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

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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
ACCRREDITATION 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

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

ROSE FUSE-HALL, Florida A&M University

WALTER OCHINKO, Veterans Education Success
C-O-N-T-E-N-T-S

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

As provided in HEA Section 114, NACIQI advises the Secretary in the discharge of these functions and is also authorized to provide advice regarding the process of eligibility and certification of institutions of higher education for participation in the federal student aid programs authorized under Title IV of the HEA. Further, in addition to these charges, NACIQI authorizes academic graduate degrees from federal agencies and institutions. This authorization was provided by letter from the Office of Management and Budget in 1954, and this letter is available on the NACIQI website along with all other records related to NACIQI's deliberations.

Thank you again for participating today, and I'll
now hand the meeting over to our Chairman, Arthur Keiser.

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

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

CHAIRMAN KEISER: Amanda?

MS. DELEKTA: Good morning. I am a law student at Michigan State University College of Law, and I am a student member.
CHAIRMAN KEISER: Anne?

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

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

Brian Jones?

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

CHAIRMAN KEISER: Great. David?

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

CHAIRMAN KEISER: Jill?

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

CHAIRMAN KEISER: Kathleen?
DR. ALIOTO: Kathleen Alioto, Advocate for children. And in particular, my focus these days is zero to five, particularly during this horrendous pandemic.

CHAIRMAN KEISER: Mary Ellen?

DR. PETRISKO: Mary Ellen Petrisko, Educational Consultant.

CHAIRMAN KEISER: Michael?

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

CHAIRMAN KEISER: Paul?

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

CHAIRMAN KEISER: Rick?

(No response.)

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

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

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

CHAIRMAN KEISER: Steven?

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

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

DR. BOOTH: You already heard me, Art.

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

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

CHAIRMAN KEISER: Okay. Did I miss anybody?

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

CHAIRMAN KEISER: Who is that, Brian?

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

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

DR. FRENCH: Yes, I've been on, but I
can't seem to get on the screen for some reason.
I'm still working it out, but I was on when
George gave remarks and everything. So I'm still
working it out, trying to get on the computer
now. It won't --

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

DR. FRENCH: Thank you. Thank you.

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

(No response.)

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

MR. BOUNDS: Good morning.

CHAIRMAN KEISER: Herman?

MR. BOUNDS: Yes, good morning. My
name is Herman Bounds. I'm the Director of the
Accreditation Group. The accreditation staff
that's on the call today is Elizabeth Daggett,
Valerie Lefor, Nicole Harris, Stephanie McKissic, Charity Helton, Karmon Simms-Coates. And we have two new analysts, Mike Stein and Reha Mallory.

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

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

That's a long name. I'd hate to have
the stationary for that.

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

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

EVENT PRODUCER: No, they haven't.

CHAIRMAN KEISER: How about Puerto Rico?

DR. SMITH: Puerto Rico, Candice?

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

DR. SMITH: Okay.

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

Sensing none, I would recognize one of the primary speakers to -- readers to make a motion to approve the consent agenda.
MR. O'DONNELL: This is Rick. I'll move that we approve the consent agenda.

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

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

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

EVENT PRODUCER: Yes.

CHAIRMAN KEISER: Candice?

EVENT PRODUCER: Mm-hmm.

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

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

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

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

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

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

DR. SMITH: We had eight, initially.

Were there additional people for HLC this morning?

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

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

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

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

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

Does anybody have a question?

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

(Simultaneous speaking.)

CHAIRMAN KEISER: Introduce the agency.

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

CHAIRMAN KEISER: Yes, go ahead, Paul.

DR. LeBLANC: Thank you, everyone. So before us, we have North Central Association of Colleges and School or otherwise known as the
Higher Learning Commission. You'll hear us reference it as HLC, initial accreditation back in 1962, renewed in 2018. What we have, as you know, is a review of the agency during the period of recognition.

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

The recommendation will be that we not -- excuse me, that the current recognition be limited such that HLC will not be allowed to accredit additional institutions of higher education that do not currently hold accreditation or pre-accreditation status of the agency for the duration of a 12-month period at which it would end with a compliance
determination by the senior Department official.

As part of that 12-month process, the staff recommended compliance report include details of HLC's efforts to mitigate the negative effect of (audio interference) procedurally around this decision to withdraw accreditation from institutions (audio interference) academic credits (audio interference) the institution during the calendar year 2018.

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

But fundamentally, this comes down to a question of the process in which we had a change of control under which Dream Center Educational Holdings took on the work of institutions. But in case of the two particular institutions in question, how the change of
control moved into candidacy status and the
effect of that on the loss of accreditation and
then the due process related to that, including
appeals and questions of lack of accreditation,
et cetera. So I will be leading the questions.
Mary Ellen will step in, and then I'll pick up
again. That is the overview at this point.

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

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

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

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

ASSISTANT SECRETARY KING: Good
morning and thank you to each of you for the time
and energy that you put into this work. It is
incredibly important and particularly under the circumstances in which the country finds itself. I'm enormously gratified that you would make the time to commit to deal with all of the issues you'll attend to over these next two days.

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

Final staff analysis finds HLC in noncompliance with the Department's consistency in decision making and due process regulations under CFR Section 602 -- 34 CFR 602.18(c), 602.25 Subdivision A, D, E, and F. Throughout the review process, HLC repeatedly asked for
additional time to respond to Department findings, and the Department granted several extensions which in total provided HLC an additional 53 days to respond to the Department's analysis. Due to this, it was not practicable for the Department to take public comment regarding HLC's compliance with the aforementioned criteria in advance of today's meeting.

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

It is our recommendation to the senior Department official to limit HLC's recognition such that it may not accredit additional institutions of higher education that do not currently hold accreditations or pre-accreditation status with the agency for a duration of the 12-month period pending a
compliance determination by the senior Department official. We also recommend that the compliance report include details on HLC's efforts to mitigate the negative effects of the agency's procedurally erroneous decision to withdraw accreditation from the Art Institute of Colorado and the Illinois Institute of Art on students, especially with regard to the status of academic credits earned at the institutions during calendar year 2018.

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

You will hear, I predict, all about stuff that at the end of the day really doesn't matter. But I'm here to tell you what does. First, our regulations require that whenever an accreditor withdraws accreditation from an institution it has previously accredited, that institution is entitled to due process. The meaning of that term is defined in our regulations.

Second, our regulations demand that our recognized accreditors follow their own regulations and policies, especially when they take actions that require the forfeiture of accredited status by a fully accredited institution. Such an action is referred to as an adverse action. Both our regulations and HLC's policies confirm that no adverse action can be taken and made final unless and until the affected institution is given notice of its right to appeal before the adverse action is taken.
In this matter before you, HLC was asked in accordance with its procedures to approve a transaction involving the sale of two institutions that were fully accredited by HLC from a for-profit business to a not-for-profit called Dream Center Education Holdings. In total, the deal involved 40 schools located in multiple states and involved five different accreditors.

HLC pursuant to its rules sent a team of reviewers to visit the sites, interview the participants, especially the leaders of the Dream Center group, as well as faculty and administrators that would continue with the schools notwithstanding the proposed new ownership group. A report was finalized and sent to the HLC leadership and board for action. The board, upon reviewing the report, approved the sale but invoked a rarely used provision in its policy arsenal: condition the sale upon Dream Center agreeing to enter into what was described as change of control candidacy status.
What was not specifically enumerated
was the fact that this status constituted a
forfeiture of accreditation by the two HLC
accredited schools. In our regulations and in
HLC's policy, the requirement that the
institutions forfeit accreditation is considered
an adverse action and as such require that Dream
Center be advised that they had a right to appeal
the inclusion of this condition as part of the
approval of the sale transaction. No such notice
was provided, thereby violating Department
regulations and HLC's own policies.

The duty to provide that notice was
immediate and had to be provided before HLC could
strip the two accredited institutions of their
accreditation. So when HLC and its supporters
get up to address you and try to direct the
conversation and your attention to events
occurring months later, I'm telling you now none
of that matters. HLC will tell you we have it
all wrong, that they didn't apply, and I'm going
to give you sections of their policies now. I
know you're going to be bamboozled by numbers. I don't mean to do that, but they're important. They will tell you that we have it all wrong, that they didn't apply Section 50.010 to this transaction as we assert. They applied 20.040 or 20.070. But neither of those sections permit the forfeiture of accreditation. Indeed, they both describe their purpose as extending accreditation subsequent to the completion of the approved sale transaction.

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

Their own vice president concurs that 50.010 is the section under which they acted, and
their former vice president stated unequivocally that the actions taken by the board in this matter did not act sufficiently to withdraw accreditation from the Dream Center institutions. Of peripheral interest, none of the other accreditors in the country involved in this transaction demanded Dream Center schools in their jurisdiction forfeit accreditation as a condition of the sale being approved.

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

HLC will point to grave concerns that they had about the new owners. In fact, there is evidence that HLC may have failed to follow its own policies by approving the transaction. But
once they chose to approve the sale and they
chose to attach to the deal, the condition that
accreditation be forfeited, due process in our
regulations and the specific provision in 50.010
required that Dream Center be specifically
advised that they had a right to appeal the
imposition of that condition.

HLC failed to provide that notice.

Failing to provide the notice of appeal and the
lack of clarity as to what policy HLC used to
approve the transaction conspired to support the
belief held by Dream Center attorneys that this
change of control candidacy status and the
six-month review with which it was coupled seemed
to be a probationary status during which time
Dream Center could demonstrate its ability to
address the various concerns HLC had enumerated
in its November 17th, 2017 letter. And these are
the specific actions that are described in the
policies HLC claims now to have relied upon but
for the fact that neither section authorizes the
candidacy status imposed on Dream Center.
I contend that at the end of the day this is not a hard case, nor is it nearly as complicated as HLC may try to make it. Focus on this moment when HLC decided to link accreditation forfeiture dressed up as a candidacy status that they had never successfully used before. It was at that moment that they failed to do what our regulations and their policy demands. And from that failure, a series of acts cascaded into what deprived over 1,000 students of accredited academic credit they earned and paid for and eventually helped lead to the financial failure of the entire organization. I'll be happy to take your questions.

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

DR. BOSTON: Wallace is.

CHAIRMAN KEISER: Wallace? Okay. Do
we want to ask Secretary King questions now, or do we want to go right to Barbara Gellman?

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

CHAIRMAN KEISER: Okay, Paul.

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

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

Would it be unfair to argue that the
harm done to students was, in part, a reflection of being enrolled in a program even though DCEH needed to -- should've known that they were unaccredited. And with that knowledge that they were unaccredited seems to come through in the documentation. And in fact was reiterated by a member of the FSA staff within the Department.

There was a point when they got multiple notices from HLC but also verification from the Department and yet continued to enroll students in what is at least arguably a contested status that they wanted to call it that at that point.

What sort of responsibility do they bear on that?

ASSISTANT SECRETARY KING: Well,

first, I would suggest to you that when an adverse action of this nature occurs, it is typically undertaken at a point in time that it is either -- typically at the end of a semester. So that the students who are enrolled, in this case, at the time that the transaction was completed had enrolled and started the spring semester. So certainly for that group of
students, they entered their relationship with Dream Center in that semester before this accreditation forfeiture apparently was put in place.

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

As I said, HLC could've waited to the end of the semester to impose it, but they chose not to do that. They insisted it be done immediately and coincident with the completion of the transaction. They could've delayed the permission to complete the transaction until the
semester was over, and they didn't do that.

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

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

CHAIRMAN KEISER: Paul, members of the committee, normally we now go directly to the agency. So I would like to do that. Kathleen,
if you don't mind, because typically we go to the agency, then we can ask questions of the agency and then of the staff.

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

EVENT PRODUCER: Please press #2 on your phone.

CHAIRMAN KEISER: You need to turn on your mic.

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

DR. GELLMAN-DANLEY: Try again. Good morning, everybody. My name is Barbara Gellman-Danley, and it has been my pleasure to serve as the president of the Higher Learning Commission for the past six years. As of February 2020, HLC accredits 973 colleges and
universities in 19 states, affords
pre-accreditation status at 7 institutions, and
supports over 5 million students at our member
institutions.

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

I will say, Assistant Secretary King,
I do agree with you that it's gracious and a real
commitment for everybody to be here today. We
wish we could be with you in person, and we hope
all your families and loved ones are doing well.
If you hear any construction in the background,
just to give you a visual, there are six of us
spread across the entire HLC office and sometimes
it gets a little noisy in Chicago.

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

As we begin this discussion, I want
you to know that HLC has taken this compliance
review by the Department seriously. In response
to the Department's initial inquiry, we evaluated
every detail and decision relating to the single
transaction from an outside vantage point. We
considered whether there was even a scintilla of
reason to believe we got this wrong or we messed
this up.

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

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

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

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

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

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

After much inquiry, evaluation of the evidence, and discussion by HLC's board, HLC approved the change of control application with
several conditions. This approval included the condition that the institutes would spend a period of time in candidacy. This offer was timely communicated to both institutes and the Department and would take effect only if the institutes accepted the condition and then completed the transaction.

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

The purpose of using candidacy as a condition was to provide an innovative solution that would enable the institutes to go forward with the proposed transaction while providing safeguards to ensure that the new operator prioritized compliance with HLC's criteria. Upon
demonstrating compliance and satisfying HLC's concerns, the institutes could then have their accreditation reinstated. We were hopeful this would happen in short order, thereby reducing the time in which the institutes were in candidacy.

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

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

Instead, the institutes allege they did not understand candidacy despite clear documentation and acknowledgment to the contrary.
HLC ultimately allowed an appeal, but the institutes and the Dream Center did not follow through on this opportunity. The Department continued to provide financial aid to students despite the fact that the institutes' nonprofit conversion had not been finalized with the Department.

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

The Department takes issue with offering candidacy as a condition for approval of the change of control application and it asserts that HLC's actions were not compliant with its own policy by Department regulations requiring
consistency in decision making and due process.
This action was from 2017. And yet in late 2019,
the Department initiated this seldom used
off-cycle compliance review in the middle of
HLC's recognition period, two years after the
decision in question.

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

With hindsight, HLC might've done this
differently. However, during this entire
process, HLC acted deliberately, intentionally,
and with forethought based on the evidence about
the transaction that it had at that time. And we
were clear with the institutes from the very
beginning. We stand by the decision we made.
To resolve this inquiry, the Department first demands that HLC take some action that corrects these alleged deficiencies, implying that HLC is required to take specific action to go back and undo or void decision made by our board three years ago. The Department specifically requires HLC to, quote, recognize the Department's interpretation of events before the Department's concerns will be allayed.

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

As you well know, this guidance was
changed soon after. Diane Auer Jones, Principal Deputy Under Secretary, spoke with HLC on her own initiative on multiple occasions regarding this concept of retroactive accreditation for the institutes. This included the day after the institutes themselves made the same request and into October where she made clear the Department favored such action or some alternatives such as the board rescinding its prior approval and placing the institutes on a sanctioned or show cause order.

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

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

And there were multiple touchpoints that which the Department could've said something, first, when the Department reviewed the very policies in question as part of our recognition renewal in the spring of 2017, second, when the Department reviewed the case study it requested as part of our recognition renewal where it took the same action on a change
of control we took on a change of control
application for another school offering candidacy
as a condition, third, during or immediately
after our November 2017 HLC board meeting where
the board discussed the Dream Center application
at length and took the very action in question
today as the Department's own analyst, Elizabeth
Daggett, was present for that very meeting as an
observer. This was even noted in the
Department's own staff report and recommendation
for our five-year recognition renewal which was
ratified by the Department. And fourth, if not
then, immediately after our November 2017 meeting
in which the Department itself was copied on the
board's action letter.

Despite these many opportunities, HLC
was not made aware that the Department had
concerns with our regulatory compliance until the
fall of 2019, two years after the action was
taken. To be clear, any requirement that HLC
void its prior action and place the institutes in
accredited status from the time of the action
through their closure would have foreseeable and potentially unforeseeable negative consequences on students seeking relief from the institutes. Our board considered and therefore firmly rejected such an approach.

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

As I have explained and Ms. Morgen will explain in greater detail, HLC has always acted in compliance with its policies and applied those policies consistently and in compliance with federal regulations in this case and in all
cases. And even if we make the assumption for a moment that HLC was not in compliance, we have since revised our policies, which the Department itself recognizes, in a manner that wholly addresses the Department's concerns. There's simply no further action we can take to further demonstrate that we are in compliance.

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

Further, it seems to have no point other than to punish HLC for a decision our board made with which the Department now disagrees. There is simply no reason for instituting a penalty on HLC other than to strong arm our
agency into changing our prior decision. The
Department is understandably concerned about the
closure of the institutes and the closure's
effect on the institutes' students.

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

The Department's request that we
reinstate accreditation seems to rest on a
conclusion that the students were only harmed by
the institutes' closure. But that consideration
fails to recognize that their students were
harmed first and foremost by the institutes and
the Dream Center's inaccurate disclosures.
Reinstatement does nothing to address that other
than to retroactively make that inaccurate
disclosure accurate.
My colleagues are going to share some additional information, but I want to leave you with a few takeaways. One, the offer to approve the change of control application with conditions was clear, unambiguous, in writing, and consistent with our policy. This offer was not made in error or out of confusion of how our policies work. To the contrary, candidacy was intentionally offered with significant input from our board to address meaningful concerns about this transaction that were clearly within HLC's purview.

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

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

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

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

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

To that end, we ask NACIQI to
recommend to the senior Department official that
this matter be closed without further action. We
ask NACIQI to specifically reject any action by
the Department to require HLC to undo or void a
prior action. And we ask NACIQI to instead
recommend that HLC retain its full recognition
without limitations.

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

And I cannot serve our members and my
board if I do not stand up for what we
collectively believe to appease the Department
just to make this go away. The Higher Learning
Commission and accreditation as a whole must have
more integrity than that. Students, taxpayers,
Congress, and the Department itself need us to have more integrity than that. And now I'll turn it over to Dr. Sweeney.

