

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

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NATIONAL ADVISORY COMMITTEE ON
INSTITUTIONAL QUALITY AND INTEGRITY

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MEETING

+ + + + +

WEDNESDAY
JULY 29, 2020

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The Advisory Committee met via Video
Teleconference at 9:00 a.m., Arthur E. Keiser,
Chair, presiding.

ADVISORY COMMITTEE MEMBERS PRESENT:

DR. ARTHUR E. KEISER, Chair, Chancellor and CEO,
Keiser University
DR. KATHLEEN SULLIVAN ALIOTO, Strategic Advisor,
Fundraiser, and Consultant
DR. RONNIE L. BOOTH, President Emeritus,
Tri-County Technical College
DR. WALLACE E. BOSTON, President, American
Public University System, Inc.
MS. AMANDA DELEKTA, Student Member, Michigan
State University College of Law
DR. JILL DERBY, Senior Consultant, Association
of Governing Boards of Universities and
Colleges
DR. DAVID A. EUBANKS, Assistant Vice President
for Assessment and Institutional Effectiveness,
Furman University

DR. GEORGE T. FRENCH, JR., President, Clark
Atlanta University
MR. BRIAN JONES, President, Strayer University
DR. PAUL J. LeBLANC, President, Southern New
Hampshire University
DR. D. MICHAEL LINDSAY, President, Gordon
College
MS. ANNE NEAL, President, National Association
for Olmsted Parks
MR. RICHARD F. O'DONNELL, Founder and CEO,
Skills Fund
DR. MARY ELLEN PETRISKO, Education Consultant
DR. CLAUDE O. PRESSNELL, JR., President,
Tennessee Independent Colleges and Universities
Association
DR. STEVEN VanAUSDLE, President Emeritus, Walla
Walla Community College
MR. RALPH WOLFF, President, The Quality Assurance
Commons for Higher and Postsecondary Education

DEPARTMENT OF EDUCATION STAFF PRESENT:

DR. GEORGE ALAN SMITH, NACIQI Executive Director,
Designated Federal Official
ROBERT L. KING, Assistant Secretary for
Postsecondary Education
HERMAN BOUNDS, Director, Accreditation Group
ELIZABETH DAGGETT, Staff Analyst
DR. NICOLE S. HARRIS, Staff Analyst
CHARITY HELTON, Staff Analyst
VALERIE LEFOR, Staff Analyst
REHA MALLORY, Staff Analyst
DR. STEPHANIE McKISSIC, Staff Analyst
MICHAEL STEIN, Staff Analyst

ACCREDITATION AGENCY REPRESENTATIVES PRESENT:

Higher Learning Commission (HLC)

DR. BARBARA GELLMAN-DANLEY, President

JOANNE BURROWS, Chair of the Board of Trustees

JULIE MICELI, Partner, Husch Blackwell

MARLA MORGEN, Associate Vice President of Legal
and Regulatory Affairs

ANTHEA SWEENEY, Vice President of Legal and
Regulatory Affairs

DAVID WISSMANN, Former Trustee

PUBLIC COMMENTERS:

DAVID HALPERIN, Attorney and Counselor

ROBERT J. INFUSINO, Former Student, Illinois

Institute of Art

AMY LAITINEN, Director of Higher Education, New
America

CLARE McCANN, Deputy Director for Federal Higher
Education Policy, New America

BEN MILLER, Vice President, Postsecondary
Education, Center for American Progress

BOB SHIREMAN, Director of Higher Education
Excellence and Senior Fellow, The Century
Foundation

JAMIEENNE S. STUDLEY, President & CEO, WASC
Senior College and University Commission

ROSE FUSE-HALL, Florida A&M University

WALTER OCHINKO, Veterans Education Success

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9:08 a.m.

DR. SMITH: Good morning, and welcome everyone. This is the meeting of the National Advisory Committee on Institutional Quality and Integrity, also known as NACIQI. My name is George Alan Smith, and I'm the Executive Director and Designated Federal Official of NACIQI.

As many of you know, NACIQI was established by Section 115 of the Higher Education Act of 1965 as amended, or HEA, and is also governed by provisions of the Federal Advisory Committee Act as amended, or FACA, which sets forth standards for the formation and use of advisory committees. Sections 101(c) and 487(c)(4) of the HEA, and Section 801(6) of the Public Health Service Act, 42 Section 296(6), requires the Secretary to publish lists of State approval agencies, nationally recognized accrediting agencies, and State approval and accrediting agencies for programs of nurse education that the Secretary determines to be

1 reliable authorities as to the quality of
2 education provided by the institutions and
3 programs they accredit. Eligibility of the
4 educational institutions and programs for
5 participating in various federal programs
6 requires accreditation by agencies listed by the
7 Secretary.

8 As provided in HEA Section 114, NACIQI
9 advises the Secretary in the discharge of these
10 functions and is also authorized to provide
11 advice regarding the process of eligibility and
12 certification of institutions of higher education
13 for participation in the federal student aid
14 programs authorized under Title IV of the HEA.
15 Further, in addition to these charges, NACIQI
16 authorizes academic graduate degrees from federal
17 agencies and institutions. This authorization
18 was provided by letter from the Office of
19 Management and Budget in 1954, and this letter is
20 available on the NACIQI website along with all
21 other records related to NACIQI's deliberations.
22 Thank you again for participating today, and I'll

1 now hand the meeting over to our Chairman, Arthur
2 Keiser.

3 CHAIRMAN KEISER: Good morning. Thank
4 you, George. Welcome, everybody. A special
5 thank you to the folks from the West Coast. It
6 is very early. We appreciate it. It's a
7 pre-breakfast, pre-dawn meeting which is kind of
8 unique. So again, thank you to those like Jill
9 and others. So my first order of business is to
10 introduce the committee to you, and I'd like to
11 start with our Vice Chair, Claude. Would you
12 introduce yourself?

13 VICE CHAIRMAN PRESSNELL: Absolutely.
14 Thank you. Good morning. I'm Claude Pressnell.
15 I'm the president of the Tennessee Independent
16 Colleges and Universities, and I'm the U.S.
17 Senate Republican appointee. I serve as Vice
18 Chair.

19 CHAIRMAN KEISER: Amanda?

20 MS. DELEKTA: Good morning. I am a
21 law student at Michigan State University College
22 of Law, and I am a student member.

1 CHAIRMAN KEISER: Anne?

2 MS. NEAL: Hi, Anne Neal, Senior
3 Fellow, American Council of Trustees and Alumni
4 and also president of the National Association
5 for Olmsted Parks. I hope everybody has had a
6 chance to get to one of those parks during the
7 pandemic.

8 CHAIRMAN KEISER: Brian, I don't see
9 you, but I know you're on the phone.

10 Brian Jones?

11 MR. JONES' ASSISTANT: Yes, I'm
12 speaking for him. Brian Jones is president of
13 Strayer University.

14 CHAIRMAN KEISER: Great. David?

15 DR. EUBANKS: Good morning, everyone.
16 I'm David Eubanks, and I work at Furman
17 University.

18 CHAIRMAN KEISER: Jill?

19 MS. DERBY: Jill Derby, Senior
20 Consultant with the Association of Governing
21 Boards of Universities and Colleges.

22 CHAIRMAN KEISER: Kathleen?

1 DR. ALIOTO: Kathleen Alioto, Advocate
2 for children. And in particular, my focus these
3 days is zero to five, particularly during this
4 horrendous pandemic.

5 CHAIRMAN KEISER: Mary Ellen?

6 DR. PETRISKO: Mary Ellen Petrisko,
7 Educational Consultant.

8 CHAIRMAN KEISER: Michael?

9 DR. LINDSAY: Hi, I'm Michael Lindsay,
10 President of Gordon College in Boston and
11 appointed by the Secretary of Education.

12 CHAIRMAN KEISER: Paul?

13 DR. LeBLANC: Paul LeBlanc, I'm the
14 president of Southern New Hampshire University.

15 CHAIRMAN KEISER: Rick?

16 (No response.)

17 CHAIRMAN KEISER: I can't hear you,
18 Rick.

19 Your phone is on mute. Candice, you
20 might need to help Rick. Ronnie?

21 DR. BOOTH: Ronnie Booth, President
22 Emeritus, Tri-County Technical College in South

1 Carolina.

2 CHAIRMAN KEISER: Steven?

3 DR. VanAUSDLE: Steve VanAusdle,
4 President Emeritus, Walla Walla Community College
5 out in Washington State.

6 CHAIRMAN KEISER: Ronnie? I mean, I'm
7 sorry, yeah.

8 DR. BOOTH: You already heard me, Art.

9 CHAIRMAN KEISER: I'm sorry. Let's
10 see. Wallace? That's the problem --

11 DR. BOSTON: Wallace Boston,
12 President, American Public University System.

13 CHAIRMAN KEISER: Okay. Did I miss
14 anybody?

15 DR. FRENCH: You can't hear me, can
16 you, Art?

17 CHAIRMAN KEISER: Who is that, Brian?

18 DR. FRENCH: This is George French,
19 Arthur. Can you hear me?

20 CHAIRMAN KEISER: No, I didn't know
21 you were there. George, welcome.

22 DR. FRENCH: Yes, I've been on, but I

1 can't seem to get on the screen for some reason.
2 I'm still working it out, but I was on when
3 George gave remarks and everything. So I'm still
4 working it out, trying to get on the computer
5 now. It won't --

6 CHAIRMAN KEISER: Okay, great. Well,
7 our event producer will communicate with you and
8 get you on.

9 DR. FRENCH: Thank you. Thank you.

10 CHAIRMAN KEISER: Rick, have you
11 solved your sound problems?

12 (No response.)

13 CHAIRMAN KEISER: I guess not. Okay.
14 Well, hopefully by tomorrow when you give your
15 report. I'm going to turn over to Herman Bounds
16 who's going to introduce the team.

17 MR. BOUNDS: Good morning.

18 CHAIRMAN KEISER: Herman?

19 MR. BOUNDS: Yes, good morning. My
20 name is Herman Bounds. I'm the Director of the
21 Accreditation Group. The accreditation staff
22 that's on the call today is Elizabeth Daggett,

1 Valerie Lefor, Nicole Harris, Stephanie McKissic,
2 Charity Helton, Karmon Simms-Coates. And we have
3 two new analysts, Mike Stein and Reha Mallory.

4 CHAIRMAN KEISER: I'd be remiss not to
5 recognize Secretary Robert L. King who is the
6 Assistant Secretary for Post-Secondary Education.
7 Welcome on the conference. I know this is a
8 difficult process and it's going to be
9 interesting today. It is a little more awkward
10 communication system than I've used before. But
11 we'll get through it. This is our second time
12 trying to use this.

13 What we're going to do right now is go
14 directly to our agenda, and the agenda is for the
15 consent agenda. We have two agencies that are up
16 before us -- that have been recommended to be on
17 the consent agenda. First, that is Missouri, the
18 State of Missouri, State Board of Nursing. The
19 second is the Puerto Rico State Agency for the
20 Approval of Public Postsecondary Vocational,
21 Technical Institutions and Programs.

22 That's a long name. I'd hate to have

1 the stationary for that.

2 I think at this point, I'd ask for a
3 call for third-party comments. How are we going
4 to do that, George or Herman.

5 DR. SMITH: I guess just I don't
6 believe there are -- that anybody is indicating
7 any third-party comments from Missouri today.

8 EVENT PRODUCER: No, they haven't.

9 CHAIRMAN KEISER: How about Puerto
10 Rico?

11 DR. SMITH: Puerto Rico, Candice?

12 EVENT PRODUCER: I haven't had anyone
13 from Puerto Rico either.

14 DR. SMITH: Okay.

15 CHAIRMAN KEISER: Okay. Now from the
16 committee, I'll call for the removal of any items
17 on the consent agenda. If any member would like
18 to remove any of these agencies from the consent
19 agenda?

20 Sensing none, I would recognize one of
21 the primary speakers to -- readers to make a
22 motion to approve the consent agenda.

1 MR. O'DONNELL: This is Rick. I'll
2 move that we approve the consent agenda.

3 CHAIRMAN KEISER: Oh, we can hear you
4 now, Rick. Great. Is there a second? Is there
5 a second?

6 DR. BOOTH: Ronnie Booth. I'll
7 second.

8 CHAIRMAN KEISER: Okay. Then go down
9 to your booth and hit the microphone. If you
10 agree to approve the consent agenda, hit yes. If
11 you disapprove, hit no. Okay. Candice, can you
12 tell what the vote is?

13 EVENT PRODUCER: Yes.

14 CHAIRMAN KEISER: Candice?

15 EVENT PRODUCER: Mm-hmm.

16 CHAIRMAN KEISER: Is it approved? I
17 don't have the tally.

18 EVENT PRODUCER: I have 13 votes of
19 yes and no votes of no.

20 CHAIRMAN KEISER: So the motion is
21 approved. Thank you very much.

22 I'm going to talk about our standard

1 review processes, if you have any questions,
2 because some of you are relatively new to the
3 committee. But we will go through for the rest
4 of the agenda on our standard review process. If
5 I may, I'll go down the way the process operates.

6 First, for those who don't know, we
7 have primary readers, two of them who are
8 assigned to each agency. The primary reader
9 introduces the agency's application. From that
10 point on, the Department staff provides a
11 briefing based on their findings at which point
12 the agency representatives provide comments or
13 response to the finding of the staff.

14 The primary reader then begins the
15 process of asking questions of the agency,
16 including potentially the standard questions
17 adopted by NACIQI for initial and renewal
18 applications. Questions by NACIQI, the rest of
19 the committee, is followed by a response and a
20 comment from the agency. There'll be third-party
21 comments, especially in this first one. And how
22 many more have signed up, George, from this

1 morning --

2 DR. SMITH: We had eight, initially.
3 Were there additional people for HLC this
4 morning?

5 EVENT PRODUCER: I don't have that
6 information as of yet, but I don't believe for
7 HLC. I think it's for others.

8 DR. SMITH: Okay. So if that's the
9 case, we only have the eight who indicated
10 earlier --

11 EVENT PRODUCER: I will update you as
12 soon as I have that information.

13 DR. SMITH: Okay. So there could be
14 some additional ones.

15 CHAIRMAN KEISER: At which point the
16 agency has the opportunity to respond to the
17 third-party comments. The Department staff will
18 then respond to the agency and the third-party
19 comments. The committee will then have a
20 discussion and vote on the agency's application,
21 then potentially a final set of questions on
22 approving instruction program quality for initial

1 and renewal applications.

2 Does anybody have a question?

3 Everybody comfortable with the process that we've
4 been using? If there are, raise your hands. I
5 don't see any. At which point, then, I would
6 like to introduce our first agency is the Review
7 of Agency Recognition During the Period of
8 Recognition for the Higher Learning Commission.
9 The NACIQI primary readers are Paul LeBlanc and
10 Mary Ellen Petrisko. Who's going to lead that,
11 George or Mary Ellen?

12 (Simultaneous speaking.)

13 CHAIRMAN KEISER: Introduce the
14 agency.

15 DR. LeBLANC: This is Paul, and I will
16 be the lead on this. The leaders are Paul
17 LeBlanc and Mary Ellen Petrisko for that. So if
18 you're ready, we'll jump in.

19 CHAIRMAN KEISER: Yes, go ahead, Paul.

20 DR. LeBLANC: Thank you, everyone. So
21 before us, we have North Central Association of
22 Colleges and School or otherwise known as the

1 Higher Learning Commission. You'll hear us
2 reference it as HLC, initial accreditation back
3 in 1962, renewed in 2018. What we have, as you
4 know, is a review of the agency during the period
5 of recognition.

6 I think you have your documents, the
7 description of HLC's very large scope and a quite
8 large number of space between others and a wide
9 range of institutions, including title, distance
10 education, correspondence education within the
11 institution under its purview. We have a staff
12 recommendation that the HLC is handling, the
13 Dream Center Education Holdings of two of its
14 institutes of art.

15 The recommendation will be that we not
16 -- excuse me, that the current recognition be
17 limited such that HLC will not be allowed to
18 accredit additional institutions of higher
19 education that do not currently hold
20 accreditation or pre-accreditation status of the
21 agency for the duration of a 12-month period at
22 which it would end with a compliance

1 determination by the senior Department official.
2 As part of that 12-month process, the staff
3 recommended compliance report include details of
4 HLC's efforts to mitigate the negative effect of
5 (audio interference) procedurally around this
6 decision to withdraw accreditation from
7 institutions (audio interference) academic
8 credits (audio interference) the institution
9 during the calendar year 2018.

10 This is an extraordinarily complicated
11 case in which Mary Ellen and I have spent a lot
12 of hours poring through copious amounts of
13 documentation. So you'll have to bear with us.
14 You'll hear a lot of dates, and it's very
15 tempting to try to create a narrative over the
16 course of questioning.

17 But fundamentally, this comes down to
18 a question of the process in which we had a
19 change of control under which Dream Center
20 Educational Holdings took on the work of
21 institutions. But in case of the two particular
22 institutions in question, how the change of

1 control moved into candidacy status and the
2 effect of that on the loss of accreditation and
3 then the due process related to that, including
4 appeals and questions of lack of accreditation,
5 et cetera. So I will be leading the questions.
6 Mary Ellen will step in, and then I'll pick up
7 again. That is the overview at this point.

8 DR. PETRISKO: I have nothing to add
9 to the overview at this point.

10 DR. LeBLANC: Arthur, do you want to
11 hear from staff now? Art, I think you're on
12 mute.

13 ASSISTANT SECRETARY KING: Mr.
14 Chairman, am I up?

15 CHAIRMAN KEISER: Yeah, I'm sorry. I
16 had it on mute. Not following my own directions.
17 I'd like to again introduce Robert L. King who is
18 the Assistant Secretary of Education who will
19 present the staff report.

20 ASSISTANT SECRETARY KING: Good
21 morning and thank you to each of you for the time
22 and energy that you put into this work. It is

1 incredibly important and particularly under the
2 circumstances in which the country finds itself.
3 I'm enormously gratified that you would make the
4 time to commit to deal with all of the issues
5 you'll attend to over these next two days.

6 The Department began an inquiry into
7 HLC's compliance with Department regulations on
8 October 2019. This review was conducted off the
9 traditional five-year recognition cycle and
10 pursuant to the Department's authority under 34
11 Code of Federal Regulations 602.33 to conduct a
12 compliance review based on any information that
13 raises issues relevant to recognition. At the
14 Department's request, HLC produced voluminous
15 documents relevant to the request and responded
16 to the draft staff analysis.

17 Final staff analysis finds HLC in
18 noncompliance with the Department's consistency
19 in decision making and due process regulations
20 under CFR Section 602 -- 34 CFR 602.18(c), 602.25
21 Subdivision A, D, E, and F. Throughout the
22 review process, HLC repeatedly asked for

1 additional time to respond to Department
2 findings, and the Department granted several
3 extensions which in total provided HLC an
4 additional 53 days to respond to the Department's
5 analysis. Due to this, it was not practicable
6 for the Department to take public comment
7 regarding HLC's compliance with the
8 aforementioned criteria in advance of today's
9 meeting.

10 Department regulations only require us
11 to take public comment when it is practicable.
12 And therefore in this circumstance, it is not
13 required. However, we will, of course, take live
14 public comment as part of this proceeding before
15 this board.

16 It is our recommendation to the senior
17 Department official to limit HLC's recognition
18 such that it may not accredit additional
19 institutions of higher education that do not
20 currently hold accreditations or
21 pre-accreditation status with the agency for a
22 duration of the 12-month period pending a

1 compliance determination by the senior Department
2 official. We also recommend that the compliance
3 report include details on HLC's efforts to
4 mitigate the negative effects of the agency's
5 procedurally erroneous decision to withdraw
6 accreditation from the Art Institute of Colorado
7 and the Illinois Institute of Art on students,
8 especially with regard to the status of academic
9 credits earned at the institutions during
10 calendar year 2018.

11 You're going to hear this morning and
12 may have read over the past several days volumes
13 of documents and arguments related to this matter
14 involving the largest and by many accounts the
15 most prestigious of our nation's accreditors.
16 Indeed, Dr. Gellman-Danley is highly respected
17 and is a person who I consider a friend. So I
18 take little pleasure today in asking you to
19 approve our recommendation, limiting the Higher
20 Learning Commission's activities over the coming
21 year and requiring them to take appropriate
22 action to diminish the harm their actions caused

1 to students attending the two institutions
2 involved in this case.

3 You will hear, I predict, all about
4 stuff that at the end of the day really doesn't
5 matter. But I'm here to tell you what does.

6 First, our regulations require that whenever an
7 accreditor withdraws accreditation from an
8 institution it has previously accredited, that
9 institution is entitled to due process. The
10 meaning of that term is defined in our
11 regulations.

12 Second, our regulations demand that
13 our recognized accreditors follow their own
14 regulations and policies, especially when they
15 take actions that require the forfeiture of
16 accredited status by a fully accredited
17 institution. Such an action is referred to as an
18 adverse action. Both our regulations and HLC's
19 policies confirm that no adverse action can be
20 taken and made final unless and until the
21 affected institution is given notice of its right
22 to appeal before the adverse action is taken.

1 In this matter before you, HLC was
2 asked in accordance with its procedures to
3 approve a transaction involving the sale of two
4 institutions that were fully accredited by HLC
5 from a for-profit business to a not-for-profit
6 called Dream Center Education Holdings. In
7 total, the deal involved 40 schools located in
8 multiple states and involved five different
9 accreditors.

10 HLC pursuant to its rules sent a team
11 of reviewers to visit the sites, interview the
12 participants, especially the leaders of the Dream
13 Center group, as well as faculty and
14 administrators that would continue with the
15 schools notwithstanding the proposed new
16 ownership group. A report was finalized and sent
17 to the HLC leadership and board for action. The
18 board, upon reviewing the report, approved the
19 sale but invoked a rarely used provision in its
20 policy arsenal: condition the sale upon Dream
21 Center agreeing to enter into what was described
22 as change of control candidacy status.

1 What was not specifically enumerated
2 was the fact that this status constituted a
3 forfeiture of accreditation by the two HLC
4 accredited schools. In our regulations and in
5 HLC's policy, the requirement that the
6 institutions forfeit accreditation is considered
7 an adverse action and as such require that Dream
8 Center be advised that they had a right to appeal
9 the inclusion of this condition as part of the
10 approval of the sale transaction. No such notice
11 was provided, thereby violating Department
12 regulations and HLC's own policies.

13 The duty to provide that notice was
14 immediate and had to be provided before HLC could
15 strip the two accredited institutions of their
16 accreditation. So when HLC and its supporters
17 get up to address you and try to direct the
18 conversation and your attention to events
19 occurring months later, I'm telling you now none
20 of that matters. HLC will tell you we have it
21 all wrong, that they didn't apply, and I'm going
22 to give you sections of their policies now. I

1 know you're going to be bamboozled by numbers. I
2 don't mean to do that, but they're important.

3 They will tell you that we have it all
4 wrong, that they didn't apply Section 50.010 to
5 this transaction as we assert. They applied
6 20.040 or 20.070. But neither of those sections
7 permit the forfeiture of accreditation. Indeed,
8 they both describe their purpose as extending
9 accreditation subsequent to the completion of the
10 approved sale transaction.

11 I would note further that HLC failed
12 to cite the policy sections they relied upon to
13 base their actions in their action letter. So
14 Dream Center could not determine on what basis
15 HLC imposed this requirement. I will ask you to
16 read those sections as I have, slowly and
17 carefully, to fully understand the complexity,
18 the confusing terminology, the duplicative
19 structure, and the actual lack of their
20 applicability to HLC's claims.

21 Their own vice president concurs that
22 50.010 is the section under which they acted, and

1 their former vice president stated unequivocally
2 that the actions taken by the board in this
3 matter did not act sufficiently to withdraw
4 accreditation from the Dream Center institutions.
5 Of peripheral interest, none of the other
6 accreditors in the country involved in this
7 transaction demanded Dream Center schools in
8 their jurisdiction forfeit accreditation as a
9 condition of the sale being approved.

10 For me, it became a simple question.
11 What was best for the students attending these
12 schools? And from their perspective, what was
13 changing? The site teams reported the courses,
14 the faculty, the majors, the course requirements,
15 the classrooms, the buildings, and the syllabi
16 would be unchanged. So while the classrooms
17 remained intact, it was only the boardroom that
18 was changing.

19 HLC will point to grave concerns that
20 they had about the new owners. In fact, there is
21 evidence that HLC may have failed to follow its
22 own policies by approving the transaction. But

1 once they chose to approve the sale and they
2 chose to attach to the deal, the condition that
3 accreditation be forfeited, due process in our
4 regulations and the specific provision in 50.010
5 required that Dream Center be specifically
6 advised that they had a right to appeal the
7 imposition of that condition.

8 HLC failed to provide that notice.
9 Failing to provide the notice of appeal and the
10 lack of clarity as to what policy HLC used to
11 approve the transaction conspired to support the
12 belief held by Dream Center attorneys that this
13 change of control candidacy status and the
14 six-month review with which it was coupled seemed
15 to be a probationary status during which time
16 Dream Center could demonstrate its ability to
17 address the various concerns HLC had enumerated
18 in its November 17th, 2017 letter. And these are
19 the specific actions that are described in the
20 policies HLC claims now to have relied upon but
21 for the fact that neither section authorizes the
22 candidacy status imposed on Dream Center.

1 I contend that at the end of the day
2 this is not a hard case, nor is it nearly as
3 complicated as HLC may try to make it. Focus on
4 this moment when HLC decided to link
5 accreditation forfeiture dressed up as a
6 candidacy status that they had never successfully
7 used before. It was at that moment that they
8 failed to do what our regulations and their
9 policy demands. And from that failure, a series
10 of acts cascaded into what deprived over 1,000
11 students of accredited academic credit they
12 earned and paid for and eventually helped lead to
13 the financial failure of the entire organization.
14 I'll be happy to take your questions.

15 CHAIRMAN KEISER: Thank you. First of
16 all, I was remiss. There are a number of
17 recusals on this particular vote, Amanda, Brian
18 Jones, Ralph Wolff. Is there anyone else,
19 George, that we have that anybody else wants to
20 declare recusal?

21 DR. BOSTON: Wallace is.

22 CHAIRMAN KEISER: Wallace? Okay. Do

1 we want to ask Secretary King questions now, or
2 do we want to go right to Barbara Gellman?

3 DR. LeBLANC: I'd like a couple of
4 clarifying questions answered.

5 CHAIRMAN KEISER: Okay, Paul.

6 DR. LeBLANC: Secretary King, thank
7 you. Thank you for laying out, as you say, a
8 very broad sweep and a lot of complexity at work
9 here. We'll spend a lot of time looking at this
10 question of consistency and due process in our
11 questioning of the agency.

12 So the second large area you worked
13 was the ways in which they did or did not
14 mitigate harm to students. And could you speak
15 -- could you share your perspective on this
16 question of at the point in which Dream Center
17 Educational Holdings agreed to this condition,
18 and this is something we spent a lot of time
19 looking at and its appropriateness and what you
20 outlined. They continued after that point to
21 enroll students.

22 Would it be unfair to argue that the

1 harm done to students was, in part, a reflection
2 of being enrolled in a program even though DCEH
3 needed to -- should've known that they were
4 unaccredited. And with that knowledge that they
5 were unaccredited seems to come through in the
6 documentation. And in fact was reiterated by a
7 member of the FSA staff within the Department.
8 There was a point when they got multiple notices
9 from HLC but also verification from the
10 Department and yet continued to enroll students
11 in what is at least arguably a contested status
12 that they wanted to call it that at that point.
13 What sort of responsibility do they bear on that?

14 ASSISTANT SECRETARY KING: Well,
15 first, I would suggest to you that when an
16 adverse action of this nature occurs, it is
17 typically undertaken at a point in time that it
18 is either -- typically at the end of a semester.
19 So that the students who are enrolled, in this
20 case, at the time that the transaction was
21 completed had enrolled and started the spring
22 semester. So certainly for that group of

1 students, they entered their relationship with
2 Dream Center in that semester before this
3 accreditation forfeiture apparently was put in
4 place.

5 So at least, in responding to your
6 question, for that group of students, they had
7 made their agreement, had their expectations and
8 had a right to have those expectations fulfilled.
9 And in fact, HLC could've chosen to say that
10 we're going to require that you go into this odd
11 status that had not been used before and was
12 unfamiliar to, I think, most of the people here
13 in the Department and in the larger education
14 community. And for those students, there is no
15 question that they would have been harmed by this
16 decision and the imposition of it and its timing.

17 As I said, HLC could've waited to the
18 end of the semester to impose it, but they chose
19 not to do that. They insisted it be done
20 immediately and coincident with the completion of
21 the transaction. They could've delayed the
22 permission to complete the transaction until the

1 semester was over, and they didn't do that.

2 As for enrolling continued students,
3 as you know, once the circumstances around this
4 particular transaction became known and
5 understood, and I will differentiate between
6 knowing it and understanding it, it was then that
7 the Department was put into a very difficult
8 position because it did not want to hurt the
9 students. And as a consequence, made a decision
10 to extend Title IV eligibility despite the
11 apparent notion that accreditation had been
12 withdrawn.

13 But I would argue to you that because
14 the way this process was undertaken that
15 accreditation was not withdrawn because HLC
16 failed to follow their own policies which
17 required notice of appeal. And because it wasn't
18 withdrawn, it was always intact. Now I'll stop
19 there.

20 CHAIRMAN KEISER: Paul, members of the
21 committee, normally we now go directly to the
22 agency. So I would like to do that. Kathleen,

1 if you don't mind, because typically we go to the
2 agency, then we can ask questions of the agency
3 and then of the staff.

4 Please let me introduce the president
5 of Higher Learning Commission, Barbara
6 Gellman-Danley. Barbara, you're there. I can
7 see you, so the floor is yours. And if you'd
8 introduce the people who you're going to be
9 having communicate with us.

10 EVENT PRODUCER: Please press #2 on
11 your phone.

12 CHAIRMAN KEISER: You need to turn on
13 your mic.

14 EVENT PRODUCER: If you press #2 on
15 your telephone, I can unmute your line. Thank
16 you.

17 DR. GELLMAN-DANLEY: Try again. Good
18 morning, everybody. My name is Barbara
19 Gellman-Danley, and it has been my pleasure to
20 serve as the president of the Higher Learning
21 Commission for the past six years. As of
22 February 2020, HLC accredits 973 colleges and

1 universities in 19 states, affords
2 pre-accreditation status at 7 institutions, and
3 supports over 5 million students at our member
4 institutions.

5 I would be pleased to respond to any
6 questions that you may have about the issue
7 before you today or about our work generally.
8 But we'll first provide a background about why we
9 are here today. And will then be followed by my
10 colleagues, vice president for Legal and
11 Regulatory Affairs, Dr. Anthea Sweeney, and
12 associate vice president for Legal and Regulatory
13 Affairs, Marla Morgen, as well as former HLC
14 board member, Dr. David Wissmann on the West
15 Coast, I might add, our current board chair, Dr.
16 Joanne Burrows. And we will then close with some
17 brief remarks from our outside counsel, Julie
18 Miceli.

19 I will say, Assistant Secretary King,
20 I do agree with you that it's gracious and a real
21 commitment for everybody to be here today. We
22 wish we could be with you in person, and we hope

1 all your families and loved ones are doing well.
2 If you hear any construction in the background,
3 just to give you a visual, there are six of us
4 spread across the entire HLC office and sometimes
5 it gets a little noisy in Chicago.

6 The underlying issue before you and
7 upon which this off cycle compliance review is
8 based took place nearly three years ago in
9 November of 2017. The Department's inquiry
10 involves HLC's response to a change of control
11 application submitted by two of our former
12 institutions, the Illinois Institute of Art and
13 the Art Institute of Colorado. These institutes
14 were being purchased by a new operator, the Dream
15 Center.

16 As we begin this discussion, I want
17 you to know that HLC has taken this compliance
18 review by the Department seriously. In response
19 to the Department's initial inquiry, we evaluated
20 every detail and decision relating to the single
21 transaction from an outside vantage point. We
22 considered whether there was even a scintilla of

1 reason to believe we got this wrong or we messed
2 this up.

3 We have done that review, and I can
4 answer with confidence the key questions the
5 Department is asking of you. Were we in
6 compliance then? Yes. Are we in compliance
7 now?? Yes. The HLC team, our board, and I
8 personally care about what we do. We do not act
9 haphazardly.

10 We take meticulous care to follow our
11 policies, and we do not play gotcha games with
12 our membership. Our commitment to consistency
13 and due process is evident in the policies,
14 procedures, and practices that we adhere to every
15 day. I would be remiss if I didn't level with
16 you that I feel there is a greater weight on my
17 presentation today as the questions before you
18 have deep and far reaching impact for all
19 accreditors. Specifically, I am concerned the
20 Department is asking for your approval of an
21 action that has the potential to topple the
22 delicate balance of the triad that that

1 accreditors, institutions, students and the
2 public rely upon.

3 At the heart of this inquiry, the
4 Department takes issue with HLC's approval of the
5 Art Institute's change of control application
6 with the condition of candidacy. The Department
7 believes that this decision was inconsistent with
8 HLC policies and noncompliant with five federal
9 regulations. We vehemently disagree, and the
10 documentation underlying this decision simply
11 does not support the Department's conclusion.

12 Let me briefly take you back through
13 the course of events that give rise to this
14 review. In the spring of 2017, a change of
15 control application was presented to HLC in which
16 EDMC would transfer ownership of the Art
17 Institute to the Dream Center, a nonprofit
18 organization with no prior higher education
19 experience. This proposed transaction also
20 sought to convert the institute to a nonprofit
21 status under the Dream Center's ownership.

22 We were aware of this because the

1 institute informed HLC of this goal and their
2 change of control application. They then
3 provided to us a September 12, 2017 letter from
4 the Department with the agency's preliminary
5 conclusion that it didn't see, quote, any
6 impediment to the nonprofit conversion. The
7 Department letter did not guarantee approval of
8 nonprofit status, but this reflects our
9 understanding of the best evidence of the
10 Department's view of continuing Title IV
11 eligibility following the transaction.

12 Upon careful review of evidence
13 available, HLC identified several specific
14 concerns relating to the institute's ability to
15 prospectively comply with the criteria for
16 accreditation following the transaction. At the
17 same time, the transaction was presented to HLC
18 as a desirable solution to a variety of issues,
19 including their significant financial troubles.

20 After much inquiry, evaluation of the
21 evidence, and discussion by HLC's board, HLC
22 approved the change of control application with

1 several conditions. This approval included the
2 condition that the institutes would spend a
3 period of time in candidacy. This offer was
4 timely communicated to both institutes and the
5 Department and would take effect only if the
6 institutes accepted the condition and then
7 completed the transaction.

8 My colleague, Dr. Sweeney, will speak
9 in greater detail to the mechanics of this
10 approval under HLC's policy. But I will
11 summarize them for you now. As you're aware,
12 candidacy is a pre-accreditation status. HLC's
13 policies at the time allowed us to offer approval
14 of their change of control application subject to
15 conditions on the institution or on its
16 accreditation.

17 The purpose of using candidacy as a
18 condition was to provide an innovative solution
19 that would enable the institutes to go forward
20 with the proposed transaction while providing
21 safeguards to ensure that the new operator
22 prioritized compliance with HLC's criteria. Upon

1 demonstrating compliance and satisfying HLC's
2 concerns, the institutes could then have their
3 accreditation reinstated. We were hopeful this
4 would happen in short order, thereby reducing the
5 time in which the institutes were in candidacy.

