

U.S. Department of Education
Office of Postsecondary Education

National Advisory Committee on Institutional Quality
and Integrity

Thursday, June 25, 2015

The Committee met in the Galaxy Ballroom of the Sheraton Pentagon City at 900 South Orme Street, Arlington, Virginia, at 8:00 a.m., Susan Phillips, Chair, Presiding.

Members Present:

Susan Phillips, Chair
Arthur Keiser, Vice Chair
Kathleen Sullivan Alioto
Simon Boehme
George Brown
Jill Derby
Roberta Derlin
Anne Neal
Richard O'Donnell
William Pepicello
Arthur Rothkopf
Cameron Staples
Ralph Wolff
Frank Wu
Federico Zaragoza

Staff Present:

Jennifer Hong, Executive Director
Herman Bounds, Jr.
Elizabeth Daggett
Karen Duke
Patricia Howes
Valerie Lefor
Donna Mangold
Sally Morgan
Chuck Mula
Steve Porcelli
Cathy Sheffield
Rachel Shultz

Also Present:

Ted Mitchell, Under Secretary, U.S.
Department of Education
Jamie Studley, Deputy Under Secretary, U.S.
Department of Education

Contents

Welcome and Introduction	5
Consent Agenda and Procedures	7
Compliance Report – Accreditation Commission for Education in Nursing	8
NACIQI Primary Readers: Frank Wu	8
NACIQI Primary Readers: Jill Derby	10
Department Staff: Chuck Mula	10
Agency Representatives: Marsal Stoll	14
Agency Representatives: Mary Lou Rusin	17
Agency Representatives: Patrick McKee	18
Third Party Oral Commenters: Marsha Adams	37
Third Party Oral Commenters: Beverly Malone	39
Third Party Oral Commenters: Ignatius Perkins	42
Third Party Oral Commenters: Linda Christensen	44
Third Party Oral Commenters: Peggy Walters	61
Third Party Oral Commenters: Linda Miles	64
Third Party Oral Commenters: Kathleen Hudson	67
Department Initiatives	69
Compliance Report -- Accreditation Commission for Education in Nursing Discussion Continued	101
Compliance Report – North Central Association of Colleges and Schools, The Higher Learning	

	4
Commission, NCA HLC	117
NACIQI Primary Readers: Anne Neal	118
Department Staff: Elizabeth Daggett	119
Agency Representatives: Dr. Barbara Gellman-Danley	122
Compliance Report – New England Association of Schools and Colleges, Commission on Institutions of Higher Education, NEA CIHE	172
NACIQI Primary Readers: Richard O’Donnell	172
Department Staff: Rachel Shultz	173
Agency Representatives: Barbara Brittingham	174
Closing Comments	188

Proceedings

(8:04 a.m.)

Welcome and Introduction

Chair Phillips: Bright and early time for 8:04 start time. I'm Susan Phillips, the Chair of NACIQI. Welcome to all of you. I want to welcome particularly our new members. They include Hank Brown, Kathleen Sullivan Alioto, who will be here shortly, and Ralph Wolff.

And in addition to our new members I want to reintroduce all of the members who are here now. And for this I think I will start with Anne for an introduction and we'll go around the table with who's who.

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

Member Staples: Good morning. Cam Staples, President of the New England Association of Schools and Colleges.

Member Boehme: Simon Boehme, Mitchell Scholar.

Member O'Donnell: Rick O'Donnell, President and CEO of Skills Fund.

Member Derby: Jill Derby, Senior Consultant with the Association of Governing Boards.

Ms. Morgan: Sally Morgan. I'm with the Office of General Counsel. I am not a member of the Committee.

Ms. Mangold: Donna Mangold, also with general counsel. Not a member of the Committee.

Mr. Bounds: Herman Bounds, Director of the Accreditation Group.

Dr. Hong: Jennifer Hong, Executive Director and designated federal officer for the NACIQI.

Chair Phillips: Susan Phillips, Chair of the NACIQI, Vice-President for Strategic Partnerships at the University of Albany and Senior Vice-President for Academic Affairs at the University of Health Sciences Center at Brooklyn. That's a mouthful.

Vice Chair Keiser: Art Keiser, Chancellor of Keiser University in Fort Lauderdale, Florida.

Member Rothkopf: Arthur Rothkopf, President Emeritus, Lafayette College.

Member Wu: Frank Wu, Chancellor and Dean, University of California, Hastings College of Law.

Member Pepicello: Bill Pepicello, President Emeritus of University of Phoenix.

Member Derlin: Bobby Derlin, Associate Provost Emeritus, New Mexico State University.

(Off microphone introduction)

Chair Phillips: Thank you, all, and welcome. Welcome back. Welcome to those of you who are in the audience and to those who are presenting to us today.

A couple of housekeeping items. One is that if the red light is on, your mic is on. Remember to please press the bar before you speak and press it to turn off.

Second housekeeping is this is the moment when you silence your cell phones. That includes all of us and those in the audience.

Third item is the access code. If you have been trying to get on the Internet access, Sheraton meeting is the site and the password is, in all caps, NACIQI1147. All caps, no spaces.

And today we will have a working lunch for the Committee. You'll find at your place a box lunch order. If you can write your name, circle your preferences and get it back to Jen, that will allow us

to get that ordered in time for us to start.

Welcoming Kathleen Sullivan Alioto, who has just joined us. I'll let you catch your breath.

Consent Agenda and Procedures

Chair Phillips: Our first item of business this morning is the consent agenda. As you know, we have a number of items that are offered in the consent agenda. We have an opportunity for third party comment, opportunity for anybody to remove items from the consent agenda before we act on it. So let me begin this by asking if there are any third party commenters for any of the following items on our consent agenda. They include: compliance reports for the American Optometric Association, Accreditation Council on Optometric Education; the Association of Advanced Rabbinical Schools and Talmudic Schools, Accreditation Commission; the National Association of Schools of Dance, Commission on Accreditation; the National Association of Schools of Music, Commission on Accreditation; the National Association of Schools of Theatre, Commission of Accreditation; and one consent agenda item on expansion of scope, the American Psychological Association, Commission on Accreditation.

I understand that we have no third party commenters who have registered at the desk. Yes? So we will skip that item.

And any of the Committee members wish to remove any of those from the agenda, from the consent agenda?

(No audible response)

Chair Phillips: Okay. Hearing none, I would entertain a move to accept this consent agenda.

Member Zaragoza: So moved.

Chair Phillips: Do I have a second?

Participant: Second.

Chair Phillips: Thank you. Those in favor of the -- oh, my apologies. If there was an occasion for you to recuse on any of those, this would be the moment to do so. We have one recusal, Jill Derby.

(No audible response)

Chair Phillips: Thank you. Calling for the vote then. All those in favor, say aye?

(Chorus of ayes)

Chair Phillips: Opposed?

(No audible response)

Chair Phillips: Abstain?

(No audible response)

Chair Phillips: Okay. We're set with that item. Jill, welcome back.

Compliance Report – Accreditation Commission for Education in Nursing

Chair Phillips: Moving on to our standard review procedures, our next item will be the compliance report for the Accreditation Commission for Higher Education in Nursing, ACEN. Just a reminder that the process here is that we begin with an introduction of the agency by the primary readers, who in this case are Frank Wu and Jill Derby. The Department staff will provide a briefing. We'll have agency representatives, third party commenters and opportunity for discussion thereafter.

So let me begin with the primary readers introducing the agency petition. And it is Frank or -
- Frank. Okay. Frank Wu.

NACIQI Primary Readers: Frank Wu

Member Wu: Good morning, everyone.

Chair Phillips: Those who need to recuse, if you would please exit now.

Member Wu: This agency is familiar to us. They were here just one year ago. I will try to be as concise as possible so that we can hear from all of the parties.

This is one of the bodies that accredits in the nursing field and it is a subsidiary of a professional group. They've been at odds for some time, apparently a couple of decades, but they've been in front of us most recently one year ago. The reason they were in front of us is because they agency does not meet the separate and independent criteria. And I believe there's no dispute about that. That is, everyone acknowledges that they at this time do not meet that criteria which they must meet because they are a Title IV gate keeper for some of the institutions that they have. Each side blames the other. There's litigation pending in the State of New York between the National League for Nursing on the one hand and the agency on the other hand. And that was true a year ago.

A year ago when they appeared there were representations made to us that bylaws would be changed to address this issue. That has not happened. And there, too, I believe there is no dispute that that has not happened. So they come back to us with a recommendation from the staff that we recommend to the Secretary that they not be continued on the grounds that they simply don't meet the separate independent criteria.

I will add for myself that it may be that having come here just a year ago and having been before this body repeatedly that because they're at an impasse nothing will cause them to make the necessary changes other than something drastic since they've already represented at least once expressly that they would make the changes, and having had sufficient time failed to do so.

Chair Phillips: Thank you. Jill Derby, you want to

add anything at this point?

NACIQI Primary Readers: Jill Derby

Member Derby: I would only add to what Frank has said that the agency appears to be requesting the staff to find it out of compliance in order to force the hand of the NLN in regards to the legal action that's happening in New York.

Department Staff: Chuck Mula

Chair Phillips: All right. Department staff. Chuck

Mr. Mula: Good morning, Madam Chair, and members of the Committee. For the record, my name is Chuck Mula and I will be presenting a summary of the compliance report submitted by the Accreditation Commission for Education in Nursing, ACEN, formerly the National League for Nursing Accreditation Commission, NLNAC, hereafter frequently referred to the commission or the agency.

The commission last appeared before you in the spring of 2014. Your recommendation to the senior department official was that she accept the commission's report and that it be granted an extension of its recognition for good cause for a period of six months. You also recommended that the agency submit a report demonstrating its compliance with the standard criteria within 30 days of expiration of the six-month period with reconsideration of recommendation status thereafter. The report would include your review of the new report and the appearance by the agency at the NACIQI meeting to be designated by the Department.

You also required the commission's report to include a complete plan and a timeline toward achieving full compliance along with any agreements made between itself and NLN that had been developed at the time and the bylaws addressing the deficiencies under 602.14(a) and (b), which preclude NLN

involvement and impingement on the agency's independence going forward.

This recommendation was based on your acceptance of the staff report and your review of the commission's petition and supporting documentation, specifically documentation demonstrating the commission's progress toward meeting the Secretary's separate and independent requirements at that time. Your review of the commission's compliance report found it to be substantially in compliance with the remainder of the Secretary's criteria for recognition.

While the commission remains non-compliant with the requirements of 602.14(a) and (b), the Department was encouraged and commended ACEN and NLN in the progress they had made at the time in resolving the issues between the two agencies. The Department was also confident that the commission would be able to come into compliance with the time frame extended to it for good cause. However, that did not happen.

In your review of the recent compliance report, which is the subject of this report, the commission appears to concede that it is not able to come into an agreement with NLN on an amendment to the bylaws that would satisfy both it and NLN and comply with the separate independent requirements. While the commission and NLN blame each other for the impasse, staff could not verify that case for non-compliance.

In any event, whether the commission's non-compliance is voluntary or has been forced upon it, the Higher Education Act requires the limitation, suspension or termination of any agency's recognition if the agency is found to be either in non-compliance with the criteria for recognition or ineffective in its performance with respect to those criteria.

The Higher Education Act sets a 12-month deadline for achieving compliance. If the agency fails to

come into compliance within the specific time frames, the law requires termination of the agency's recognition unless recognition is extended for good cause. The commission has already received the six-month good cause extension and provides no basis for a conclusion that a short additional extension would resolve the problem.

In addition to the issues posed by the ACEN's organizing documents, which includes the commission's resistance to amend its purpose to reflect that accrediting programs is a principle rather than a sole purpose causes concern for the Department. As under HEA the entity accreditation must be institutional rather than programmatic to participate in Title IV. Under the Secretary's criteria institutional accreditors have responsibilities that programmatic accreditors do not have.

This refusal by the commission to acknowledge a role as an institutional accreditor and its practice of referring to the entities which it accredits solely as programs rather than institutions raises concerns that it is not providing institutional accreditation to the entities for which it presents the appearance to act as a gate keeper for Title IV purposes, and that accordingly it cannot impact those entities for Title IV reasons.

Furthermore, if the commission provides no institutional accreditation, then Title IV cannot provide the federal link required for recognition under 34 CFR 602.10. As noted in the 2014 compliance report, compliance would have been achieved but for the nullification of the amendments to the Certificate of Incorporation and bylaws resulting from the agency's apparent violation of New York State law.

In the absence of lawful revisions to the document confirming them to separate and independent requirements, the Department cannot find ACEN in compliance. The commission continues not to meet the requirements of 602.14(a) and (b), the

Secretary's criteria for recognition, and Department staff is recommending termination of the agency's recognition. Agency representatives are present today. This concludes my presentation and I'll be happy to answer any questions you may have.

Chair Phillips: Thank you, Chuck.

Questions from the readers?

(No audible response)

Chair Phillips: This won't be your last opportunity, but just wanted to give you this -

Member Wu: None of staff.

Chair Phillips: Okay. Committee, questions of the staff? Cam?

Member Staples: Thank you. I just want to ask Chuck -- I'm reading the documents about the process, but if we were to recommend following staff's recommendation to revoke their recognition and then the Secretary were to follow suit, then there were subsequent actions that occurred that potentially made the agency fall into compliance or come into compliance with the requirements, what's the likely timeline and process for that? I know I'm asking you to project ahead. I'm just trying to understand if there's a realistic opportunity for the agency at some point to be reinstated prior to the effective date of its lack of recognition, which I know typically is an 18-month window when institutions are given a chance to find alternative accreditation. So I'm just trying to understand how that plays out if we were to take this action.

Mr. Mula: Yes, if Jennifer or Herman want to jump in, they can, but I would think that going through the process again would take about two years.

Member Staples: So there likely would be a window of time when they would not be recognized and the institutions that they accredit would have had to

have found an alternative accreditor?

Mr. Mula: Right, they would have had done that already before that happened.

Member Staples: Thank you.

Chair Phillips: Any other Committee questions of the staff? Again, we will have opportunities later as well.

(No audible response)

Chair Phillips: Thank you, Chuck.

Let me invite the agency representatives to come join us at the table.

Please sit and if you could identify yourselves before you make your remarks, we will go from there.

Agency Representatives: Marsal Stoll

Dr. Stoll: I'm Marsi Stoll, the CEO of ACEN.

Dr. Rusin: I'm Mary Lou Rusin and I'm Chairman of the Board.

Mr. McKee: Good morning. I'm Pat McKee. I'm general counsel.

Ms. McDonald: -- of King & Spalding in Atlanta, outside counsel with Mr. McKee. Tish McDonald.

Chair Phillips: Thank you.

Dr. Stoll: Good morning. As I introduced myself, my name is Marsi Stoll. I'm CEO of ACEN.

I have been on the job for about six months, so I've not had the privilege of previously appearing before you. As you may be aware, that before coming to ACEN I served six years as Vice-President of Southern Association of Colleges and Schools Commission of Colleges. I have significant experience in accreditation and already have and will continue to bring that experience to bear on the

issues at hand at ACEN. As you know, I'm joined today by Mary Lou Rusin, our board chair, Pat McKee, our counsel, and Tish McDonald, our outside counsel. After my comments Dr. Rusin and Mr. McKee will provide you some additional information and all of us will then be pleased to respond to your questions.

I wish to make it clear that ACEN agrees with the staff determination that so long as its Certificate of Incorporate and corporate bylaws require the approval of the National League for Nursing for amendment it cannot meet the separate and independent requirements of 34 CFR Section 602.14, section (a) and (b).

ACEN also agrees with the staff position concerning its statement of purpose. This second issue will be easily resolved upon ACEN being able to concert control over its certificate and bylaws. However, we are unable to address it without that control. As a consequence it is not correct to state, as the staff contends in its report, that ACEN is, quote, "resistant to amending its purpose," end quote. ACEN is unable to do so without control over its certificate and bylaws.

To date NLN has resisted all of ACEN's previous efforts to amend the certificate and bylaw to remove the consent requirement. These efforts have included negotiation between NLN and ACEN, unilateral action taken on part of ACEN, and legal action taken by ACEN against NLN. While the staff reports NLN has made it clear that it would be willing to make the appropriate changes for ACEN to come into compliance, it has steadfastly refused to do so.

So as a result of the extraordinary efforts of ACEN to come into compliance, ACEN is puzzled by the staff comment in the final report that, quote, "Rather than coming into compliance, the agency appears to be requesting that staff find it out of compliance so as to force NLN's hand or support the

legal action in New York," end quote. ACEN has used every means at its disposal to come into compliance, but ultimately it is in the hands of NLN, not ACEN to make the changes that will result in compliance. Failing to achieve NLN's consent it is indeed the position of ACEN that DOE should find ACEN out of compliance to support its legal action in New York.

It is likewise difficult to understand the staff comment that, quote, "The agency also seems to insist that it needs to be able to make revision to NLN's Certificate of Incorporation," end quote. ACEN has never made any claim to revise NLN's Certificate of Incorporation. Further, the assertion by staff that it has, quote, "stated several times that the statute or regulation do not require accrediting commissions that are part of a membership organization to be separately incorporated," end quote, belies a similar lack of understanding. ACEN has separately been incorporated from NLN for almost 15 years, making the issue of separate incorporation at minimum moot, at worse a red herring that distracts attention from the true issues at stake.

As we stated in response to the draft staff report, immediately upon receiving the report ACEN of course knew two things that it had to do to bring it into compliance: ACEN set out the details of this plan in its response. I am certain you have many questions concerning the likelihood of ACEN being able to accomplish this plan and I'm going to refer those questions to Mr. McKee.

Before turning our presentation over to Dr. Rusin, I would like to share as a result of comments attributed to Dr. Beverly Malone in an article that appeared in Inside Higher Education yesterday, I immediately contacted Dr. Malone and we talked late yesterday afternoon. Dr. Malone repeated the comments quoted in the article. We agreed to continue the conversation to try to find a solution that allows ACEN to have control of our bylaws while

retaining some type of appropriate organizational relationship that works for both organizations, and most importantly benefits nursing education and the profession of nursing.

Agency Representatives: Mary Lou Rusin

Dr. Rusin: Good morning. I'm Mary Lou Rusin, professor and Chair of the Nursing Department at Daemon College in Buffalo New York. I've served on the board of ACEN for the past seven years and for the last three years I have served as Chair of the Board of Commissioners of the Accrediting Commission.

As chair I've been directly involved in the efforts of ACEN to achieve compliance with the separate and independent requirements of the regulations. As this body is aware, as early as 2012 the Department has been consistent in its statements to ACEN that the control NLN maintains over ACEN's certificate and bylaws is in violation of its separate and independent requirements.

More recently in the Department's 2014 report it determined as follows: Quote, "The Department especially noted that there was a provision in the NLNAC's bylaws that required the written consent of the NLN in order for the NLNAC Board of Commissioners to amend the agency's bylaws in order to come into compliance with the separate and independent requirements. Furthermore, in the context of NLN's authority granted it by the bylaws NLN could legally direct the NLNAC's operations of the agency's accreditation business leaving the Department to conclude the agency could not operate in the separate and independent manner required by Title IV statute and regulations," end quote. The Department further noted this problem could be addressed by a one-time amendment to the ACEN certificate and bylaws consented to by NLN.

ACEN is committed to achieving compliance with the Department's requirements, has acted on these consistent statements from the Department and has expended significant efforts in doing so. I personally have met with representatives of NLN on several occasions during the past year in an effort to resolve the differences that keep ACEN from achieving compliance. ACEN has paid NLN millions of dollars to settle all contractual claims NLN has had with ACEN. While I have served as chair the board has approved the pursuit of legal avenues and the expenditure of significant funds to enlist the assistance of the courts to achieve compliance. However, I regret that to date these multi-faceted efforts have not been successful.

However, ACEN has a plan that holds the likelihood of success should this body agree with the final staff report. I wish to make it clear that ACEN is not requesting additional time to come into compliance. We believe that ACEN will be able to come into compliance in the time between the recommendation this body makes to the Secretary and the Secretary's final determination. We will ask that the Secretary recognize those efforts in making the Secretary's final determination.

I now wish to turn our presentation over to our general counsel, Mr. McKee.

Agency Representatives: Patrick McKee

Mr. McKee: Good morning. I'm Patrick W. McKee. I serve as general counsel for ACEN and have served in this position since 2010, just after ACEN moved to Atlanta. I've worked with ACEN throughout the entire controversy with NLN.

As Dr. Stoll mentioned in her remarks, upon receiving the draft staff report recommending the termination of its recognition, ACEN began implementing a two-pronged plan to bring it into compliance. In broad outline which I'll elaborate in just a moment, that two-pronged plan was this: Upon the finalization of the draft staff report on

June 15, ACEN sent a letter requesting NLN for a one-time consent for ACEN to amend its certificate and bylaws to remove the consent requirement. ACEN had reason to believe that this request had a significant chance of achieving the required compliance because NLN has represented to this body, as Dean Wu mentioned in his remarks, to DOE, to ACEN and to the New York court that it would do nothing to endanger ACEN's recognition by DOE.

If this request had been granted, ACEN would have taken immediate steps to amend its certificate and bylaws to achieve the required compliance and would have reported these steps to you at this meeting. Notwithstanding the assurances NLN gave to this body, to DOE, to ACEN and to the New York court, on June 17 it refused in writing to take those steps. And to this day NLN continues to refuse to grant consent to ACEN.

As Dr. Stoll has mentioned, we are continuing to try to pursue that avenue even as we speak.

However, this refusal triggers the second prong of ACEN's plan. Upon a negative recommendation by this body to the Assistant Secretary, which we fully expect, and prior to the Assistant Secretary's final determination, ACEN will petition the New York court for injunctive relief to prevent NLN from withholding its consent to ACEN to amend its certificate and bylaws to achieve compliance. We have reason to believe that this petition to the New York court will be successful. ACEN believes it can demonstrate that NLN has made numerous representations to this body, to it and to the New York court that it will grant the required consent.

We can also establish; and I think this is without contradiction, that termination of ACEN's recognition will cause irreparable harm to it, to over 1,200 nursing programs and to more than 100,000 nursing students, and to the general public. In fact, we have already received an indication from one of

our programs that its application for continued Title IV status is being put on hold pending the resolution of this matter.

If its petition is granted, ACEN will take immediate steps to amend its certificate and bylaws to achieve the required compliance. It will be necessary for the Assistant Secretary to take notice of these subsequent actions under the Assistant Secretary's authority to consider relevant and material information pertaining to the agency's compliance with the recognition criteria, but not contained in the record as provided in 34 CFR 602.36(g).

As I stated earlier, ACEN fully expects a negative recommendation from this body. And as Dr. Rusin stated in her remarks, ACEN is not requesting additional time to come in compliance. These factors will assist, not hinder ACEN's ultimate efforts to come into compliance prior to the Secretary's final determination.

It has been NLN's position, among others, that DOE has not stated unequivocally that the consent requirement in the certificate and bylaws is violative of the separate and independent requirements of the regulations. Dr. Rusin's presentation quoting just one of the Department's statements shows DOE has made this statement clear in the past, but now there can be no doubt from the final staff report that the only significant impediment to compliance is the consent requirement. We fully expect this body's recommendation to be equally as clear.

NLN also contends that the consent requirement can be solved by amending the offending bylaw to carve out, quote, "those matters that relate solely to accreditation so long as NLN gets to make the determination which matters relate to accreditation." NLN has gone so far as to have presented a proposed bylaw to staff for its review. We believe the final staff report is a clear rejection of this proposal.

ACEN agrees with the staff position on this point.

Any proposed bylaw in which NLN retains control over ACEN offends the separate and separate and independent requirements of the regulations. NLN's contention that it can carve out accreditation matters from the bylaw to solve this problem is wrong for three reasons: First, which is to state the obvious: Any retention by NLN of any power over the certificate and bylaws of ACEN can be used to control ACEN. Second, such a proposed solution is illusory because all of ACEN's business relates to accreditation. And finally, such a provision does not resolve the core controversy between NLN and ACEN as to what matters NLN may legitimately control and ACEN remain independent.

Rather than solving the problem, it will result in years of continued, expensive, debilitating litigation and a constant disruption to the 1,200 ACEN accredited nursing programs and the 100,000 nursing students that attend these programs. ACEN contends that NLN may not legitimately retain any control over ACEN and it comply with the separate and independent regulation. We ask that this body's recommendation to the Assistant Secretary firmly endorse that position.

Finally, we recognize that as a general matter the Assistant Secretary makes a decision regarding recognition based on the record. However, the regulations make an exception to this general rule. The regulations allow the Assistant Secretary to take notice of subsequent actions under the Assistant Secretary's authority to consider relevant and material information pertaining to the agency's compliance with the recognition criteria not contained in the record.

While ACEN is prohibited from submitting such information to the Assistant Secretary, we wish to notify the Assistant Secretary we expect such relevant and material information will exist in the nature of the New York court's ruling and ACEN's subsequent amendment to its certificate and bylaws. None of this information exists at this time

and therefore cannot be included in the record. We request the Assistant Secretary to invoke the authority to consider such information under 34 CFR Section 602.36(g). Based on this evidence we believe ACEN will establish full compliance.

I'm sure this body has questions for us, which we will be pleased to entertain.

Chair Phillips: Thank you. Reader questions? Frank?

Dr. Wu: Thank you so much. I have three questions. And in fairness, I'll ask them to the representatives of NLN as well when they have a chance to speak.

The first question, I just want to be clear on this; I think you've already said it, but it's my understanding ACEN itself wants to meet this criteria. What I mean by that is it's not some silly rule that we're imposing. You would like to be separate and independent and you believe that that's desirable.

So I'll go through all the questions real quick.

Chair Phillips: Okay.

Dr. Wu: So the first is I just want to understand you believe it's in your interest to have this independence from NLN in order to perform the function you perform?

Second question is very simple: Why can't these two groups get this done? This has been going on for four years. It's mildly embarrassing I think to all concerned that you have to come back and we've made no progress. This gives me a sense of déjà vu. It's more or less the same hearing that occurred a year ago. So it's not a rhetorical question. It's actually a real question. Why isn't this getting done?

And the third question is it's been alluded to that

NLN might want to set up a separate accrediting agency to compete with you. And I wonder if you might comment on that. And I'll ask NLN whether that is the case. Thank you.

Dr. Stoll: I'll take a shot at your first question. In regards to separate and independent, yes, we are genuinely committed to be able to demonstrate the separate and independent requirements per the federal regulation. We believe that's in the best interest of all that we are separate and independent.

Regarding your second question, as you heard, I've only been on the job for six months. It is embarrassing and it's a sad day for the profession of nursing that this is where it is. Why can't we get this done? I don't know the answer to that question other than to say we have tried.

And in regards to the third question, my understanding is, yes, they are setting up a competitor accrediting agency. I find it a bit perplexing on how NLN could then have a relationship with two accrediting agencies that compete with each other.

Dr. Rusin: And I'll echo Dr. Stoll's comments that, yes, certainly we are very interested in coming into compliance. And that is so that we can protect the interests, the Title IV interests of our programs at the diploma level and other programs that need access to Title IV funding for their students. We're very committed to that. I can't stress that enough.

In terms of why we can't get it done, let me just say that as chair, when it was clear to me that it didn't seem to be happening at the administrative level, I took it upon myself to try to reach out to the NLN Board of Governors. And actually we had a team of four members of ACEN and four members from the Board of Governors of NLN and we met together on various occasions to try to hammer out the bylaws issue.

And we were really -- we made some progress, but when we got to the points of the separate and independent, the consent part, and also the part about NLN's ability to dissolve ACEN, there was always stonewalling that occurred. And that always had to be referred back to the attorneys. It wasn't something we could work out around the table. So we really -- you know, both sides got together, the Board of Governors and the volunteers of the organization, and really worked very hard to get this done, but as you can see to no avail.

Chair Phillips: Jill?

Member Derby: Beyond the consent requirement that seems to be the major sticking point here, it seems that the agency has resisted amending its purpose from sole to primary with the implications for Title IV. I just want to be clear about it. Is that the case that you have resisted that, or is that something that NLN has not allowed because of their final say over the bylaws?

Dr. Stoll: We are not resistant to changing the wordage from "sole" to "primary." We're unable to change it because we need consent of NLN to change it.

Member Derby: And have you requested that consent from them or not to change that wording?

Dr. Stoll: Mary Lou, I'm going to have to -- or, Pat, or you to handle that.

Mr. McKee: That last request concerning the purpose only appeared, to my recollection, in the most recent staff report. And so it's been so recent. We have been trying primarily to concentrate on the consent requirement which would obviate the other problem.

Member Derby: Sure. Secondly, you referenced the ability of the Assistant Secretary to make a subsequent ruling. That seems to assume that the legal action happening in New York is going to be

resolved fairly soon. Could that not drag out for a longer period of time such that there wouldn't be a determination made that could clarify the situation?

Mr. McKee: I'll respond to that. Because of the immediate nature of the need for resolution we would present a petition to the New York court and request emergency relief.

Member Derby: Thank you.

Chair Phillips: Herman?