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

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

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

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

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

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

The policies at the time provided four options that the HLC board could take when considering a change of control application:

first, to approve with or without conditions;
second, to defer; third, to deny; or fourth, the board could require an institution to move to a candidate status.

This fourth option could only occur in two scenarios, where the board determined that the change in ownership would, in essence, create a new institution, or where the supplemental policy was invoked because the board determined that the institution would not meet the criteria
for accreditation after the close of the
transaction. Only where the board took the
fourth option and moved an institution to
candidacy as an adverse action was the action
appealable.

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

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

As such, this distinction is
essentially moot with respect to the institutes.

But the distinction provides important context
for how and why HLC's policies distinguish between imposed board action such as moving an institution to candidacy and the institute's own choice to accept a candidacy condition. With respect to the Dream Center transaction, the Department has taken the position that the HLC's board action in offering candidacy as a condition which was then accepted by the institutes was not allowable under the first option under HLC's policies and therefore instead occurred under the supplemental policy.

To simplify, the Department seems to take the position that at that time, anytime a change of control resulted in an accredited institution moving to candidacy, it must have occurred under the supplemental policy. This interpretation is flawed for many reasons, two of which directly contradict the Department's position. First, at the time, there was no requirement in either federal regulations or HLC's own policies that candidacy could not be offered as a condition.
Importantly, a condition like candidacy was expressly allowed by the policy itself as the change of control policy stated that where the board decides to approve a change of control application, and I quote, it may decide so subject to conditions on the institution or its accreditation. Candidacy is a condition of affecting accreditation as contemplated by the policy. Thus, HLC had broad discretion as to which conditions to offer.

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

Second, the HLC policies which set forth the distinct option where the board could involuntarily move an institution from accredited to candidate status as an adverse action clearly
identified two bases on which the board could do so at the time it approved a change of control where a new institution would be created by the transaction or under the supplemental policy where the institution would not be in compliance with the criteria for accreditation after the transaction. But these circumstances were not present here.

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

I want to make clear that even though the board had a variety of concerns about this
transaction, it was hopeful that these concerns could be remedied and sooner rather than later. This is why the board's action letter requested a variety of evidence to assess and verify compliance with HLC requirements following the transaction. The board's decision was rightfully not made in a vacuum.

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

And quite relevant to the board's decision, there were representations that this ownership change would benefit the schools and the students. The board's judgment based on the evidence before it was that candidacy was an
appropriate condition to give the institutes the
opportunity to demonstrate that they could, in
fact, continue to comply with the eligibility
requirements once they were under the Dream
Center's ownership. And this is why the November
2017 joint action letter stated that the
institutes were in, and I quote, sufficient
compliance with the eligibility requirement to be
considered for candidacy.

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

They could have as they did accept the
condition, or they could have rejected the
condition of candidacy. This rejection would
have simply put the institutes in the same
position they would have been in if the board had
denied the application outright. If the change
of control application had been denied, whether
initially or by virtue of the rejection of
candidacy, the institutes would have remained in
their accredited status.

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

There was no right under HLC's
policies or federal regulation for an institution
to appeal the denial of a change of control
application which is why, respectfully, the
Department is fundamentally incorrect that
candidacy could not be offered as a choice as a
condition of the board's approval and could only
be considered an appealable adverse action under
HLC's policy. HLC acted entirely within the
scope of its policies in offering candidacy to
the institutes.

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

MS. MORGEN: Thank you very much, Dr.
Sweeney. Good morning. My name is Marla Morgen,
and I serve as HLC's associate vice president of
Legal and Regulatory Affairs. My colleagues, Dr.
Gellman-Danley and Dr. Sweeney, have explained to
you why HLC made the decision to offer the
condition of candidacy to the institutes and how
this decision was not only supported by the
evidence available to HLC's board at the time but
also aligned with HLC's policies.

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

There are two key regulations at issue
today, 34 CFR 602.18, which requires consistency
in decision making, and 34 CFR 602.25, which
requires provision of due process. And to be
clear, we are speaking about the regulations in
effect at the time, not those that went in effect
on July 1st, 2020. The Department erroneously
concludes that with respect to the approval of
the institutes' change of control application, HLC was noncompliant with one subpart of the first regulation and four subparts of the second.

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

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

As part of HLC's most recent
recognition application, the Department specifically requested a case study of that institution. HLC submitted to the Department documentation of HLC's offer of candidacy and the institution's acceptance of that condition. The Department never communicated to HLC any concerns about decision making with respect to that institution.

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

I want to make clear, with the exception of the first item, the due process requirement I just mentioned only apply where an institution has been subject to an adverse action
which, as Dr. Sweeney explained, was not the case here. Nevertheless, HLC went above what was required and did provide the institutes with each of these guarantees of due process and more. For example, the institutes were asked to respond in writing to the staff reports which had noted anticipated deficiencies in their compliance with the eligibility requirements. The institutes' response was considered by the board and informed the board's offer of candidacy.

Then following HLC's written notification of this offer, the institutes had ample time to consider whether to accept it. Indeed, candidacy never could've become effective if first the institutes had not explicitly accepted the condition in writing as they did not January 4th, 2018, and second, had not closed the transaction. The Department takes the position that this offer of candidacy was confusing, that the institutes did not understand that they would be in a pre-accredited status upon the transaction completion.
However, there is ample evidence in the record that the term, candidacy, was understood. In fact, counsel for the Dream Center himself specified in writing to HLC that he and his clients understood that candidacy was pre-accredited status. Finally, despite the fact that it was not required, the institutes were offered an appeal. And I want to spend a couple moments explaining how this appeal came to be.

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

Indeed, later that same month, the institute stated they hoped to avoid an appeal.
In this second communication, the institutes explained that the conditions were accepted because they believed the institutes would be eligible for Title IV based on the pre-accreditation status. The institutes clearly understood they were in candidacy and that this was a pre-accreditation status.

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

HLC invited the institutes to file an appeal as soon as possible. They did not, however, do so. Nearly a month after that in late June 2018, the Dream Center's counsel requested a call with HLC. He set forth an unusual proposal, specifically that HLC grant the
institutes accreditation from the time of their initial accreditations through the end of the year.

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

Because this appeal was misaddressed and only sent by email despite HLC's procedures requiring submission of a hard copy, HLC never received the appeal. HLC did not even learn of its existence until December 2019 as part of this compliance review. As you are likely aware, on July 3rd, 2018, only a few days after their unusual proposal, the Dream Center announced the closure of the institutes as well as the closure of numerous other institutions not affiliated with HLC.
Because there was no follow-up communication from the Dream Center about any attempt to submit an appeal and then the Dream Center announced its closure, HLC presumed that the institutes had decided they did not wish to submit an appeal after all. Indeed, the appeal attempt was never mentioned by the institutes or the Dream Center again. In the end, even if the action of offering candidacy as a condition of approval, was an adverse action subject to appeal, which it was not, HLC provided that appeal opportunity.

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

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

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

I started with HLC in 1995 as a peer reviewer and quickly became a team chair. I served on the HLC board for a total of eight years. My tenure on the board just ended last September. The HLC board is a very dynamic group
of professionals who are always active and engaged in the process of board action. Our board is committed to its responsibilities and comes well prepared with making decisions about institutions.

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

Most of our deliberations centered around institutions themselves as we had ongoing concerns about both schools. One in particular, Illinois, had struggled in recent years and both
had struggled in the past. Illinois was facing declining enrollment and a worsening financial situation.

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

Ultimately, the board determined that approval with conditions was the best fit. We specifically discussed and then agreed that a series of relatively significant conditions, including candidacy and ongoing monitoring, were appropriate due to our concerns. Throughout this discussion, the board was keenly aware that the candidacy was a pre-accreditation status and that in accepting any offer, the institutes would be foregoing their accreditation status.
We knew that the institutes could choose to reject this offer and that their acceptance of the conditions would be voluntary. I recall wondering whether the institutions would ultimately accept this offer. As I know Dr. Gellman-Danley mentioned earlier, this was not the first time we considered such approach and actually made that offer to another institution in my time on the board.

Both that time and here with respect to the Dream Center, the board carefully came to the decision that this approach was the most appropriate response and we did not arrive at this decision lightly. The board's decision to offer candidacy was thoughtful and deliberate. And we feel confidently -- I feel confidently that I speak for the whole board when I say that we understood the policies in which we were operating under to offer this option to the Dream Center. With that, I will turn it to my colleague and HLC's current board chair, Dr. Joanne Burrows.
DR. BURROWS: Good morning. Thank you for the opportunity to speak on behalf of the Higher Learning Commission today. My name is Dr. Joanne Burrows. I have 40 years of experience in higher education, including as a president, provost, and professor. I have served 6 years as a peer reviewer for the Higher Learning Commission and now serve as the chair of the Higher Learning Commission board of trustees.

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

I want the board of NACIQQI to hear from me, the board chair, that I echo everything that Dr. Gellman-Danley, Dr. Sweeney, and my former trustee colleague, Dr. Wissmann has stated. I am here to address two particular topics with you today. The first is the board's understanding of the ramification of the November 2017 decision on the Dream Center transaction,
and the second is the strength of the HLC board, the education and training that we receive on an ongoing basis which gives me great confidence in our decision making processes and compliance with federal regulations.

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

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

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

Each fall, we receive in-depth training which has been some of the best professional development I've had in higher education. Since assuming the role of vice president of Legal and Regulatory Affairs in September 2018, Dr. Sweeney has meaningfully enhanced that training to include substantive and special topics relating to the HLC criteria for accreditation as well as our decision making and review processes. Preparatory meeting materials included updated summary of selected board actions from the previous ten years which includes types of institutional actions that are presently before the board for consideration, key
precedents, and context for how prior cases were
previously handled.

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

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

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

MS. MICELI: Thank you, Dr. Burrows. I just want to make sure that you can hear me. My name is Julie Miceli, and I serve as outside legal counsel for HLC in this matter before the Department. I'm a partner in the education practice team at Husch Blackwell. And as some of you may be aware, I previously worked in the Department's Office of General Counsel under the Obama Administration and for a short time during the Bush Administration.
We are not here today because the Department has well founded concerns about HLC's compliance. It doesn't. HLC's trustees, its president, and members of its leadership have explained why and how the HLC board made the decision it did with respect to the Art Institutes.

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

The thinly veiled compliance concern set forth by the Department made clear that the
Department's use of its authority here is not about compliance. It is about obtaining a specific result from HLC. If the Department thought that HLC had acted contrary to regulations in November 2017, it would've raised those concerns at the time, and it had plenty of opportunity to do so. As an initial matter, the policy about which the Department is concerned was adopted in 2009.

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

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

By then, HLC had almost finalized the
process of removing the policy with which the
Department now states concerns, what we've been
calling the supplemental policy. And it was in
the process of removing the option of change of
control candidacy and revising its policies and
procedures. If the Department's concern was
actually HLC's compliance, it would recognize
HLC's revocation of the supplemental policy and
the subsequent policy revisions on change of
control and HLC coming into compliance, but it
does not.
To the contrary, the Department remains focused on HLC taking some other action specific to the Dream Center and its former students as the only way for HLC to come into compliance. And so throughout this inquiry, HLC has made good faith efforts to respond to this very concern, and yet the Department moves the goalpost.

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

Then the Department told HLC it was concerned about students' ability to transfer their credits. HLC developed a robust communications plan informing relevant stakeholders and students about the opportunities
for credit transfer, and it encouraged its membership to consider these impacted students. The Department did not give HLC any feedback on this plan despite multiple requests for input.

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

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

Call it retroactive accreditation.

Call it forward-dating the date of candidacy.

Call it voiding HLC's decision. But this is what
the Department is after, and HLC simply cannot
honor its judgment as an independent accredits
if it takes this action at the insistence of the
Department.

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

And contrary to the Department's
public assertions, HLC did not take action to
harm the students, not generally and not with
respect to students' transcripts or ability to
transfer. In fact, despite HLC's outreach to
support students, not one student complained to
HLC about their transcripts or about their
ability to transfer credits. This is not to say that HLC cannot do better.

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

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

CHAIRMAN KEISER: Well, thank you, HLC. Our next process is for Claude or Mary
Ellen to ask questions.

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

CHAIRMAN KEISER: Did I say Claude?

I meant -- I'm so sorry. Oh, I apologize.

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

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

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

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

(Simultaneous speaking.)

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

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

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

DR. SWEENEY: Thank you, Dr.

Gellman-Danley. I'd be happy to take the
question. And first, I'd like to perhaps provide some grounding on all of the policies that could get one to candidacy status from accredited status at that time. And then I will certainly provide some background on the precedent case that Mr. LeBlanc references.

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

But at the outset, I also need to emphasize that any reference the change of control candidacy policy would be misleading. There were actually four possible paths for change of control candidacy status to occur. The first is the one that we maintain was applied
here and in the precedent case where under HLC Policy B-20.040, the board's first decision making option was to approve the application with or without conditions.

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

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

And if it's functionally equivalent, the rejection of a condition of the board's
approval is likewise not appealable, one has to ask, how could knowing and voluntary acceptance of a condition of the board's approval where the parties have exclusive control over whether and when to effectuate the condition be appealable? Choice and control feature prominently here. And these two elements are not elements that we see characterized in adverse actions.

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

In that case, the institution in question had a troubling history. It had been removed from show cause in November of 2011 but with a condition that an advisory visit take place related to its recruiting and enrollment processes. There had, in fact, but a government
accountability office investigation identifying findings of concern related to recruiting, enrollment, and in particular, placement data.

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

In that case, the institution accepted the condition, first choice, but then decided after the fact not to go through with the transaction. In fact, they decided to close under the terms of the MOU prior to the condition being effectuated. And so part of this is understanding that with any policy that is rarely used, the accreditor takes a very conscientious
approach to the development and review and
adoption of a policy.

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

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

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

(Simultaneous speaking.)

DR. LeBLANC: I'm sorry to interrupt.

I had actually a simpler question.

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

DR. LeBLANC: No, and I appreciate.

This is complex.

DR. SWEENEY: Thank you --

(Simultaneous speaking.)

DR. LeBLANC: -- and how much ground
we have to cover. So in this other case, and I'm
really trying to get at this issue of consistency
which has been raised by the Department. You
have one other case, and I understand that they
did not go through and consummate the deal.

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

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

DR. LeBLANC: So 50.010 which is a sub-policy as you described, a supplemental sub-policy around sanctions, was not used in the actual administration of the other case nor was it invoked or described in any way in the case
study which the Department reviewed?

DR. SWEENEY: That's my understanding.

That's correct. In fact, the supplemental policy, E-50.010, has never been applied to any institution.

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

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

DR. LeBLANC: And after the case study was submitted to the Department, was any flag or concern or communication received by HLC indicating the Department's discomfort on these or a suggestion that there was noncompliance with HLC policy?
DR. SWEENEY: None whatsoever.

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

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

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

DR. LeBLANC: Thank you.

DR. SWEENEY: And that's shorthand
that we're using Dream Center as shorthand. But
the nuance of the distinction is going to be
critical. First, yes, there is -- if we're
speaking about the institution with whom HLC or
with which HLC had the accreditation
relationship, there's ample evidence of
understanding.

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

The plain meaning of this language is
that if the condition was accepted, the
institutes would voluntarily forfeit their
accreditation. Then we get the November 29th, 2017 response to the board’s original action letter. And it contains language indicating, we understand the institutions will be in a candidacy status.

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

Six days after the transaction, I personally participated on a conference call with both presidents of the institutes at that time ostensibly about their obligations to students and personally corrected their planned disclosure, line by line, explaining where there
was ambiguity. February 2nd, 2018, Dream Center's external counsel addresses HLC with a letter protesting language in its PDN as Ms. Morgen pointed out earlier and indicates while complaining about language that might be construed as the institution having no status because we had identified eligibility filings.

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

February 23rd, 2018, external counsel for Dream Center writes again, this time indicating that, quote, pre-accreditation is a term of art within the regulations. HLC is well aware of this and was comfortable that the
institutes and the Dream Center were represented by competent counsel who could interpret federal regulation. But one need not be an accreditation expert to know what pre-accreditation meant.

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

DR. LeBLANC: If I may just interrupt you for a moment on this point. At any point in those communications around candidacy status and pre-accreditation, does HLC explicitly say, this means you will not -- effectively and explicitly say, this means that your students will not have access to Title IV funding? I mean, at the end of it, this is the sort of critical point for the institution, the loss of access to Title IV funds for their students. Was that ever explicitly said? And to your point about the prefix, is it
HLC's stance that the understanding of these various status, including pre -- excuse me, candidacy or pre-accreditation, is the responsibility of the institution?

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

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

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

DR. LeBLANC: -- to address --

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

And I want to give just an overall statement, then I'll turn it over to Dr. Sweeney.
And that is in the six years that I have been at HLC, I've never had an institution hesitate to ask a question if they had it. But I've also not had a previous situation where an institution said after the fact, we didn't understand it, because there were so many conversations and so much going on that to posit it as if they did not understand it is just not the truth. Dr. Sweeney?

DR. LeBLANC: If I may just stay with --

DR. SWEENEY: Thank you --

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

DR. GELLMAN-DANLEY: I'd like to
answer just quickly, then turn that over to Dr. Sweeney because she actually was very engaged in it. But we have positions that we call vice presidents for accreditation relations. And those folks are on the phone 24/7 with their institutions.

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

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

(Simultaneous speaking.)

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

DR. LeBLANC: May I interrupt for one second?
DR. GELLMAN-DANLEY: Sure.

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

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

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

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

DR. LeBLANC: Of course.

DR. SWEENEY: So just a quick note here. I assumed my current role March 1st, 2018. I had previously served as their staff liaison and continued to serve in that role, holding essentially two full-time responsibilities at
that point. My role as a liaison in that
capacity was to communicate with the institutions
we accredit.