6 On January 4th, 2018, following two
7 months of back and forth with the Dream Center's
8 counsel, the Art Institute voluntarily accepted
9 our conditions. Candidacy became effective two
10 weeks later when they completed the sale. The
11 course of events that ensued afterwards is both
12 disturbing and disappointing.

13 The institutes inaccurately disclosed
14 to their students that they remained accredited.
15 This inaccuracy was not remedied despite HLC's
16 previous notification to the Dream Center and the
17 institutes to do so. The institutes failed to
18 fully satisfy HLC's concern which would have led
19 to reinstatement of accreditation.

20 Instead, the institutes allege they
21 did not understand candidacy despite clear
22 documentation and acknowledgment to the contrary.

1 HLC ultimately allowed an appeal, but the
2 institutes and the Dream Center did not follow
3 through on this opportunity. The Department
4 continued to provide financial aid to students
5 despite the fact that the institutes' nonprofit
6 conversion had not been finalized with the
7 Department.

8 The institutes announced their closure
9 in the summer of 2018, and then they closed on
10 December 28, 2018. This string of events led to
11 litigation by former students against one of the
12 Art Institutes and the Dream Center as well as
13 against the Department. The Department then
14 decided to discharge federal student loans
15 granted to the students during the institutes'
16 period of candidacy. This is the history of
17 events that brings us here today.

18 The Department takes issue with
19 offering candidacy as a condition for approval of
20 the change of control application and it asserts
21 that HLC's actions were not compliant with its
22 own policy by Department regulations requiring

1 consistency in decision making and due process.
2 This action was from 2017. And yet in late 2019,
3 the Department initiated this seldom used
4 off-cycle compliance review in the middle of
5 HLC's recognition period, two years after the
6 decision in question.

7 As you may have gathered from HLC's
8 written responses in this matter, HLC is stunned
9 and deeply troubled by the Department's position.
10 As my colleague, Dr. Wissmann, will speak to,
11 HLC's offer of candidacy was an intentional and
12 purposeful one. It was carefully aligned with
13 our policies and appropriately responded to the
14 institute's change of control application and our
15 concerns.

16 With hindsight, HLC might've done this
17 differently. However, during this entire
18 process, HLC acted deliberately, intentionally,
19 and with forethought based on the evidence about
20 the transaction that it had at that time. And we
21 were clear with the institutes from the very
22 beginning. We stand by the decision we made.

1 To resolve this inquiry, the
2 Department first demands that HLC take some
3 action that corrects these alleged deficiencies,
4 implying that HLC is required to take specific
5 action to go back and undo or void decision made
6 by our board three years ago. The Department
7 specifically requires HLC to, quote, recognize
8 the Department's interpretation of events before
9 the Department's concerns will be allayed.

10 It appears that the Department is
11 saying the only way for HLC to come into
12 compliance is by taking a specific action that
13 would result in the institute having been
14 accredited for a period of time between their
15 sale and their closure. The institutions
16 themselves asked in the summer of 2018 and
17 shortly before announcing their end of year
18 closure whether HLC could take action to accredit
19 the institutions for that period. At the same
20 time, this was prohibited by both HLC policy as
21 well as the Department's guidance.

22 As you well know, this guidance was

1 changed soon after. Diane Auer Jones, Principal
2 Deputy Under Secretary, spoke with HLC on her own
3 initiative on multiple occasions regarding this
4 concept of retroactive accreditation for the
5 institutes. This included the day after the
6 institutes themselves made the same request and
7 into October where she made clear the Department
8 favored such action or some alternatives such as
9 the board rescinding its prior approval and
10 placing the institutes on a sanctioned or show
11 cause order.

12 It is important for the committee to
13 understand, please, that neither nor any other
14 employee or board member ever stated to anyone at
15 the institutes and the Department or the Dream
16 Center that HLC would retroactively accredit the
17 institutes. The communication came to HLC from
18 the institutes and subsequently from the
19 Department. HLC did not then and does not now
20 believe the concept of retroactive accreditation
21 or any form of rewriting history to void our
22 prior decision would be appropriate, even if it

1 were allowed under HLC policy.

2 Likewise, we did not then and do not
3 now believe a show cause order was appropriate in
4 November 2017 as it evidences the time to not
5 support a show cause order. And even if it did,
6 our policies provided that the board does not
7 generally consider change of control applications
8 from certain institutions, including those on a
9 sanction or show cause order. Throughout our
10 many months with the Department on this topic,
11 including conversations with Michael Frola in the
12 spring of 2018, not one official raised concerns
13 that HLC had acted in violation of federal
14 requirements.

15 And there were multiple touchpoints
16 that which the Department could've said
17 something, first, when the Department reviewed
18 the very policies in question as part of our
19 recognition renewal in the spring of 2017,
20 second, when the Department reviewed the case
21 study it requested as part of our recognition
22 renewal where it took the same action on a change

1 of control we took on a change of control
2 application for another school offering candidacy
3 as a condition, third, during or immediately
4 after our November 2017 HLC board meeting where
5 the board discussed the Dream Center application
6 at length and took the very action in question
7 today as the Department's own analyst, Elizabeth
8 Daggett, was present for that very meeting as an
9 observer. This was even noted in the
10 Department's own staff report and recommendation
11 for our five-year recognition renewal which was
12 ratified by the Department. And fourth, if not
13 then, immediately after our November 2017 meeting
14 in which the Department itself was copied on the
15 board's action letter.

16 Despite these many opportunities, HLC
17 was not made aware that the Department had
18 concerns with our regulatory compliance until the
19 fall of 2019, two years after the action was
20 taken. To be clear, any requirement that HLC
21 void its prior action and place the institutes in
22 accredited status from the time of the action

1 through their closure would have foreseeable and
2 potentially unforeseeable negative consequences
3 on students seeking relief from the institutes.
4 Our board considered and therefore firmly
5 rejected such an approach.

6 Furthermore, voiding our action would
7 have irreparable harm on our field, including
8 every accreditor and every peer review team, as
9 the Department rather than the accrediting agency
10 would become the responsible accreditor. This
11 precedent is impermissible and should not sit
12 well with any of us, the Department, NACIQI,
13 accreditors, students, or institutions of higher
14 education. The Department is also asking us to
15 come into compliance with the five regulations,
16 the ones pertaining to consistency with its own
17 policies and due process.

18 As I have explained and Ms. Morgen
19 will explain in greater detail, HLC has always
20 acted in compliance with its policies and applied
21 those policies consistently and in compliance
22 with federal regulations in this case and in all

1 cases. And even if we make the assumption for a
2 moment that HLC was not in compliance, we have
3 since revised our policies, which the Department
4 itself recognizes, in a manner that wholly
5 addresses the Department's concerns. There's
6 simply no further action we can take to further
7 demonstrate that we are in compliance.

8 Finally, we understand the
9 Department's recommendation includes the
10 recognition limitation that HLC cannot grant
11 accreditation status as distinct from candidacy
12 status to any institution that does not currently
13 hold candidacy or accreditation with HLC for a
14 period of 12 months. This recommendation is
15 inappropriate. For one, the limitation on our
16 ability to accredit has nothing to do with the
17 issue at hand.

18 Further, it seems to have no point
19 other than to punish HLC for a decision our board
20 made with which the Department now disagrees.
21 There is simply no reason for instituting a
22 penalty on HLC other than to strong arm our

1 agency into changing our prior decision. The
2 Department is understandably concerned about the
3 closure of the institutes and the closure's
4 effect on the institutes' students.

5 HLC is concerned about those issues as
6 well. But the closure of the institute was not
7 the result of HLC's approval of control with
8 conditions. The closure was a result of a bad
9 deal. Brent Richardson himself, the CEO of the
10 Dream Center at the time, later told us they
11 found a 95 million dollar hole that their due
12 diligence failed to uncover.

13 The Department's request that we
14 reinstate accreditation seems to rest on a
15 conclusion that the students were only harmed by
16 the institutes' closure. But that consideration
17 fails to recognize that their students were
18 harmed first and foremost by the institutes and
19 the Dream Center's inaccurate disclosures.
20 Reinstatement does nothing to address that other
21 than to retroactively make that inaccurate
22 disclosure accurate.

1 My colleagues are going to share some
2 additional information, but I want to leave you
3 with a few takeaways. One, the offer to approve
4 the change of control application with conditions
5 was clear, unambiguous, in writing, and
6 consistent with our policy. This offer was not
7 made in error or out of confusion of how our
8 policies work. To the contrary, candidacy was
9 intentionally offered with significant input from
10 our board to address meaningful concerns about
11 this transaction that were clearly within HLC's
12 purview.

13 Two, the fact that the Dream Center
14 later alleged it did not understand it was not
15 aware of the impact of candidacy is disingenuous.
16 This offer was not in fine print hidden at the
17 bottom of a verbose legal disclaimer. It was
18 clear and the Dream Center acknowledged it in
19 writing. And it was their responsibility to be
20 aware of our policies, to understand them, and to
21 ask questions of us if they did not. HLC was and
22 remains skeptical about the Dream Center's claim

1 that it was confused and NACIQI should be too.

2 Three, HLC provided more than
3 sufficient due process to the institutes, even
4 permitting an appeal when it was not required
5 under the relevant policies. Four, HLC has
6 responded as thoroughly as possible to the
7 Department's displeasure with offering the
8 condition of candidacy. The relevant policies
9 and procedures have been revised, and the
10 supplemental policy that was not used here has
11 been removed. HLC has made assurances it will
12 not offer this condition again which it can't as
13 this approach is not foreclosed by the
14 Department's new regulations.

15 Five, HLC has taken action to support
16 impacted students seeking credit transfers, as
17 requested by the Department in the spring. HLC
18 sent letters to member institutions and all
19 relevant states, encouraging them to consider
20 accepting transfer credits from the institutes'
21 former students. And we executed an entire
22 communications plan to inform all member

1 institutions and stakeholders about transfer
2 opportunities.

3 In addition, we set up a dedicated
4 hotline for these students. To date, we have had
5 zero calls to the hotline. Not one student has
6 called about the credits. We asked the
7 Department through a FOIA request whether it had
8 received any such inquiry from students. We have
9 heard no response.

10 Finally, and I must be frank with you,
11 I respect the partnership we have with the
12 Department and with NACIQI. But the use of the
13 Department's authority and its drive to undo our
14 prior action is disheartening. I'm hopeful we
15 can put this aside and quickly get back to the
16 positive working relationship that we have had
17 with the Department so we can work on the many
18 challenging issues facing higher education right
19 now.

20 To that end, we ask NACIQI to
21 recommend to the senior Department official that
22 this matter be closed without further action. We

1 ask NACIQI to specifically reject any action by
2 the Department to require HLC to undo or void a
3 prior action. And we ask NACIQI to instead
4 recommend that HLC retain its full recognition
5 without limitations.

6 To demonstrate our commitment to the
7 partnership with the Department and NACIQI, we
8 are happy to provide any special report as part
9 of our upcoming renewal process. Through this
10 report, HLC would explain the changes to our
11 change of control policies and procedures and
12 processes, demonstrate how we have ensured
13 consistency in decision making, and describe the
14 clarity in our communication with our members in
15 administering these new policies. But we do
16 stand by our decision.

17 And I cannot serve our members and my
18 board if I do not stand up for what we
19 collectively believe to appease the Department
20 just to make this go away. The Higher Learning
21 Commission and accreditation as a whole must have
22 more integrity than that. Students, taxpayers,

1 Congress, and the Department itself need us to
2 have more integrity than that. And now I'll turn
3 it over to Dr. Sweeney.

4 DR. SWEENEY: Thank you, Dr.
5 Gellman-Danley. Mr. Chairman, NACIQI committee
6 members, good morning. My name is Anthea
7 Sweeney, and I serve as vice president of Legal
8 and Regulatory Affairs and served as the HLC's
9 staff liaison when HLC reviewed the Dream Center
10 transaction.

11 I'm here to explain HLC's policies
12 that were in effect at the time the institutes
13 were offered and then the institutes themselves
14 first accepted and then effectuated the condition
15 of candidacy as part of the board's approval of
16 their change of control application.

17 Respectfully, the Department is incorrect that
18 HLC was out of compliance with HLC's own
19 policies. HLC acted within the scope of its
20 policies and in alignment with its policies at
21 all times with respect to the institutes.

22 At the time of the board's decision in

1 November 2017, there were three relevant
2 governing documents, Policy B-20.040 titled
3 Change of Control Structure or Organization,
4 Policy F-20.070 titled Process for Seeking
5 Approval of a Change of Control, and a Change of
6 Control Procedures document. Today for ease of
7 reference, I'll refer to these documents
8 collectively as the policies. There was also an
9 additional policy which is relevant here only
10 because the Department has erroneously concluded
11 that it controlled the HLC board's action in
12 November 2017. That is Policy E-50.010, a
13 supplemental policy to the change of control
14 policies.

15 This policy was housed in HLC's
16 sanction policies and as set forth in the clear
17 language of the policy could only be invoked in
18 circumstances where an institution was not
19 meeting HLC's criteria for accreditation. It's
20 titled, Accredited to Candidate Status. But I'll
21 refer to it as the supplemental policy throughout
22 my remarks so as to distinguish it from my

1 references to the policies more generally.

2 Dr. Gellman-Danley has already stated
3 this, but it is important to reiterate. The
4 supplemental policy was irrelevant to the Dream
5 Center transaction. The supplemental policy no
6 longer exists as it was rescinded entirely. And
7 finally, HLC has since revised its policies to
8 foreclose its ability to offer an accredited
9 institution candidacy as a condition.

10 The policies at the time provided four
11 options that the HLC board could take when
12 considering a change of control application:
13 first, to approve with or without conditions;
14 second, to defer; third, to deny; or fourth, the
15 board could require an institution to move to a
16 candidate status.

17 This fourth option could only occur in
18 two scenarios, where the board determined that
19 the change in ownership would, in essence, create
20 a new institution, or where the supplemental
21 policy was invoked because the board determined
22 that the institution would not meet the criteria

1 for accreditation after the close of the
2 transaction. Only where the board took the
3 fourth option and moved an institution to
4 candidacy as an adverse action was the action
5 appealable.

6 But where candidacy was offered to an
7 institution under the first option as a
8 condition, it was not appealable. The reason for
9 this is simple. It was a voluntary choice, like
10 offering a struggling student the opportunity to
11 take a leave of absence rather than suspending
12 the student.

13 We do not expect schools to chase down
14 students who voluntarily withdraw to see if they
15 wish to appeal their own decision to do so. The
16 same holds true here. Nonetheless, for reasons
17 my colleague, Ms. Morgen, will explain later, HLC
18 did provide the Dream Center an opportunity to
19 appeal.

20 As such, this distinction is
21 essentially moot with respect to the institutes.
22 But the distinction provides important context

1 for how and why HLC's policies distinguish
2 between imposed board action such as moving an
3 institution to candidacy and the institute's own
4 choice to accept a candidacy condition. With
5 respect to the Dream Center transaction, the
6 Department has taken the position that the HLC's
7 board action in offering candidacy as a condition
8 which was then accepted by the institutes was not
9 allowable under the first option under HLC's
10 policies and therefore instead occurred under the
11 supplemental policy.

12 To simplify, the Department seems to
13 take the position that at that time, anytime a
14 change of control resulted in an accredited
15 institution moving to candidacy, it must have
16 occurred under the supplemental policy. This
17 interpretation is flawed for many reasons, two of
18 which directly contradict the Department's
19 position. First, at the time, there was no
20 requirement in either federal regulations or
21 HLC's own policies that candidacy could not be
22 offered as a condition.

1 Importantly, a condition like
2 candidacy was expressly allowed by the policy
3 itself as the change of control policy stated
4 that where the board decides to approve a change
5 of control application, and I quote, it may
6 decide so subject to conditions on the
7 institution or its accreditation. Candidacy is a
8 condition of affecting accreditation as
9 contemplated by the policy. Thus, HLC had broad
10 discretion as to which conditions to offer.

11 The conditions which could be offered
12 were not limited to the non-exhausted list of
13 conditions described in the policies. In fact,
14 HLC had offered this very condition of candidacy
15 to an institution previously. This was what
16 occurred here, and this offer was clearly
17 explained in the board action letter to the Dream
18 Center.

19 Second, the HLC policies which set
20 forth the distinct option where the board could
21 involuntarily move an institution from accredited
22 to candidate status as an adverse action clearly

1 identified two bases on which the board could do
2 so at the time it approved a change of control
3 where a new institution would be created by the
4 transaction or under the supplemental policy
5 where the institution would not be in compliance
6 with the criteria for accreditation after the
7 transaction. But these circumstances were not
8 present here.

9 In this instance, the board did not
10 determine the institutes were becoming new
11 institutions nor did the board conclude the
12 institutes would fail to meet the criteria for
13 accreditation following the transaction. And as
14 such, the board did not impose candidacy. It did
15 not require candidacy. By contrast, the board
16 offered the institutes' candidacy as a condition
17 of its approval under Option 1 based on
18 prospective compliance concerns that were
19 centered on the eligibility requirements rather
20 than HLC's criteria for accreditation.

21 I want to make clear that even though
22 the board had a variety of concerns about this

1 transaction, it was hopeful that these concerns
2 could be remedied and sooner rather than later.
3 This is why the board's action letter requested a
4 variety of evidence to assess and verify
5 compliance with HLC requirements following the
6 transaction. The board's decision was rightfully
7 not made in a vacuum.

8 It was based not only on concerns set
9 forth in the HLC staff report that after the
10 transaction was completed, certain eligibility
11 requirements could not be met and certain
12 criteria would be only met with concerns but also
13 on the institutes' response to those concerns.
14 The board considered the institutes' application
15 holistically. This application included, for
16 example, the Department's pre-acquisition letter
17 regarding the transition to nonprofit status.

18 And quite relevant to the board's
19 decision, there were representations that this
20 ownership change would benefit the schools and
21 the students. The board's judgment based on the
22 evidence before it was that candidacy was an

1 appropriate condition to give the institutes the
2 opportunity to demonstrate that they could, in
3 fact, continue to comply with the eligibility
4 requirements once they were under the Dream
5 Center's ownership. And this is why the November
6 2017 joint action letter stated that the
7 institutes were in, and I quote, sufficient
8 compliance with the eligibility requirement to be
9 considered for candidacy.

10 But it also expressly required the
11 institute to submit eligibility filings in very
12 short order after the transaction. The candidacy
13 was intended as a safeguard to address the
14 prospective compliance concerns while also
15 allowing the institutes to quickly re-obtain
16 accreditation if supported by the evidence. This
17 offer of candidacy gave the institutes multiple
18 viable choices.

19 They could have as they did accept the
20 condition, or they could have rejected the
21 condition of candidacy. This rejection would
22 have simply put the institutes in the same

1 position they would have been in if the board had
2 denied the application outright. If the change
3 of control application had been denied, whether
4 initially or by virtue of the rejection of
5 candidacy, the institutes would have remained in
6 their accredited status.

7 They could have chose to resubmit an
8 application for a new change of control at a
9 later date for the board's consideration. Or
10 they could have abandoned the proposed
11 transaction and remained accredited while they
12 explored alternative solutions for their
13 financial problems. But what the institutes
14 could not have done, just as they were not
15 entitled to do here, was appeal that denial.

16 There was no right under HLC's
17 policies or federal regulation for an institution
18 to appeal the denial of a change of control
19 application which is why, respectfully, the
20 Department is fundamentally incorrect that
21 candidacy could not be offered as a choice as a
22 condition of the board's approval and could only

1 be considered an appealable adverse action under
2 HLC's policy. HLC acted entirely within the
3 scope of its policies in offering candidacy to
4 the institutes.

5 Contrary to the Department's
6 assertions, the board did not act in violation of
7 the supplemental policy. In fact, the
8 supplemental policy did not apply. I'm happy to
9 answer any questions you have about HLC's
10 compliance with its policies, how those policies
11 complied with federal regulations, and how those
12 policies were applied with respect to the
13 institutes. But first, my colleague, Ms. Morgen,
14 is going to respond directly to the Department
15 staff analysis and address HLC's compliance with
16 federal regulations in greater detail. Ms.
17 Morgen?

18 MS. MORGEN: Thank you very much, Dr.
19 Sweeney. Good morning. My name is Marla Morgen,
20 and I serve as HLC's associate vice president of
21 Legal and Regulatory Affairs. My colleagues, Dr.
22 Gellman-Danley and Dr. Sweeney, have explained to

1 you why HLC made the decision to offer the
2 condition of candidacy to the institutes and how
3 this decision was not only supported by the
4 evidence available to HLC's board at the time but
5 also aligned with HLC's policies.

6 The Department's findings on
7 noncompliance are unsupported by the evidence.
8 They reflect a flawed understanding of HLC's own
9 policies, and they cannot and do not support the
10 recognition recommendation the Department has set
11 forth. I appreciate your time today as I briefly
12 walk you through how contrary to the Department's
13 findings both HLC's decision and its policies
14 are, in fact, compliant.

15 There are two key regulations at issue
16 today, 34 CFR 602.18, which requires consistency
17 in decision making, and 34 CFR 602.25, which
18 requires provision of due process. And to be
19 clear, we are speaking about the regulations in
20 effect at the time, not those that went in effect
21 on July 1st, 2020. The Department erroneously
22 concludes that with respect to the approval of

1 the institutes' change of control application,
2 HLC was noncompliant with one subpart of the
3 first regulation and four subparts of the second.

4 HLC has responded point by point to
5 each of the Department's findings in a written
6 response to its staff analysis which has been
7 made available to you. We are happy to answer
8 any questions you have about HLC's compliance
9 with each of these regulations. At a high level,
10 however, I want to briefly explain how HLC was
11 consistent in its decision making and provided
12 due process to the institutes.

13 First, and as Dr. Sweeney laid out for
14 you in great detail, candidacy was a permissible
15 condition under HLC's policy. In fact, the same
16 practice was previously and consistently applied
17 with another institution. In that instance, the
18 institution accepted the condition of candidacy.
19 But prior to the candidacy going into effect,
20 that institution closed and voluntarily resigned
21 from HLC.

22 As part of HLC's most recent

1 recognition application, the Department
2 specifically requested a case study of that
3 institution. HLC submitted to the Department
4 documentation of HLC's offer of candidacy and the
5 institution's acceptance of that condition. The
6 Department never communicated to HLC any concerns
7 about decision making with respect to that
8 institution.

9 Additionally, HLC has provided the
10 institutes with sufficient due process.
11 Specifically, HLC had adequate written standards
12 as set forth in HLC policy and in communications
13 to the institutes. HLC gave the institutes the
14 opportunity to have their written responses
15 considered by the HLC board. HLC provided
16 written notification to the institutes regarding
17 the offer of candidacy. And finally, HLC granted
18 the institutes an opportunity to appeal.

19 I want to make clear, with the
20 exception of the first item, the due process
21 requirement I just mentioned only apply where an
22 institution has been subject to an adverse action

1 which, as Dr. Sweeney explained, was not the case
2 here. Nevertheless, HLC went above what was
3 required and did provide the institutes with each
4 of these guarantees of due process and more. For
5 example, the institutes were asked to respond in
6 writing to the staff reports which had noted
7 anticipated deficiencies in their compliance with
8 the eligibility requirements. The institutes'
9 response was considered by the board and informed
10 the board's offer of candidacy.

11 Then following HLC's written
12 notification of this offer, the institutes had
13 ample time to consider whether to accept it.
14 Indeed, candidacy never could've become effective
15 if first the institutes had not explicitly
16 accepted the condition in writing as they did not
17 January 4th, 2018, and second, had not closed the
18 transaction. The Department takes the position
19 that this offer of candidacy was confusing, that
20 the institutes did not understand that they would
21 be in a pre-accredited status upon the
22 transaction completion.

1 However, there is ample evidence in
2 the record that the term, candidacy, was
3 understood. In fact, counsel for the Dream
4 Center himself specified in writing to HLC that
5 he and his clients understood that candidacy was
6 pre-accredited status. Finally, despite the fact
7 that it was not required, the institutes were
8 offered an appeal. And I want to spend a couple
9 moments explaining how this appeal came to be.

10 An appeal was first mentioned by the
11 institutes in early February in connection with a
12 question that the institutes had about HLC's
13 Public Disclosure Notice, or PDN. The institutes
14 were concerned that the PDN could be misconstrued
15 to suggest they were in so-called pre-candidacy
16 status rather than the agreed to candidacy
17 status. In response to these concerns, HLC
18 revised the PDN to remove the language the
19 institutes found confusing. This seemingly
20 resolved the institutes' concerns.

21 Indeed, later that same month, the
22 institute stated they hoped to avoid an appeal.

1 In this second communication, the institutes
2 explained that the conditions were accepted
3 because they believed the institutes would be
4 eligible for Title IV based on the
5 pre-accreditation status. The institutes clearly
6 understood they were in candidacy and that this
7 was a pre-accreditation status.

8 Perhaps they did not understand the
9 different Title IV eligibility requirements that
10 the Department set forth for nonprofit versus
11 for-profit schools. But they certainly
12 understood that candidacy was a pre-accredited
13 status at the time they accepted the candidacy
14 condition and at all times thereafter. Several
15 months later in May 2018, the incident provided
16 HLC with their letter of intent to appeal.

17 HLC invited the institutes to file an
18 appeal as soon as possible. They did not,
19 however, do so. Nearly a month after that in
20 late June 2018, the Dream Center's counsel
21 requested a call with HLC. He set forth an
22 unusual proposal, specifically that HLC grant the

1 institutes accreditation from the time of their
2 initial accreditations through the end of the
3 year.

4 HLC responded that because the board
5 was meeting in two days, the request could not be
6 considered at that meeting. Only following this
7 call did the Dream Center's general counsel
8 attempt to send an appeal by email to Dr.
9 Gellman-Danley and Dr. Sweeney. However, he
10 misspelled the word, commission, in their email
11 addresses, one M instead of two.

12 Because this appeal was misaddressed
13 and only sent by email despite HLC's procedures
14 requiring submission of a hard copy, HLC never
15 received the appeal. HLC did not even learn of
16 its existence until December 2019 as part of this
17 compliance review. As you are likely aware, on
18 July 3rd, 2018, only a few days after their
19 unusual proposal, the Dream Center announced the
20 closure of the institutes as well as the closure
21 of numerous other institutions not affiliated
22 with HLC.

1 Because there was no follow-up
2 communication from the Dream Center about any
3 attempt to submit an appeal and then the Dream
4 Center announced its closure, HLC presumed that
5 the institutes had decided they did not wish to
6 submit an appeal after all. Indeed, the appeal
7 attempt was never mentioned by the institutes or
8 the Dream Center again. In the end, even if the
9 action of offering candidacy as a condition of
10 approval, was an adverse action subject to
11 appeal, which it was not, HLC provided that
12 appeal opportunity.

13 The Department considers this
14 opportunity untimely, stating that HLC's offer of
15 an appeal was a hollow gesture. There was
16 nothing hollow about it. HLC was ready and
17 willing to consider any appeal brought to its
18 attention that summer. It was the institutes'
19 and the Dream Center's own decision not to follow
20 through on this opportunity when it was granted.
21 It raises questions certainly as to whether it
22 was the Dream Center's request for the appeal

1 that was, in fact, the hollow gesture.

2 In conclusion, a careful review of
3 this situation makes clear that HLC acted
4 consistently with its policies. The institutes
5 were provided due process at every stage. HLC
6 was and is in compliance with federal
7 regulations, including the regulations cited by
8 the Department. We are happy to answer any
9 questions you may have once HLC's trustees have
10 had the opportunity to speak. With that, I will
11 hand it over to Dr. David Wissmann.

12 DR. WISSMANN: Good day, and thank you
13 for the opportunity to be with you today. I am
14 David Wissmann, former member of the HLC board of
15 trustees. I am also a professor emeritus at
16 Avila University, and I'm proud to say that my
17 entire career has been in higher education.

18 I started with HLC in 1995 as a peer
19 reviewer and quickly became a team chair. I
20 served on the HLC board for a total of eight
21 years. My tenure on the board just ended last
22 September. The HLC board is a very dynamic group

1 of professionals who are always active and
2 engaged in the process of board action. Our
3 board is committed to its responsibilities and
4 comes well prepared with making decisions about
5 institutions.

6 I became aware of the change of
7 control application submitted by the Art
8 Institute of Colorado and the Illinois Institute
9 of Art when the case was provided to the board
10 members in preparation for our November 2017
11 board meeting. We were faced with a for-profit
12 organization that was wanting to sell these two
13 institutions to a nonprofit organization that had
14 no prior experience in higher education. In
15 considering the proposed change of control, we,
16 of course, considered the identity of the Dream
17 Center and its past experience as well as the
18 specifics of the ownership transaction itself.

19 Most of our deliberations centered
20 around institutions themselves as we had ongoing
21 concerns about both schools. One in particular,
22 Illinois, had struggled in recent years and both

1 had struggled in the past. Illinois was facing
2 declining enrollment and a worsening financial
3 situation.

4 There was hope, however, based on our
5 review of the record, including the application,
6 the HLC staff report, and the responses from the
7 institutions that the Dream Center would have
8 sufficient financial means to resolve some of
9 these issues. But we also had concerns with the
10 institutes' ability to meet HLC's criteria for
11 accreditation after the close of the transaction.
12 We discussed options regarding the application.

13 Ultimately, the board determined that
14 approval with conditions was the best fit. We
15 specifically discussed and then agreed that a
16 series of relatively significant conditions,
17 including candidacy and ongoing monitoring, were
18 appropriate due to our concerns. Throughout this
19 discussion, the board was keenly aware that the
20 candidacy was a pre-accreditation status and that
21 in accepting any offer, the institutes would be
22 foregoing their accreditation status.

1 We knew that the institutes could
2 choose to reject this offer and that their
3 acceptance of the conditions would be voluntary.
4 I recall wondering whether the institutions would
5 ultimately accept this offer. As I know Dr.
6 Gellman-Danley mentioned earlier, this was not
7 the first time we considered such approach and
8 actually made that offer to another institution
9 in my time on the board.

10 Both that time and here with respect
11 to the Dream Center, the board carefully came to
12 the decision that this approach was the most
13 appropriate response and we did not arrive at
14 this decision lightly. The board's decision to
15 offer candidacy was thoughtful and deliberate.
16 And we feel confidently -- I feel confidently
17 that I speak for the whole board when I say that
18 we understood the policies in which we were
19 operating under to offer this option to the Dream
20 Center. With that, I will turn it to my
21 colleague and HLC's current board chair, Dr.
22 Joanne Burrows.

1 DR. BURROWS: Good morning. Thank you
2 for the opportunity to speak on behalf of the
3 Higher Learning Commission today. My name is Dr.
4 Joanne Burrows. I have 40 years of experience in
5 higher education, including as a president,
6 provost, and professor. I have served 6 years as
7 a peer reviewer for the Higher Learning
8 Commission and now serve as the chair of the
9 Higher Learning Commission board of trustees.

10 I have been on the board for 8 years.
11 And during that time, the board has only grown
12 stronger. Let me just repeat. I've been on the
13 board for 8 years, and I think it has only grown
14 stronger during that period of time.

15 I want the board of NACIQI to hear
16 from me, the board chair, that I echo everything
17 that Dr. Gellman-Danley, Dr. Sweeney, and my
18 former trustee colleague, Dr. Wissmann has
19 stated. I am here to address two particular
20 topics with you today. The first is the board's
21 understanding of the ramification of the November
22 2017 decision on the Dream Center transaction,

1 and the second is the strength of the HLC board,
2 the education and training that we receive on an
3 ongoing basis which gives me great confidence in
4 our decision making processes and compliance with
5 federal regulations.

6 I remember our November '17 board
7 meeting well and our lengthy discussion on the
8 Dream Center transaction. The board very clearly
9 understood its actions. The board fully
10 understood that candidacy is a pre-accreditation
11 status and that if accepted, the institutions
12 would be choosing to forego their accreditation.

13 Further, the board was aware of two
14 key impacts of this acceptance. First,
15 academically, credits earned during candidacy
16 would not be from an accredited institution and
17 that students may choose to stay during this time
18 or transfer. Second, that the institutes would
19 not be eligible for Title IV financial aid, but
20 we were keenly aware that the institutes were
21 pursuing a nonprofit conversion which was
22 included in the institutes' pre-acquisition

1 letter and the record that was before us.

2 There was not a president or a provost
3 on the board, and that's the majority of us, who
4 did not fully appreciate this. These details
5 were not lost on us as a board. Now let me turn
6 to my second point, the board's preparation to
7 ensure precision in our decision making more
8 broadly.

9 Each fall, we receive in-depth
10 training which has been some of the best
11 professional development I've had in higher
12 education. Since assuming the role of vice
13 president of Legal and Regulatory Affairs in
14 September 2018, Dr. Sweeney has meaningfully
15 enhanced that training to include substantive and
16 special topics relating to the HLC criteria for
17 accreditation as well as our decision making and
18 review processes. Preparatory meeting materials
19 included updated summary of selected board
20 actions from the previous ten years which
21 includes types of institutional actions that are
22 presently before the board for consideration, key

1 precedents, and context for how prior cases were
2 previously handled.

3 Before these individual cases are
4 presented by trustee teams, Dr. Sweeney presents
5 a summary of the cases that will be considered
6 and the decision making options available under
7 our policy. One of the things the trustees
8 particularly value is the decision making option
9 chart that Dr. Sweeney developed. The trustees
10 affectionately call it our placemats, and we use
11 them as supplemental reference throughout our
12 meetings. The placemats graphically organize the
13 decision making options that are available to us.

14 Finally, when a case is presented, HLC
15 staff provided in-depth information for the
16 board's consideration. As a result, the board's
17 choices are knowing, deliberate, and aligned with
18 policy. That is why I am disheartened to see
19 that the Department has taken issue with a
20 strategy that our board and I personally felt was
21 the most appropriate response to the Dream Center
22 transaction which involved a change of control

1 application for which we had real concerns.

2 I'm even more disheartened that this
3 single case is presented to assert that our
4 board's decisions lacked consistency which could
5 not be further from the truth. If NACIQI
6 ratifies the Department's recommendation, this
7 would be counter to the board's careful
8 consideration of the evidence in this individual
9 case and undermine our board's thoughtful
10 evidence-based decision making processes that we
11 have so carefully refined. And with that, I'd
12 like to turn it back over to our team.

13 MS. MICELI: Thank you, Dr. Burrows.
14 I just want to make sure that you can hear me.
15 My name is Julie Miceli, and I serve as outside
16 legal counsel for HLC in this matter before the
17 Department. I'm a partner in the education
18 practice team at Husch Blackwell. And as some of
19 you may be aware, I previously worked in the
20 Department's Office of General Counsel under the
21 Obama Administration and for a short time during
22 the Bush Administration.

1 We are not here today because the
2 Department has well founded concerns about HLC's
3 compliance. It doesn't. HLC's trustees, its
4 president, and members of its leadership have
5 explained why and how the HLC board made the
6 decision it did with respect to the Art
7 Institutes.

8 Dr. Sweeney has explained how these
9 policies work, and I must respond to Assistant
10 Secretary King's opening that this stuff doesn't
11 matter. In fact, these details that HLC have
12 explained to you absolutely matter. It is clear
13 that the Department's conclusions about HLC's
14 compliance with federal regulations were informed
15 by incorrect information and are wrong on the
16 merits. Instead, and quite simply, we are here
17 today because the Department is displeased that
18 the Art Institutes were pre-accredited and not
19 accredited once they were under the Dream
20 Center's ownership.