Mr. Bounds: I need to make a correction. That statement that's in the bylaws about primary and sole purpose, that was present in the 2014 staff report one year ago in addition to is present again in the extension for good cause discussions also. So it's been there over a year.

Mr. McKee: Thank you for that correction, sir.

Chair Phillips: Here's the opportunity for other Committee members to speak. We'll come back. I've got Arthur and then Frank.

Member Rothkopf: Yes, I'd like to pursue the dialogue that Frank Wu started on kind of getting at why this has happened or happening and has happened for several years. If indeed it's the NLN desire to set up a competing organization that's at the root of this, I guess I'm curious; and you may or may not know the answer, why is it nothing -- I mean, are there plans that have been made public? Why is it that in four years nothing has surfaced, at least publicly to our knowledge, that this is happening? And the essence is I'm trying to understand why it is that NLN has not agreed to this. And of course you may not be able to answer. There will be some representatives of them. But if the reason is a competing organization, why isn't that happening over this extended period of time?

Dr. Stoll: If I understand your question correctly, I hope this is the correct answer. It has been

proposed to start CNEA, which is the name of the organization that NLN will be starting, and my understanding is is they are in the process of setting up that organization, but they are not in operation yet.

Mr. McKee: May I supplement that? A representative of that competing accrediting agency appeared before you last year, Dr. Halstead. And she made a third party comment to which Dean Wu asked would you be willing -- and I'm paraphrasing -- would you be willing to consent to amend the bylaws for ACEN to achieve compliance. And she committed here on the record on the transcript that NLN would do so.

Dr. Wu: Thank you.

Chair Phillips: Frank?

Dr. Wu: To just help us understand how we got this point, I was wondering does this have to do in some way with the move to Atlanta, where you split off and moved, or is there a cause and effect there? Or does this have something to do with the minimum education level needed to be licensed as a nurse, whether a four-year degree is needed? I mean, what's the policy dispute here? There must be something else here that we are unaware of.

Dr. Stoll: My understanding related to the move to Atlanta had to do with it being one way of establishing the separateness and to a certain extent some level of independence. That's my understanding of the move to Atlanta.

Dr. Rusin: I would concur with that. That was the beginning of the very obvious split within the organizations.

Dr. Stoll: I'm not sure I understood your other part about the level of nursing education. Can you explain just a little bit more?

Dr. Wu: I'm no expert, but I understand there is

some dispute within the nursing profession about what the minimum level of higher education should be for nurses and that it's been suggested is implicated in some way in this dispute.

Dr. Stoll: I don't believe that that is the case. There are six levels of nurses in the United States, LPN being one level. And then you have the RN that can be achieved through the diploma, the associate, the baccalaureate level. Then you have advance practice at the master's and doctoral level. ACEN, as you well are aware, accredit all six levels of nursing education in the United States. CCNE, which is the other nursing organization, only does baccalaureate, master's and doc. And they do not do Title IV gate keeping, as you know, and we have that authority.

Dr. Wu: And you don't know about this new entity that's being set up, if it will operate at all six levels? I'd save that question for NLN.

Dr. Stoll: That's my understanding is that they are planning on doing all six levels, yes.

Dr. Rusin: But my understanding is also that they would not seek Title IV recognition. So that's a major difference.

Dr. Wu: So they would not need to be separate and independent? So that's how they can have a competitor?

Dr. Rusin: Correct.

Dr. Wu: One more question, and you may not know the answer. What would happen to nursing if there were no accrediting authority that served as a Title IV gate keeper?

Dr. Stoll: I do have an answer for that. Of our 1,233 programs the diploma programs which lead to the RN and the practical programs which lead to the licensed practical nurse license would not have an agency that they could access Title IV funds

through. Those programs depend on ACEN mostly because they do not have some type of other institutional relationship that provides them access to Title IV funds. Generally diploma programs are housed in hospitals and practical programs generally are either associated with a community college. Then they can get access through the regional accreditor or their national accreditor. However, many practical programs are associated with vocational, technical or career schools that do not have access to Title IV monies.

So currently that would leave approximately a little over 100 programs that are ACEN-accredited that would not have access to Title IV funds, and that represents approximately 15,000 students in the United States that are associated with ACEN-accredited programs.

Dr. Wu: Thank you. That's very helpful.

Chair Phillips: I have Herman, Hank and Rick.

Member Brown: Thank you. Counsel indicated that he's hopeful that there will be action by the New York courts to issue injunction relief in this case. What would be the legal basis for such a ruling?

Mr. McKee: Yes, sir. Our primary legal claim is called detrimental reliance, or also known as promissory estoppel. That arises when an entity makes assurances to another entity on which that entity relies to its detriment. And NLN has consistently made assurances to this body, to ACEN and to the public that ACEN would be separate and independent. We have expended extraordinary resources based upon those representations and we have relied on those to our detriment. We believe that that establishes the requirements for a claim of promissory estoppel or detrimental reliance.

The procedural vehicle that we would use for making that claim would be a claim for an injunction seeking injunctive relief. The basis for injunctive relief usually requires immediate irreparable harm.

And I believe we have mentioned that we think we would be subjected to immediate irreparable harm in the face of losing our recognition.

Member Brown: Would I be correct in assuming then that if this body endorses the recommendation of the staff that that would be an important portion of your argument to the New York court?

Mr. McKee: Indeed.

Member Brown: Thank you.

Chair Phillips: I have Herman and then Rick.

Mr. Bounds: Yes, I just wanted to make another point. There are two issues here. In order for those programs to be eligible for Title IV, that's an institutional benefit. So those programs and the hospital administrations form the institution. So for those certificate programs a national accreditor could come in and accredit those programs for Title IV purposes. Now if there is a licensure requirement, they would need a nursing accreditor maybe for state licensure purposes, but for Title IV purposes a national accreditor could accredit those certificate programs. Just a thing to remember is that the hospital administration forms the institution. That allows those programs to receive Title IV funding. If not, if they were strictly programs, they wouldn't be eligible anyway.

Chair Phillips: Rick?

Member O'Donnell: Thank you. I believe I heard one of you say that as part of trying to resolve this issue you had paid millions of dollars to NLN. And I'm curious, what were those payments for and what were the amounts?

Dr. Stoll: There were a variety of fees including a royalty fee for using NLN as part of our name. The business records that I have available to me, that I have verifiable numbers for; so those are the only numbers I'm comfortable quoting dating from 2004

to 2014, indicate that we have paid NLN \$5.9 million for a variety of fees in a relationship of that nature.

Chair Phillips: Ralph?

Member Wolff: While I understand that the primary issue here is really separate and independent, I'm curious to follow up on the issue of institutional accreditation. Would change of the wording "sole primary" be enough to move to become an institutional accreditor? I understand the staff review to say there is a separate issue that you would need to, at least for some programs, shift from programmatic to institutional accreditation. And if that is the case, would just a change in that wording be sufficient, or would you need to file for a change of scope for that shift?

Dr. Stoll: My understanding is is that for a very long while we have always had that responsibility when we were the Title IV gate keeper and were and are the institutional accreditor. My understanding is that the word "sole" suggests that all we do is programmatic accreditation and the word "primary" better describes, if I can characterize it that way, the real responsibility that we have when we're the Title IV gate keeper, which is inclusive of the institutional accreditation as well as the programmatic accreditation.

Member Wolff: That may be a question for staff, because I'm really not clear if there would be additional steps. As I understand your argument, if you were able to get either judiciary relief or the NLN were to allow you to change your status and become separate and independent, you would be able to file that with the Secretary and be able to recover your status. I still wonder then would there be additional steps needed to become an institutional accreditor or is that already part of your authority?

Chair Phillips: Herman?

Mr. Bounds: Yes, the agency scope, they're already the institutional Title IV gate keeper. The problem with that language was just as Marsi explained is that in the articles of incorporation it states "sole purpose," and that alluded to their sole purpose was accrediting only programs. But they accredit both programs and institutions. Again, as I explained before, the programs within those hospitals, the hospital administration forms the institution for Title IV purposes. So they've always had that language in their scope. We just wanted them to modify the language so that it says primary purpose instead of sole purpose, not identifying one area of accreditation versus the other.

Chair Phillips: Other Committee -

Ms. Morgan: Herman can correct me if I'm wrong, but I believe that they have processes and procedures relating to institutional accreditation. They have those extra procedures and just don't acknowledge that in their statement of purpose.

Chair Phillips: Other Committee -- Anne?

Member Neal: Perhaps I misunderstand this, but you've been accredited in some configuration since 1952, and perhaps the corporate changes are such that this was not an issue, but did you request a waiver in the past for these purposes?

Mr. McKee: The waiver provisions do not apply to our type of accreditation.

Member Neal: Never been a problem before then?

Mr. McKee: Well, let me answer that -- that's a separate question. As you may be aware, the separate and independent requirements became a requirement of law in 1992. Prior to that of course NLNAC was part of NLN, and that was not a problem. It was only since 1992 that this issue became on the radar. It was resolved at one stage by NLN promising this body to separately incorporate the body that ultimately became

NLNAC. It also assured that that corporation would be autonomous. The reason why we're here is that second promise has not be fulfilled.

Chair Phillips: Frank?

Dr. Wu: Just one more question. I was rereading the transcript from a year ago just to see where we left things. This is a question for the lawyers. Where exactly is the New York case right now? What is its status? Is it on appeal? Have you had oral argument? Is it awaiting decision?

Mr. McKee: The New York case has multiple facets to it, and many of the facets have been resolved. As you heard, Dr. Stoll stated that we have paid NLN many millions of dollars to resolve the contractual claims in that case. So those contractual claims have been resolved.

NLN's primary claim in that case is that ACEN is not submitted to control by NLN and that the New York court should enforce that. We have counterclaimed along the lines of how I previously discussed. During the pendency of that action ACEN in an effort to achieve compliance unilaterally amended its bylaws and NLN filed a motion for an injunction to prevent those amendments from going into effect. The New York court granted that injunction based on New York law. We opposed that injunction based on the primacy of the federal law and regulations. That injunction is currently on appeal and we will be briefing that issue July 13.

Dr. Wu: So just so I'm clear, you made, to use a technical term, a preemption argument in state court. That's a yes. You're nodding.

Mr. McKee: That is exactly right.

Dr. Wu: So this is just an observation. For us as a body this is the only case that's surfaced in the past five years, but it's entirely possible that there are other issues that could lead to disputes in the state courts and we, NACIQI, have an interest in the

federal preemption argument prevailing so that state courts don't go off and do something that's inconsistent with what we're doing. Just an observation.

Mr. McKee: Dean Wu, we would invite -- invite -

Dr. Wu: I'm sure -

Mr. McKee: -- the Department to weigh in on this issue either as an intervenor or as an amicus in the New York court. Wish to make that clear.

Chair Phillips: Thank you. Other Committee questions? Simon.

Member Boehme: Hello. My name is Simon Boehme. Thank you, Madam Chair.

Today I'm very, very upset. I think this is embarrassing. And most importantly, from your testimony something that was missing was why we're all here today is to talk about students. So I'd like to talk about two specific examples. I think this whole separate and independent has been beaten down, but what really needs to be addressed today is what's going on in Bethune-Cookman University in Florida and Grambling State University in Louisiana.

First, Bethune-Cookman, as you may know is an HBCU which has been having problems dating back to 1997, which you have been the accrediting agency for them, that fewer than half of their grads pass the national exam. And then it seems as though five years later in 2003 it bounced up to 100 percent pass rate and now in 2013 it is back to 56 percent of graduates pass the board exam. Hopefully you'll also be able to discuss the allegations of administrators altering grades to help students pass.

And Grambling State University in Louisiana, struggling to maintain a pass rate above 80 percent since 2010. And you accredited them in 2012. You

received continued accreditation through 2020 with some conditions from your organization. And then on April 2nd Grambling received official notice from your organization that the program had received accreditation through 2020 without conditions. But what is so upsetting to me is that June 11th this year the Louisiana State Board of Nursing revoked the bachelor's program, yet they still have listed on your web site and on their web site that you are accrediting them.

So my question to you is are you guys still even paying attention to the 15,000 students?

Dr. Stoll: The answer is yes we are still paying attention to the 15,000 students. We are well aware of the issues that are going on at both of those institutions in their nursing program. They have been on monitoring with us as the process calls for. You have noted that they make progress. They've demonstrated their capacity within that monitoring period to be able to offer quality, and then things change.

Member Boehme: So I guess I don't understand how the Louisiana State Board of Nursing just this month revoked the bachelor's program, yet they are still accredited through 2020.

Dr. Stoll: So the process works that when a state agency, the regulatory agency makes that kind of determination, that the program is responsible for self-reporting. I would have to check our records to see if that was reported to us by the program.

When that happens, we ask the program for additional information and we follow up from there. Typically what -

Member Boehme: I'm sorry. I'm sorry, but when you sent them a letter on April 2nd without conditions, you were not aware of any of these issues? Is that what you're suggesting?

Dr. Stoll: The result of that April letter was a

follow-up report that the program submitted that was reviewed by peers, that was reviewed by the Board of Trustees -- sorry, Board of Commissioners. And at that time of that report the program demonstrated that they had made satisfactory progress in order to earn the decision that the Board made.

Member Boehme: So good enough for the accreditor -

Dr. Stoll: At that -

Member Boehme: -- but not good enough -

Dr. Stoll: At that -

Member Boehme: -- for the Board of Nursing for Louisiana State?

Dr. Stoll: At that time that we had that information. Now if I understood your timeline correctly, the information from the Board of Nursing came after the Board of Commissioners' decision. Is that correct timeline?

Member Boehme: I don't know. You are the accreditor. I would like to know that timeline. I mean, this is -

Dr. Stoll: Well, I'm trying to follow your timeline. You said that the Board -- the letter is dated April and that the Board of Nursing in the state made a decision in June. Is that correct?

Member Boehme: Right. So April 2nd your organization, which you should be able to tell me -- you sent a letter to their program saying that they had full accreditation without conditions until 2022. It's on the web site. And then when I'm looking at the web site right now from the School of Nursing at Grambling, it says, and I quote, "The approval to offer the bachelor of science in nursing degree was withdraw on June 11th, 2015 by the Louisiana State Board of Nursing. The BSN program was

terminated which includes all tracks leading to a BSN degree." This is a program that you accredit. This is a part of the 15,000 students which you're accrediting agency is supposed to be looking at.

And again I think I am just so upset, Madam Chair, that while we're talking about obviously these important federal regulations, students are being left behind. Students are not being discussed. And now these students have to transfer. These students have to go elsewhere. When you were charged to be the gate keepers and protect the students and protect taxpayers' dollars, you failed in this situation.

Chair Phillips: Anything that you would like to add to your comments?

Dr. Rusin: Well, I think sometimes in our business, in accrediting all these programs we have policies and procedures that we follow quite closely. And the reporting sometimes lags behind what's going on within maybe a state which has a much closer day to day control aspect over. I'm sure that our records, when we go back and check them, that probably Bethune has not notified us of the action taken by the Louisiana Board of Nursing. But once we know that, then we would follow up on our end with them as well.

Dr. Stoll: Thank you. And that is true. They are obligated to self-report. And now that you have brought this to our attention, if they have not self-reported, we will follow up on it.

Chair Phillips: Other Committee questions of the agency?

(No audible response)

Chair Phillips: Thank you for joining us. Don't go far. We may need you back.

We do have a number of third party commenters. Let me just read the names that I have. Marsha

Howell Adams, Beverly Malone, Brother Ignatius Perkins, Dr. Linda Christensen. Sorry, all of those were doctors besides the brother. All of those are National League for Nursing. I'm not sure if you are intending to speak at one or separately. I also have Dr. Peggy Walters, Dr. Linda Miles, and Dr. Kathleen Hudson. I'm sorry Peggy Walters representing diploma nursing programs, Linda Miles representing Dayton State College, and Kathleen Hudson representing Piedmont Virginia Community College. Just to give you a feel for the third party commenters that we can expect.

The first four of you, National League for Nursing, if you are planning to speak together, please come join us and tell us who is who.

Just to give some structure to the third party comment process, we do invite third party commenters to indicate their interest in making a comment prior to the meeting. We also accept walk-ins, as it were, before the meeting. And we have several of those today. We do limit our comments technically to three minutes each. In the interest of this issue, I will make some judgment extending that.

So, welcome.

Third Party Oral Commenters: Marsha Adams

Dr. Adams: I'm Marsha Adams. I am currently the President of the National League for Nursing.

Dr. Malone: Beverly Malone, the CEO for the National League for Nursing.

Dr. Perkins: Brother Ignatius Perkins, member of the National League for Nursing.

Dr. Christensen: And Linda Christensen, Chief Administration Officer at the National League for Nursing.

Dr. Adams: Good morning. As I stated, I am

currently the President of the National League for Nursing and I'm here today as the elected voice of 40,000 NLN members. The National League for Nursing has presented a consistent message of support for our subsidiary within the boundary that the NLN will not legally sever the ties with our subsidiary. The NLN recognizes and accepts the U.S. Department of Education regulations for recognition of accrediting agencies, specifically the separate and independent requirements applicable to Title IV accrediting agencies. I can assure you that the NLN does not interfere with ACEN's accreditation processes, procedures, policies, decisions, budgets and so forth in any way, shape or form.

We recognize ACEN's legally valid bylaws are their 2005 NLNAC bylaws. Those bylaws are out of date and do not reflect current practice. After last summer's NACIQI meeting representatives from both the NLN and ACEN met with the Department of Education for guidance on the issues. On October 6th four NLN board members and four ACEN commissioners met to update ACEN's bylaws. The group updated terms to reflect current practice which all parties agreed were compliant with the DOE regulations. The bylaw terms related to corporate structure were left to each agency to draft. The NLN legal team drafted corporate structure terms that retain the sole member subsidiary status as related to structure but allowed ACEN total control to operate accreditation functions as required by the regulations. The ACEN legal team inserted language that allows ACEN total control over their structure as well as operations.

Although ACEN refused to meet with the NLN for a second meeting, there were multiple letters between NLN and ACEN. Our negotiations resulted in two sets of potential bylaws. The NLN version of ACEN bylaws provides ACEN with all authority over bylaw provisions dealing with accreditation matters. And the NLN only retains the authority to maintain the parent subsidiary relationship. The NLN Board

of Governors formally approved these bylaws and forwarded them to ACEN in May 2015. We firmly believe that they will meet the DOE regulations.

ACEN's version contained the same accreditation-related provisions with added corporate language that totally excludes the NLN as the parent organization. ACEN continues to accept nothing less than having total control over its own bylaws and articles of incorporation. ACEN has openly stated that they want to sever ties with the NLN.

Today ACEN is at a crossroads. It has the option to accept the updated bylaws that reflect current practice and the legal structure of parent subsidiary and avoid an adverse vote by you today. Or ACEN has the option to refuse to accept its current legal status as the NLN's wholly-owned subsidiary at the cost of losing U.S. DOE recognition. The choice is in ACEN's hands.

I would like to express my appreciation for being able to address you today and share the message that the NLN is not just saying we are supporting ACEN. We are acting to support our subsidiary ACEN by having approved bylaws that are compliant with the U.S. DOE regulations. Thank you.

Third Party Oral Commenters: Beverly Malone

Dr. Malone: Good morning. As I said before my name is Beverly Malone and I am the CEO for the National League for Nursing, and I've been the CEO for the past eight years.

I want to proudly restate and publicly restate that we are in support of our ACEN colleagues, and for us that means within parent and subsidiary relationship. And so for us there is no contradiction there.

I also want to clarify today NLN's many attempts to work with our colleagues at ACEN so that the U.S. DOE compliance can be maintained and that our understanding of the separate and independent are

those five regulatory statements that are within your books and that we have taken to heart and that we use as our guidelines.

I want to correct some multiple misstatements that have been circulating about the NLN. We're very popular right now. Our history is that we've been in accreditation since the early 1950s, as was stated. And the NLNAC, the previous name for the organization, separately incorporated in 2001 as a subsidiary and remains a subsidiary today.

We understand that separate and independent refers to specific accreditation activities, not to legal structure. And we've asked our colleagues at the DOE to help us with that, and in previous times we've gotten even a letter saying that the DOE does not address the legal structure of an organization. So we took that to heart any time we talked to our NLNAC ACEN colleagues and said we can work this within the umbrella of being a parent and a subsidiary. We can work all of these issues and we can bring the compliance issues up to where we need them to be, where you need them to be so we can keep everything moving for our students, for the schools of nursing. We've gotten a lot of comments from our schools of nursing.

First of all, the NLN is trying -- this misstatement -- is trying to maintain control of ACEN. We are only acting as a parent/subsidiary corporate structure, not over any accreditation activities. And our colleagues have said very clearly that if they can separate from us, that they will then make sure there is no relationship between us.

The NLN is monitoring ACEN's budget, another interesting comment. The only way we're involved in the budget at all is that we need a combined audit at the end of the year to present the whole organization's work. Other than that, I don't even know what their budget is.

The NLN is trying to control the Board of Commissioners and personnel policies. We've

changed our bylaws to preclude such actions. For example, our colleagues when they were in NLNAC told us that voting, the way that the voting situation was set up that it needed to be changed. Our members voted on it and we changed it to make sure that there was nothing that would interfere with your approval of our colleagues.

And then this, that the NLN is trying to retain ACEN for financial gain. It's the money. That's what some people have been saying to me. And I want to assure you that we take absolutely no money from our colleagues at this point in time. That ceased a year ago. And it was based on contractual arrangements such as footage, in terms of when they cohabited with us in New York City. There was a royalty agreement that preceded any of us. But there's never been that we want this for a monetary gain. We want it for our schools. We have 12,000 schools of nursing within the NLN. We have 40,000 individual members and the students are out there. And so, we would like to see this settled.

And one of the things that I heard was that NACIQI said, well, why hasn't the NLN showed up at our meetings? And I can tell you that the previous executive director of ACEN told me very clearly that if NLN showed up, they would lose your approval. And I took that as the truth. And we didn't show up until we were presented with a law suit against us. And then it seemed like maybe we should show up.

Finally, the NLN -- that's the big piece. So let me just summarize. The NLN supports our subsidiary; we have said that again and again, and I will continue to say it, and has taken many steps to support their continued compliance with U.S. DOE regulations. However, the NLN is not willing to do at the cost of giving away a subsidiary that is totally owned by the NLN.

And from hearing this morning what the comments were, I'm concerned that this lack of compliance has been pushed to the 11th hour all for the result

of a court case to find an emergency way to deal with it. It doesn't feel as if there's been any really truth concern in terms of working with the National League for Nursing, working with us in a way that we can forestall any harm to our members, any harm to the schools of nursing, but that this has been a plan A kind of operation. And I am very surprised, very concerned about that. Thank you.

Third Party Oral Commenters: Ignatius Perkins

Dr. Perkins: Good morning, all. Thank you for the opportunity to appear before you today on behalf the National League for Nursing. My name is Brother Ignatius Perkins. I'm a Dominican friar and I currently am director of health services and executive director of the Dominican Friars Health Care Ministry in New York.

As a nurse educator and dean of schools of nursing for more than 40 years I have had a long association with the National League for Nursing serving in various positions and was on the NLN Board of Governors at the time when ACEN first file suit against the NLN to legally sever their subsidiary status.

Since 1893 the NLN, its subsidiaries, member schools of nursing, constituent leagues and individual members have served as the preeminent organization that has developed nursing education into its premier status among the health professions in the United States and through the developing world. This is a long and enduring history of nursing education to remember and to recall, but also a history still to accomplish. The NLN will never compromise its mission to promote excellence in nursing education, to build a strong and diverse nursing work force, to advance the health of the nation and the global community.

Without exception we hold our subsidiaries, member schools of nursing, constituent leagues and individual members accountable to this same mission and its core values. To do anything less

compromises the integrity of nursing and the art of human caring and reduces the process of accreditation of nursing education programs to a technological and impersonal exercise.

Written documents submitted by the NLN clearly and without any controversy attest to the facts that the NLN has never interfered with matters pertaining to the accreditation of nursing programs by a subsidiary, the Accreditation Commission of Education in Nursing. The issue before us I believe is not now, has never been centered on the authority of the DOE or the National Advisory Committee and the respective regulatory authority, or the need or willingness of ACEN and NLN to comply with these rules. This current and long-protracted conflict is centered in the disagreement by ACEN's leadership with the historical significance, mission and core values of NLN, the parent organization evidenced by a frank and open unwillingness to recognize and comply with its structure and its bylaws as the NLN subsidiary.

Among similar organizations the NLN has committed to caring, integrity, diversity and excellence as integral core values of its outcomes. The telos of NLN is not now nor has ever been seen as limited to compliance with the regulatory and accreditation standards. The NLN views and supports full compliance with the DOE and the National Advisory Committee standards and policies as a means to achieve its mission, but not as an end in themselves.

The NLN is much more than a complex multi-layer organization. It is a human community, an ecology of professional independent relationships that consists of women and men committed in different but complementary ways to achieve the nation's health care through nursing education. The primary architects of this work are the thousands of women and men of the NLN. The largest and most powerful cohort are our nurse educators who help reshape the ecology of health care and nursing practice

through nursing education.

Hundreds of our schools of nursing are accredited by ACEN, however, as a result of this fractious relationship between ACEN and the NLN, these valuable centers of learning, many who hold institutional membership in the NLN, are marginalized from the full participation in the NLN community. The largest threat to this continued resistance of ACEN to cooperate and comply with NLN is the negative impact on the nation's health care and the care of the sick. NLN has always been about human dignity, freedom and human flourishing, which is the trilogy of nursing. It will not deviate from this sacred mission birthed more than 120 years ago.

Thank you very much for your time and thoughtful consideration of all the facts and testimony that surround this case.

Chair Phillips: Thank you.

Third Party Oral Commenters: Linda Christensen

Dr. Christensen: My name is Linda Christensen and I am the Chief Administration Officer at the National League for Nursing. I am here to provide testimony as to my direct knowledge of issues that are before you today.

In collaboration with the NLN, NLNAC, now ACEN, moved offices from New York to Georgia on June 1st, 2009. On June 2nd, 2009 NLNAC filed new articles of incorporation in Georgia without NLN's knowledge. NLN had previously incorporated NLNAC in New York State in 2001, and NLNAC could not be reincorporated elsewhere. NLNAC later filed papers to legally dissolve the attempted Georgia incorporation.

In 2009 NLN became aware of the need for NLNAC to conduct its own elections. NLN made the bylaws change necessary to NLN's bylaws to accommodate this request. After that NLNAC started their own

independent elections. What NLNAC did not do was to change their own bylaws to reflect that change in practice.

I met with the Department of Education in 2010, early in 2010 to help clarify and understand what separate and independent really meant. Shortly after my meeting the president of NLN was contacted by an elected official of NLNAC and told that my very meeting with the DOE was threatening their recognition status, and it was something that I was not supposed to do.

During the spring of 2011 the NLN addressed the NLNAC Board of Commissioners about multiple inconsistencies between the NLNAC bylaws and the actual practices between NLN and NLNAC. The concern was that the practice between us, which was minimal, was not reflected correctly in the bylaws and we were aware that would be problematic. NLNAC's response initially was we will get back to you. And definitely on June 23rd of that year NLN received a lawsuit naming us as a defendant in a Georgia case that NLNAC filed to request the court complete separation from the NLN on the grounds that it was required by the DOE regulations related to separate and independent.

In December of 2011 the NLN Board of Governors voted to approved draft changes to the NLNAC bylaws that would have reflected current practices between the two organizations, that would have retained language that NLN was the parent organization and NLNAC was the subsidiary, which would have been consistent with New York not-for-profit corporate law, and third, were thought to be consistent with the Department of Education regulations.

These draft NLNAC bylaws were sent to NLNAC commissioners in January of 2012. NLN received no response from NLNAC regarding those proposed bylaws that had been approved by NLN and could have been adopted. During 2012 the NLN bylaws

were updated to include language that restricted NLN from interfering with any subsidiary practices that must be independent from the NLN.

During the spring of 2013 NLNAC started doing business as ACEN and presented new bylaws to the U.S. DOE, bylaws that NLN had never seen. The New York court did find that those bylaws by ACEN that they conceived on their own where they named them self as class A members and relegated NLN to be a class B member that could be voted out at any time, thus removing the parent/subsidiary status between NLN and NLNAC. The New York court found those bylaws void, contrary to the New York not-for-profit corporation law. And that was with the argument of federalism brought up at that time.

During the fall of 2014 and the spring of 2015 board members from both the NLN and ACEN met to update the 2005 NLNAC bylaws. Although I understand the group agreed to any provisions dealing with accreditation and separate and independent practices, they did not discuss corporate language that would be necessary with New York not-for-profit corporate law. NLN and legal counsel provided language that identified NLN as the sole member, yet within those bylaws all the operational terms of accreditation functions were left to ACEN. ACEN's draft removed NLN as having any corporate authority at all.

As of April of this year the NLN Board of Governors formally approved the NLN version of those bylaws that initially were worked on between the two groups, received language by our New York attorneys that was consistent with New York not-for-profit corporate law and sent then to ACEN, and they could have approved those bylaws at that time. To our knowledge they have not been approved.