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

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

(Simultaneous speaking.)

DR. LeBLANC: Okay. You're answering
a different question. Forgive me, but you're
answering a different question. My question is I
understand that your members understand
candidacy. These were not members. These were
prospective members. A simple question is, did you have a sense that they -- let me rephrase. Do you have -- can you remember conversations or interactions in which they press this point when which they sought more clarification of the implications especially regarding Title IV funds?

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

(Simultaneous speaking.)

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

DR. LeBLANC: Thank you. That's really the question. So a related question now for me would be in the documents that HLC produces and the documents that lay out the consequences of candidacy status or the implications of being in candidacy status, is there a kind of clarity and a laying out of what that means for Title IV, what that means for students, what that status of candidacy means?

In other words, if I were to search for it, would
I find documentation that says, candidacy status means the following?

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

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

DR. SWEENEY: Formally speaking because I'll exclude the observation that was occurring at the time of the decision for what it was, the Department was copied on the board's November 16, 2017 action letter. Mike Frola of federal student aid sought clarification for the first time in early March, days after I assumed
this role. And we had a conference call on March 9th in which he asked, what was the purpose of change of control, candidacy, and so forth.

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

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

So we've set that aside and suggest at this point in this narrative which we're trying to build that there seems little evidence that the institutions or the Dream Center exhibited
curiosity or drive to understand this. And there
was also, with the Michael Frola conversation, no
indications that the Department didn't
understand. Is that a fair summation of where we
are in the narrative?

DR. SWEENEY: I'm sorry.
Respectfully, no. HLC undertook one obligation,
and that was at the time it required institutions
to provide a copy of their pre-acquisition letter
with the Department if, in fact, they had
submitted a pre-acquisition package. This would
give the board comfort that its partner in the
triad was engaging with the institutions about
their prospective title for eligibility. HLC's
board undertook no independent consideration as
to Title IV eligibility after the transaction
because as a Title IV gatekeeper, their quality
assurance activities are what prevent fraud,
waste, and abuse.

(Simultaneous speaking.)

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

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

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

It was a pre-accreditation that did not come with Title IV, and it did not come with the -- as a result the accreditation. And it was
just clear as can be. It was clearly presented
to the board, and it is impossible for me to
believe that in all those conversations that were
held with those folks when there were group
meetings where we went out. Our staff went out
with the other creditors that were looking at the
different institutions. Over and over again,
these things were discussed.

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

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

DR. LeBLANC: You answered the
question for me. Thank you. And I assume that
the former HLC employee you're referring to is
Karen Solinski?

DR. GELLMAN-DANLEY: Yes.

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

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

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

So if I can sort of stand outside of
the regulations, I know we can only do that
momentarily because this is critical since
noncompliance and consistency and due process are
all at stake here. But it's hard for any
objective person looking at the situation, in
retrospect admittedly, to not see the loss of
Title IV as having -- I'll use the phrase,
adverse impact. This is a big deal.

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

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

DR. GELLMAN-DANLEY: Let me go quickly
with that and then turn it over to Dr. Sweeney.

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

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

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

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

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

(Simultaneous speaking.)

DR. LeBLANC: You just described two
choices for them, and neither of them provide a path- 
yway of making their case to continue Title IV eli- 
gibility.

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

(Simultaneous speaking.)

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

DR. GELLMAN-DANLEY: Dr. LeBlanc, there's one more point that I think is important and that is we had no reason to not believe that the early determination by the Department that
they could reach a not-for-profit status would
happen. We realized it wasn't guaranteed, but it
was a good signal. And in that case, the minute
they hit the not-for-profit status, they would've
been eligible for federal financial aid. Isn't
that correct?

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

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

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

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

There was a fourth option, the supplemental, that we never applied. But there's a risk that the board could take that option,
right? That institution begins to advise and counsel. It says, this is our plan. They certainly were capable of prematurely saying, we're going nonprofit.

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

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

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

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

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

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

DR. SWEENEY: That's correct.
DR. LeBLANC: And you said at the point I believe -- HLC said, excuse me, that -- excuse me, retroactive accreditation was not possible. Why was that not possible?

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

There's been internal debate about whether that's actually retroactive or a forward-looking policy. But that was the only provision in policy that approached even minimally what was being proposed here. That's why it was unusual.
DR. LeBLANC: So your understanding was that the policy expressly prohibited -- or let me rephrase -- made crystal clear when accreditation could be dated from. And it did not allow for the concept of retroactive accreditation with this narrow exception. Is that fair?

DR. SWEENEY: That is fair.

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

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

DR. GELLMAN-DANLEY: And if I might,

Dr. LeBlanc, might I add a quick point?

DR. LeBLANC: Please.

DR. GELLMAN-DANLEY: Yes, I

specifically recall a CRAC, the Council of
Regional Accrediting Commission, where we were
told months later that that policy was going to
go away. And the accreditor was, like, whoa, you
just said you can't do it. Now you can.

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

DR. LeBLANC: But retroactive

accreditation continues to be a topic of
conversation in the documentation. When did it
next come up? In that instance, it came up

through DCEH. When did it next come back to you?

DR. GELLMAN-DANLEY: I'll take that.

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

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

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

DR. SWEENEY: So precisely, we next heard in late June from Dr. Jones. She reached out to Dr. Gellman-Danley who then asked me to
call her back. And on that return call when we were done playing phone tag, yes, that was the conversation in which she expressed disappointment that the June 2017 memo had been provided at all. And she asked that HLC work with her directly on this matter.

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

DR. SWEENEY: The latter.

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

DR. SWEENEY: Yeah, it was -- I'm sorry. You're asking whether there was contact
with other Department staff. Is that right?

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

DR. SWEENEY: All right.

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

DR. SWEENEY: That's correct. Yes.

Retroactive accreditation as a phrase was commonly understood here to be verboten. So when we first heard the unusual proposal, I reached out to our analyst first to confirm my understanding. That's how the June 6 memo comes to me.

So once Dr. Jones reached out and we connected, by that time, I was already going back to Ms. Daggett to say somewhat awkwardly, there seems to be inconsistent guidance coming from the
Department. I was really being very careful with my wording because of how diametrically opposed the positions were.

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

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

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

DR. SWEENEY: That's right.

DR. LeBLANC: -- review -- can you remember and summarize what was the explanation
for why that particular guidance would not be applicable in this particular case?

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

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

DR. SWEENEY: Yes.

(Simultaneous speaking.)

DR. LeBLANC: Forgive me for
interrupting you. But just to be maybe a little bit more helpful, I also believe that -- did you seek a letter from Under Secretary Jones saying that retroactive accreditation would have no impact on HLC standing if you were to grant it in this case?

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

DR. GELLMAN-DANLEY: I can say very briefly what happened, if I might, and that is
you can have great conversations with your
colleagues at the Department. But when the
gerubber hits the road, in order to assure we
follow policies consistently, we said the oral
collection is not sufficient. We need to see
something in writing because all we had in
writing were past declarations of what not to do.
And so it made no sense for us to just proceed
without clarification which actually I believe
any accreditor would've thought that way. Let's
just get it in writing.

(Simultaneous speaking.)

CHAIRMAN KEISER: Paul, before you --

Paul, let me just say it's 11:43. At 12:00

o'clock, we are going to break for lunch. Okay?

I appreciate all the members sitting here the

whole time.

DR. LeBLANC: So Arthur, just for

clarification, are you telling me to go faster or

are you saying we'll just take the break at that

point and resume afterwards?

CHAIRMAN KEISER: Yeah, no, take your
time. Do what you have to do.

DR. LeBLANC: Okay.

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

DR. LeBLANC: Okay. Thank you.

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

And remember that the board was hopeful that the institutes could demonstrate evidence that they could be reinstated earlier. So the reference to that phrase had to do with the range and whether or not despite the terms of the board letter, the institutes worked hard enough, quickly enough despite the staggered schedule of monitoring to demonstrate, hey, look,
we're under new ownership. We meet all of your requirements.

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

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

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

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

DR. SWEENEY: She referenced that they
were working on removing the Bounds guidance --
sorry, Mr. Bounds -- but that she understood how
inconsistency in the Department can be confusing
and frustrating for accreditors. And don't
worry, HLC. I'll get you something in writing.
I understand how it goes, sort of, was the tenor
of that email.

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

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

DR. SWEENEY: We had a policy called
accrreditation, and we still have it, that talks
about 30 days. It wasn't clear to us. And in fact, we didn't interpret the July 25th memo that was issued to accreditors in 2018 as being the letter Diane -- I'm sorry -- Under Secretary Jones had specifically indicated she would provide to HLC.

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

DR. SWEENEY: Yes.

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

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

(Simultaneous speaking.)

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

DR. LeBLANC: Thank you. Did Dr. Jones then reach out again with suggestions about how to handle the 30 days or to manage that somehow?
DR. SWEENEY: Not to my knowledge.

Barbara?

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

DR. LeBLANC: So what happens next?

I believe you received a letter on December -- excuse me, October 31st, '18. Could you describe sort of that letter from -- I believe it was from Dr. Jones?

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

She was very cordial, and I got an easy way you can do retroactive accreditation and I'll get you something soon. And I said, well, that doesn't mean our board is going to follow it, and we have all the policies. But I'm
certainly open to -- I would never, ever say to someone, I won't read or listen to what you say. And then --

(Simultaneous speaking.)

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

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

DR. GELLMAN-DANLEY: Not at all, no.

The conversation was about I have a way to let you do something that is not currently available for you to do in your policy.

DR. LeBLANC: Thank you.

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

And it was only after I read the
letter -- which was shocking. And we use the
word shocking, because a long complicated letter
that says you did something wrong is very
different than any conversation we had ever had,
ever. It was about, how should we make sure the
institutes are successful? What can we do? Are
there other opportunities, et cetera, for the
institutes, et cetera?

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

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

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

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

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

And then a couple hours later, I got a call that said, look, here's the deal. Just
send us a paragraph. Say you're going to look into your policy. And I said, okay. And that's what we did. So we complied with that request. And that's a very brief version of the interaction. And we did not hear anything until a year later.

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

DR. GELLMAN-DANLEY: No, no.

DR. LeBLANC: And --

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

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

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

DR. LeBLANC: So another 12 months go by. So roughly two years from the original
action now in question at this hearing before the inquiry?

DR. GELLMAN-DANLEY: That's correct.

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

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

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

DR. SWEENEY: Thank you, Dr. LeBlanc. Briefly, we have taken every possible measure in
our policies, not only to remove the policy that
the Department has expressed concerns about but
to remove every possible path that I described in
my first answer that would allow HLC's board to
either move an institution from accredited to
candidate status or offer candidacy as a
condition. So as far as our policies go, we have
done everything possible. Even in our procedures,
we have explicitly said, no condition could alter
an institution's accredited status.

DR. LeBLANC: Then I'm going to finish
with my final question. Really, it's probably to
you, Dr. Gellman-Danley, which is we're looking
at a process and there has been, fair to say I
think, allegations that the agency feels there's
a punitive quality to this investigation. So I
would ask, in your experience, have you had a
prior experience in which the senior Department
official or the Under Secretary has sort of
intervened in an individual case in this active
manner in the past, to be (audio interference)
conduit in the matter?
DR. GELLMAN-DANLEY: I've been with the Higher Learning Commission for six years. This was the most involvement. I do not want to use the term intervene. That's judgmental, and I don't intend to do that. It'd be conjecture. But I would say the communication that was as interested and passionate and directed and somewhat confusion had not happened prior.

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

DR. GELLMAN-DANLEY: It is normal process that we would deal with our analyst and Herman Bounds because of their role in the accreditation office and federal financial aid in the regional areas or Mr. Frola as appropriate within the Department. Those are the individuals
that we've worked with. Previous administrations
or experience, the individuals in the other
higher level positions would interact with us
more at the helicopter level as opposed to more
directly.

DR. LeBLANC: And so -- I'm sorry.

The investigation was underway, and I believe --
had you responded to the investigation (audio
interference) by the time the departmental press
release was sent out that was critical of the
(audio interference)? Have you had yet a chance
to respond?

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

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

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

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

(Simultaneous speaking.)
DR. LeBLANC: And I'll hand it over to you. Thank you all, all of you at HLC for your patience as we work through pretty complicated details.

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

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

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

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

CHAIRMAN KEISER: Again, I want to thank everybody for being back on time. We will continue with the conversation with the Higher Learning Commission. Mary Ellen who is also one
of the primary readers will now ask questions at which point the other members of the committee will have an opportunity to ask questions. I just want to remind those who are recused, because usually we would've asked you to leave the room but we can't ask you to leave the room, is you do not have the opportunity to ask questions nor do you have an opportunity to vote or to communicate with us. So at this point, Mary Ellen, it's your ball game, speaking of Red Sox.

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

But before I do, I just want to say really briefly about the retroactive guidance. I was allotted an accreditor at the point that there was some discussion on this. And just so
it's clear, the guidance is very clear that accreditation actions were to be dated on the date the commission actually acted. They could not be before that.

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

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

The main policy in question here on the part of the Department is 50-10 which is accreditation to candidacy status. And you mentioned that that was a supplemental policy.
So a general question so that I can understand your policy structure and how you apply it. Is there a difference between the status of some policies and how they support other policies? I would like you to know that when looking at 50.010, the accreditation to candidacy status, it notes that a related policy is, in fact, a change of candidacy -- I mean, change of control. So can you say -- are there supplemental policies, or are all the policies on the same level?

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

And so as I go through this, I want to be clear that looking at all of our policies and asking questions about our policies if there is a misunderstanding, is an obligation that our institutions have. So taking our policies and
procedures together, what we're calling the supplemental policy, E50-10, and we're saying supplemental here for ease of reference because we realize this is a verbal presentation. You don't have our remarks in front of you. It was housed within our sanctions policies because it was in the nature of a sanction in that that policy's application would result in the right to appeal.

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

So when I look at the first two of those, 20.040, change of control, how it explains what that means, and then 20.070, the processes for seeking, there's nothing said, and that's understandable, about what the action will be when the commission looks at an application for change of control. So this just talks about what
it means and what to do if you want to apply for
one.

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

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

The board must find that the
institution as a result of or related to the
change of control meets the eligibility requirements and demonstrates conformity with assumed practices but no longer meets all of the criteria for accreditation and federal compliance requirements. So they're pretty good, but they're not 100 percent. Must also find the institution meets the candidacy requirements.

But here's the important sentence.

Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal. So that policy itself which is linked to the change of control, which we talked about kind of action, does say that it's an adverse -- moving from accreditation to candidate is an adverse action and is subject to appeal.

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

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

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

But when you look at these related policies, it looks like -- clearly, it says, a move from accreditation to candidate status is an adverse action subject to appeal. So I guess I
just want to pull that apart a little bit and ask if the condition of candidacy was presented as it was in the November 16, 2017 action letter and it was explicitly stated that the conditions had to be accepted, why was the possibly -- why did it not say if this is an adverse action, you can appeal it or you can accept this condition and we'll just move ahead?

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

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

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

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

The board actually found, if anything, the reverse. It found prospective compliance with the criteria for accreditation although with
some concerns. And it listened to the -- or read or reviewed the findings in the staff report that enumerated several concerns with eligibility requirements and four in particular related to stability, planning, integrity, and accreditation records that the team that visited the institutes anticipated would not be met.

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

So if you encourage folks to ignore the underlying merits, it's very easy to say, look at the outcome. Look at the title of this policy. This must be the one that was applied.
It simply wasn't the case.

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

But the board certainly had the discretion to require an additional review to determine whether, in fact, an eligibility process bypassed, so to say it was being attempted. So in other words, where it was determined that after a change of control, the resulting institution would not meet candidacy requirements let alone accreditation requirements, the board was directed by the
procedures to deny the application. But here the
board, because of due process, took into account
the institute's response to the staff report.

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

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

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

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

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

DR. PETRISKO: If I understand
correctly what I read in the action letter and what you're saying now, at the time the action was taken, the commission's decision or judgment was that there were some concerns with the eligibility requirements and there were some concerns with standard practices and accreditation standards possibly. Not enough to say, we have to go back to the drawing board 100 percent. Enough to get this status.

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

DR. SWEENEY: I think it is and they're balancing at the same time the extent of what the institutes look like today with that information. So if you examine our policies, you will see that under the processes policy which articulates the evaluative framework for how the
board looks at change of control applications,
there are five approval factors, the third of
which talks about whether there's a substantial
likelihood that after the transaction takes place
-- or after the change of control takes place,
because not all changes of control are
transactions -- whether there's a substantial
likelihood the institution will continue to meet
HLC's criteria for accreditation and eligibility
requirements.

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

DR. PETRISKO: Okay. So in other
words, at the time of the action, the
institutions who are accreditable and accredited,
looking forward, there were questions because of
what was going to change, whether that would
continue to be the case. And so this action was
taken to be sure -- to the extent it was possible
to be sure that the institution was in compliance
with the eligibility requirements and the
standards, that there would be this follow-up
reporting, et cetera, and there would be a list.

(Simultaneous speaking.)

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

At the very end, there was a request
to say they wanted to appeal. And there's a
response that really explains the accreditation status. And the difference between accreditation status and an accredited status. Those might sound the same to some people, but we know, you know, it doesn't sound the same to us. So there's a very clear explanation about that. But the thing about appeals didn't come up in the response. Can you say anything about that?

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

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

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

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

DR. PETRISKO: Okay.

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

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

Quote, HLC board considered whether the institute's effective date of candidacy could be changed from January 20th, 2018 to January 8th, 2019. So they did consider whether some sort of retroactive action might be possible. Upon notification that the HLC board would be considering this action, the Department, through Mr. Brinton (phonetic), who was mentioned before
as counsel for the Department, indicated to HLC's
counsel that such action would resolve the
entirety of this compliance inquiry.

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

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

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

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

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

But I would actually like to refer to
our attorney, our outside counsel for a moment,
because you reference the Department saying
that's all it would take and she had that
conversation. And then we can go back to Anthea and me. Julie?