21 The thinly veiled compliance concern
22 set forth by the Department made clear that the

1 Department's use of its authority here is not
2 about compliance. It is about obtaining a
3 specific result from HLC. If the Department
4 thought that HLC had acted contrary to
5 regulations in November 2017, it would've raised
6 those concerns at the time, and it had plenty of
7 opportunity to do so. As an initial matter, the
8 policy about which the Department is concerned
9 was adopted in 2009.

10 In 2017, HLC was undergoing a
11 recognition renewal, giving rise to multiple
12 opportunities to discuss the policies in question
13 today. As part of that renewal review, the
14 Department even asked for and had before it a
15 prior case in which the exact offer of candidacy
16 was previously made. A member of the
17 Department's accreditation group, and I don't
18 want this point to get lost, actually attended
19 and observed the very November 2017 board meeting
20 at which the board took the action now in
21 question.

22 And the board's action was then

1 communicated directly to the Department, both in
2 November 2017 when candidacy was first offered
3 and again in January 2018, after the institutes
4 accepted the candidacy condition. The
5 accreditation group did not raise any concerns
6 about HLC's compliance at the time. It was not
7 until October 24, 2019, a mere two days after the
8 Department was sued by former Dream Center
9 students that the Department opened this
10 compliance inquiry.

11 By then, HLC had almost finalized the
12 process of removing the policy with which the
13 Department now states concerns, what we've been
14 calling the supplemental policy. And it was in
15 the process of removing the option of change of
16 control candidacy and revising its policies and
17 procedures. If the Department's concern was
18 actually HLC's compliance, it would recognize
19 HLC's revocation of the supplemental policy and
20 the subsequent policy revisions on change of
21 control and HLC coming into compliance, but it
22 does not.

1 To the contrary, the Department
2 remains focused on HLC taking some other action
3 specific to the Dream Center and its former
4 students as the only way for HLC to come into
5 compliance. And so throughout this inquiry, HLC
6 has made good faith efforts to respond to this
7 very concern, and yet the Department moves the
8 goalpost.

9 First the Department told HLC that it
10 was concerned about notations on student
11 transcripts. HLC explained that it does not
12 control student transcripts and it did not
13 require the Dream Center to write anything on
14 student transcripts. HLC had previously
15 explained this very point to Deputy Under
16 Secretary Jones in July of 2018 following the
17 institutes' announcement of closure.

18 Then the Department told HLC it was
19 concerned about students' ability to transfer
20 their credits. HLC developed a robust
21 communications plan informing relevant
22 stakeholders and students about the opportunities

1 for credit transfer, and it encouraged its
2 membership to consider these impacted students.
3 The Department did not give HLC any feedback on
4 this plan despite multiple requests for input.

5 And quite tellingly, upon learning of
6 the board's consideration of this matter, the
7 Department's counsel informed me that if the
8 board were to move forward the institutes'
9 effective date of candidacy, the Department would
10 consider this compliant and resolved. The board
11 did consider this action. But based on a number
12 of reasons, including the harm to students, it
13 did not adopt this approach.

14 The board's decision making in
15 November 2017 and this past spring in 2020 with
16 respect to the institutes was based on HLC's
17 established policies and its own judgment as an
18 independent accreditor. I will not and cannot
19 speculate as to why the Department has found that
20 every effort by HLC to address its concerns has
21 been insufficient. Throughout all of this, it is
22 clear that there's only one action that HLC can

1 take that will satisfy the Department.

2 Call it retroactive accreditation.
3 Call it forward-dating the date of candidacy.
4 Call it voiding HLC's decision. But this is what
5 the Department is after, and HLC simply cannot
6 honor its judgment as an independent accreditor
7 if it takes this action at the insistence of the
8 Department.

9 HLC shares deeply in the Department's
10 stated concern for students. It is, of course,
11 concerned that students were harmed. But that
12 harm was not caused by HLC. And after
13 disclosures were provided by the institute, the
14 ineligible federal loans which were later
15 discharged were provided by the Department.

16 And contrary to the Department's
17 public assertions, HLC did not take action to
18 harm the students, not generally and not with
19 respect to students' transcripts or ability to
20 transfer. In fact, despite HLC's outreach to
21 support students, not one student complained to
22 HLC about their transcripts or about their

1 ability to transfer credits. This is not to say
2 that HLC cannot do better.

3 In light of everything that has
4 happened after the board's offer of candidacy,
5 HLC studied the issue and decided that it would
6 not offer candidacy as a condition in the future.
7 And this option has been precluded by new federal
8 regulations.

9 But retroactive accreditation,
10 effectively rewriting history, is not appropriate
11 here and neither is the Department's inquiry.
12 For all the reasons you've heard from HLC and the
13 Department's findings which appear to be based on
14 flawed information are in error. The Department
15 imposing its will on any single accreditation
16 decision in this matter is counter to the
17 Department's authority and how accreditation of
18 the system fundamentally works. With that, the
19 HLC team would be happy to answer questions
20 following public comment. Thank you.

21 CHAIRMAN KEISER: Well, thank you,
22 HLC. Our next process is for Claude or Mary

1 Ellen to ask questions.

2 DR. LeBLANC: Art, I don't know why
3 you're fixated on Claude and I'm going to be --

4 CHAIRMAN KEISER: Did I say Claude?
5 I meant -- I'm so sorry. Oh, I apologize.

6 DR. LeBLANC: And you obviously like
7 Claude better. So I get it. So thank you. Dr.
8 Gellman-Danley, I'm not sure as we go through
9 this, rather than answer our questions, I'm going
10 to just assume that you will sort out how on the
11 HLC would like to take the questions as we go.

12 So if that's okay with you, I'm just
13 going to in. And please bear with me. There's a
14 lot of detail to cover, and you all have a lot
15 planned. So I'll just jump in. And again, I'll
16 let you direct who you'd like to have answer.

17 Can we start with this question? So
18 noncompliance with your own policies is an issue
19 that's been raised in the staff report and raised
20 by Secretary King. Can you talk a little bit
21 about candidacy and its permissibility and the
22 consistency of the application of that policy to

1 one other case you cited?

2 The case study that was done, what
3 policies were used in that previous case? And
4 what policies were cited in the case study?
5 Specifically, was the supplemental policy on
6 tangent 50.010 applied or cited in the case study
7 the Department reviewed?

8 (Simultaneous speaking.)

9 DR. GELLMAN-DANLEY: Yes. I'd like to
10 ask -- oh, I'm sorry. I thought you were done.

11 DR. LeBLANC: No. Well, I was done,
12 except I was going say I'm hearing some
13 background noise. So if people could go on mute
14 when they're not on, that would be great. And
15 I'm going to do the same. It reminds me of a
16 leaf blower.

17 DR. GELLMAN-DANLEY: Well, I'm going
18 to turn this to our policy expert, Dr. Sweeney.
19 And then Dr. Sweeney, if you need to involve
20 anybody else, go ahead.

21 DR. SWEENEY: Thank you, Dr.
22 Gellman-Danley. I'd be happy to take the

1 question. And first, I'd like to perhaps provide
2 some grounding on all of the policies that could
3 get one to candidacy status from accredited
4 status at that time. And then I will certainly
5 provide some background on the precedent case
6 that Mr. LeBlanc references.

7 So the purpose of change of control
8 candidacy again is to allow the institution the
9 opportunity as a condition of the board's
10 approval of a change of control application to
11 demonstrate compliance with HLC requirements
12 after the change of control is completed. I
13 stress the word, after, because it's important.
14 It's critical to understand that change of
15 control evaluations are forward-looking
16 prospective evaluations.

17 But at the outset, I also need to
18 emphasize that any reference the change of
19 control candidacy policy would be misleading.
20 There were actually four possible paths for
21 change of control candidacy status to occur. The
22 first is the one that we maintain was applied

1 here and in the precedent case where under HLC
2 Policy B-20.040, the board's first decision
3 making option was to approve the application with
4 or without conditions.

5 In that case, because of a
6 non-exhausted illustrative list of conditions and
7 the absence of any express prohibition in federal
8 regulations or HLC policy, candidacy was
9 allowable. The board had broad discretion. And
10 let's be clear. If the institutions accepted the
11 condition and then completed the transaction,
12 that's the only way candidacy would be effective
13 at that time.

14 If they rejected the condition, then
15 the board's approval would be null and void. And
16 this meant the institutes would be in the same
17 position they would've been in if the board had
18 denied the application outright. I think we can
19 all agree that denial of a substantive change
20 application is not appealable.

21 And if it's functionally equivalent,
22 the rejection of a condition of the board's

1 approval is likewise not appealable, one has to
2 ask, how could knowing and voluntary acceptance
3 of a condition of the board's approval where the
4 parties have exclusive control over whether and
5 when to effectuate the condition be appealable?
6 Choice and control feature prominently here. And
7 these two elements are not elements that we see
8 characterized in adverse actions.

9 That's why we maintain that approval
10 with the condition of candidacy as a choice under
11 Policy B-20.040 was not appealable. And that is
12 the same policy that was applied to the February
13 2015 case. In that case, a subsidiary of a large
14 for-profit conglomerate, we're all familiar with
15 the Corinthian Colleges and the aftermath of
16 their closure.

17 In that case, the institution in
18 question had a troubling history. It had been
19 removed from show cause in November of 2011 but
20 with a condition that an advisory visit take
21 place related to its recruiting and enrollment
22 processes. There had, in fact, but a government

1 accountability office investigation identifying
2 findings of concern related to recruiting,
3 enrollment, and in particular, placement data.

4 There's a wrinkle here with respect to
5 a memorandum of understanding with the Department
6 that called for Corinthian to sell or close its
7 campuses by early 2015. So with respect to the
8 institution in question, its application for
9 change of control was approved with the condition
10 of candidacy as a choice for the institution to
11 accept or reject at its option. And it would
12 have the second choice to trigger that condition
13 by moving forward with the transaction or not
14 moving forward with the transaction.

15 In that case, the institution accepted
16 the condition, first choice, but then decided
17 after the fact not to go through with the
18 transaction. In fact, they decided to close
19 under the terms of the MOU prior to the condition
20 being effectuated. And so part of this is
21 understanding that with any policy that is rarely
22 used, the accreditor takes a very conscientious

1 approach to the development and review and
2 adoption of a policy.

3 But one cannot see the flaws in a
4 policy until it is implemented. And so the Dream
5 Center case was the first opportunity to see the
6 full implementation of the policy. But there
7 were so many irregularities here, so many actions
8 taken by the institutions that were not in
9 compliance with HLC expectations that while the
10 policy has been removed and the procedures have
11 been removed, I would hate for NACIQI to get the
12 impression that the fallout that we saw here was
13 a result of HLC offering the institutes the
14 condition of candidacy and then moving forward
15 with the transaction.

16 There are too many things that HLC's
17 board could not have anticipated. That's a
18 defining characteristic of prospective reviews.
19 There are always elements of risk in prospective
20 reviews because no accrediting body has a crystal
21 ball.

22 But that's why that heavy, careful,

1 detailed, monitoring protocol that you saw in the
2 November 16, 2017 action letter was so important.
3 It demonstrates the Board's attention to detail,
4 its concern for students. Its weighing of its
5 policies and their application to the underlying
6 facts. It's application --

7 (Simultaneous speaking.)

8 DR. LeBLANC: I'm sorry to interrupt.
9 I had actually a simpler question.

10 CHAIRMAN KEISER: Yeah, if you could
11 just respond to the question rather than going
12 beyond and talking in broad terms, we'd be most
13 appreciative.

14 DR. LeBLANC: No, and I appreciate.
15 This is complex.

16 DR. SWEENEY: Thank you --

17 (Simultaneous speaking.)

18 DR. LeBLANC: -- and how much ground
19 we have to cover. So in this other case, and I'm
20 really trying to get at this issue of consistency
21 which has been raised by the Department. You
22 have one other case, and I understand that they

1 did not go through and consummate the deal.

2 But did you apply the same policies in
3 that case as you did in the case of the
4 institutes? And were those policies in fact
5 B-20.040? Or was 50.010 ever invoked or a used
6 case study which the Department subsequently
7 requested?

8 DR. SWEENEY: I have to allow some
9 wiggle room here because I cannot represent to
10 NACIQI that I understood or studied that
11 precedent case to a fine level of detail. And
12 internally at HLC, we refer to policies by their
13 titles and not the numbers. That's an
14 organization framework. But yes, it was B-20.040
15 that was applied. This was offered as a
16 condition. There was an offer and there was a
17 knowing and voluntary acceptance.

18 DR. LeBLANC: So 50.010 which is a
19 sub-policy as you described, a supplemental
20 sub-policy around sanctions, was not used in the
21 actual administration of the other case nor was
22 it invoked or described in any way in the case

1 study which the Department reviewed?

2 DR. SWEENEY: That's my understanding.
3 That's correct. In fact, the supplemental
4 policy, E-50.010, has never been applied to any
5 institution.

6 DR. LeBLANC: Would it be your
7 contention then that the two policies mirror --
8 the two cases mirror each other up to the point
9 of the institutional decision to go forward with
10 the purchase or not?

11 DR. SWEENEY: Yes, with the exception
12 of the MOU that I mentioned earlier. That was
13 not a nuance that was present here. But it is
14 tangential. I raise it only because there was a
15 clear choice influenced by the Department for the
16 precedent institution.

17 DR. LeBLANC: And after the case study
18 was submitted to the Department, was any flag or
19 concern or communication received by HLC
20 indicating the Department's discomfort on these
21 or a suggestion that there was noncompliance with
22 HLC policy?

1 DR. SWEENEY: None whatsoever.

2 DR. LeBLANC: So there's no prior flag
3 to the second case which was used around
4 candidacy -- excuse me, change of control which
5 is the case before us today. So if we could talk
6 about that. What do you have -- and this is,
7 again, to anyone on the HLC case. What do you
8 have to believe that DCH understood candidacy as
9 pre-accredited?

10 And more importantly -- and we lost
11 track about who said this. But Dr. King talked
12 about there's one thing about knowing and another
13 thing about understanding. Do you have any
14 evidence that DCH understood that
15 pre-accreditation met loss of access to Title IV
16 funds for their students?

17 DR. SWEENEY: I'll be brief. Let me
18 start by saying that the accreditation
19 relationship is not with the corporation. It's
20 with the institutions we accredit.

21 DR. LeBLANC: Thank you.

22 DR. SWEENEY: And that's shorthand

1 that we're using Dream Center as shorthand. But
2 the nuance of the distinction is going to be
3 critical. First, yes, there is -- if we're
4 speaking about the institution with whom HLC or
5 with which HLC had the accreditation
6 relationship, there's ample evidence of
7 understanding.

8 Allow me to just kick off a quick
9 list. First, the plain language of the action
10 letter, page 4, the letter stated, as the
11 institutions and the buys did not accept these
12 conditions in writing, the approval of the board
13 will become null and void and the institutions
14 will need to submit a new application for change
15 of control structure or organization if they
16 choose to proceed with this transaction or
17 another transaction in the future. And
18 critically, in that event, the institutes will
19 remain accredited institutions.

20 The plain meaning of this language is
21 that if the condition was accepted, the
22 institutes would voluntarily forfeit their

1 accreditation. Then we get the November 29th,
2 2017 response to the board's original action
3 letter. And it contains language indicating, we
4 understand the institutions will be in a
5 candidacy status.

6 There's ample time for reasonable
7 inquiry and consideration. Bear in mind as well
8 that the institutes had been in contact with the
9 Department as early as February 2017 regarding a
10 pre-acquisition review and HLC had comfort that
11 there was appropriate communication related to
12 Title IV implications with the Department as its
13 partner in the regulatory triad. Then we get to
14 the January 4th, 2018, explicit acceptance of the
15 condition in writing, including the condition of
16 candidacy.

17 Six days after the transaction, I
18 personally participated on a conference call with
19 both presidents of the institutes at that time
20 ostensibly about their obligations to students
21 and personally corrected their planned
22 disclosure, line by line, explaining where there

1 was ambiguity. February 2nd, 2018, Dream
2 Center's external counsel addresses HLC with a
3 letter protesting language in its PDN as Ms.
4 Morgen pointed out earlier and indicates while
5 complaining about language that might be
6 construed as the institution having no status
7 because we had identified eligibility filings.

8 In the process of complaining about
9 that, he admits that the clients -- he and the
10 clients understood that they would be in a
11 pre-accreditation status, working on a path to
12 one accreditation. And he alleges HLC has put us
13 in some sort of pre-candidacy status. And we
14 were, like, no, no. So it was a -- we
15 interpreted that as a misunderstanding of the
16 PDN. Tightened that up. Assumed everything was
17 fine.

18 February 23rd, 2018, external counsel
19 for Dream Center writes again, this time
20 indicating that, quote, pre-accreditation is a
21 term of art within the regulations. HLC is well
22 aware of this and was comfortable that the

1 institutes and the Dream Center were represented
2 by competent counsel who could interpret federal
3 regulation. But one need not be an accreditation
4 expert to know what pre-accreditation meant.

5 The answer is in the prefix,
6 pre-accreditation. That term was defined
7 differently in the federal regulations at the
8 time in two places, 34 CFR 600.2 and 34 CFR
9 602.3. It was clear that the term was not
10 consistent with accredited status. However, one
11 could understand --

12 DR. LeBLANC: If I may just interrupt
13 you for a moment on this point. At any point in
14 those communications around candidacy status and
15 pre-accreditation, does HLC explicitly say, this
16 means you will not -- effectively and explicitly
17 say, this means that your students will not have
18 access to Title IV funding? I mean, at the end
19 of it, this is the sort of critical point for the
20 institution, the loss of access to Title IV funds
21 for their students. Was that ever explicitly
22 said? And to your point about the prefix, is it

1 HLC's stance that the understanding of these
2 various status, including pre -- excuse me,
3 candidacy or pre-accreditation, is the
4 responsibility of the institution?

5 DR. GELLMAN-DANLEY: Thank you. May
6 I take that very quickly and then we can toss it
7 back, Dr. LeBlanc?

8 DR. LeBLANC: Of course. Whoever you
9 need --

10 DR. GELLMAN-DANLEY: As Dr. Wissmann
11 --

12 DR. LeBLANC: -- to address --

13 DR. GELLMAN-DANLEY: -- mentioned and
14 as our two trustees mentioned, we have an
15 enormous amount of training that goes on. And
16 our members are very active in the training. And
17 they go to our conferences, and they have to
18 approve our policies. And they go through a
19 first reading and a second reading, and they go
20 to the extent of understanding it.

21 And I want to give just an overall
22 statement, then I'll turn it over to Dr. Sweeney.

1 And that is in the six years that I have been at
2 HLC, I've never had an institution hesitate to
3 ask a question if they had it. But I've also not
4 had a previous situation where an institution
5 said after the fact, we didn't understand it,
6 because there were so many conversations and so
7 much going on that to posit it as if they did not
8 understand it is just not the truth. Dr.
9 Sweeney?

10 DR. LeBLANC: If I may just stay with

11 --

12 DR. SWEENEY: Thank you --

13 DR. LeBLANC: If I could stay with you
14 for a moment. Could you characterize -- I was
15 trying to get a feel for -- we were obviously
16 going through a lot of documents. During this
17 process, how frequent was the communication with
18 the institutions or with DCEH? With whom were
19 those conversations? And did this question --
20 any clarifying questions come up on what it meant
21 to go into candidacy status?

22 DR. GELLMAN-DANLEY: I'd like to

1 answer just quickly, then turn that over to Dr.
2 Sweeney because she actually was very engaged in
3 it. But we have positions that we call vice
4 presidents for accreditation relations. And
5 those folks are on the phone 24/7 with their
6 institutions.

7 They have a liaison at the
8 institution. They will talk to the vice
9 presidents. And as appropriate, they will talk
10 to the presidents. They're very respectful and
11 it's constant.

12 So the communication, one of the
13 reasons we're able to actually work from home is
14 because people are still talking to their
15 institutions constantly via email, et cetera. So
16 I can't imagine more possible communication. Now
17 more doesn't mean better.

18 (Simultaneous speaking.)

19 DR. GELLMAN-DANLEY: But I'm telling
20 you that I feel confident --

21 DR. LeBLANC: May I interrupt for one
22 second?

1 DR. GELLMAN-DANLEY: Sure.

2 DR. LeBLANC: I'm confident that you
3 have robust resources for when people have
4 questions. What I'm really getting at and the
5 question I asked you was, with whom were you
6 speaking at DCEH or the institutions? And did
7 they ask? Could they access these sources you
8 just evoked? I'm trying to get a sense of --

9 DR. GELLMAN-DANLEY: I'm going to --

10 DR. LeBLANC: -- did they fully
11 understand? Were they asking questions?

12 DR. GELLMAN-DANLEY: I understood they
13 ask a lot of questions. But because we have
14 their vice president for accreditation relations
15 here, if it's all right with you, Dr. LeBlanc,
16 I'd like to turn it over back to Dr. Sweeney.

17 DR. LeBLANC: Of course.

18 DR. SWEENEY: So just a quick note
19 here. I assumed my current role March 1st, 2018.
20 I had previously served as their staff liaison
21 and continued to serve in that role, holding
22 essentially two full-time responsibilities at

1 that point. My role as a liaison in that
2 capacity was to communicate with the institutions
3 we accredit.

4 And so January 26th, I certainly was
5 on the phone with both presidents. It was their
6 habit to communicate jointly or for one president
7 particularly at Illinois Institute of Art to
8 communicate on behalf of both institutions. On
9 that particular day, we certainly were in
10 communication.

11 Candidacy is very much understood by
12 our members, whether you say candidacy for
13 accreditation candidate, candidacy. The only
14 thing that would've been different about change
15 of control candidacy is what occasioned the
16 change in status. But every year --

17 (Simultaneous speaking.)

18 DR. LeBLANC: Okay. You're answering
19 a different question. Forgive me, but you're
20 answering a different question. My question is I
21 understand that your members understand
22 candidacy. These were not members. These were

1 prospective members. A simple question is, did
2 you have a sense that they -- let me rephrase.
3 Do you have -- can you remember conversations or
4 interactions in which they press this point when
5 which they sought more clarification of the
6 implications especially regarding Title IV funds?

7 DR. SWEENEY: I think an answer to
8 that --

9 (Simultaneous speaking.)

10 DR. SWEENEY: Yes. The institutions
11 were not asking their liaison about Title IV
12 eligibility during that time.

13 DR. LeBLANC: Thank you. That's
14 really the question. So a related question now
15 for me would be in the documents that HLC
16 produces and the documents that lay out the
17 consequences of candidacy status or the
18 implications of being in candidacy status, is
19 there a kind of clarity and a laying out of what
20 that means for Title IV, what that means for
21 students, what that status of candidacy means?
22 In other words, if I were to search for it, would

1 I find documentation that says, candidacy status
2 means the following?

3 DR. SWEENEY: You would find it in the
4 federal regulations. You would not find it in
5 HLC policy.

6 DR. LeBLANC: Thank you. That may be
7 an opportunity for future clarity. So did the
8 Department -- there are some -- I inferred at
9 least from Secretary King's comments that there
10 was perhaps even in the Department a little bit
11 of confusion around what candidacy status meant.
12 Did the Department -- when did the Department
13 know that this was happening, and did the
14 Department pursue clarification? Was there any
15 flag raised? Was there any indication?

16 DR. SWEENEY: Formally speaking
17 because I'll exclude the observation that was
18 occurring at the time of the decision for what it
19 was, the Department was copied on the board's
20 November 16, 2017 action letter. Mike Frola of
21 federal student aid sought clarification for the
22 first time in early March, days after I assumed

1 this role. And we had a conference call on March
2 9th in which he asked, what was the purpose of
3 change of control, candidacy, and so forth.

4 DR. LeBLANC: If I could -- just I
5 want to -- because there's a lot of detail, I
6 periodically step out and just kind of frame the
7 pieces of the conversation. I think there's a
8 tension around the question of where the burden
9 of explanation is in these events and trying to
10 sort of understand whose responsibility it was.
11 And if there was a breakdown, where did that
12 breakdown occur and whose responsibility is it?

13 Is it the burden of the accreditor,
14 given your closeness to the decision and you have
15 prior insight and you guys know this stuff.
16 These people don't. Was there some responsibility
17 on HLC's part to be crystal clear about what the
18 consequences are?

19 So we've set that aside and suggest at
20 this point in this narrative which we're trying
21 to build that there seems little evidence that
22 the institutions or the Dream Center exhibited

1 curiosity or drive to understand this. And there
2 was also, with the Michael Frola conversation, no
3 indications that the Department didn't
4 understand. Is that a fair summation of where we
5 are in the narrative?

6 DR. SWEENEY: I'm sorry.

7 Respectfully, no. HLC undertook one obligation,
8 and that was at the time it required institutions
9 to provide a copy of their pre-acquisition letter
10 with the Department if, in fact, they had
11 submitted a pre-acquisition package. This would
12 give the board comfort that its partner in the
13 triad was engaging with the institutions about
14 their prospective title for eligibility. HLC's
15 board undertook no independent consideration as
16 to Title IV eligibility after the transaction
17 because as a Title IV gatekeeper, their quality
18 assurance activities are what prevent fraud,
19 waste, and abuse.

20 (Simultaneous speaking.)

21 DR. GELLMAN-DANLEY: Dr. LeBlanc, may
22 I add a quick point?

1 DR. LeBLANC: Yeah.

2 DR. GELLMAN-DANLEY: I think it's
3 important to note you ask a question that we
4 might not have gotten to. And prior to Dr.
5 Sweeney's role, her predecessor had a great deal
6 of interaction with the Dream Center Education
7 Holding folks. And I think this is what I
8 experience and I can tell you, and it is
9 different respectfully from the letter we got as
10 far as how this information was relayed.

11 When this idea was brought to me, it
12 was brought to me with great clarity by that
13 individual that this is a situation that we will
14 be able to do something for the institutes that
15 aren't quite -- the new owner is not ready. It
16 will come with the following kinds of things. It
17 was extremely clear that it was not attached
18 because they were -- because of their current tax
19 status.

20 It was a pre-accreditation that did
21 not come with Title IV, and it did not come with
22 the -- as a result the accreditation. And it was

1 just clear as can be. It was clearly presented
2 to the board, and it is impossible for me to
3 believe that in all those conversations that were
4 held with those folks when there were group
5 meetings where we went out. Our staff went out
6 with the other creditors that were looking at the
7 different institutions. Over and over again,
8 these things were discussed.

9 So while I was not in the room where
10 it happened -- to quote Hamilton -- the bottom
11 line is that the person who was having those
12 conversations was very clear with our board and
13 with me what the status was. So I think we're
14 going down a trap that says they knew nothing
15 about it, and that's just not true. It's a
16 mutual responsibility.

17 Communication is mutual. So we took
18 our responsibility and our institutions and
19 individuals in each case take theirs, both. We
20 don't skirt our responsibilities.

21 DR. LeBLANC: You answered the
22 question for me. Thank you. And I assume that

1 the former HLC employee you're referring to is
2 Karen Solinski?

3 DR. GELLMAN-DANLEY: Yes.

4 DR. LeBLANC: We'll eventually get to
5 the question of the Department's investigation.
6 I believe Karen Solinski was one of two people
7 interviewed as part of this. Did you see a
8 transcript of her interview and her remarks? Did
9 you have an opportunity review for this?

10 DR. GELLMAN-DANLEY: No, we were told
11 there was no transcript. We did ask because it
12 wasn't presented.

13 DR. LeBLANC: Thank you. I appreciate
14 that. If I can keep moving on. A lot hinges on
15 this question of adverse action, and you made a
16 very clear case that you did not view this as an
17 adverse action under Supplemental Policy 50.010.
18 But in fact, that B20-40 applied.

19 So if I can sort of stand outside of
20 the regulations, I know we can only do that
21 momentarily because this is critical since
22 noncompliance and consistency and due process are

1 all at stake here. But it's hard for any
2 objective person looking at the situation, in
3 retrospect admittedly, to not see the loss of
4 Title IV as having -- I'll use the phrase,
5 adverse impact. This is a big deal.

6 And institutions -- any entity
7 acquiring institutions it seems to me would want
8 clarity about that, reassurance about that, and a
9 sense of what's possible. So an offer was made,
10 as you described it, to Dream Center and the
11 institutions to accept a candidacy with
12 conditions. Were the options to them outlined at
13 that point?

14 If they decided not to accept, did
15 they have clarity? Did you outline clearly for
16 them what their options would be if they did not
17 accept that offer? And did that -- if they did
18 not accept, would their Title IV eligibility
19 continue through whatever subsequent process
20 would apply? And would that process include some
21 form of appeal?

22 DR. GELLMAN-DANLEY: Let me go quickly

1 with that and then turn it over to Dr. Sweeney.

2 I'd like to make a comment based on something
3 that Assistant Secretary King said which was end
4 of semester, when he was answering a question to
5 you. I do know for certain that the initial
6 conversations were very clear that, look, there's
7 a lot of problems, folks. There's problems
8 historically with these institutions.

9 Rather than turn you down altogether,
10 here's an option. If you move quickly, we will
11 work with you to expedite your accreditation as a
12 result. And we did not change the date of the
13 transaction to make it later, and we did not
14 start a challenge to everything that in effect
15 stopped down that move toward that accreditation.
16 So I think it's important to say that, and I'll
17 turn it over to Dr. Sweeney.

18 DR. SWEENEY: So again, the question
19 was if they rejected the candidacy condition,
20 were there options clearly laid out for them?
21 And the answer is yes. They understood that
22 change of control was part of substantive change

1 more generally.

2 And if they rejected the condition, it
3 simply meant -- and this was laid out in the
4 board's action letter -- that the approval would
5 be null and void. And the institutes would be in
6 the same position they would have been had the
7 board denied the application outright. Denial of
8 the application is not an adverse action.

9 DR. LeBLANC: So I just wanted to be
10 clear. I'm not using adverse action as a term of
11 art or a technical term in the way we use it in
12 these conversations, but to understand that this
13 would have -- let me use a different phrase -- a
14 catastrophic impact on the ability of these
15 institutions to continue operation. There was,
16 if I hear you correctly, no version of the
17 conversation in which they could fundamentally
18 appeal the actions that caused a catastrophic
19 impact for them. I don't think that's too strong
20 a term.

21 (Simultaneous speaking.)

22 DR. LeBLANC: You just described two

1 choices for them, and neither of them provide a
2 pathway of making their case to continue Title IV
3 eligibility.

4 DR. SWEENEY: I'm sorry. That's
5 incorrect. The institutes were accredited --

6 (Simultaneous speaking.)

7 DR. SWEENEY: -- decision and they
8 would have remained accredited after the denial
9 of their substantive change application. And
10 while they were in financial distress due to
11 declining enrollments and so forth, they could
12 have come back as any institution would after
13 denied substantive change application. Or they
14 could have sought other revenue opportunities to
15 bolster their finances. So their accreditation
16 status would not have been affected by a denial
17 of the substantive change application, the change
18 of control application in this case.

19 DR. GELLMAN-DANLEY: Dr. LeBlanc,
20 there's one more point that I think is important
21 and that is we had no reason to not believe that
22 the early determination by the Department that

1 they could reach a not-for-profit status would
2 happen. We realized it wasn't guaranteed, but it
3 was a good signal. And in that case, the minute
4 they hit the not-for-profit status, they would've
5 been eligible for federal financial aid. Isn't
6 that correct?

7 DR. SWEENEY: That is correct. The
8 Department was going to have to evaluate based on
9 its three pronged test after the transaction
10 whether the institution met its definition of
11 nonprofit status. And because we had not taken
12 an adverse action, there would be no two-year
13 waiting period as if an adverse action had taken
14 place.

15 DR. LeBLANC: Can you clarify that
16 last point? As I understand it, loss of
17 accreditation does require 24 months minimum
18 dictated by departmental regulations. I don't
19 understand that to be an adverse action from a
20 technical sense. But quite simply, if you lose
21 your accreditation, it will be 24 months before
22 you can regain it. Are you saying that wasn't

1 the case?

2 DR. SWEENEY: I think we distinguish
3 between loss -- loss and withdrawal were not
4 synonymous in our policies. Voluntary forfeiture,
5 not synonymous with an adverse action. And if,
6 indeed, there was going to be a two-year waiting
7 period, this is something that the institutes had
8 notice of with the Department when they initiated
9 their pre-acquisition review.

10 They were told in that pre-acquisition
11 letter that there were several conditions tied to
12 that three prong test that the Department would
13 have to determine after the transaction had been
14 satisfied before it would deem the institutes to
15 be nonprofit institutions. An institution that
16 submits a change of control application as early
17 as May 1st, 2017 and understands that there is a
18 prospect here based on our policy. Remember
19 there are four options.

20 There was a fourth option, the
21 supplemental, that we never applied. But there's
22 a risk that the board could take that option,

1 right? That institution begins to advise and
2 counsel. It says, this is our plan. They
3 certainly were capable of prematurely saying,
4 we're going nonprofit.

5 Use that energy to communicate with
6 their students and to say, look, we're planning
7 to sell pending HLC approval. There are risks
8 involved. Let's help you figure out what your
9 academic choices are. Being transparent and
10 forthcoming with students is integral to HLC
11 policies. When institutions don't follow those
12 policies, they rob students of meaningful
13 opportunity to make choices for their future.

14 DR. LeBLANC: Thank you. I want to
15 switch gears just a little bit and talk a little
16 bit about something again that Secretary King
17 brought up which was this question of harm to
18 students and the ways that HLC did or did not try
19 to mitigate against that harm. So in January --
20 there's a lot of dates to keep straight. January
21 20, 2018, letter to DCEH, you made it clear that
22 they're pre-accredited and that their courses and

1 degrees did not carry HLC accreditation. That
2 should be made clear to the students.

3 The following months, the officials
4 from DCEH met with FSA officials who confirm
5 they're no longer accredited. There was some
6 back and forth about DCEH messaging or not
7 messaging. And then we get this question of
8 retroactive accreditation.

9 So could you sort of just walk me
10 through how retroactive accreditation -- I just
11 want to make sure that I'm clear about this.
12 This was first raised by DCEH's attorney if I
13 heard the events correctly and I think I have it
14 documented here. I have pages and pages all over
15 my desk. Or did it first come up with Under
16 Secretary Jones? Did Dr. Jones raise this
17 question?

18 DR. SWEENEY: It first came from the
19 corporation's external counsel late June.

20 DR. LeBLANC: That was a June 24th
21 letter, I believe, correct?

22 DR. SWEENEY: That's correct.

1 DR. LeBLANC: And you said at the
2 point I believe -- HLC said, excuse me, that --
3 excuse me, retroactive accreditation was not
4 possible. Why was that not possible?

5 DR. SWEENEY: Our accreditation policy
6 provides that the effective date of any action
7 that HLC takes will be the date of its action.
8 There's a narrow exception related to initial
9 accreditation that allows HLC's board to grant
10 accreditation to a new institution that has met
11 all of its accreditation requirements except that
12 it hasn't graduated that first class as required
13 by our policies. And so it allows the board to
14 deem the date of accreditation to be within 30
15 days, if the graduation occurs within 30 days,
16 that is.

17 There's been internal debate about
18 whether that's actually retroactive or a
19 forward-looking policy. But that was the only
20 provision in policy that approached even
21 minimally what was being proposed here. That's
22 why it was unusual.

1 DR. LeBLANC: So your understanding
2 was that the policy expressly prohibited -- or
3 let me rephrase -- made crystal clear when
4 accreditation could be dated from. And it did
5 not allow for the concept of retroactive
6 accreditation with this narrow exception. Is
7 that fair?