I'd like to thank you very much for your time.

Chair Phillips: Thank you.

Readers, I have Frank and Jill.

Dr. Wu: So this is great to hear from you. Could I try to summarize what I've heard in a manner most sympathetic to you. So I'm just going to draw out five key points, and you can tell me if I have captured this.

All right. Number one, NLN does agree that ACEN must comply with the separate and independent rule. Number two, NLN's view as to the accreditation function ACEN does comply. Number three, that as to the corporate structure of ACEN, that is beyond the province of this body. So it doesn't fall within separate and independent. Number four, the sticking point here, the real fight is over the provision about bylaw revision and whether NLN has the ultimate authority. That would be the main symbolic -- not just symbolic, the main change that ACEN wants that NLN objects to. Number five, that the position ACEN has taken and what they presented is a tactical move to gain an advantage in a pending civil law suit in New York State where they want NACIQI to weigh in in a way that will help them because they ultimately you believe wish to secede from you as an entity.

Have I roughly captured the position you have?

Dr. Malone: I think you've done an excellent job. Number four, that the NLN wants control over the bylaws, we do not want control over accreditation-related bylaws. Not of our concern, not our business. Only the ones that relate to the legal structure and functioning of the organization in that way as a parent to a subsidiary.

Dr. Wu: Right. Thank you. This is very helpful. What it suggests to me is that the question for NACIQI as a body is the following: Does separate and independent refer to just the accreditation function? And if that's so, then your position is much stronger. Or does it refer to the entirety of the relationship including the corporate structure? In which case your position is weaker. So I don't

know the answer to that. That's something for us to discuss after we finish.

I did have another question though. I wanted, and I had said earlier I would ask you this question as well, to ask about this competing agency that you're starting up. It apparently is true that you will be entering the field or already have, that you created a body to compete with ACEN. And I wonder how does that play into all this?

Dr. Christensen: The new body, CNEA from NLN, was not even envisioned years ago. The law suit was filed against NLN to try to break away totally and separate from the NLN in 2011. NLN has always had accreditation as part of its mission, and as part of its overall family of activities. Out of response to our members who wanted accreditation through the NLN; they were afraid of what was going to happen, it was played out in the media to some extent about filing the law suit and trying to break away from NLN and no longer be part of NLN even as a subsidiary.

On the basis of that, NLN made a decision to go ahead and start another accrediting agency, but I would like to point out it would be a different type of agency. It would not be competing with ACEN at this point in time as the same type of agency. It would be the non-Title IV agency. And again, that was in response to potentially if the court would have ruled in their favor, they could have been gone. And they have told us that if they get control of their bylaws and articles of incorporation, that they would separate totally without a relationship.

Dr. Wu: Actually, one more question. Why do you want to hold on them if -

(Laughter)

Dr. Wu: -- things are like this?

Dr. Malone: Yes, I can answer where I am. It belongs to the NLN. This is who we are. This is

what our members have asked us to be. And our members being our schools of nursing. And many of them are both in the NLN and accredited by our colleagues in ACEN. So it's more of an identity. And we believe that we can be there for our members, for the schools of nursing. And Brother Ignatius talked about who we were as an organization. It's part of who we are as an organization.

Dr. Wu: Okay. That's fine. It just seems they don't really like you.

(Laughter)

Dr. Malone, You know, I have noticed that.

(Laughter)

Dr. Malone: But I do want to add one more piece that I didn't. Madam Chair, is it okay to add one more piece?

Chair Phillips: Yes, absolutely.

Dr. Malone: Marsi, the executive director of ACEN, we did have a conversation last night about 7:00 p.m. about trying to figure out how we could come together and move forward. She's only been here six months. And so the possibility of someone who's only been around six months means that there might be another opportunity. And so I just want to put that clearly on the table as part of what we discussed.

But when I listen to the lawyers, it sounds more like a strategic plan than it does anything else. And I want to mention that what they did to our Board of Governors was not a good thing. They put their names and addresses in letters to all their schools and asked their members, those who are accredited, to contact them. It's messy stuff. Thank you, Madam Chair.

Chair Phillips: Thank you.

Jill?

Member Derby: Well, I think Frank has posed the really central problem here, because I find myself confused then. I need clarification about what exactly does "separate and independent" mean? And I think without that clarification it's hard to make the determination here. Because what I hear -- and I'm curious to hear from our staff about the degree to which they've been engaged in, the degree to which they've been consulted in this, particularly the latest iteration that was referred to that NLN offered, and our staff's position about whether or not that met the separate and independent requirement. Because if it did, it seems to me there's room for them to work this out. But other than that, we're not left with much of an option in terms of our own decision here.

Chair Phillips: Herman or Sally, do you want to address the definitional issue?

Mr. Bounds: Yes, I'll go first and Sally can jump right in.

So from the beginning we have met with both agencies and we discussed the Department's position on separate and independent. And when we look at that, we're looking at separate and independent accreditation functions. As we said before, even in the 2012 report, that the parent corporate structure is a concern, but separate and independent can be maintained under that umbrella. We stated that many times. Matter of fact, if you look at the 2012 report, which I had to read, because it was before my time at the Department, all 208 pages, if you look at that thing, it specifically spells out each and every step that needed to be made to make the bylaws compliant, including the articles, within that structure.

So I'm glad you asked, because folks have been interpreting what we have said all morning. So I'm glad we had an opportunity to kind of clear that up. But that's what we have said all along. Sally may

be able to explain it in greater detail, but that's the big picture. Separate and independent, if you look at the requirements, it's really pretty basic. There are five areas that we look at. And when we look at bylaws, articles of incorporation, we look to see if there's language in any of those documents that would be in conflict with any of those five requirements in the regulatory criteria, in the statute. So that's what we looked at.

And I think that detailed instruction has been given and it just needs to be followed. Department staff doesn't take any sides. We don't look at the internal arguments between the two bodies. We strictly look at this as a black and white issue. What does the statute and the regulations require? And that's what we report. So again, I'll let Sally jump in because she may be able to explain. It's a little more in depth than I could -

Ms. Morgan: Okay. I've heard two sides here today, one saying that you have to take out the requirement in the bylaws that allows NLN, or requires NLN consent to any amendment to the bylaw. And on the other hand, a position that as long as there's some language in the bylaws that says NLN won't interfere with accrediting decisions, that would be all right.

I think either one of those is a rather extreme position, and we're more in the middle. The separate and independent requirement says, among others, that the related entity is not supposed to be able to select the members of the governing body of the accrediting agency. And you could read that in a very legalistic sort of way and say, all right, as long as they don't actually pick them and put them in, that's satisfied. On the other hand, control of the bylaws and saying how big the body should be and what they're qualifications have to be and requiring consent to any sort of change by the parent organization does exert control on who the decision makers are.

In addition, provisions in bylaws that really spell out what the agency's policies are, especially if they require consent to be changed, essentially puts the parent corporation in the position of actually being the decision maker itself.

So it isn't only the provision in the bylaws that says that there has to be consent by NLN that causes us concern. There are provisions throughout that impinge -- and I think NLN recognizes this. There are provisions throughout that impinge on the agency's independence. At the same time, we recognize that there is -- the state does have requirements of NLN as a parent corporation and that the NLN has to be sure that the relationship respects that.

So there's a lot of nuance here. There's not a bright line test. And I responded to what Frank said earlier: It has not been the Department's position that the federal law preempts the state laws, but if a state law was sufficiently restrictive, that could mean that effectively an accrediting agency organized in that state could not be recognized.

Chair Phillips: Frank and then Jill.

Dr. Wu: So I have a practical question, which is could we take a break soon, because we've been at this for two hours? So that's just a practical question.

But then a question for a staff. The NLN and ACEN are not the only entities like this. There are dozens of others. How do they do it in their bylaws, the ABA and so on? We recognize many, many other agencies that are inside or related to professional membership groups. So their model is out there. This is not a unique case.

Mr. Bounds: I think when this situation started we provided some sample bylaws from one agency to show how they met the requirements. This particular agency at one time, they were under the corporate umbrella. They were compliant and they

chose independently to separate. So we gave them a couple of examples of how you could kind of work this situation out.

Dr. Wu: But also there are agencies that are inside another corporate entity?

Mr. Bounds: Oh, sure. Yes.

Dr. Wu: Right.

Mr. Bounds: Yes, yes, yes. Yes. Yes.

Chair Phillips: Jill?

Member Derby: Just a question. So you have initiated a competing agency here, but you are willing that it not be separate and independent, which means that there are quite a few programs that it could not accredit. Can you speak to that?

Dr. Malone: Sure. We have initiated another -- it's called the Commission on Nursing Education Accreditation. And we don't foresee it being competitive. It will not be a Title IV granting organization and it will primarily focus from the -- mostly licensed practical nurse all the way to the doctorally-prepared nurse. So that's where we are.

And the reason that we initiated it, in all honesty, was a request from our members. They were very adamant and we tons of requests that the -- this is who the NLN is. We are partly an accrediting organization.

Member Derby: Thank you.

Chair Phillips: I've got Cam and Hank and Kathleen. And then I'm going to sort of put a pause and let us breathe and come back in a minute.

Okay. Cam?

Member Staples: Thanks, Susan. I just have a question again, and, Herman, this might be for you or for Chuck; and that is, the NLN adopted a bylaw

in May, is that right, May of this year?

(No audible response)

Member Staples: Which I believe you think addressed all the requirements. And my question is was that part of the staff review? I just read the staff review again and I didn't see any taking account of that bylaw change. And I guess the question I have is the staff analysis is pretty clear that corporate structure is not required to be changed. And if the staff were to look at the bylaw change, is it possible they are in compliance even if their subsidiary doesn't think they're in compliance or doesn't want to be considered in compliance? That's my question. I mean, did the bylaw address the Department's concerns about separate and independent?

Chair Phillips: I don't see Chuck here. Do you want to -

Mr. Bounds: Yes, and the issue that we had, Cam, was that no matter what we looked at, without agreements from both parties, we felt like we were spinning our wheels, because we look at those bylaws and say, you know, look, these would be okay with some tweaks.

Member Staples: Right.

Mr. Bounds: And then you get the other organizations; well, no, we don't agree with those tweaks. So it ended up being you look at a set, you waste a lot of time looking at a document which the other entity does not approve of, and then you look at the other entity's document and they don't approve of that. So at some point we just said, hey, it's not our job to try to referee this thing. I mean, we were getting pulled in for solely the sake of the students and thinking about all the other things that could happen.

So, I mean, just at some point we just said, hey, look, you guys have to get together and submit us

something that we can review. But we did see some that would have worked with some tweaks, but we didn't consider those again because we didn't have the approval of both organizations. At that time really ACEN is the recognized entity, so we needed them to submit something with some statement from the parent organization saying that they approved these changes. And that's where we were.

Member Staples: Thank you. That puts us in an interesting quandary, because if the adopted bylaws do satisfy the Department's review; let's just assume for sake of argument that the bylaws that were adopted by the NLN satisfy the Department's criteria, then we're being asked by the subsidiary to find them out of compliance as a tool -- and that's mentioned even in the staff analysis, potentially as a tool in a legal fight. It's a difficult place for us to be in to determine whether they're in or out of compliance without looking at the present status of the bylaws, which may have been legally adopted, whether the ACEN likes it or not, under the corporate structure they currently have.

Mr. Bounds: Yes, I think that's the problem. They really weren't legally adopted. They were just a draft document.

Member Staples: Oh, I thought -- well, can I ask the commission, because I thought they said you adopted them to your board in your process this spring.

Dr. Adams: Yes, ultimately the board of Governors did adopt those bylaws to be given to ACEN to review because we firmly believed that it met the separate and independent related to accreditation, but also recognized us as the parent organization.

Member Staples: So at least according to your analysis, they've been legally adopted. Is it part of the problem? I understand you want agreement by both, but if they have legally adopted the bylaw change, isn't that something that should be

considered by the Department?

Mr. Bounds: Again, the issue is that ACEN being the recognized entity, they would need to supply those bylaws as part of their petition for recognition. We could not take those bylaws directly from the parent organization.

Member Staples: Okay.

Mr. Bounds: And Sally can correct me if I'm wrong, but they would need to come from the recognized entity with some sort of notice or documentation saying that, yes, we all agree and all the legalese have been addressed.

Member Staples: Okay. Thank you.

Chair Phillips: So in effect, just to clarify that, if the bylaws that NLN adopted do indeed match what the Department needs, ACEN could preclude those from being used to satisfy things if they didn't like them?

Mr. Bounds: If they didn't like them, sure.

Chair Phillips: Okay. Got it. I have Hank and Kathleen, and then a break.

Member Brown: Yes, you mentioned that they're a wholly-owned subsidiary. Who elects their directors?

Dr. Malone: That was an issue three or four years ago that the whole membership of NLN was electing them. When it was brought to our attention that this would not comply with DOE, we changed it immediately. So their members, their -- not members, but those who are accredited by their organization are the ones who vote and elect them, totally.

Member Brown: So you're the owner, they're a wholly-owned subsidiary, but you don't select their directors?

Dr. Malone: No, because we are very clear that we

don't want to do anything that puts them out of compliance. And we were trying to make sure that that didn't happen. Tell us what we can do within this overall structure of parent and subsidiary and we will do that to change it.

Member Brown: A second question. You mentioned in drafting the bylaws, in the hopes of complying, you had sought the advice of the Department of Education. Do you have a written opinion from the Department of Education?

Dr. Malone: No, I think Mr. Bounds just explained that ours was -- it didn't have the stamp of ACEN on it, so it wasn't going to go anywhere. But we wanted to know before we offered it to them were we in compliance? That for us was the big thing. We wanted to as much as possible help our colleagues. And we knew that by sending something to them that was out of compliance that wasn't much of a help, so we sent it in -- we knew that with tweaks and with the support of ACEN it could fly, possibly.

And so we adopted it by our board, just as my president said, and then we sent it to our colleagues at ACEN. And they have said in a letter to us that the only way -- that if they control their bylaws and their certificate, they will totally separate from the NLN. That is unacceptable to us.

Member Brown: I'm sorry. Let me ask my question again.

Dr. Malone: I'm sorry I didn't answer it.

Member Brown: Well, no, I wasn't very clear. You sought guidance from the Department of Education as to the appropriate wording for the bylaws?

Dr. Malone: No, we had -- well, I guess so. We had already worded it. We sent it to them to let us know whether -- this would be in compliance. That was the big issue.

Member Brown: And they told you it would be in compliance?

Dr. Malone: With tweaks. With tweaks.

Member Brown: And you adopted the version that they had signed off on?

Dr. Malone: Well, they didn't sign off on it, but we did adopt the version that needed tweaking.

Member Brown: Okay. You adopted a version with their recommended changes?

Dr. Malone: They didn't really give us -- you want to speak to that, Mr. Bounds?

Chair Phillips: Mic, please.

Mr. Bounds: So, we got a set of bylaws from NLN. We looked at those bylaws and made some suggestions. But the key thing to remember is that the 2012 staff report and the 2014 staff report outlined the specific changes that needed to be made to the bylaw and articles of incorporation. So a model for amending the bylaws has been there for what, four years. So they have already had that instruction.

What we received as a document was sort of a draft to look through. Could you guys take a look at this and see what you think about the language? I just want to be clear though, the guidance for amending the bylaws has been out since 2012. If you look at the 2012 staff report, it is very, very specific. I wasn't here there, but the folks who did the analysis and did the work; I think Sally was here also, did a very, very good job going line by line explaining exactly what needed to be changed. So the model was there. We just took a cursory look.

And the point that I made earlier is that at some point you run out of energy when you're trying to review these documents when you have conflicting interests and you don't have the approval of both

organizations. So at that point we said, hey, look, these changes could be made. There are some additional things that we would like to see. And that was probably the end of that discussion.

Had we gotten a document that everyone agreed on, then we could have put more energy into that document saying, okay, change these. Go to line two, fix that. We could have gave some more detailed instructions. But other than that, at that point we said looks good, but you got to get the approval of the other body, the other group before we go any further.

And then the last thing that I would like to say is that if we would have gotten some sort of agreement on the document and they would have said, hey, guys, look, we have come to an agreement, we're going to adopt these changes, then that probably would have changed the staff -- because we would have seen an end to this process. But as it is right now we still don't have agreement from both groups. So that's where we are.

But to answer your question, the specific instruction for what needed to be changed to make the bylaws compliant has been there for a long time.

Member Brown: It just looks to me like you've got a group here who's fighting to not be accredited. I mean, have I misstated it?

Mr. Bounds: No, sir. I don't know.

Chair Phillips: Kathleen and then a break.

(Off mic comments)

Chair Phillips: Mic, please.

Member Alioto: Ms. Malone, you talked about protecting students and health care in America, as ACEN is also saying they're interested in doing. And I'm sitting here and keep thinking what is this really all about? And you mentioned money and that you

hadn't been receiving money in the last year from ACEN. They said earlier that 5.9 million had been given to you. I'm also curious about the legal cost. I'd be interested in knowing. I got a feeling this is kind of a lawyer's paradise.

(Laughter)

Member Alioto: So what have the legal costs been?

Dr. Malone: For us it's been about 70,000 per year. So 2011 to now is four years. Four times seventy is two point one million. Yes, it's about a couple million.

Member Alioto: And how -

Dr. Malone: It's a half a million. I'm sorry. My math is off.

Member Alioto: And you said that you had not received any money -

Dr. Malone: No.

Member Alioto: -- from ACEN in the last year -

Dr. Malone: No.

Member Alioto: -- but before that it was royalties?

Dr. Malone: Yes.

Member Alioto: That was the 16.1 percent?

Dr. Malone: Yes, and it was also -- before that it had been we were living together in New York and they had space that they paid rent for -

Member Alioto: Yes.

Dr. Malone: -- the footage. And so, it was that. And the five point whatever million that Marsi mentioned, it was over the entire time. It was not the last year or the last two years or anything like that, or what they paid us in any way.

Member Alioto: Thank you. What is this all about really?

(Laughter)

Dr. Malone: I am really being honest with you that it is about the NLN having accreditation as part of who it is and about our membership requesting that we work with this. We were just on the phone with some colleagues who I think will probably be presenting later today, who you'll be hearing from about their concern. This kind of last-minute issue here, it's got the whole nursing community up and some folks incredibly frightened about what it means for their accreditation and their programs. So it's about how parents work with their subsidiaries. And we're more than willing to work with our subsidiary. They're not willing to work with us as a parent organization.

Member Alioto: Thank you.

Chair Phillips: Okay. We have three more third party commenters, and I'll invite them to come up after we take a 12.5 minute break.

(Laughter)

Chair Phillips: And let me just call that now. And those of you who -- the three who remain to comment, I haven't forgotten you, but other needs call at the moment.

(Whereupon, the above-entitled matter went off the record at 10:08 a.m. and resumed at 10:22 a.m.)

Third Party Oral Commenters: Peggy Walters

Chair Phillips: For the record, we have the recusals of the Committee members for this are Bill Pepicello, Art Keiser, Federico Zaragoza and Bobby Derlin. So those of you are needing to recuse can do so again no.

The Committee members back to the table. And let me invite our third part commenters. And I think

that you are coming up separately. I have in sequence Dr. Peggy Walters, if you could join us. Greetings and welcome.

Dr. Walters: Good morning, Madam Chair. Good morning, Committee members. Thank you for the opportunity to come and to speak today on behalf of diploma nursing in the United States. I am Dr. Peggy Walters. I am the Director of the Watts School of Nursing. We're located in Durham, North Carolina, part of the Duke Regional Hospital and part of the Duke University Health System. Watts School of Nursing originated in 1895. We are 120 years old this year and we've been nationally accredited since 1956.

I am greatly troubled today that the ACEN, who is our national accrediting body, could possibly lose its recognition. It is necessary for the Committee to take action today so that ACEN can be allowed to become an independent entity and that our school of nursing can maintain its national accreditation.

ACEN is the only national accrediting body that diploma programs can use in the United States. The bottom line is that without ACEN we will not be nationally accredited, our students will not be able to get federal financial aid, and 80 to 90 percent of our students in our program currently receive those funds. We're very proud of the default rate of less than four percent and our nursing students work very hard to maintain the quality of the program that they so represent when they go out to take care of patients in the community.

The U.S. Department of Education upholds federal regulation, encourages integrity and honesty for all parties and we appreciate your attention to this matter, and we certainly thank you for all the work that you do, because it is hard work.

But not only is it about accrediting our programs and making sure our students can get federal financial aid, it's also about the citizens of North Carolina. The December 2014 report from the

HRSA, from the Department of Health and Human Services stated that the State of North Carolina in the year 2025 will need an additional 13,000 nurses. The American College of Medical Quality estimates that number to be as high as 20,000. By not having schools of nursing that are nationally accredited we can potentially impact any will have an impact on the quality of health care in North Carolina. It will be severely hampered.

Our students attend and graduate from our accredited programs because our employers will only hire students who have graduated from accredited programs at the national level because it's meeting the highest standards that are set out there for schools of nursing.

There's also the issue of public trust. That trust will be broken if our colleagues are not allowed to have accreditation approved for them for the ACEN and by having our commitment to make those requirements of DOE met. The potential loss of ACEN's recognition will result in for us at our program irreparable harm. It will affect, as stated before, over 1,000 nursing programs and hundreds of thousands of nursing students will be affected and the public trust will be eroded.

Now is the time to allow ACEN to be an independent entity so that the education of America's nursing work force can be sustained and we go forward to doing the task and focus on our function. Thank you very much.

Chair Phillips: Thank you. Readers or Committee members who would like to speak? Frank?

Dr. Wu: So I've heard you say a couple of times that you would like ACEN to be independent. I just wanted to make sure that I heard that right. It's your view that nursing would be better off? So you do have a view on the matter? You want ACEN to not be part of NLN?

Dr. Walters: We'd like first of all of this issue to be

resolved. And if that resolution means that they need to be a separate entity, then that's what we would like for it to be.

Chair Phillips: Other Committee member questions for this witness?

(No audible response)

Chair Phillips: Thank you very much for joining us.

Dr. Walters: Thank you.

Chair Phillips: I'd like to call Dr. Linda Miles. Good morning. Thank you for joining us.

Third Party Oral Commenters: Linda Miles

Dr. Miles: Thank you. Good morning. My name is Dr. Linda Miles. I'm Chair of the School of Nursing at Daytona State College and I'd like to thank the Committee for the opportunity to provide testimony this morning.

As a nurse administrator I'm very concerned of the consequences that might result from the ACEN losing its recognition by the Department of Education for not only our programs, but our students. Preventing the ACEN's ability to accredit nursing programs could be catastrophic for nursing programs, the students, the faculty and administrators in Florida because of the state law that mandates programs are accredited by either ACEN or CCNE.

I'd like to take a moment to walk you through the ACEN's recognition by the Department of Education and why it is so important by providing historical context to Florida's legislation as it relates to nursing education.

Florida has faced several cycles of nursing shortages over the years and legislation was passed in 2009 to address the nursing shortage by significantly reducing the requirements for new nursing education program approval. However, the Office of

Program Policy Analysis and Government and data from the Florida Center for Nursing identified that some nursing programs were not effectively preparing students to pass the licensure examination and enter the health care work force with the competencies that they needed to fulfill their role.

As a result, the state passed legislation requiring current pre-nursing programs to become accredited by July 2019 and programs that were established after July 2014 to become accredited within five years of admitted its first class of students. The legislation indicates that nursing programs must become accredited by an agency that is recognized by the U.S. Secretary of Education, and ACEN is the only accrediting body that is recognized by the Department of Education that accredits all programs: associate, practical and diploma nursing programs.

Daytona State College offers associate nursing programs and many of our students choose to continue their education to the baccalaureate and master's levels. Associate programs must be accredited so students can enter and continue their education into many of these programs.

Students are very informed today of what accreditation means to their programs. Students who are excited about furthering their education and who have worked so hard to achieve their associate degrees would no longer be able to continue their education into many of the baccalaureate and higher programs. If the associate programs lost their accreditation, the academic progression of nurses to earn higher degrees benefits everyone, and the inability to do so will become an extra burden on these students.

Additionally, Daytona State College has formed strong bonds with our local hospitals as they allow nursing student rotations through clinical training, contribute to scholarships and hire our students as

part-time nurse techs or in similar positions. These close relationships with hospitals could be in jeopardy because many employers will not hire graduates from non-accredited nursing programs, and as a result the hospitals could face an increased shortage of registered nurses.

Our nursing programs could also lose valuable clinical sites because priority is giving to nursing programs that are accredited, which could result in less students being admitted into the programs and as a result less graduates entering the work force.

As the region's work force and population grows, the demands on the health care system will only continue to rise. Colleges and universities will be challenged to prepare a new work force to address the nursing shortage. In our state anything that distracts from this mission is counterproductive. At Daytona State College we pride ourselves in the quality of the nursing program that we provide students, and this is largely based on the rigorous accreditation process that the ACEN requires.

We serve our community by being tuned into career demands and trends throughout the region and nation. In fact, according to the recent survey by the Florida Center for Nursing Florida will need an estimated 50,000 nurses by 2025 to prevent a catastrophic shortage of nurses. Currently we are playing defense as the state struggles to achieve significant gains in the availability of registered nurses as many leave the work force each year.

As a nurse administrator I feel that there is a responsibility to the profession of nursing and both current and future nurses to take the necessary steps for the ACEN to maintain its recognition by the Department of Education as an accreditor of nursing programs. I think without an accrediting agency with ACEN's track and know how the industry will be in a free fall and the ability to provide adequate health care to our communities could be significantly affected. Thank you.

Chair Phillips: Thank you very much. Readers, Committee members, questions? Frank?

Dr. Wu: So I have a question for you -

Dr. Miles: Sure.

Dr. Wu: -- which is do you care one way or another if ACEN is inside or outside of a bigger structure?

Dr. Miles: I only want this to really be resolved so that it doesn't affect our programs and students. Thank you.

Chair Phillips: Thank you very much. Our last third party commenter is Dr. Kathleen Hudson. Excuse me if I am not pronouncing this right; the handwriting is not entirely clear. Thank you for joining us.

Third Party Oral Commenters: Kathleen Hudson

Dr. Hudson: Good morning. My name is Dr. Kathleen Hudson. I am the Dean of Health and Life Sciences at Piedmont Virginia Community College in Charlottesville, Virginia.

I've been a nurse educator and a nurse administrator for more years than I care to admit. Our program at PVCC started in 1974. We've been accredited by NLN, NLNAC and ACEN. We're really proud to be an accredited nursing program. It keeps us on our toes. We just recently went through our accreditation site visit, and we have some work to do. And I was pleased to see that our peers identified that, because as an administrator it helps me keep my faculty and students on the cutting edge.

But I'm here today because I want to talk on behalf of our current and future nursing students. We currently have a 170 students in our program. We're considered a small program. I have 850 students in the pipeline wanting to get into my

program, and without accreditation that's going to make it very difficult for them.

The current trend in nursing is to have bachelors-prepared nurses, working especially in the hospitals. Our two local hospitals are magnet hospitals and their goal is 80 percent BSN nurses by 2020. They can't get there without our associate degree nurses becoming bachelors-prepared nurses. Our associate degree graduates cannot get into bachelor's programs if we're not accredited. That's a requirement of most of the four-year nursing schools is that associate degree nurses come from an accredited nursing program. And that's very important for the community of Charlottesville.

We are one of two nursing schools. University of Virginia graduates about 100 students a year. They go away because students come to the university to get their education. They go back to their home communities. PVCC graduates about 100 students a year. Our students stay in the community. They work in the hospitals. They work in the nursing homes. They work in schools. They take care of our community. And so it's really important that we be able to continue to have our nursing program and that it be accredited.

My previous colleagues have already outlined a lot of the concerns that I have in terms of accreditation. My main concern is that as an associate degree program right now today ACEN is the only game in town. If they lose accreditation, we're not going to be able to become accredited in 18 months or 2 years. There's no other program available to us at that point because our graduates need nursing school accreditation, not any federal program accreditation. They need to be accredited by a nursing education body in order for them to proceed in their education, in order for our employers to feel comfortable hiring them and committing the health care of our communities to them.

So I just want to emphasize that it's really important that there be an accrediting body for associate degree programs from my perspective and ACEN is that program. That is the entity today. That is our only game in town. I know you're going to -- I'm going to answer your question. Do I care whether it's inside or outside of NLNAC? I really don't, but we need an accrediting body. I guess my comment would be after listening to all of the testimony this morning is that if NLN strongly believes in accreditation and they have an accrediting body in the pipeline, why not let ACEN go? I don't understand. But from my personal perspective I don't care one way or the other.

Chair Phillips: Thank you very much.

Frank?

Dr. Wu: So I do I have one other question. There is already another nursing accrediting agency, but that wouldn't work for you because?

Dr. Hudson: They only accredit bachelor's and master's degree programs. They don't recognize accreditation for associate degree.

Chair Phillips: Other Committee questions?

(No audible response)

Chair Phillips: Thank you very much for joining us.

