say something one step upstream from that, which is in the absence of compliance issues with the agency, do we have a basis for a deferral in the first place? Then your question, if we did, and if we chose to do that, what would be the consequence for their accreditation authority or

the accreditation of other institutions they have accredited? Am I understanding that correctly?

MS. WANNER: That was what I said.

CHAIRPERSON STUDLEY: Yeah. So it's two questions. So Art Keiser.

DR. KEISER: Yes. I am extraordinarily uncomfortable with this conversation for two reasons. One, most of these agencies are under some kind of lawsuit at one time or another, and in the middle of a lawsuit.

I mean there are things that are stated and things that are done that, you know, I don't think we need to get involved in that, especially on an issue that occurred close to eight, ten years ago, and which this agency has already gone through two re-recognitions since that time, and this is a specific incident, and I suggest strongly we let the courts do their thing and we do our thing, and we move on because, you know, in the world of law today, you can be accused of anything, and as long as the evidence is not there and the staff has done a thorough evaluation, which in reading the

material, I have seen that they did, I see no other but following the staff recommendation.

CHAIRPERSON STUDLEY: Arthur.

MR. ROTHKOPF: Yeah, I just want to go to the question of whether, and you have stressed the, quote, "untruthfulness of statements made by the agency," and yet the staff has found the submission contains no evidence of dishonesty.

And I guess my question really is, is this whole case about the truthfulness of what was said by the agency, or aren't there conceivably other issues that could end up deciding this litigation, or is it only about truthfulness?

MR. GOLDSTEIN: This particular matter that is before the court is a finding of fact. This is a bankruptcy proceeding. COE is not a defendant in the bankruptcy proceeding. This is not a proceeding against COE. It is a proceeding to determine the bankruptcy estate. It is a proceeding to determine whether the Federal government owes \$30 million to the estate of Decker, or whether Decker owes, the estate owes "x"

millions of dollars to the Department of Education.

A critical finding of fact, which involves COE, is whether COE was truthful when it told the Department of Education that this program was not within the scope of accreditation. There is a considerable mix of quite complex facts that go into that which I will say if correct, if the evidence that was introduced in court, examined by the Federal judges and determined, if that, in fact, is sustained, the agency did not, in fact, act with integrity.

Now, I recognize this is not today. This is something that happened some years ago, but it does go to the question of the integrity of the agency, and it is the trustee's--and, again, the trustee does not have a horse in the race of whether or not COE is reaffirmed. That has no bearing whatsoever on the bankruptcy proceeding.

I want to make that very, very clear. The trustee is an officer of the court. And the trustee feels that it is in the interests of the proper conduct of the affairs of the Department of

Education to bring this matter to the attention of this Committee as indicative of prior conduct on the part of the COE.

This is for the information of the Committee based upon what the trustee believes to have been seriously deficient conduct on the part of the COE at that point in time. There will be a determination in this case, and we guess within six months, and you're absolutely right, it could be six years.

We, the trustee, believes very strongly that the Committee should be aware of this information, and that is the basis for this presentation.

MR. ROTHKOPF: Well, I guess we're now aware of it.

CHAIRPERSON STUDLEY: I have Brit and then Anne.

DR. KIRWAN: I'll defer my question.

CHAIRPERSON STUDLEY: Anne.

MS. NEAL: My question gets back again to a determination of the integrity, which is

obviously critical to our determination, and am I correctly understanding you to say that the staff's determination that there is not a matter of integrity is not one on which we can rely because they are, in effect, a party in interest on the other side in this matter?

MR. GOLDSTEIN: If I understand the question, the trustee's concern and the trustee's concern regarding the staff report is that the staff report dismisses the judicial proceeding as irrelevant and as unsupported by fact, and the trustee cannot understand how the staff could have come to that conclusion based upon the findings of the Federal courts. At the very least, this Committee should have been made aware of the proceeding, of the nature of the proceeding, and of the findings of the court.

That is very disturbing to the trustee, and again the trustee as an officer of the court felt it important to bring this information before the Committee because, in fact, it was not brought before the Committee in the context of the staff

review.

CHAIRPERSON STUDLEY: Brit, do you want to ask your question now or have other--

DR. KIRWAN: I just--we had the explanation that there is no matter pending, and therefore continuation wouldn't be--a question in my mind. If in fact the courts decide that they had not been operating with integrity, surely integrity, I don't know what section it comes under, but the integrity of accrediting body is a criteria that we would be concerned about.

So I just, I don't know exactly how I feel on this matter yet. I got to think about it a little more, but just in terms of the pending issue, isn't there--couldn't you make a construct that says there is a criteria that is pending that has come to our attention at this session?