8 DR. SWEENEY: That is fair.

9 DR. LeBLANC: You sought further
10 guidance from the Department at that point. What
11 guidance did you receive?

12 DR. SWEENEY: I reached out and got
13 from our analyst a memo to accreditors that had
14 been authored by Mr. Bounds, the director of the
15 accreditation group, that appeared to approach
16 this topic about retroactive accreditation. At
17 least that's how that memo was commonly
18 understood at HLC to frown upon retroactive
19 accreditation. The context was slightly
20 different. It talked about backdating approvals
21 to the date of an evaluation. But HLC as a
22 conscientious accreditor interpreted this as no

1 retroactive accreditation.

2 DR. GELLMAN-DANLEY: And if I might,
3 Dr. LeBlanc, might I add a quick point?

4 DR. LeBLANC: Please.

5 DR. GELLMAN-DANLEY: Yes, I
6 specifically recall a CRAC, the Council of
7 Regional Accrediting Commission, where we were
8 told months later that that policy was going to
9 go away. And the accreditor was, like, whoa, you
10 just said you can't do it. Now you can.

11 And so I think it's important to note
12 that there was nothing unclear about Dr. Bounds'
13 memo. No retroactive accreditation. Follow the
14 rules. So it wasn't really our policy alone. It
15 was that.

16 DR. LeBLANC: But retroactive
17 accreditation continues to be a topic of
18 conversation in the documentation. When did it
19 next come up? In that instance, it came up
20 through DCEH. When did it next come back to you?

21 DR. GELLMAN-DANLEY: I'll take that.
22 We had several calls with Principal Under

1 Secretary -- I want to make sure I say it right
2 -- Dr. Jones and the we is all the regional
3 accreditors, and sometimes other accreditors, but
4 the regional accreditors in this case. And
5 subsequent to that, there were some calls
6 individually with HLC and the idea of retroactive
7 accreditation was brought up, at which point I
8 said, she hadn't been in the job forever. So I
9 said, you might not be aware that previously that
10 a policy came into place that doesn't allow that.
11 And at that point, she said, gee, I don't think
12 that should've happened and I'm going to follow
13 up.

14 DR. LeBLANC: Okay. Is that the
15 conversation in which Dr. Jones asked you to work
16 exclusively with her and not the staff on this
17 question?

18 DR. GELLMAN-DANLEY: That's an Anthea
19 call, not me. Anthea?

20 DR. SWEENEY: So precisely, we next
21 heard in late June from Dr. Jones. She reached
22 out to Dr. Gellman-Danley who then asked me to

1 call her back. And on that return call when we
2 were done playing phone tag, yes, that was the
3 conversation in which she expressed
4 disappointment that the June 2017 memo had been
5 provided at all. And she asked that HLC work
6 with her directly on this matter.

7 DR. LeBLANC: And with this matter, do
8 you understand that matter to be the question of
9 retroactive accreditation in a broad sense? Or
10 did you understand that to be retroactive
11 accreditation in the case of the institutes and
12 Dream Center EH?

13 DR. SWEENEY: The latter.

14 DR. LeBLANC: Okay. My understanding
15 again with copious documentation is that you're
16 also hearing from Department staff on the
17 question of retroactive accreditation. And we I
18 say hearing from them that this is subsequent to
19 the earlier guidance you sought. Is that
20 correct?

21 DR. SWEENEY: Yeah, it was -- I'm
22 sorry. You're asking whether there was contact

1 with other Department staff. Is that right?

2 DR. LeBLANC: Yeah, that you had a
3 conversation with Secretary Jones. She asked you
4 to work exclusively with her, and you understand
5 that to be specifically to the case of Dream
6 Center EH. But I believe --

7 DR. SWEENEY: All right.

8 DR. LeBLANC: -- that in the line
9 response to the Department's investigation that
10 you were at the time also still in conversation
11 with other Department staff.

12 DR. SWEENEY: That's correct. Yes.
13 Retroactive accreditation as a phrase was
14 commonly understood here to be verboten. So when
15 we first heard the unusual proposal, I reached
16 out to our analyst first to confirm my
17 understanding. That's how the June 6 memo comes
18 to me.

19 So once Dr. Jones reached out and we
20 connected, by that time, I was already going back
21 to Ms. Daggett to say somewhat awkwardly, there
22 seems to be inconsistent guidance coming from the

1 Department. I was really being very careful with
2 my wording because of how diametrically opposed
3 the positions were.

4 DR. LeBLANC: And what was the --
5 well, how would you sum up the guidance you
6 received from Ms. Daggett at that point in terms
7 of this question?

8 DR. SWEENEY: I believe it was the
9 same evening if not the next. But I think
10 actually, no, it was the same evening. Both Mr.
11 Bounds and Ms. Daggett called me together. Ms.
12 Daggett apologized first for providing the memo,
13 and then Mr. Bounds explained why the memo was
14 inapplicable to this situation.

15 DR. LeBLANC: This is new to me. So
16 the memo in question here is that earlier memo,
17 sometimes described as the Bounds memo that gave
18 guidance on retroactive accreditation. Could you
19 --

20 DR. SWEENEY: That's right.

21 DR. LeBLANC: -- review -- can you
22 remember and summarize what was the explanation

1 for why that particular guidance would not be
2 applicable in this particular case?

3 DR. SWEENEY: Because the context
4 expressed there had to do with retroactive
5 accreditation back -- in the sense of backdating
6 the effective date of board action to a site
7 visit. And that clearly was not the context
8 here. This was much more attenuated, let's say.
9 So essentially, he explained that the precise
10 example represented in his memo was not the
11 reality here. And therefore, that memo was not
12 applicable to this situation.

13 DR. LeBLANC: So it's not until July
14 25th that Under Secretary Jones releases new
15 Department guidance allowing retroactive
16 accreditation. But 22 days before that on July
17 3rd in an email, HLC says its board will now
18 consider retroactive accreditation. But you also
19 wanted reassurances. Could you explain?

20 DR. SWEENEY: Yes.

21 (Simultaneous speaking.)

22 DR. LeBLANC: Forgive me for

1 interrupting you. But just to be maybe a little
2 bit more helpful, I also believe that -- did you
3 seek a letter from Under Secretary Jones saying
4 that retroactive accreditation would have no
5 impact on HLC standing if you were to grant it in
6 this case?

7 DR. SWEENEY: That's right. We had
8 discussed it internally. And Barbara, I'll let
9 you weigh in certainly on this one. Because it
10 would have involved, if our board was going to
11 consider it at all, a policy change on two
12 readings with public comment, we wanted
13 assurances. Barbara asked that if we were going
14 to even bring up the idea with our board, we
15 would need something that would allow our board
16 to understand in writing how or why the
17 Department's position on retroactive
18 accreditation was different at that time compared
19 to what was stated in the June 2017 memo by Mr.
20 Bounds.

21 DR. GELLMAN-DANLEY: I can say very
22 briefly what happened, if I might, and that is

1 you can have great conversations with your
2 colleagues at the Department. But when the
3 rubber hits the road, in order to assure we
4 follow policies consistently, we said the oral
5 conversation is not sufficient. We need to see
6 something in writing because all we had in
7 writing were past declarations of what not to do.
8 And so it made no sense for us to just proceed
9 without clarification which actually I believe
10 any accreditor would've thought that way. Let's
11 just get it in writing.

12 (Simultaneous speaking.)

13 CHAIRMAN KEISER: Paul, before you --
14 Paul, let me just say it's 11:43. At 12:00
15 o'clock, we are going to break for lunch. Okay?
16 I appreciate all the members sitting here the
17 whole time.

18 DR. LeBLANC: So Arthur, just for
19 clarification, are you telling me to go faster or
20 are you saying we'll just take the break at that
21 point and resume afterwards?

22 CHAIRMAN KEISER: Yeah, no, take your

1 time. Do what you have to do.

2 DR. LeBLANC: Okay.

3 CHAIRMAN KEISER: But we'll take a
4 break at 12:00.

5 DR. LeBLANC: Okay. Thank you.

6 DR. SWEENEY: Dr. LeBlanc, may I
7 clarify one item? You asked specifically about
8 the phrase, we might consider earlier
9 reinstatement, and I really need to clarify that.
10 Recall that from the original board action
11 letter, there was a statement that the period of
12 change of controlled candidacy could last as
13 short as six months or as long as four years, the
14 maximum period of candidacy under our policy.

15 And remember that the board was
16 hopeful that the institutes could demonstrate
17 evidence that they could be reinstated earlier.
18 So the reference to that phrase had to do with
19 the range and whether or not despite the terms of
20 the board letter, the institutes worked hard
21 enough, quickly enough despite the staggered
22 schedule of monitoring to demonstrate, hey, look,

1 we're under new ownership. We meet all of your
2 requirements.

3 There was an openness and a
4 willingness for Barbara to take a recommendation
5 to the board for an earlier reinstatement of
6 accreditation. But this would not have been
7 retroactive accreditation, and that distinction
8 has often been lost. So I wanted to make that
9 clear.

10 DR. LeBLANC: Was -- in that email of
11 July 3rd, you sought documented reassurance. Was
12 it forthcoming?

13 DR. SWEENEY: If by forthcoming you
14 mean imminent --

15 DR. LeBLANC: No, I mean, did you
16 receive a letter? Did you receive an offer? I
17 think this is -- you had subsequent interaction
18 with Under Secretary Jones. Did Dr. Jones say
19 that she would make available a letter saying
20 that retroactive accreditation would have no
21 impact -- negative impact on HLC standing?

22 DR. SWEENEY: She referenced that they

1 were working on removing the Bounds guidance --
2 sorry, Mr. Bounds -- but that she understood how
3 inconsistency in the Department can be confusing
4 and frustrating for accreditors. And don't
5 worry, HLC. I'll get you something in writing.
6 I understand how it goes, sort of, was the tenor
7 of that email.

8 DR. LeBLANC: And consistent with that
9 on July 25th, Under Secretary Jones released new
10 departmental guidance allowing retroactive
11 accreditation. At that point, HLC seems to
12 indicate that if its review led to a board vote
13 okaying retroactive accreditation, it would be
14 only for 30 days. Was that HLC policy? Was that
15 Department policy? Why 30 days?

16 And clearly from Dream Center's and
17 the institutions' perspectives, 30 days would not
18 be adequate for what it was seeking. Could
19 unpack that 30-day question? Whose policy drives
20 30 days?

21 DR. SWEENEY: We had a policy called
22 accreditation, and we still have it, that talks

1 about 30 days. It wasn't clear to us. And in
2 fact, we didn't interpret the July 25th memo that
3 was issued to accreditors in 2018 as being the
4 letter Diane -- I'm sorry -- Under Secretary
5 Jones had specifically indicated she would
6 provide to HLC.

7 DR. LeBLANC: So this is HLC's policy,
8 not Department policy, just to be clear?

9 DR. SWEENEY: Yes.

10 DR. LeBLANC: And you believe that in
11 that position, you were simply being compliant
12 with your own policy?

13 DR. SWEENEY: You mean by taking the
14 position that we had at the time that we couldn't
15 do anything about --

16 (Simultaneous speaking.)

17 DR. SWEENEY: Yeah, that's right. We
18 were adhering to our own policy.

19 DR. LeBLANC: Thank you. Did Dr.
20 Jones then reach out again with suggestions about
21 how to handle the 30 days or to manage that
22 somehow?

1 DR. SWEENEY: Not to my knowledge.

2 Barbara?

3 DR. GELLMAN-DANLEY: Not to my
4 knowledge, no.

5 DR. LeBLANC: So what happens next?
6 I believe you received a letter on December --
7 excuse me, October 31st, '18. Could you describe
8 sort of that letter from -- I believe it was from
9 Dr. Jones?

10 DR. GELLMAN-DANLEY: Yes. I just
11 would like to give the context of that. That was
12 a committee day for our board. The full board
13 met the next day. But a couple days earlier, I
14 was flying back from D.C. which I did very often
15 until the past five months. I was flying back
16 from D.C., and I got a call from Dr. Jones that
17 she found a way to make it easy.

18 She was very cordial, and I got an
19 easy way you can do retroactive accreditation and
20 I'll get you something soon. And I said, well,
21 that doesn't mean our board is going to follow
22 it, and we have all the policies. But I'm

1 certainly open to -- I would never, ever say to
2 someone, I won't read or listen to what you say.

3 And then --

4 (Simultaneous speaking.)

5 DR. GELLMAN-DANLEY: -- I was at the
6 board meeting.

7 DR. LeBLANC: Just a clarifying point.
8 This phone call, this communication, did this
9 happen after you affirmed that even if you did
10 grant retroactive accreditation, it'd only be 30
11 days? Was this conversation subsequent to that?

12 DR. GELLMAN-DANLEY: Not at all, no.
13 The conversation was about I have a way to let
14 you do something that is not currently available
15 for you to do in your policy.

16 DR. LeBLANC: Thank you.

17 DR. GELLMAN-DANLEY: Okay. So then
18 fast forward to that night. I don't think you
19 need to know the timing. I was tied up. I ended
20 up talking to Dr. Jones later. I asked Dr.
21 Sweeney to join me for her expertise.

22 And it was only after I read the

1 letter -- which was shocking. And we use the
2 word shocking, because a long complicated letter
3 that says you did something wrong is very
4 different than any conversation we had ever had,
5 ever. It was about, how should we make sure the
6 institutes are successful? What can we do? Are
7 there other opportunities, et cetera, for the
8 institutes, et cetera?

9 They were all over the map, different
10 accreditors. And then all of a sudden, we get
11 this letter. So I asked Dr. Sweeney to join me
12 and we tried to understand the letter because I
13 barely had time to read it. All of you have
14 extensive expertise with boards of trustees, et
15 cetera. And when you're in a meeting with the
16 board, you don't sit there and read other things.
17 You pay attention.

18 And so I took a quick look at it, and
19 I did not understand why for the first time we
20 were hearing we had done something wrong. We had
21 all these conversations prior. I was very
22 surprised. I can't hide that emotion. I was

1 shocked.

2 And I said, I don't understand. I
3 thought a couple days ago -- I'm not saying we
4 promised anything, to do anything, but -- with
5 our own policy, but you said you had this kind of
6 easy idea. I don't understand.

7 And she said -- no offense because
8 there are an awful lot of lawyers in the room.
9 So I think there was no ill intent, I just want
10 to say that to all of you with your excellent
11 legal background. She said, well, you know how
12 lawyers write. Okay? And so I said, but that's
13 a letter we have.

14 And she said -- and I said, I'm
15 uncomfortable because the way the triad works, I
16 sense you're trying to get me to do -- get our
17 board to do something at this meeting, that's not
18 common practice. And so she said, no, no, I
19 don't want to offend anybody. We'll just take
20 the letter back.

21 And then a couple hours later, I got
22 a call that said, look, here's the deal. Just

1 send us a paragraph. Say you're going to look
2 into your policy. And I said, okay. And that's
3 what we did. So we complied with that request.
4 And that's a very brief version of the
5 interaction. And we did not hear anything until
6 a year later.

7 DR. LeBLANC: Okay. So on the prior
8 12 months, you had no flags raised by anyone in
9 the Department?

10 DR. GELLMAN-DANLEY: No, no.

11 DR. LeBLANC: And --

12 DR. GELLMAN-DANLEY: The conversations
13 we had were more about, what do we do with these
14 institutions? How do we make it work, et cetera?

15 DR. LeBLANC: So in the simple letter
16 that Under Secretary Jones asked for and that you
17 supplied, subsequent to that, do you remember the
18 next time you heard that there were issues?

19 DR. GELLMAN-DANLEY: October 24th, a
20 year later.

21 DR. LeBLANC: So another 12 months go
22 by. So roughly two years from the original

1 action now in question at this hearing before the
2 inquiry?

3 DR. GELLMAN-DANLEY: That's correct.

4 DR. LeBLANC: And do you believe that
5 the concern -- in the critical letter and now, do
6 you believe the concerns raised in the
7 investigation have been addressed? Do you
8 believe that you have addressed the issues with
9 Supplemental Policy 50-10 and the questions of
10 conditions around candidacy? To the best of your
11 knowledge, what have you all not yet addressed?

12 DR. GELLMAN-DANLEY: I can't think of
13 anything. I'm going to turn that over to Dr.
14 Sweeney for a brief response with respect to our
15 time.

16 DR. LeBLANC: And we're coming up on
17 the last eight minutes before lunch. So Dr.
18 Sweeney, will you keep it very brief? And I'm
19 wrapping up because when we return, I will be
20 handing over to my colleague, Mary Ellen.

21 DR. SWEENEY: Thank you, Dr. LeBlanc.
22 Briefly, we have taken every possible measure in

1 our policies, not only to remove the policy that
2 the Department has expressed concerns about but
3 to remove every possible path that I described in
4 my first answer that would allow HLC's board to
5 either move an institution from accredited to
6 candidate status or offer candidacy as a
7 condition. So as far as our policies go, we have
8 done everything possible. Even in our procedures,
9 we have explicitly said, no condition could alter
10 an institution's accredited status.

11 DR. LeBLANC: Then I'm going to finish
12 with my final question. Really, it's probably to
13 you, Dr. Gellman-Danley, which is we're looking
14 at a process and there has been, fair to say I
15 think, allegations that the agency feels there's
16 a punitive quality to this investigation. So I
17 would ask, in your experience, have you had a
18 prior experience in which the senior Department
19 official or the Under Secretary has sort of
20 intervened in an individual case in this active
21 manner in the past, to be (audio interference)
22 conduit in the matter?

1 DR. GELLMAN-DANLEY: I've been with
2 the Higher Learning Commission for six years.
3 This was the most involvement. I do not want to
4 use the term intervene. That's judgmental, and I
5 don't intend to do that. It'd be conjecture.
6 But I would say the communication that was as
7 interested and passionate and directed and
8 somewhat confusion had not happened prior.

9 DR. LeBLANC: Yeah, and let me just be
10 clear. I don't use intervene, (audio
11 interference) pejoratively. (Audio interference)
12 are better. Interjected (audio interference)
13 involved. And has it been your experience to
14 have the departmental staff sort of removed from
15 the process in the way that was described in your
16 response to the Department's inquiry?

17 DR. GELLMAN-DANLEY: It is normal
18 process that we would deal with our analyst and
19 Herman Bounds because of their role in the
20 accreditation office and federal financial aid in
21 the regional areas or Mr. Frola as appropriate
22 within the Department. Those are the individuals

1 that we've worked with. Previous administrations
2 or experience, the individuals in the other
3 higher level positions would interact with us
4 more at the helicopter level as opposed to more
5 directly.

6 DR. LeBLANC: And so -- I'm sorry.
7 The investigation was underway, and I believe --
8 had you responded to the investigation (audio
9 interference) by the time the departmental press
10 release was sent out that was critical of the
11 (audio interference)? Have you had yet a chance
12 to respond?

13 DR. GELLMAN-DANLEY: No. I don't
14 think we had a chance to respond. I'll ask
15 Anthea if I'm wrong on the timing. But I will
16 tell you we were at a board meeting and we were
17 quite disappointed to see that. And the one
18 thing I would encourage no matter what happens
19 here today is transparency and giving us
20 opportunities to have more communication that's
21 effective communication versus that kind of
22 approach.

1 (Simultaneous speaking.)

2 DR. GELLMAN-DANLEY: Am I correct,
3 Anthea?

4 DR. SWEENEY: You are correct. We
5 have not responded to the November 8th, 2019
6 press release.

7 DR. LeBLANC: I guess then I'll finish
8 by reminding my colleagues that legislation gives
9 us the ability to give feedback to the Secretary
10 around ways to improve our processes and to
11 improve the processes of the Department and the
12 agencies. So I think this goes to a process
13 question. To that end, I'd like -- George, I'd
14 like to sort of have read into the record
15 yesterday's House Committee on Education and
16 Labor Report which has a lot of, I think,
17 documentation which would be useful for the
18 senior officials' review when that officially
19 happens. So I can send that to you, George,
20 along with the accompanying documents. I believe
21 that's permissible.

22 (Simultaneous speaking.)

1 DR. LeBLANC: And I'll hand it over to
2 you. Thank you all, all of you at HLC for your
3 patience as we work through pretty complicated
4 details.

5 CHAIRMAN KEISER: Thank you, Paul, for
6 a very lengthy questioning period. Mary Ellen,
7 do you mind if we come to you after lunch?

8 DR. PETRISKO: That sounds like a good
9 idea. Thank you.

10 CHAIRMAN KEISER: Okay. I'm going to
11 -- George, I think I'm going to try to ask
12 everybody to stay on. You can turn your cameras
13 off if you want, but we will re-adjourn at 1:00
14 exactly. I'm a stickler for time. So 1:00, we
15 will continue the conversation.

16 (Whereupon, the above-entitled matter
17 went off the record at 11:59 a.m. and resumed at
18 1:00 p.m.)

19 CHAIRMAN KEISER: Again, I want to
20 thank everybody for being back on time. We will
21 continue with the conversation with the Higher
22 Learning Commission. Mary Ellen who is also one

1 of the primary readers will now ask questions at
2 which point the other members of the committee
3 will have an opportunity to ask questions. I
4 just want to remind those who are recused,
5 because usually we would've asked you to leave
6 the room but we can't ask you to leave the room,
7 is you do not have the opportunity to ask
8 questions nor do you have an opportunity to vote
9 or to communicate with us. So at this point,
10 Mary Ellen, it's your ball game, speaking of Red
11 Sox.

12 DR. PETRISKO: Thank you very much.
13 So before I start talking about policy and I want
14 to really get down to policy because the question
15 here is about the extent to which HLC followed
16 its own policy and due process and appeals, which
17 is part of policy. So I want to really look at
18 those policies together.

19 But before I do, I just want to say
20 really briefly about the retroactive guidance. I
21 was allotted an accreditor at the point that
22 there was some discussion on this. And just so

1 it's clear, the guidance is very clear that
2 accreditation actions were to be dated on the
3 date the commission actually acted. They could
4 not be before that.

5 The guidance was based on 34 CFR
6 602.22 which is on substantive change and a
7 rather narrow condition of that. But it was
8 interpreted that that applied more broadly. So
9 that was the previous guidance, and now the
10 guidance has changed. So for those who didn't
11 know what the previous guidance was, that's what
12 it was.

13 But on to policy. Thank you, Dr.
14 Gellman-Danley, Dr. Sweeney, in particular for
15 your introduction to this and your comments on a
16 lot of the policy questions already. If I may
17 address my first question to Dr. Sweeney, and it
18 is kind of a broad question.

19 The main policy in question here on
20 the part of the Department is 50-10 which is
21 accreditation to candidacy status. And you
22 mentioned that that was a supplemental policy.

1 So a general question so that I can understand
2 your policy structure and how you apply it. Is
3 there a difference between the status of some
4 policies and how they support other policies? I
5 would like you to know that when looking at
6 50.010, the accreditation to candidacy status, it
7 notes that a related policy is, in fact, a change
8 of candidacy -- I mean, change of control. So
9 can you say -- are there supplemental policies,
10 or are all the policies on the same level?

11 DR. SWEENEY: Yes, I'm happy to answer
12 that, Dr. Petrisko. The way that HLC's policy
13 book is organized is not a framework that may
14 easily be understood by those who are outside of
15 our organization. But it is certainly
16 transparent and understood by those who hold
17 membership status with HLC.

18 And so as I go through this, I want to
19 be clear that looking at all of our policies and
20 asking questions about our policies if there is a
21 misunderstanding, is an obligation that our
22 institutions have. So taking our policies and

1 procedures together, what we're calling the
2 supplemental policy, E50-10, and we're saying
3 supplemental here for ease of reference because
4 we realize this is a verbal presentation. You
5 don't have our remarks in front of you. It was
6 housed within our sanctions policies because it
7 was in the nature of a sanction in that that
8 policy's application would result in the right to
9 appeal.

10 DR. PETRISKO: Okay. Thank you. So
11 you mentioned that the two policies that were in
12 question here were 20.040 which is change of
13 control and 20.070 which is the processes for
14 change of control. And there's a procedures
15 document that goes along with that.

16 So when I look at the first two of
17 those, 20.040, change of control, how it explains
18 what that means, and then 20.070, the processes
19 for seeking, there's nothing said, and that's
20 understandable, about what the action will be
21 when the commission looks at an application for
22 change of control. So this just talks about what

1 it means and what to do if you want to apply for
2 one.

3 Two other policies that have been
4 brought in here, we just talked about 50-10,
5 which is the Department has really raised the
6 questions about, and 70 which is the procedures,
7 that's where -- and the appeal policy. I want to
8 bring that up as well because, again, we're
9 talking about following policy and we're talking
10 about due process. I think all of these are
11 relevant.

12 So the 50-10 -- which as you noted, is
13 in the chapter about sanctions and it's below the
14 processes -- different kinds of processes --
15 notes that it's related to the change of control.
16 So there is a relationship there. And that
17 policy states pretty clearly in the very
18 beginning -- and I'll read it. I'm sorry it's
19 going to take some time, but I think this is
20 important.

21 The board must find that the
22 institution as a result of or related to the

1 change of control meets the eligibility
2 requirements and demonstrates conformity with
3 assumed practices but no longer meets all of the
4 criteria for accreditation and federal compliance
5 requirements. So they're pretty good, but
6 they're not 100 percent. Must also find the
7 institution meets the candidacy requirements.

8 But here's the important sentence.
9 Moving an institution from accredited to
10 candidate status is an adverse action and thus is
11 not a final action and is subject to appeal. So
12 that policy itself which is linked to the change
13 of control, which we talked about kind of action,
14 does say that it's an adverse -- moving from
15 accreditation to candidate is an adverse action
16 and is subject to appeal.

17 I want to note also in the procedures
18 document, 20-70, there is a statement. There are
19 two statements. One is that there -- it can be
20 approved with conditions, and we've talked about
21 it quite a bit, can be approved with conditions.

22 And in the event of additional review

1 by the eligibility process or a fact finding
2 review, the board goes through these processes.
3 And at the end, it says, if the board determines
4 that the transaction forms a new institution
5 requiring a period of time in candidacy, then the
6 institution will have the opportunity to appeal
7 the change of control candidacy as described in
8 policy and the appeals policy.

9 The Appeals Policy 90-10 also says
10 that adverse actions are defined as withdrawal or
11 denial of accreditation -- that's when Candace
12 was going on -- withdrawal or denial of
13 accreditation, moving the institution from
14 accredited to candidate status. So it's true
15 that if you look at Policies 20.040 and 20.070
16 about change of control and how that happens, how
17 you apply and how it's treated, nothing is said
18 about appeal.

19 But when you look at these related
20 policies, it looks like -- clearly, it says, a
21 move from accreditation to candidate status is an
22 adverse action subject to appeal. So I guess I

1 just want to pull that apart a little bit and ask
2 if the condition of candidacy was presented as it
3 was in the November 16, 2017 action letter and it
4 was explicitly stated that the conditions had to
5 be accepted, why was the possibly -- why did it
6 not say if this is an adverse action, you can
7 appeal it or you can accept this condition and
8 we'll just move ahead?

9 DR. SWEENEY: Happy to answer this,
10 and I'll try to be brief. But I'll also sort of
11 follow along with the order that you presented.
12 You started by stating the standard that's
13 articulated in the supplemental policy, E-50-10.

14 Indeed, it can only be invoked if the
15 board finds prospective noncompliance with the
16 criteria for accreditation under new ownership
17 and with the federal compliance requirements.
18 But the institution must be found prospectively
19 to meet the requirements for candidacy which
20 would contemplate the eligibility requirements on
21 the assumed practices. This is why a close
22 examination of the original board action letter

1 is important.

2 The merits do matter because if you
3 examine the analysis that the board undertook in
4 November of 2017, they had no concerns about
5 prospective noncompliance with the criteria for
6 accreditation. Under our policies, a finding of
7 met with concerns still counts for compliance.
8 There was no mention of federal compliance
9 requirements and specific enumerated evidence of
10 prospective noncompliance there.

11 The concerns were with the eligibility
12 requirements. If you look at the analysis
13 undertaken in November 2017, it could appear at
14 first that the board misapplied the supplemental
15 policy, didn't follow the standard, and somehow
16 arrived at an adverse action. The truth is
17 that's simply not the analysis the board applied.
18 That's not the policy that was in operation in
19 November 2017.

20 The board actually found, if anything,
21 the reverse. It found prospective compliance
22 with the criteria for accreditation although with

1 some concerns. And it listened to the -- or read
2 or reviewed the findings in the staff report that
3 enumerated several concerns with eligibility
4 requirements and four in particular related to
5 stability, planning, integrity, and accreditation
6 records that the team that visited the institutes
7 anticipated would not be met.

8 Right there if the board agreed with
9 the team's analysis, those institutes would not
10 have met their requirements for candidacy. So to
11 examine the underlying merits and conclude that
12 the board misapplied the supplemental policy, you
13 would have to ignore the fact that there are
14 other paths that the board could have taken to
15 get to the same result. And the supplemental
16 policy is tempting because its title is very
17 simple, moving from accredited to candidate
18 status.

19 So if you encourage folks to ignore
20 the underlying merits, it's very easy to say,
21 look at the outcome. Look at the title of this
22 policy. This must be the one that was applied.

1 It simply wasn't the case.

2 To the second half of your question
3 where you talk about the procedures, you're
4 right. Under HLC procedures in effect at the
5 time, where the board determined that the results
6 of the change of control would be a new
7 institution that would be required to spend a
8 time of -- a period of time in candidacy, that
9 would be appealable. And if that so-called new
10 institution was determined for whatever reason to
11 be attempting to bypass HLC's eligibility
12 process, the other policy directed the board to
13 deny the application.

14 But the board certainly had the
15 discretion to require an additional review to
16 determine whether, in fact, an eligibility
17 process bypassed, so to say it was being
18 attempted. So in other words, where it was
19 determined that after a change of control, the
20 resulting institution would not meet candidacy
21 requirements let alone accreditation
22 requirements, the board was directed by the

1 procedures to deny the application. But here the
2 board, because of due process, took into account
3 the institute's response to the staff report.

4 And let's acknowledge that there's
5 nuance and color in the process of evaluation.
6 Accreditors, boards, decision-making bodies can
7 examine the same evidence and take into account
8 additional evidence in coming to a different
9 conclusion about the extent of an institution's
10 compliance. Remember this is a forward-looking
11 exercise. Everyone is trying to calculate,
12 what's the extent of this institution's
13 compliance going to look like after the
14 transaction takes place?

15 That is certainly nuanced, and perhaps
16 reasonable minds could disagree about the level
17 of prospective compliance. And remember that at
18 the time of the decision, the institutes were
19 both in compliance with HLC requirements. So it
20 was possible on November 2nd, 2017 for HLC's
21 board to say, these institutes are in sufficient
22 compliance to meet the requirements for

1 candidacy.

2 But because of the level of concern
3 that was expressed in the staff report and the
4 relative nascent effect of new evidence that had
5 been presented recently, we're going to say we're
6 going to offer candidacy instead of requiring it.
7 Offer it as a choice, a condition of our
8 approval. They can accept or reject the
9 conditions.

10 If they don't want to accept the
11 conditions, then they're no worse off than they
12 are now. They don't have to go through with the
13 transaction. No board approval, let's be clear,
14 would require institutions to actually go through
15 with a change of control transaction.

16 The federal regulations say, if you're
17 going to go through with it, it's got to be
18 within 30 days of a board action. But HLC has
19 procedural mechanisms to allow for the board to
20 extend its accreditation. Indeed, these
21 institutes asked for an extension.

22 DR. PETRISKO: If I understand

1 correctly what I read in the action letter and
2 what you're saying now, at the time the action
3 was taken, the commission's decision or judgment
4 was that there were some concerns with the
5 eligibility requirements and there were some
6 concerns with standard practices and
7 accreditation standards possibly. Not enough to
8 say, we have to go back to the drawing board 100
9 percent. Enough to get this status.

10 But you also said something about
11 prospectively looking at what they thought the
12 possibility would be for compliance and worried
13 about the future compliance. So an action was
14 taken based on what they believed could be the
15 case in the future based on the evidence they had
16 at the time. Is that accurate to say that?

17 DR. SWEENEY: I think it is and
18 they're balancing at the same time the extent of
19 what the institutes look like today with that
20 information. So if you examine our policies, you
21 will see that under the processes policy which
22 articulates the evaluative framework for how the

1 board looks at change of control applications,
2 there are five approval factors, the third of
3 which talks about whether there's a substantial
4 likelihood that after the transaction takes place
5 -- or after the change of control takes place,
6 because not all changes of control are
7 transactions -- whether there's a substantial
8 likelihood the institution will continue to meet
9 HLC's criteria for accreditation and eligibility
10 requirements.

11 So right there in that third approval
12 factor is this language, substantial likelihood
13 after the change of control. That's why we know
14 the change of control evaluation is something
15 slightly different from a comprehensive
16 evaluation. Those other evaluations are looking
17 at your compliance today and today only. Change
18 of control is looking at where you are today,
19 where we expect reasonably based on everything
20 that we have in front of us where you're likely
21 to be after the transaction is completed.

22 DR. PETRISKO: Okay. So in other

1 words, at the time of the action, the
2 institutions who are accreditable and accredited,
3 looking forward, there were questions because of
4 what was going to change, whether that would
5 continue to be the case. And so this action was
6 taken to be sure -- to the extent it was possible
7 to be sure that the institution was in compliance
8 with the eligibility requirements and the
9 standards, that there would be this follow-up
10 reporting, et cetera, and there would be a list.

11 (Simultaneous speaking.)

12 DR. PETRISKO: Okay. I have a couple
13 different questions now about appeal. And
14 ultimately, HLC did agree to allow for an appeal.
15 But the first request for appeal came out in a
16 letter of February 2nd. This letter has been
17 talked about a lot because it's where all the
18 confusion is. You have pre-candidacy,
19 pre-accreditation candidacy, and what does that
20 mean?

21 At the very end, there was a request
22 to say they wanted to appeal. And there's a

1 response that really explains the accreditation
2 status. And the difference between accreditation
3 status and an accredited status. Those might
4 sound the same to some people, but we know, you
5 know, it doesn't sound the same to us. So
6 there's a very clear explanation about that. But
7 the thing about appeals didn't come up in the
8 response. Can you say anything about that?

9 DR. SWEENEY: To my knowledge --
10 because I was in a different role at the time. I
11 was the liaison and not communicating directly
12 with external counsel at that time. There were
13 phone conversations followed by official
14 correspondence.

15 There was clarification around why the
16 institutes or their counsel thought that perhaps
17 they were in a different status from the one they
18 had agreed to. And it had to do with the level of
19 detail that we provide in our public disclosure
20 notices. Our Public Disclosure Notices, PDNs,
21 are designed for lay people, primarily students.
22 It's HLC's own obligation, and in reference --

1 (Simultaneous speaking.)

2 DR. PETRISKO: My question was a
3 totally different question. My question is --
4 and it was passed on at the very end of the
5 February 2nd letter. I grant you that. The
6 question is, why was there no explicit response
7 to the issue of appeal that was in the February
8 2nd letter which HLC had determined is not
9 appealable. But there was no further mention of
10 appeal in a response to that letter. And I just
11 wondered, was that overlooked because it's a more
12 complicated issue of accreditation status? Or I
13 just didn't understand it.

14 DR. SWEENEY: It was not overlooked.
15 Again, I think there were a combination of verbal
16 and written communications that HLC was clearly
17 reminding the institutes in their response -- in
18 our response on February 7th of the condition
19 that the clients had accepted. And so the
20 voluntariness, the knowing choice that the
21 institutes had made was highlighted in that
22 letter to remind external counsel that this was

1 not an adverse action.