Department Initiatives

Chair Phillips: Committee, we have a bit of a juncture here. We do have to adhere to some time frames for our next event of the meeting. That does give us about five minutes for any further questions if you want to bring anybody back up for questions or some initial discussions. I need your input and queries.

Yes, Hank?

Member Brown: During the discussion our staff

director indicated that there were other -- if I understood it correctly, were other accrediting agencies that could provide accreditation.

Chair Phillips: The Title IV institutional accreditation, but not -

Member Brown: And access to Title IV funds?

Chair Phillips: Right, but not nursing accreditation.

Mr. Bounds: Yes, there were two issues. One was accreditation for licensure and the other was accreditation for Title IV purposes. So there are other agencies that could accredit those programs for Title IV purposes. And then I was just going to look at CCNE's scope of recognition. I think the last speaker was correct. They could come in for licensure for the bachelor's and master's degree programs. There would be an issue for associate degree programs for licensure purposes, unless they were in one of the state organizations. If they -

(Simultaneous speaking)

Chair Phillips: If I could just clarify wording, I think their scope of accreditation is for bachelor's and above.

Mr. Bounds: Yes, I'm sorry.

Chair Phillips: It doesn't have to do with -- we don't recognize for licensure or -

Mr. Bounds: Right, right. No, no. No, no. What I was -- yes.

Chair Phillips: Yes.

Mr. Bounds: What I was saying is that, yes, we don't, but I think what she was alluding to is that the state requires for licensure purposes accreditation by a recognized agency is what I was kind of alluding to, but yes. States may require that, yes.

Chair Phillips: So, Hank, there are three different features there. One is that, if I'm understanding this correctly, Florida requires a nursing-recognized federally-recognized accreditor -

Mr. Bounds: Right.

Chair Phillips: -- of which there are two. Only one accredits at the full set of levels, and that's ACEN. The other existing accreditor only accredits -- the scope is bachelor's and up. So that second issue is is there another accreditor for those programs that are not bachelor's and up in nursing? And the answer is no. And then the third issue is is there another way for any of the nursing programs to get the institutional accreditation that would allow them access to Title IV? And the answer to that is yes, but it wouldn't be nursing-specific and it wouldn't meet the requirements for the state licensure issue. Did I get all that right?

Mr. Bounds: You did.

Chair Phillips: Okay.

(Laughter)

Dr. Wu: May I try to -

Chair Phillips: Yes, go ahead.

Dr. Wu: The practical consequence of this is if ACEN went out of business, at least three categories of schools and their students would be in trouble. One would be in jurisdictions where you must have a degree from a program accredited by a nursing accrediting agency. The second would be at associate's degree levels or other of the six levels that the other agency doesn't do. So there is an entirely different accrediting agency out there, but it only does some of those six levels. And the last would be stand-alone institutions that don't have a regional accreditor that they are going to.

Chair Phillips: Or a national accreditor.

Dr. Wu: Right.

Chair Phillips: Some other institutional accreditor.

Dr. Wu: That's right. That don't have some place else to go. So there would be institutions that would be affected for Title IV purposes if ACEN went out of business.

Chair Phillips: And there would also be institutions that would be affected for state licensure purposes of their graduates -

Dr. Wu: Right. Right.

Chair Phillips: -- if ACEN went out of business.

Yes?

Mr. Bounds: One correction. For Title IV purposes the programs at master's degree and below could be accredited by one of the national accreditors. It would be the doctoral programs in that instance that would be out, because I don't believe -- I have to look, I don't believe there's a national accreditor that can accredit any occupations at the doctoral level.

Dr. Wu: Thanks. Thanks.

Chair Phillips: But that still wouldn't allow it to be a nursing accreditation, right?

Mr. Bounds: And that would be the -- that's correct. They would still need the nursing accreditor for state licensure purposes, unless it fell into one of those four states that have state nursing, but that wouldn't be Title IV either. Yes, you're right. You're correct. Yes, you're correct. Sorry.

Chair Phillips: Just to make sure that the muddy waters are fully clear. Kathleen?

Dr. Hudson: ACEN had said that it would be 15,000 students that would be impacted by this. I

wondered if all of the community colleges that have AA programs in nursing -- aren't there more than 15,000 students we're talking about here?

Chair Phillips: Could we invite the ACEN delegation back for just a few minutes to clarify the who is at risk question? Thank you.

Dr. Stoll: That comment that I made about the 15,000 students was directly related to the number of 2013 data enrolled students in diploma and practical programs, and those 15,000 students' access to Title IV monies through ACEN. You are correct that there are far many more students that are part of ACEN accredited programs at the associate degree level. Based on 2013 data, it's approximately 156,000 students at the associate degree level. But let's not mix up Title IV from nursing accreditation. They're two separate critters.

Chair Phillips: Frank?

Dr. Wu: Not to prolong this, but I did want to give you an opportunity to address a claim that NLN has made, which is that you have a secret plan to secede and this is just part of a strategy that you have where you're using NACIQI basically to advance your goals ultimately to be entirely on your own.

And note, I believe this would be an accurate statement. NACIQI doesn't care whether the accrediting agency is inside something or not. It only cares that separate but independent is satisfied. And there are some accrediting authorities that are entirely separate as a corporate matter and other accrediting authorities; the ABA for example, where the authority is contained inside something bigger. So I'm expressing no view of whether you're independent or not independent other than for the separate but independent requirement, the technical legal requirement.

But I just would like you to have a chance to respond because it's been suggested that this is just

a big war and this is one little battle and you're trying to get NACIQI in on your side in this battle.

Ms. McDonald: With the Chair's permission I will address that. Again, I'm Tish McDonald. I'm with King & Spalding in Atlanta, an outside counsel.

The short answer to the question is if we had control over our bylaws, absolutely we would take steps to remove NLN as the sole member, but that is not because it's a secret plan. It's because it's a relationship that does not work for either side. But I think it's very important for this group, as I was listening to the good questions by the Committee members and the good statements by Dr. Bounds, to go over exactly how we got here.

And I'm not going to start from 1952, but as Dr. Bounds indicated, in 2012 the staff did a very careful line-by-line analysis of our bylaws and said here is what doesn't work. And I have those in front of me. And specifically two of the comments that were made were as follows: That Article 3, Section 2(a) provides that the principal member must approve all changes to the bylaws and the certificate of corporation. And the staff said that has to go.

Similarly, the staff said that Article 12 has a similar provision that says the bylaws of ACEN may be altered, amended and restated by the NLN Board of Commissioners -- or excuse me, only with the written consent of NLN. That has to go. It says; I quoting, "It must revise its bylaws to be compliant with the separate and independent definition."

Now, I'm an advocate, I'm a lawyer, but I'm going to tell you over the next two years I respectfully submit through a lot of legal resources NLN basically took the position, well, the staff got it wrong. They couldn't mean that because they must only be talking about accreditation. They can't mean what it says in black and white, that these provisions have to come out.

So we reached an impasse. We go and try to change our bylaws unilaterally. The New York court says, well, no, you can't. You need to have their consent because your bylaws said to. So that caused a lot of consternation of course.

So we then get to 2014. And so what does the staff say, again quite appropriately on page 6? It says that if NLNAC; that was our prior name, is subjected to any interference in its operations by NLN, then that could severely affect, severely affect the agency's compliance. Well, I heard Dr. Adams say today the only thing that NLN is interested in staying away from really is accreditation activities, but she said but we still have the right to control legal structure and operations. And that's the crux of it. The staff has already said any interference with our operations just doesn't pass muster.

And so I also wanted to make sure, because there was some discussion about what the tweaks to the proposed bylaws NLN had. NLN did submit some bylaws, but remarkably what's in there is still the power that we would have -- not have any ability to change our bylaws unless it's solely related to accreditation. Here's why that's important: They have also in their bylaws that if we are dissolved, where do the assets go? To NLN. So I would respectfully submit is this about money? I would say it is. Because we asked them to remove that provision and they would not do so.

So let's theoretically look in the future. We get into a fuss about something about what is accreditation, what is not? Did we do something they liked or we didn't? Or let's say that NLN, which I hope doesn't happen, falls on hard times and they need the money. They could gin up an effort to dissolve us and take all the assets. And I'm sorry, but I think that's a clear interference with separate and independent. And so, with all due respect to NACIQI and to this body, our group has spent a significant amount of money simply trying to go by what we've been told we needed to do, which is to have the

absolute right to control our bylaws, the absolute right to do what we want to do with respect to those bylaws. And we also believe that -- we're not asking NACIQI to regulate corporate structure. We're asking really NACIQI to stand behind its early interpretation, which we submit is right, that these consent provisions run afoul of separate and independent.

So in summary, I would say that you've been clear. And I felt like if I had to address anything, it would be I would submit that the tweak that Mr. Bounds may have been referring to is exactly that, is they did try tweak the ability to change our bylaws, only that we could do that with accreditation matters. And I think that the real tweak is, no, we need to have the ability to change them completely because of the likelihood of interference in operations.

Chair Phillips: So because of the time, at this point I'm going to suspend this conversation for the moment. I'm sure that there will be some further discussion. It is likely that we won't be able to come back to this issue until 2:00 this afternoon. So that isn't to say that you can't stay for the next part of our meeting, but we do need to suspend this for now.

So I'm going to call a break for 7.5 minutes -

(Laughter)

Chair Phillips: -- so that we can transition to the next part of our agenda. Thank you very much for joining us, and I expect that we'll see you this afternoon. Thank you.

We're adjourned for just 7.35 minutes now.

(Whereupon, the above-entitled matter went off the record at 10:52 a.m. and resumed at 11:08 a.m.)

Chair Phillips: We're getting very good at this starting and stopping. Thank you for rejoining us. We're pleased to move into the next segment of our

committee meeting and are delighted to welcome Under Secretary Ted Mitchell, who I am sure is very familiar to you and needs to introduction.

Ted has been an important influence and inspiration to the Committee as we've taken up our policy work and learned about the initiatives of the Department and the directions that it is taking. We've invited him today to offer -- continue to offer the inspiration and beyond. And so, with that, I will invite him to take the floor. Ted?

Under Secretary Mitchell: There we go. Thank you, Susan, and happy to be back with you. Inspiration sets a pretty high bar, so I'll start -- I'll start with information and see if we can -- see if we can move through that.

So, first, as we begin the conversation, I have some framing remarks and then hope we can have a good back and forth. But, as I -- as I start, I want to reaffirm my own and the Department's thanks and confidence in NACIQI for the work that you do.

It's extremely valuable work and, as we know from conversations that we've had together, conversations that are certainly out in the field, conversations that are increasingly going on in Congress as we approach reauthorization of the Higher Ed Act, accreditation is much on people's minds.

And so we really are grateful for the guidance that you provide us and the guidance you provide the field in terms of thinking through the role of accreditation as one of the three parts of the triad that has, for generations, kept American higher education moving forward and providing quality outcomes to students.

And that I think is our collective commitment and I hope that we can have a chance today to talk about what that is going to mean and look like as we're

challenged in the future to do more, not less, in the area of accreditation.

But, before we talk about that, I'd like to step back and talk a little bit about the Department's overall higher ed agenda and how we've been organizing ourselves over the last several years.

I think that you know that the north star goal that the President set for us was to become first in the world once again in the attainment of post-secondary degrees and credentials and not just as a score-keeping exercise but both as a moral responsibility to educate Americans for -- all Americans for their role in an international economy and a thriving social democracy and as well a way of preparing a workforce that can be competitive in that global economy.

That then has generated three topic areas for us. One is access. The other is affordability and the third, which is where our work comes together in many ways, is high quality outcomes.

So, on access, I think you know that we have been hard at work increasing access to post-secondary education. And that, interestingly, starts by improvements in K-12 and, as we've talked about it more recently, PK 12. We believe that a national investment in quality preschool is probably the best down payment we can make on college access and success and we'll continue to try to work with Congress on that.

But K-12 reforms themselves we believe are critical and we have spent the last six years working with states, talking about what it means to be college and career ready and we're continue -- we continue to be very pleased that states across the country have adopted higher standards for students and that those standards have been developed through close collaboration between K 12 educators and educators in colleges and universities.

And so we are hopeful that, as states make the

move to higher standards, college-ready and college access become higher and higher probabilities for all Americans and that there will be an increased focus of attention on low income and first generation college-going families.

To that end, we've been terrifically encouraged by the growth in the number of Latino students and African American students and first-generation students who have enrolled in colleges and universities over the last several years. So we think that that -- the access agenda is thriving.

You know that more directly the First Lady had initiated the Reach Higher Program that has engaged all students but, again, primarily low income and first generation college-going students in filling out, completing the FAFSA Program and really trying to aspire to the very best college or University that they can attend. And the Reach Higher Program is indeed creating quite a buzz among high school students and is achieving its goal of promoting FAFSA.

On our side, we continue to work to simplify the FAFSA form. Ninety-eight percent of FAFSA filers now file online, which we think is a step in the right direction. And, once you have your materials ready, the -- applying online seems to take about 20 minutes.

So, for those of us of an age for whom 20 hours would have been a good achievement, we think we're also making progress -- making progress there. So we think on access the dials are moving in the -- in the right direction and we're quite encouraged.

Affordability is quite complicated as you all know. And we're working at both the front end of affordability and the back end of affordability to try to make sure that college remains attainable and affordable for the broad range of Americans.

So we're working, as you know, on an initiative that

the President announced this year in the State of the Union address America's college promise to make two years of community college free to responsible students and we see that as one of the foundation stones of our affordability agenda and we also believe that it will send a signal across the country to students who don't see themselves as able to afford college, a signal that, yes, they can and there is room for them.

We've worked from the beginning of the administration to expand the Pell Grant Program, increasing both the number of students who are eligible for Pell Grants and the size of the maximum Pell award. And, as we move into higher ed reauthorization, the continued expansion of the Pell Grant Program will be one of the things that we'll be most vocal about.

Part of the way we've expanded the Pell Grant Program is by bringing student loans in-house and creating the direct -- expanding the direct loan program. That freed up \$60 billion that the Government has then been able to reinvest in federal financial aid.

We have also supported dual enrollment programs around the country that make college more affordable by speeding up the accumulation of college credit, allowing students to accumulate college credit while they're in high school.

That's just one of the kinds of innovations that we seek to support that aim to drive down costs, increase quality and promote access. Our first-in-the-world grant competition is aimed directly at innovations that support students getting to and through college.

The applications last year numbered in the more than 400, which I think show a lively interest across the higher ed sector in innovations that aim to be -- to create more efficiencies in the system. The deadline for those of you applying this year is next week. So keep those -- keep those fingers typing.

On the back end, we are trying to address the affordability issue through a number of initiatives on the borrow repayment front. So, first of all, we -- as the President announced, we're creating a borrower bill or rights that establishes standards for loan servicers and expectations for how the loan servicers will work, how they will be compensated in ways that support students repaying their loans in a timely and effective manner.

We also understand that, especially in difficult economic times or times of transition, borrowers need a little bit more help than that. And so the President has created a number of income-drive repayment programs. The most recent of those are PAYE, p-a-y-e, and -- standing for Pay As You Earn. And these plans cap payments according to income.

In the PAYE Program, for example, capping payments at ten percent of a borrower's income with a forgiveness at the end, if that's necessary. We've also expanded the Public Service Loan Forgiveness Program to make sure that people who are in vital public service jobs are given recognition for the important work that they do for their communities and for the nation as a whole.

So we believe that the affordability agenda is also moving forward but we know that we need cooperation from colleges and universities quite directly in helping us contain costs and price and to encourage students to move through their -- whether it's their undergraduate careers or their graduate careers in a timely -- in a timely way.

Finally, the outcome initiatives, there we have been focused on first better understanding the outcomes of different institutions. And you'll note that this week we have announced some decisions about the ratings project that we've been working for a number of years.

We think that it's very important for students and families, for accreditors, for the nation as a while to understand the outcomes associated with an

education at different institutions.

And so our project has now turned a corner to make sure that we are providing consumers with the very best information that we can provide, so that they can make comparative judgments about different institutions. And we think that it's going to be a very exciting tool and one that will serve a number of -- a number of constituencies and a number of interests.

We also, as you know, have been focused on outcomes in the career college sector. And so our gainful employment regulation is one that we intend both to provide essential customer protections but also information to all of us about the direction in which the career colleges are moving.

We have proposed to Congress in each of our last several budgets a Pell bonus to provide a bonus to institutions that do a great job addressing the needs and graduating students who come with Pell Grants because we think that one of the things we ought to focus on as a nation is the importance of higher education serving as an engine of social mobility and creating not just a responsibility for institutions to participate in that but an incentive we think is -- would be an important -- an important way to get those incentives aligned.

And then, finally, I spoke earlier about the importance of accreditors as a part of the triad. States are, of course, the third leg of that stool and the third part of the triad. And so, in our state authorization regulations that go into effect next week, we are again reasserting the importance of the state in helping think through quality control and outcomes in their jurisdictions.

So access, affordability, outcomes all aimed at creating an environment in which every American has the opportunity to attend higher education, to complete higher education and to do so at an

expense level that is affordable to them and doesn't saddle them with debt but an education that, instead, really prepares them for productive lives in the economy and dedicated lives in civil society.

It's in the outcomes piece where I think our work does come together, Susan, and I'll say just a couple of things. I know that you'll -- you're working today as you have done for a while on a series of policy recommendations and I talked about those the last time -- some of those the last time that I was with you. We admire many of those recommendations and encourage you to move forward on them.

A couple that I think we should talk a little bit more about, I think that risk-based accrediting and encouraging accreditors to think about their portfolio from a perspective of risk is an exciting opportunity for the accreditation process to be more efficient both at the top end of low-risk institutions and at the bottom end of institutions that cause accreditors concern.

We think that thinking about risk-based approval of accreditors is also something that is worthy of -- worthy of further conversation.

At a more elemental level but really critical are the ideas about common definitions, common processes across accrediting agencies and then the all-important issue of transparency. We know that several accreditors have gone pretty far in making the results of their accreditation work public and the administration has been, we think, forceful across government in thinking about transparency as one of the ways in which we not only make government work better but we send the right messages to institutions about what they -- what they need to be doing and thinking about.

I think that we can also do better between the Department and NACIQI in terms of our communications and look forward to talking about ways to do that. I think we don't take as much

advantage as we ought of the collective wisdom around this table and would like to work on ways to do that better.

And, at the -- at the next level, I think that recent events have shown that we also need to do a better job of communicating directly with accreditors and accreditors need to do a better job of communicating directly with us. And, certainly, as we think about risk-based accreditation and risk-based work in general, the only way that works is if we have a better sense of risk and that happens through information sharing and a different level of transparency.

So I look forward to our conversation this morning and we'll stop, Susan, to get that started.

Chair Phillips: No problem.

Under Secretary Mitchell: Thanks.

Chair Phillips: Thank you so much, Ted. I also want to especially thank you for not only being here but for inviting a conversation. I have to say that this group is not shy about offering their thoughts and wanting projects to think about. So thank you for that.

Let me also apologize and introduce somebody who also need no introduction, Jamie Studley, the Deputy Under Secretary of Education who, as you might know, sat in this chair in -- a number of years ago serving on NACIQI, chairing NACIQI and migrating to the Department. So, welcome, Jamie, also.

I would -- I would invite the members of the Committee to pose questions or comments or ideas. There was clearly some news last night about the new activities or the new directions that the Department was taking that I know that you probably all read in the Chronicle this morning when

you got up. That might be a topic of discussion and some of the directions --

Under Secretary Mitchell: Jamie and I have not talked about that before, so we'd be delighted.

Chair Phillips: You may also have some queries about some of the concepts that we've been thinking about with our policy agenda. Get a little reading from the Department about what that might look like, the encouragement to consider the risk-based assessment, both accreditation and recognition is one that's been on the table, we've been chewing on.

It actually came up in the CHEA meeting yesterday where there was a very interesting suggestion that NACIQI take on the risk-based assessment, at which point I sort of did a double-take. But, nonetheless, parts of our policy agenda, issues that you'd like to raise, questions that you'd pose for either of them or, if you have questions that you want to ask us.

So let me open the floor to those of you who might want to speak to this occasion. We really have an opportunity here for discussion. Now, having said that you're not shy --

Under Secretary Mitchell: So let me -- may I?

Chair Phillips: Go for it.

Under Secretary Mitchell: For those of you who have been involved in the transparency initiative and have either been a part of or watched as the results of accreditor findings are made public, how is that working? Ralph?

Member Wolff: Yes.

Under Secretary Mitchell: I suppose I could have just asked you directly but I --

Member Wolff: Well, you could. We're not the only one but --

Under Secretary Mitchell: Right.

Member Wolff: -- I'll just say that we entered into a big step forward in -- let's see, with the June Commission meeting in 2012 making all reports --

Chair Phillips: This is for WASCC, his former entity.

Member Wolff: Yes. Actually, the -- it should be the former we. The Western Association Senior College Commission made all reports and actions public that followed a visit, not actions that didn't have a visit. And the sky didn't fall. Actually, it was quite well accepted. It had been vetted with the region before it was established. And I think it's been very useful.

My observation about it -- and -- well, let me just say that my understanding is that other regions have expanded their disclosure, regional commissions, not necessarily to the publication of full reports.

But my experience with other -- all of European and British quality assurance systems make all the reports public and also Hong Kong. And so -- where I've worked. And so I relied on that experience in promoting this with the Western Commission.

What -- I will say one change that was made, it's typical that institutions get to comment on factual errors as a draft of the report before it is finalized. We added a comment to say, was there any information, if made public, would be inaccurate or damaging? And the -- both the chair of the team in responding to the draft had full authority to accept or reject that.

And, secondly, the Commission also, in a couple of occasions prior to before my leaving the Commission, allowed for certain information, particularly around financial information, to be modified that was considered to be proprietary.

And we -- the Commission also adopted a policy on

proprietary information not only with respect to for-profit institutions but for this issue that, as information became public, would certain information around which the institution wanted to be candid be damaging if it were made public? And so far, those steps have seemed to be very well received and have been implemented and been effective.

What has been really I think valuable about transparency and I'm actually quite a proponent of as much transparency as -- the self-studies are not made public by the Commission. They may be and can be by the institution. And the irony, most public institutions they are automatically publicly available. But, for private institutions, it's entirely their discretion.

But it does provide the public and policy makers to see what is the basis of the decision, what is the evidence. There is so much mis and disinformation about accreditation and about decisions and about actions that this provides both -- to me, provides clarity about what in fact was the action and what was the evidence on which it was based for better or for ill.

And my hope was that, if people challenged the basis, they would have, first of all, an evidentiary base and we could improve, all of accreditation could improve. I think it's really important for more transparency and would hope to see that others move in that direction.

Finally, I would just say that the big issue is whether institutions would be less candid in the process. And I don't believe that that would be a finding because a self-study is still retained and teams -- and all public institution reports have been made public for many years.

So it's really only an issue of making either, one, information on the accreditor's website publicly available and, two, for private institutions, making their reports public. And I think there's been real

value to have it on the accreditor website, so there is an independent source for anyone to review.

So I've become a very strong proponent and advocate and believe it is needed to enhance the credibility of accreditation at a time when so many people challenge the decisions but don't really have access to the evidence on which they're based.

Under Secretary Mitchell: Thanks. A follow-up question to actually turn it around on us. Transparency works both ways. What are things that you would like to see us be more transparent about in helping both NACIQI and accreditors as well? Arthur?

Vice Chair Keiser: I gather that, in terms of the Ratings Project, and I just saw that in the morning press today, that it's maybe turning into a great deal of data being put out there which will enhance decision making on the parts of students and their parents with various institutions.

I would urge, and this is based on many years of concern about this issue, that the data that you get either be filed under penalty of law from the institution or -- and/or that it be audited by an outside firm.

There have been many instances and, you know, based on the U.S. news and some of the other ratings, that the data put forward particularly on admissions and other areas -- the books are cooked. And, you know, admissions people don't put out data that makes them look bad. And so I'd urge that either data come from, you know, federal information or that there be some audited requirement so that the data is accurate.

If I may turn for that just for the question, Mr. Secretary, do you or does the Department intend to take a position publicly on what the reforms ought to be to the accreditation system?

As one who's quite critical of the current system and

I just looked to the hearing last week at the -- on the Senate side and the Wall Street Journal article based on public information which indicated a widespread belief that the system isn't working and that they're not dealing with the marginal institutions, if I can call them that, who are -- who are still accredited.

And students are still going to those institutions and you're likely to end up with more Corinthians than you've got right now, which is another issue for the federal budget because you may have a huge contingent liability there.

But I guess my question is do you and the Department intend to put forward your recommendations in a public way as to what you think ought to happen in the area of, you know, accreditation?

Under Secretary Mitchell: Yes.

Vice Chair Keiser: Excellent. When would you think that might be forthcoming?

Chair Phillips: And it might even be -- include some of -- being informed by the comments of the work that we have to complete tomorrow.

Under Secretary Mitchell: Indeed. So I don't -- I don't mean to be completely cute. So, yes, we do - - we do intend to make a set of recommendations. We're not ready to do that today but I will say that we start from a position that the triad needs to be strengthened and we do believe that that starts with our own work.

And I think we've been clear that we need to beef up our own efforts and are taking steps to do that. The state authorization regulation that I mentioned is a part of a conversation we're having with states about their responsibility in this. And I do see our work together around accreditation as being the -- being the piece that we need to turn our attention to.

Accreditation needs to be strengthened. I've said publicly and Jamie has said publicly that I think that we have a -- we have a system that is both inflexible and, at times, lacks rigor. And that's a -- that's a bad place to be.

We need an accreditation system that is flexible to the new modes, the new institutional forms that are being created but we also need that system to be rigorous in protecting students and ensuring high-quality outcomes.

So I -- we start from that position of we've got some serious work to do but we don't start from a position of saying that it is only an accreditation problem or an accreditors problem or a state problem or a Department of Ed problem.

The way we can -- the way we can keep Corinthians from happening is by working together. And, in places where we feel we don't have the sufficient tools, and that's the collective "we," I think it's our responsibility to turn to Congress and ask them to help us and provide us with more tools. So an accreditation conversation in the context of HEA will be an important conversation to have.

Member Boehme: Thank you so much. Simon Boehme.

Under Secretary Mitchell: Good to see you.

Member Boehme: Thank you for joining us. And it's certainly good to see you. If we can, just change the conversation to our own policy recommendations that we're discussing. On March 23rd we had a conference call where there were about 10 or 11 of us on the conference calling.

From the beginning of the policy recommendations, I know I'm not the only vocal proponent but I'm very insistent upon that access and affordability, the first two things that you outlined, be mentioned within our policy recommendations. And, to date, that -- my attempt to include these critical

components have yet to make face within our policy recommendations.

We -- we're hoping to -- I was hoping, along with a few other members, to include the word "affordability" because it's not just an issue that the administration is pushing but it's an issue obviously impacting millions of students.

Under Secretary Mitchell: Right.

Member Boehme: And so, as Susan said so nicely, that you're here to provide some sort of inspiration. I was wondering if you could comment specifically on how, as we carry forward within these policy recommendations and so it doesn't seem as though, you know, myself and other members here, you know, if it's this lost cause.

But where do you see accreditation and affordability and access fitting in specifically? And thank you again for coming.

Under Secretary Mitchell: You're welcome. And thank you for giving me a year to rethink about that question. So I think access and affordability are key issues for the millions of students you mentioned and represent and I think that they are key issues for institutions and institutional well-being and survival.

That said, I think it's also true and one of the things that we acknowledge coming into this work is that there is a wealth of diversity, of institutional mission and design in higher education. And I think that we need to be respectful of that.

And I think that we need to be respectful of the market that operates within higher education and within which students and families make choices.

And so the Department's that -- given the tools at our disposal, is to make issues of access and affordability as transparent and public as possible so that students and families understand with a great

deal of rigor how much an institution will cost them and what the outcomes are that they're likely to receive from that investment.

And I think that, at a minimum, I would love to see the accrediting process be one that doubles down at a minimum on these issues of making access and cost and that information accessible and available. And so, if the accrediting process and policies around accreditation could help support this idea of making that information public in a very visible way, that would be quite helpful.

Deputy Under Secretary Studley: Could I just add a quick point on that? On the peer-review side of accreditation, much of what -- much of the value of the process lies in the questions that accreditors ask. So this is simply an observation about how change takes place in this universe.

And several people have mentioned to me from campuses recently that accreditor's questions about student outcomes have helped rotate their thinking to much greater attention to student outcomes and they have amped up their capacity to address that and to advance the field.

And so coupled with the transparency that Ted is talking about and the act of gathering information and looking at it is simply the conversation that accreditors can -- that teams can have when they speak to an institution.

And just -- many people have heard me talk about better questions, that much of our process here is about asking questions and pointing people to the -- to the kinds of things that could move them in these directions.

So whether or not the rules change or the requirements change, the accreditors have the opportunity to talk about how an institution is thinking about affordability, how they follow people, how they make choices about their priorities and helped them understand best practices and the

ways others are thinking about it or discuss, as part of the process, what the consequences are.

That's a -- some might call that a soft way to get at the issue but, advancing the conversation is not soft. It really can change the awareness of decision-makers. It can involve faculty in conversations that they may not typically have because they are focused on the student outcomes and the other forms of institutional capacity and decisions.