DR. PETRISKO: Thank you.

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

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

EVENT PRODUCER: We lost your audio.

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

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

CHAIRMAN KEISER: Julie?

MS. MICELI: Can you hear me now?

EVENT PRODUCER: Yes.

MS. MICELI: Can you hear me now?

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

DR. PETRISKO: Yes, please go ahead.
MS. MICELI: Okay. Then, thank you, and if it's helpful, I will go back. So, that is correct. I think Assistant Secretary King referenced there was a period of about 53 days in total when we were working with the Department that we had sought extensions.

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

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

DR. PETRISKO: Thank you.
MS. MICELI: As you all know, the board rejected that action.

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

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

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

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

DR. SWEENEY: It has.

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

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

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

DR. SWEENEY: We couldn't do it again under our own policies and we would be precluded from adopting new policies to do it, because the new federal regulations expressly prohibit it now.
DR. PETRISKO: Okay. I think -- oh, no, I had one more, sorry. The Department's recommendation includes HLC taking action to, quote, mitigate the negative effect of HLC's decision to withdraw accreditation, especially with regard to the status of academic credits earned, et cetera.

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

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

And it's not clear what mitigation means, but it strongly implies that all those previous conversations about such things as
retroactive accreditation or changing the
decision could be what the Department is
insinuating.

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

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

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

And we will continue to work on that,
we will continue to strengthen our due process
mechanisms to the extent that we can. We have an
internal policy committee that looks at policy
internally, before we even bring things to the
board or take instructions from the board about new policies to draft. And we have certainly learned from this experience, so we will take the lessons learned forward.

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

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

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

VICE CHAIRMAN PRESSNELL: Thanks. I put my hand up in hopes that eventually it would
be answered, but it wasn't quite answered yet.
So, I've got just a small number of clarification
questions.

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

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

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

DR. SWEENEY: Let me clarify. I think
the question had to do with the implications of
pre-accredited status for Title IV for institutions.

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

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

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

           VICE CHAIRMAN PRESSNELL: Right.

           DR. SWEENEY: What my answer was to
say is that we don't undertake to explain to our institutions those implications, because the Department is in the best place to do that.

VICE CHAIRMAN PRESSNELL: Yes.

(Simultaneous speaking.)

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

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

As a for-profit institution in candidacy status, a pre-accreditation status, under the law, the school would not be eligible for Title IV aid, until and unless it were to convert into not-for-profit status or re-earn,
gets its accreditation reinstated.

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

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

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

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

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

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

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

So, the gap would be from the time
that candidacy took effect to the time that they
either converted to not-for-profit or their
accreditation was reinstated because they earned
it. That is the gap.

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

MS. MICELI: They did not --

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

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

DR. PETRISKO: Excuse me, this is Mary

Ellen. There's evidence that there was
communication, I believe it was in May of 2018,
from the Department, from Michael Frola, to HLC
staff, that said that the temporary program
participation agreement as of 2020 has provided
temporary interim nonprofit status to the
institution.

CHAIRMAN KEISER: A reminder, please
--

MS. MICELI: That is --

CHAIRMAN KEISER: -- raise your hand

and I'll recognize you. Because this thing will
go on forever if everybody's interrupting each
other.

VICE CHAIRMAN PRESSNELL: Right. And

I'm trying to get through my comments, my
questions as quickly as I can.

And I really -- I'll ask Secretary

King about that, because it appears we don't know
exactly how long students were not eligible for
Title IV aid in this process, and that's what I
was trying to determine.

The next question is, what was the
majority cause for placing them on candidacy?
Because Secretary King indicated that all things were the same, before the sale, after the sale, there was really no reason to ever put them on candidacy.

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

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

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

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

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

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

As you will note from the things I've just listed, all of the board's concerns would
unfortunately be validated many times over during the course of 2018.

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

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

At the time, gainful employment rules were still in effect and the site team had identified several programs that did not meet the gainful employment rules and said, notwithstanding a conversion from for-profit to nonprofit status, the underlying problem of high tuition programs that don't prepare students for
viable careers is going to remain a problem.

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

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

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

So, the question is, there was confusion, we know the Art Institutes did not post that they were not accredited institutions,
you sought a remedy to that posting and so forth,
so I'm trying to figure out -- and then they
announced their closure.

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

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

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

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

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

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

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

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

VICE CHAIRMAN PRESSNELL: Anthea --

DR. SWEENEY: Six days later --

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

DR. SWEENEY: A date for when they
corrected their disclosures, from that point?

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

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

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

CHAIRMAN KEISER: Claude, are there any other questions?
DR. GELLMAN-DANLEY: There's one quick point, if I might make, Dr. Pressnell, and that is, Brent Richardson himself told us there was a $95 million gap that they didn't know about and that EDMC misled them. That is why -- and other reasons. It is not because of this issue that the institutions closed.

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

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

One is that you all have talked about a change of your policies, coming into compliance to rectify this. I'm curious as to the motivation behind changing your policies, is it because of the new regulations around accreditation? Is it because of this event? And if it's because of this event, do you think that
your polices were not accurate and needed to be rectified?

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

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

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

We did the original quick response we were asked to do, but we went through every line of that letter. And we really analyzed and said, how could things be done differently?
Anthea, when she took over the job, did a terrific, smart move, creating a policy, as she mentioned, committee. And so, we have very seasoned people from different parts of the organization. So, it's not one or two people dealing alone with the policies and then passing them on, which has really never been our case, but a good job.

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

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

And coincidentally, I will tell you candidly, I was on negotiated rulemaking, interesting experience. And so, for the four
weeks, over four months that we were on there, we
got a lot of edited track-change kind of versions
of policies to look at, and that was on there.

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

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

DR. SWEENEY: Dr. Gellman-Danley --

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

DR. SWEENEY: -- if I might?

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

DR. GELLMAN-DANLEY: Yes, please.

CHAIRMAN KEISER: If I can just,
excuse me, if I can try to have you answer the
question, rather than go on to a long discussion,
because it's important that -- we have a lot of
people who have questions.

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

CHAIRMAN KEISER: Now, you can --

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

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

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

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

CHAIRMAN KEISER: Thank you.

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

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

VICE CHAIRMAN PRESSNELL: Yes.

CHAIRMAN KEISER: Kathleen, Ronnie Booth, and then myself. If you want to ask a question, raise your hand and then we'll get to you in order. So, Kathleen, you're first.

You've got to press Star-6, is that correct?

DR. ALIOTO: Okay. Thank you. I'd like to confirm what Barbara, excuse my calling you by your first name, just said.
In Exhibit 15, if we look at Exhibit 15, we have the person who was brought in by the Dream team come say, and a transcript of the Art Institute of Colorado on October 1, 2018, that this was the -- these colleges were a mess.

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

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

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

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

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

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

DR. GELLMAN-DANLEY: No.

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

DR. GELLMAN-DANLEY: Yes.
DR. ALIOTO: Did Dream Center accept candidacy status?

DR. GELLMAN-DANLEY: Yes.

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

DR. GELLMAN-DANLEY: Anthea?

DR. SWEENEY: In writing.

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

DR. SWEENEY: That is correct.

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

CHAIRMAN KEISER: That'll be later.
DR. ALIOTO: -- Dr. King?

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

DR. ALIOTO: Okay.

CHAIRMAN KEISER: -- Dr. King comes forward.

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

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

I hate to think that in this present situation, that we would give a death knell to the accreditation integrity of our nation by not
allowing this accrediting agency to continue.

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

DR. ALIOTO: But that's not --

CHAIRMAN KEISER: Ronnie Booth?

DR. ALIOTO: -- not political.

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

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

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

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

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

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

DR. BOOTH: So, is this --

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

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

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

DR. BOOTH: I meant, on the --

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

DR. BOOTH: -- day that they -- if you'll let me -- on the day the vote --
DR. GELLMAN-DANLEY: I'm sorry, sir.

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

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

DR. BOOTH: Okay.

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

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

DR. SWEENEY: That's correct.

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

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

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

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

This is to anyone. Have you ever, before the Everest circumstance and now, the Art Institutes, had you ever imposed this particular
policy on a change of control or change of
ownership?

DR. SWEENEY: We had not.

CHAIRMAN KEISER: Now, after the

Everest and you imposed this policy and the
school, instead of going through with the
process, decided to close, would that have been
any indication that this policy may be pretty
difficult to comply with?

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

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

DR. SWEENEY: Because it was offered
as a choice, we saw it as a business decision
that the institution had. It could or could not,
at its option, undertake a transaction. And
that's true for any institution that submits a
change of control application.

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

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

CHAIRMAN KEISER: No, I was -- the
point of Everest was not to -- that's not to look
at that issue, it's just to look at what happened
when the institution realized they could not
continue to operate with the conditions you
provided. And you've never provided this
condition to anybody else besides two for-profit
institutions, is that fairly accurate?
DR. GELLMAN-DANLEY: That's accurate, but I would ask you to please consider that when we saw the very strong reaction, the way it happened this time, we removed the policy.

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

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

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

Submitting an application as early as May 1, 2017 meant that as early as of that date, they could have started seeking out institutions to engage in articulation agreements, because
there was a prospect here that their status could change at their option.

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

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

DR. Sweeney: I can see why that would be a question that would be raised, given the nature of substantive change and federal regulations.

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

If its approval is accompanied by
conditions, this also represents a willingness to authorize accreditation after the transaction, but only if those conditions are satisfied by the institution accepting them.

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

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

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

CHAIRMAN KEISER: But in fact --

DR. GELLMAN-DANLEY: -- although it's --
(Simultaneous speaking.)

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

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

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

EVENT PRODUCER: Hold on just --

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

EVENT PRODUCER: Hold on just one moment.

MS. NEAL: Am I audible?

EVENT PRODUCER: Yes.

CHAIRMAN KEISER: There you are.

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

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

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

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

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

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

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

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

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

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

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

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

MS. NEAL: I'm asking about --

DR. GELLMAN-DANLEY: If you were asking --
MS. NEAL: -- a particular aspect of your work.

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

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

MS. NEAL: I'd like to talk just briefly about your ensuring academic quality and monitoring academic rigor. Could you please let us all know what is the average first-time
full-time four-year graduation rate of your
cohort of schools, all 973 institutions and five
million students?

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

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

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

We're actually quite concerned over
what's going to happen now in this current
environment, because we know that there are so
many changes that are going to happen, as far as support services and full-time faculty, et cetera, at some of our institutions.

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

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

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

So, I cannot give you a specific average, except to tell you, when we did the CREX study, below 25 percent for community colleges and below, I can't remember, 40 percent for universities, the numbers after we took into
account transfer, which was not in the original
data available federal, and those kinds of
issues, there were only a combination of about
120 institutions that fell beneath those. And
then we asked them for corrective plans.

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

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

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

I mean, we've been talking this
morning about benefits to students and
transparency and what I'm hearing is that if I,
as a student, wanted to know how my school was
doing and it was accredited by you, I would not
have any readily accessible data from you that
would help me understand that.
So, I'm just trying to understand how you embrace your responsibility to students to ensure educational quality and to provide that transparency.

DR. GELLMAN-DANLEY: I'll try to give a Reader's Digest answer to it, very important question.

It is not true that we don't have information, we ask for nonfinancial indicators and we ask for financial indicators and we do have a great deal of information. Our institutions have to report several of those things, including the employment part, as part of what we call the assurance system.

During negotiated rulemaking, there was a lot of discussion about the importance of accreditors actually interacting with the business and industry to find out what is needed, so we could report to our students and we could train our peer reviewers accordingly.

And as a result, another advantage to the Lumina Foundation, we set up a stakeholders
group to take a look at what we need to know, as far as going on to jobs. But we actually do have a lot of that information.

What we're trying to get is the most accurate information and the two grants that we have and the work that we've done have brought us extremely far on that. I just can't give you the exact citations, because I didn't know that would be part of our discussion today.

But I assure you, our students could find out a lot from us and when we do that student guide, I say respectfully to any of our institutions who are listening, they might not want to put that on their website, but I believe we're going to request it, which is exactly what they need to show to their students, the questions that they need to ask.

And in order to get there, we are bringing in all kinds of people who have heard complaints and concerns, and if somebody on this meeting wants to be on that group, just let me know, because it's a wide-open situation.
And we're going to get together and say, let's list everything that hasn't gone right and reverse engineer it back and put a live web interactive updated on all of our campuses, where it says, this is what you need to know about the questions you need to ask the students, through the lens of an accreditor, because it's quality assurance.

MS. NEAL: But it hasn't happened yet, has it?

DR. GELLMAN-DANLEY: The first meetings were going to be in March, and we had to, because of the virus, change it. The first meeting now is a virtual meeting on September 2, I believe.

MS. NEAL: So, let me ask one further question. So, if I am a parent or if I am an employer and I see that HLC has accredited an institution, can I be assured that that student has taken a survey of American history?

Can I be assured that the students that are graduated from that institution can
write or that they have been exposed to college
level math or science? Is your accreditation an
assurance that those things have happened within
that college experience?

DR. GELLMAN-DANLEY: You give us great
power in asking that question, because I would
love to tell you would have 100 percent
assurance, but I could say with the knowledge
that we're working with, you have a damn good
chance you're going to know that that was a good
institution. But I can't assure you they require
those courses.

And we give them the autonomy to build
their curriculum and we make sure that it's done
the right way, as far as quality, and that
they're offering appropriate, and they have good,
sensitive topic here, but faculty qualifications,
that they actually are qualified for what they
teach, whether it's on campus or not. But we do
not control the specific curriculum.

However, it is an ambitious goal and
we do have every faith that it is a sign of
quality assurance to be affiliated with the
Higher Learning Commission. And that's the
feedback --

CHAIRMAN KEISER: Thank you.

DR. GELLMAN-DANLEY: -- we've gotten
from the general world as a whole.

CHAIRMAN KEISER: Thank you. Anne --

MS. NEAL: Thank you.

CHAIRMAN KEISER: -- is that it?

MS. NEAL: Yes.

CHAIRMAN KEISER: David, you're the,
right now, the last.

DR. EUBANKS: Yes, thank you. I have
just one quick question. Given that you have
made some policy changes from everything you've
learned, if the same kind of situation came up
now, can you speculate on how that might play
out, what would be the result?

DR. GELLMAN-DANLEY: I want to be
humble about this, I'm very proud of what we do,
so I don't want to come across as arrogant that
way. But the humble part wants to say, of course
we can learn. So, we even learned from you today.

We took what Dr. LeBlanc suggested, he's been very successful, he's a smart guy, and we spent part of our lunch hour saying, should we go so far as to add a checklist? You have to -- sign you know this, you know that, or that kind of thing.

And I have seen such continuous improvement, and when I say since I've been there, I'm not giving myself credit, I'm only giving you the time frame of six years, a lot was done prior to me and will be done after. Yes, the world -- we will adapt accordingly. We will not be so arrogant that we say everything was perfect and what could we do differently?

So, I don't know what specific I can give you, because we've already eliminated that policy and the lines in other policies that apply, but absolutely, I stand here today --

CHAIRMAN KEISER: Thank you.

DR. GELLMAN-DANLEY: -- well, sit
here, and say to you, yes, we are open to
adapting and we already have and we will continue
to do so. And we'll be proud to show you that
when we come back to you in a couple of years.

DR. EUBANKS: And I'm sorry --

CHAIRMAN KEISER: Thank you, Barbara.

David, another question?

DR. EUBANKS: Well, I wasn't specific
enough. If a Dream Center-like scenario appeared
now, you would no longer have the option to do
the candidacy sort of choice for them.

So, would it be a choice of evaluating
the risks of the possible outcomes and leaning on
the side of simply denying the application? Or
would there be some other intermediate option
that you have thought of in the interim?

DR. GELLMAN-DANLEY: We would bring in
a lot of our external experts that we've used.
We would continue to do that. And we have not
been afraid to deny in the past. And sometimes
institutions come back to us. What I hope will
not happen is that we would become skeptical
because of the way this particular organization handled the transaction.

I would say one other thing we would do is move on and establish the positive relationship we've had in the past with the Department, so that all people that we speak to, we have a very positive reaction and interaction and we're just candid and open with each other and if there's any concerns, actually, we get a phone call.

And so, I would just say, we are very much looking forward to being better every day.

And yes, we would --

CHAIRMAN KEISER: Thank you.


CHAIRMAN KEISER: Any further -- I see no more questions. Thank you, members from HLC, we appreciate all the time you've spent with us. It's probably been the longest interview that I can remember, but again, very, very important.

Secretary King, it's your turn to respond to the HLC presentation.
ASSISTANT SECRETARY KING: Thank you, Mr. Chairman, and thank you to the members of the Commission and your questions. I want to go back to the beginning and share with you, because I'm going to read directly, the rules that are part and parcel of HLC's policies.

First, the policy 20.040, change of control, structure, or organization. Essentially, it says that an institution shall receive Commission approval prior to undergoing a transaction that affects or may affect how corporate control, structure, or governance occurs at the accredited or candidate institution.

Approval of the transaction resulting in the change of control, structure, or organization shall be necessary prior to its consummation to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction.

That's the opening paragraph of this policy. It then goes on, as representatives of
HLC indicated, and it says, it may decide, talking about the board, so subject to conditions on the institution or its accreditation.

In those cases in which the Commission's board decides, in its sole discretion, that the proposed transaction builds a new institution by passing the eligibility process and initial status review by means of a comprehensive evaluation, the Commission board shall not approve the change of control, structure, or organization.

Let me go back to this other passage.

In those cases in which the Commission's board decides to approve the proposed change of control, structure, or organization, it may decide, so subject to, listen to this careful, conditions on the institution or its accreditation.

Applying a condition on accreditation, at least in my view, presumes that accreditation is intact and that conditions are applied to that intact accreditation. It may be
limitations on new enrollment. It may be financial reporting. It might even be placing an accredited institution on probation.