MS. GILCHER: Well, just from my point of view, I think that the procedures that allow for looking at an agency when new information comes to light--

DR. KIRWAN: Right.

MS. GILCHER: --during a period of recognition provide us, you, an opportunity to look at the integrity issue at that point.

DR. KIRWAN: Right.

MS. GILCHER: Right now, things are still in flux in the court so there has not been a determination that there is an integrity issue.

CHAIRPERSON STUDLEY: Cam.

MR. STAPLES: Can I just ask that we--I guess I would make the recommendation that we approve the continued recognition, and that we just make clear to our staff and perhaps to the DOE staff that they track this case, and at the time of its final resolution, that they make sure that NACIQI is informed of that resolution, and then we can choose at that time to take whatever steps we want to take?

CHAIRPERSON STUDLEY: George.

DR. FRENCH: Let me ask Sally, the statement that you just made, there has been no determination. In fact, have the lower courts-- it's at the appellate level now, but have the lower

courts made any determination that there was an integrity issue? And that may not be final at the United States Supreme Court, but haven't there been determinations already?

MS. WANNER: Number one, the court didn't decide a recognition issue. That wasn't what was before them.

DR. FRENCH: No, no, I didn't say recognition. I said integrity.

MS. WANNER: Right. And they didn't use the word "integrity" either. What they used was, was this particular statement that these programs were accredited truthful or not? And there is a District Court decision, and underneath that a Bankruptcy Court decision that it's not truthful, but it's on appeal, and we have no decision.

It would be unfair to the agency at this point to treat that as a resolved matter. It would be cutting off their legal rights.

DR. KIRWAN: One last--just as a matter of procedure, I do feel that the Committee should have been informed about the court decisions, and it was

not part of the, as far as I can tell, the written document. Maybe it was in some other part, but what I'm looking at doesn't reference the court decisions, just as a piece of information for the Committee.

MS. GILCHER: What we provided you was a copy of the third-party comment.

DR. KIRWAN: Right.

MS. GILCHER: Which is the information that we were given in the context of our review.

CHAIRPERSON STUDLEY: Art.

DR. KEISER: Just as the senior member, we dealt with this issue before. There were public comments before. There were discussions contemporaneously with the issue. That, in fact, I think a lot of the issues with distance learning and the separate recognition of distance learning came out of this problem.

So this Committee has dealt with this before and--

DR. KIRWAN: This particular issue?

DR. KEISER: This particular issue.

DR. KIRWAN: Thank you. That's helpful.

DR. FRENCH: Madam Chair.

CHAIRPERSON STUDLEY: George.

DR. FRENCH: To be sure, I was not suggesting that we impede upon the rights of the agency whatsoever. I didn't make a determination one way or another. I'm just concurring with Dr. Kirwan that I think the information would have been good to have, and that there have been determinations that there was some untruthfulness. They may not be final determinations at the appellate or United States Supreme Court level, but the bankruptcy and district court did.

So I think that's information that would just be helpful. But I think we need to also, I think we're debating something, to be honest with you, that the witness made very clear that they were not asking for us to withhold recognition at this point. They're not even asking us to do that at this point.

CHAIRPERSON STUDLEY: They have suggested deferral. And there has been--some of the

Committee's questions have gone to the question of whether that would be something we want to consider.

DR. FRENCH: But let me ask then--

CHAIRPERSON STUDLEY: Let me let you finish your--

DR. FRENCH: Right. Then I thought I heard you clearly say that you are not here asking for a deferral, that you just wanted to go on record that this action is pending?

MR. GOLDSTEIN: The trustee has recommended to the Committee that it defer action pending an outcome. The trustee would certainly be satisfied if it is made clear in the record that the Committee understands the potential gravity of the matter, and that the Committee directs the staff to follow the proceeding, and that when the proceeding reaches finality, and the finality in this particular case is whether or not the finding of fact of untruthfulness was or was not correct.

Mr. Keiser's comment about a lot of the distance learning rules, procedures coming out of

this is absolutely right. But that is separate, and the facts underlying this matter did not come to light until some period of time after, after the event.

Totally independent of that is the question of whether or not the agency acted with integrity, and all the trustee is asking this Committee is to take cognizance that there is a significant question now being adjudicated in Federal court, and at such time as that matter is adjudicated that the trustee believes it is absolutely essential that the Committee take cognizance of the matter and act accordingly.

CHAIRPERSON STUDLEY: Anne.