But I think we shouldn't underestimate the positive value of altering the conversation, asking questions about things that really matter and putting people's attention on those. That, coupled with clearly-available information that people can then compare, could provide some of the forward motion I think you're looking for.

Member Boehme: Great. Thank you.

Under Secretary Mitchell: Jill?

Member Boehme: Jill. Yes?

Member Derby: Just a follow-up to that, Jamie, and that is, so how can we encourage that among the accrediting agencies because I think you've hit on something? The very questions they ask stimulate that kind of response in institutions because institutions are listening with the accrediting teams are in.

Deputy Under Secretary Studley: I think of your Chair, Dr. Phillips, speaking to exactly this issue at CHEA a year-and-a-half ago I believe. So Susan can probably remember better exactly what she said but she offered up the question about what roll accreditors ought to play, could play in thinking about affordability and how they could do it in ways that felt comfortable and appropriate to them and to the institutions but to actually take it as part of the institution exchange.

And I would be interested in whether she's gotten a reaction and whether she sees additional ways to move that ahead. So I -- some of it is just bully pulpit. As we talk about it, you know, we've moved the conversation from access to completion across higher ed.

I won't say that we did it alone but many, many different voices realized that it's not just about opening a door. It's about the quality and usefulness and long-term value of education.

So this is our third piece and I -- I'm glad you're interested in thinking about it. I don't have a magic bullet but Susan has certainly brought it to an important place to ask accreditors that question. And I think part of it is to keep asking where can we raise it and how can we look at it? What part can we play in advancing that discussion?

Member Boehme: Could I just add on to that? I think one suggestion that's not necessarily in our recommendations but NACIQI is not really able to ask those questions of accreditors. And I know, as I have sat here over several meetings, we spend most of our time on arcane minutia around processes and, when we ask questions -- when I ask questions of an accreditor about what they're doing around institution affordability and drop-out rates and other things, their answer usually is it's very important but that's not really what we look at.

And NACIQI -- it's not really what NACIQI and the Department look at in terms of recognizing an accreditor. And so putting into either the reauthorization or in regulation some ability for us to have legitimacy for us to ask those type of questions for the accrediting agencies I think would help further their asking the questions when they're doing their reviews on campus.

Chair Phillips: I'd like just to add my talk to CHEA a year-and-a-half ago was predicated on having been invited to testify at the HELP Committee as it's -- as it first got going on the reauthorization

conversation. And I was there to talk about the triad. Peter wasn't available, so I was invited.

And so I spoke about the accreditor part of the triad and the panel talked about quality assurance and the Committee wanted to talk about affordability. That's -- that was just what they wanted to talk about and they weren't quite sure how to marry affordability and quality.

And that spun me off. I'm thinking about, so how do those go together? What are the dangers of putting them together? What are -- how do you define quality? What's -- so I got a whole -- I mean there are some scary places you can go with that and there are some very exciting places you could go with that.

I will share with you my comments from last year but I just did it again yesterday at CHEA where actually I was much more forthright with accreditors asking them what they were doing to contribute to the cost and the affordability issues and what they might be doing to solve that problem?

In the spirit of my taking a page out of the New York Times, What Are You Contributing to the California Drought, we are all eating that group of grapes that has taken California water to produce. We are all contributing to making higher education more or less affordable.

And, even though we're fond of saying they made me do it or I have to do it because, we are contributing to it and we could contribute to the solution as well. That goes for us as the NACIQI. I told the accreditors I was going to pose that to NACIQI as well, what cost we were adding to the process and how we might eliminate that cost.

I would ask it of the accreditors. I would ask it of the Department. I would ask it of the legislature. I certainly ask it of the people who create more regulations for institutions to comply with. I would ask it for -- of students. I would ask it of

everybody.

Everybody is contributing to this. We are all eating those grapes, causing this larger problem of affordability and we all have an opportunity to consider what -- how we might stop contributing to that and how we might pose a solution. So more to come on that as those conversations play out.

Member Wolff: I've spent more time of the other side of the table than on this side. So some of my comments will reflect those experiences.

One caution I would say is the tyranny of bright lines given the diversity of all of higher education. And so, as we explore a lot of these issues, completion, affordability, access, given the diversity of institutions, there are some who would say an institution below X amount should be not accredited or whatever. There has to be room for that diversity and the diversity of students, not just the diversity -- and the -- their preparation.

Another comment is on the risk base. Sitting on the other side of the table, I think one of the issues is to look at how the regulatory framework makes it really difficult to adapt different processes in the accreditation of an -- of a range of institutions.

For example, are all institutions required to address all standards, even if some have demonstrated over many years certain areas of governance or finance have not been an issue, so that there can be attention to it. Right now, I don't know that that is possible or in what ways there could be, if you will, a differential touch, not a lighter touch, but a differential touch.

One area in which communication has -- I think is difficult is the Department's doing its own reviews particularly around finance and accreditors are doing their reviews. But there's not communication and it would be enormously helpful if there could be a legal framework in which the Department can share concerns along -- that it may have about an

institution and whether there are ways in which the accreditor can participate.

And I think the recent examples that, you know, have been so public, you have accreditors operating in one domain but they're looking at a different set of financial criteria than you all are at the Department. But, at the end of the day, it's all about the student --

Under Secretary Mitchell: That's right.

Member Wolff: -- and the protection of the student and so that kind of communication I think would be enormously valuable.

Finally, I just would want to comment about innovation and a lot of conversation about non-institutional providers or -- I'm not sure what the right term would be -- innovative providers who are outside the higher education framework that were innovating.

And I would draw a distinction between accessing Title IV and recognition of the work that they're doing. And there isn't really a framework right now for recognition, either non government or governmental. And she is talking about it. There's the ACE credit model.

But I do think we need to explore that there are needs for recognizing sub-degree work, non-higher-education work that is -- should be recognizable around badges credentials. But it doesn't necessarily meet entitlement to Title IV and all the regulatory framework that would be involved and whether or not there's a legal structure or whether that should operate outside the Title IV framework.

Under Secretary Mitchell: Great. Thanks. Thanks, Ralph. And I think the comments on innovation and non-IHE providers. I think that that's a very live one and we would like to pursue that, Susan, as we -- as we go forward.

And then I think, when I talked about better communication and information sharing, I think the sharing of financial -- of inquiries about finances was top of mind for me as well. But there are also ranges of student outcome reports that we get, again, different slices of the pie on things like placement rates. And so it would be useful for us to think about those together.

And then, across accrediting agencies, I think that this does come back to the issue of -- many issues but one of them is one of common definitions and common nomenclature.

Please?

Member Alioto: I'm wondering, in terms of marrying quality and affordability, now, I think there are thousands of community college classrooms where that is happening and I'm thrilled about the support of the Administration for free community colleges.

But I'm curious in terms of your breadth of experience and knowledge of education, if you have any kind of approach to what is actually happening in classrooms when you say, pre-K through college, and how you're connecting that with accreditation?

Under Secretary Mitchell: The --

Member Alioto: And I don't mean just test scores.

Under Secretary Mitchell: Right.

Member Alioto: I mean what is actually -- how you're helping teachers teach.

Under Secretary Mitchell: Yes. So we've got the rest of the afternoon to do that, right?

Member Alioto: We do. We do.

Chair Phillips: And I have to hear about 85 topics in that area.

Under Secretary Mitchell: I think that -- I think that's right. So I think this -- well, I'll just answer the question. I think that we want to be cognizant of the appropriate federal role. I have opinions from visiting lots of classrooms and talking with lots of teachers. But they are not the federal position, nor should they be.

Because we do understand that the fundamental delivery mechanism for the vast majority of education in this country, whether it's pre-K, K-12 or higher education is the public system that is rooted in -- rooted in states.

Chair Phillips: Yes.

Under Secretary Mitchell: And, at every moment, we try to be as respectful as we can about that and reaching into individual classrooms is not something that we do. But supporting teachers in doing that work is something that we want to be very involved in.

So helping to think about how teachers are taught, for example, is something that's at the forefront of our attention right now because we believe that, to achieve the outcomes we need as a -- as a nation and as a society at every level, teachers need the very best kind of preparation that they can get.

And, frankly, we're concerned that many of them are not getting that kind of excellent preparation. So we're -- that's why we're thinking about new regulations for teacher-preparation programs.

That's why we're working today, in fact, with appropriators to try to restore funds for teacher grant programs that have been really vital in helping states and districts create opportunities for teachers to improve their craft.

It's really hard work and I think doing everything that we can from the federal level and encouraging states to do what they can at the state level is important.

At the -- you know, you mentioned community colleges and one of the things that is imbedded in the President's proposal is both the requirement and the opportunity for community colleges to refocus on the pedagogy in the classroom and the quality of the instruction and the quality of the outcomes in community -- in community colleges.

So there too, we're not prescribing how that happens but we believe that that's an important part of a partnership that would provide federal dollars to go to -- to community colleges with -- and then ask states to step up as well.

Member Alioto: And what role will we be playing in that?

Under Secretary Mitchell: So NACIQI will continue to play a role in helping accrediting agencies assure quality of those community colleges. And I think that, in terms of the transparency that we need to provide just at a very basic level should this proposal go forward or even in places where states have taken up the charge as in Tennessee where they're doing it on their own, I think it's important for the relevant accrediting agencies to even know that these community colleges have sort of made the handshake deal with their states to do X Y and Z and be a part of a -- part of a program.

I think, unless accreditors have visibility into what the -- in this case, community colleges have agreed, what bargain they've agreed to do, the best questions could be misdirected if they're not aimed at supporting the institution doing what it said it was going to do as a part of the America's College Promise or the Tennessee Promise or any of those kinds of things.

Member Alioto: Thank you.

Chair Phillips: Thank you so much for being here. I know that we have more questions than we can possibly fit in. We do have the rest of the afternoon but I understand that you may have some other

commitments.

Under Secretary Mitchell: I don't. Yes.

Chair Phillips: Thank you so much for coming.

Under Secretary Mitchell: Thank you.

Chair Phillips: I know our agenda calls for us to move into a training session for -- over lunch. I hope you are able to stay with us for a bit.

Under Secretary Mitchell: Yes. I can do that.

Chair Phillips: But have to close out this part of the conversation. Thank you all. Our schedule at this point, for those of you in the audience, is to reconvene we expect around 2:00 p.m. and we will go back to our ACEN conversation at that time.

So we wish you good lunch. Enjoy the view. It's a beautiful day out there and we will see you back there at 2:00.

Committee Members, I need you to stay and we'll resume in just about five minutes to reshuffle our deck here.

Under Secretary Mitchell: Thank you, Susan. Thanks, everybody.

(Whereupon, the matter went off the record at 12:01 p.m. and resumed at 2:16 p.m.)

Compliance Report -- Accreditation Commission for Education in Nursing Discussion Continued

Chair Phillips: Thank you and welcome back. Again, we are resuming, now, our conversation about the consideration of the compliance report for ACEN. And we have the opportunity to inquire further questions of the Agency, the third party responders or the staff readers.

Let me inquire with you first of where you stand on this and see if we're ready for more discussion or to

move towards additional information.

Member Wu: All right.

Chair Phillips: Frank.

Member Wu: If you'd like us to make a motion, the two primary readers are prepared to make a motion. But if you --

Chair Phillips: Okay.

Member Wu: -- want us to wait, we can wait too.

Chair Phillips: We can make a motion and if we --

Member Wu: Okay.

Chair Phillips: -- get a second, then we can have some discussion which I think the Committee will like, so.

Member Wu: Okay.

Chair Phillips: Okay.

Member Wu: Here it is. And I think it's ready to go up on the screen so you can read it. So we move the following, "NACIQI recommends adoption of the staff report that ACEN be found to not meet the requirements for recognition, specifically that it be separate and independent.

And then there's some further language, so this is not the standard boilerplate.

It makes this recommendation without expressing any view on the corporate structure of ACEN other than it must comply with the requirement that it be separate and independent.

It also recommends, consistent with regulations, the record be open for a period of three months to allow supplementation with new information not available at this time."

Chair Phillips: Do we have a second.

Participant: I'll second it.

Chair Phillips: Okay. We have a motion and a second. Discussion. Cam?

Member Staples: Can I ask a question? Now that we're in this deliberation I can still ask --

Chair Phillips: Yes.

Member Staples: -- a question of Chuck? And then I want to get to the motion. But one of the things that concerned me was that it sounded like staff did not feel like they could take account of bylaw changes that might have been made by the parent association because the recognized agency where it was not submitting them and was not agreeing to them.

And I guess I just want to verify that's what I heard, isn't that right, Herman --

Mr. Bounds: Yes.

Member Staples: -- from you?

Mr. Bounds: Right. And that was --

Member Staples: So I guess what I would like to suggest -- and I don't know if that last provision is intended to include that. I just want to be clear that if there is any supplemental information by, I mean, in this case the parent.

Although, I'm not sure why it wouldn't be any sort of relevant entity that pertains to the separate and independent analysis that that would be permissible for those entities to submit and for the department to consider in its evaluation of whether the Agency meets the separate and independent requirement.

And I say that because in this case it appears that the entity that's before us is not looking to have us find that they're in compliance.

So it makes it challenging for the staff when there's,

perhaps, a disinclination on the part of the Agency to submit records that might show they're in compliance.

So for that reason I would just want to make clear that I support the resolution, although I'm a little uncomfortable that we're making the statement that they're out of compliance when I'm not sure that they are based on the bylaws that may have been adopted.

But I think as long as we provide a window of time and we say explicitly to the staff we hope you will take those into consideration, or at least feel free to take into consideration, information supplied by others than the recognized agency when making their determination about whether the separate independent requirement is met.

So I guess I don't have a question after all of that except for the short one to Herman. And I just wanted to make that comment. Thank you.

Chair Phillips: I'll go with Sally, Jill and Rick.

Ms. Morgan: Just to respond to your suggestion so everyone is clear, if this recommendation were to pass the staff isn't going to get another bite at this.

This is going to go to the senior department official with the record as it stands. Any additional information that comes to her attention that she wants to take into consideration, she can do that. But with this recommendation the staff will not have another opportunity to analyze that information.

Chair Phillips: I have Jill and Rick.

Member Derby: No, I'm not ready. Go ahead, Rick.

Member O'Donnell: Chuck, a question for you. If I heard you correctly, you stated that ACEN was 12 months to get into compliance and then they were given another six month waiver and that was the extent of the time period. So I want to clarify that I

heard that correctly.

And then I don't know who the question is for, but I'm curious what regulation allows for another three months that's in the resolution.

Ms. Morgan: There's a, I can't remember the number, but there's a limitation in the regulations that says that the senior department official has to make their decision within 90 days of the NACIQI meeting.

And that was because this is tending to, you know, the decision-making period was tending to get really long and so it holds the senior department official who is the decision maker absent of an appeal to the secretary. It gives her 90 days.

Mr. Mula: I would like to make a comment, Rick. I think it's important to know that when they were giving the good cause timeframe, six months, we were convinced that they were able to come into compliance because we had been talking to both the parent organization and the accrediting commission and what kind of progress they were making with each other.

In our opinion, it was very favorable. And I felt very good about the fact that we were going to get a bylaws that were -- actually because, as Herman said before, he had sent them copies of acceptable language for bylaw.

Suddenly we had no conversation at all. And what bothers the department the most is that without that conversation, now we have a great deal of students who are in danger of losing the financial aid and, you know, their degrees will not be accredited.

Chair Phillips: Jen?

Dr. Hong: Yes, so just to add on to what Sally was saying. The 90 days wasn't intended for the provision of more information. It was to put a

timeframe around the issuance of the decision of the senior department official. Is that --

Member Wu: Is that a --

Dr. Hong: -- the 30 day?

Member Wu: -- lot more? So our wording here, although it's my understanding just based on what was presented, and I've not independently verified this, that there is a provision for the senior department person to look at something new that's submitted, right, if there's a new development.

We just wanted to make that explicit. So, for example, if the Agency and its parent went out in the hall right now and settled everything and wrote up something, that they would have the opportunity to present that.

And so we want to make absolutely clear that there is a window of opportunity here for them to resolve matters satisfactory to all parties. And that will save the Agency from the result of losing its status.

Chair Phillips: Just a clarification in relation to what Cam had suggested. My sense is that you were raising a different issue? That the new information that might be available, if not to the staff, then to the department decision maker, might be information that did not come from the Agency. Is that right?

Member Wu: And the draft --

Member Staples: That's right.

Member Wu: -- doesn't say it has to come from the Agency. But we could make that explicit to allow supplementation with new information not available at this time, regardless of the party that submits it.

Member Staples: I mean, my understanding, and maybe I could ask Chuck if it's okay, Susan, to follow up, but my understanding is that. And, obviously, when third part commenters submit

information it is the staff can review it.

So, and in this case the parent is the third party commenter, but not after a certain point, is that right?

Mr. Mula: Right. There was no third party comments for me to be able to review before the analysis was sent out.

Member Staples: So it's really that if it arrives late from a third party commenter, we want to make the sure the staff -- and I guess I understand Sally's point about the fact that it would go to the senior department official.

But without being more explicit, you know, I guess I would like to suggest that the staff be able to provide analysis as to whether that new information satisfy the separate and independent issue at stake.

I mean, it's certainly relevant to the senior department official's decision as to whether that new information in the staff's opinion satisfies that criteria.

Chair Phillips: Other committee questions or discussion? Sally?

Ms. Morgan: I just wanted to read the language here. It says, "If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the senior department official's attention, while a decision regarding the agency's recognition is pending before the senior department official.

And if the senior department official concludes the recognition decision should not be made without consideration of the information, the senior department official does not make a decision and refers it to the staff for analysis or provides the information to the agency and to the staff and permits both sides to respond to the senior department official on it."

So that's the process that's available.

Chair Phillips: All right. Ralph.

Member Wolff: I'm not sure and maybe I want some advice on this. What I heard from ACEN was that should the finding be made by NACIQI to declare them not in compliance that that will be used in court in New York to support their claim that they needed to be identified as a separate corporation.

I'd also heard that there are instances in NEASK in New England would be one where there's a credible entity that operates within a larger corporate structure.

So I want to make sure that NACIQI is not used in this judicial process and whether the language is sufficient that we're neutral about the corporate structure of ACEN.

I wonder if we need to be more declarative in some way that we would accept either separate or within a larger corporate structure.

I just don't want this decision to be used in the wrong way in a court where we have no means of clarifying the actual decision and thinking of NACIQI.

And, frankly, I think it would be an integrity issue, but we wouldn't be there because I think it's very clear that we would permit one approach or the other.

Member Wu: May I --

Chair Phillips: Frank --

Member Wu: -- respond.

Chair Phillips: Yes.

Member Wu: The second sentence there is meant to do that, but I would be happy if someone wants

to make that more clear if there's a way to make it more explicit.

So this is really a working draft for a foundation to have a conversation. So I think neither of the primary readers is wedded to this. We're trying to capture the consensus that I infer from the conversation.

I had another question though, for staff. How quickly are the transcripts of these meetings prepared? Because one of the things that would be useful is for Ralph's comments on the transcript to be available.

And I would second what he had said, that our explicit intent here is to make our statement not a factor in the New York lawsuit. That is it is meant so that neither side can invoke it and say, you see, this means we should win in this lawsuit.

So if the transcript is done right away, then the parties will have it. And I just haven't followed how long it takes for these transcripts to be prepared.

Dr. Hong: Do you know how long? After the meeting, how long does it take for them to do the transcripts?

Ms. Howes: We haven't gotten it in yet.

Dr. Hong: No, for the transcriber to get it.

Ms. Howes: They could do it in seven days.

Chair Phillips: If you could put that on the record, please, this side conversation?

Dr. Hong: Patricia Howes, she's saying the court reporter gets back to us in seven days?

Ms. Howes: Seven working days.

Dr. Hong: And then we do send technical --

Ms. Howes: Right, we do.

Dr. Hong: -- fixes to it. And then --

Ms. Howes: They would probably --

Dr. Hong: Yes, so a couple weeks to -- yes, ten to 14 days.

Chair Phillips: My sense is that that's A, too late, and B, why does there have to be a transcript? Why does the New York court have to pay any attention to a transcript?

So you may about to just make the statement that you want to make more explicit here than about what the intention is in this that --

Member Wu: What if it read, it makes this recommendation without expressing any view on the corporate structure of ACEN within a larger structure or not? I'm just drafting --

Chair Phillips: Yes.

Member Wu: -- on the fly.

Chair Phillips: So just my sense of the sentiment that you're trying to convey is not so much that NACIQI doesn't have an opinion on the point as much as that it believes that there are ways to work it out in whatever way it goes.

And the concern about the being this decision of non-compliance is being used to advance a particular solution.

Member Wu: Okay. How about this?

Chair Phillips: So, is that correct?

Member Wu: Yes, sure.

Chair Phillips: Yes.

Member Wu: How about inserting a different sentence as a third sentence? So the third sentence would be -- I'll reread the second sentence.

"It makes this recommendation without expressing any view on the corporate structure of ACEN, other than it must comply with the requirement that it be separate and independent."

Then adding a sentence that says, NACIQI observes that there are authorized accrediting agencies that function within a larger corporate structure. Or, as well as those that are --

Chair Phillips: Don't.

Member Wu: -- fully -- well, I don't want to reuse the word independent, as well as those that are fully stand alone.

Chair Phillips: Yes.

Member Wu: So saying very explicitly, these things come in both varieties and I've never counted, so I have no idea. Maybe the staff does, of the 70 or so. I don't have the foggiest idea of how many are inside something and how many aren't. But I know it's more than one is inside something. So it's not unusual.

Chair Phillips: Yes.

Member O'Donnell: Frank, can I --

Chair Phillips: Yes.

Member O'Donnell: It's unclear to me. It feels like we're doing just backward flips in gymnastics to make some point. And I don't know why we wouldn't just say we recommend the staff recommendation and leave it at there.

And regardless of how someone may or may not want to use this in pending litigation is their own choice. But it seems to me that we're trying so hard to say that we don't have an opinion that we're actually somehow having an opinion. And that bothers me.

Member Wu: Yes, so my response is the reason we

have this additional language is I'm trying to capture both Cam's point and Ralph's point.

Cam's point that something could happen. Something could happen tonight between the Agency and its parent where they resolve everything.

And we wouldn't want some devastating consequence to take place when it could actually be wrapped up, or if not tonight, it could be next week. The parties have represented it's possible that they could resolve this with a little nudge from us.

So I'm trying to capture Cam's point that if that were to happen, we don't want all these institutions and all these students to suddenly have the rug pulled out from under them.

And then Ralph's point is because it's apparent that there's a lawsuit going on and that whatever we do might be invoked, in fact, the parties have hinted that they plan to invoke it in that lawsuit, we're trying to prevent NACIQI from being inserted so that one party can say, you see, NACIQI's on our side versus the other side.

But, you know, I would be fine with something much simpler. I'm trying to capture these sentiments that have been expressed.

Member O'Donnell: I mean, well, could I just --

Chair Phillips: Make an --

Member O'Donnell: -- follow up real quick? I mean, we could just say we adopt the staff recommendation and encourage the senior department official to look at any additional information that comes in before the decision is made.

And that way they can, I mean, because they can choose to do that, you know, already and we're just making it explicitly clear that with the information

we have today we accept the staff recommendation and that's that.

And then the person who ultimately makes the decision, we're encouraging them to keep their eyes open if anything should happen between now and the time of the decision.

Chair Phillips: Right. And, indeed, there might be third parties who listen to that statement and who've listened to this discussion who might choose to make additional information available. Jill and then Anne.

Member Derby: Well, there are two things we're trying to say. And as the seconder of the motion, I would support the additional language that Frank has come up with.

So for one thing, we want to make sure that it's clear that there's an opportunity here, after the fact, as is written into our regulations that the senior official can work with any new developments that come in.

But the other point of making it clear, as Frank's language does, is that when this is used, as it may be in that court situation, you can't really assume that the attorneys or the judge are familiar with the intricacies of accreditation and the process that we use.

So I think it is good to spell it out as Frank has done, particularly emphasizing with this additional language. It's really informative in a way that I think could be useful and important.

Chair Phillips: Anne.

Member Neal: I'm going to weigh in on the side of Rick's approach that it be a simple motion, but that there could be verbiage around it to clarify, but not included in the motion.

But then I also have a question for clarification by

Chuck or Herman. Is the standard that is being applied in this nursing case, in terms of separate and independent, identical to the standard that we applied again with New England Association of Schools and Colleges?

Mr. Bounds: And I'm not familiar exactly what New England's, you know, bylaws, you know, say, but it is clear that the only thing the department of concerned about is meeting those six items that are stated in the separate and independent regulations.

You know, all of 602 is about accrediting functions and accrediting activities. And we look at that statute in relationship to the independence of the Agency relative to their accreditation function.

And I think that's been the same situation that we've taken with middle states, I think New England, with a couple other agencies that I'm aware of.

Mr. Mula: Actually, Herman asked me to check on both New England and those states to see how they handled their separate, independent disputes.

And I did that and we actually got some input from both agencies of studied bylaws because we wanted to be able to give the guidance that we needed to give and what was different about their bylaws and how it made their separation successful and still remain under the umbrella.

Member Wu: I wanted to align myself with what Anne just said in the following sense. I assume something. That is I assume that we're fairly consistent. That we're not going to hold ACEN to a different understanding of this provision than we hold chiropractors, veterinarians, lawyers, the regionals, so that we're setting precedent here.

And although most agencies appear to be happy with their parents and vice-versa, it's entirely possible that sometime next year or down the road, some other squabble will have developed between

an agency and its corporate parent that will come before this body.

So I'm assuming that whatever we do with ACEN, we will behave in a reasonably consistent manner unless the facts are distinguishable, as lawyers would say, as we go along.

Mr. Mula: Frank, we did have a situation in exactly what's happened. There was a separate independent issue. I'm not going to name an agency, but it actually talked with its parent organization and agreed on staying in compliance.

And then later on, they worked something out and the agency and commission split. But it was after they got their compliance back and --

Member Wu: Thanks. That's helpful. So it just means this is not actually unique. It's happened before. One could predict human beings being human. It will happen again.

Chair Phillips: Okay. So just to clarify, we have either one motion up there or a motion and additional verbiage. Could we clarify that point? So I'm just separating the first sentence from the rest -
-

Member Wu: So --

Chair Phillips: -- of it.

Member Wu: -- I guess, if I may suggest, it's not in my interest as the maker of this motion to suggest that someone move to amend it. But the thing to do would be for Richard or Anne to move to amend by striking everything after the first sentence and then wouldn't that procedurally be the way --

Chair Phillips: Yes.

Member Wu: -- to do it? And then we'd vote on that and if that passed, then we would vote on passing it. And if it failed, we'd return to this.

Member Staples: Just a question about what's before us. I see another sentence underneath. Is that now part of the motion or is that just a separate sentence that you were thinking of making an --

Member Wu: So --

Member Staples: -- amendment?

Member Wu: -- as the maker of the motion, yes, that's now the third sentence. I don't know who's controlling the text, but if it could be moved to be the third sentence.

Member Staples: Oh, okay. So that should be edited then, to reflect that that's in there now?

Member Wu: Right. Is it useful to read the whole thing again for the audience?

Dr. Hong: Yes.

Member Wu: Okay. So I'm happy to read it from the top. "NACIQI recommends adoption of the staff report that ACEN be found to not meet the requirements for recognition, specifically that be separate and independent.

It makes this recommendation without expressing any view on the corporate structure of ACEN, other than it must comply with the requirement that it be separate and independent.

NACIQI observes that there are authorized accrediting agencies that function within a larger corporate structure as well as those that are fully stand alone.

It also recommends, consistent with regulations, the record be open for a period of three months to allow supplementation with new information not available at this time, regardless of the party that submits that new information."

Member Alioto: Can we speak to that again?

Chair Phillips: Absolutely. This is the amended motion that is on the table. It can be altered by a new motion or discussed.

Member Alioto: I would go with --

Chair Phillips: Mic?

Member Alioto: -- this statement.

Chair Phillips: Mic.

Member Alioto: I would go with this statement because of Jill's comment that a judge probably has no idea. I mean, he might have, she might have some idea about what this is about, but I don't like NACIQI to be in the position of being a pawn in a legal case. And I think that this helps keep us from that problem. So I support these words. Thank you.

Chair Phillips: Thank you. Further discussion or motion to amend or movement to vote? Okay. I've got the question called. I'm going to proceed without the formal adoption of that. But, so as unamended, as written there, those in favor? Those opposed? Those abstaining? The motion passes. We're done.

Chair Phillips: We will thank you, readers. Thank you, commenters and Agency. This concludes our consideration of the ACEN compliance report.

Compliance Report – North Central Association of
Colleges and Schools, The Higher Learning
Commission, NCA HLC

Chair Phillips: We're going to shift gears now to our next compliance report which is the North Central Association of Colleges and Schools, The Higher Learning Commission.

This is, I believe, one that has two recusals and that is Bobby Derlin and Bill Pepicello. Any other recusals beyond those? We'll welcome the opportunity for those who might be exiting the room

to do so.