2 DR. PETRISKO: Okay.

3 DR. SWEENEY: So there was no right to
4 appeal.

5 DR. PETRISKO: Okay. So after May,
6 there was a -- the decision was made that because
7 of whatever reason, I don't think you need to go
8 into that, that HLC would, in fact, agree to an
9 appeal. There's a later -- and I'm sorry. I
10 didn't write down which letter this was in. But
11 I'm quoting from the document that -- and I don't
12 know, Dr. Sweeney, whether this is something for
13 you to respond to or Dr. Gellman-Danley or maybe
14 one of the board members.

15 Quote, HLC board considered whether
16 the institute's effective date of candidacy could
17 be changed from January 20th, 2018 to January
18 8th, 2019. So they did consider whether some
19 sort of retroactive action might be possible.
20 Upon notification that the HLC board would be
21 considering this action, the Department, through
22 Mr. Brinton (phonetic), who was mentioned before

1 as counsel for the Department, indicated to HLC's
2 counsel that such action would resolve the
3 entirety of this compliance inquiry.

4 However, on April 23rd, 2020, after
5 careful analysis and consideration, the HLC board
6 declined to take this action for a variety of
7 reasons. And one of the reasons that was noted
8 was that it could potentially be more harmful to
9 students. Can you talk a little bit more about
10 what went on here and how this decision was made?
11 It was considered, understandably, and the
12 decision was made to stick with the original
13 action. And there were concerns that students
14 expressed. So talk a little bit more about that,
15 whoever is the appropriate person to address
16 that.

17 DR. GELLMAN-DANLEY: I don't know how
18 to raise my hand technologically in Webex, so I'm
19 just going like that. Thank you. Now, I will
20 say, retirement looks nice on you, you look very
21 relaxed.

22 I would like to point out that I

1 started it and I was middle of the night stressed
2 about what was going on with higher education,
3 because I got up to get a drink and I was reading
4 the Chronicle about how many horrible things were
5 going on in higher ed, which continue, and my
6 heart goes out to all of you who deal with that
7 directly.

8 And I thought, well, I don't know,
9 maybe we should at least look at this against the
10 policy we had in place, that was very clear that
11 you can do no harm, that you would not be causing
12 harm to the students by making any kind of
13 change.

14 And I thought about it and I said,
15 well, let's just have a discussion with the
16 board. In light of that, it was brought to the
17 board and we determined there actually would be
18 harm and that is why it did not go forward.

19 But I would actually like to refer to
20 our attorney, our outside counsel for a moment,
21 because you reference the Department saying
22 that's all it would take and she had that

1 conversation. And then we can go back to Anthea
2 and me. Julie?

3 DR. PETRISKO: Thank you.

4 MS. MICELI: That's right. I made
5 that remark in my opening. There was an
6 extensive period of back and forth. In fact, I
7 think this was probably the time period in which
8 Assistant Secretary was --

9 DR. PETRISKO: I can't hear you, your
10 sound is off.

11 EVENT PRODUCER: We lost your audio.

12 CHAIRMAN KEISER: Julie, we lost your
13 audio. Julie? Julie?

14 EVENT PRODUCER: She might be
15 disconnecting and can't hear us.

16 CHAIRMAN KEISER: Julie?

17 MS. MICELI: Can you hear me now?

18 EVENT PRODUCER: Yes.

19 MS. MICELI: Can you hear me now?

20 Could you hear me at the beginning, when I
21 started?

22 DR. PETRISKO: Yes, please go ahead.

1 MS. MICELI: Okay. Then, thank you,
2 and if it's helpful, I will go back.

3 So, that is correct. I think
4 Assistant Secretary King referenced there was a
5 period of about 53 days in total when we were
6 working with the Department that we had sought
7 extensions.

8 And some of that time period actually
9 was so that the HLC, yes, so that HLC and the
10 Department could talk and try to figure out, we
11 were seeking clarity as to what it was that the
12 Department meant, what kind of action was the
13 Department looking for? And we couldn't get
14 specific clarity on that.

15 In going back to the Department and
16 putting forward the option that the board
17 considered and rejected, it was very clear to me
18 that if the board had approved that action before
19 them, which would be to forward-date the date of
20 candidacy, that that would have resolved and
21 addressed the Department's concerns.

22 DR. PETRISKO: Thank you.

1 MS. MICELI: As you all know, the
2 board rejected that action.

3 DR. PETRISKO: Okay, thank you. I
4 think my last question is the following. It's
5 noted that the policy with which the Department
6 has the most concern, which is the accreditation
7 to candidacy status policy, 50.010, it's noted
8 that that was eliminated.

9 So, I want to be clear, the other
10 policies in this case, what's the status with
11 them now?

12 So, I believe it's the case that
13 processes for seeking approval of change of
14 control, monitoring relating to changes of
15 control, and the policy accreditation to
16 candidacy status, that has been eliminated. The
17 others have been revised.

18 Has the appeal policy itself undergone
19 any changes, the 90.010 policy on appeals, has
20 that been changed at all?

21 DR. SWEENEY: It has.

22 DR. PETRISKO: Okay.

1 DR. SWEENEY: It has. We essentially
2 went through all of the policies related to this
3 rarely used policy and made conforming changes.

4 And so, the appeals policy removes
5 this circumstance, not the one applied here, but
6 in that policy language to the effect of moving
7 an institution from accredited to candidate
8 status has been removed because that policy no
9 longer exists in all of HLC's policies.

10 DR. PETRISKO: Okay. Thank you. So,
11 is it safe to say or safe to assume that the
12 changes in all of these revisions effectively
13 make it impossible for HLC to take an action
14 related to a change of control, such as was taken
15 in the case of these institutes? You couldn't do
16 it again, it's against the policy now, is that
17 correct?

18 DR. SWEENEY: We couldn't do it again
19 under our own policies and we would be precluded
20 from adopting new policies to do it, because the
21 new federal regulations expressly prohibit it
22 now.

1 DR. PETRISKO: Okay. I think -- oh,
2 no, I had one more, sorry. The Department's
3 recommendation includes HLC taking action to,
4 quote, mitigate the negative effect of HLC's
5 decision to withdraw accreditation, especially
6 with regard to the status of academic credits
7 earned, et cetera.

8 If HLC -- and I know you've talked
9 about, informed people about what you can and you
10 can't do, et cetera. If HLC decided to somehow
11 mitigate beyond what's already been done,
12 mitigate these effects, what might it be and how
13 could you do that in keeping with your current
14 policies and procedures?

15 DR. GELLMAN-DANLEY: I'm going to
16 start by saying, we cannot figure out how to
17 mitigate it without going against our own
18 integrity and undoing a decision that was very
19 deliberate.

20 And it's not clear what mitigation
21 means, but it strongly implies that all those
22 previous conversations about such things as

1 retroactive accreditation or changing the
2 decision could be what the Department is
3 insinuating.

4 But we haven't a clue of a way to do
5 that that would not have harm to the students and
6 great harm to accreditation. Anthea?

7 DR. SWEENEY: I think that's right,
8 but I also wanted to come back to something that
9 Assistant King, I'm sorry, not Assistant King, I
10 think it was Mr. LeBlanc, suggested when he said,
11 is there a checklist or something?

12 HLC is an organization interested in
13 continuous improvement. We take due process
14 seriously, we take adherence to our policies
15 seriously, and we certainly take our member
16 institutions and their understanding of our
17 policies seriously.

18 And we will continue to work on that,
19 we will continue to strengthen our due process
20 mechanisms to the extent that we can. We have an
21 internal policy committee that looks at policy
22 internally, before we even bring things to the

1 board or take instructions from the board about
2 new policies to draft. And we have certainly
3 learned from this experience, so we will take the
4 lessons learned forward.

5 But to void our action as if you go
6 back in time, you could prevent the unfortunate
7 aftermath that occurred, really misconstrues what
8 accreditors can do. We have a lot of authority,
9 but we don't have that power.

10 DR. PETRISKO: Thank you, that answers
11 all my questions. I really appreciate the
12 seriousness with which you approached the
13 questions and the detail with which you answered
14 them. Thank you.

15 CHAIRMAN KEISER: Okay. We'll now
16 open to questions from the Committee. And Claude
17 had his hand up a long, long time ago, but if you
18 would like to ask a question, put your hands up,
19 you know how to do that, and if you don't, let me
20 know. And, Claude, you're first.

21 VICE CHAIRMAN PRESSNELL: Thanks. I
22 put my hand up in hopes that eventually it would

1 be answered, but it wasn't quite answered yet.
2 So, I've got just a small number of clarification
3 questions.

4 The first one, there was a statement,
5 I think by Ms. Sweeney, that HLC doesn't define
6 accreditation status, you defer to the federal
7 status. Are you saying HLC doesn't have
8 definitions of your accreditation statuses in
9 your handbook for them to know?

10 DR. SWEENEY: I'm sorry, were you
11 directing the question to me? I don't want to
12 preclude anyone here.

13 VICE CHAIRMAN PRESSNELL: Yes, you had
14 said that you don't have -- that because of --
15 Paul was asking you questions about where do they
16 find exactly what the definition or the
17 implications were of the candidacy status and you
18 said that you did not have them at HLC, that the
19 Department defines those. So, are you saying you
20 don't provide that information?

21 DR. SWEENEY: Let me clarify. I think
22 the question had to do with the implications of

1 pre-accredited status for Title IV for
2 institutions.

3 HLC certainly defines its own terms.
4 We have a glossary that we continually revise and
5 it treats terms that we think need to be defined
6 or refined, and certainly, areas of ambiguity
7 that come to our attention through interaction
8 with our member institutions.

9 So, we're satisfied in that way about
10 our own obligations to define the terms that
11 appear in our policies. But what we don't
12 define, but which is clearly defined in other
13 places, like the Higher Education Act, are terms
14 like pre-accreditation in the context of
15 eligibility for Title IV.

16 The HEA is clear about whether an
17 institution that is for-profit would be eligible
18 for Title IV. The answer is no, if it's in
19 candidacy, and yes, if it's a not-for-profit in
20 candidacy.

21 VICE CHAIRMAN PRESSNELL: Right.

22 DR. SWEENEY: What my answer was to

1 say is that we don't undertake to explain to our
2 institutions those implications, because the
3 Department is in the best place to do that.

4 VICE CHAIRMAN PRESSNELL: Yes.

5 (Simultaneous speaking.)

6 VICE CHAIRMAN PRESSNELL: -- clarified
7 there. The other question I've got deals with
8 financial aid issues. Was there, at any time, an
9 interruption in terms of Title IV eligibility for
10 the students, and if there was an interruption in
11 the eligibility, how long was that interruption?

12 MS. MICELI: I'm happy to take this.
13 So, HLC's approval with conditions of candidacy
14 under the HEA would have -- and as Dr. Wissmann
15 spoke to during his remarks, and Dr. Burrows as
16 well, the board was well aware of the
17 consequences of that.

18 As a for-profit institution in
19 candidacy status, a pre-accreditation status,
20 under the law, the school would not be eligible
21 for Title IV aid, until and unless it were to
22 convert into not-for-profit status or re-earn,

1 gets its accreditation reinstated.

2 Dr. Wissmann also pointed out in his
3 remarks that the board was very well aware of,
4 from an academic perspective, this means that the
5 credits that the students earn during that period
6 would not have the weight of coming from an
7 accredited institution.

8 It's actually what makes the
9 disclosures and the lack of disclosures here, or
10 the inaccurate disclosures, so critical to the
11 students who didn't have a choice to take action.

12 VICE CHAIRMAN PRESSNELL: Yes, let me
13 pause you just for a minute, because I want to
14 get into the accreditation or the (audio
15 interference). What's really critical to know is
16 that if they were accredited and then, at the
17 point of the transaction taking place in the
18 change of ownership, whether or not they've been
19 approved for nonprofit status versus for-profit
20 status, if they were approved for nonprofit
21 status, then, what I'm trying to find out, was
22 there any point where Title IV eligibility was

1 truly interrupted for the students or actually
2 not?

3 And if it was interrupted, it would
4 have been interrupted at the point of the
5 consummation of the change of ownership and them
6 not being determined to be not-for-profit.

7 And so, I'm trying to just figure out,
8 what was the gap, or was there a gap in Title IV
9 eligibility for the students attending the Art
10 Institute?

11 MS. MICELI: That gap -- I'm going to
12 turn it to Dr. Gellman-Danley here, but you are
13 correct, from a legal perspective, that is
14 exactly how the law would work, in that there
15 would be a gap.

16 The plan that was communicated to HLC
17 through the pre-accreditation, pre-acquisition
18 process, and then, also in a follow-up letter
19 months later, was that they would convert to
20 not-for-profit and that the Department had seen
21 that there would be no impediments.

22 So, the gap would be from the time

1 that candidacy took effect to the time that they
2 either converted to not-for-profit or their
3 accreditation was reinstated because they earned
4 it. That is the gap.

5 VICE CHAIRMAN PRESSNELL: Right, but
6 how long was that gap? Did they have the
7 approval for nonprofit status before the
8 consummation or at the point of the consummation
9 of the change of ownership? If so, then there is
10 no gap, right? Because they made that switch
11 from for-profit to nonprofit?

12 MS. MICELI: They did not --

13 VICE CHAIRMAN PRESSNELL: But if there
14 was a gap, how long was the gap? Does anybody
15 know?

16 MS. MICELI: They did not complete the
17 conversion, to HLC's knowledge, that was a
18 process that they would have interacted with the
19 Department on and that they never completed.

20 DR. PETRISKO: Excuse me, this is Mary
21 Ellen. There's evidence that there was
22 communication, I believe it was in May of 2018,

1 from the Department, from Michael Frola, to HLC
2 staff, that said that the temporary program
3 participation agreement as of 2020 has provided
4 temporary interim nonprofit status to the
5 institution.

6 CHAIRMAN KEISER: A reminder, please

7 --

8 MS. MICELI: That is --

9 CHAIRMAN KEISER: -- raise your hand
10 and I'll recognize you. Because this thing will
11 go on forever if everybody's interrupting each
12 other.

13 VICE CHAIRMAN PRESSNELL: Right. And
14 I'm trying to get through my comments, my
15 questions as quickly as I can.

16 And I really -- I'll ask Secretary
17 King about that, because it appears we don't know
18 exactly how long students were not eligible for
19 Title IV aid in this process, and that's what I
20 was trying to determine.

21 The next question is, what was the
22 majority cause for placing them on candidacy?

1 Because Secretary King indicated that all things
2 were the same, before the sale, after the sale,
3 there was really no reason to ever put them on
4 candidacy.

5 So, could you articulate clearly, what
6 was the primary reason for moving them from fully
7 accredited to prospectively saying you were
8 fearful they would not meet the candidacy status?
9 So, what was the majority cause? And whoever on
10 HLC who would like to answer that.

11 DR. SWEENEY: Thank you, Dr.
12 Pressnell. Again, HLC never moved the institutes
13 from accredited to candidacy status. Candidacy
14 status was automatically triggered when they
15 closed the transaction. But I'm happy to go
16 through the merits, the underlying merits.

17 The institutes actually weren't
18 exactly in the same position as they were prior
19 to the board's decision. So, I think that's a --
20 prior to the transaction. So, I think I need to
21 go through the merits here, just in brief.

22 Remember that on the day the board

1 made its decision, the institutes were in
2 compliance with all of HLC's requirements, but
3 there were some prospective concerns that caused
4 the board to say, look, we're going to offer
5 candidacy as a condition.

6 Here are the things that the board saw
7 and that the site visit team saw that they wanted
8 relatively quickly to sort of have their concerns
9 addressed. Essentially, prove us wrong that, or
10 prove the site team wrong, show us that you are
11 going to be equally in compliance with the
12 eligibility requirements as you are today.

13 Here were the eligibility
14 requirements. Stability, planning, integrity,
15 accreditation records, these were anticipated not
16 to be met. And within the criteria for
17 accreditation, commitment to public good,
18 integrity, transparency, autonomy, demonstrating
19 responsibility for educational program quality,
20 resources, strategic planning.

21 As you will note from the things I've
22 just listed, all of the board's concerns would

1 unfortunately be validated many times over during
2 the course of 2018.

3 The institutes that they felt
4 confident enough about on November 2, 2017, to
5 give the benefit of the doubt to, poorly
6 disappointed our board. Our board celebrates
7 when institutions comes off sanctions. Did you
8 know that? They celebrate. They gave the
9 benefit of the doubt.

10 The institutes that were in place
11 after the transaction, now, academically, there
12 are folks who would say they were in no different
13 position. But there were concerns about the
14 academic programs articulated in the summary
15 section of that staff visit.

16 At the time, gainful employment rules
17 were still in effect and the site team had
18 identified several programs that did not meet the
19 gainful employment rules and said,
20 notwithstanding a conversion from for-profit to
21 nonprofit status, the underlying problem of high
22 tuition programs that don't prepare students for

1 viable careers is going to remain a problem.

2 And then, instead of working on these
3 concerns and improving, what we saw was the
4 benefit of the doubt was not justified, bad faith
5 conduct. Those were not the institutes the board
6 thought it saw on November 2nd, not at all.

7 VICE CHAIRMAN PRESSNELL: Okay. My
8 next question -- thank you, that's very helpful.
9 My next question deals with the practical
10 implications and the confusion around
11 accreditation, whether or not they were
12 accredited from the students' perspective and the
13 general public, from their perspective.

14 So, I need just a time line, if you
15 could, because Secretary King intimated that this
16 decision really precipitated the fall of the
17 institution, he made it clear in his opening
18 comments that had you not done this, chances are
19 the institutions would still be operating today.

20 So, the question is, there was
21 confusion, we know the Art Institutes did not
22 post that they were not accredited institutions,

1 you sought a remedy to that posting and so forth,
2 so I'm trying to figure out -- and then they
3 announced their closure.

4 How much time before their closure was
5 the public actually notified that they were in
6 candidacy status? Can you give me that time
7 line? Ms. Sweeney, I assume you probably could.

8 DR. SWEENEY: I would like to defer to
9 my president, who's raised her hand.

10 DR. GELLMAN-DANLEY: I just want to
11 say quickly, in response to your question, we
12 take all of this very seriously.

13 And as a result, we got some funds
14 from the Lumina Foundation to be able to think to
15 the future and we're working on a student guide
16 to accreditation, through the eyes of
17 accreditors, so students need to know. Because
18 they were not told in any way in time.

19 And so, we're going to look at all of
20 those issues collectively, just as the last time
21 I was with you, we talked about student success
22 and we're working on that. So, we take -- we're

1 learning a lot from today.

2 Anthea can give you the deadline, it
3 was far too long. Anthea?

4 DR. SWEENEY: Sure. So, HLC's own
5 public disclosure notice was posted after the
6 transaction.

7 We were after the institutes, please
8 let us know when you have closed, within 24
9 hours, so that we can post our own public
10 disclosure notice, and at the same time, our mark
11 of affiliation on the institute's website, which
12 isn't just a visual model of HLC, it's actually a
13 digital way, where you can click through the
14 hyperlink and come to the institute's profile on
15 our website and see everything that we've said in
16 our public disclosure notice. That happened
17 right away.

18 VICE CHAIRMAN PRESSNELL: Anthea --

19 DR. SWEENEY: Six days later --

20 VICE CHAIRMAN PRESSNELL: Anthea, can
21 you give dates, please?

22 DR. SWEENEY: A date for when they

1 corrected their disclosures, from that point?

2 VICE CHAIRMAN PRESSNELL: The
3 transaction occurred on X date, which affected
4 the change. And then at what point was the
5 public fully notified? And then at what point
6 did they close? I'm trying to see whether or not
7 there was a cause and effect, as Dr. King
8 suggested.

9 DR. SWEENEY: I see, our public
10 disclosure notice, and I'm sorry, I don't
11 remember the day of the week, we have a rule, an
12 internal rule about putting PDNs up on Fridays,
13 but I believe it was January 21, on or about, in
14 2018. And when they closed, as in the institutes
15 closed for good, would have been December 28 of
16 that year.

17 They did momentarily correct their
18 disclosures in June, but then, once the
19 announcement of closure went live, the website
20 changed entirely.

21 CHAIRMAN KEISER: Claude, are there
22 any other questions?

1 DR. GELLMAN-DANLEY: There's one quick
2 point, if I might make, Dr. Pressnell, and that
3 is, Brent Richardson himself told us there was a
4 \$95 million gap that they didn't know about and
5 that EDMC misled them. That is why -- and other
6 reasons. It is not because of this issue that
7 the institutions closed.

8 I just handed off something to Anthea
9 that might be helpful, I don't know if she needs
10 it or not. Not to distract you, so excuse me for
11 interrupting.

12 VICE CHAIRMAN PRESSNELL: No, that's
13 fine. Barbara, actually, you could probably just
14 stay on. I've got two more questions and then
15 I'm done, Art.

16 One is that you all have talked about
17 a change of your policies, coming into compliance
18 to rectify this. I'm curious as to the
19 motivation behind changing your policies, is it
20 because of the new regulations around
21 accreditation? Is it because of this event? And
22 if it's because of this event, do you think that

1 your policies were not accurate and needed to be
2 rectified?

3 And then, finally, if you could
4 respond to me as to what would the implication be
5 to HLC if the Department's recommendation is
6 agreed to? So, I would like to know what happens
7 to the broader sense of accreditation in HLC if
8 you go on this 12-month sanction.

9 So, first, if you could answer the
10 question about the policy changes and your
11 records?

12 DR. GELLMAN-DANLEY: Thank you. We
13 took the October 31, 2018 letter seriously, that
14 I discussed, from the evening of the board
15 meeting, from Dr. Jones. And when we got back to
16 the office after the board meeting, I directed
17 Dr. Sweeney to actually create a response and
18 follow up.

19 We did the original quick response we
20 were asked to do, but we went through every line
21 of that letter. And we really analyzed and said,
22 how could things be done differently?

1 Anthea, when she took over the job,
2 did a terrific, smart move, creating a policy, as
3 she mentioned, committee. And so, we have very
4 seasoned people from different parts of the
5 organization. So, it's not one or two people
6 dealing alone with the policies and then passing
7 them on, which has really never been our case,
8 but a good job.

9 We went through all of it. It is not
10 because of this institution, it's because our
11 sense was the complexity that came out of it, by
12 having, I'm just going to say it, a bad actor
13 bring up all these kinds of things we never could
14 have anticipated, we said, let's remove this
15 policy.

16 We don't want a repeat of that kind of
17 behavior. It wasn't that we thought there were
18 big flaws with the policy, we did not want a
19 repeat of that behavior.

20 And coincidentally, I will tell you
21 candidly, I was on negotiated rulemaking,
22 interesting experience. And so, for the four

1 weeks, over four months that we were on there, we
2 got a lot of edited track-change kind of versions
3 of policies to look at, and that was on there.

4 And I said, it says, dear HLC on
5 there, but it didn't say it, but in my mind I
6 thought, dear HLC, but we determined that we
7 couldn't have anticipated an institution would be
8 so disingenuous in how they went about this
9 arrangement and we would find other ways to deal
10 with this kind of situation in the future,
11 because of that.

12 I don't think I missed anything, but
13 does that answer your question? Anthea, is there
14 anything --

15 DR. SWEENEY: Dr. Gellman-Danley --

16 DR. GELLMAN-DANLEY: -- you would
17 quickly add?

18 DR. SWEENEY: -- if I might?

19 CHAIRMAN KEISER: If I can just try to
20 get --

21 DR. GELLMAN-DANLEY: Yes, please.

22 CHAIRMAN KEISER: If I can just,

1 excuse me, if I can try to have you answer the
2 question, rather than go on to a long discussion,
3 because it's important that -- we have a lot of
4 people who have questions.

5 DR. GELLMAN-DANLEY: Sure. Do you --

6 CHAIRMAN KEISER: Now, you can --

7 DR. GELLMAN-DANLEY: -- want me to go
8 to the second question, then?

9 VICE CHAIRMAN PRESSNELL: Just real
10 quick, what are the implications to HLC if the
11 staff recommendation is upheld?

12 DR. GELLMAN-DANLEY: Well, then, you
13 don't need accreditors. It's as simple as that.
14 If the Department can come in and say, you made
15 this decision, we really hadn't talked to you a
16 lot about it, and now, we're going to tell you
17 you have to change it, then you might as well
18 make it whatever, a duad, I don't know what it
19 would be called, not a triad, because you've,
20 this is not about us, you've eliminated the need
21 for accreditors.

22 Our board, and I will say this to the

1 hilt, is the most impressive board I've ever
2 worked with in my life, no offense if any of my
3 previous presidency boards are watching, but this
4 is an amazing board and if this takes place, then
5 you have actually taken the independence away
6 from accreditors as a whole, fully. And it --

7 CHAIRMAN KEISER: Thank you.

8 DR. GELLMAN-DANLEY: -- won't help the
9 students. Remember that, it will not help the
10 students, it won't do anything to help the
11 students.

12 CHAIRMAN KEISER: Thank you. Are you
13 finished, Claude? Claude, are you finished?

14 VICE CHAIRMAN PRESSNELL: Yes.

15 CHAIRMAN KEISER: Kathleen, Ronnie
16 Booth, and then myself. If you want to ask a
17 question, raise your hand and then we'll get to
18 you in order. So, Kathleen, you're first.
19 You've got to press Star-6, is that correct?

20 DR. ALIOTO: Okay. Thank you. I'd
21 like to confirm what Barbara, excuse my calling
22 you by your first name, just said.

1 In Exhibit 15, if we look at Exhibit
2 15, we have the person who was brought in by the
3 Dream team come say, and a transcript of the Art
4 Institute of Colorado on October 1, 2018, that
5 this was the -- these colleges were a mess.

6 And let's see, worked with HLC for
7 many years, and worked well with everyone
8 involved, so I hope we continue to do that. This
9 transaction, I was a guest executive chairman, I
10 was approached by DCEH, et cetera.

11 We spent the better part of the year
12 looking at these schools. And in September of
13 last year, met with the Department of Ed and we
14 have four or five things that were instrumental
15 to the deal that we had to get going. All right.

16 We completed the interaction, now we
17 found out, that not only was the money off ten
18 percent, it was 150 percent and the CEO, CFO, and
19 one other person walked away with about \$30
20 million, which the Department kind of told them
21 not to do.

22 So, the reason I tell you this is that

1 we had about a \$95 million hole that we didn't
2 know about, then there's the banks, there's going
3 to be some lawsuits on all of this, obviously.
4 But I tell you this to tell you that our thinking
5 of having these many moneys there and fixing all
6 these schools become apparent that that wasn't
7 going to be possible.

8 Now, he's quite complimentary about
9 your team trying to assist these schools in
10 getting this done. So, I think that it's
11 unfortunate for these schools by the Department
12 of Education at this point for really trying to
13 do a great job.

14 So, I have a few questions. So, did
15 HLC's original 2017 action letter say Dream
16 Center had to accept candidacy status as
17 condition of approval or no?

18 DR. GELLMAN-DANLEY: No.

19 DR. ALIOTO: Can you just say no for
20 the record? Did HLC then ask Dream Center if it
21 would accept candidacy status?

22 DR. GELLMAN-DANLEY: Yes.

1 DR. ALIOTO: Did Dream Center accept
2 candidacy status?

3 DR. GELLMAN-DANLEY: Yes.

4 DR. ALIOTO: Can you just say yes so
5 it's in the record? Can you explain how Dream
6 Center accepted candidacy status?

7 DR. GELLMAN-DANLEY: Anthea?

8 DR. SWEENEY: In writing.

9 DR. ALIOTO: In writing? So, based on
10 what you just said, Dr. Sweeney, HLC explicitly
11 told Dream Center in that November 2017 action
12 letter that it must accept candidacy status,
13 which is not an accredited status, as a condition
14 of HLC approval and the Dream Center CEO, whom
15 you just heard me read his testimony, and the
16 presidents of the two institutions signed a
17 letter accepting that status, correct?

18 DR. SWEENEY: That is correct.

19 DR. ALIOTO: Okay. All right. Now,
20 this question is for the Department, and I don't
21 know if that would be Mister --

22 CHAIRMAN KEISER: That'll be later.

1 DR. ALIOTO: -- Dr. King?

2 CHAIRMAN KEISER: That'll be later,
3 Kathleen. Kathleen, that'll be when --

4 DR. ALIOTO: Okay.

5 CHAIRMAN KEISER: -- Dr. King comes
6 forward.

7 DR. ALIOTO: Okay. Let's see. Well,
8 I guess the question about the lack of public
9 comment goes to the Department, too. All right.

10 So, I guess that my other questions
11 are really for the Department, except for my
12 little speech that I think that yesterday, the
13 Department of Education, on the recommendation of
14 Dr. Jones to the Secretary of Education, has
15 renewed the accreditation status of ACICS and at
16 the -- which this body and the Department of
17 Education had ended in 2016, and it was voted,
18 bilateral vote, of the NACIQI that their behavior
19 had not been appropriate, in terms of schools.

20 I hate to think that in this present
21 situation, that we would give a death knell to
22 the accreditation integrity of our nation by not

1 allowing this accrediting agency to continue.

2 CHAIRMAN KEISER: Kathleen, if we can
3 stay on questions, because you have the -- when
4 we get to the vote, you can make whatever
5 political comments you would like, okay?

6 DR. ALIOTO: But that's not --

7 CHAIRMAN KEISER: Ronnie Booth?

8 DR. ALIOTO: -- not political.

9 DR. BOOTH: Okay. A question, I
10 guess, for Dr. Gellman-Danley, if I could. It's
11 more of a statement, then a response. It's my
12 understanding that both institutions, both of the
13 Art Institutes were accredited by HLC before the
14 change of ownership, change of control vote?

15 DR. GELLMAN-DANLEY: Yes. Yes, Dr.
16 Booth.

17 DR. BOOTH: So, both were? So, both
18 were accredited, fully accredited by HLC. Under
19 the change of control, they all of a sudden were
20 not accredited? That's correct?

21 DR. GELLMAN-DANLEY: That's the
22 condition they accepted, to go into candidacy,

1 yes.

2 DR. BOOTH: Okay. But my point being,
3 they were accredited and not under any sanction,
4 and typically, under HLC, before a person loses
5 accreditation, there would be a sanction, is that
6 not correct?

7 DR. GELLMAN-DANLEY: They did not lose
8 their accreditation, sir. They had a lot --

9 DR. BOOTH: So, is this --

10 DR. GELLMAN-DANLEY: -- they did have
11 a history of issues, but they were not under a
12 sanction.

13 DR. BOOTH: So, neither one of those
14 institutions was under a sanction before,
15 notwithstanding what Julie said about--

16 DR. GELLMAN-DANLEY: Well, no, before,
17 they had been. No, they had --

18 DR. BOOTH: I meant, on the --

19 DR. GELLMAN-DANLEY: -- Anthea, you
20 look like you want --

21 DR. BOOTH: -- day that they -- if
22 you'll let me -- on the day the vote --

1 DR. GELLMAN-DANLEY: I'm sorry, sir.

2 DR. BOOTH: On the day the vote was
3 taken, was either institution under sanction? On
4 the day --

5 DR. SWEENEY: Illinois Institute of
6 Art had been on notice during the previous two
7 years, it had been placed on notice on November
8 2015 and it was removed from notice at the same
9 board meeting, before the board undertook --

10 DR. BOOTH: Okay.

11 DR. SWEENEY: -- the consideration of
12 the change of control application.

13 DR. BOOTH: So, but when the change of
14 consideration was taken, neither institution was
15 on sanction?

16 DR. SWEENEY: That's correct.

17 DR. BOOTH: Then, I'll just ask,
18 Barbara, if you will, in your opening statement,
19 you said that, from your perspective, I can't
20 quote, I should have written it down, but from
21 your perspective, that the Dream Center knew
22 nothing about higher education, or something to

1 that effect.

2 So, if I could just say, the question
3 I would have, and I'll just let you answer it on
4 your own later on, what duty do we owe as an
5 accrediting body to an institution when they have
6 less knowledge than someone who's been doing it
7 for a long time?

8 And I'll just leave it, I don't need
9 a response, when it comes to the question from me
10 is, what duty do we have to inform those who,
11 quote, don't have a clue about higher education
12 or don't know anything about higher education?
13 So, Mr. Chairman, I'll stop at that.

14 CHAIRMAN KEISER: Okay. Thank you.
15 I have some questions. And then Anne Neal will
16 be next. Okay. I don't see anybody else. If
17 you would also pull down your hand by pressing
18 the hand button, and that way, I won't get
19 confused.

20 This is to anyone. Have you ever,
21 before the Everest circumstance and now, the Art
22 Institutes, had you ever imposed this particular

1 policy on a change of control or change of
2 ownership?

3 DR. SWEENEY: We had not.

4 CHAIRMAN KEISER: Now, after the
5 Everest and you imposed this policy and the
6 school, instead of going through with the
7 process, decided to close, would that have been
8 any indication that this policy may be pretty
9 difficult to comply with?

10 DR. SWEENEY: I'm sorry, you can
11 restate the question, sir?

12 CHAIRMAN KEISER: Well, the Everest
13 circumstance, which is the policy that you kind
14 of used, that it's based on, was Everest decided
15 that this was too draconian and decided to close
16 because they would have lost their Title IV
17 funding if they had agreed to the candidacy
18 status, so did you not see that potentially as an
19 indication that by applying this candidacy status
20 that you had, it could have been a significant
21 financial problem for the institution?

22 DR. SWEENEY: Because it was offered

1 as a choice, we saw it as a business decision
2 that the institution had. It could or could not,
3 at its option, undertake a transaction. And
4 that's true for any institution that submits a
5 change of control application.

6 CHAIRMAN KEISER: Again, yes, just, I
7 need short answers, because it's so long. Go
8 ahead, Dr. Danley.

9 DR. GELLMAN-DANLEY: Every
10 institutional situation is different. We were
11 confident the policy had validity and there, just
12 as in this circumstance, there were a lot of
13 issues related to what was going on with Everest
14 at the time. But that's --

15 CHAIRMAN KEISER: No, I was -- the
16 point of Everest was not to -- that's not to look
17 at that issue, it's just to look at what happened
18 when the institution realized they could not
19 continue to operate with the conditions you
20 provided. And you've never provided this
21 condition to anybody else besides two for-profit
22 institutions, is that fairly accurate?

1 DR. GELLMAN-DANLEY: That's accurate,
2 but I would ask you to please consider that when
3 we saw the very strong reaction, the way it
4 happened this time, we removed the policy.

5 CHAIRMAN KEISER: I understand that
6 and I appreciate that. Now, at that time, did
7 you consider to ask the institution for a
8 train-out plan?

9 DR. SWEENEY: I'm happy to answer
10 that. A teach-out plan would not have been
11 required. Institutions know how to help their
12 students transfer.

13 And so, prior to the announcement of
14 the closure, the only thing that the institute
15 would have been required to do was the very thing
16 they did not do, which was communicate and start
17 advising and counseling their students about
18 their academic options.

19 Submitting an application as early as
20 May 1, 2017 meant that as early as of that date,
21 they could have started seeking out institutions
22 to engage in articulation agreements, because

1 there was a prospect here that their status could
2 change at their option.

3 A teach-out plan was not required
4 until closure announcement.

5 CHAIRMAN KEISER: Understood. Dr.
6 Wissmann said he considered this action as an
7 approval with conditions, approval of the change
8 of ownership. Well, the conditions were that you
9 were not accredited, you lost your accreditation.
10 Is that a fair statement of saying, you're
11 approved, but we're withdrawing your
12 accreditation?

13 DR. SWEENEY: I can see why that would
14 be a question that would be raised, given the
15 nature of substantive change and federal
16 regulations.