MS. NEAL: As a recovering attorney, I hesitate to ask this question, but have you any expectation of the time frame? I mean we've been guessing six months, six years. Realistically, is there a--

MR. GOLDSTEIN: My litigation partner who is handling this case expects that the Court of Appeals will act within six months. Part of this

is whether the court asks for oral argument. Briefs have been filed. If the court does not ask for oral argument, it may be sooner.

If the court does ask for oral argument, six months is considered a plausible time frame. Now, Federal courts act when the Federal courts act. It's a little bit like the Department. But our best estimate is six months.

MS. NEAL: I am in the same situation, I think, that Brit is in, in that I am still thinking this through, but let me posit another alternative. If we were to renew the agency's recognition not for three years but for one, which would mandate its return and would not rely on discretion?

CHAIRPERSON STUDLEY: Art.

DR. KEISER: I am really troubled. We have one side of an argument, and it's--Michael, I've known for a long time, and he's articulate and made an exceptional presentation. However, that's just one side. In law, there are two sides, and I don't want to be the judge or the jury in this case.

We have a process. We need to follow our process, and not get into the merits because frankly, you know, we haven't even asked COE to come up, and if they come up, I doubt they're going to even say anything because of the nature of the lawsuit so this is the wrong--we're going the wrong direction, folks, and I think we need to bring it back under control and stay within what our role is and what our charge is.

Otherwise, this thing will be, we'll be playing into a one side of an argument, which may or may be right or may not be right, but if you've ever been in a lawsuit, you know both sides have merit, and I really don't want to be judging that.

CHAIRPERSON STUDLEY: Cam.

MR. STAPLES: I just heard the witness say that the suggestion of moving forward with recognition as long as we've asked the staff and our staff to notify us officially when the resolution of this case occurs about its outcome is sufficient for the trustee. We're taking official note of this pending proceeding, but we're not

taking any action based on it now, and I agree with Art, I think that's what we ought to do. We ought to just move forward.

DR. FRENCH: Madam Chair.

CHAIRPERSON STUDLEY: George.

DR. FRENCH: Madam Chair, I concur with Cam and actually with Art on this, that we would move forward with our regular procedures because I think if we make, as counsel indicated, there might be oral arguments, and I don't think--I think if we take a stance of making an adjustment to what is normal, that that would be taking a side.

I think it could be said that the normal recognition was for three years, but the presentation was made before NACIQI, and NACIQI decided to just go with one year, which is punitive, which is almost taking sides, and it could be misconstrued.

CHAIRPERSON STUDLEY: I think we're now moving into conversation that more appropriately would take place on a motion before us. So I'd like to excuse the third-party commenter at this

time and see if the agency would like to comment, and then invite a motion, at which point, we can have discussion of the Committee's view on the motion.

MR. GOLDSTEIN: The trustee appreciates the willingness of the Committee to entertain its concerns.

CHAIRPERSON STUDLEY: Thank you very much. Appreciate it.

We'll call back the representatives of the accrediting agency. Thank you very much.

DR. PUCKETT: Yes. I do believe that it would be irresponsible and unjust if we didn't make a few comments, but we're not here to try the case before you, but at this point, I'll defer to our two attorneys, our Special Counsel, and Mr. Ken Ingram.

MR. DICKERSON: Thank you, and I want to thank the Committee for the opportunity to address the third-party comments that were made by Mr. Goldstein. I'm a partner at the law firm of Alson & Bird. I represent COE in litigation pending

between Decker College, or the trustee, and COE.

It is not our practice to comment in detail on the ongoing litigation, but I do think it's appropriate to highlight a few pieces of information that will be helpful to the Committee, and I'll start with giving you a little background on the litigation and the facts in this case.

In 2004, Decker College filed applications for approval of several construction trade programs, and as you all know, the way this process works, they complete an application and attach numerous exhibits. In this case, the applications were more than 150 pages.

In those 150 pages, Decker College mentioned the word "distance education" or "online" three times and didn't indicate to COE that the programs would be primarily online. In fact, Decker began to offer the programs with nearly 90 percent of the content occurring online, a fact that COE didn't know.

Ultimately, the Department of Education investigated Decker College and noticed that these

programs were being offered online, and COE informed the Department that it wasn't aware of the extent of the distance education in these programs.

An administrative procedure took place within COE, and COE affirmed those statements, and ultimately Decker College filed a civil lawsuit against COE. They filed that lawsuit in the Northern District of Georgia, and the Northern District of Georgia refused or denied their motion for temporary restraining order, and so Decker College then dismissed that lawsuit, and they filed for involuntary bankruptcy.

In the bankruptcy proceedings, the trustee for Decker College filed another civil lawsuit against COE, and so I think there was some misunderstanding of the nature of the current proceedings that are pending between the two parties.