But I cannot understand how that includes the forfeiture of accreditation, which by eliminating accreditation essentially prohibits the capacity to attach conditions.

It goes on, board shall withdraw the accreditation or candidacy of an institution that completes a change of control, structure, or organization without receiving prior Commission approval from the board of trustees.

So, under this section, 20.040, the only reference of withdrawing accreditation from an institution is if they go ahead with the transaction without having gotten board approval. Or if they're considered a new institution, which HLC has said they did not make that finding.

One other provision in this section is quite interesting. It says, the board will also not consider for approval any proposed change of control, structure, or organization for an
institution that the board has determined within
the previous 12 months to merit withdrawal of
accreditation, even if a formal action to
withdraw accreditation has not yet taken place.

So, it appears to me from what
happened in this case is the board made a
decision, based on a review that was done of the
participants in this transaction, in the
immediate month prior to the board decision, that
according to this board, merited withdrawal of
accreditation. And if so --

CHAIRMAN KEISER: Secretary King?

ASSISTANT SECRETARY KING: Say again?

CHAIRMAN KEISER: I'm sorry, Secretary
King, I kind of made a mistake. We should have
heard the third-party comments before you come in
--

ASSISTANT SECRETARY KING: All right.

CHAIRMAN KEISER: -- so you can
respond to them also.

ASSISTANT SECRETARY KING: All right,
I'll stop. Thank you.
CHAIRMAN KEISER: If you want to just
finish up with what you were going to say and
then I'm going to go to the third-party comments.

ASSISTANT SECRETARY KING: All right.
Well, just the point here that this provision in
20.040 would suggest strongly that the board
should not have approved the transaction, because
it found, based on the deal that was being
offered, that Dream Center merited withdrawal of
accreditation. I'll stop there.

CHAIRMAN KEISER: Thank you. Folks,
we will now go to the comments. We have a number
of commenters who will be speaking today. And I
want to go over the fact that, of the commenters,
we give you three minutes to make your
presentations.

I will be timing the comments and
giving you the full three minutes. At 30
seconds, I will say 30 seconds, which hopefully
will not be too disruptive, at which point then
you will hopefully stop at the end of the three
minutes, at which point we go to the next
commenter.

Is that clear to everyone? Is the WebEx people, are you ready for this?

EVENT PRODUCER: Yes.

CHAIRMAN KEISER: Okay. The first commenter is David Halperin, attorney and counselor. You can -- when he gets -- is he going to be on video or just strictly voice?

EVENT PRODUCER: It's --

DR. SMITH: Strictly voice

EVENT PRODUCER: Okay.

MR. HALPERIN: Dr. Keiser, can you hear me?

CHAIRMAN KEISER: Mr. Halperin, you're ready to go.

MR. HALPERIN: Can you hear me, Dr. Keiser?

CHAIRMAN KEISER: We can, go ahead.

MR. HALPERIN: Okay, thank you. Thank you, good afternoon.

In April 2018, two Dream Center Education Holdings employees contacted me with
proof of improper conduct at the company, including that it was telling students that two Art Institute schools remained accredited when, in fact, HLC had declared the campuses in unaccredited candidate status. I was the first to write about this and other misconduct, starting in May 2018.

Subsequent investigations have revealed that the Department concealed the Dream Center infractions, tried to make that campuses retroactively eligible for financial aid.

Acting Under Secretary Jones was the central player and the record shows she made multiple false statements to Congress about these matters. Instead of holding DCEH accountable or taking responsibility for its own misconduct, the Department wants to punish HLC.

HLC made clear from the start to DCEH and the Department that the campuses were unaccredited, a decision HLC was entitled to make. DCEH did not initially appeal and the Department did not initially press HLC to reverse
its decision. Instead, both DCEH and the
Department let students be deceived.

Moreover, DCEH's bad stewardship of
the schools, marked by deceptive practices,
conflicts of interest, financial recklessness,
and basic incompetence have vindicated HLC's
decision to declare them not accredited. Please,
don't ratify the pending disgraceful action by
the Department.

You should be asking, one, why is the
Department's letter signed by Ms. Weisman rather
than the Department's Accreditation Division?

Two, Ms. Jones, according to the
Weisman letter, has, quote, decided not to
participate in the current review? Does that
mean she is formally recused? Given her improper
conduct, recusal is the only responsible course.

Three, Deputy Secretary Zais has been
designated the senior Department official, but is
that appropriate? Last year, he improperly
pressured acting Inspector General Sandra Bruce
to curb an investigation of Ms. Jones'
investigation of ACICS and then tried to replace
Ms. Bruce with a Department lawyer.

    If NACIQI supports the Department,
punishing HLC, even as it moves to reinstated
ACICS, you will send a terrible message. You
will tell accreditors they won't get in trouble
for letting schools deceive, abuse, overcharge,
or under-educate students.

    Instead, they will get in trouble only
for demanding quality, compliance, and honesty,
and schools will know they can walk all over
accreditors, because the Department will blame
the accreditor for any dispute. That's not what
NACIQI is supposed to do. Please don't do that.

MR. INFUSINO: Hello?

(Simultaneous speaking.)

CHAIRMAN KEISER: Oh, I'm sorry. The
next presenter is Mr. Robert Infusino, former
student, Illinois Institute of Art. You have
three minutes.

MR. INFUSINO: Okay. Good afternoon.

My name is R.J. Infusino. I appreciate the
opportunity to be heard today. I attended the Illinois Institute of Art from 2015 and 2018 and along with so many of my classmates, I've been deeply and personally affected by the Dream Center's deception.

I was further failed by the Department of Education, which has shown more interest in justifying its own actions than in actually helping students like myself.

I was studying sound engineering at the Illinois Institute of Art when HLC changed the school from being accredited to a candidate for accreditation. When I learned in the summer of 2018 that my school had lost its accreditation, had been lying to me, and was shutting down, it was like my whole world came crashing down around me.

I felt betrayed and had to choose between a school discharge, which would just wipe out all my hard work, or I would have to like transfer to a new school that wouldn't be likely to accept my credits that I had worked and
already paid for.

While I was grappling with the
difficult decision, the Department of Education
was nowhere to be found and I received no
guidance or assistance whatsoever.

I eventually transferred to another
school to finish my degree. Because I could not
transfer many of my credits, in the end, I had to
complete and pay for another full year of extra
school.

When all this started, I knew nothing
about accreditation. Now, years later, I'm sorry
to say that I have learned a lot. Students like
me shouldn't have to worry about this kind of
thing, and students like me shouldn't have to sue
the government in order to get the help that
we're entitled to.

I understand this hearing is about the
mistakes that the Department claims HLC made when
it changed my school's accreditation status. I
don't know if HLC made mistakes or not, but if it
did, why didn't the Department do anything for us
back when it made the change, or even tell us that it happened?

Last summer, I shared my story in a Congressional hearing and met with the Under Secretary, Diane Auer Jones, about how this affected me. She never mentioned that because of the problems with HLC, my classmates --

CHAIRMAN KEISER: Thirty seconds.

MR. INFUSINO: -- and I could get our money back. It was only later, when we sued the Department of Education for issuing illegal loans that they suddenly changed their position and decided that my classmates and I should get a refund.

I learned from that lawsuit that the Department of Education had known about our loss of accreditation all along, yet it never told us, they just kept enforcing the loans. We eventually got loan cancellation and refunds, but only after --

CHAIRMAN KEISER: Your time is up,

Robert.
MR. INFUSINO: -- we went to court.

I just have a little bit --

CHAIRMAN KEISER: Would you like to summarize?

EVENT PRODUCER: Sorry, hold on just a moment. Please go ahead, sir.

CHAIRMAN KEISER: Did you cut him off?

EVENT PRODUCER: I did, but he's back on now.

MR. INFUSINO: Yes, I was --

CHAIRMAN KEISER: Would you like to summarize, sir, real quickly?

MR. INFUSINO: Yes, I'll summarize the end here. This whole experience has been just incredibly difficult and it was very disappointing that I have never felt like the Department of Education was on my side.

When I needed help, I didn't get it. And I hope that here, in your deliberations today, you keep in mind students like me, who have been just in this mess for years now.

CHAIRMAN KEISER: Thank you. Thank
you very much, sir. Our next presenter is Amy Laitinen, I hope I got that right, Director of Higher Education for the New American Foundation.

MS. LAITINEN: Good afternoon.

CHAIRMAN KEISER: Ms. Laitinen?

MS. LAITINEN: My -- yes, can you hear me?

CHAIRMAN KEISER: We can.

MS. LAITINEN: Can you hear me?

EVENT PRODUCER: You're great.

CHAIRMAN KEISER: Yes, we can.

MS. LAITINEN: Can we start the three minutes now?

CHAIRMAN KEISER: I will, go ahead.

MS. LAITINEN: Good afternoon --

CHAIRMAN KEISER: Go ahead.

MS. LAITINEN: -- I'm Amy Laitinen, I direct New America's Higher Education program.

Let's be clear, we're not here today because HLC moved a failing for-profit college being sold to a neophyte nonprofit foundation from accredited to pre-accredited status.
We're not here today because HLC notified the public that the college wasn't accredited anymore, although those are the ostensible reasons the Department gives.

We are here today because a senior Department official bent over backwards to help that failing for-profit college, illegal distributing millions of taxpayer dollars to the school, and she wants to conceal those actions by pinning responsibility on the accreditor instead.

HLC's actions with Dream Center weren't perfect.

But a few key facts remain, outlined yesterday in a trove of new documents released by Education Committee Chairman Bobby Scott.

Dream Center willingly accepted the condition of candidacy status in exchange for HLC blessing a questionable sale of EDMC institutions to a nonprofit institution, but then lied about that status to students for almost six months.

HLC offered Dream Center an opportunity to appeal the decision, even though its policies didn't require it, and Dream Center
dragged that process out for months to buy time.

Under Secretary Diane Auer Jones attempted to strong-arm HLC into retroactively restoring Dream Center's accreditation status, even though it went directly against HLC's and the Department's own policies.

The Department continued to pay out Title IV to the school, despite knowing it was not accredited and, therefore, ineligible for aid, and covered up its actions by retroactively asserting that the school was approved as a nonprofit.

An investigation of HLC came years after the decision, only as members of Congress turned up the heat on the Department for its own actions in the case. So, I urge the members of NACIQI today to focus their attention on what is really happening in this case with a few key questions.

Why was the Under Secretary so personally involved in this case that she directed HLC to work only with her, not with the
Department's career staff?

Why did the Department ignore repeated communication that indicated Dream Center was in candidacy status and, therefore, not eligible for federal aid?

And why has this investigation been initiated, run, and presented by the political staff of the Department, rather than the career staff, who are normally at the location.

CHAIRMAN KEISER: Thirty seconds.

MS. LAITINEN: I would also like to ask that the Committee report and associated documents on this event be entered into the record and I will submit those comments by email.

CHAIRMAN KEISER: Thank you. Our next presenter is Clare McCann, Deputy Director for Federal Higher Education Policy at New America.

MS. MCCANN: Thank you for the opportunity to provide comment. My name is Clare McCann, I work for New America's Higher Education program.

On November 29, 2017, Dream Center
sent a signed letter to HLC reading in part, we understand that both schools will undergo a period of candidacy, beginning with the close of the transaction.

Then, nearly two weeks after the Dream Center deal closed, Dream Center sent HLC another letter, reading in part, we were shocked that the Commission placed the institutions in candidacy status. As you all no doubt know, candidacy status or pre-accreditation is not the same as an accredited status. It also affects Title IV eligibility for for-profit institutions.

When the institutions were placed in candidacy status in 2018, they also should have lost eligibility for federal aid. Instead, the Department kept the money flowing.

In May 2018, five months after Dream Center was placed in candidacy status, the Department took what an FSA official termed an extraordinary measure of granting temporary interim nonprofit status to Dream Center, backdated to January 20, 2018.
The Department didn't stop there in its efforts to accommodate Dream Center. In May or June 2018, Under Secretary Diane Auer Jones reached out to Dream Center to say that she would, quote, pursue a more informal and expedited resolution of the accreditation issue.

That plan was to have HLC backdate Dream Center's grant of accreditation when it was restored, a retroactive accreditation that was impermissible under the regulations and Department policy in effect at that time.

On June 27, 2018, Under Secretary Jones informed HLC that the career staff had issued a memo the previous year prohibiting retroactive accreditation, quote, in error and asked that HLC work, quote, exclusively with her at the Department on this issue.

Within a half-hour of responding to HLC about its agreeing to consider the policy, Under Secretary Jones held a call with Dream Center executives, who emailed internally later that date, quote, it appears HLC is in sync with
A month later, Under Secretary Jones issued new guidance allowing retroactive accreditation, this time in her name, rather than from the career staff.

Under Secretary Jones went to such lengths to help Dream Center because of the Department's own corrupt actions to allow Dream Center to receive millions in taxpayer dollars illegal for months, before taking the unusual and extraordinary step of retroactively and temporarily deeming Dream Center a nonprofit college.

This proceeding today is little more than the Department's attempt at a cover-up.

Under the HEA, NACIQI is responsible --

CHAIRMAN KEISER: Thirty seconds.

MS. MCCANN: -- not just for reviewing accreditors, you are also responsible for, as the statute says, advising the Secretary with respect to the eligibility and certification process for institutions of higher education.
So, I strongly urge the Committee to reflect its questions about institutional integrity and the Department's illicit actions related to Dream Center in its discussion.

CHAIRMAN KEISER: Thank you. Our next speaker is Ben Miller, Vice President, Post Secondary Education, Center for American Progress. Mr. Miller?

MR. MILLER: Thank you. Dream Center's purchase of the Education Management Corporation was a fiasco for students and taxpayers. They lacked the resources and the knowhow to run the struggling colleges and never should have been allowed to do so.

Dream Center's collapse should prompt detailed review of what happened and how the regulatory and oversight system ever let this occur.

But that is not the discussion you're having today. Instead, ED has tabled pressing accreditation issues related to ACICS in its pursuit of HLC that appears to entail
unprecedented levels of political appointee involvement.

I don't think HLC's decision-making has always been perfect, but it's the Education Department that should be answering questions about its involvement with Dream Center. So, let's start with the Dream Center accreditation status issue.

The Dream Center EDMC team had already been warned about getting accreditation descriptions right in October 2017. Dream Center had a chance to raise concerns about the candidacy status.

The agreement from November 2017 included language that, quote, the board shall reinstate accreditation and place the institutions on the standard pathway, end quote, if the institutions demonstrated the ability to meet eligibility requirements at a later visit.

Dream Center lawyers poured over this document. At least one of these individuals was not a newbie. She had experience in higher ed
dating back to at least the 1990s. They poured over the document, asking for multiple changes. Dream Center had 14 days to accept or reject the proposal.

When Dream Center's initial acceptance didn't mention the candidacy component, HLC specifically asked it to affirm acceptance of the change to candidacy status, which Dream Center did.

Dream Center's own student disclosure that it ran by HLC in late January 2018 noted that, quote, the institution is currently completing the final requirements to have regional accreditation reinstated by the HLC board, end quote.

I don't know why Dream Center's outside counsel didn't question HLC in greater detail about the November 2017 document or why it took nearly two weeks after the public disclosure to raise questions to HLC.

What I do know is that during the same time, he was sharing his own version of the song
You've Got a Friend in Me from Toy Story as, quote, You've Got a Friend in Trump, end quote.

It seems that there were clearly better things he could have been doing with his time.

And keep in mind that Dream Center knew no later than January 20 that they were not accredited, but they were not forthright with students for months to come.

Instead of going after HLC, you should be asking questions about the Department of Education's policies and procedures. For time's sake, I'll just list three related to this specific matter. First --

CHAIRMAN KEISER: Thirty seconds.

MR. MILLER: -- why the political leadership at the Department Education signed off on the retroactive nonprofit designation that allowed Dream Center to keep receiving federal money when its accreditation status should have cut it off from federal aid?

Second, why did the career staff not seem to know about the plan to remove the
retroactive accreditation guidance when talking
to HLC staff and why did the head of the
accreditation group not sign it?

Third, is it common policy and
procedure for a single political appointee to be
personally negotiating accreditors' standards and
actions and sending letters that supposedly have
only been reviewed by her and the lawyers? I
hope this NACIQI review --

CHAIRMAN KEISER: Thank you.

MR. MILLER: -- will use this time to
recognize that we need to focus on the Department
of Education.

CHAIRMAN KEISER: Thank you. Our next
presenter is Bob Shireman, Director of Higher
Education Excellence and Senior Fellow at The
Century Foundation. Mr. Shireman?

MR. SHIREMAN: Thank you, and good
afternoon. Assistant Secretary King this morning
said that the response you would hear to the
Department's HLC letter would be, quote, stuff
that doesn't really matter.
But the nature of the relationship between Department officials and accreditors is of the utmost importance, it matters a great deal.

For the Department to bring this issue to NACIQI is both misguided and suspicious. For NACIQI to endorse the letter or to take any action against HLC on the basis of the letter would be inappropriate and hazardous.

I urge Assistant Secretary King to withdraw the letter from NACIQI consideration. If the Department does not withdraw the letter, I encourage your Committee to reject its recommendation.

Accrediting agencies are, by design, separated from direct control by Department of Education officials, whether those officials are political appointees or career civil servants. This firewall is critical to protecting accreditation from political meddling.

As a former Department official and Congressional staff member, I am well aware of
the intense pressure that can come from school stakeholders and owners seeking favors. Sometimes those pressures lead to government officials reaching out to accreditors to let their wishes be known. That happens.

Ultimately, however, the decision about whether a school is accredited or what the consequences should be for a violation of the accreditor's standards is up to the accreditor.

That is what makes our higher education system different from other countries. We do not have a national ministry of education looking over the shoulder of every college leader and faculty member in the country.