17 But under the policies, when the board
18 approves a change of control application, and I
19 mean HLC policies, its approval represents a
20 willingness to authorize accreditation after the
21 transaction.

22 If its approval is accompanied by

1 conditions, this also represents a willingness to
2 authorize accreditation after the transaction,
3 but only if those conditions are satisfied by the
4 institution accepting them.

5 CHAIRMAN KEISER: But is it fair to
6 say that you approve the change of ownership,
7 which would imply you're approving the
8 continuation of accreditation when, in fact, you
9 didn't do that, you approved the change of
10 ownership, but you withdrew the accreditation.
11 Isn't that what you did?

12 DR. SWEENEY: If we approved it
13 assuming that based on the direction so far, with
14 the Department going to a not-for-profit status
15 and with every hope they would meet our
16 eligibility requirements, we saw it as they would
17 reach accreditation.

18 DR. GELLMAN-DANLEY: It is an
19 interesting point --

20 CHAIRMAN KEISER: But in fact --

21 DR. GELLMAN-DANLEY: -- although it's
22 --

1 (Simultaneous speaking.)

2 CHAIRMAN KEISER: Excuse me, according
3 to Dr. Booth, at the date of your decision, they
4 had met your accrediting standards. You're
5 assuming that they would not, which is kind of
6 approval, but assuming you're not going to meet
7 the standards, I'm not sure I understand that.
8 Anne, I'll turn it over to you.

9 DR. SWEENEY: It wasn't an assumption,
10 it was based on evidence in the record.

11 CHAIRMAN KEISER: Go ahead, Anne, we
12 can't hear you. You have to do Star-6, I think,
13 is that right?

14 EVENT PRODUCER: Hold on just --

15 CHAIRMAN KEISER: Anne? There you
16 are. No, you're not.

17 EVENT PRODUCER: Hold on just one
18 moment.

19 MS. NEAL: Am I audible?

20 EVENT PRODUCER: Yes.

21 CHAIRMAN KEISER: There you are.
22 Thank you.

1 MS. NEAL: Okay, thank you. I wanted
2 just to pursue a few lines that we've heard. In
3 its letter, the Department says, the imposition
4 of the condition to withdraw accreditation was
5 part of the sale transaction was not openly
6 discussed, nor was it required in any other of
7 the transactions involving four other
8 accreditors. Could you address that for me,
9 please?

10 DR. GELLMAN-DANLEY: I can do that,
11 yes. I'll start, if I might. Each accreditor
12 has their own situation with their institutions,
13 they were very different.

14 There was one case where it was very
15 clear the institution was on show-cause, which
16 was extremely different than this situation. And
17 every, we actually coordinated some visits and
18 worked together, but every situation was
19 different.

20 Anthea may know a little more, Ms.
21 Neal, if it's all right, if I ask her to add?

22 MS. NEAL: Sure.

1 DR. SWEENEY: To my understanding,
2 it's true that no other accreditor had this
3 series of policies and apparatus within their
4 policies. And HLC looked at it as a way that --
5 it was looking at its environment, looking at
6 institutional situations, and finding ways
7 forward.

8 So often, accreditors are accused of
9 being anti-innovation. And I can recall the
10 board thinking that this was an elegant and
11 innovative approach at the time.

12 MS. NEAL: Let me pursue just a
13 minute, the lodestar, for me, whenever I come to
14 a NACIQI meeting, which is the guarantors of
15 educational quality, we've had a very long
16 discussion today and educational quality has
17 really not come up very often.

18 And I wanted to pursue first this area
19 of your engagement as an accreditor. Obviously,
20 you all quite proudly articulate your peer review
21 and that this is the foundation of your work.
22 I'm curious, what is the peer review expertise in

1 assessing tax conversions?

2 DR. GELLMAN-DANLEY: Let me start with
3 that one, please. We bring in folks with
4 different backgrounds based on the types of
5 institution and the transaction.

6 And in this case, and other cases, we
7 do our very best to bring in peer reviewers that
8 have more expertise or explicit expertise in that
9 area. Sometimes they are lawyers, sometimes
10 they're finance experts, et cetera. If I left
11 anything out, any of my staff want to add to
12 that?

13 MS. NEAL: I think I heard from Ms.
14 Burrows that provosts and presidents are largely
15 the composition of your board that makes these
16 decisions.

17 DR. GELLMAN-DANLEY: You're asking
18 about our board, I thought you asked about peer
19 reviewers, I apologize.

20 MS. NEAL: I'm asking about --

21 DR. GELLMAN-DANLEY: If you were
22 asking --

1 MS. NEAL: -- a particular aspect of
2 your work.

3 DR. GELLMAN-DANLEY: Okay. I would be
4 glad to answer that. We have a few people that
5 are on our board, we have attorneys and we have
6 finance experts and we have institutions that, if
7 it is not a not-for-profit or a complex
8 situation. If it is a complex situation, we
9 bring in those leaders from campuses who have
10 gone through major changes and conversions within
11 their campuses, merging campuses, bringing in new
12 organizations, et cetera.

13 So, we have our go-to people on the
14 board, who, just as you are readers today, you
15 have your readers today, have that expertise and
16 are much stronger in that knowledge. And they
17 have educated and informed our board across the
18 years.

19 MS. NEAL: I'd like to talk just
20 briefly about your ensuring academic quality and
21 monitoring academic rigor. Could you please let
22 us all know what is the average first-time

1 full-time four-year graduation rate of your
2 cohort of schools, all 973 institutions and five
3 million students?

4 DR. GELLMAN-DANLEY: I could not give
5 you an average across the board, but as you well
6 know, it varies everywhere from not what we would
7 like it to be at certain institutions all the way
8 up to, I would say in the 90s, depending on the
9 type of institution.

10 Because -- as I mentioned very briefly
11 before, I actually really heard you folks the
12 last couple times, I seem to be visiting you
13 frequently, but the last couple times I was with
14 you, about the importance of student success.

15 And we brought in experts on how to
16 measure student success, how to have the best
17 data for student success, and to get to the best
18 answer of what you're asking. And so, we've seen
19 improvements.

20 We're actually quite concerned over
21 what's going to happen now in this current
22 environment, because we know that there are so

1 many changes that are going to happen, as far as
2 support services and full-time faculty, et
3 cetera, at some of our institutions.

4 We have seen improvement. We did the
5 CREX study, as you might recall. We followed up
6 with institutions that fell below a certain
7 percent.

8 And we have had two strategic plans
9 since I've been there, they each have certain
10 tenets. One is VISTA, one is EVOLVE. And in
11 VISTA, the S is student success. And in EVOLVE,
12 the O is outcomes.

13 So, we are working actually, and I
14 don't want to give it a bad omen, with an outside
15 foundation to get some additional money to make
16 sure the data we're getting from our institutions
17 is the best and the most reliable.

18 So, I cannot give you a specific
19 average, except to tell you, when we did the CREX
20 study, below 25 percent for community colleges
21 and below, I can't remember, 40 percent for
22 universities, the numbers after we took into

1 account transfer, which was not in the original
2 data available federal, and those kinds of
3 issues, there were only a combination of about
4 120 institutions that fell beneath those. And
5 then we asked them for corrective plans.

6 MS. NEAL: And can you tell me what
7 your admission rates for bachelor's degree
8 recipients at graduate programs are?

9 DR. GELLMAN-DANLEY: I don't believe
10 we ask for that kind of data. I think that's a
11 good one we should, I like that. But I don't
12 believe we have that kind of data.

13 MS. NEAL: And I guess I would add to
14 that, employment rates upon graduation and on
15 which you base that?

16 I mean, we've been talking this
17 morning about benefits to students and
18 transparency and what I'm hearing is that if I,
19 as a student, wanted to know how my school was
20 doing and it was accredited by you, I would not
21 have any readily accessible data from you that
22 would help me understand that.

1 So, I'm just trying to understand how
2 you embrace your responsibility to students to
3 ensure educational quality and to provide that
4 transparency.

5 DR. GELLMAN-DANLEY: I'll try to give
6 a Reader's Digest answer to it, very important
7 question.

8 It is not true that we don't have
9 information, we ask for nonfinancial indicators
10 and we ask for financial indicators and we do
11 have a great deal of information. Our
12 institutions have to report several of those
13 things, including the employment part, as part of
14 what we call the assurance system.

15 During negotiated rulemaking, there
16 was a lot of discussion about the importance of
17 accreditors actually interacting with the
18 business and industry to find out what is needed,
19 so we could report to our students and we could
20 train our peer reviewers accordingly.

21 And as a result, another advantage to
22 the Lumina Foundation, we set up a stakeholders

1 group to take a look at what we need to know, as
2 far as going on to jobs. But we actually do have
3 a lot of that information.

4 What we're trying to get is the most
5 accurate information and the two grants that we
6 have and the work that we've done have brought us
7 extremely far on that. I just can't give you the
8 exact citations, because I didn't know that would
9 be part of our discussion today.

10 But I assure you, our students could
11 find out a lot from us and when we do that
12 student guide, I say respectfully to any of our
13 institutions who are listening, they might not
14 want to put that on their website, but I believe
15 we're going to request it, which is exactly what
16 they need to show to their students, the
17 questions that they need to ask.

18 And in order to get there, we are
19 bringing in all kinds of people who have heard
20 complaints and concerns, and if somebody on this
21 meeting wants to be on that group, just let me
22 know, because it's a wide-open situation.

1 And we're going to get together and
2 say, let's list everything that hasn't gone right
3 and reverse engineer it back and put a live web
4 interactive updated on all of our campuses, where
5 it says, this is what you need to know about the
6 questions you need to ask the students, through
7 the lens of an accreditor, because it's quality
8 assurance.

9 MS. NEAL: But it hasn't happened yet,
10 has it?

11 DR. GELLMAN-DANLEY: The first
12 meetings were going to be in March, and we had
13 to, because of the virus, change it. The first
14 meeting now is a virtual meeting on September 2,
15 I believe.

16 MS. NEAL: So, let me ask one further
17 question. So, if I am a parent or if I am an
18 employer and I see that HLC has accredited an
19 institution, can I be assured that that student
20 has taken a survey of American history?

21 Can I be assured that the students
22 that are graduated from that institution can

1 write or that they have been exposed to college
2 level math or science? Is your accreditation an
3 assurance that those things have happened within
4 that college experience?

5 DR. GELLMAN-DANLEY: You give us great
6 power in asking that question, because I would
7 love to tell you would have 100 percent
8 assurance, but I could say with the knowledge
9 that we're working with, you have a damn good
10 chance you're going to know that that was a good
11 institution. But I can't assure you they require
12 those courses.

13 And we give them the autonomy to build
14 their curriculum and we make sure that it's done
15 the right way, as far as quality, and that
16 they're offering appropriate, and they have good,
17 sensitive topic here, but faculty qualifications,
18 that they actually are qualified for what they
19 teach, whether it's on campus or not. But we do
20 not control the specific curriculum.

21 However, it is an ambitious goal and
22 we do have every faith that it is a sign of

1 quality assurance to be affiliated with the
2 Higher Learning Commission. And that's the
3 feedback --

4 CHAIRMAN KEISER: Thank you.

5 DR. GELLMAN-DANLEY: -- we've gotten
6 from the general world as a whole.

7 CHAIRMAN KEISER: Thank you. Anne --

8 MS. NEAL: Thank you.

9 CHAIRMAN KEISER: -- is that it?

10 MS. NEAL: Yes.

11 CHAIRMAN KEISER: David, you're the,
12 right now, the last.

13 DR. EUBANKS: Yes, thank you. I have
14 just one quick question. Given that you have
15 made some policy changes from everything you've
16 learned, if the same kind of situation came up
17 now, can you speculate on how that might play
18 out, what would be the result?

19 DR. GELLMAN-DANLEY: I want to be
20 humble about this, I'm very proud of what we do,
21 so I don't want to come across as arrogant that
22 way. But the humble part wants to say, of course

1 we can learn. So, we even learned from you
2 today.

3 We took what Dr. LeBlanc suggested,
4 he's been very successful, he's a smart guy, and
5 we spent part of our lunch hour saying, should we
6 go so far as to add a checklist? You have to --
7 sign you know this, you know that, or that kind
8 of thing.

9 And I have seen such continuous
10 improvement, and when I say since I've been
11 there, I'm not giving myself credit, I'm only
12 giving you the time frame of six years, a lot was
13 done prior to me and will be done after. Yes,
14 the world -- we will adapt accordingly. We will
15 not be so arrogant that we say everything was
16 perfect and what could we do differently?

17 So, I don't know what specific I can
18 give you, because we've already eliminated that
19 policy and the lines in other policies that
20 apply, but absolutely, I stand here today --

21 CHAIRMAN KEISER: Thank you.

22 DR. GELLMAN-DANLEY: -- well, sit

1 here, and say to you, yes, we are open to
2 adapting and we already have and we will continue
3 to do so. And we'll be proud to show you that
4 when we come back to you in a couple of years.

5 DR. EUBANKS: And I'm sorry --

6 CHAIRMAN KEISER: Thank you, Barbara.
7 David, another question?

8 DR. EUBANKS: Well, I wasn't specific
9 enough. If a Dream Center-like scenario appeared
10 now, you would no longer have the option to do
11 the candidacy sort of choice for them.

12 So, would it be a choice of evaluating
13 the risks of the possible outcomes and leaning on
14 the side of simply denying the application? Or
15 would there be some other intermediate option
16 that you have thought of in the interim?

17 DR. GELLMAN-DANLEY: We would bring in
18 a lot of our external experts that we've used.
19 We would continue to do that. And we have not
20 been afraid to deny in the past. And sometimes
21 institutions come back to us. What I hope will
22 not happen is that we would become skeptical

1 because of the way this particular organization
2 handled the transaction.

3 I would say one other thing we would
4 do is move on and establish the positive
5 relationship we've had in the past with the
6 Department, so that all people that we speak to,
7 we have a very positive reaction and interaction
8 and we're just candid and open with each other
9 and if there's any concerns, actually, we get a
10 phone call.

11 And so, I would just say, we are very
12 much looking forward to being better every day.
13 And yes, we would --

14 CHAIRMAN KEISER: Thank you.

15 DR. GELLMAN-DANLEY: -- yes. Okay.

16 CHAIRMAN KEISER: Any further -- I see
17 no more questions. Thank you, members from HLC,
18 we appreciate all the time you've spent with us.
19 It's probably been the longest interview that I
20 can remember, but again, very, very important.
21 Secretary King, it's your turn to respond to the
22 HLC presentation.

1 ASSISTANT SECRETARY KING: Thank you,
2 Mr. Chairman, and thank you to the members of the
3 Commission and your questions. I want to go back
4 to the beginning and share with you, because I'm
5 going to read directly, the rules that are part
6 and parcel of HLC's policies.

7 First, the policy 20.040, change of
8 control, structure, or organization.
9 Essentially, it says that an institution shall
10 receive Commission approval prior to undergoing a
11 transaction that affects or may affect how
12 corporate control, structure, or governance
13 occurs at the accredited or candidate
14 institution.

15 Approval of the transaction resulting
16 in the change of control, structure, or
17 organization shall be necessary prior to its
18 consummation to effectuate the continued
19 accreditation of the institution subsequent to
20 the closing of the proposed transaction.

21 That's the opening paragraph of this
22 policy. It then goes on, as representatives of

1 HLC indicated, and it says, it may decide,
2 talking about the board, so subject to conditions
3 on the institution or its accreditation.

4 In those cases in which the
5 Commission's board decides, in its sole
6 discretion, that the proposed transaction builds
7 a new institution by passing the eligibility
8 process and initial status review by means of a
9 comprehensive evaluation, the Commission board
10 shall not approve the change of control,
11 structure, or organization.

12 Let me go back to this other passage.
13 In those cases in which the Commission's board
14 decides to approve the proposed change of
15 control, structure, or organization, it may
16 decide, so subject to, listen to this careful,
17 conditions on the institution or its
18 accreditation.

19 Applying a condition on
20 accreditation, at least in my view, presumes that
21 accreditation is intact and that conditions are
22 applied to that intact accreditation. It may be

1 limitations on new enrollment. It may be
2 financial reporting. It might even be placing an
3 accredited institution on probation.

4 But I cannot understand how that
5 includes the forfeiture of accreditation, which
6 by eliminating accreditation essentially
7 prohibits the capacity to attach conditions.

8 It goes on, board shall withdraw the
9 accreditation or candidacy of an institution that
10 completes a change of control, structure, or
11 organization without receiving prior Commission
12 approval from the board of trustees.

13 So, under this section, 20.040, the
14 only reference of withdrawing accreditation from
15 an institution is if they go ahead with the
16 transaction without having gotten board approval.
17 Or if they're considered a new institution, which
18 HLC has said they did not make that finding.

19 One other provision in this section is
20 quite interesting. It says, the board will also
21 not consider for approval any proposed change of
22 control, structure, or organization for an

1 institution that the board has determined within
2 the previous 12 months to merit withdrawal of
3 accreditation, even if a formal action to
4 withdraw accreditation has not yet taken place.

5 So, it appears to me from what
6 happened in this case is the board made a
7 decision, based on a review that was done of the
8 participants in this transaction, in the
9 immediate month prior to the board decision, that
10 according to this board, merited withdrawal of
11 accreditation. And if so --

12 CHAIRMAN KEISER: Secretary King?

13 ASSISTANT SECRETARY KING: Say again?

14 CHAIRMAN KEISER: I'm sorry, Secretary
15 King, I kind of made a mistake. We should have
16 heard the third-party comments before you come in
17 --

18 ASSISTANT SECRETARY KING: All right.

19 CHAIRMAN KEISER: -- so you can
20 respond to them also.

21 ASSISTANT SECRETARY KING: All right,
22 I'll stop. Thank you.

1 CHAIRMAN KEISER: If you want to just
2 finish up with what you were going to say and
3 then I'm going to go to the third-party comments.

4 ASSISTANT SECRETARY KING: All right.
5 Well, just the point here that this provision in
6 20.040 would suggest strongly that the board
7 should not have approved the transaction, because
8 it found, based on the deal that was being
9 offered, that Dream Center merited withdrawal of
10 accreditation. I'll stop there.

11 CHAIRMAN KEISER: Thank you. Folks,
12 we will now go to the comments. We have a number
13 of commenters who will be speaking today. And I
14 want to go over the fact that, of the commenters,
15 we give you three minutes to make your
16 presentations.

17 I will be timing the comments and
18 giving you the full three minutes. At 30
19 seconds, I will say 30 seconds, which hopefully
20 will not be too disruptive, at which point then
21 you will hopefully stop at the end of the three
22 minutes, at which point we go to the next

1 commenter.

2 Is that clear to everyone? Is the
3 WebEx people, are you ready for this?

4 EVENT PRODUCER: Yes.

5 CHAIRMAN KEISER: Okay. The first
6 commenter is David Halperin, attorney and
7 counselor. You can -- when he gets -- is he
8 going to be on video or just strictly voice?

9 EVENT PRODUCER: It's --

10 DR. SMITH: Strictly voice

11 EVENT PRODUCER: Okay.

12 MR. HALPERIN: Dr. Keiser, can you
13 hear me?

14 CHAIRMAN KEISER: Mr. Halperin, you're
15 ready to go.

16 MR. HALPERIN: Can you hear me, Dr.
17 Keiser?

18 CHAIRMAN KEISER: We can, go ahead.

19 MR. HALPERIN: Okay, thank you. Thank
20 you, good afternoon.

21 In April 2018, two Dream Center
22 Education Holdings employees contacted me with

1 proof of improper conduct at the company,
2 including that it was telling students that two
3 Art Institute schools remained accredited when,
4 in fact, HLC had declared the campuses in
5 unaccredited candidate status. I was the first
6 to write about this and other misconduct,
7 starting in May 2018.

8 Subsequent investigations have
9 revealed that the Department concealed the Dream
10 Center infractions, tried to make that campuses
11 retroactively eligible for financial aid.

12 Acting Under Secretary Jones was the
13 central player and the record shows she made
14 multiple false statements to Congress about these
15 matters. Instead of holding DCEH accountable or
16 taking responsibility for its own misconduct, the
17 Department wants to punish HLC.

18 HLC made clear from the start to DCEH
19 and the Department that the campuses were
20 unaccredited, a decision HLC was entitled to
21 make. DCEH did not initially appeal and the
22 Department did not initially press HLC to reverse

1 its decision. Instead, both DCEH and the
2 Department let students be deceived.

3 Moreover, DCEH's bad stewardship of
4 the schools, marked by deceptive practices,
5 conflicts of interest, financial recklessness,
6 and basic incompetence have vindicated HLC's
7 decision to declare them not accredited. Please,
8 don't ratify the pending disgraceful action by
9 the Department.

10 You should be asking, one, why is the
11 Department's letter signed by Ms. Weisman rather
12 than the Department's Accreditation Division?

13 Two, Ms. Jones, according to the
14 Weisman letter, has, quote, decided not to
15 participate in the current review? Does that
16 mean she is formally recused? Given her improper
17 conduct, recusal is the only responsible course.

18 Three, Deputy Secretary Zais has been
19 designated the senior Department official, but is
20 that appropriate? Last year, he improperly
21 pressured acting Inspector General Sandra Bruce
22 to curb an investigation of Ms. Jones'

1 investigation of ACICS and then tried to replace
2 Ms. Bruce with a Department lawyer.

3 If NACIQI supports the Department,
4 punishing HLC, even as it moves to reinstated
5 ACICS, you will send a terrible message. You
6 will tell accreditors they won't get in trouble
7 for letting schools deceive, abuse, overcharge,
8 or under-educate students.

9 Instead, they will get in trouble only
10 for demanding quality, compliance, and honesty,
11 and schools will know they can walk all over
12 accreditors, because the Department will blame
13 the accreditor for any dispute. That's not what
14 NACIQI is supposed to do. Please don't do that.

15 MR. INFUSINO: Hello?

16 (Simultaneous speaking.)

17 CHAIRMAN KEISER: Oh, I'm sorry. The
18 next presenter is Mr. Robert Infusino, former
19 student, Illinois Institute of Art. You have
20 three minutes.

21 MR. INFUSINO: Okay. Good afternoon.
22 My name is R.J. Infusino. I appreciate the

1 opportunity to be heard today. I attended the
2 Illinois Institute of Art from 2015 and 2018 and
3 along with so many of my classmates, I've been
4 deeply and personally affected by the Dream
5 Center's deception.

6 I was further failed by the Department
7 of Education, which has shown more interest in
8 justifying its own actions than in actually
9 helping students like myself.

10 I was studying sound engineering at
11 the Illinois Institute of Art when HLC changed
12 the school from being accredited to a candidate
13 for accreditation. When I learned in the summer
14 of 2018 that my school had lost its
15 accreditation, had been lying to me, and was
16 shutting down, it was like my whole world came
17 crashing down around me.

18 I felt betrayed and had to choose
19 between a school discharge, which would just wipe
20 out all my hard work, or I would have to like
21 transfer to a new school that wouldn't be likely
22 to accept my credits that I had worked and

1 already paid for.

2 While I was grappling with the
3 difficult decision, the Department of Education
4 was nowhere to be found and I received no
5 guidance or assistance whatsoever.

6 I eventually transferred to another
7 school to finish my degree. Because I could not
8 transfer many of my credits, in the end, I had to
9 complete and pay for another full year of extra
10 school.

11 When all this started, I knew nothing
12 about accreditation. Now, years later, I'm sorry
13 to say that I have learned a lot. Students like
14 me shouldn't have to worry about this kind of
15 thing, and students like me shouldn't have to sue
16 the government in order to get the help that
17 we're entitled to.

18 I understand this hearing is about the
19 mistakes that the Department claims HLC made when
20 it changed my school's accreditation status. I
21 don't know if HLC made mistakes or not, but if it
22 did, why didn't the Department do anything for us

1 back when it made the change, or even tell us
2 that it happened?

3 Last summer, I shared my story in a
4 Congressional hearing and met with the Under
5 Secretary, Diane Auer Jones, about how this
6 affected me. She never mentioned that because of
7 the problems with HLC, my classmates --

8 CHAIRMAN KEISER: Thirty seconds.

9 MR. INFUSINO: -- and I could get our
10 money back. It was only later, when we sued the
11 Department of Education for issuing illegal loans
12 that they suddenly changed their position and
13 decided that my classmates and I should get a
14 refund.

15 I learned from that lawsuit that the
16 Department of Education had known about our loss
17 of accreditation all along, yet it never told us,
18 they just kept enforcing the loans. We
19 eventually got loan cancellation and refunds, but
20 only after --

21 CHAIRMAN KEISER: Your time is up,
22 Robert.

1 MR. INFUSINO: -- we went to court.
2 I just have a little bit --

3 CHAIRMAN KEISER: Would you like to
4 summarize?

5 EVENT PRODUCER: Sorry, hold on just
6 a moment. Please go ahead, sir.

7 CHAIRMAN KEISER: Did you cut him off?

8 EVENT PRODUCER: I did, but he's back
9 on now.

10 MR. INFUSINO: Yes, I was --

11 CHAIRMAN KEISER: Would you like to
12 summarize, sir, real quickly?

13 MR. INFUSINO: Yes, I'll summarize the
14 end here. This whole experience has been just
15 incredibly difficult and it was very
16 disappointing that I have never felt like the
17 Department of Education was on my side.

18 When I needed help, I didn't get it.
19 And I hope that here, in your deliberations
20 today, you keep in mind students like me, who
21 have been just in this mess for years now.

22 CHAIRMAN KEISER: Thank you. Thank

1 you very much, sir. Our next presenter is Amy
2 Laitinen, I hope I got that right, Director of
3 Higher Education for the New American Foundation.

4 MS. LAITINEN: Good afternoon.

5 CHAIRMAN KEISER: Ms. Laitinen?

6 MS. LAITINEN: My -- yes, can you hear
7 me?

8 CHAIRMAN KEISER: We can.

9 MS. LAITINEN: Can you hear me?

10 EVENT PRODUCER: You're great.

11 CHAIRMAN KEISER: Yes, we can.

12 MS. LAITINEN: Can we start the three
13 minutes now?

14 CHAIRMAN KEISER: I will, go ahead.

15 MS. LAITINEN: Good afternoon --

16 CHAIRMAN KEISER: Go ahead.

17 MS. LAITINEN: -- I'm Amy Laitinen, I
18 direct New America's Higher Education program.
19 Let's be clear, we're not here today because HLC
20 moved a failing for-profit college being sold to
21 a neophyte nonprofit foundation from accredited
22 to pre-accredited status.

1 We're not here today because HLC
2 notified the public that the college wasn't
3 accredited anymore, although those are the
4 ostensible reasons the Department gives.

5 We are here today because a senior
6 Department official bent over backwards to help
7 that failing for-profit college, illegal
8 distributing millions of taxpayer dollars to the
9 school, and she wants to conceal those actions by
10 pinning responsibility on the accreditor instead.
11 HLC's actions with Dream Center weren't perfect.

12 But a few key facts remain, outlined
13 yesterday in a trove of new documents released by
14 Education Committee Chairman Bobby Scott.

15 Dream Center willingly accepted the
16 condition of candidacy status in exchange for HLC
17 blessing a questionable sale of EDMC institutions
18 to a nonprofit institution, but then lied about
19 that status to students for almost six months.

20 HLC offered Dream Center an
21 opportunity to appeal the decision, even though
22 its policies didn't require it, and Dream Center

1 dragged that process out for months to buy time.

2 Under Secretary Diane Auer Jones
3 attempted to strong-arm HLC into retroactively
4 restoring Dream Center's accreditation status,
5 even though it went directly against HLC's and
6 the Department's own policies.

7 The Department continued to pay out
8 Title IV to the school, despite knowing it was
9 not accredited and, therefore, ineligible for
10 aid, and covered up its actions by retroactively
11 asserting that the school was approved as a
12 nonprofit.

13 An investigation of HLC came years
14 after the decision, only as members of Congress
15 turned up the heat on the Department for its own
16 actions in the case. So, I urge the members of
17 NACIQI today to focus their attention on what is
18 really happening in this case with a few key
19 questions.

20 Why was the Under Secretary so
21 personally involved in this case that she
22 directed HLC to work only with her, not with the

1 Department's career staff?

2 Why did the Department ignore repeated
3 communication that indicated Dream Center was in
4 candidacy status and, therefore, not eligible for
5 federal aid?

6 And why has this investigation been
7 initiated, run, and presented by the political
8 staff of the Department, rather than the career
9 staff, who are normally at the location.

10 CHAIRMAN KEISER: Thirty seconds.

11 MS. LAITINEN: I would also like to
12 ask that the Committee report and associated
13 documents on this event be entered into the
14 record and I will submit those comments by email.

15 CHAIRMAN KEISER: Thank you. Our next
16 presenter is Clare McCann, Deputy Director for
17 Federal Higher Education Policy at New America.

18 MS. MCCANN: Thank you for the
19 opportunity to provide comment. My name is Clare
20 McCann, I work for New America's Higher Education
21 program.

22 On November 29, 2017, Dream Center

1 sent a signed letter to HLC reading in part, we
2 understand that both schools will undergo a
3 period of candidacy, beginning with the close of
4 the transaction.

5 Then, nearly two weeks after the Dream
6 Center deal closed, Dream Center sent HLC another
7 letter, reading in part, we were shocked that the
8 Commission placed the institutions in candidacy
9 status. As you all no doubt know, candidacy
10 status or pre-accreditation is not the same as an
11 accredited status. It also affects Title IV
12 eligibility for for-profit institutions.

13 When the institutions were placed in
14 candidacy status in 2018, they also should have
15 lost eligibility for federal aid. Instead, the
16 Department kept the money flowing.

17 In May 2018, five months after Dream
18 Center was placed in candidacy status, the
19 Department took what an FSA official termed an
20 extraordinary measure of granting temporary
21 interim nonprofit status to Dream Center,
22 backdated to January 20, 2018.

1 The Department didn't stop there in
2 its efforts to accommodate Dream Center. In May
3 or June 2018, Under Secretary Diane Auer Jones
4 reached out to Dream Center to say that she
5 would, quote, pursue a more informal and
6 expedited resolution of the accreditation issue.

7 That plan was to have HLC backdate
8 Dream Center's grant of accreditation when it was
9 restored, a retroactive accreditation that was
10 impermissible under the regulations and
11 Department policy in effect at that time.

12 On June 27, 2018, Under Secretary
13 Jones informed HLC that the career staff had
14 issued a memo the previous year prohibiting
15 retroactive accreditation, quote, in error and
16 asked that HLC work, quote, exclusively with her
17 at the Department on this issue.

18 Within a half-hour of responding to
19 HLC about its agreeing to consider the policy,
20 Under Secretary Jones held a call with Dream
21 Center executives, who emailed internally later
22 that date, quote, it appears HLC is in sync with

1 retro accreditation.

2 A month later, Under Secretary Jones
3 issued new guidance allowing retroactive
4 accreditation, this time in her name, rather than
5 from the career staff.

6 Under Secretary Jones went to such
7 lengths to help Dream Center because of the
8 Department's own corrupt actions to allow Dream
9 Center to receive millions in taxpayer dollars
10 illegal for months, before taking the unusual and
11 extraordinary step of retroactively and
12 temporarily deeming Dream Center a nonprofit
13 college.

14 This proceeding today is little more
15 than the Department's attempt at a cover-up.

16 Under the HEA, NACIQI is responsible --

17 CHAIRMAN KEISER: Thirty seconds.

18 MS. MCCANN: -- not just for reviewing
19 accreditors, you are also responsible for, as the
20 statute says, advising the Secretary with respect
21 to the eligibility and certification process for
22 institutions of higher education.

1 So, I strongly urge the Committee to
2 reflect its questions about institutional
3 integrity and the Department's illicit actions
4 related to Dream Center in its discussion.

5 CHAIRMAN KEISER: Thank you. Our next
6 speaker is Ben Miller, Vice President, Post
7 Secondary Education, Center for American
8 Progress. Mr. Miller?

9 MR. MILLER: Thank you. Dream
10 Center's purchase of the Education Management
11 Corporation was a fiasco for students and
12 taxpayers. They lacked the resources and the
13 knowhow to run the struggling colleges and never
14 should have been allowed to do so.

15 Dream Center's collapse should prompt
16 detailed review of what happened and how the
17 regulatory and oversight system ever let this
18 occur.

19 But that is not the discussion you're
20 having today. Instead, ED has tabled pressing
21 accreditation issues related to ACICS in its
22 pursuit of HLC that appears to entail

1 unprecedented levels of political appointee
2 involvement.

3 I don't think HLC's decision-making
4 has always been perfect, but it's the Education
5 Department that should be answering questions
6 about its involvement with Dream Center. So,
7 let's start with the Dream Center accreditation
8 status issue.

9 The Dream Center EDMC team had already
10 been warned about getting accreditation
11 descriptions right in October 2017. Dream Center
12 had a chance to raise concerns about the
13 candidacy status.

14 The agreement from November 2017
15 included language that, quote, the board shall
16 reinstate accreditation and place the
17 institutions on the standard pathway, end quote,
18 if the institutions demonstrated the ability to
19 meet eligibility requirements at a later visit.

20 Dream Center lawyers poured over this
21 document. At least one of these individuals was
22 not a newbie. She had experience in higher ed

1 dating back to at least the 1990s. They poured
2 over the document, asking for multiple changes.
3 Dream Center had 14 days to accept or reject the
4 proposal.

5 When Dream Center's initial acceptance
6 didn't mention the candidacy component, HLC
7 specifically asked it to affirm acceptance of the
8 change to candidacy status, which Dream Center
9 did.

10 Dream Center's own student disclosure
11 that it ran by HLC in late January 2018 noted
12 that, quote, the institution is currently
13 completing the final requirements to have
14 regional accreditation reinstated by the HLC
15 board, end quote.

16 I don't know why Dream Center's
17 outside counsel didn't question HLC in greater
18 detail about the November 2017 document or why it
19 took nearly two weeks after the public disclosure
20 to raise questions to HLC.

21 What I do know is that during the same
22 time, he was sharing his own version of the song

1 You've Got a Friend in Me from Toy Story as,
2 quote, You've Got a Friend in Trump, end quote.
3 It seems that there were clearly better things he
4 could have been doing with his time.

5 And keep in mind that Dream Center
6 knew no later than January 20 that they were not
7 accredited, but they were not forthright with
8 students for months to come.

9 Instead of going after HLC, you should
10 be asking questions about the Department of
11 Education's policies and procedures. For time's
12 sake, I'll just list three related to this
13 specific matter. First --

14 CHAIRMAN KEISER: Thirty seconds.

15 MR. MILLER: -- why the political
16 leadership at the Department Education signed off
17 on the retroactive nonprofit designation that
18 allowed Dream Center to keep receiving federal
19 money when its accreditation status should have
20 cut it off from federal aid?

21 Second, why did the career staff not
22 seem to know about the plan to remove the

1 retroactive accreditation guidance when talking
2 to HLC staff and why did the head of the
3 accreditation group not sign it?

4 Third, is it common policy and
5 procedure for a single political appointee to be
6 personally negotiating accreditors' standards and
7 actions and sending letters that supposedly have
8 only been reviewed by her and the lawyers? I
9 hope this NACIQI review --

10 CHAIRMAN KEISER: Thank you.

11 MR. MILLER: -- will use this time to
12 recognize that we need to focus on the Department
13 of Education.

14 CHAIRMAN KEISER: Thank you. Our next
15 presenter is Bob Shireman, Director of Higher
16 Education Excellence and Senior Fellow at The
17 Century Foundation. Mr. Shireman?

18 MR. SHIREMAN: Thank you, and good
19 afternoon. Assistant Secretary King this morning
20 said that the response you would hear to the
21 Department's HLC letter would be, quote, stuff
22 that doesn't really matter.