Again, our procedure here is to begin with an introduction of the agency by one of the two primary readers. Our primary readers here are, I believe, Anne Neal and Simon Boehme.

And I'm not sure which of you is going to take the lead on this. Okay. Simon Boehme is going to take the lead? All right.

Member Boehme: Not yet.

Chair Phillips: Not quite yet, okay. While you are contemplating that, again, the process would allow us next to speak to the department staff by agency representatives, third party commenters and so on.

We don't have any registered third party commenters for this particular agency, so. And I understand the department staff is Elizabeth Daggett who is right there at hand.

So Simone and Anne if you'd let us know when you're ready to present the agency, we'll go from there.

NACIQI Primary Readers: Anne Neal

Member Neal: I'll just leap in here. We have before us the North Central Association of Colleges and Schools Higher Learning Commission.

And it is the staff's recommendation that the agency's recognition be renewed for two -and-one-half years which would be for the continuing accrediting and pre-accreditation of degree granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin and Wyoming, a natural regional group.

Chair Phillips: Thank you, Anne. Staff recommendations, if you would have your briefing?

Ms. Daggett: We'll be happy to.

Chair Phillips: Thank you.

Department Staff: Elizabeth Daggett

Ms. Daggett: Good afternoon, Madam Chair and members of the Committee. My name is Elizabeth Daggett and I'm providing the summary of the compliance report for the agency, the Higher Learning Commission of the North Central Association of Colleges and Schools or HLC.

The staff recommendation, as already stated, to the senior department official for this agency is to accept the report and renew the agency's recognition for a period of two-and-a-half years.

This recommendation is based on our review of the agency's report in response to the remaining issues and its supporting documentation.

The remaining issues from the petition review in 2013 required documentation to demonstrate the implementation of new standards and policies.

Our review of the agency's report found that the agency is in compliance with the secretary's criteria for recognition. Therefore, as I stated earlier, the staff is recommending to the senior department official to accept the report and renew the agencies recognition for a period of two-and-a-half years. Thank you. And there is an agency representative here.

Chair Phillips: Wonderful. Thank you. Any questions of the staff by the readers? Yes, Anne?

Member Neal: Yes, I think one of the reasons I pulled this from the consent agenda was frustration that I think we've heard earlier today here at NACIQI about capacity to really assess how an accreditor is doing, the missing the forest through the trees problem.

And I guess as I looked at the materials, again, I

had that frustration of not really knowing how HLC was doing as opposed to presenting a lot of paper.

And, so, what I typically do is that I go to the newspapers or I look things up in it and it gives me much more insight and understanding, of course, that what I read may not be fully complete and may even be wrong, but that at least it gives me a broader insight.

And when I did so, obviously, there have been a number of stories of fairly high profile about Tiffin and the recent lawsuit brought by Ivy Bridge for tortious interference with contract in the context of the HLC review.

There's been an article that appeared in the Arizona paper regarding the HLC review of the Thunderbird case, basically, arguing that HLC intruded and interfered in a number of trustee determinations that had been made to the point that finally the recommendation that the board had reached could not be realized because of the delay of the HLC.

And I guess these sorts of things concerned me. And my question to you is, I mean, how, as a body, can we learn about some of these things that are going on so that it informs our ability to assess whether or not the accrediting body is a reliable guarantor of educational quality and is, in fact, abiding by the statute in doing what it is supposed to do?

Ms. Daggett: Well, I don't want to jump into what I think Herman's going to talk about tomorrow. But I think one of the things that we've actually discussed about doing is to provide in our summaries for the future, providing additional information regarding complaints that we have dealt with or issues such as that when we come to the table.

Specifically for HLC in this review, it's a little bit harder to reflect the entire view in that we're looking for this. It's a compliance report. So I'm specifically looking at the areas where we found

them not in compliance from the full petition.

But, you know, we are working with it on a daily basis and I'm familiar with all of those areas that you've touched on and, in fact, talked with HLC with for most of them in some form or fashion.

As far as how to bring that forward either in our report or otherwise, I would, you know, defer to Jennifer or Herman to maybe provide more additional information in that area.

Chair Phillips: Simon.

Member Boehme: And thank you, Anne, for providing the summary. You are quicker at the draw than I am. And question to staff, for the student achievement section, was there any attention paid to four-year and six-year graduation rate?

Ms. Daggett: As far as what I reviewed which was the review of whether or not they were meeting their own standards, I didn't look specifically at four or six year graduation rates because how HLC does that process is using institutional set standards for their student achievement and then they review that as to whether or not that meets their requirements in that area.

But I would, like I said, there is a member of the agency here who would better be able to answer that question.

Member Boehme: Just --

Ms. Daggett: They didn't look specifically at those two data points.

Member Boehme: All right. Just curious. Thank you.

Chair Phillips: Other committee members questions for the staff? Okay. Thank you. Don't go away. If we could invite the agency representative to join us?

Agency Representatives: Dr. Barbara Gellman-Danley

Dr. Gellman-Danley: Hello. I'm Barbara Gellman-Danley, President of The Higher Learning Commission. I'm the representative today because we have a board meeting going on. So I'm sorry we couldn't bring more individuals. But I hope I can answer all your questions.

Chair Phillips: Thank you very much. Would you like to make a statement about the agency? If you could --

Dr. Gellman-Danley: Well, sure.

Chair Phillips: -- respond to the question.

Dr. Gellman-Danley: I think the report speaks for itself, but I'm certainly delighted to answer any questions that you have. I would say this, I've been in my position not quite a year and I served as a peer reviewer privately before that to give a little context and two times at the state level as a vice chancellor. So I'm aware, in particular, with one of these institutions where I was a vice chancellor in that state.

If I made address the question about Thunderbird. Even though it's not necessarily part of the case, I would like to say that I spent my Christmas break talking to folks from Arizona state and Thunderbird and there was a happy ending.

So I wasn't at HLC and I can't speak to the time laureate was under consideration, but I can say that they were both very thrilled with the fact that it became part of Arizona State, it maintained its name. And I spoke to the Thunderbird board members several times and Michael Crow. So I just want to say my knowledge of that case as it ended

up in a good place.

So I think I'll just make myself available for questions.

Chair Phillips: Thank you. First the two readers.

Member Neal: I'll follow up on that. Yes, I understand that that is how it was resolved. And I guess my question really is whether or not it's the right of the accrediting body to supplant the determination and the judgment of the board of trustees in this case, a fairly complex business conclusion that they had reached which by the action of the accreditors was effectively undone.

You are right that there was a resolution, but it was not the resolution that the trustees sought. And so my question is this. Is this the peer review responsibility of an accrediting body to be second guessing business judgments by the board?

Dr. Gellman-Danley: Well, I would question the term second judgment, but I do understand second guessing your question. I was not there for the laureate situation. I can't speak, so I'll speak in the general terms of how you asked that question.

We have criteria that address the governance issue. And I understand there can be concerns with the governance issue and how we look at that.

We do not see it as interfering. We probe to ask more questions. So we work with our institutions. We get a sense of where they're going.

But as many of you have said, and it may not be as specific to this case, first and foremost are the students. And if we find a situation where the students could be at risk, where the confidence isn't there, that's when the questions are asked.

Member Neal: Back to the understanding, I looked at the HLC list of peer reviewers and it outlines 1,300 faculty and administrators, as best I could

tell, not a single trustee. And yet, these are the folks that are reviewing the trustee actions. Am I correct in understanding that?

Dr. Gellman-Danley: You are. And we have opportunities, so where we have called in trustees. And we have, certainly, our board, some of them service trustees on other organizations and have and our staff as well. So we're not without some governance knowledge. But yes, I can --

Member Neal: In this case?

Dr. Gellman-Danley: Well, the case is related to Thunderbird and Arizona State. To be honest with you, I've told you what I know of it.

Chair Phillips: Other committee questions or reader questions?

Member Boehme: First of all, thank you so much for joining us. I was upset earlier today, but I guess the emotions that I share now with The Higher Learning Commission is I'm very concerned. And I'm hoping that today you'll be able to not only clarify and make me feel better, but NACIQI and those here today.

What I'm looking at in front of me is a four-year graduation rate in 2013 and the six-year graduation rate in 2013. And it's a question that I asked the staff just to see if they had investigated it.

And I'm concerned because what I see are three universities, Capella University, Colorado Technical University, Greenwood Village, Doane College, Lincoln, Green Island and Master. And those three universities had a four year graduation rate of zero percent which are accredited by the HLC.

And that's a point and I'm sure there's a lot going on there and I'm not sure, but going beyond just those three universities, I'm from Michigan, the University of Michigan, Flint has a nine percent four year graduation rate. Youngstown State University

has a nine percent graduation rate.

These are all in the single digits. And I'm seeing at least 28 universities here that have below a ten percent four year graduation rate, which are accredited, which have the ability to access Title IV funds.

And so my question to you is what standard are you holding these universities to? I mean, is it do you have to get into the negatives? I mean, are we going to start accrediting universities that don't exist? I mean, what's going on here?

Dr. Gellman-Danley: Well, first of all there are no bright-lines that have been afforded to us by the Department of Education or, historically, HLC.

But first of all, I share your concern, and let me say that. I think that in this country we need to do everything possible to have better persistence in completion. And we have several criteria which were cited in here on persistence and completion.

In the case of a couple of those institutions, they're adult learning institutions. And the adult learning population does not graduate, necessarily, at the same rate as 18 to 22 year olds, although, as you point out, that may not be the best benchmark anyway.

So it's a confluence of a variety of circumstances. If I may take one case that was put with this case and talk about their graduation rates would that be all right?

Member Boehme: Yes.

Dr. Gellman-Danley: So let's talk about Northwest Oklahoma State University. I was a vice chancellor at the state level in Oklahoma. And as a result of my position, anything that was a regional or branch campus reported to me.

So they had a dual reporting structure, it was a lot

of approval processes. Because of that I've driven all over that state, which is quite rural, many, many times from one end to the other.

In the northwest Oklahoma state, which of course sounds fabulous compared to the ones you looked at, but I don't have yours in front of me and I don't have their history, so I can't answer specifically a trend.

They had in the 30s, their graduation rate, all right, so after four years, after six years, after eight years. They called in, I think it was Noel Levitz, but they called in expert enrollment management folks to help them and are making that a focus.

But using that example in a place where many of the places in Oklahoma and some in Kansas because we have two institutions that fall into this rural area, they are the institution in the area, period. And they are doing a good solid job in serving the region for economic development, serving their students.

I actually served in an institution that had a higher graduation rate, but where I asked a group of people how many of you went to Rio Grande? It was pronounced that way. How many of you have students of family who went there, et cetera?

And pretty much in a community like where Northwestern is you'll have a lot of hands go up. There are not that many people who are from far away.

But as an example of serving a need, in Enid, Oklahoma, which if you may recall was referenced as a place where they have a branch campus, Enid was a combination of three or four institutions that went in there and had a center.

It's called something different in every state, but it's a combination consortial arrangement that did not succeed. Northwestern stuck it out and stayed there and is now serving that community very well.

So, yes, I'm not going to disagree with you that graduation rates aren't important. And our standards are increasingly including completion persistence.

And I can tell you right now as I sit here that we have institutions that are under consideration for sanctions because a collective look at their institutions recognize the kinds of things that you're talking about today. So I feel that HLC is very committed to that.

Member Boehme: Right. So, but from the data that I have, and I'd like for you to correct me if I'm wrong, but of the 28 institutions that are in the single digit graduation rate only two of them have been placed on either notice or probation, is that correct?

Dr. Gellman-Danley: I don't have all the institutions memorized, but I --

Member Boehme: Right.

Dr. Gellman-Danley: -- can tell you that there have been several institutions that have been given sanctions or excessive -- you know, not excessive, plenty of monitoring reports where they have to go back and show that and if they have an improvement. And if they haven't shown improvement they could go for deeper.

Member Boehme: Right.

Dr. Gellman-Danley: But I don't have all the statistics for these institutions in front of me.

Member Boehme: So see, I think then that --

Dr. Gellman-Danley: I know some of them.

Member Boehme: Right. And Madam Chair and NACIQI members this is where we are getting into the heart of what accreditation is about in quality is that we have to hold people's feet to the fire.

And it's not just the accreditors fault. But when we bring people in front of NACIQI they should be able to tell me and us what's going on.

And I, you know, and I'm not blaming you. To an extent I am because you should, I believe, that you should be able because you are the president of this organization, to tell me more about what's going on at Chicago State University. Why do they have a four percent?

And if it is an adult type of degree program, which many of them may be in, that's understandable. But when I look at the federal regulation 602.16(a)(1)(i) student achievement, you even outline yourself and the staff found that you look at course completion.

But when I see these over 28 universities with less than a four year graduation rate, this is unacceptable. And so, I mean, and maybe you have some more questions and hopefully NACIQI does too, but this organization should come back to NACIQI and tell us what they're doing about this and report with more complete information.

Dr. Gellman-Danley: Well, may I follow up? You pointed out one institution that we are very aware has problems in Chicago. There are others. And they are not without very close sanctioning and monitoring.

And in those cases if improvement is not shown, well, first time we see it, we call it to their attention. And we don't call it to their attention lightly. It's not acceptable. We find it critically important that our institutions succeed.

And I do not want to leave the impression because I don't have the statistics memorized for those 28 schools that I'm not aware of what's going on at these places.

I can speak specifically to Capella and there are a lot of, actually, excellent things going on at Capella

University.

Member Boehme: Right. But by the metrics you outlined and from the information that NACIQI receives, when we log onto our little portal, we only see what you hold yourself to, course completion, job placement, licensing examination.

And when there is public information out there, when there is a single digit graduation rate, and granted numbers don't tell the entire story and I agree with you. And I acknowledge that and I appreciate that you have some understanding of the examples that I've brought about. But we need to have more information.

And most importantly, students deserve to have more information, the consumers and the families. Because it is a damn shame, and pardon my language, if they sign up for this institution and less than two percent people graduate.

I'm shocked that I'm really the only way, kind of, here frustrated about this. And so, you know, this is of deep concern to me. I'm glad you shared this and I'm going to stop talking now.

Dr. Gellman-Danley: If I may --

Member Boehme: This is --

Dr. Gellman-Danley: -- quickly though, our standards do require that information to be provided on websites. And we did a survey this past year where we surveyed every single one of our institutions to find out how they're communicating their students on persistence and completion. And for those that did not give us satisfactory answers, we spent hours going on their websites.

Member Boehme: Right. That's --

Dr. Gellman-Danley: And so --

Member Boehme: -- great. And I think that's

fantastic and I appreciate the initiative, but I think also as NACIQI members this information should have been related to us in the staff report or there should have been some greater reporting communication that can.

Chair Phillips: So this has generated a fair number of hands. I've got Rick, Jill, Hank and Art. So Rick, here --

Member O'Donnell: Thank you --

Chair Phillips: -- you go.

Member O'Donnell: -- for being here today. One of things NACIQI is doing is preparing a set of policy recommendations around how to improve accreditation. And you correctly stated that there are no bright lines in statute or regulations around persistence, graduation rates.

Do you think it would help you as an accreditor if there were bright lines? Whether in the Higher Ed Act or by regulation if it was just said, you know, a school doesn't qualify for Title IV if it doesn't have a graduation or persistence rate of X, a minimum floor or standard? Would you like to see bright lines?

Dr. Gellman-Danley: Well, let me give you two sides of that as my answer because I think it's worthy for debate. One is that institutions are so diverse. We'd have to be careful bright lines, all right?

So you take your prestigious private institutions, you take your large state institutions where, well, I would have said previously where there's a lot of state support, but now state assisted if not state located. But nevertheless they have huge endowments and those opportunities.

And then, of course, you take small rural colleges or tribal colleges and so there is a danger. We've watched a department with good intent spend,

what, two/three years on the rating system and not quite be able to come up with something that was statistically sound or would make everybody comfortable.

It's not your job or my job to make everybody comfortable, it's to do the right thing. I would welcome to be engaged in discussions about what does that mean. I would welcome that.

Chair Phillips: Thank you. I have Jill.

Member Derby: Well, I want to assure me colleague, Simon, that he's not the only one that's concerned about that and I appreciate his raising it.

I mean, there's a whole loud national conversation going on around that. And there aren't any easy answers. You've certainly pointed out the diversity. And institutions are quick to say, look, if we take everybody and how can we graduate them and so on and so forth.

So I think it's important to recognize the diversity. But it's a very important conversation. My question to you is this, you said that HLC is increasing their standards.

That caught my ear because it seems to be up to the agencies to increase their standards, to focus in on this, to ask the question more and more about student outcomes across the board. So can you tell me more about it?

Dr. Gellman-Danley: Sure. It's we have standards. And with our change of approaches that we've done over the years, it's persistence and completion which, of course, has now become the national language. It's --

Member Derby: Sure.

Dr. Gellman-Danley: We all know it's not inputs, it's outputs, et cetera. When we do our training, I think this is important to say, both the discussions

that I have every other week at length with our liaisons, the individuals who serve as the representatives to the institutions, we are very upset with what's going on in the country with the default rates, the graduation rates.

We're concerned about the impact of the recession. We go back to when we went to college and we got out in four years, et cetera. Okay. But it's the training.

What I would emphasize that when we work with our peer reviewers, our institutional actions counsel, and as we help inform our important trustees, our board, we have huge discussions about this.

So let me give you an example. When I came in, I instituted doing a strategic plan. We hadn't had one in a while. It was time. We wanted it to have an extensive amount of input.

So we read and studied all the kinds of trends research that's out there we could get our hands on. And then we conducted a survey that we sent out to our member institutions totally anonymous.

So they, you know, people could be afraid of accreditors, but it was totally anonymous. And we sent it to 7,000, so there could be multiple people answering from one institution or there simply could be a combined response. We got 1,859.

And we said to our institutions, which trends are happening in higher education that matter the most. There were several. But if we were to go to the top 20, absolutely persistence and completion is in there.

We also had listening sessions at our annual conference. We had over 100 presidents attend. And we are struggling together with what to do to improve American higher education, I mean, the quality assurance that would lead to better graduation rates.

Member Derby: Can I just follow up --

Dr. Gellman-Danley: Sure.

Member Derby: -- Susan? Because you could understand that from our point-of-view hearing of institutions that have a two or three or four percent graduation rate and they're accredited, it does leave one wondering who's minding the store, who's in charge of quality assurance here.

And given all the challenges of diversity, I think Rick makes a good point about bright lines. With all the difficulty it was one size doesn't fit all in higher --

Dr. Gellman-Danley: Right.

Member Derby: -- education. It's almost each institution is individual and in the mix of things. But it is troubling and the public often asks who's in charge here. That kind of thing is going on.

Dr. Gellman-Danley: Yes. May I give you another example? When I was a vice chancellor of academic affairs in the state of Ohio, it was one of the first states to put in, after Tennessee, performance-based funding. And that kind of relates to what you're talking about.

And there were very rich discussions about how to do it. Never should we do it. The same thing is going on at HLC. How do we do this? What's the best way?

Well, some of the ways were if you're in a developmental education course and you succeed and you go on to a non-developmental education course. I'm remiss to use a term a regular course because that sends a wrong message.

And then if you complete the standards were set by each sector. So the community colleges had a sector in the state institutions and, of course, the privates weren't involved. We didn't have any sway over the privates.

And so we really worked hard and had the kind of conversations you're suggesting. And we sat down and said, well, you know, we moved the community college were 50 percent performance based and 50 percent enrollment the first year and then both sectors were 100 percent performance based. All right? Which was scary, right? Scary.

But it wasn't just a matter of the numbers, okay. It wasn't just graduation rate. It were a variety of factors. How do you move on with English? How do you move on with math? How are you doing in general education?

If you're at an institution such as a community college where an option is to transfer, of course, a lot of it's to go to work, what are the transfer rates? And I know this because we would go into our system when I used to be at the other side.

I was president then when I was at the regions. And we had one of the most fabulous systems in the country and we could tell any time a student left one institution to go to another with the flaw of not including the privates.

So if someone from a state community college went on to a good private university, that state community college if they lost them after a year-and-a-half it wasn't persistence.

So yes, we need to have the discussions, but with the bright lines we would have to really figure out how to make that a good solid look.

Chair Phillips: I have Hank and Art.

Member Brown: Thank you. You replied to the question about whether or not there was a minimum standard here for graduation rates by saying there's no bright lines from DOE. I think the question was do you have any bright lines really?

Obviously, student achievement is spelled out and the statute is one of your responsibilities to

measure. What minimum standards do you have for student achievement?

Dr. Gellman-Danley: We do not have written standards that say this is a point that you need to get to, all right, at this point. But we do have an approach where when we meet and talk about all these schools or visiting teams go out, an institution can actually fail a criterion if they don't show strong persistence in all of that.

But it's all in one package. It's not just graduation rates. So we do look at the persistence and we do look at the completion. And I mean, you all raise an excellent point, should we all have some bright-line.

But I can assure you that that is taken into consideration when we look at these institutions. So for example, let's say we had an institution that was financially okay, but they had a 20 percent graduation rate. All right. I would tell you it should be higher than that, right? So they're financially sound. Then we look into our other criteria, like integrity. Where are you putting your money? What are your financial resources?

Well, we dig so deep to say, with all due respect to athletics, are you ignoring the quality assurance of the academic side of the house as well as the rest of the institution facilities, et cetera, and putting your money somewhere where you shouldn't or where you may be putting the institution at risk for what matters the most, which is the result of the students' lives.

So it's a confluence of those variety of things. And I have been in discussions where institutions were, let's say, on paper looked okay and did not look as poor as the institutions you're recommending.

And it's appropriate you point those out. And we still put them on sanctions because their overall picture said they're not paying attention to persistence and completion.

Part of that is institutions doing regular program reviews and adapting their programs. So we find institutions that may do program reviews, but it becomes a so what, right?

We did this research. Why found out. I don't want to pick on nursing, sometimes that's not -- today I won't use that example, but let's say it's a political science program, okay? Because there are programs that it's easier to prove that.

But in political science, let's say they do a review every five years. And they notice that A, B or C should happen because public policy is changing or whatever and their curriculum doesn't change.

You certainly could deduce from that and develop a syllogism that says, and as a result those students won't get jobs, right? They won't succeed. That comes into our consideration. That is very important.

Member Brown: Just speaking for myself, I have real trouble thinking that an accreditation agency is doing their job if in reading the statutory requirement of measuring student achievement if they don't have any bright lines at all. I don't know how you can claim you're doing your job without any bright lines at all.

Dr. Gellman-Danley: Well, all I can tell you is I think our criteria and our standards that we've done are very strong and take all these into account collectively.

Member Brown: In the last five years how many institutions have you removed accreditation to?

Dr. Gellman-Danley: Five institutions, six that was, kind of, it's hard to explain that one, so we'll say five. We also have had -- I've got that information. We've had several that have withdrawn on their own.

We had about 29 that were going through our

candidacy process and realized they weren't going to make it. So that doesn't always show up in the number, but they wanted to be accredited and we're pretty tough in that time.

And it's kind of like you don't want to give a student a bad advice, so we don't want to give an institution a bad advice. If you're not going to succeed, you're not getting into this world. And so there have been institutions that have come to that.

But if I might say, and I realize this is a debatable issue, accreditors don't see their jobs as closing institutions, accreditors see their jobs as doing everything they can to improve the institution with the caveat. And if they don't meet the standards that doesn't happen.

Member Brown: How many of those five were related to financial matters and how many were related to student achievement?

Dr. Gellman-Danley: I would say probably three related to financial and the others for student achievement.

Member Brown: Thank you.

Dr. Gellman-Danley: But you know, it's not segregated because as I mentioned previously, if the finances are not being put in the right place and you're getting a revolving door, your financial problem is because you're not taking care of your students appropriately often.

Member Brown: Yes.

Chair Phillips: Thank you. I have Art.

Vice Chair Keiser: I won't belabor the point too much, but it does seem, I have to agree with Simon that if our job is to help an institution improve, which I believe very strongly is part of the accreditation, where have they been at nine percent?

You know, a major Chicago State with four percent that you said? Chicago State has had lots of problems over the years. And does four percent reflect a commitment to improvement by an institution? I mean, it's pretty hard to get much below. The zero percent doesn't make any sense to me, but the four percent is a scary kind of number for a public institution.

And it kind of tracks back to Anne. How political is the process in where, you know, if it's a public institution you won't pull their accreditation or if it's a private institution like Thunderbird and the faculty get up in arms and then you basically dictate how the board should respond? I think that was Anne's point.

Those are concerns that I have. And I think eventually this body will eventually get to those kinds of questions.

Dr. Gellman-Danley: Well, let me pick on one institution. And I don't want to turn around and see if the press is still here, but when it comes to Chicago State, a big feeder for them are the Chicago city schools.

And I don't know that any of you have the interest to read about the Chicago city schools, but they can't hold onto superintendents, they have a lot of challenges. And today, I believe, the governor just vetoed the budget because of a \$4 billion shortfall.

So we do have an obligation in higher education to figure out. And I've been on lots of committees that had been looking at this over a course of 35 years. How do we help, you know, the bridge of the K through 12 system?

Because I don't like when we blame the K through 12 system. I don't like it when institutions say you didn't do a good job, so therefore we're off the hook and not taking responsibility. But somehow that bridge isn't always there and that's a problem.

But, yes, we are quite aware of that institution. But as we sit here today there are two institutions, one, that I did a desk review and just said I'm recommending probation. And it's going in front of the board because of all kinds of things on that campus that won't serve the students. And we have another institution that's going to a stronger sanction.

So I do not disagree with what you folks are saying and, in fact, I think it's actually good timing. I've been in my job a year. I've talked to a lot of individuals. We're doing a strategic plan. And maybe we take some of what you're saying into consideration.

Vice Chair Keiser: Well --

Chair Phillips: Art.

Vice Chair Keiser: -- but I think that's part of the problem that Anne and Simon had is you're one of the true, important accrediting bodies in this country.

And when you have to make the excuse that Chicago State is having problems because of its students coming out of the public K through 12, that's a post-secondary institution and should stand on its own merits.

Because if you're only graduating four percent, 96 percent of the students are not graduating and you're perpetuating the problem, which seems to me a greater crime than, you know, closing the institution.

In just my limited understanding of the specific issue though, I have read year after year concerns with integrity and issues at Chicago State.

But I think Simon's point is very well taken. You don't have to have a bright-line. If four percent is pretty hard to improve upon, I mean, if they were two percent and they went to four percent, then I

still have a serious problem.

Dr. Gellman-Danley: Well, that's the same as when people say your car came in first and there were only two in the race. So I understand exactly what you're saying.

You can rest assured we are very much on top of that institution. And I have to tell you, you know, I would feel remiss and disingenuous if I left here and didn't tell you that I'm extremely impressed with the work that's being done at HLC, I was before I got there and the kinds of efforts that are being made to address these national trends.

And as I said, you know, you don't change your standards every year. But the quick movement of the national agenda, it's moved, of course, in higher education a lot faster in the last few years. We are all over that. And we are training our peer reviewers to be more critical.

Even when I was a peer reviewer, it goes back to when I was at Antioch a number of years ago. We had a situation where I was on a review and I actually couldn't believe how critical people were. So --

Member Boehme: I'm sorry. I just have to interrupt.

Chair Phillips: Simon, yes.

Member Boehme: You accredited Chicago State. I'm looking on your website. You cannot come into NACIQI and say Chicago State University is being watched when it says the last reformation of accreditation was 2012 through 2013 and the next date is 2022.

Dr. Gellman-Danley: Okay. Let me address that. Okay. We have, I think, three or four institutions in front of our board at this moment where circumstances became so changed in a couple year period that it doesn't matter that they would've

been ten years or five years from now, they're going on probation.

We have a right to do desk reviews and we have right to call for advisory visits, et cetera. I don't have all the Chicago data in front of me, but I do know that they're an example.

I don't want to just reference or pick on one institution, but there are examples that are concrete examples that when you look at those dates, don't think of them as a bright line because our criteria say. However, anything can --

Member Boehme: So you --

Dr. Gellman-Danley: -- happen.

Member Boehme: -- have bright lines for dates, but you don't have bright lines for student achievement --

Dr. Gellman-Danley: No --

Member Boehme: -- numbers?

Dr. Gellman-Danley: -- I just asked you don't look at that as a bright line. What I said is if you see an institution that says 2020 or 2022, if circumstances change, it's not as if we're out of touch with those institutions.

We get reports every year. We get our assurance system in place. Every year we have to get updated data. What happens on a comprehensive visit may be less often, but there are things that happen in between whether in person or not. And there, our system will red flag immediately any changes or behavioral patterns.

Member Boehme: With, I'm sorry, but a college that has a four percent completion rate, and the last time you looked at it was 2013 and the last time according to your website is 2014, the last date of information change.

A school doesn't suddenly drop from 50 percent to four percent. Maybe it does, I'm not sure. And when consumers go onto your website, it sure looks great that, you know, Chicago University is doing well. And I don't mean to just pick on that, but this is just one that comes to mind.