It is, in fact, a civil lawsuit that's pending in the bankruptcy court. So there's no doubt there is ongoing litigation that has not been resolved.

And with respect to the determination by the bankruptcy court, I think there is a little misunderstanding about that as well. The first point about that that's important--I think you all picked up on this--it's not a final decision obviously. It's under appeal and the Sixth Circuit is still reviewing it.

But another I think important point that wasn't brought out in Mr. Goldstein's presentation was that the court did not make a determination that COE had been dishonest. In fact, what the court found was that COE should have known that Decker was offering these programs online, not that they knew and lied to the Department of Education, but the court ultimately determined that they should have known, they should have reviewed some of these materials.

We strenuously disagree with the bankruptcy court's findings, but we're encouraged by the fact that the bankruptcy court did not determine that COE had been dishonest or had intentionally misrepresented any statements to the

Department of Education, and I think that's an important fact for this Committee to understand.

The other important issue, and I think Mr. Keiser picked up on this, is that the events that Mr. Goldstein is referring to took place over eight years ago, and they were reviewed by this Committee, and this Committee didn't find any dishonesty. In fact, this Committee made some recommendations as to how COE could improve its processes.

COE made those modifications and improvements to the Committee's satisfaction, and the Committee and the Department ultimately renewed COE's recognition not once but twice since these events have happened. So this is an issue that frankly that really isn't even ripe at this point.

And then the staff has also done an independent evaluation and analysis of this issue and has also concluded that there was no dishonesty or lack of integrity. The fact that the Department, the staff, and this Committee--is it time to wrap up?

CHAIRPERSON STUDLEY: Yes. Complete your thought.

MR. DICKERSON: Sure. Can I make two more thoughts? And I'll wrap up.

CHAIRPERSON STUDLEY: Complete your thought.

MR. DICKERSON: It's important because the courts apply deference to the actions of accrediting agencies understanding that experts in the field of education, like yourself, have better context and are better able to make good decisions about the actions of accrediting agencies.

Then the last point I'll make, and I'll be quiet, is that Mr. Goldstein and his law firm are not here because they're objective observers, but they're here because they're motivated by their own financial interests. They want to make a record that they can use in the proceedings that are ongoing between COE and Decker and the administrative proceedings that are ongoing between Decker and the Department of Education.

At this time, I'm happy to answer any

questions the Committee might have.

CHAIRPERSON STUDLEY: Thank you.

I just want to say given what the Committee has said, we don't need to litigate this here. But your clarifications are useful. But go ahead, sir.

MR. INGRAM: I'm Ken Ingram, General Counsel.

I just have one additional point to Derin's presentation and Gary's comments. Mr. Goldstein's comments today suggested the entire reason for Decker's going out of business related to this one letter in August of 2005. In point of fact, and I would like to make this letter a part of the record of this proceeding, on September 30, 2005, the Office of Federal Student Aid wrote a letter to the then president of Decker College, copied to Mr. Goldstein, and it said, in part, as outlined below, the Department--Department of Education--has determined that Decker has not complied with Title IV HEA requirements and has breached its fiduciary duty.

The extent of Decker's noncompliance and breach of fiduciary duty is very severe. It was then taken out of the Title IV program and, again, if I can submit this as part of the record, but this letter is part of the record of litigation. But just for your information, this letter was not the only issue behind the fact that Decker went out of business.

CHAIRPERSON STUDLEY: Thank you.

We cannot accept additional materials for the record at this time, and we're already busy enough carrying out our NACIQI functions. We do not want to try and substitute for the district or appellate courts in this matter.

It does prove, however, that Art Keiser is absolutely right, that it takes two lawyers to understand the complexity of the situation.

Do any of the members of the Committee have questions for the representatives of the agency? Art, did I see your hand?

DR. KEISER: No.

CHAIRPERSON STUDLEY: No. Okay. It was

just rising in distress; right?

Any other Committee members have questions for the agency at this time? Seeing none, is there a motion that anyone would like to put before us?

DR. KEISER: I move that the NACIQI recommend that the COE's recognition be renewed for three years.

CHAIRPERSON STUDLEY: Is there a second?

MR. STAPLES: Second.

MR. ROTHKOPF: I'll second it.

[Motion made and seconded.]

CHAIRPERSON STUDLEY: Okay.

MS. NEAL: May I have a question? I thought we were going to have some additional language regarding reporting back to us. Is that not part of your motion?

DR. KEISER: It is not part of my motion.

CHAIRPERSON STUDLEY: Right. I would take the suggestion that Cam made and others found helpful as already having been made by being included in our record and our discussion, and it is not part of Art Keiser's motion which has been

seconded.