1 But the nature of the relationship
2 between Department officials and accreditors is
3 of the utmost importance, it matters a great
4 deal.

5 For the Department to bring this issue
6 to NACIQI is both misguided and suspicious. For
7 NACIQI to endorse the letter or to take any
8 action against HLC on the basis of the letter
9 would be inappropriate and hazardous.

10 I urge Assistant Secretary King to
11 withdraw the letter from NACIQI consideration.
12 If the Department does not withdraw the letter, I
13 encourage your Committee to reject its
14 recommendation.

15 Accrediting agencies are, by design,
16 separated from direct control by Department of
17 Education officials, whether those officials are
18 political appointees or career civil servants.
19 This firewall is critical to protecting
20 accreditation from political meddling.

21 As a former Department official and
22 Congressional staff member, I am well aware of

1 the intense pressure that can come from school
2 stakeholders and owners seeking favors.

3 Sometimes those pressures lead to government
4 officials reaching out to accreditors to let
5 their wishes be known. That happens.

6 Ultimately, however, the decision
7 about whether a school is accredited or what the
8 consequences should be for a violation of the
9 accreditor's standards is up to the accreditor.

10 That is what makes our higher
11 education system different from other countries.
12 We do not have a national ministry of education
13 looking over the shoulder of every college leader
14 and faculty member in the country.

15 Accrediting agencies have made it
16 possible for us to have colleges that are
17 autonomous from the federal government, even
18 while they benefit from federal financial aid.
19 An accreditor that consistently fails to protect
20 students and taxpayers or does not have the
21 capability or expertise to do its job, of course,
22 does not deserve secretarial recognition.

1 That was the case with ACICS, the item
2 that was originally on your agenda today. The
3 Department, however, removed that item from the
4 agenda and instead decided to throw this HLC
5 issue at you.

6 Who made that decision and why, I do
7 not know, but it was a bad decision. Accrediting
8 agencies need to know that when a Department
9 official contacts them about a situation with a
10 school, the Department is --

11 CHAIRMAN KEISER: Thirty seconds.

12 MR. SHIREMAN: -- fully respecting the
13 accrediting agency's ultimate authority and
14 responsibility to decide.

15 The Department's HLC letter undermines
16 the autonomy by transforming the accreditor into
17 a contractor expected to carry out the
18 Department's wishes, or else. That is what makes
19 the Department's letter misguided, hazardous, and
20 inappropriate.

21 What makes the letter suspicious is
22 its fictionalized account of what happened in

1 this case. The record shows the Dream Center was
2 informed that these schools would be placed into
3 candidacy status. The fact that --

4 CHAIRMAN KEISER: Thank you.

5 MR. SHIREMAN: -- why is the
6 Department pursuing this? I'm not sure, but I do
7 hope that the Department will withdraw its
8 request. Thank you.

9 CHAIRMAN KEISER: Thank you very much.
10 Our next speaker is our former Chair and now
11 President and CEO of the WASC Senior College and
12 University Commission, Jamiene Studley. Jamie?

13 EVENT PRODUCER: Can you please press
14 Pound-2 on your phone? Please press Pound-2 on
15 your phone? Please press Pound-2 --

16 CHAIRMAN KEISER: Jamie?

17 EVENT PRODUCER: -- so I can identify
18 your line. She's on Webex, but no one is raising
19 their hand at the moment, did you want to go to
20 the next person and come back to her?

21 CHAIRMAN KEISER: Okay. The next
22 person is supposed to be Belle Wheelan, but her

1 representative, hold on, Rosalind Fuse-Hall will
2 read a statement for Belle Wheelan. Ms.
3 Fuse-Hall?

4 MS. FUSE-HALL: Thank you, Mr.
5 Chairman, and good morning, members of the NACIQI
6 Committee and the Department. I am here as the
7 Director of Legal and Governmental Affairs and
8 Commission Support at the Southern Association of
9 Colleges and Schools Commission on Colleges. And
10 I've been asked by Dr. Wheelan, who is now
11 serving on a panel for SHEEO to offer her
12 comments.

13 And she says, I am here today to raise
14 my concerns about the compliance inquiry before
15 you involving the Higher Learning Commission. As
16 a longstanding member of the accrediting
17 community, I am troubled by the Department's
18 approach that appears to pressure an accreditor
19 to undo prior actions.

20 Accreditors are responsible for
21 assuring our member institutions are in
22 compliance, especially with federal regulations.

1 To do this, we look at policies and procedures,
2 systems and practices for implementing them, and
3 the checks and balances that ensure that they are
4 working properly.

5 Where we identify problems, our job is
6 to ensure that our institutions evaluate those
7 concerns, course correct, and move forward in
8 compliance. This is a reasonable, practical, and
9 evenhanded manner in which to operate and which
10 our membership expects of us.

11 Accreditors have always been and
12 should continue to be treated by NACIQI and the
13 Department in precisely the same manner. For
14 instance, unless there are ongoing compliance
15 concerns, accreditors do not take action against
16 an institution for a single decision that is
17 nearly three years old. Such an action would be
18 disingenuous and shows no practical value towards
19 improvement. The same should be the case for
20 accreditors.

21 Likewise, we hold our membership
22 responsible for reading our letters,

1 understanding our policies, and asking questions
2 if they do not understand them. We cannot place
3 blame on accreditors if institutions fail to do
4 so.

5 Finally, we do not force institutions
6 to agree with our view of the facts on the
7 ground. We focus on ensuring institutions
8 correct course and move forward. We hold
9 training sessions and host individual meetings
10 where needed --

11 CHAIRMAN KEISER: Thirty seconds.

12 MS. FUSE-HALL: -- to ensure our
13 member institutions understand our standards.
14 Accreditors should not have to adopt the
15 Department's view in order to avoid compliance
16 consequences.

17 But just as we shouldn't use our
18 authority to force the institutions to go back in
19 time and reverse actions, I believe the
20 Department's authority should not be used in such
21 a manner either. Such an action sets a troubling
22 precedent for accreditation as a whole.

1 Thank you for the opportunity to share
2 Dr. Wheelan's thoughts with you.

3 CHAIRMAN KEISER: Thank you.

4 DR. SMITH: Arthur, this is George.
5 Let's try Jamie one more time.

6 CHAIRMAN KEISER: Okay. Jamie, are
7 you here? Jamie?

8 EVENT PRODUCER: Hold on just one
9 moment --

10 CHAIRMAN KEISER: Okay.

11 EVENT PRODUCER: -- I think she
12 lowered her hand.

13 CHAIRMAN KEISER: Jamie?

14 EVENT PRODUCER: Just one moment.

15 CHAIRMAN KEISER: Well, if not, we can
16 move --

17 EVENT PRODUCER: No, she's here.

18 CHAIRMAN KEISER: -- to the next
19 person.

20 EVENT PRODUCER: She's here.

21 CHAIRMAN KEISER: Okay, good.

22 MS. STUDLEY: Hello? Hi.

1 CHAIRMAN KEISER: Hey, Jamie.

2 MS. STUDLEY: Hey.

3 CHAIRMAN KEISER: I already introduced
4 you, you have three minutes.

5 MS. STUDLEY: Thank you, Mr. Chair.

6 I'm proud to have served not only as Chair of
7 NACIQI, but also as General Counsel and Deputy
8 and acting Under Secretary of this Department.

9 This opportunity to comment today
10 shares the core value of public decision-making,
11 to be heard on the proposed actions of our
12 government. Others who cannot participate today
13 or fear public speaking or have more than three
14 minutes worth to say are entitled to that same
15 opportunity.

16 An unwarranted and exceptional limit
17 on public comments deprives NACIQI and the
18 Department of a full range of perspectives,
19 jeopardizes the credibility of decisions, and
20 sets a deeply disturbing precedent.

21 I am concerned about the argument
22 between HLC's request for extensions of time and

1 the Department's denial of written comment. The
2 right to comment belongs to the public and cannot
3 be casually erased.

4 More than once, the fine staff of this
5 Department has handled in the realm of 100,000
6 written regulatory comments, surely it could
7 manage written comments on this matter.

8 I am also troubled by the Department's
9 insistence that the HLC recognize the
10 Department's interpretation of events. As an
11 accreditor dealing with institutions, we do not
12 compel them to see things the same way we do.

13 We require, rather, that they align
14 their policies and practices with our standards.
15 HLC eliminated the policy the Department
16 questioned and revised related provisions.

17 The duty of NACIQI and the Department
18 is to evaluate whether an accreditor has
19 established satisfactory standards and set in
20 motion practices to ensure compliance going
21 forward.

22 There is no showing here that the

1 agency lacks the commitment or capacity to comply
2 with federal recognition requirements, including
3 the essential element of due process.

4 In response to comments today, let me
5 add, the WASC Commission took a different action
6 on a parallel change of control transaction
7 because we had different policies and facts.

8 In July 2017, WASC implemented its
9 requirements setting a condition precedent to a
10 control change and a dozen serious detailed
11 expectations about mission and education quality,
12 at what Secretary King called the board room,
13 including financing and servicing agreements, to
14 be addressed in an imminent reaffirmation review.
15 That followed our policies.

16 In closing, whatever hat I have worn,
17 I have consistently urged the Department and
18 NACIQI to take seriously the duties --

19 CHAIRMAN KEISER: Thirty seconds.

20 MS. STUDLEY: -- to assure they
21 recognize NACIQI effectiveness, and due process.
22 We respect that responsibility.

1 In so doing, NACIQI must be scrupulous
2 to accept accreditor condition actions, applying
3 their approved standards in complex
4 circumstances, and to promote consistency and
5 fairness.

6 Like accrediting agencies, NACIQI must
7 be impartial and independent in rendering your
8 recommendation. Thank you for your attention and
9 for your service.

10 CHAIRMAN KEISER: Thank you very much.
11 Our final presenter is Walter Ochinko of Veterans
12 Education Success. Mr. Ochinko?

13 MR. OCHINKO: Thank you for the
14 opportunity to comment on the Education
15 Department's surprising conclusion that the
16 Higher Learning Commission failed to comply with
17 federal regulations. I say surprising because
18 overwhelming evidence exists that HLC
19 scrupulously followed its own standards, as well
20 as departmental regulations.

21 As you know, when HLC notified the
22 Dream Center in November 2017 that the

1 accreditation of two Art Institute campuses would
2 be changed to pre-accredited, the Dream Center
3 should have known that because the schools
4 operated as for-profit, the pre-accreditation
5 exemption for nonprofit institutions did not
6 apply.

7 Nonetheless, the Dream Center
8 continued to assure students that the schools
9 were accredited for six months. In fact, the
10 credits earned by students enrolled at these two
11 schools were worthless.

12 In October 2018, the Department
13 acknowledged as much when it forgave loans for
14 students that had been attending these schools
15 when the Dream Center misrepresented their
16 accreditation status.

17 The record also demonstrates that the
18 Department continued to disperse federal student
19 aid, despite knowing that the schools were no
20 longer accredited.

21 Then, the Department literally bent
22 over backwards to reverse the effects of the loss

1 of accreditation by retroactively recognizing the
2 two schools as nonprofit and pressuring HLC to
3 reverse its decisions.

4 The Dream Center's misrepresentation
5 of its schools' accreditation status is right out
6 of the playbook of its former own, Education
7 Management Corporation. Between 2013 and 2015,
8 EDMC paid over \$200 million to settle four state
9 and federal lawsuits for deceptive and misleading
10 advertising and recruiting.

11 Our 2015 report on schools that are
12 eligible to enroll veterans, but did not lead to
13 a job included an EDMC school that misrepresented
14 its accreditation status to students. I want to
15 close by reminding you that veterans were
16 impacted by the Dream Center's misrepresentation
17 of its accreditation status.

18 These veterans' GI Bill benefits were
19 wasted at these two Art Institute campuses.
20 Although the federal student loans were forgiven,
21 these veterans are not eligible to have more than
22 a token restoration of their GI Bill benefits.

1 I urge you to think about the impact
2 on veterans like Marta Villanueva, an Art
3 Institute student who served in Iraq. She says,
4 and I quote, it's heartbreaking, because we
5 earned these benefits literally with sweat,
6 blood, and tears. Thank you for the opportunity
7 to comment.

8 EVENT PRODUCER: You're still muted.

9 CHAIRMAN KEISER: Thank you, Mr.
10 Ochinko. We now have the opportunity for the
11 Commission to respond to the comments.

12 DR. GELLMAN-DANLEY: Thank you, Mr.
13 Chair. It's been a very interesting day and a
14 very interesting listening session. I would like
15 to thank all the speakers for taking the time and
16 the passion to express your opinions.

17 And ironically, right next to my desk,
18 I have a quote from my favorite philosopher,
19 Aristotle. Given equally effective presentation,
20 truth will be chosen.

21 We have been very direct with you
22 today and I hear that concern in the speakers.

1 I'd like to say to Robert Infusino, as a student,
2 that I wish you the very best in the future.

3 There's a difference between
4 confusion, which is somewhat in our sights, our
5 thoughts, and intentional. And I really
6 appreciate your passion and your concerns.

7 I also appreciate people recognizing
8 that merit matters. And I too do not take
9 pleasure sitting on opposite sides of this issue
10 with my good colleague, Robert King. But that
11 does matter and you could hear that throughout
12 all the speakers.

13 What really matters, that I'm hearing
14 from the speakers, is that the students lost
15 their chance for choice.

16 And it makes me think about how when
17 my son was thinking about college, I got after
18 him in ninth grade, tenth grade, eleventh grade,
19 all the way through, and I said, remember, what
20 you do will give you choices in life, the way you
21 behave will give you choices in life.

22 And these people are saying that the

1 students' choice was taken away, their free will,
2 their right. We didn't do that. Honesty
3 up-front, clarity, moving quickly could have led
4 to a very different outcome.

5 And so, this is what I want to say
6 today in sum, in listening to these passionate
7 speakers, and I might add to all of you, I
8 appreciate everything that you've said. And I
9 told you earlier that I'm a big fan of Hamilton
10 and I quoted it once. History tells our story.
11 Tell the right story today. Thank you.

12 CHAIRMAN KEISER: Thank you. Now,
13 Secretary King, I'm sorry before to have you get
14 in there, but give you an extra opportunity. But
15 now, it's your turn to respond to the comments
16 and to the Commissioners.

17 ASSISTANT SECRETARY KING: Mr.
18 Chairman, thank you. Listening to the comments
19 from the various speakers, it struck a chord with
20 me in terms of responding to what I consider
21 personal attacks, not just on me, but on my
22 colleague, acting Under Secretary Diane Jones.

1 First, as a starting point, I worked
2 as a prosecutor for 13 years. Prosecuted some of
3 the most heinous crimes that anybody could
4 imagine in the communities in which I worked.
5 But every one of the people that I prosecuted was
6 entitled to due process.

7 It's embedded in our law and it's
8 certainly embedded in the rules and regulations
9 that govern the relationship between the
10 Department and its accreditors, the Department
11 and institutions. It also -- the obligations of
12 accreditors to those that come before them,
13 however good or bad they may be.

14 I've worked for four governors, two
15 Republicans and two Democrats. And I've never
16 been accused of allowing partisanship to affect
17 my decisions.

18 The complaint that political
19 appointees cannot be fair is ludicrous,
20 particularly when the complaint is being made by
21 former Obama administration political appointees,
22 who somehow believe that they have the corner on

1 fairness and appropriateness.

2 In fact, every one of you are
3 political appointees, and yet, I suspect that
4 each one of you believe in your own minds that
5 you can be fair. And that's what due process
6 ultimately is all about.

7 And finally, this attack on Under
8 Secretary Jones is unwarranted, it is partisan,
9 it is totally false in its conclusions. And in
10 working with her nearly every day, I find her to
11 be among the most caring and honest colleagues
12 with whom I have ever worked.

13 When she joined the Department, in the
14 early summer of 2018, this mess had already been
15 created. And while she didn't understand all of
16 the facts at the time, what she did was not to
17 protect Dream Center.

18 What she did was to try to effect
19 solutions that would help the students, whom she
20 understood were being injured by the actions that
21 culminated ultimately in the closure of these
22 schools.

1 One of you raised the point or
2 asserted or you thought that I had said that the
3 decision by HLC was the cause of Dream Center
4 failing. I did not say that and don't believe
5 that.

6 But I do believe that by withdrawing
7 accreditation, in my view improperly, it led to
8 the demise of student enrollment, which obviously
9 had an impact on the reputation of the school,
10 the cash flow for the schools, and had some
11 impact on the larger problems that emerged.

12 But let me get back to the immediate
13 issue before you. What has been so interesting
14 throughout all of this is the effort on the part
15 of HLC to try to avoid the fact that their policy
16 50.010 is what they actually followed or
17 attempted to follow, but failed to meet its
18 requirements. Instead, what they did is they
19 said, no, let's look at all of these other
20 policies, because that's how we actually decided
21 this case.

22 But when you read those other

1 policies, as I began to do earlier, go back to
2 20.040, the purpose of that policy, in its
3 opening paragraph, is to effectuate the
4 continuing accreditation of the institution
5 subsequent to the closing of the proposed
6 transaction.

7 If you go to 20.070, it says the board
8 may approve the change, thereby authorizing
9 accreditation for the institution subsequent to
10 the close of the transaction or it may deny
11 approval for the change.

12 It goes on to say that the board may
13 approve the change subject to certain conditions.
14 Such conditions may include, but are not limited
15 to, limitations on new educational programs,
16 student enrollment growth, development of new
17 campuses or sites, et cetera.

18 It then goes on to say, if the board
19 votes to approve the change, with or without
20 conditions, thereby authorizing accreditation for
21 the institution subsequent to the close of the
22 transaction, the Commission will conduct a

1 focused or other evaluation to the institution
2 within six months of the consummation of the
3 transaction.

4 So, that language and that condition,
5 the six-month focused evaluation, was part and
6 parcel of what was in the original letter
7 authorizing and approving the sale, Section
8 20.070.

9 We heard this morning about the
10 appeals procedure that was in place at the time
11 of this transaction, 90.010. Here's what it
12 says. An institution may appeal an adverse
13 action of the board of trustees prior, not three
14 months later or six months later, prior to the
15 action becoming final.

16 And then it describes adverse actions.
17 Adverse actions are defined as those that, one,
18 withdraw or deny accreditation. Two, withdraw or
19 deny candidacy. Or three, moves the institution
20 from accredited to candidate status.

21 Even if you accept, which I do not,
22 but even if you accept the notion that these

1 other sections, not 050, govern and describe the
2 board's behavior, they still had this duty,
3 according to 90.010, to say to Dream Center, you
4 have a right to appeal this condition that we're
5 placing on the transaction.

6 The notion that there was no
7 obligation to provide this notice is belied by
8 this section, 90.010, and when you go back to
9 50.010, I think as President LeBlanc pointed out,
10 it says, moving an institution from accredited to
11 candidate status is an adverse action and thus is
12 not a final action and is subject to appeal.

13 We heard from Ms. Sweeney earlier, she
14 came up with a term I had never heard before, I
15 just want to pull my notes out so I can share it
16 with you.

17 She said today, in response to
18 questions, I think from Ms. Petrisko, she said
19 the only time that we use 50.010 is when there is
20 prospective noncompliance and because we didn't
21 identify in our action letter of November 16,
22 2017 any prospective noncompliance, Dream Center

1 should have known that this section did not
2 apply.

3 I have to tell you, first, I had never
4 heard this term, and number two, it is
5 incomprehensible to me that even the most
6 seasoned attorney representing the institutions
7 in these transactions, of which Ron Holt was one,
8 he was one of the lawyers for Dream Center, would
9 understand that, that because prospective
10 noncompliance wasn't included in this seven-page
11 letter, the action letter, that somehow Dream
12 Center should have known that 50.010 was not
13 being used.

14 A point I made earlier, nowhere in
15 this letter does the board say to Dream Center,
16 as a consequence of this and as a consequence of
17 being in this change of control candidacy status,
18 you are sacrificing or forfeiting accreditation,
19 even though you have been up to this point and on
20 the day of this letter fully accredited.

21 And nowhere in this letter is there
22 any reference to any of these sections, allowing

1 the lawyers for Dream Center or the Dream Center
2 executives to work their way through the maze of
3 policies to try to figure out which one pertains
4 to them.

5 The decision itself, I find, and I'm
6 talking about the initial decision, however good
7 or bad Dream Center was, and as I was commenting
8 when I first started and then we had to allow the
9 third-party people to speak, HLC's own policies
10 suggest to them, strongly, in fact direct them,
11 if they have this level of misgiving, not to
12 approve the transaction.

13 And that section that's in 40, 040
14 says that the board will also not consider for
15 approval any proposed change of control structure
16 or organization for an institution the board has
17 determined, within the previous 12 months, to
18 merit withdrawal of accreditation.

19 Well, that's exactly what they were
20 doing. They were saying, under these
21 circumstances, we should withdraw accreditation.
22 And yet, they went ahead and authorized the

1 transaction.

2 I was struck by the assertion that all
3 of the members of HLC fully understand the
4 meaning of all these terms and that they were
5 quite certain that the lawyers for Dream Center,
6 in this case, understood all that was involved,
7 because they had accepted the terms.

8 But here was a letter dated February
9 23, 2018, after HLC came forward and published on
10 their site the notice that accreditation had been
11 withdrawn, there was a flurry of discussions back
12 and forth.

13 And as a result of those discussions,
14 and let me read the letter to you, it says, we
15 have discussed your letter of response and the
16 proposed public notice disclosure with our
17 clients, this is from the lawyer that represents
18 Dream Center.

19 To ensure that we correctly understand
20 your response and the status of our client's
21 schools, the Illinois Institute of Art and the
22 Art Institute of Colorado, we are confirming

1 that, number one, both institutions remain
2 eligible for Title IV, as the Commission clearly
3 suggested in its letter to our clients dated
4 November 16, referring to the institutions as
5 being in pre-accreditation status, a term of art
6 that is defined in federal regulation as a
7 qualifying status for Title IV eligibility for a
8 nonprofit institution.

9 Two, both institutions remain
10 accredited in the status of change of control
11 candidate for accreditation per their change of
12 ownership and are eligible to apply for renewal,
13 slash, extension of their accreditation on March
14 1, 2018, pending their eligibility review.

15 Three, both institutions will receive
16 an objective review for continued accreditation
17 with team members who have the requisite skill
18 and experience to render an unbiased decision.

19 At the end, it says, please confirm
20 that our understandings as stated above are
21 correct.

22 In response to this letter, a couple

1 of things seem to have occurred. The first was
2 that Karen Solinski's services were terminated on
3 this date. That Ms. Sweeney was then designated
4 to take over the oversight of this particular
5 case.

6 And it as at that time that she
7 reached out to private counsel, who claims that
8 she made several phone calls that went unreturned
9 and therefore concluded that Dream Center was no
10 longer interested.

11 And I have to tell you, if I received
12 a letter like this, and this was addressed to Dr.
13 Gellman-Danley, if I received a letter like this,
14 I would not have let it go unresponded to.

15 As Barbara said earlier, it's one
16 thing to talk on the phone, it's another thing to
17 get written confirmation of whatever the position
18 is. This letter would not have gone unresponded
19 to. Certainly, this assertion at point number
20 two.

21 The notion of saying to an
22 organization, in this case, Dream Center, we're

1 going to approve the transaction, but we are
2 going to place you on a path that nearly assures
3 your demise, makes absolutely no sense.

4 It strikes me, and I'm not in a
5 position, contrary to the assertions made by some
6 of those who spoke earlier, to tell HLC what
7 decision they should have made, but I would ask
8 you to consider what decisions they could have
9 made that might have alleviated all of the
10 problems that are part and parcel of what we've
11 been talking about.

12 They could have said, as most of the
13 other accreditors said to their applications from
14 Dream Center, we may put you on some conditional
15 status where your accreditation remains intact,
16 but you have to demonstrate to us that you can
17 meet certain criteria.

18 The assertion, by the way, that the
19 reason that the other accreditors didn't do what
20 HLC did is because their circumstances were
21 different, well, they were different to a certain
22 extent, because the schools were all different, I

1 understand that, but the underlying issue was not
2 the school. The underlying issue was Dream
3 Center Management, and that was common to every
4 one of them.

5 Ms. Sweeney said earlier that if
6 somebody's a really bad actor, that's who we use
7 50.010 for, and it's for those people who are the
8 really bad actors that they have a right to
9 appeal this adverse action.

10 But if you're not all that bad an
11 actor, we're not going to subject you to 50.010,
12 we're going to subject you to 20.040 or 070, in
13 which case we can put you in the same position,
14 candidacy status, taking away your accreditation,
15 but you have no right to appeal.

16 To suggest that this constitutes due
17 process, in the way these various rules may or
18 may not get manipulatively used, strikes me as
19 incongruent with the purpose and the meaning of
20 the notion of due process.

21 The questions have been raised about,
22 well, why are we here and why can't we just move

1 forward? And after all, the Department is
2 behaving in a way that is taking over the role of
3 an accreditor. Quite to the contrary.

4 We have not said to HLC, these are the
5 rules and standards that you need to use to
6 determine accreditation, they decide that. What
7 we say is your responsibility is to follow your
8 own rules.

9 And whether they were acting under
10 50.010 or any of the other sections, 90.010 says
11 you have to provide a right, a notice of appeal
12 prior to the action becoming final, not months
13 later.

14 Second, the question is, if you
15 believe that due process was in fact compromised
16 in this case, and we contend that it was, because
17 this notice was not provided timely to Dream
18 Center, meaning right at the very beginning,
19 because what was being done was an adverse
20 action, whether you describe this under 50.010 or
21 90.010, either way, they were entitled to this
22 right and they were deprived of it.

1 Had it been exercised, had it been
2 provided, we can only speculate, but it may have
3 been. That, at that point, Dream Center would
4 have understood the consequences and said, we
5 have to walk away from the deal.

6 Attorney Holt said that to us. He
7 said, if we had realized that we were going to
8 lose accreditation by going forward with the
9 deal, we would never have done it.

10 Karen Solinski, who was the vice
11 president at the time and who participated,
12 according to her description, in the development
13 early on of a lot of these policies, responded to
14 me, after a phone call that we had, and let me
15 read this to you. This was December 23, just
16 before Christmas.

17 This was my note to her, thank you
18 once again for making time to speak with us and
19 for filling in information we think vital to our
20 analysis of HLC managing the request to approve
21 the sale of a large group of educational
22 institutions from a for-profit ownership group to

1 a nonprofit group called Dream Center Education
2 Holdings.

3 I wanted to take this moment to once
4 again confirm your understanding of the
5 transaction, with respect to the question of the
6 accreditation of the two institutions located
7 within the HLC jurisdiction.

8 We understood you to say that both
9 institutions remained accredited during a
10 six-month period following the sale, during which
11 the HLC would monitor the actions and behavior of
12 DCEH, Dream Center, ascertain whether they could
13 remain accredited (because they were progressing
14 toward meeting each of the items that had raised
15 concerns during the site visits in the fall of
16 2017 and then outlined in the November 16
17 letter), or in the alternative, to withdraw their
18 accreditation because they were not meeting the
19 expectations set out in the November '16 letter.

20 Can you either confirm that I have
21 accurately described your understanding as
22 communicated to us this morning or, if not,

1 please correct what I've written in a response
2 email. Thanks so much, Bob.

3 Here's what she wrote back on December
4 26. Bob, thank you for our conversation on
5 Monday. I'm writing to confirm that you have
6 accurately described my understanding of the
7 transaction.

8 Based on my long familiarity as HLC
9 vice president, then executive vice president,
10 until March of 2018, of Legal and Governmental
11 Affairs, with oversight of change of control and
12 policy development, slash, implementation, and
13 based on the understanding of the HLC board that
14 adopted the change of control policies in 2009
15 and 2010.

16 You correctly indicated in our
17 conversation and I agree that HLC did not, either
18 in November of 2017 or January of 2018, act to
19 withdraw the accreditation of the two
20 institutions identified in your email.

21 The purpose of the change of control
22 candidacy was to signal to the institutions and

1 to the public that HLC would need to reconfirm
2 after the closing of the transaction and in short
3 order, based on evidence current at that time,
4 the institutions' ability to meet the HLC
5 criteria for accreditation and other policies.

6 Last on this point, and then I have
7 one other and I will close. Ms. Sweeney,
8 throughout the day, has said to you, repeatedly,
9 that 50.010 was not involved, it was essentially
10 irrelevant, and that because Dream Center chose
11 this choice, I would describe it as rather a
12 Hobson's choice, that no appeal was required, or
13 notice of appeal.

14 But Ms. Sweeney, in May of 2018, May
15 30, in an email to Elizabeth Daggett on our
16 staff, wrote in response to questions that Ms.
17 Daggett had posed, and I quote, as you may be
18 aware, while HLC's board approved the
19 transaction, it did so with several conditions,
20 one of which was to move the institutes from
21 accredited to candidate status under HLC policy.
22 Such a decision is subject to appeal under our

1 policies. The institutes have indicated their
2 intent to appeal.

3 So while this making available an
4 appeal, all the way down in May, finally
5 occurred, the damage had been done because the
6 announcement and the decision to remove
7 accreditation had been made public. This is not
8 sufficient under 90.010, and it is not sufficient
9 under our regulations, defined at 600.25.

10 The last point is this, and I thank
11 you for your patience, whenever a due process
12 violation occurs, regardless of what government
13 agency is responsible for overseeing its
14 commission, it always has to be done
15 retrospectively.

16 I'm not talking about retrospective
17 accreditation, I'm talking about an analysis of
18 whether or not due process was violated.

19 And if you say that an accreditor can
20 violate an applicant or an institution's due
21 process rights, a year ago, a month ago, five
22 years ago, and that there is no remedy because

1 the Department is powerless to say wait a minute,
2 that was not right, that you didn't follow your
3 own procedures, that you didn't provide notice
4 that any institution is entitled to in front of
5 you, regardless of how good or bad they may be,
6 that if you say the Department cannot do this,
7 which is what the three accreditors who spoke to
8 you this morning, or this afternoon, said we
9 cannot do, then there's no meaning to the
10 regulations that require the adherence to these
11 principles.

12 And so the only way we can do this is
13 retrospectively, is to go back, look at the
14 transaction, determine whether or not the
15 standards that are in place in our regulations
16 and in the agency's own policies have been
17 adhered to.

18 We're not here substituting our
19 judgment for theirs. I would agree with
20 President Danley that we have no right to do
21 that, but we do have a right to say did you
22 exercise the authority that you have consistent

1 with your own policies and consistent with the
2 due process regulations in federal departmental
3 use. And I would argue that they did not.

4 So part of this is to say to the world
5 of higher education out there, because I
6 understand the implications of this, what it is
7 to say to our institutions, many of whom live in
8 abject fear of their accreditor, that they're
9 going to lose accreditation, they're going to be
10 put on probation, that something terrible is
11 going to happen when they do their site visits,
12 I've been through all that, as you have as well.

13 But what we're saying to institutions
14 across the country and the students that they
15 serve is that you are entitled to due process in
16 your relationship with your accreditors, and if
17 you don't get it, the Department will step in, as
18 we are here, and saying this was wrong and that
19 we are going to monitor over the next year to
20 make sure, not just that new policies have been
21 adopted, it doesn't matter whether they're new or
22 old if you don't adhere to them, but to assure

1 that HLC will adhere to their policies going
2 forward.

3 The last piece, in terms of trying to
4 address the transcript issues for students, I
5 think all of us feel for Mr. Infusino and the
6 distress that he and his classmates experienced.
7 And as angry as he is, I would argue to him that
8 he is simply placing his blame in the wrong
9 place.

10 And that's not to say that Dream
11 Center is blameless, it's not to say that the
12 Department perhaps could have acted faster or
13 differently, but it is to say that the start of
14 this, the cause of this was the failure of the
15 board of HLC to fulfill their responsibilities to
16 the applicants before them.

17 Thank you very much for giving us this
18 time.

19 CHAIRMAN KEISER: Thank you, Secretary
20 King. Anne, would you lower your hand, just by
21 pushing the button? Okay. And I have one hand
22 raised, and that's Claude. And please raise your

1 hands if you have a question for Secretary King.

2 VICE CHAIRMAN PRESSNELL: Thank you.

3 And thank you for being here, Secretary King, I
4 appreciate your comments. I've got just a small
5 number of questions.

6 One about the retroactive
7 accreditation piece, you know, you just stated
8 that the basis for the retroactivity was based on
9 a decision of noncompliance with due process.

10 But it appears from everything we've
11 heard today that it was more than that because
12 there was the withdrawing of Herman's memo that
13 prohibited retroactivity. And so my question is
14 can you address that?

15 Because it appeared that you were
16 going down one path and now, it appears that you
17 may be going down a different path. So can you
18 clarify (audio interference)?

19 ASSISTANT SECRETARY KING: I'll try
20 to. I was not in the Department when all of that
21 was going on, but I think I understood what
22 happened. It became apparent to the Department

1 that the transaction that was undertaken here by
2 HLC was, frankly, unprecedented.

3 The notion that because they attempted
4 it once before with Everest College, but the deal
5 fell through, and somehow that constituted the
6 Department blessing that process, it's just
7 nonsense. The Department didn't bless anything.

8 But the process when it was first
9 understood here, I think was, frankly,
10 misunderstood. And the belief was that, in fact,
11 accreditation had been withdrawn, even though I'm
12 saying to you HLC didn't follow their own
13 policies, therefore the withdrawal should be
14 considered void, but people didn't understand
15 that at the time.

16 So the question was, well, is there a
17 way to not leave these students in the lurch
18 because they've already started the semester,
19 this is happening in the middle of the semester,
20 and it's putting them in a very bad place.

21 So that's what started this question
22 about could you do retroactive accreditation?

1 And at the time, as I understand it, there was a
2 policy, I don't know when it was adopted, but it
3 had been guidance from the Department that
4 prohibited retroactive accreditation.

5 When Under Secretary Jones first came
6 to the Department, which was in this
7 administration, which was I think around June or
8 July of 2018, she came into the middle of all of
9 this and all of these discussions were now
10 underway.

11 And as you heard, I think from Ms.
12 Sweeney, it was a letter from Dream Center where
13 they were trying to figure out how do we fix this
14 problem?

15 And Diane Jones, without having the
16 benefit of what we now know, kind of leaped into
17 this, accepted the notion that accreditation had
18 been withdrawn, and is there anything we could do
19 to try and restore it?

20 She worked, as I understand it, with
21 all of the accreditors, many of whom thanked her
22 for her work, both in terms of getting Dream

1 Center, which somewhere up to that point had not
2 yet posted on their website that accreditation
3 had been withdrawn, she was the one who got them
4 to get it posted on their website, and then to
5 try and work towards some solution for that
6 issue.

7 It never, understandably, got
8 resolved, and the closest that we came to
9 resolving it was President Danley's offer this
10 spring, 2020, to have the board go back and
11 essentially date the loss of accreditation to be
12 commensurate with the date that the schools
13 closed in December of 2018.

14 But as you heard, the board rejected
15 that on the claim that somehow that would harm
16 students. It was interesting when that question
17 was asked this afternoon, there was no answer to
18 how students would be harmed by doing this. But,
19 nonetheless, that's as close as we came to trying
20 to resolve that issue.

21 (Simultaneous speaking.)

22 ASSISTANT SECRETARY KING: I hope that

1 answers your question.

2 VICE CHAIRMAN PRESSNELL: Yeah, it
3 does. Maybe you can answer my question on the
4 Title IV issue. I know there were some
5 third-party comments on it as well.