So, again, I'm not sure if this is genuine or not. And I hope you're looking into institutions like this. But, again, when there's over 27/28, I'm not sure, institutions that have single digit graduation rates, something needs to be looked at.

Chair Phillips: We just --

Dr. Gellman-Danley: I can assure you anything I've said is genuine.

Chair Phillips: I would add to this conversation, listening to some of the deep concerns that have been expressed, particularly, in what I'll call flagrant examples of worry about institutions, is that the actions of the accreditors are not visible to those who are worrying. The formal -- we made the last -

Dr. Gellman-Danley: The reports.

Chair Phillips: -- decision --

Dr. Gellman-Danley: Right. Right.

Chair Phillips: -- and so forth, are available. But the flag that's been made or the annual report or the agenda item for your next meeting or the desk review, those actions are -- and this isn't a complaint other than it's a way of trying to understand why you might look at an accreditor's action and think that they're sitting on their hands because there is no action that is evident.

Whether or not there is an action, you know, you don't know. You've described some about this particular institution. But it lends to the lack of confidence about accreditors minding the store

when there isn't visibility except for this ten-year period or five-year period or whatever.

It's each accreditor who tries to describe that and I know all of them have those interim processes. By the time you get to the point of explaining it, the confidence has already been lost.

And it sort of makes for a, you know, on the larger conversation about transparency and what it is that is happening with a given institution, it's clear that not all that is happening is visible. And that leaves the creditors, I think, with a big confidence gap.

Dr. Gellman-Danley: May I address that?

Chair Phillips: Sure.

Dr. Gellman-Danley: Two points, actual public perception of higher education in general, not just about accreditation, was one of the top trends that we found because institutions feel separate from us, but you could add us to it, feel underplayed that the public is asking about the return on investment, what is the value, are we going to get jobs, et cetera, et cetera.

I remember when I was an undergraduates, I don't know what I remember this, I was 18. I got a letter from Syracuse University saying you want to go into education, but don't go into early childhood education, there are no jobs.

And at that moment I thought -- so somehow that registered in my mind as a very strong integrity thing to do because I might have said I'm going somewhere else.

We are putting in front of the board, hopefully they'll wait until I'm there tomorrow, but there is a proposal to have more details come out of our report. So that the peer reviewers would take each section and not change what's in there, but translate it out of education-ease so the public can understand it by section –

Chair Phillips: Oh.

Dr. Gellman-Danley: -- by criteria.

Chair Phillips: Yes.

Dr. Gellman-Danley: So that's being considered and then it goes first and second reading to our members and it becomes a change of policy.

Chair Phillips: Yes. Yes. Those things will help. And maybe get on the website that you're looking at, so. And maybe it'll make you not worry or maybe it'll make you worry more. Yes.

Member Derby: Well, I just wanted to add on --

Chair Phillips: Sure.

Member Derby: -- to what you said because I think that's fair. And if I were to generalize the tone, I think it's clear that the members of the committee are very concerned about these sort of things and ask the tough questions.

But on the other hand, for an agency to pull accreditation from a college or a university is a very -- for us to pull recognition, for you to pull accreditation is a very serious kind of action to take. And who does it impact?

So I think that the message that I would want to convey to the accrediting agencies is you've got to do better, you've got to press harder. And put them on whatever sanctions so that really what you're doing is pushing them to get it better.

We all know about the Chicago school system. I think that's a very fair argument that, you know, it's a pretty big mess. And here's a university, I was there years ago actually visiting that one --

Chair Phillips: Oh, I didn't know, yes.

Member Derby: -- that struggles that gets some of the worst prepared students. So you close it and

then those students can't go there --

Chair Phillips: Yes.

Member Derby: -- or do you try to push it hard to improve those persistence, graduation and all the rest of it? And I think for myself, I'm wanting to say push harder. You know, apply stricter standards, whatever it takes to get them working harder to raise those rates because it just looks bad.

And I think as a member of this committee I feel like some responsibility for that and --

Dr. Gellman-Danley: We are going to finish our strategic plan to announce it at our annual conference. You know, there always has to be a little drama with something like that. I certainly would welcome any input.

We are definitely going to talk about that as a key trend in the role of accreditation and assuring quality. But beyond that, improving the higher education system.

I have always said, and Simon I say this to you, but we've all been students. No matter what position I had, is our decision in the best interest of the students. Am I pleased to see that's said a lot at HLC. And we will continue to say that and say that more because that's our audience.

Chair Phillips: Thank you. I wonder if we are ready to make a motion, any kind of motion about the staff recommendation, primary readers and/or Simon, do you have a motion to make?

Member Boehme: Yes, well, I'd like to motion that - and we have a sample packet in here, is that correct? What I would like to see is, and this is me just thinking off the head, I'd like to see them come back in December.

I'd like to see them come back in six months and

particularly discuss with us, and Anne, maybe you have a section that you'd want to add on, but at least what I'd like to see and from this discussion I think it's very clear that, and it's been expressed by multiple members that student achievement seems to be an issue, to come back and provide more information on 602.16(a)(1)(i), the student achievement.

So I'd like to see them come back in six months just to update us. And it sounds like there's some strides and strategic planning going on.

But this is very concerning. Parents are sending their students to these institutions and we have to make sure that they're getting a high quality education. So I'd like to see them come back.

Chair Phillips: Are you including a recommendation about action on the compliance report that they have submitted? Is this in addition to a recommendation or is it are you suggesting that the compliance report be considered at a later time? I'm actually --

Member Boehme: I'm not sure.

Chair Phillips: -- not sure of our timeframe that we have to deal with here, but --

Member Boehme: Anne, do you have an opinion on that or --

Member Neal: No, I was prepared to vote on a motion that the staff had prepared.

Chair Phillips: Mic. Microphone, sorry.

Member Neal: Oh, I was prepared to vote on the motion that the staff had prepared. I was not going to vote positively, but I was prepared to vote on it negatively. But your issue is another important one. What are the options if you want to have them return without a determination today?

Ms. Morgan: You could do extension for good

cause.

Member Boehme: I would be fine with that.

Member Wu: May I ask a question?

Chair Phillips: Please.

Member Wu: Do we have authority in general to summon agencies before us? So I'm just wondering, of the ones, do they always come at the conclusion of their time period or can we be more creative and make them come on different schedules or come more often? Do we have that authority?

Dr. Hong: I think we're looking at two different issues. One is we have to take action on their recognition, but separately, can they come before the NACIQI independently and have an oral report upon request of the NACIQI. Why not?

Member Wu: Not them volunteering, but can we compel them? Now, I assume any agency we invite will accept the invitation.

Dr. Gellman-Danley: I'd be willing to volunteer. If you feel that there's information we're not giving you just let us know. We'll come and I'll be glad to update you on this grad plan.

Chair Phillips: Ralph.

Member Wolff: This is a really important discussion and I want to indicate I don't think it should be isolated to a single agency. Because in every region there are institutions with very low graduation rates.

And these issues have been part of the national conversation, but they have not been required elements of the recognition process, at least with respect to data.

To the extent that this might become a policy issue I think we should treat it. But I worry about

focusing on one agency's non-compliance with the criteria that didn't exist before when there was a staff recommendation to accept.

I think it's a separate issue to say how are accreditors going to address this issue. I believe it's fundamentally important. These data alone, having worked on this issue for years within the agency that I worked with is to say that it is not easy to move the needle, but it is one that we need to collectively work on.

So, and my issue is not to let anyone off the hook on this issue, but not to make it a limitation on their recognition, but to say are there ways we could engage a deeper discussion with the accrediting community that this issue is not going to go away, that this issue does need to be addressed.

Sanctions alone aren't going to make it change, but we do need to figure out what are the ways. And New England's going to come up, others will come up over the course of the next year.

And rather than picking off one agency at a time, and maybe it's an issue with one and not another, how do we address this as a larger issue because it is so fundamental to, I think, to institutional effectiveness.

Chair Phillips: Thank you. I have Art and Frank.

Vice Chair Keiser: Ralph, I --

Chair Phillips: Thank you.

Vice Chair Keiser: -- agree with you in that this is the a really important beginning of an important discussion. However, I think Simon very emphatically discussed the fact that we do require institutions to have programs standard and, you know, requirements to deal with the issue of outcomes, positive, negative.

And when these outliers are so egregious the

question is are the standards that this commission has or commissions have, are they meeting the intent of the regulation or in the case of this, this is a statutory requirement, and that is up for discussion.

And I believe anytime of there being a compliance report or a full review, it is an important question, one which we have wrestled with over the years.

But whether we do it today or not, but I do think it would be appropriate to have, you know, whether we agree to them on achieving the compliance report with a report back next on their student achievement standards. I think that is appropriate and I don't know, you know, it would certainly be a motion that I would accept.

Chair Phillips: Frank.

Member Wu: So this is more of a question than a statement. It seems as if we're headed toward a change and there's a critical mass of this body that wants to make this change. And the change is to be more aggressive, to be more inquiring, to be, perhaps, wider ranging in our questioning of agencies.

I'm fine with that. I'm not pushing for it, but I think it's a good idea. So my question is how would we communicate that in a way that's fair? Because I know what Ralph has said that we really actually want others to be aware of this.

And while there are members of the public and word might be disseminated and the press might well be here and they occasionally cover what we do, I'm actually surprised sometimes that agencies come, watch a little bit, appear and then leave and don't stay for the rest.

Because there's a lot going on here that would be of interest to agencies other than the one answering the question because it really signals the thinking of this body in a way that effects their livelihoods.

So that said, the question is should we do something, is there some appropriate means of saying, hey, NACIQI means business? And you, agency, should be on alert about this. You should be aware.

We are giving you notice that this isn't just some pro forma thing where you just show up and get rubber stamped for a few years, that you ought to come prepared.

Because if we don't do that, then it's sort of unfair because they've been accustomed to, some agencies, they're in and out in five minutes. And if we suddenly spring on them -- Simon suddenly says, you know, well, what about such-and-such college, they're going to be dumbfounded. So --

Member Boehme: But I --

Member Wu: -- the question is should we alert people that we mean business?

Chair Phillips: I have Herman and Cam and then, Simon also.

Mr. Bounds: No, I just wanted to make one statement with regards to the staff review. You know, we review the agencies based on the regulatory criteria. And right now the department is forbidden from setting any student achievement outcomes. We don't do that.

So as Beth was saying we look at how they say they measured and we look at their policies and procedures, and you all know that. But I just wanted to make that statement as, you know, first of all based on our scheduling of agencies that come back for review. That's a concern, too, with the number that we have scheduled already, which shouldn't have no bearing anyway.

But an agency coming back up and then we take in

another look at that agency, you may find that the staff report may reflect the same thing because we don't set those goals. We just look at their policies and procedures. That's what we do. And our review is basically black and white, so I just wanted to bring that up.

Chair Phillips: My list is growing, Cam, Simon, Jen, Jill and Art --

Member Staples: Thank you. I agree --

Chair Phillips: -- and Anne.

Member Staples: -- with the comments of Frank and Ralph that we ought to take a step back. That doesn't mean we don't pose the questions here or take action today.

But I think the bigger issue is we do tend to take advantage of whoever is before us to get into extended policy decisions, and this has happened as long as I've been on NACIQI, that then don't get rolled out to other accreditors. It's just the nature of how this works.

And so I think, three or four years ago we began our policy discussions. We set aside entire days where we invited people to come talk to us, and those of us who've been around there remember that, whether it was accreditors or experts that we identified.

And it may be very well worth our while to think about setting a time, whether it's sometime in the course of this next year where we set up a full day during one of meetings and just invite in a whole range of accreditors to address these issues and give them a chance to think about it and to come to us with some evidence, some information, some guidance.

Because I think otherwise we're just sort of picking out those few examples from people that happened to, on the carousel, end up on our, you know, our

calendar on that particular year or day.

So I think it's a very worthwhile thing to dig into. I think we would find it much more valuable for our purposes if we did that than if we just, in one case or in a couple cases, said you need to come back.

I mean, invite everybody in, have a full range discussion, organize it in a way that's constructive because it may go toward the issues we were talking about earlier today about how do we turn our whole process into something that's more valuable. Engaging people when they're not here for the life or death decision of recognition.

I think that's part of what I was trying to say earlier that it's difficult when an agency's coming before us, and it's a yes or no about their existence, to engage in that sort of wide ranging conversation that you want to have with them when they're off cycle.

So I think that's what gets my recommendation that we do that in the future and that decision today, whatever we do in this instance I don't think should be the last work on having a broader conversation.

Chair Phillips: I have Simon, Jen, Jill, Art and Ann. I'm going to just stick in a comment before we go to Simon. I can see the enormous value in having a non-high stakes conversation with accreditors that allows us to say how do we know that you're doing your job when all we see is these data.

You know, tell us about how you think about the data that you see, what you understand about it and what actions you take about it. I can see that being enormously helpful. And not only to our thinking, but also to the larger concern that nobody's watching that.

And I'm assuming that people are watching it, actually, in this, or we might find that people aren't watching it and in that case we have a different problem. But it would certainly inform the larger

conversation, perhaps give some more credence to the accretor actions, to our actions.

Certainly, it cannot be too long before the, what I'll call, the Elizabeth Warren question comes back to NACIQI of so how did you recognize that agency if they were accrediting those kinds of institutions.

So, you know, flashlight we point we can point back to us. All right. So I'll get off my high horse for the moment, come back to Simon and onto my list.

Member Boehme: Sure.

Chair Phillips: So, Simon.

Member Boehme: I mean, there's a new sheriff in town and it's all of us. And accreditors should be on high alert because all of this information is public.

And as long as I serve on NACIQI I am going to research every single accreditation agency. And I am going to find out, and hopefully, I invite all my NACIQI members too to take -- I take this job very seriously because I care about students. And everyone, I assume, inside this room does too.

And we all have different interpretations of how we're going to protect students. But the norm, at least from where I'm coming from, it's been going on for far too long.

And to Frank's point about fairness, this is a committee that was just brought to us. I mean, Anne pulled off this committee for a reason. And, you know, through research there were other reasons to explore this further.

And so to me I don't see it so much as about fairness as everyone who comes in front of NACIQI should be ready. And certainly there is a past precedent. I've been on this committee since 2013. And I respect what's happened in the past, but, you know, there's changing winds.

And I'm going to continue doing research on all

these agencies and hopefully we can work together to improve education because I think that's what we're all here for.

Chair Phillips: Thank you. Jen?

Dr. Hong: Just real briefly, I'll echo what Cam said to the extent that the committee has kind of this dual charge in terms of teeing up policy recommendations, but also recommendations on recognition.

If we could organize that better and put that out in the Federal Register Notice for the public ahead of time, folks can be prepared when they come to talk about these issues.

I understand that sometimes these charges are overlapping and when the agency's in front of you, you're going to ask questions that, you know, bleed into possible recommendations for policy and the NACIQI has the authority to do that.

Chair Phillips: Jill.

Member Derby: Thank you. This has just been really a great discussion and I want to support Cam's suggestion about let's spend some time on it. Susan, yours as well, pointing out that we don't see all the data and that could enrich a discussion and if we spend some time on it.

I think what's going on here in my sense is we don't set the standards. But in this conversation, we're sending a signal that we're pressing on the accrediting agencies to really set higher standards to enforce solid standards, to be addressing this issue that is across the country of what's going on in higher education with low, persistent graduation rates and so on and so forth. I think we need a longer discussion on it.

Chair Phillips: Thank you.

Member Derby: And I agree with those who say to

punish the one agency right in front of us because this now has come to the forefront. And Simon's raised very good issues here. It really wouldn't be fair. And so I will vote with the staff recommendation.

Chair Phillips: I have Art, Anne and Ralph and then I'm going to see if I can see where we are.

Vice Chair Keiser: Well, I agree with Cam's and Ralph's recommendation that it requires --

Participant: Microphone.

Vice Chair Keiser: -- further discussion --

Chair Phillips: Mic. Yes, Cam probably turned it off.

Vice Chair Keiser: Well, I agree with Cam's and Ralph's discussion that we need to have the discussion. However, we've had this discussion many times before. The question becomes what, you know, and this is a staff question, is there standards appropriate? Are their standards measurable and, which is required by the statute, and do they do anything?

And if they are not, then it is the obligation of staff to bring this to our attention rather than us bringing it to the attention.

So is four percent reasonable? I don't think so, but again, what, and with the question we asked was how does that measurement become reasonable? And that's the discussion we have to have in the future.

And, you know, are these standards you set for your agency and for the schools that you accredit? Are you enforcing them for all institutions similarly, not necessarily because one has, you know, there is diversity we have to recognize, but there has to be, certainly, a minimum standard, not necessarily a maximum that you would say, no, you are not meeting our requirements for reasonableness in

terms of outcome.

So again, you know, I'd even make a motion that we accept the staff recommendation on the compliance issue, but have the agency come back before us to discuss the reasonableness of their standard.

Chair Phillips: I have Anne and Ralph and then I'm going to come back to the motion that's on the table and see what we want to do with that.

Member Neal: Well, I certainly agree with Ralph that this is not something that's unique to HLC. And I certainly also agree that kinds of intrusiveness issues that we've talked about and then the concern about quality control are not only going to be with this accrediting body.

I guess my question then is in response to Frank's question is should we then, consider a deferral with a report in 12 months or potentially an 18 month renewal as a sign of our dissatisfaction?

Chair Phillips: Okay. Ralph?

Member Wolff: Let me comment both generally and then maybe more specifically. Ted raised the issue of communication and this is an area where communication with the accrediting community is vitally necessary.

It's really hard to say you're on a consent agenda, you're called in, you're not quite sure why you were taken off the consent agenda.

And notwithstanding the good question, Simon, you asked, to then say how would you defend a decision that you didn't prepare, didn't know anything about and defend your action when there are 1,100 institutions in the region?

And also it's a question whether to engage in review of specific institutional decisions when we're looking at an accrediting agency.

So we need to, I would think, have some real ground rules for a kind of conversation, particularly when something's taken off a consent agenda and it's really hard for an agency to prepare for something brand new.

That's not to take away from the importance of the issue. I don't want to wait a year to engage this issue. I think it's vitally important to the country. It's part of a national conversation.

I will say that at least with respect to the regional accreditors, 602.16, success with respect to student achievement for the last 20 years has been addressed as academic achievement student learning outcomes.

The conversation hasn't left that, but the conversation is now dramatically shifting to completion, retention, persistence and graduation and what are the standards.

That is a very difficult conversation with community colleges, most of whom would not meet a bright-line standard that would be appropriate for a liberal arts college or a selective public institution, adult learning institution and the like.

So this is a question that I think we need to engage as a policy issue. And when we inquire about this, that agency would be prepared.

I'd also like to ask the staff to say how can this be addressed within 602.16 which does not require bright lines, but does ask for standards. Course completion are the issues there, but many of the accreditors have focused on different ways of defining that.

So I'm not quite sure how we might engage that discussion, but I'm struggling with I'd like to accept the staff recommendation, but signal that this is going to be an issue that is going to be raised that all institutions need to endure as they come before.

But we don't have a mechanism in the guide for recognition, that I'm aware of, at least in fulfilling our responsibility. How would you respond to this specific issue?

I'd like to go through a more formal process of saying I'd like to move it in this direction, very much so as a policy, as a set of, you know, interpretation of the regulation.

But that there's a fair process by which institutions would be communicated and that there are clear guidelines on what kind of information would be provided and how one looks at the complex issues of under-prepared students, diverse institutions, all the things that all of us in higher education are struggling with. And when is an appropriate timeline to expect any change even if we are demanding improvement?

Chair Phillips: So this topic is generating some more discussion. We have Hank and Frank. I want to just put a parenthesis in here.

There has been a motion put on the table. It has not received a second. There's been another motion put on the table. It has not received a second. There's been another motion put on the table and it has not received a second, so.

Member Wolff: I'll second any one of them. Then we know --

Chair Phillips: I'm sorry.

Member Wolff: -- what we're doing.

Chair Phillips: So I just want to open the opportunity to define something that we could perhaps move to a vote on?

Member Boehme: Well, the original motion was the six months, right? So can we leave that one in? If there's no second, we'll move on to the next one?

Member Wu: Well, I'll second the first one.

Chair Phillips: The original --

Member Boehme: Well, it's that that you're not in compliance with the student achievement and they have to come back in six months.

Chair Phillips: Okay. Is there a second for that?

Participant: Second.

Chair Phillips: Okay. All right. So if you could put that up just so that we know what we're talking about before we start discussing it.

Member Zaragoza: Well, can I clarify that? Well, that's determination that we're not in compliance?

Chair Phillips: I'm sorry?

Member Zaragoza: The observation was that they were not in compliance, yet that's not what the staff report says.

Member Boehme: Correct.

Chair Phillips: So this not accepting the staff report. Finding them not in compliance and asking them to return in six months on this --

Member Boehme: Right. Although I must say --

Chair Phillips: -- of --

Member Boehme: Yes.

Chair Phillips: -- student achievement standards.

Member Boehme: Although, I must say Anne's recommendation, what was yours, Anne, the 12 months come back to accept a staff report and add to.

Chair Phillips: Okay. At this moment we have something on the table that has been seconded. So I'm going to either modify it or will toss it. So we're just going to get it up, so that we know what we're talking about. So just bear with us for a moment.

As that is being posted, I do have Hank and Frank. Do you want to speak now or shall we wait until that's up? Okay. No, he's passing. Do you want to say something?

Member Wu: So, yes, two unrelated points, the first is I would suggest we do it the other way, which is to go with the staff and also require that they come back in six months. That is capture Simon's idea that they come back and we ask more questions.

There are two reasons I suggest this, A, it just seems to be more fair so that we're not shifting the standards suddenly, and B, I'm mindful that the secretary might take the staff recommendation.

So we would want to keep the pressure on for them to come back in six months. So it might work better if we just are united with the staff and say, but come back in six months and Simon just grills them again.

Member Zaragoza: If that's a substitute motion, I would second that.

Member Boehme: Yes, same. Yes.

Chair Phillips: Okay. Let me get the first motion up so that we can -- just the first one.

Member Zaragoza: Simon, you're going to --

Chair Phillips: No.

Member Zaragoza: -- withdraw your motion and I'll withdraw the second.

Member Boehme: All right. I withdraw my motion.

Member Zaragoza: And I withdraw --

Chair Phillips: Okay.

Member Zaragoza: -- the second.

Member Wu: So, but --

Chair Phillips: Okay. But --

Member Wu: -- I am siding with you --

Chair Phillips: Hold on.

Member Wu: -- on --

Chair Phillips: Can --

Member Wu: -- having them there.

Chair Phillips: -- we be clear --

Member Wu: Yes.

Chair Phillips: -- about what the motion is now on the table? Can somebody state that? Accept the staff recommendation and have them come back in six months to speak to the issue of student achievement, is that correct?

Member Wu: Right.

Chair Phillips: So that's the motion and we have a second. Okay. Now, discussion. And let her get it up. Cam.

Member Staples: And I don't want to wrap this in the motion, I guess I would just say, I will leave it in your hands, Susan and the staff, to contemplate whether we bring other people back in six months as well, rather than just HLC having a broader conversation.

But I throw that out there for your consideration as to how to have a bigger conversation than just how they reacted.

Member Wu: Right. So I had a second item which is do we ever put out press releases? Because something we could do is put out a press release, a NACIQI member Simon Boehme says there's a new sheriff in town and, you know, NACIQI members nodded at that or, you know, things get published in the Federal Register. That's how we communicate

in a --

Chair Phillips: Yes.

Member Wu: -- formal way. Something very neutral could be -- one or two sentences could be published there if we passed a motion that said something to the effect, and I'm just thinking of something very neutral, NACIQI members agreed on the importance of inquiry of accrediting agencies that was related to the quality of higher education or something like that.

Anything like that would signal to the world and would get picked up by the press and it would reverberate and people we want to hear it would hear it. You know, there are 30 people here, but if you added up all the accrediting authorities, there'd be ten times or 20 times that number.

Chair Phillips: Yes.

Member Wu: So we have maybe five percent of the audience that we want to have for this message that I think virtually everyone, regardless of their perspective, agrees with. We want to do something meaningful here when we gather.

Chair Phillips: I have Art and Ralph and in a moment we'll have this up just on the screen.

Vice Chair Keiser: Just let me find the order of it. We have motion and a second on the floor. And I think we need to -- whatever else we can add to it is fine, but I think we need to stay on the vote.

Chair Phillips: Yes. Other discussion on this vote, Ralph or --

Member Wolff: Yes, I guess the way I understand the vote or the motion is to require HLC to come back. We're going to have NEASK coming up sometime and presumably, the same questions will be asked or they should be asked. And will they be invited to come back and will there be two separate

conversations?

So either I will seek to amend the resolution or vote against it because I don't think this is an issue of HLC alone, nor NEASC alone. Secondly, this issue is not about the quality of higher education and it's really not about 602.16 success with respect to student achievement.

It is specifically and directly about how accreditors are going to address data on retention, persistence and graduation. That's what it's about and that's what the conversation needs to be about.

How do the regulations fit in, how are accreditors responding to it, what are appropriate actions to be taken and what is our role with respect to that. And that's what I see the questions that Simon is raising, but I don't want to frame it so broad.

Finally, I'll just say that in the past following a NACIQI meeting where they're having conference calls with all accreditors to say these are issues that are coming up and you should be prepared.

So either my amendment would be, or the reason I would vote against is, I think, this is something that a group of accreditors need to address, whether it's CRAC for regionals, nationals and to say we're moving in this direction, how do you see responding?

How are you addressing this issue? And maybe it's even possible to generate a list of questions that they would address, but to keep it really focused on these kinds of data and what they mean. Thank you.

Member Wu: I just want to say that's far better because that ties in clearly to what authority we have. So thank you, Ralph.

Ms. Morgan: Is that an --

Chair Phillips: Okay.

Ms. Morgan: -- amendment?

Chair Phillips: Right now we have a motion that has been seconded. If I could confirm that this is the one that you think you made and seconded? Okay. And if we can certainly have more discussion, we can have opportunities for amendments. What's your pleasure on the -- yes.

Ms. Morgan: I just wanted to point out that this says renew the agency's recognition for two-and-a-half years. What that means is that you're approving their standard and that they're applying it.

So just realize if you vote for that, that's what you're saying. And that could be what you mean, but as Ralph points out, it's really a different issue. It's really not student achievement.

So it's sort of contradictory to say to renew their recognition for two-and-a-half years, but then require them to come back to talk about student achievement.

Chair Phillips: Well, actually recognition and discussion are two different things?

Member Wu: Right.

Chair Phillips: So --

Ms. Morgan: What are they going to report on?

Chair Phillips: A discussion is what it says, not report, not --

Ms. Morgan: So they're not going to submit anything to the staff to --

Chair Phillips: Well, I haven't seen anything about that. I just see a discussion. Perhaps that was not what was intended.

Member Boehme: I mean, and maybe this can be turned to you. And I hear what Ralph is saying. I

mean, I just want to push back. You know, we meet twice a year. You know, it's not every day that, you know, we're running into, you know. And I think NACIQI should meet more often, but I have more time on my hands than you guys do.

But maybe you can voluntarily provide some information on us. I mean, I think the staff report, and I embrace it as well and I don't mean to single out this HLC, but I think, though, Ralph, there is enough compelling information with multiple -- I mean, if it was just one or two or three, not that they shouldn't be let off the hook, but there's well over 27 colleges and universities that have single digit graduation rates.

And I think that's worthy for a concern. And I'm sure there's other universities that have to do it that -- it's across the country, absolutely. There's a lot of factors.

I think it's fine as is. I'm not sure. Frank was the one who composed this. I'm not sure if Frank wants to make any other motions. But I think we should just vote on this and move forward.

Member Wu: So, I would substitute the phrase that Ralph just offered where it says student achievement. Ralph had a phrase that tied directly to the regs, but he knows the phrase better than I do. It had three parts data about --

Chair Phillips: Retention --

Member Wu: -- blank, blank and blank.

Chair Phillips: -- persistence and graduation.

Member Wu: That, yes.

Member Wolff: Those words are not actually in the regs, but that's what we're focusing on. And student achievement is --

Member Wu: Sound of the story.

Member Wolff: -- defined so broadly.

Member Boehme: Course completion is in the regulations.

Member Wolff: Course completion.

Member Boehme: And maybe that's what we should say.

Member Wolff: The graduation rates not course --

Member Boehme: Right.

Member Wolff: -- completion.

Member Boehme: Yes.

Member Wolff: And job placement --

Member Boehme: Yes.

Member Wolff: -- is in the regs. I think what we're really -- the reason I'm saying is it's not broad and we're signaling the issue is graduation rates, completion and persistence for their certificate or degrees for which students enroll.

And that's what the national conversation's about, I think that's what you're raising and so that's where I really want to focus the conversation.

Chair Phillips: If I could ask if that was an amendment? I've --

Member Wolff: I would just say I will propose that student achievement be modified to persistence, completion and graduation rates. How would that being addressed then?

Chair Phillips: Yes. Second, was that friendly?

Member Boehme: It's friendly amendment, yes.

Chair Phillips: Okay.

Member Wu: What do I state again for the record?