Accrediting agencies have made it possible for us to have colleges that are autonomous from the federal government, even while they benefit from federal financial aid. An accreditor that consistently fails to protect students and taxpayers or does not have the capability or expertise to do its job, of course, does not deserve secretarial recognition.
That was the case with ACICS, the item that was originally on your agenda today. The Department, however, removed that item from the agenda and instead decided to throw this HLC issue at you.

Who made that decision and why, I do not know, but it was a bad decision. Accrediting agencies need to know that when a Department official contacts them about a situation with a school, the Department is --

CHAIRMAN KEISER: Thirty seconds.

MR. SHIREMAN: -- fully respecting the accrediting agency's ultimate authority and responsibility to decide.

The Department's HLC letter undermines the autonomy by transforming the accreditator into a contractor expected to carry out the Department's wishes, or else. That is what makes the Department's letter misguided, hazardous, and inappropriate.

What makes the letter suspicious is its fictionalized account of what happened in
this case. The record shows the Dream Center was informed that these schools would be placed into candidacy status. The fact that --

CHAIRMAN KEISER: Thank you.

MR. SHIREMAN: -- why is the Department pursuing this? I'm not sure, but I do hope that the Department will withdraw its request. Thank you.

CHAIRMAN KEISER: Thank you very much.

Our next speaker is our former Chair and now President and CEO of the WASC Senior College and University Commission, Jamienne Studley. Jamie?


CHAIRMAN KEISER: Jamie?

EVENT PRODUCER: -- so I can identify your line. She's on Webex, but no one is raising their hand at the moment, did you want to go to the next person and come back to her?

CHAIRMAN KEISER: Okay. The next person is supposed to be Belle Wheelan, but her
representative, hold on, Rosalind Fuse-Hall will
read a statement for Belle Wheelan. Ms.
Fuse-Hall?

MS. FUSE-HALL: Thank you, Mr.
Chairman, and good morning, members of the NACIQI
Committee and the Department. I am here as the
Director of Legal and Governmental Affairs and
Commission Support at the Southern Association of
Colleges and Schools Commission on Colleges. And
I've been asked by Dr. Wheelan, who is now
serving on a panel for SHEEO to offer her
comments.

And she says, I am here today to raise
my concerns about the compliance inquiry before
you involving the Higher Learning Commission. As
a longstanding member of the accrediting
community, I am troubled by the Department's
approach that appears to pressure an accreditor
to undo prior actions.

Accreditors are responsible for
assuring our member institutions are in
compliance, especially with federal regulations.
To do this, we look at policies and procedures, systems and practices for implementing them, and the checks and balances that ensure that they are working properly.

Where we identify problems, our job is to ensure that our institutions evaluate those concerns, course correct, and move forward in compliance. This is a reasonable, practical, and evenhanded manner in which to operate and which our membership expects of us.

Accreditors have always been and should continue to be treated by NACIQI and the Department in precisely the same manner. For instance, unless there are ongoing compliance concerns, accreditors do not take action against an institution for a single decision that is nearly three years old. Such an action would be disingenuous and shows no practical value towards improvement. The same should be the case for accreditors.

Likewise, we hold our membership responsible for reading our letters,
understanding our policies, and asking questions
if they do not understand them. We cannot place
blame on accreditors if institutions fail to do
so.

Finally, we do not force institutions
to agree with our view of the facts on the
ground. We focus on ensuring institutions
correct course and move forward. We hold
training sessions and host individual meetings
where needed --

CHAIRMAN KEISER: Thirty seconds.

MS. FUSE-HALL: -- to ensure our
member institutions understand our standards.
Accreditors should not have to adopt the
Department's view in order to avoid compliance
consequences.

But just as we shouldn't use our
authority to force the institutions to go back in
time and reverse actions, I believe the
Department's authority should not be used in such
a manner either. Such an action sets a troubling
precedent for accreditation as a whole.
Thank you for the opportunity to share Dr. Wheelan's thoughts with you.

CHAIRMAN KEISER: Thank you.

DR. SMITH: Arthur, this is George.

Let's try Jamie one more time.

CHAIRMAN KEISER: Okay. Jamie, are you here? Jamie?

EVENT PRODUCER: Hold on just one moment --

CHAIRMAN KEISER: Okay.

EVENT PRODUCER: -- I think she lowered her hand.

CHAIRMAN KEISER: Jamie?

EVENT PRODUCER: Just one moment.

CHAIRMAN KEISER: Well, if not, we can move --

EVENT PRODUCER: No, she's here.

CHAIRMAN KEISER: -- to the next person.

EVENT PRODUCER: She's here.

CHAIRMAN KEISER: Okay, good.

MS. STUDLEY: Hello? Hi.
CHAIRMAN KEISER: Hey, Jamie.

MS. STUDLEY: Hey.

CHAIRMAN KEISER: I already introduced you, you have three minutes.

MS. STUDLEY: Thank you, Mr. Chair.

I'm proud to have served not only as Chair of NACIQI, but also as General Counsel and Deputy and acting Under Secretary of this Department.

This opportunity to comment today shares the core value of public decision-making, to be heard on the proposed actions of our government. Others who cannot participate today or fear public speaking or have more than three minutes worth to say are entitled to that same opportunity.

An unwarranted and exceptional limit on public comments deprives NACIQI and the Department of a full range of perspectives, jeopardizes the credibility of decisions, and sets a deeply disturbing precedent.

I am concerned about the argument between HLC's request for extensions of time and
the Department's denial of written comment. The
geright to comment belongs to the public and cannot
be casually erased.

More than once, the fine staff of this
Department has handled in the realm of 100,000
written regulatory comments, surely it could
manage written comments on this matter.

I am also troubled by the Department's
insistence that the HLC recognize the
Department's interpretation of events. As an
accreditor dealing with institutions, we do not
compel them to see things the same way we do.

We require, rather, that they align
their policies and practices with our standards.
HLC eliminated the policy the Department
questioned and revised related provisions.

The duty of NACIQI and the Department
is to evaluate whether an accreditor has
established satisfactory standards and set in
motion practices to ensure compliance going
forward.

There is no showing here that the
agency lacks the commitment or capacity to comply with federal recognition requirements, including the essential element of due process.

In response to comments today, let me add, the WASC Commission took a different action on a parallel change of control transaction because we had different policies and facts.

In July 2017, WASC implemented its requirements setting a condition precedent to a control change and a dozen serious detailed expectations about mission and education quality, at what Secretary King called the board room, including financing and servicing agreements, to be addressed in an imminent reaffirmation review. That followed our policies.

In closing, whatever hat I have worn, I have consistently urged the Department and NACIQI to take seriously the duties --

CHAIRMAN KEISER: Thirty seconds.

MS. STUDLEY: -- to assure they recognize NACIQI effectiveness, and due process.

We respect that responsibility.
In so doing, NACIQI must be scrupulous to accept accreditor condition actions, applying their approved standards in complex circumstances, and to promote consistency and fairness.

Like accrediting agencies, NACIQI must be impartial and independent in rendering your recommendation. Thank you for your attention and for your service.

CHAIRMAN KEISER: Thank you very much. Our final presenter is Walter Ochinko of Veterans Education Success. Mr. Ochinko?

MR. OCHINKO: Thank you for the opportunity to comment on the Education Department's surprising conclusion that the Higher Learning Commission failed to comply with federal regulations. I say surprising because overwhelming evidence exists that HLC scrupulously followed its own standards, as well as departmental regulations.

As you know, when HLC notified the Dream Center in November 2017 that the
accréditation of two Art Institute campuses would be changed to pre-accredited, the Dream Center should have known that because the schools operated as for-profit, the pre-accreditation exemption for nonprofit institutions did not apply.

Nonetheless, the Dream Center continued to assure students that the schools were accredited for six months. In fact, the credits earned by students enrolled at these two schools were worthless.

In October 2018, the Department acknowledged as much when it forgave loans for students that had been attending these schools when the Dream Center misrepresented their accreditation status.

The record also demonstrates that the Department continued to disperse federal student aid, despite knowing that the schools were no longer accredited.

Then, the Department literally bent over backwards to reverse the effects of the loss
of accreditation by retroactively recognizing the
two schools as nonprofit and pressuring HLC to
reverse its decisions.

The Dream Center's misrepresentation
of its schools' accreditation status is right out
of the playbook of its former own, Education
Management Corporation. Between 2013 and 2015,
EDMC paid over $200 million to settle four state
and federal lawsuits for deceptive and misleading
advertising and recruiting.

Our 2015 report on schools that are
eligible to enroll veterans, but did not lead to
a job included an EDMC school that misrepresented
its accreditation status to students. I want to
close by reminding you that veterans were
impacted by the Dream Center's misrepresentation
of its accreditation status.

These veterans' GI Bill benefits were
wasted at these two Art Institute campuses.
Although the federal student loans were forgiven,
these veterans are not eligible to have more than
a token restoration of their GI Bill benefits.
I urge you to think about the impact on veterans like Marta Villanueva, an Art Institute student who served in Iraq. She says, and I quote, it's heartbreaking, because we earned these benefits literally with sweat, blood, and tears. Thank you for the opportunity to comment.

EVENT PRODUCER: You're still muted.

CHAIRMAN KEISER: Thank you, Mr. Ochinko. We now have the opportunity for the Commission to respond to the comments.

DR. GELLMAN-DANLEY: Thank you, Mr. Chair. It's been a very interesting day and a very interesting listening session. I would like to thank all the speakers for taking the time and the passion to express your opinions.

And ironically, right next to my desk, I have a quote from my favorite philosopher, Aristotle. Given equally effective presentation, truth will be chosen.

We have been very direct with you today and I hear that concern in the speakers.
I'd like to say to Robert Infusino, as a student, that I wish you the very best in the future.

There's a difference between confusion, which is somewhat in our sights, our thoughts, and intentional. And I really appreciate your passion and your concerns.

I also appreciate people recognizing that merit matters. And I too do not take pleasure sitting on opposite sides of this issue with my good colleague, Robert King. But that does matter and you could hear that throughout all the speakers.

What really matters, that I'm hearing from the speakers, is that the students lost their chance for choice.

And it makes me think about how when my son was thinking about college, I got after him in ninth grade, tenth grade, eleventh grade, all the way through, and I said, remember, what you do will give you choices in life, the way you behave will give you choices in life.

And these people are saying that the
students' choice was taken away, their free will, their right. We didn't do that. Honesty up-front, clarity, moving quickly could have led to a very different outcome.

And so, this is what I want to say today in sum, in listening to these passionate speakers, and I might add to all of you, I appreciate everything that you've said. And I told you earlier that I'm a big fan of Hamilton and I quoted it once. History tells our story. Tell the right story today. Thank you.

CHAIRMAN KEISER: Thank you. Now, Secretary King, I'm sorry before to have you get in there, but give you an extra opportunity. But now, it's your turn to respond to the comments and to the Commissioners.

ASSISTANT SECRETARY KING: Mr. Chairman, thank you. Listening to the comments from the various speakers, it struck a chord with me in terms of responding to what I consider personal attacks, not just on me, but on my colleague, acting Under Secretary Diane Jones.
First, as a starting point, I worked as a prosecutor for 13 years. Prosecuted some of the most heinous crimes that anybody could imagine in the communities in which I worked. But every one of the people that I prosecuted was entitled to due process.

It's embedded in our law and it's certainly embedded in the rules and regulations that govern the relationship between the Department and its accreditors, the Department and institutions. It also -- the obligations of accreditors to those that come before them, however good or bad they may be.

I've worked for four governors, two Republicans and two Democrats. And I've never been accused of allowing partisanship to affect my decisions.

The complaint that political appointees cannot be fair is ludicrous, particularly when the complaint is being made by former Obama administration political appointees, who somehow believe that they have the corner on
fairness and appropriateness.

   In fact, every one of you are
political appointees, and yet, I suspect that
each one of you believe in your own minds that
you can be fair. And that's what due process
ultimately is all about.

   And finally, this attack on Under
Secretary Jones is unwarranted, it is partisan,
it is totally false in its conclusions. And in
working with her nearly every day, I find her to
be among the most caring and honest colleagues
with whom I have ever worked.

   When she joined the Department, in the
early summer of 2018, this mess had already been
created. And while she didn't understand all of
the facts at the time, what she did was not to
protect Dream Center.

   What she did was to try to effect
solutions that would help the students, whom she
understood were being injured by the actions that
culminated ultimately in the closure of these
schools.
One of you raised the point or asserted or you thought that I had said that the decision by HLC was the cause of Dream Center failing. I did not say that and don't believe that.

But I do believe that by withdrawing accreditation, in my view improperly, it led to the demise of student enrollment, which obviously had an impact on the reputation of the school, the cash flow for the schools, and had some impact on the larger problems that emerged.

But let me get back to the immediate issue before you. What has been so interesting throughout all of this is the effort on the part of HLC to try to avoid the fact that their policy 50.010 is what they actually followed or attempted to follow, but failed to meet its requirements. Instead, what they did is they said, no, let's look at all of these other policies, because that's how we actually decided this case.

But when you read those other
policies, as I began to do earlier, go back to
20.040, the purpose of that policy, in its
opening paragraph, is to effectuate the
continuing accreditation of the institution
subsequent to the closing of the proposed
transaction.

If you go to 20.070, it says the board
may approve the change, thereby authorizing
accreditation for the institution subsequent to
the close of the transaction or it may deny
approval for the change.

It goes on to say that the board may
approve the change subject to certain conditions.
Such conditions may include, but are not limited
to, limitations on new educational programs,
student enrollment growth, development of new
campuses or sites, et cetera.

It then goes on to say, if the board
votes to approve the change, with or without
conditions, thereby authorizing accreditation for
the institution subsequent to the close of the
transaction, the Commission will conduct a
focused or other evaluation to the institution
within six months of the consummation of the
transaction.

So, that language and that condition, the six-month focused evaluation, was part and parcel of what was in the original letter authorizing and approving the sale, Section 20.070.

We heard this morning about the appeals procedure that was in place at the time of this transaction, 90.010. Here's what it says. An institution may appeal an adverse action of the board of trustees prior, not three months later or six months later, prior to the action becoming final.

And then it describes adverse actions. Adverse actions are defined as those that, one, withdraw or deny accreditation. Two, withdraw or deny candidacy. Or three, moves the institution from accredited to candidate status.

Even if you accept, which I do not, but even if you accept the notion that these
other sections, not 050, govern and describe the
board's behavior, they still had this duty,
according to 90.010, to say to Dream Center, you
have a right to appeal this condition that we're
placing on the transaction.

The notion that there was no
obligation to provide this notice is belied by
this section, 90.010, and when you go back to
50.010, I think as President LeBlanc pointed out,
it says, moving an institution from accredited to
candidate status is an adverse action and thus is
not a final action and is subject to appeal.

We heard from Ms. Sweeney earlier, she
came up with a term I had never heard before, I
just want to pull my notes out so I can share it
with you.

She said today, in response to
questions, I think from Ms. Petrisko, she said
the only time that we use 50.010 is when there is
prospective noncompliance and because we didn't
identify in our action letter of November 16,
2017 any prospective noncompliance, Dream Center
should have known that this section did not apply.

    I have to tell you, first, I had never heard this term, and number two, it is incomprehensible to me that even the most seasoned attorney representing the institutions in these transactions, of which Ron Holt was one, he was one of the lawyers for Dream Center, would understand that, that because prospective noncompliance wasn't included in this seven-page letter, the action letter, that somehow Dream Center should have known that 50.010 was not being used.

    A point I made earlier, nowhere in this letter does the board say to Dream Center, as a consequence of this and as a consequence of being in this change of control candidacy status, you are sacrificing or forfeiting accreditation, even though you have been up to this point and on the day of this letter fully accredited.

    And nowhere in this letter is there any reference to any of these sections, allowing
the lawyers for Dream Center or the Dream Center
executives to work their way through the maze of
policies to try to figure out which one pertains
to them.

The decision itself, I find, and I'm
talking about the initial decision, however good
or bad Dream Center was, and as I was commenting
when I first started and then we had to allow the
third-party people to speak, HLC's own policies
suggest to them, strongly, in fact direct them,
if they have this level of misgiving, not to
approve the transaction.

And that section that's in 40, 040
says that the board will also not consider for
approval any proposed change of control structure
or organization for an institution the board has
determined, within the previous 12 months, to
merit withdrawal of accreditation.

Well, that's exactly what they were
doing. They were saying, under these
circumstances, we should withdraw accreditation.
And yet, they went ahead and authorized the
transaction.

I was struck by the assertion that all of the members of HLC fully understand the meaning of all these terms and that they were quite certain that the lawyers for Dream Center, in this case, understood all that was involved, because they had accepted the terms.

But here was a letter dated February 23, 2018, after HLC came forward and published on their site the notice that accreditation had been withdrawn, there was a flurry of discussions back and forth.

And as a result of those discussions, and let me read the letter to you, it says, we have discussed your letter of response and the proposed public notice disclosure with our clients, this is from the lawyer that represents Dream Center.

To ensure that we correctly understand your response and the status of our client's schools, the Illinois Institute of Art and the Art Institute of Colorado, we are confirming
that, number one, both institutions remain
eligible for Title IV, as the Commission clearly
suggested in its letter to our clients dated
November 16, referring to the institutions as
being in pre-accreditation status, a term of art
that is defined in federal regulation as a
qualifying status for Title IV eligibility for a
nonprofit institution.

Two, both institutions remain
accredited in the status of change of control
candidate for accreditation per their change of
ownership and are eligible to apply for renewal,
slash, extension of their accreditation on March
1, 2018, pending their eligibility review.

Three, both institutions will receive
an objective review for continued accreditation
with team members who have the requisite skill
and experience to render an unbiased decision.

At the end, it says, please confirm
that our understandings as stated above are
correct.

In response to this letter, a couple
of things seem to have occurred. The first was that Karen Solinski's services were terminated on this date. That Ms. Sweeney was then designated to take over the oversight of this particular case.