6 ASSISTANT SECRETARY KING: Yeah.

7 VICE CHAIRMAN PRESSNELL: Was there
8 ever an interruption of full Title IV aid to
9 students at either of the two art institutes, and
10 if so, how long was that interruption of aid?

11 ASSISTANT SECRETARY KING: My
12 understanding is that Title IV was not
13 interrupted. When one of our career staff at
14 FSA, Mike Frola, whose name was mentioned during
15 the course of these proceedings, learned about
16 the situation, he was confronted, as I understand
17 it, with a choice of either granting this
18 temporary nonprofit status to Dream Center, even
19 though that had not been finally determined,
20 which then permitted them, permitted the
21 students, to continue to be eligible for Title IV
22 while this matter got worked out.

1 Under the rules, and I think Ms.
2 Sweeney, I think it was her, correctly stated
3 this, but to be eligible for Title IV, if you are
4 in for-profit status, you have to be accredited.
5 If you are a nonprofit, and that status had not
6 yet been determined, although it was in the
7 process of being determined, not for IRS
8 purposes, but for Department of Education
9 purposes, there are two different standards for
10 that, if you are in pre-accredited status, which
11 is what HLC had placed Dream Center in, this
12 candidacy status, which is pre-accredited status,
13 then as a nonprofit, you would be eligible for
14 Title IV.

15 So as I understand it, Frola,
16 confronted with that decision and the potential
17 of cutting students off in the middle of the
18 semester, made a decision to award this interim
19 status as nonprofit, while their full application
20 was pending, which then protected the students
21 from loss of Title IV.

22 VICE CHAIRMAN PRESSNELL: Right. I

1 guess, part of this comes together, one, I'm not
2 sure that the Department should be able to issue
3 interim temporary nonprofit status and that's not
4 our issue, but there seems to be not a lot Title
5 IV aid, there appeared to be confusion as to
6 whether or not the institution was accredited or
7 not and the institution closed, I would say not
8 because of this, but this is my conjecture.

9 I mean, obviously the Dream Center was
10 a catastrophic debacle in higher education that
11 transcends HLC. So, we just didn't -- all of
12 this -- because of these two institutions and
13 their failure. So, trying to work my way through
14 that.

15 My next question is, HLC has now
16 modified their policies and they've aligned, for
17 numerous reasons, one, the new regulations, and
18 also because of this case, they've got them
19 aligned with the direction the Department wants
20 to go.

21 I guess I'm asking, what does the
22 Department hope to gain with this 12-month

1 decision, except to put on hold other potential
2 institutions eligible for accreditations? And if
3 the end game is to have them remedy this
4 situation, come into compliance, have they not
5 already done it? Or what do you hope to gain by
6 the 12-month sanction?

7 ASSISTANT SECRETARY KING: Well, I
8 think several things. The first is, as I
9 mentioned earlier, adopting new rules is not the
10 same as following the rules. And what we see
11 happened in this case is that HLC did not follow
12 their rules.

13 So, new rules, old rules, the question
14 is, can they demonstrate, and we're not sure that
15 they, I hope that they will, can they demonstrate
16 that they are prepared to adhere to their own
17 policies, number one.

18 I had a train of thought and I just
19 lost it.

20 VICE CHAIRMAN PRESSNELL: I'm glad I'm
21 not the only one.

22 ASSISTANT SECRETARY KING: Yes, well,

1 it's tough when you're old. Let me come back to
2 that other, there's another -- oh, well, and the
3 larger point I guess is this, how else does the
4 Department exercise its responsibility to
5 institutions, except by an action like this,
6 where we say to an accreditor that, in this case
7 we think failed to do what it was supposed to do,
8 that we impose some sanction.

9 If we don't, then what do these rules
10 mean? What does due process mean if there's
11 never a consequence? And so, I think that taking
12 this step is a way of sending that message.

13 And I guess, last is under the new
14 accrediting rules now, institutions across the
15 country are free to go to any accreditor they
16 want, so there's no shortage of access to
17 accreditors.

18 The fact that HLC, if you were to
19 support this and if the SDO concurs with our
20 recommendation, yes, HLC would be prevented for a
21 period of a year from taking on new, not
22 in-progress institutions, but new ones, for that

1 period.

2 But I think it's, again, I guess,
3 contrary to the assertion that the Department is
4 trying to stand in the role or the place of
5 accreditors, so who needs them? Quite to the
6 contrary.

7 As I said, we're not describing what
8 the rules should be, we're not describing
9 anything other than whatever your rules are, you
10 have to follow them, and that you have to meet
11 these minimum standards, which are set forth in
12 regulations, of due process.

13 VICE CHAIRMAN PRESSNELL: And I just
14 have a final comment. I have the highest regard
15 and respect for you and I think understanding
16 that you came back from an attorney background
17 kind of explains your opening comments to the
18 Committee on who it should believe and kind of
19 sowing the seeds of distrust of HLC before we got
20 into the deliberation, which from an attorney
21 perspective, I see why you did that, but I was a
22 little taken aback by those opening comments.

1 ASSISTANT SECRETARY KING: Well, if --
2 I had a little trouble hearing what you said, but
3 I certainly didn't mean to be disrespectful to
4 anybody.

5 I do believe, however, that the issue
6 that we looked at, that I looked at, was this
7 period surrounding the site visit by the team
8 that did the extensive reviews, that then
9 reported to the board, made their
10 recommendations, the board's, then action through
11 their action letter and the events that
12 immediately followed.

13 In terms of once we got down into the
14 summer and whether or not accreditation could be
15 retroactively applied, whether or not Title IV
16 was involved, were simply not part of our
17 purview.

18 And so, because in so many of the
19 responses during this, HLC would spend pages
20 talking about all of that stuff, if I came across
21 disrespectfully, I didn't mean to, but I was
22 simply trying to say to you that all of those

1 things, which are interesting and had other
2 consequences, were not related to the analysis
3 that we did here. That was my intended point.

4 VICE CHAIRMAN PRESSNELL: All right.
5 Thank you.

6 CHAIRMAN KEISER: Thank you. If you
7 have questions, please ask questions. If you
8 have comments, when we debate the decision, we
9 will then have those comments that we can make.
10 The -- Steve VanAusdle is next, followed by
11 Kathleen, followed by Mary Ellen, and I guess,
12 Anne Neal, and then I'm going to withdraw my
13 questions. So, Steve?

14 DR. VanAUSDLE: Thank you, Robert.
15 I've got 20 pages of notes and two short
16 questions.

17 CHAIRMAN KEISER: All right.

18 DR. VanAUSDLE: One is clarifying on
19 the appeal process. So, my question is, did the
20 HLC deny a written request for appeal from the
21 Dream Center? Was there a written request and
22 was it denied?

1 ASSISTANT SECRETARY KING: There was
2 a written request in early February that was not
3 denied, but was ignored. And --

4 DR. VanAUSDLE: Was that -- it was a
5 written request?

6 ASSISTANT SECRETARY KING: I --

7 DR. VanAUSDLE: Because I heard
8 earlier something about email request --

9 ASSISTANT SECRETARY KING: Well, I
10 think that's written.

11 DR. VanAUSDLE: -- that was spelled
12 wrong. Okay.

13 ASSISTANT SECRETARY KING: Well, no,
14 no, that was later. That came, the one you're
15 referring to was, I think in March or April,
16 something like that.

17 But there was, I think Ms. Sweeney
18 commented that there was a written request, I
19 think it was February 2. And that went
20 unresponded to. I don't know if that constitutes
21 denied.

22 But if the point is, did HLC formally

1 deny a request for an appeal, the obligation that
2 I think you should be focused on is whether or
3 not HLC fulfilled its obligation to provide a
4 notice of appeal timely. That's what our
5 regulations require and that's what HLC's own
6 policy requires, at 90.010.

7 CHAIRMAN KEISER: Okay, thank you.

8 DR. VanAUSDLE: The other -- one more
9 question.

10 CHAIRMAN KEISER: Go ahead, Steve.

11 DR. VanAUSDLE: It's kind of around
12 this whole concept that relationships really
13 matter in the long run, and this probably putting
14 a little dynamic tension in that arena, but as
15 you responded to Claude, you answered a lot of
16 this question.

17 My concern was, what's the impact of
18 us approving this recommendation? Is that in the
19 interest of higher education or is it just a
20 sanction because we think we've got to impose a
21 sanction? Does it strain relationships or can we
22 move in a direction that brings the Department

1 and all the accreditors a little closer together,
2 learning from this incident?

3 And I sit here thinking, in their
4 territory, there's a lot of institutions and a
5 lot of students that might be impacted by their
6 lack of ability to respond. As a president, I
7 wouldn't want to work with multiple accreditors
8 from outside my region, unless I absolutely had
9 to and I think the continuity and stability is
10 really important.

11 ASSISTANT SECRETARY KING: Well, I'm
12 not quite sure how to answer your question. I
13 think the -- certainly, we all hope to work
14 closely together, and I think the Department has
15 had very positive relationships with accreditors.

16 And as I said at the outset, I'm sure
17 Barbara's not very happy with me today, but I
18 thought of her as a friend for a long time. But
19 I also think that friends at times talk honestly
20 to each other and if we screw up, let them know
21 it.

22 And I think, as I said, it cannot be,

1 in my judgment, that accreditors, however well
2 meaning, if they do make errors, are somehow
3 immune from any consequence, other than to say,
4 well, jeez, we'll learn from it.

5 I think that the institutions out
6 there, thousands of them who are accredited, over
7 5,000 today, have to know that they're entitled
8 to due process with their relationships with
9 their accreditors and that the Department will be
10 here to assure that that happens.

11 And that's what -- you know, I wish,
12 frankly, that we had a more attractive
13 institution here. I don't think there's anybody
14 in the Department that has great admiration for
15 Dream Center. But however good or bad they were,
16 they were entitled to these protections. And
17 that's our point.

18 DR. VanAUSDLE: So, after today's
19 discussion, you feel you should stand with your
20 recommendation?

21 ASSISTANT SECRETARY KING: I do.

22 DR. VanAUSDLE: Okay.

1 CHAIRMAN KEISER: Kathleen?

2 DR. VanAUSDLE: Thank you, Mr. Chair.

3 EVENT PRODUCER: Kathleen, you're
4 muted, hold on just a moment. We can hear you
5 now.

6 DR. ALIOTO: Secretary King, I can
7 understand, well understand why four governors
8 would have appointed you. You are very smart and
9 a very persuasive lawyer.

10 And I would just wonder, if you had
11 been with HLC and this came before the body and
12 you were greeted by a legal situation in which
13 they were \$95 million in the hole and previous
14 owners had absconded with \$30 million, what would
15 you have done?

16 ASSISTANT SECRETARY KING: I wouldn't
17 have approved the transaction.

18 DR. ALIOTO: And AOL, not AOL, has
19 said that they were trying to help, they were
20 trying to help, and you can see that there are
21 different kinds of time frames on here, but let's
22 just stick to the question.

1 In your report, you said that HLC, or
2 documents revealed that HLC repeatedly reached
3 out to Dream Center and Dream Center received
4 this communication, but deliberately ignored
5 these communications to let it, quote, let it
6 sit, because it provides more runway to operate.

7 Now, so, you're giving a very
8 different analysis of what actually happened than
9 what --

10 ASSISTANT SECRETARY KING: What are
11 you reading --

12 DR. ALIOTO: -- what the documents --
13 the documents that are in the -- oh, and by the
14 way, with the documents, in the future, if you
15 could put the dates on them and if they could be
16 chronological, because the documents in this
17 dossier were all over the place.

18 And it was like jigsaw puzzle to
19 understand, I still don't understand what was
20 going on. But the staff report left out of
21 context that the Dream Center deliberately
22 ignored HLC communications.

1 Now, you're just giving us one side of
2 this, and you're a great lawyer, you're giving us
3 one side of the picture, not the full picture,
4 and now, we're supposed to make a decision and we
5 have to look at the full picture.

6 ASSISTANT SECRETARY KING: Well, I --

7 CHAIRMAN KEISER: Kathleen, do you
8 have a question? Bringing -- because this is
9 time to ask questions --

10 DR. ALIOTO: Why does the --

11 CHAIRMAN KEISER: -- and we can make
12 our points later on.

13 DR. ALIOTO: Why does the staff report
14 leave out the repeated HLC communications to
15 Dream Center?

16 ASSISTANT SECRETARY KING: Well, I'm
17 not aware of the report you're referring to, but
18 HLC has been here all day and has been very amply
19 represented to tell their side of the story, with
20 multiple people that both work for the
21 organization and others who had an interest.

22 So, I don't know that the NACIQI Board

1 has been deprived of any information that's
2 available. I'm not familiar with what you're
3 talking about.

4 DR. ALIOTO: Well, it's in the report
5 that, the staff report that NACIQI was given.
6 And the documents that NACIQI was given. That's
7 what I'm talking about.

8 ASSISTANT SECRETARY KING: Okay.
9 Well, some --

10 DR. ALIOTO: Okay. Now, I also --

11 ASSISTANT SECRETARY KING: -- of the
12 stuff you have is not stuff that I have seen.

13 DR. ALIOTO: All right. Well, the
14 dossier is fairly hefty. I also want to know
15 about this question about the lack of public
16 comments. And there was a complaint from one of
17 the students --

18 ASSISTANT SECRETARY KING: Yes, I
19 heard that.

20 DR. ALIOTO: -- question about this.
21 And it's the first time that I've seen it, I've
22 been here for five years, it's the first time

1 I've seen that happen.

2 ASSISTANT SECRETARY KING: The
3 regulation that governs public comment does not
4 mandate it, it says, if practicable.

5 And given the time frames that were
6 involved and the length of extensions that we had
7 provided to HLC during the course of these
8 various communications, because there were
9 deadlines that they sought to have extended, 53
10 days were utilized by HLC for the various
11 extensions that they requested.

12 As a consequence, we got to the cutoff
13 date by which the agenda has to be published and
14 speakers have to be identified and public
15 comments have to be submitted so that there's
16 time to respond to them.

17 We couldn't have done that and met
18 today's meeting date, because so much of the time
19 that was involved had been consumed by extensions
20 sought by HLC for their own purposes.

21 DR. ALIOTO: Or you did not consider,
22 what was the rush? What was the rush that we had

1 to have this on the agenda? Did our President
2 want to have it on the agenda now, since he's
3 supposed to be involved in these decisions?

4 ASSISTANT SECRETARY KING: The
5 President of the United States? I don't think he
6 even knows this is going on.

7 DR. ALIOTO: No, Art Keiser, our
8 President.

9 ASSISTANT SECRETARY KING: Oh, your
10 President, I'm sorry.

11 (Simultaneous speaking.)

12 ASSISTANT SECRETARY KING: Part of
13 this --

14 CHAIRMAN KEISER: No, I had nothing to
15 do with the agenda, Kathleen.

16 DR. ALIOTO: Don't you --

17 ASSISTANT SECRETARY KING: In answer
18 to --

19 DR. ALIOTO: -- generally have
20 something to do with it?

21 ASSISTANT SECRETARY KING: The answer
22 is that, as you heard the President

1 Gellman-Danley talk about was that these events
2 were how many days ago, months ago, and extending
3 it further was just going to make it that much
4 more attenuated.

5 We had concluded our work on this, I
6 think in early January, mid-January. Well, the
7 initial, but the initial reports that we shared
8 with HLC were back in the winter. And then there
9 was a series of exchanges of communication,
10 including an effort to try to resolve this.

11 And unfortunately, I would have
12 preferred, very honestly, because lawyers like to
13 settle cases, I would have preferred to have
14 resolved this. And unfortunately, the HLC board
15 declined to pursue the course that President
16 Danley had mapped out for it as a way to settle
17 the matter. So, we're here.

18 DR. ALIOTO: Well, haven't we heard
19 today that they have, President Pressnell had
20 suggested, they have essentially agreed with
21 your, the Department's new rules, so why are you
22 still after us to slap them on the wrist, and

1 perhaps do a disservice to institutions and
2 students in the process?

3 ASSISTANT SECRETARY KING: Well, I
4 understand your point of view and I think I've
5 answered that question already, so I'll -- I
6 don't want to take up more time unnecessarily.

7 DR. ALIOTO: Okay. Thank you. I do
8 have something else at the end, when I can --

9 CHAIRMAN KEISER: Mary Ellen?

10 DR. PETRISKO: Thank you.

11 CHAIRMAN KEISER: We're going to take
12 a break after Anne Neal, and we'll take a
13 ten-minute break.

14 DR. PETRISKO: So, some of my
15 questions were answered already, particularly
16 about the recommended action, but I just want to
17 make sure I understand about the public comment.

18 The comment was made that it would be
19 accepted if practicable. I was under the
20 impression that that if practicable was a change
21 to the regulations that went into effect July 1,
22 maybe I'm wrong, but I'd like to know that.

1 And secondly, how will that be
2 determined, whether it's practicable or not? And
3 when --

4 ASSISTANT SECRETARY KING: I don't
5 know that that provision has been changed in the
6 new regulations, I don't believe it has. And
7 it's a judgment call that we make.

8 DR. PETRISKO: Okay.

9 ASSISTANT SECRETARY KING: I can't say
10 it any clearer than that.

11 DR. PETRISKO: All right. Thank you.

12 CHAIRMAN KEISER: Anne?

13 MS. NEAL: I just want to pursue a few
14 minutes the issue of accountability that you have
15 raised, which I think it may be something for
16 Congress as opposed to this body, but I'd like to
17 talk about it a little bit more.

18 Because as I hear you, you have said
19 rightly, that as guarantors of educational
20 quality, the accreditors are part and parcel of a
21 system of accountability. And NACIQI is part of
22 that system, the Department of Ed is part of that

1 system.

2 And so, here, we find ourselves with
3 various options. And as I understand it, we have
4 fairly limited options each time we come
5 together. We can renew the accreditors, we can
6 deny the accreditors, or we can put them on
7 conditions.

8 And then, similarly, the accreditors
9 themselves, when they're dealing with
10 institutions, they can say they're great, they
11 can say they're terrible and put them out of
12 business, or they can put various conditions on
13 them so that they can improve.

14 And my experience has been, after
15 being on this body in many different iterations,
16 that there is a real hesitancy to take action, to
17 actually have consequences, generally for the
18 finest of reasons, that we really don't want to
19 hurt students.

20 So, whenever we are faced with
21 accreditors and making them accountable, shutting
22 them down has vast consequences vis-a-vis

1 students. And so, there have been those who have
2 suggested that accreditors are too big to fail
3 for that reason alone.

4 Similarly, I've often heard
5 accreditors say vis-a-vis institutions, well, we
6 didn't want to shut them down, that would hurt
7 students, we want to help them, we want to see if
8 we can continue moving them along, and we've
9 heard that today.

10 So, I want to ask you, is there
11 something flawed in this system that does not
12 provide the kind of fine-tuned sanctions that
13 would be appropriate when actions are taken that
14 are inappropriate?

15 ASSISTANT SECRETARY KING: That's a
16 big question. We, in this matter, certainly
17 considered what would be the right recommendation
18 to you and to the senior Department official.
19 And we did not feel that asking you to withdraw
20 recognition of HLC was appropriate and,
21 obviously, have not done that.

22 We thought that some sort of

1 intermediate action that would make the point,
2 but not dramatically impact either HLC adversely
3 or the institutions that they accredit or the
4 students that go to those institutions would be
5 harmed by this.

6 In terms of, are there other things we
7 could do? You've raised a topic that probably
8 deserves a different setting to discuss whether
9 or not the system we have is the best system to
10 assure academic quality.

11 I greatly enjoyed your questions
12 earlier to, I think to Dr. Danley. I'm not sure
13 that the system we have makes the most sense. I
14 have been concerned for a long time about what
15 accreditors do to really ascertain academic
16 quality and rigor, and it varies, as I've
17 learned, from accreditor to accreditor.

18 Some have been very aggressive, in
19 terms of demanding of their member organizations,
20 their member institutions demonstrated, first of
21 all, collection of the right, meaningful data,
22 and then demonstrated improvement. Others have

1 been quite lax about it.

2 And I'll share with you, I had a
3 discussion not that long ago, while I was still
4 working in Kentucky, with Belle Wheelan at SACS.
5 And I asked, flat out, I said, Belle, what do you
6 do to assess academic quality? And she was very
7 honest and candid, she said, nothing. I said,
8 why not. She said, because my members won't let
9 me.

10 And so, the question of whether or not
11 membership organizations should be the
12 gatekeepers to federal largesse is a big
13 question. I'm not prepared they shouldn't be,
14 but I think it's a question worth asking and
15 discussing.

16 Barbara's probably sitting there
17 thinking I'm crazy, but it's an important issue
18 that I think the country needs to think through
19 whether or not all of the institutions that we're
20 prepared to provide Title IV support for really
21 deserve that support.

22 And the measure, in my view, ought to

1 be the quality of the products that they produce
2 in terms of student outcomes. So, I'd rather
3 leave it at that.

4 MS. NEAL: Art, two very quick
5 responses. I would urge the Department to
6 consider reconsidering its recommendation
7 vis-a-vis non-renewal for reasons of educational
8 quality.

9 But secondly, I'd like to ask the
10 General Counsel for NACIQI, who has often advised
11 us in this area, about these kinds of conditions.
12 I know we have had similar conditions imposed in
13 the past, when there was a desire to say that the
14 accreditor had not been acting perfectly, and it
15 was designed to send a message.

16 I would be curious to benefit from the
17 historical memory of the General Counsel on the
18 Committee as to when those kinds of conditions
19 were imposed, and also, any suggestions or
20 recommendations as to other conditions when an
21 accreditor may not have been deemed to act in a
22 perfect faction.

1 MS. MANGOLD: Hi, this is Donna
2 Mangold. And Sally Morgan, with all of the
3 historical knowledge, has retired. So, I'm going
4 to --

5 CHAIRMAN KEISER: Donna, could you
6 hold off? We're going to --

7 MS. MANGOLD: I'm sorry.

8 CHAIRMAN KEISER: -- take a break.
9 That's more of a question for the discussion that
10 we're going to have as a Committee.

11 MS. MANGOLD: Okay.

12 CHAIRMAN KEISER: So, it is 4:12, if
13 we can come back at 4:22, we can then -- I'll ask
14 that either Mary Ellen or Paul make a motion for
15 us to discuss, at which point we can then
16 entertain any kind of discussion we want. Does
17 that sound okay with everybody? Ten-minute
18 break.

19 ASSISTANT SECRETARY KING: Mr.
20 Chairman, do you need me to stay or am I
21 released?

22 CHAIRMAN KEISER: You're released.

1 ASSISTANT SECRETARY KING: Okay.

2 Thank you so much, appreciate it.

3 CHAIRMAN KEISER: The discussion will
4 be among the members.

5 (Whereupon, the above-entitled matter
6 went off the record at 4:13 p.m. and resumed at
7 4:23 p.m.)

8 DR. LeBLANC: Okay. I --

9 CHAIRMAN KEISER: Paul, would you like
10 to --

11 DR. LeBLANC: Yes, can you hear me
12 okay? Thumbs up will suffice.

13 CHAIRMAN KEISER: We can.

14 DR. LeBLANC: Okay. So, because this
15 has a fair bit of complexity and we covered an
16 awful lot of ground over the last seven hours,
17 I'm going to just do the briefest of overview and
18 then our motion. And this will be very brief.

19 I'll speak, Mary Ellen and I went back
20 and forth and this comes from both of us, but I
21 will make the motion and she can second, and we
22 can open discussion, as we typically do.

1 We believe that HLC's policies
2 regarding change of control, adverse action, and
3 skills were not as clear or logical as they
4 should have been.

5 The offer of candidacy and the
6 scattered consequence could have been outlined in
7 a clear and more transparent fashion, no matter
8 the responsibility of DCEH to know, understand,
9 or seek clarification of its own.

10 Compliance with its own policies has
11 shown itself to be complicated, because HLC's
12 policies are themselves complicated. The answer
13 to HLC's own lack of clarity should not be,
14 others provide the clarity, we do not.

15 Subsequently, DCEH amply and
16 ironically demonstrated the shortcomings and
17 behaviors that concerned HLC, including shoddy
18 administrative practices regarding its
19 accreditation relationship, its ignorance of
20 basic accreditation knowledge, what appears to be
21 an ongoing and willful deception of students, and
22 failure to act in its own best interest in the

1 matter of the appeal finally granted it in the
2 best interests of the students, to continue to
3 enroll after it should have stopped doing so.

4 Whether or not one believes due
5 process was honored, the harm to students largely
6 happened because DCEH continued to enroll
7 students, failed in its disclosure
8 responsibilities, despite mountains of notice,
9 and drew down millions of dollars of federal
10 financial aid.

11 The Department did not acquit itself
12 well in this matter either. Namely, it failed to
13 raise issue of policies that it later came to
14 flag in its investigation. It offered HLC
15 conflicting guidance.

16 It did not raise compliance and due
17 process issues with HLC, despite the case study,
18 staff presence in the board meeting, subsequent
19 back and forth with the agency and DCEH
20 representatives. It curiously raised these
21 issues only when HLC refused to violate its own
22 policy on retroactive accreditation and the

1 30-day limit.

2 In a series of steps that feel at
3 least unorthodox and perhaps inappropriate, the
4 senior political appointee interjected herself on
5 behalf of DCEH, sidelined experienced staff, and
6 appeared to be negotiating on behalf of the
7 institutions.

8 The eventual investigation before us
9 today demonstrated indifference to due process
10 itself, given the absence of any interviews with
11 HLC staff and only two interviews conducted, one
12 with the DCEH attorneys, who demonstrated either
13 incompetence or ignorance or both, and one with a
14 former HLC employee, for which there is not a
15 transcript.

16 The Department then exacerbated the
17 situation by issuing a press release, even before
18 HLC had responded to the charges leveled against
19 it. No one shines in this case in our view.

20 However one comes to interpret HLC's
21 original process and implementation of its
22 policies, it subsequently offered DCEH an

1 opportunity to appeal, it refused to violate its
2 own policy on retroactive accreditation, it
3 worked to mitigate harm to students, and it
4 cleaned up the policy on change of control
5 policy, such that no repetition of this unhappy
6 matter can occur.

7 The remedy that has been sought has
8 been implemented. A 12-month sanction at this
9 point merely sounds punitive not constructive.
10 As such, we see no grounds for supporting the
11 staff recommendation.

12 I move that the NACIQI reject the
13 staff recommendation and recommend that the
14 senior Department official not revise or curtail
15 the accrediting agency's scope of recognition.
16 With that, I need a second.

17 CHAIRMAN KEISER: Is there a second?
18 Mary Ellen?

19 DR. PETRISKO: Mary Ellen seconds.

20 CHAIRMAN KEISER: Actually, we can use
21 the -- from now on, when we talk about a vote,
22 further discussion, if you would raise your hand?

1 No further discussion?

2 I'll call for the motion, then, to be
3 called. There's a little megaphone at the bottom
4 of the participant lists, go to that. All those
5 in favor of the motion, signify by hitting yes.
6 All those opposed, hit no.

7 VICE CHAIRMAN PRESSNELL: Art, would
8 you mind to read the motion again?

9 CHAIRMAN KEISER: The motion -- Paul,
10 go ahead, Paul.

11 DR. LeBLANC: I move that the NACIQI
12 reject the staff recommendation and recommend
13 that the senior Department official not revise or
14 curtail the accrediting agency's scope of
15 recognition. So, a yes vote is against the
16 staff's recommendation and imposes no sanction on
17 HLC.

18 MS. NEAL: Are you asking --

19 CHAIRMAN KEISER: The motion has been
20 made and seconded. I had already -- is there any
21 further discussion? If not, please vote. Go to
22 the megaphone and vote.

1 MS. NEAL: Arthur, could I get
2 clarification?

3 CHAIRMAN KEISER: I'm sorry, who's
4 saying that?

5 MS. NEAL: Arthur, it's Anne. I just
6 -- on this issue, I want to be clear, Paul, are
7 you all basically recommending that HLC be
8 renewed for a full term? Is that in essence what
9 you're recommending?

10 DR. LeBLANC: Yes, there was no -- the
11 staff recommendation actually doesn't talk about
12 term length, Anne, it only says that for the next
13 12 months, it will not have any new members and
14 that it requires a report on mitigation against
15 student harm.

16 And we think those things have been
17 addressed and we would vote against the
18 recommendation. But nothing in the staff
19 recommendation has to do with lengthening or
20 rethinking of the term length.

21 MS. NEAL: Well, I guess as I think
22 about my vote, I'm thinking about it in the

1 context of the status of HLC. So, what -- are
2 you all then going to make a second motion, in
3 terms of their renewal?

4 Because I am not of the mind that they
5 have upheld their role as guarantors of
6 educational quality and hence, I'm just trying to
7 figure out what is your next step or what is the
8 next vote or what is the next opinion?

9 VICE CHAIRMAN PRESSNELL: Art, this is
10 Claude.

11 CHAIRMAN KEISER: Anne, there's a
12 motion and a second on the floor. People have
13 already -- because we've already started voting.
14 You can vote against the motion or you can vote
15 for the motion.

16 Again, I had asked for discussion
17 twice and now, the vote is in motion. So, if you
18 would please vote and then we can -- if we vote
19 against the motion, we can have further motions.
20 If we vote for the motion, then the motion is
21 passed. Okay. Unless it's really critical that
22 somebody -- because most of the votes are up

1 there.

2 DR. LeBLANC: Art, a point of --

3 CHAIRMAN KEISER: You can see them on
4 the participants. What, Paul?

5 DR. LeBLANC: So, my point --

6 CHAIRMAN KEISER: Paul?

7 DR. LeBLANC: -- staff recommendation,
8 she can put forward any subsequent motion around
9 term length or anything else, correct?

10 CHAIRMAN KEISER: Right.

11 DR. LeBLANC: Is that what you --

12 CHAIRMAN KEISER: Right. You can make
13 a second, a third, a fifth motion, as many as you
14 want, but on the first motion, we just voted.
15 And we have six for, three against. So, I would
16 -- unless some -- did anybody not vote? There
17 are nine votes, there are more than nine people
18 here.

19 Does Jill have a question or is that
20 her vote? Anne, are you voting? You don't have
21 your vote in. Claude, you have one. David has
22 one. Jill, you don't have question, you have a

1 hand raised, but you don't have a vote. Go to
2 the megaphone.

3 EVENT PRODUCER: Your phone is muted,
4 Jill.

5 CHAIRMAN KEISER: Okay, you voted.
6 Okay. Paul, Rick, Ronnie Booth, Steve, and Wally
7 Boston cannot vote. Okay. The motion passes.
8 Paul, you had a second motion?

9 DR. LeBLANC: I have a motion, I
10 mentioned this earlier, a request to read the
11 House Committee Report, more importantly, it's a
12 supporting document, which are things like the
13 transcript of the interview with Barbara, into
14 the record. I believe that needs a vote,
15 actually, from NACIQI.

16 Our General Counsel took a look at
17 Department of Ed's regs and felt that as long as
18 it's germane, it doesn't have to be materials
19 that were provided to us for today, but it has to
20 be germane to the topic, which it is.

21 And of course, voting into the record
22 does not force the Secretary to do anything with

1 it that she doesn't want to, she can ignore it or
2 not.

3 But I think it's important enough to
4 be read into the record. I'd like to make a
5 motion that we include all the supporting
6 documents into the record of today's hearing.

7 CHAIRMAN KEISER: Is there a second?

8 DR. ALIOTO: I'll second it.

9 CHAIRMAN KEISER: Who seconded?
10 Kathleen?

11 DR. ALIOTO: I'll second it.

12 CHAIRMAN KEISER: Okay. Motion is
13 made and seconded. Is there any further
14 discussion or discussion on this motion?

15 MS. NEAL: I'm always in favor of more
16 information rather than less. I'm just curious,
17 in the past, I don't recall our being allowed to
18 submit documents after the discussion has
19 occurred.

20 CHAIRMAN KEISER: I'm not sure that we
21 would be prohibited from adding to the record,
22 Anne.

1 MS. NEAL: Okay. I'm in favor of more
2 information, rather than less.

3 CHAIRMAN KEISER: Okay. Any further
4 discussion? If not, please vote using the
5 megaphone. Okay. That looks like the motion is
6 unanimous. Now, did anyone else want to make
7 another motion? Well, that was a long one.

8 MS. NEAL: I have a question, Art.
9 And so --

10 CHAIRMAN KEISER: Yes, go ahead, Anne.

11 MS. NEAL: -- since we have rejected
12 the recommendation, so what is the status, then,
13 of HLC?

14 CHAIRMAN KEISER: The status will be
15 what the Secretary wants it to be, or her person.
16 We're just an advisory committee, we are advising
17 that the recommendation by the staff was not
18 acceptable to us and we made a recommendation to
19 the Department. So, whatever the Secretary wants
20 is the way it's going to be.

21 DR. BOOTH: HLC is not --

22 CHAIRMAN KEISER: Does that make

1 sense, Anne?

2 (Simultaneous speaking.)

3 DR. BOOTH: HLC was not at the end of
4 their cycle, this was coming mid-cycle for them.

5 VICE CHAIRMAN PRESSNELL: That's
6 correct, HLC was approved in 2018, so they're not
7 up for renewal. This entire hearing was based on
8 that one issue. So, it was not based on the
9 renewal of the accreditor. So, they're in the
10 midst of their cycle.

11 CHAIRMAN KEISER: Ronnie, did you have
12 a question?

13 DR. BOOTH: I was just going to make
14 that comment, that they were in the middle of
15 their cycle, this was a one-off issue that has
16 nothing to do with their standing.

17 CHAIRMAN KEISER: Okay. Well, folks,
18 it's --

19 DR. ALIOTO: I just wanted --

20 CHAIRMAN KEISER: -- a little late to
21 bring up New York -- what, I'm sorry? Kathleen?

22 DR. ALIOTO: I just wanted to thank

1 everyone and I'm sure you'll thank me that I
2 didn't give my speech at the end.

3 (Laughter.)

4 CHAIRMAN KEISER: Well, you're
5 certainly welcome to.

6 DR. ALIOTO: The time has passed and
7 it is time to get out of here.

8 (Laughter.)

9 CHAIRMAN KEISER: Okay. We will do
10 tomorrow, New York tomorrow, George?

11 DR. SMITH: Yes, we'll start with New
12 York, exactly.

13 CHAIRMAN KEISER: Okay. I don't think
14 there's too much controversy the rest of the
15 meeting. It is 4:36, thank you all. I would
16 entertain a motion for adjournment for today?

17 DR. LeBLANC: So moved, Mr. Chairman.

18 DR. VanAUSDLE: Second.

19 DR. FRENCH: Mr. Chairman?

20 CHAIRMAN KEISER: Moved by Paul,
21 second by Steve, it looked like. Somebody said
22 something to me?

1 DR. FRENCH: Yes, this is George
2 French. I just wanted to thank you for your
3 leadership on this call, this was not the easiest
4 thing to do, using technology, but you did an
5 excellent job. Thank you.

6 CHAIRMAN KEISER: Well, thank you for
7 being patient with me. It was tough. So, the
8 other motion we should make is that the
9 Department get a better technology system.

10 (Laughter.)

11 CHAIRMAN KEISER: Okay. Thank you
12 all, we'll see you in the morning. We start at
13 what time, George?

14 DR. SMITH: Nine.

15 CHAIRMAN KEISER: Nine. Try to log in
16 around 8:30, 8:40 so we'll be all ready to go at
17 9:00. Thank you.

18 (Whereupon, the above-entitled matter
19 went off the record at 4:37 p.m.)
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National Advisory Committee Meeting

Before: US DED

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