Chair Phillips: Yes, we're just going to get it up so that you can actually see it.

Dr. Gellman-Danley: Madam Chair, may I ask a question? Is that --

Chair Phillips: Yes.

Dr. Gellman-Danley: -- appropriate.

Chair Phillips: Yes, ma'am.

Dr. Gellman-Danley: Okay. I'm trying to figure this out that this would say we're recognized and we're going to come back in six months for a discussion, is that correct? I'm trying to put a semicolon.

Chair Phillips: That would --

Dr. Gellman-Danley: And we'll come back to discuss these issues. And then I have a question. Will we be given parameters to discuss? Because I actually did prepare extensively. I stopped working for my board meeting and put in hours to prepare for today. So I want to prepare appropriately. You deserve that respect. And then this would be just for HLC? This doesn't expand the discussion to others.

Chair Phillips: I would venture to say that we aren't yet prepared to say who else would be --

Dr. Gellman-Danley: Okay.

Chair Phillips: -- in that discussion. It doesn't say that it's a solo discussion.

Dr. Gellman-Danley: Okay.

Chair Phillips: So --

Dr. Gellman-Danley: I'm just --

Chair Phillips: Yes.

Dr. Gellman-Danley: -- trying to understand.

Chair Phillips: I understand. Anne.

Member Neal: Just to add a gloss to Ralph's comment. I do think that we're asking for broader conversation, but I also think that at the end of the day each one of us has to make a judgment as to whether or not the accreditor is a reliable guarantor of educational quality.

And that's all the million up or down decision, so that's how I will be governing my vote in terms of how I make that judgment.

Chair Phillips: Yes, thank you. Okay. We have the current recommendation in large font, readable? It's the agency name. It's --

Dr. Hong: In the small part?

Member Wu: We want to say something about this.

Chair Phillips: Mic.

Member Wu: We want to say at the next NACIQI meeting just so it's clear that, you know, we don't have some problem if the meeting turns out to be in November or January. The point is at the next NACIQI meeting.

Member Boehme: I'll second that.

Ms. Hong: I would just add that there's a very robust agenda for the next NACIQI meeting. So I'm concerned about us being able to get to all those agencies within three days. So do you want it to be at the next NACIQI meeting, is my question?

Member Wu: Yes.

Dr. Hong: -- possible.

Member Wu: Yes, we do.

Member Boehme: Yes.

Chair Phillips: Just to note to speak to the issue of time that will mean likely a four day meeting.

Thought you might want to have that information.

If we have a fulsome discussion on this topic, it is likely that we will have a four day meeting in December. Just, it's important to be aware of all of the consequences of one's actions.

Member O'Donnell: I have a question. If we're just having a discussion, is it possible to have a separate meeting that's a telephone meeting, like kind of like we had the policy discussions? That might be inviting HLC and others back and that sometime we could just do it by telephone conference?

Chair Phillips: Yes. We can always work to arrange an additional meeting by teleconference. We do need to follow the federal notice requirements and there is a bit of a lag time for that to occur.

I think federal notice for the December meeting actually begins in two months. So we would need to do the federal notice now to have something done before then. Herman.

Mr. Bounds: This is, and maybe Sally can help out, this is just purely an operational question. Since the motion is to renew the agency's recognition for two-and-a-half years and just come back and report, that indicates to me that the agency is not submitting any documentation to us. They're just coming back to report to you all.

So my question is, with the Federal Register Notice, how does that work with, does that bring into play the whole third party comment issue? Did that start that bowl of wax rolling again before we make those type of --

Chair Phillips: Yes.

Mr. Bounds: And I think this is so different --

Chair Phillips: Herman, I think --

Mr. Bounds: -- that --

Chair Phillips: Yes, it's a good question.

Mr. Bounds: Yes.

Chair Phillips: We'll need to --

Mr. Bounds: Okay.

Chair Phillips: -- address that.

Mr. Bounds: Okay. I just wanted --

Chair Phillips: Yes.

Mr. Bounds: -- to bring that up.

Chair Phillips: Yes. I think we have one other with the mic, please, and then we're going to call the question --

Member Alioto: Could we add --

Chair Phillips: -- for --

Member Alioto: -- access to the list to discuss access?

Vice Chair Keiser: That's not this issue. That's a --

Member Alioto: What?

Vice Chair Keiser: -- separate issue.

Member Alioto: Well, retention, persistence and completion rates were also separate.

Vice Chair Keiser: Those are outcomes. Access is -
-

Chair Phillips: Mic.

Vice Chair Keiser: Access is not an outcome, so. Access is the entry into the program --

Member Alioto: Right.

Vice Chair Keiser: -- not the -

Member Boehme: Call for the question.

Vice Chair Keiser: -- outcome.

Chair Phillips: Okay.

Member Wu: Second.

Chair Phillips: I have a call for the question at this point on this motion as done up or down. Those in favor of this motion as written, hands? One, two, three, four, five. This motion right here, in favor, just to -- one, two, three, four, five, six, seven. Opposed, three, four. Okay. This motion passes.

That concludes the action on this particular item, this item. It does not yet determine her question of what do you want me to talk about at the next NACIQI meeting.

And I'm going to suggest that we take our next agency and we may want to clarify this as we do this. I'm guessing that the same issue will come up.

But for the purposes of your question of does this mean that your recognition is continued, this is the recommendation that is going forward to the secretary depending on what that authority concludes. That would be the recommendation is to continue your recognition.

Dr. Gellman-Danley: Okay. Well, thank you very much. I hope you won't be offended, but I have a board meeting going on. So I've missed about 90 percent of it. I do need to head back.

Chair Phillips: I understand.

Dr. Gellman-Danley: Okay? All right. Thank you --

Chair Phillips: That's it.

Dr. Gellman-Danley: -- very much.

Chair Phillips: Yes. I'm going to call just a five

minute break to let people reorganize their desks and refill their coffee. We do have one more agency for consideration and perhaps some similar issues to contend.

(Whereupon, the above-entitled matter went off the record at 4:16 p.m. and resumed at 4:23 p.m.)

Compliance Report – New England Association of Schools and Colleges, Commission on Institutions of Higher Education, NEA CIHE

Chair Phillips: Okay, our next item of business is considering the compliance report for the New England Association of Schools and Colleges, Commission on Institutions of Higher Education.

We do have two recusals. For this one, it's Cam Staples, and the second is Jill Darby. Any other recusals than those that I mentioned? Okay, seeing none, this -- our primary readers are Bobby Derlin and -- who got reassigned from --

Member O'Donnell: I did.

Chair Phillips: Thank you, Rick O'Donnell. And we'd ask them to provide us with an introduction of the agency. Which of you is -- all right, Rick, you're on.

NACIQI Primary Readers: Richard O'Donnell

Member O'Donnell: Great, thank you. This is Rick O'Donnell. The agency is the New England Association of Schools and Colleges, Commission on Institutions of Higher Education.

It is a regional accreditor that currently accredits approximately 230 institutions in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

The agency's accreditation is used by institutions in the region to establish eligibility to participate in Title IV. The agency is recognized for the accreditation and pre-accreditation of institutions that award bachelor's, master's, and/or doctoral

degrees.

And with that point, I'll pass it off to staff, which I believe is Rachel.

Chair Phillips: Wonderful, Rachel?

Department Staff: Rachel Shultz

Ms. Shultz: Thank you, and good afternoon. I'm Rachel Shultz, and I will be presenting information regarding the report submitted by the New England Association of Schools and Colleges, Commission on Institutions of Higher Education, or the CIHE.

As a result of the CIHE's last appearance before the committee, the agency was asked to provide additional information and documentation establishing that it operates separately and independently of the Association's Board of Trustees to demonstrate that it has both budget and staffing autonomy, and to clarify in its policies what entity is responsible for selected appeals panel pool members.

A secondary of concern was related to the agency's procedures for the approval of additional locations. The agency was requested to revise its policies to address the establishment of representative samples of additional locations for review during focused on site visits.

As is documented in its current report, the agency has made the requested changes to its organizational structure, and has revised its policy manual regarding the review of additional locations. The agency, therefore, has no remaining issues.

The staff recommendation is to accept the agency's report and renew its recognition for a period of two-and-a-half years. There are CIHE representatives here today, and we will be happy to respond to the committee's questions. Thank you.

Agency Representatives: Barbara Brittingham

Chair Phillips: Thank you. Readers or committee, any initial questions for the staff? Okay, inviting the agency representative, Dr. Brittingham, to join us? Welcome, and thank you for being with us.

Dr. Brittingham: Thank you.

Chair Phillips: Anything that you would like to speak to on behalf of the agency?

Dr. Brittingham: I would like to thank our reviewer, Rachel Shultz. We can her Eagle Eye in our office, and she, and Herman, and the staff have been very helpful to us in this process.

And I suspect I know what we're going to talk about, but I'll let you all get it started.

Chair Phillips: Super, thank you. Readers, your initial questions, if you have any, for the agency? Rick?

Member O'Donnell: Thank you. I think you probably do know what we're going talk about assuming you sat in on the last panel. But I have a list of the graduation rates of some of the schools that you've accredited, and there are schools that are single digits.

I think maybe my question is are there -- do you all have bright lines in terms of some of these outcome measures, or again, is it some of your peer regional accreditors you look to take a holistic approach but really don't have bright lines? I'd love your comments on that.

Dr. Brittingham: Thank you. We are similar to the other agencies in that we do not have bright lines. I'm not sure what the list is that you have, but I do want to say a few things. One is that in general, when retention and graduation rates are low, it's important to remember that the rates that are reported are for first time full time students.

And at one of our institutions, for example, that was cited in the public press for having a low graduation rate, seven percent of their student body is first time full time, so that means that that low graduation rate is not measuring 93 percent of the students.

About six or seven years ago, we designed some data forms to look at student achievement. We stole one from something Ralph had done to look at assessment and then added some different options.

And then we have another data series of student achievement and success that begins by asking institutions to report their IPEDs rates if they have undergraduate students, and if they have IPEDs rates, and so, even if they only measure seven percent, we want those reported, and then invite them to add other retention and graduation rates, for example, for part-time students, for distance learning students, for students at remote locations.

We also put space on there for time to completion of degree for graduate students which is normally how that's measured by many institutions. Retention and graduation rates are part of the cover memo that accompanies the team report, and so they are in front of institutions, and the teams, and the commission in multiple ways.

Just one other thing I can say too, this is a really vexing issue that I think concerns all of us. And one of the things that the CRAC, the Council for Regional Accreditors, has done is to work with the National Student Clearinghouse because they have data that tracks students, and almost all of the institutions now are members of this, and they will track students who are part-time and who move from full-time to part-time and status and back.

They have really interesting reports. And, you know, if you're putting together a symposium on this, it might be useful to include them because they've got the big national picture on this. But we each have an arrangement with them, and I'll speak

on how it works for us.

First, to look at students at four-year students and look at, again, full-time and part-time, and whether students transfer to another institution, whether they graduate, where they started from, whether they're still enrolled, whether they graduated from someplace else they transferred to, or whether they're still enrolled there.

They started with four-year institutions because it was -- and Ralph, I think, was still there when this was initiated, and that commission has only four-year institutions, so we have a second project with them to look at the community colleges as well.

That data is -- we don't have all of it yet, but we think it will be very important because their overall reports are very important. We will not get information on individual institutions, but what we will be able to do is present an array of the data for New England and nationally to the institution, ask them to locate themselves there, they know where they are, and ask them to talk about where they see themselves fitting into that.

Member O'Donnell: Thank you. That's very helpful. I'm curious if an external body, whether that be Congress or the Department, did establish bright lines knowing it may be tough to do, knowing there's all sorts of diversity in higher ed?

But assume for a variety of institution types some, you know, that Congress or the Department said that, "If you're going to qualify for Title IV, you need to meet a minimum standard." And assuming some institutions would fall below that standard, it would be controversial.

But do you think standards would be useful to you as an accreditor to say, "We're required -- We have a bright line. We've been given it." You may or may not even agree with the bright line, but I'm curious if you think that would help in your job as an accreditor?

Dr. Brittingham: I'm not sure it would because, you know, I think the fact that the Department -- I forget what Ted Mitchell's language was, but -- took a course correction and their -- what was going to be a rating system is now going to be a consumer information system as I understand it.

And so, I wonder whether that means that they couldn't draw a bright line, that they could not come up with those -- they were going to have three categories, you know, the overachievers, the underachievers, and everybody else, and whether they, when they looked at how that worked, whether they were not able to draw a bright line that they felt was going to be helpful in that way.

Member O'Donnell: That's possible, although I wonder if a minimum standard and a ratings system is different because saying a school, and there are different schools, but, you know, a four-year institution and an open-access two-year institution may have different minimum standards.

But saying a minimum standard of a graduation rate of -- I mean, I think it should be quite high, but let's just say ten percent, that's different than saying, "This is, you know, rating schools that are ten percent and above." So while I understand they would have had difficulty with a ratings system and standards are different, I think basic minimum standards shouldn't be that hard to come up with in my judgment.

Chair Phillips: Hank?

Member Brown: Thank you. Share with us, if you would, what measurements of student achievement you used in doing your assessment.

Dr. Brittingham: So you're not talking about retention and graduation now.

Member Brown: No.

Dr. Brittingham: Just what students learn. We do

not prescribe a common measure. We ask institutions how they're going about it. I will say that institutional assessment in the last ten years, but over a longer period of that time, has gotten much better.

We have a number of students, I don't really know how many, but I think it's a small number, who use the Collegiate Learning Assessment, but that's sort of an overall measure for them. It's not -- doesn't let them make decisions on individual students. It's more a curriculum feedback matter.

I think the interest that we're seeing in competency-based education, which I call the shiny object of the year, is going to have a wash-back effect. It's going to raise the bar on assessment, I think, for institutions, and I think it's a sign.

I think the interest is a sign of confidence among many institutions that their assessment is good enough now, that they should be able to assess student competency at a high level to go beyond description of what their students know and to set a high bar for their student achievement, so I see real progress there.

The mission of institutions in New England, and I think it's true in the other regions, is so varied that to come up or to be prescriptive with institutions about what assessments they should use has not seemed like a useful idea to us.

Member Brown: If I'm not mistaken, the statute requires a measurement of student achievement, doesn't it?

Dr. Brittingham: It requires that institutions have measures of student achievement.

Member Brown: Do you feel like you're complying with the requirements by not having one, or two, or a dozen, or a variety of measurements?

Dr. Brittingham: There are a variety of

measurements certainly, but we don't prescribe them. And we were reviewed by the Department and this body that said that we did meet that requirement. Will we meet it in a different way? Do we meet it in a different way now? Will we meet it in a different way in five years? I think it is all very much in motion.

We're in the process now of revising our standards. We had a whole series of activities late this summer or early fall. We will come out with the first draft of the revised standards and I will unveil here, and I don't think it would surprise anybody in New England. There'll be a standard on educational effectiveness that will draw from something that was included much farther down in a standard in 2011. Now it will be put up as one of the main standards that says that institutions understand what students gain as a result of their education, and use that information for planning for resource allocation and to inform the public.

Member Brown: Of all the standards you look at, do you have any minimums?

Dr. Brittingham: Do we have any minimums? We have minimums -- we have a minimum number of credits for a degree for the associate, for the bachelor's and for the master's.

Member Brown: I mean in terms of measurement of achievement.

Dr. Brittingham: No.

Chair Phillips: Any other questions for the agency? Simon?

Member Boehme: Can you specifically, as my colleague stated about a similar concern that I raised earlier, and I'm glad my colleague raised this important concern, can you tell me the specific -- because accreditation is supposed to improve the education landscape, improve the education quality for students.

So can you tell me specifically what you are doing -- do you mind if I look at that? Northeastern University, zero percent, again, but Cambridge College, two percent, University of Maine, three percent, Fisher College, four percent, Granite State College, nine percent for a four-year graduation rate, you know.

And what are you specifically doing to ensure that they have been -- that they are improving? And if you are doing it by an institution by institution basis, I would love to hear a specific example of benchmarks you are setting for them.

Dr. Brittingham: Yeah, I've talked to a couple of institutions on that list. First of all, I have trouble thinking that it's that low for Northeastern University. That doesn't sound right, but the others, okay. And I've talked to a couple of them recently about this.

And one of them said that they -- it's an adult-serving institution. Most of their students are part-time. Most of them are transfer students, but not all of them. They have a few students who come to them as first time full-time, which are the students who would show up there.

And they said that they have -- one of the things that they have learned is that they are more successful with students who do come to them as transfer students, but that they have so far continued to take a small number of first time students. I think they may change that policy.

Member Boehme: Thank you.

Chair Phillips: Ralph?

Member Wolff: This conversation seems a little calmer, but I think the issues are equally as important. I would just point out, if I could quote some data, that since 1980 to 2011, undergraduate enrollment doubled to 18 million, and the vast majority of that growth were Pell students, first

generation, and under-represented students.

So I just want to say that -- and most of these first generation students, instead of going to four-year schools, and this is data, now go to community colleges who have more recently very, very low completion rates, both for completion and degree earning.

This is a whole system issue, and punishing either accreditors or institutions isn't going necessarily to change it. But it is an issue we can't duck, and I think it's an issue we need to look at what role can we play that will be constructive, and how do we engage accreditors in the conversation, and how do they engage, in turn, institutions, and not letting institutions off the hook, but making the hook one that's feasible to respond to?

So I reiterate the issue that while there's a more thorough going response that NEASC has provided, I think this is a larger issue than a single agency, and to look at how the nationals are addressing it, and how the regionals are addressing it, how we might work together and, frankly, promote much greater attention and accountability. I think it's not just attention, but accountability, to the issues.

So, sorry it's a little bit of a speech, but I feel like that this is not just an HLC issue, it's not an NEASC issue, it is really everyone's issue. But the future of the country, and particularly first generation students participating in our democracy depends on our coming up with resolutions to it.

Dr. Brittingham: Can I just respond to Ralph? I absolutely agree with Ralph about this, and I -- it's too bad Frank isn't still here. He wondered how the word was going to get out.

I was taking a lot of notes in the last session and I will be sending them out to my colleagues, so at least within our group people will know about your concern, and I think, you know, we would welcome more general conversation with this group because

it is an area of concern to all of us, and it's really hard to figure out, you know.

We work to help institutions. It's really hard to figure out, to know when the education quality isn't good enough despite everything we look at, so it's a very hard issue.

Chair Phillips: I do hear in this conversation, both in the last session and in this one, that certainly it would be useful to know what information you see, what data you have, what you -- how you understand it.

You've provided some context for -- I understand it because it's adult or it's -- there's only seven percent of the students that are -- that come in as first time full-time, and then also what you do about in a way that perhaps would give us a better glimpse into what is -- the decisions that are being made and the understandings that are perhaps closer to the problem than where we sit, and then that that might then lead us to some better sets of ideas about how we could move that data into a direction everybody would be -- feel more comfortable with.

I have Hank and Bill?

Member Brown: I don't mean to belabor the issue, and you're such a nice person. I don't mean to be argumentative with you, but let me respectfully disagree as emphatically as I possibly can. You have a system where you have billions of dollars poured into higher education. People who take accounting, many of them as far as to take the CPA exam, the failure or passage rate on that exam is a pretty good indication as to whether that accounting department has achieved its goal. Architecture is the same. Engineering is the same. Law is the same. Nursing is the same. Medical doctors are the same.

This certainly doesn't cover all of the area, but to have a statutory mandate to measure student

achievement and not have minimum standards for passage in those areas looks to me like we're simply ignoring the law.

Dr. Brittingham: Thank you for that. One of the requirements, and maybe staff can help me with the exact language if you want to, but the requirement basically says that if a specialized accreditor places one of our institutions on the equivalent of probation, then they notify us, and we then follow up with the institution.

So -- and many of them, I don't think all of them, but many of them do have bright lines for passage rates of their license exams. And we've had instances where we get a notification. And sometimes the institution will alert us ahead of time, but sometimes we find out through the specialized accreditor, and then we follow up with that.

And part of what we want to know is, are they fixing that program? But we're also interesting in is that a symptom? Is it not just accounting but is it, you know, is it the other programs as well?

So programs that have a specialized accreditor with a bright line, we do have a pretty good way to follow up with that. The political science program, the English programs, those are harder.

But we do look at -- you know, we ask institutions. I mentioned part of the data form that talks about retention and graduation, but other parts of the data form talk about license or passage rates, and they talk about employment rates. They talk about rates that are important to the mission of the institution.

So we have, for example, a public institution in Massachusetts, where one of their signature goals is that their students stay in the commonwealth and are employed, and that's one of the things that they track. How successful are they in preparing students who are employed in the commonwealth?

So it varies quite a bit by mission.

Member Brown: But without a minimum standard in those categories, you really haven't set a bar. No matter how low you set it, you haven't set any minimum.

Dr. Brittingham: They're the only one I know that has that goal. I mean, part of it is respecting institutional mission, which is something that we are required to do, and I think we do a good job of that, is to say that institutions need to take the responsibility of saying what their goals are, what their minimums are, and then we look at it and say whether their goals are appropriate to their mission and their student body.

Member Brown: So you do set minimums?

Dr. Brittingham: No. Well, we do -- we set minimums in the sense of respecting the minimums set by the specialized accrediting agencies for the licensed professions.

Member Brown: I guess we're in a circumstance where if your job is to prepare teachers, and a significant number of them can't pass the exam, the -- we're saying they get accredited anyway?

Dr. Brittingham: We would look at that a couple times in a decade, and we would also -- meaning if pass, are they getting employed? The professions have different rates of passage built into their exams.

So if you look across the professions, they don't all have the same expectation of what the passage rate would be.

Not all of the professions have a mechanism so that the graduating institution gets feedback on its own students. Some of them send them to the institutions, others don't, and the institution has to rely on individual graduates telling them whether they passed or not.

This, as you can imagine, is not as useful as if they get the information directly from the agency so that they know that they have their whole cohort.

Member Brown: I think you're -- I take your point and I think it's well made, but there are a number of areas where they do get accurate information. And it just seems to me that by not setting a minimum standard for accreditation means that we're not taking seriously the requirement for student achievement.

Dr. Brittingham: You can be sure I will share your concerns and all of this discussion with our commission.

Chair Phillips: Other questions for the agency? Bill? Oh, I'm sorry, you were on the list.

Member Pepicello: Yes, thank you. Mine is actually more, I guess, a comment on what I heard and what I'm hearing in this discussion. And we're talking more about, or least some about the structure of accreditation, and part of that is setting standards and having the definitions for those standards, and whether or not there needs to be bright lines.

But I think a piece of it is if we're going to collect data, we should probably help define what that data set is by having a rationale for whatever it is we collect, because if you lay out a very specific rationale for why you are collecting whatever it is, whether it's completion, or graduation rates, which we ultimately are going to take to be indicators of quality, I think it helps if you know, or if you lay out specifically why these are the things that you are collecting.

And I think that, in turn, will help all agencies with setting those standards, whatever they may be, and the definitions of those, and I think help us to guide agencies in what we want to discuss with them when they come back.

So they would know that the framework of the discussion has to do with, at least partly, with what's the rationale for what you're doing, and then how are you measuring that data?

Chair Phillips: Thank you.

Member Pepicello: Thank you.

Chair Phillips: Any last questions? Do the readers have a recommended motion to make?

Member O'Donnell: Madam Chair, this is Rick O'Donnell. I would move that we accept the staff recommendation, and that the New England Association of Schools and Colleges Commission on Institutions of Higher Education, we renew the agency's recognition for two-and-a-half years.

Chair Phillips: It's been seconded. Further discussion? Could you put your mic on?

Member Alioto: Are we going to invite them to come back in six months?

Chair Phillips: That wasn't part of the motion.

Member O'Donnell: Yeah, I'd like to make -- well, we have to wait on a second, is that correct?

Chair Phillips: We did get a second.

Member O'Donnell: Oh, we did get a second.

Dr. Brittingham: I will come back if you invite me.

Member Boehme: I'd like to see that included. Kathleen, I think you bring up a good point.

Chair Phillips: Ralph?

Member Wolff: I would propose we -- I mean, I'm just going to say following this, I want to make another motion which is that we broaden the net and we invite regional and national accreditors in six months, so rather than singling out NEASC and HLC.

So I think you can either do it this way -- but I just want to say that I think this conversation requires more than one agency in six months. But I would prefer that it be done not in a recognition decision, but it be done toward our goal of wanting to move toward --

Member Boehme: But this is our way of bringing them back, is that right, Jen? Is this the mechanism that we use to compel organizations to come back?

Dr. Hong: Right, I mean, this is the mechanism that you use for HLC to come back and have a discussion, if you will.

Member Boehme: Okay.

Chair Phillips: Just to clarify, right now we have the motion as written. We've had some suggestions. I haven't heard any amendment called friendly yet. So I have actually Bobby and Art if we're back to the sequence, just to -- we do have a motion and a second, and that's it.

Vice Chair Keiser: Yeah, actually I'd stay with the motion. First of all, I thought the responses from this commission were a whole lot more compelling. Second, the questions that Simon asked of the HLC were very specific.

And I don't think our issue was to create a compliance issue, but to at least understand how they could justify those -- the numbers that they had. But I also agree with Ralph.

And I'm not sure six months, because we are going to have a busy schedule, that we expand the conversation to maybe even a summit of some sort to talk about incomes because it will become an issue. It is becoming an issue.

And with the President's rating system kind of disappearing, the questions are not going to go away. So I would agree with that Ralph that on a

different motion I would suggest that we call this question and then talk about the other thing later.

Chair Phillips: I have Bobby, but perhaps we've just called the question.

Member Derlin: I actually want to speak to this further discussion we're going to have with agencies, so I'm happy to vote.

Chair Phillips: Okay, super. Okay, we have a motion on the table and it's been seconded. The question has been called. Those in favor of the motion as stated? Those opposed? Those abstaining?

All right, that motion passes. That concludes the consideration of the compliance report for the New England Association of Schools and Colleges. Thank you for coming. I imagine that we have one more item of business before we close shop. Perhaps we could take it today or we can defer it until tomorrow.

Closing Comments

Member Wolff: I'm fully prepared to defer it, but not beyond tomorrow. I'd like to know the best way to make a motion. Given the December meeting, how -- what would be the best way to frame a motion, and whether staff, including you, can help to frame it?

This is too important an issue to let go, and I would like to broaden -- whether HLC individually responds, I would also like to see a way in which other agencies, how they address this issue as I raised before.

What actions? How do they assure accountability? What data are they collecting? What kind of actions are they taking? I know the nationals do have numbers. The regionals do not. And so I'd like to figure out how to stage that conversation, but I'm not eager to put it off in a long term. So if we -- I'll

do it tomorrow if you can -- we can figure out the best way to make a resolution.

Chair Phillips: I'm sorry? Yeah, I'm going to -- I'm actually going to suggest that we spend some time overnight thinking about it, about how to craft it. Perhaps invite the staff to consider how -- a first glimpse at that, what that might look like, not in a compliance kind of way, but in a discussion kind of way. I've got some notes that I've made as well.

Realizing that it is four minutes until 5:00 and we started at 8:00, I also wanted to draw us to a close today with just one final remark. Tomorrow we have a fair number of information and discussion items, including the final pieces of the policy recommendations that we had been working on for a year.

Just to give context, as you know, in March we were able to address the first 11 of the 17 recommendations through the meeting that we held in the conference call. We were not able to finish those last six, and we certainly want to conclude that process so that it -- those recommendations can move on into the very much ongoing process of the reauthorization of the Higher Education Act.

My guess is that in addition to completing those process, we may find ourselves having an interest in pursuing certainly this topic. There may be others that we -- that echo from the Under Secretary's conversation or from our conversations here that we want to set an additional agenda for ourselves.

I am certainly willing to consider holding our recommendations that we've been working on for a year, but I'm going to say I would personally vote against that. I really need to move -- I feel like we need to move those forward, but I don't want to preclude the notion that we continue on.

So with that in mind, I do want to encourage you tonight to just go back to those last six recommendations, 12 through 17, that we had put

on the table. We will come back to them tomorrow definitely. We will also come back tomorrow with this, a crafting of this conversation we want to stage.

And if there are additional conversation topics, policy topics that we want to put on the table, let's - - let me offer to make sure that we include a conversation about that list that we should be building. Bobby?

Member Derlin: I just wanted to say I think that all sounds fine. I'd like to suggest that given the importance of this new conversation that has emerged, and the importance of us working our way through our policy recommendations, I'd really like to see if we could speed up our agenda a little bit.

Get the policy recommendations done, and then have the consideration of these additional items related to student achievement. I think that can be an incentive to our getting the policy recommendations done.

I'd also like to ask if the staff could please consider, in working with you, really clarifying how we will segregate compliance decision making in our agenda from pursuing some of these broader more general conversations with accreditors about student achievement and so on.

Chair Phillips: Last call, anyone? It is exactly 5:00. We will start up again tomorrow morning at 8:00. I hope you have a good evening, productive thinking, and come back with fresh minds tomorrow. We stand adjourned for the day.

(Whereupon, the above-entitled matter went off the record at 5:00 p.m.)