DR. KIRWAN: We may assume that the information will come back to us based on the record that we have today.

CHAIRPERSON STUDLEY: I treat it as a request that's been made of the staff, and unless you tell me that it is impossible or inappropriate for us to do that, we would like to think of that suggestion as having been made of the staff.

DR. KIRWAN: Okay.

CHAIRPERSON STUDLEY: Thank you.

Motion has been made and seconded. Is there any further Committee discussion of that motion? All in favor please say aye.

[Chorus of ayes.]

CHAIRPERSON STUDLEY: Opposed?

[No response.]

CHAIRPERSON STUDLEY: Thank you very much. The agency has been continued for recognition as provided by the motion.

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CHAIRPERSON STUDLEY: Before you all go-- that concludes the agencies that we had on our docket to review today--we just have a couple of closing comments for you.

MS. GILCHER: I just wanted to make a little clarification about what we mean by scope of recognition and therefore how we review agencies.

There have been a couple times when the issue has been raised about an agency looking only at Title IV institutions under certain standards or criteria. Within the Criteria for Recognition, there are those that apply only to Title IV gatekeepers. Okay. And we are very cognizant of that, and we look for evidence of their review of Title IV institutions in that.

In the standards areas and in other areas not so stipulated, we look at an agency for its entire scope of recognition, and you'll find that most of these will say that they accredit institutions and/or programs, and they may very well be broader than that group of institutions that use them for Title IV.

For instance, it would be freestanding institutions for a specialized agency they'd be the Title IV gatekeeper for, but they also accredit other institutions and programs in that area of specialization.

Our recognition allows for access to Federal benefits, Federal monies and programs for the whole grant of recognition, not just for Title IV. So it is incumbent upon us to be looking at them and how they apply those criteria across that whole grant of recognition.

Do you want to elaborate?

MS. WANNER: No, that's good.

CHAIRPERSON STUDLEY: Okay. I have one other announcement, just reiterating what I said yesterday about the process for filling NACIQI Committee member positions that will expire September 30, 2013. I'm looking to see if I can do this quickly. There are 18 members of the Committee. Six were appointed by the Secretary of Education, and our terms conclude in September '13.

In order to stagger the original seats,

the House appointments end in September 2014 and the Senate appointments end in September 2016. In the next few weeks, the Secretary is going to publish a Federal Register Notice soliciting nominations for the six positions. Anyone who is interested can self-nominate or be nominated by others, and the Secretary and the Department really would welcome a range of candidates to consider.

We welcome those who are currently sitting to think seriously about whether you are willing to continue. The appointments will be for six-year terms. Once this next group is appointed and the House appointments are made, then everyone will be on a six-year term, and we expect that appointments will be made in time for fall decision so that appointees can participate starting with any actions or involvement that we have in the fall, and then continue later on.

We will invite you to distribute that notice widely for others to participate. Remember that there is one student seat within that six, and that's one where we need to appoint someone who is

a student at the time that the appointment is made. So I will be talking to those of you who are--the others who are in the same group I am of being a Secretarial appointee in this round about your interest in continuing.

There is something that I meant to say at this point, and I forgot to do my homework last night so I'm just going to tell you that I will be talking, would like to raise the idea that we recreate our Policy Subcommittee of this group so that as conversations in the Department and elsewhere about regulatory and HEA issues that come forward arise, that we have some people within the NACIQI who have identified an interest in thinking about policy matters.

This doesn't mean that we can conduct NACIQI activities outside the public forum, but we can do those things which are appropriate for a Policy Subcommittee to do to bring things back to NACIQI.

We also have the option of public telephone meetings between now and our December

meeting should there be anything important in that regard, but I did not have the offline conversations that I had thought I would remember to have. So what I'd like to ask is that NACIQI members, and I will let the others who aren't here know this as well, if you would be interested in serving on a policy committee, scope of which to be determined, please let me know by e-mail. Carol and I will send something out after this meeting, and if you have any suggestions or concerns about that approach, I'd be happy to hear them at that point.

But given the important moment in conversations about higher education statutory and regulatory possibilities at this time, I thought it would be good for us to be prepared.

Is there anything else from the staff or members of the Committee that you would like us to address or know at this point? Otherwise, I thank the audience for your interest and attention. I thank the NACIQI members for your homework, diligence and cooperation and thoughtfulness during

this meeting, and I thank the staff for all of your efforts to help our work go smoothly and in service of America's students.

Thank you very much and have a good weekend. I'm going to take that as a motion made and seconded and approved to adjourn the meeting.

[Whereupon, at 12:51 p.m., the NACIQI meeting was adjourned.]