



UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

January 3, 2019

Ms. Sandra Bruce
Acting Inspector General and Deputy Inspector General
Office of the Inspector General
U.S. Department of Education
550 12th Street, S.W.
Washington, D.C. 20202

Dear Ms. Bruce:

I recently read news reports that the Office of the Inspector General (OIG) is considering a review of the U.S. Department of Education's (Department) decision dated November 21, 2018 (2018 Decision) to continue the recognition of the Accrediting Council for Independent Colleges and Schools (ACICS). I was disappointed to learn of this through the media, as opposed to your office informing me about this inquiry in one of our regular meetings.

This matter is unique in that the Department initiated its action as a result of a recent federal court decision, *Accrediting Council for Independent Colleges and Schools v. DeVos*, 303 F. Supp. 3d 77 (D.D.C. March 23, 2018). In that decision, the court ordered Secretary DeVos to reconsider the previous Administration's denial of continued recognition of ACICS as an accreditor. The court remanded the case to the Department after finding that the Department's actions in the prior Administration were "arbitrary and capricious" and in violation of the Administrative Procedure Act and the Higher Education Act, and the latter's implementing regulations. Indeed, the court was unequivocal in its criticism of the Department's failure properly to examine all of the evidence demanded of ACICS by the Department.

Specifically, the court found, among other things, that the then Secretary of Education (in his final agency decision dated December 12, 2016 [2016 Decision]) and that the then Senior Department Official and Chief of Staff to the Secretary (in her recommendation dated September 22, 2016 [2016 Recommendation]) arbitrarily and capriciously failed to consider 36,000 pages of documents and other materials (Part II Submission and Related Evidence) that the Department had demanded from ACICS. The court's findings are concerning to the Department, and I would note are of the nature your office is charged with considering.

These wasteful, abusive procedural illegalities under the previous Administration are particularly troubling in light of OIG's Final Audit Report, "U.S. Department of Education's Recognition and Oversight of Accrediting Agencies," (Control Number ED-OIG/A09R0003). That report examined the Department's review of accreditation agencies considered by the Department between January 1, 2013, and May 7, 2017 – a period almost exclusively overseen by the prior Administration – and found troubling areas of oversight that this Administration is now working to correct.

Indeed, in contrast to the 2016 Decision and the 2016 Recommendation from the previous Administration, the Department's most recent 2018 Decision and the Senior Department Official's 77-page recommendation dated September 28, 2018 (2018 Recommendation) are well-reasoned and based on a careful consideration of the record and the court's ruling.

The Department fully cooperates with OIG reviews. Nonetheless, it is disturbing that your office appears to be responding to a Congressional request that is really a disagreement over policy and the merits of the Department's decision.

Under these circumstances, we request that your office reconsider any plan that it might have to review the Department's 2018 Decision and 2018 Recommendation. Nonetheless, if your office believes that a review of the ACICS matter is warranted, any such inquiry should begin with an examination of the previous Administration's decision-making that led to the denial of ACICS's petition for continued recognition – an action found by a federal judge to have been illegal. Specifically, should you choose to review the ACICS matter, we ask at a minimum that you review, explore, and answer the following areas of inquiry for the time period prior to December 31, 2016:

1. Why did the Department request from ACICS the Part II Submission and Related Evidence?
2. Who at the Department decided to request the Part II Submission and Related Evidence?
 - a. Did this person or persons consult with the Department's Accreditation Staff before doing so?
3. Did any person at the Department review the Part II Submission and Related Evidence after it was requested?
 - a. If so, why did the Department not use the Part II Submission and Related Evidence when considering and issuing the 2016 Recommendation and the 2016 Decision?
 - b. If not, why did the Department not review the Part II Submission and Related Evidence after requesting it from ACICS?
4. Did the Department refuse to use the Part II Submission and Related Evidence because doing so would have delayed revocation of ACICS's recognition?
5. Was any person at the Department instructed not to review the Part II Submission and Related Evidence?
 - a. If so, why?

Should you choose not to look into the previous Administration's actions, I expect to receive a clear, written explanation with sound reasons why that will not be done.

Thank you for your consideration of my requests.

Sincerely,


Mitchell M. Zais, Ph.D.