And it was at that time that she reached out to private counsel, who claims that she made several phone calls that went unreturned and therefore concluded that Dream Center was no longer interested.

And I have to tell you, if I received a letter like this, and this was addressed to Dr. Gellman-Danley, if I received a letter like this, I would not have let it go unresponded to.

As Barbara said earlier, it's one thing to talk on the phone, it's another thing to get written confirmation of whatever the position is. This letter would not have gone unresponded to. Certainly, this assertion at point number two.

The notion of saying to an organization, in this case, Dream Center, we're
going to approve the transaction, but we are
going to place you on a path that nearly assures
your demise, makes absolutely no sense.

It strikes me, and I'm not in a
position, contrary to the assertions made by some
of those who spoke earlier, to tell HLC what
decision they should have made, but I would ask
you to consider what decisions they could have
made that might have alleviated all of the
problems that are part and parcel of what we've
been talking about.

They could have said, as most of the
other accreditors said to their applications from
Dream Center, we may put you on some conditional
status where your accreditation remains intact,
but you have to demonstrate to us that you can
meet certain criteria.

The assertion, by the way, that the
reason that the other accreditors didn't do what
HLC did is because their circumstances were
different, well, they were different to a certain
extent, because the schools were all different, I
understand that, but the underlying issue was not the school. The underlying issue was Dream Center Management, and that was common to every one of them.

Ms. Sweeney said earlier that if somebody's a really bad actor, that's who we use 50.010 for, and it's for those people who are the really bad actors that they have a right to appeal this adverse action.

But if you're not all that bad an actor, we're not going to subject you to 50.010, we're going to subject you to 20.040 or 070, in which case we can put you in the same position, candidacy status, taking away your accreditation, but you have no right to appeal.

To suggest that this constitutes due process, in the way these various rules may or may not get manipulatively used, strikes me as incongruent with the purpose and the meaning of the notion of due process.

The questions have been raised about, well, why are we here and why can't we just move
forward? And after all, the Department is behaving in a way that is taking over the role of an accreditor. Quite to the contrary.

We have not said to HLC, these are the rules and standards that you need to use to determine accreditation, they decide that. What we say is your responsibility is to follow your own rules.

And whether they were acting under 50.010 or any of the other sections, 90.010 says you have to provide a right, a notice of appeal prior to the action becoming final, not months later.

Second, the question is, if you believe that due process was in fact compromised in this case, and we contend that it was, because this notice was not provided timely to Dream Center, meaning right at the very beginning, because what was being done was an adverse action, whether you describe this under 50.010 or 90.010, either way, they were entitled to this right and they were deprived of it.
Had it been exercised, had it been provided, we can only speculate, but it may have been. That, at that point, Dream Center would have understood the consequences and said, we have to walk away from the deal.

Attorney Holt said that to us. He said, if we had realized that we were going to lose accreditation by going forward with the deal, we would never have done it.

Karen Solinski, who was the vice president at the time and who participated, according to her description, in the development early on of a lot of these policies, responded to me, after a phone call that we had, and let me read this to you. This was December 23, just before Christmas.

This was my note to her, thank you once again for making time to speak with us and for filling in information we think vital to our analysis of HLC managing the request to approve the sale of a large group of educational institutions from a for-profit ownership group to
a nonprofit group called Dream Center Education
Holdings.

I wanted to take this moment to once
again confirm your understanding of the
transaction, with respect to the question of the
accreditation of the two institutions located
within the HLC jurisdiction.

We understood you to say that both
institutions remained accredited during a
six-month period following the sale, during which
the HLC would monitor the actions and behavior of
DCEH, Dream Center, ascertain whether they could
remain accredited (because they were progressing
toward meeting each of the items that had raised
concerns during the site visits in the fall of
2017 and then outlined in the November 16
letter), or in the alternative, to withdraw their
accreditation because they were not meeting the
expectations set out in the November '16 letter.

Can you either confirm that I have
accurately described your understanding as
communicated to us this morning or, if not,
please correct what I've written in a response
email. Thanks so much, Bob.

Here's what she wrote back on December
26. Bob, thank you for our conversation on
Monday. I'm writing to confirm that you have
accurately described my understanding of the
transaction.

   Based on my long familiarity as HLC
vice president, then executive vice president,
until March of 2018, of Legal and Governmental
Affairs, with oversight of change of control and
policy development, slash, implementation, and
based on the understanding of the HLC board that
adopted the change of control policies in 2009
and 2010.

   You correctly indicated in our
conversation and I agree that HLC did not, either
in November of 2017 or January of 2018, act to
withdraw the accreditation of the two
institutions identified in your email.

   The purpose of the change of control
candidacy was to signal to the institutions and
to the public that HLC would need to reconfirm after the closing of the transaction and in short order, based on evidence current at that time, the institutions' ability to meet the HLC criteria for accreditation and other policies.

Last on this point, and then I have one other and I will close. Ms. Sweeney, throughout the day, has said to you, repeatedly, that 50.010 was not involved, it was essentially irrelevant, and that because Dream Center chose this choice, I would describe it as rather a Hobson's choice, that no appeal was required, or notice of appeal.

But Ms. Sweeney, in May of 2018, May 30, in an email to Elizabeth Daggett on our staff, wrote in response to questions that Ms. Daggett had posed, and I quote, as you may be aware, while HLC's board approved the transaction, it did so with several conditions, one of which was to move the institutes from accredited to candidate status under HLC policy. Such a decision is subject to appeal under our
policies. The institutes have indicated their intent to appeal.

So while this making available an appeal, all the way down in May, finally occurred, the damage had been done because the announcement and the decision to remove accreditation had been made public. This is not sufficient under 90.010, and it is not sufficient under our regulations, defined at 600.25.

The last point is this, and I thank you for your patience, whenever a due process violation occurs, regardless of what government agency is responsible for overseeing its commission, it always has to be done retrospectively.

I'm not talking about retrospective accreditation, I'm talking about an analysis of whether or not due process was violated.

And if you say that an accreditor can violate an applicant or an institution's due process rights, a year ago, a month ago, five years ago, and that there is no remedy because
the Department is powerless to say wait a minute, that was not right, that you didn't follow your own procedures, that you didn't provide notice that any institution is entitled to in front of you, regardless of how good or bad they may be, that if you say the Department cannot do this, which is what the three accreditors who spoke to you this morning, or this afternoon, said we cannot do, then there's no meaning to the regulations that require the adherence to these principles.

And so the only way we can do this is retrospectively, is to go back, look at the transaction, determine whether or not the standards that are in place in our regulations and in the agency's own policies have been adhered to.

We're not here substituting our judgment for theirs. I would agree with President Danley that we have no right to do that, but we do have a right to say did you exercise the authority that you have consistent
with your own policies and consistent with the
due process regulations in federal departmental
use. And I would argue that they did not.

So part of this is to say to the world
of higher education out there, because I
understand the implications of this, what it is
to say to our institutions, many of whom live in
abject fear of their accreditor, that they're
going to lose accreditation, they're going to be
put on probation, that something terrible is
going to happen when they do their site visits,
I've been through all that, as you have as well.

But what we're saying to institutions
across the country and the students that they
serve is that you are entitled to due process in
your relationship with your accreditors, and if
you don't get it, the Department will step in, as
we are here, and saying this was wrong and that
we are going to monitor over the next year to
make sure, not just that new policies have been
adopted, it doesn't matter whether they're new or
old if you don't adhere to them, but to assure
that HLC will adhere to their policies going forward.

The last piece, in terms of trying to address the transcript issues for students, I think all of us feel for Mr. Infusino and the distress that he and his classmates experienced. And as angry as he is, I would argue to him that he is simply placing his blame in the wrong place.

And that's not to say that Dream Center is blameless, it's not to say that the Department perhaps could have acted faster or differently, but it is to say that the start of this, the cause of this was the failure of the board of HLC to fulfill their responsibilities to the applicants before them.

Thank you very much for giving us this time.

CHAIRMAN KEISER: Thank you, Secretary King. Anne, would you lower your hand, just by pushing the button? Okay. And I have one hand raised, and that's Claude. And please raise your
hands if you have a question for Secretary King.

VICE CHAIRMAN PRESSNELL: Thank you.

And thank you for being here, Secretary King, I appreciate your comments. I've got just a small number of questions.

One about the retroactive accreditation piece, you know, you just stated that the basis for the retroactivity was based on a decision of noncompliance with due process.

But it appears from everything we've heard today that it was more than that because there was the withdrawing of Herman's memo that prohibited retroactivity. And so my question is can you address that?

Because it appeared that you were going down one path and now, it appears that you may be going down a different path. So can you clarify (audio interference)?

ASSISTANT SECRETARY KING: I'll try to. I was not in the Department when all of that was going on, but I think I understood what happened. It became apparent to the Department
that the transaction that was undertaken here by
HLC was, frankly, unprecedented.

The notion that because they attempted
it once before with Everest College, but the deal
fell through, and somehow that constituted the
Department blessing that process, it's just
nonsense. The Department didn't bless anything.

But the process when it was first
understood here, I think was, frankly,
misunderstood. And the belief was that, in fact,
accreditation had been withdrawn, even though I'm
saying to you HLC didn't follow their own
policies, therefore the withdrawal should be
considered void, but people didn't understand
that at the time.

So the question was, well, is there a
way to not leave these students in the lurch
because they've already started the semester,
this is happening in the middle of the semester,
and it's putting them in a very bad place.

So that's what started this question
about could you do retroactive accreditation?
And at the time, as I understand it, there was a policy, I don't know when it was adopted, but it had been guidance from the Department that prohibited retroactive accreditation.

When Under Secretary Jones first came to the Department, which was in this administration, which was I think around June or July of 2018, she came into the middle of all of this and all of these discussions were now underway.

And as you heard, I think from Ms. Sweeney, it was a letter from Dream Center where they were trying to figure out how do we fix this problem?

And Diane Jones, without having the benefit of what we now know, kind of leaped into this, accepted the notion that accreditation had been withdrawn, and is there anything we could do to try and restore it?

She worked, as I understand it, with all of the accreditors, many of whom thanked her for her work, both in terms of getting Dream
Center, which somewhere up to that point had not yet posted on their website that accreditation had been withdrawn, she was the one who got them to get it posted on their website, and then to try and work towards some solution for that issue.

It never, understandably, got resolved, and the closest that we came to resolving it was President Danley's offer this spring, 2020, to have the board go back and essentially date the loss of accreditation to be commensurate with the date that the schools closed in December of 2018.

But as you heard, the board rejected that on the claim that somehow that would harm students. It was interesting when that question was asked this afternoon, there was no answer to how students would be harmed by doing this. But, nonetheless, that's as close as we came to trying to resolve that issue.

(Simultaneous speaking.)

ASSISTANT SECRETARY KING: I hope that
answers your question.

VICE CHAIRMAN PRESSNELL: Yeah, it does. Maybe you can answer my question on the Title IV issue. I know there were some third-party comments on it as well.

ASSISTANT SECRETARY KING: Yeah.

VICE CHAIRMAN PRESSNELL: Was there ever an interruption of full Title IV aid to students at either of the two art institutes, and if so, how long was that interruption of aid?

ASSISTANT SECRETARY KING: My understanding is that Title IV was not interrupted. When one of our career staff at FSA, Mike Frola, whose name was mentioned during the course of these proceedings, learned about the situation, he was confronted, as I understand it, with a choice of either granting this temporary nonprofit status to Dream Center, even though that had not been finally determined, which then permitted them, permitted the students, to continue to be eligible for Title IV while this matter got worked out.
Under the rules, and I think Ms. Sweeney, I think it was her, correctly stated this, but to be eligible for Title IV, if you are in for-profit status, you have to be accredited. If you are a nonprofit, and that status had not yet been determined, although it was in the process of being determined, not for IRS purposes, but for Department of Education purposes, there are two different standards for that, if you are in pre-accredited status, which is what HLC had placed Dream Center in, this candidacy status, which is pre-accredited status, then as a nonprofit, you would be eligible for Title IV.

So as I understand it, Frola, confronted with that decision and the potential of cutting students off in the middle of the semester, made a decision to award this interim status as nonprofit, while their full application was pending, which then protected the students from loss of Title IV.

VICE CHAIRMAN PRESSNELL: Right. I
guess, part of this comes together, one, I'm not sure that the Department should be able to issue interim temporary nonprofit status and that's not our issue, but there seems to be not a lot Title IV aid, there appeared to be confusion as to whether or not the institution was accredited or not and the institution closed, I would say not because of this, but this is my conjecture.

I mean, obviously the Dream Center was a catastrophic debacle in higher education that transcends HLC. So, we just didn't -- all of this -- because of these two institutions and their failure. So, trying to work my way through that.

My next question is, HLC has now modified their policies and they've aligned, for numerous reasons, one, the new regulations, and also because of this case, they've got them aligned with the direction the Department wants to go.

I guess I'm asking, what does the Department hope to gain with this 12-month
decision, except to put on hold other potential institutions eligible for accreditations? And if the end game is to have them remedy this situation, come into compliance, have they not already done it? Or what do you hope to gain by the 12-month sanction?

ASSISTANT SECRETARY KING: Well, I think several things. The first is, as I mentioned earlier, adopting new rules is not the same as following the rules. And what we see happened in this case is that HLC did not follow their rules.

So, new rules, old rules, the question is, can they demonstrate, and we're not sure that they, I hope that they will, can they demonstrate that they are prepared to adhere to their own policies, number one.

I had a train of thought and I just lost it.

VICE CHAIRMAN PRESSNELL: I'm glad I'm not the only one.

ASSISTANT SECRETARY KING: Yes, well,
it's tough when you're old. Let me come back to that other, there's another -- oh, well, and the larger point I guess is this, how else does the Department exercise its responsibility to institutions, except by an action like this, where we say to an accreditor that, in this case we think failed to do what it was supposed to do, that we impose some sanction.

If we don't, then what do these rules mean? What does due process mean if there's never a consequence? And so, I think that taking this step is a way of sending that message.

And I guess, last is under the new accrediting rules now, institutions across the country are free to go to any accreditor they want, so there's no shortage of access to accreditors.

The fact that HLC, if you were to support this and if the SDO concurs with our recommendation, yes, HLC would be prevented for a period of a year from taking on new, not in-progress institutions, but new ones, for that
But I think it's, again, I guess, contrary to the assertion that the Department is trying to stand in the role or the place of accreditors, so who needs them? Quite to the contrary.

As I said, we're not describing what the rules should be, we're not describing anything other than whatever your rules are, you have to follow them, and that you have to meet these minimum standards, which are set forth in regulations, of due process.

VICE CHAIRMAN PRESSNELL: And I just have a final comment. I have the highest regard and respect for you and I think understanding that you came back from an attorney background kind of explains your opening comments to the Committee on who it should believe and kind of sowing the seeds of distrust of HLC before we got into the deliberation, which from an attorney perspective, I see why you did that, but I was a little taken aback by those opening comments.
ASSISTANT SECRETARY KING: Well, if --

I had a little trouble hearing what you said, but
I certainly didn't mean to be disrespectful to
anybody.

I do believe, however, that the issue
that we looked at, that I looked at, was this
period surrounding the site visit by the team
that did the extensive reviews, that then
reported to the board, made their
recommendations, the board's, then action through
their action letter and the events that
immediately followed.

In terms of once we got down into the
summer and whether or not accreditation could be
retroactively applied, whether or not Title IV
was involved, were simply not part of our
purview.

And so, because in so many of the
responses during this, HLC would spend pages
talking about all of that stuff, if I came across
disrespectfully, I didn't mean to, but I was
simply trying to say to you that all of those
things, which are interesting and had other
consequences, were not related to the analysis
that we did here. That was my intended point.

VICE CHAIRMAN PRESSNELL: All right.

Thank you.

CHAIRMAN KEISER: Thank you. If you
have questions, please ask questions. If you
have comments, when we debate the decision, we
will then have those comments that we can make.
The -- Steve VanAusdle is next, followed by
Kathleen, followed by Mary Ellen, and I guess,
Anne Neal, and then I'm going to withdraw my
questions. So, Steve?

DR. VanAUSDLE: Thank you, Robert.

I've got 20 pages of notes and two short
questions.

CHAIRMAN KEISER: All right.

DR. VanAUSDLE: One is clarifying on
the appeal process. So, my question is, did the
HLC deny a written request for appeal from the
Dream Center? Was there a written request and
was it denied?
ASSISTANT SECRETARY KING: There was a written request in early February that was not denied, but was ignored. And --

DR. VanAUSDLE: Was that -- it was a written request?

ASSISTANT SECRETARY KING: I --

DR. VanAUSDLE: Because I heard earlier something about email request --

ASSISTANT SECRETARY KING: Well, I think that's written.

DR. VanAUSDLE: -- that was spelled wrong. Okay.

ASSISTANT SECRETARY KING: Well, no, no, that was later. That came, the one you're referring to was, I think in March or April, something like that.

But there was, I think Ms. Sweeney commented that there was a written request, I think it was February 2. And that went unresponded to. I don't know if that constitutes denied.

But if the point is, did HLC formally
deny a request for an appeal, the obligation that
I think you should be focused on is whether or
not HLC fulfilled its obligation to provide a
notice of appeal timely. That's what our
regulations require and that's what HLC's own
policy requires, at 90.010.

CHAIRMAN KEISER: Okay, thank you.

DR. VanAUSDLE: The other -- one more
question.

CHAIRMAN KEISER: Go ahead, Steve.

DR. VanAUSDLE: It's kind of around
this whole concept that relationships really
matter in the long run, and this probably putting
a little dynamic tension in that arena, but as
you responded to Claude, you answered a lot of
this question.

My concern was, what's the impact of
us approving this recommendation? Is that in the
interest of higher education or is it just a
sanction because we think we've got to impose a
sanction? Does it strain relationships or can we
move in a direction that brings the Department
and all the accreditors a little closer together, learning from this incident?

And I sit here thinking, in their territory, there's a lot of institutions and a lot of students that might be impacted by their lack of ability to respond. As a president, I wouldn't want to work with multiple accreditors from outside my region, unless I absolutely had to and I think the continuity and stability is really important.

ASSISTANT SECRETARY KING: Well, I'm not quite sure how to answer your question. I think the -- certainly, we all hope to work closely together, and I think the Department has had very positive relationships with accreditors.

And as I said at the outset, I'm sure Barbara's not very happy with me today, but I thought of her as a friend for a long time. But I also think that friends at times talk honestly to each other and if we screw up, let them know it.

And I think, as I said, it cannot be,
in my judgment, that accreditors, however well
meaning, if they do make errors, are somehow
immune from any consequence, other than to say,
well, jeez, we'll learn from it.

I think that the institutions out
there, thousands of them who are accredited, over
5,000 today, have to know that they're entitled
to due process with their relationships with
their accreditors and that the Department will be
here to assure that that happens.

And that's what -- you know, I wish,
frankly, that we had a more attractive
institution here. I don't think there's anybody
in the Department that has great admiration for
Dream Center. But however good or bad they were,
they were entitled to these protections. And
that's our point.

DR. VanAUSDLE: So, after today's
discussion, you feel you should stand with your
recommendation?

ASSISTANT SECRETARY KING: I do.

DR. VanAUSDLE: Okay.
CHAIRMAN KEISER: Kathleen?

DR. VanAUSDLE: Thank you, Mr. Chair.

EVENT PRODUCER: Kathleen, you're muted, hold on just a moment. We can hear you now.

DR. ALIOTO: Secretary King, I can understand, well understand why four governors would have appointed you. You are very smart and a very persuasive lawyer.

And I would just wonder, if you had been with HLC and this came before the body and you were greeted by a legal situation in which they were $95 million in the hole and previous owners had absconded with $30 million, what would you have done?

ASSISTANT SECRETARY KING: I wouldn't have approved the transaction.

DR. ALIOTO: And AOL, not AOL, has said that they were trying to help, they were trying to help, and you can see that there are different kinds of time frames on here, but let's just stick to the question.
In your report, you said that HLC, or documents revealed that HLC repeatedly reached out to Dream Center and Dream Center received this communication, but deliberately ignored these communications to let it, quote, let it sit, because it provides more runway to operate.

Now, so, you're giving a very different analysis of what actually happened than what --

ASSISTANT SECRETARY KING: What are you reading --

DR. ALIOTO: -- what the documents -- the documents that are in the -- oh, and by the way, with the documents, in the future, if you could put the dates on them and if they could be chronological, because the documents in this dossier were all over the place.

And it was like jigsaw puzzle to understand, I still don't understand what was going on. But the staff report left out of context that the Dream Center deliberately ignored HLC communications.
Now, you're just giving us one side of this, and you're a great lawyer, you're giving us one side of the picture, not the full picture, and now, we're supposed to make a decision and we have to look at the full picture.

ASSISTANT SECRETARY KING: Well, I --

CHAIRMAN KEISER: Kathleen, do you have a question? Bringing -- because this is time to ask questions --

DR. ALIOTO: Why does the --

CHAIRMAN KEISER: -- and we can make our points later on.

DR. ALIOTO: Why does the staff report leave out the repeated HLC communications to Dream Center?

ASSISTANT SECRETARY KING: Well, I'm not aware of the report you're referring to, but HLC has been here all day and has been very amply represented to tell their side of the story, with multiple people that both work for the organization and others who had an interest.

So, I don't know that the NACIQI Board
has been deprived of any information that's available. I'm not familiar with what you're talking about.

DR. ALIOTO: Well, it's in the report that, the staff report that NACIQI was given. And the documents that NACIQI was given. That's what I'm talking about.

ASSISTANT SECRETARY KING: Okay.

Well, some --

DR. ALIOTO: Okay. Now, I also --

ASSISTANT SECRETARY KING: -- of the stuff you have is not stuff that I have seen.

DR. ALIOTO: All right. Well, the dossier is fairly hefty. I also want to know about this question about the lack of public comments. And there was a complaint from one of the students --

ASSISTANT SECRETARY KING: Yes, I heard that.

DR. ALIOTO: -- question about this. And it's the first time that I've seen it, I've been here for five years, it's the first time
I've seen that happen.

ASSISTANT SECRETARY KING: The regulation that governs public comment does not mandate it, it says, if practicable.

And given the time frames that were involved and the length of extensions that we had provided to HLC during the course of these various communications, because there were deadlines that they sought to have extended, 53 days were utilized by HLC for the various extensions that they requested.

As a consequence, we got to the cutoff date by which the agenda has to be published and speakers have to be identified and public comments have to be submitted so that there's time to respond to them.

We couldn't have done that and met today's meeting date, because so much of the time that was involved had been consumed by extensions sought by HLC for their own purposes.

DR. ALIOTO: Or you did not consider, what was the rush? What was the rush that we had
to have this on the agenda? Did our President
want to have it on the agenda now, since he's
supposed to be involved in these decisions?

ASSISTANT SECRETARY KING: The
President of the United States? I don't think he
even knows this is going on.

DR. ALIOTO: No, Art Keiser, our
President.

ASSISTANT SECRETARY KING: Oh, your
President, I'm sorry.

(Simultaneous speaking.)

ASSISTANT SECRETARY KING: Part of
this --

CHAIRMAN KEISER: No, I had nothing to
do with the agenda, Kathleen.

DR. ALIOTO: Don't you --

ASSISTANT SECRETARY KING: In answer
to --

DR. ALIOTO: -- generally have
something to do with it?

ASSISTANT SECRETARY KING: The answer
is that, as you heard the President
Gellman-Danley talk about was that these events
were how many days ago, months ago, and extending
it further was just going to make it that much
more attenuated.

We had concluded our work on this, I
think in early January, mid-January. Well, the
initial, but the initial reports that we shared
with HLC were back in the winter. And then there
was a series of exchanges of communication,
including an effort to try to resolve this.

And unfortunately, I would have
preferred, very honestly, because lawyers like to settle cases, I would have preferred to have
resolved this. And unfortunately, the HLC board declined to pursue the course that President Danley had mapped out for it as a way to settle the matter. So, we're here.

DR. ALIOTO: Well, haven't we heard
today that they have, President Pressnell had
suggested, they have essentially agreed with
your, the Department's new rules, so why are you still after us to slap them on the wrist, and
perhaps do a disservice to institutions and
students in the process?

ASSISTANT SECRETARY KING: Well, I
understand your point of view and I think I've
answered that question already, so I'll -- I
don't want to take up more time unnecessarily.

DR. ALIOTO: Okay. Thank you. I do
have something else at the end, when I can --

CHAIRMAN KEISER: Mary Ellen?

DR. PETRISKO: Thank you.

CHAIRMAN KEISER: We're going to take
a break after Anne Neal, and we'll take a
ten-minute break.

DR. PETRISKO: So, some of my
questions were answered already, particularly
about the recommended action, but I just want to
make sure I understand about the public comment.

The comment was made that it would be
accepted if practicable. I was under the
impression that that if practicable was a change
to the regulations that went into effect July 1,
maybe I'm wrong, but I'd like to know that.
And secondly, how will that be determined, whether it's practicable or not? And when --

ASSISTANT SECRETARY KING: I don't know that that provision has been changed in the new regulations, I don't believe it has. And it's a judgment call that we make.

DR. PETRISKO: Okay.

ASSISTANT SECRETARY KING: I can't say it any clearer than that.

DR. PETRISKO: All right. Thank you.

CHAIRMAN KEISER: Anne?

MS. NEAL: I just want to pursue a few minutes the issue of accountability that you have raised, which I think it may be something for Congress as opposed to this body, but I'd like to talk about it a little bit more.

Because as I hear you, you have said rightly, that as guarantors of educational quality, the accreditors are part and parcel of a system of accountability. And NACIQI is part of that system, the Department of Ed is part of that
system.

And so, here, we find ourselves with various options. And as I understand it, we have fairly limited options each time we come together. We can renew the accreditors, we can deny the accreditors, or we can put them on conditions.

And then, similarly, the accreditors themselves, when they're dealing with institutions, they can say they're great, they can say they're terrible and put them out of business, or they can put various conditions on them so that they can improve.

And my experience has been, after being on this body in many different iterations, that there is a real hesitancy to take action, to actually have consequences, generally for the finest of reasons, that we really don't want to hurt students.

So, whenever we are faced with accreditors and making them accountable, shutting them down has vast consequences vis-a-vis
students. And so, there have been those who have suggested that accreditors are too big to fail for that reason alone.

Similarly, I've often heard accreditors say vis-a-vis institutions, well, we didn't want to shut them down, that would hurt students, we want to help them, we want to see if we can continue moving them along, and we've heard that today.

So, I want to ask you, is there something flawed in this system that does not provide the kind of fine-tuned sanctions that would be appropriate when actions are taken that are inappropriate?

ASSISTANT SECRETARY KING: That's a big question. We, in this matter, certainly considered what would be the right recommendation to you and to the senior Department official. And we did not feel that asking you to withdraw recognition of HLC was appropriate and, obviously, have not done that.

We thought that some sort of
intermediate action that would make the point, but not dramatically impact either HLC adversely or the institutions that they accredit or the students that go to those institutions would be harmed by this.

In terms of, are there other things we could do? You've raised a topic that probably deserves a different setting to discuss whether or not the system we have is the best system to assure academic quality.

I greatly enjoyed your questions earlier to, I think to Dr. Danley. I'm not sure that the system we have makes the most sense. I have been concerned for a long time about what accreditors do to really ascertain academic quality and rigor, and it varies, as I've learned, from accreditor to accreditor.

Some have been very aggressive, in terms of demanding of their member organizations, their member institutions demonstrated, first of all, collection of the right, meaningful data, and then demonstrated improvement. Others have
been quite lax about it.

And I'll share with you, I had a
discussion not that long ago, while I was still
working in Kentucky, with Belle Wheelan at SACS.
And I asked, flat out, I said, Belle, what do you
do to assess academic quality? And she was very
honest and candid, she said, nothing. I said,
why not. She said, because my members won't let
me.

And so, the question of whether or not
membership organizations should be the
gatekeepers to federal largesse is a big
question. I'm not prepared they shouldn't be,
but I think it's a question worth asking and
discussing.

Barbara's probably sitting there
thinking I'm crazy, but it's an important issue
that I think the country needs to think through
whether or not all of the institutions that we're
prepared to provide Title IV support for really
deserve that support.

And the measure, in my view, ought to
be the quality of the products that they produce
in terms of student outcomes. So, I'd rather
leave it at that.

MS. NEAL: Art, two very quick
responses. I would urge the Department to
consider reconsidering its recommendation
vis-a-vis non-renewal for reasons of educational
quality.

But secondly, I'd like to ask the
General Counsel for NACIQI, who has often advised
us in this area, about these kinds of conditions.
I know we have had similar conditions imposed in
the past, when there was a desire to say that the
accreditor had not been acting perfectly, and it
was designed to send a message.

I would be curious to benefit from the
historical memory of the General Counsel on the
Committee as to when those kinds of conditions
were imposed, and also, any suggestions or
recommendations as to other conditions when an
accreditor may not have been deemed to act in a
perfect faction.
MS. MANGOLD: Hi, this is Donna Mangold. And Sally Morgan, with all of the historical knowledge, has retired. So, I'm going to --

CHAIRMAN KEISER: Donna, could you hold off? We're going to --

MS. MANGOLD: I'm sorry.

CHAIRMAN KEISER: -- take a break.

That's more of a question for the discussion that we're going to have as a Committee.

MS. MANGOLD: Okay.

CHAIRMAN KEISER: So, it is 4:12, if we can come back at 4:22, we can then -- I'll ask that either Mary Ellen or Paul make a motion for us to discuss, at which point we can then entertain any kind of discussion we want. Does that sound okay with everybody? Ten-minute break.

ASSISTANT SECRETARY KING: Mr. Chairman, do you need me to stay or am I released?

CHAIRMAN KEISER: You're released.
ASSISTANT SECRETARY KING: Okay.

Thank you so much, appreciate it.

CHAIRMAN KEISER: The discussion will be among the members.

(Whereupon, the above-entitled matter went off the record at 4:13 p.m. and resumed at 4:23 p.m.)

DR. LeBLANC: Okay. I --

CHAIRMAN KEISER: Paul, would you like to --

DR. LeBLANC: Yes, can you hear me okay? Thumbs up will suffice.

CHAIRMAN KEISER: We can.

DR. LeBLANC: Okay. So, because this has a fair bit of complexity and we covered an awful lot of ground over the last seven hours, I'm going to just do the briefest of overview and then our motion. And this will be very brief.

I'll speak, Mary Ellen and I went back and forth and this comes from both of us, but I will make the motion and she can second, and we can open discussion, as we typically do.
We believe that HLC's policies regarding change of control, adverse action, and skills were not as clear or logical as they should have been.

The offer of candidacy and the scattered consequence could have been outlined in a clear and more transparent fashion, no matter the responsibility of DCEH to know, understand, or seek clarification of its own.

Compliance with its own policies has shown itself to be complicated, because HLC's policies are themselves complicated. The answer to HLC's own lack of clarity should not be, others provide the clarity, we do not.

Subsequently, DCEH amply and ironically demonstrated the shortcomings and behaviors that concerned HLC, including shoddy administrative practices regarding its accreditation relationship, its ignorance of basic accreditation knowledge, what appears to be an ongoing and willful deception of students, and failure to act in its own best interest in the
matter of the appeal finally granted it in the best interests of the students, to continue to enroll after it should have stopped doing so.

Whether or not one believes due process was honored, the harm to students largely happened because DCEH continued to enroll students, failed in its disclosure responsibilities, despite mountains of notice, and drew down millions of dollars of federal financial aid.

The Department did not acquit itself well in this matter either. Namely, it failed to raise issue of policies that it later came to flag in its investigation. It offered HLC conflicting guidance.

It did not raise compliance and due process issues with HLC, despite the case study, staff presence in the board meeting, subsequent back and forth with the agency and DCEH representatives. It curiously raised these issues only when HLC refused to violate its own policy on retroactive accreditation and the
30-day limit.

In a series of steps that feel at least unorthodox and perhaps inappropriate, the senior political appointee interjected herself on behalf of DCEH, sidelined experienced staff, and appeared to be negotiating on behalf of the institutions.

The eventual investigation before us today demonstrated indifference to due process itself, given the absence of any interviews with HLC staff and only two interviews conducted, one with the DCEH attorneys, who demonstrated either incompetence or ignorance or both, and one with a former HLC employee, for which there is not a transcript.

The Department then exacerbated the situation by issuing a press release, even before HLC had responded to the charges leveled against it. No one shines in this case in our view.

However one comes to interpret HLC's original process and implementation of its policies, it subsequently offered DCEH an
opportunity to appeal, it refused to violate its own policy on retroactive accreditation, it worked to mitigate harm to students, and it cleaned up the policy on change of control policy, such that no repetition of this unhappy matter can occur.

The remedy that has been sought has been implemented. A 12-month sanction at this point merely sounds punitive not constructive. As such, we see no grounds for supporting the staff recommendation.

I move that the NACIQI reject the staff recommendation and recommend that the senior Department official not revise or curtail the accrediting agency's scope of recognition. With that, I need a second.

CHAIRMAN KEISER: Is there a second?

Mary Ellen?

DR. PETRISKO: Mary Ellen seconds.

CHAIRMAN KEISER: Actually, we can use the -- from now on, when we talk about a vote, further discussion, if you would raise your hand?
No further discussion?

I'll call for the motion, then, to be called. There's a little megaphone at the bottom of the participant lists, go to that. All those in favor of the motion, signify by hitting yes. All those opposed, hit no.

VICE CHAIRMAN PRESSNELL: Art, would you mind to read the motion again?

CHAIRMAN KEISER: The motion -- Paul, go ahead, Paul.

DR. LeBLANC: I move that the NACIQI reject the staff recommendation and recommend that the senior Department official not revise or curtail the accrediting agency's scope of recognition. So, a yes vote is against the staff's recommendation and imposes no sanction on HLC.

MS. NEAL: Are you asking --

CHAIRMAN KEISER: The motion has been made and seconded. I had already -- is there any further discussion? If not, please vote. Go to the megaphone and vote.
MS. NEAL: Arthur, could I get clarification?

CHAIRMAN KEISER: I'm sorry, who's saying that?

MS. NEAL: Arthur, it's Anne. I just -- on this issue, I want to be clear, Paul, are you all basically recommending that HLC be renewed for a full term? Is that in essence what you're recommending?

DR. LeBLANC: Yes, there was no -- the staff recommendation actually doesn't talk about term length, Anne, it only says that for the next 12 months, it will not have any new members and that it requires a report on mitigation against student harm.

And we think those things have been addressed and we would vote against the recommendation. But nothing in the staff recommendation has to do with lengthening or rethinking of the term length.

MS. NEAL: Well, I guess as I think about my vote, I'm thinking about it in the
context of the status of HLC. So, what -- are you all then going to make a second motion, in terms of their renewal?

Because I am not of the mind that they have upheld their role as guarantors of educational quality and hence, I'm just trying to figure out what is your next step or what is the next vote or what is the next opinion?

VICE CHAIRMAN PRESSNELL: Art, this is Claude.

CHAIRMAN KEISER: Anne, there's a motion and a second on the floor. People have already -- because we've already started voting. You can vote against the motion or you can vote for the motion.

Again, I had asked for discussion twice and now, the vote is in motion. So, if you would please vote and then we can -- if we vote against the motion, we can have further motions. If we vote for the motion, then the motion is passed. Okay. Unless it's really critical that somebody -- because most of the votes are up
there.

DR. LeBLANC: Art, a point of --

CHAIRMAN KEISER: You can see them on the participants. What, Paul?

DR. LeBLANC: So, my point --

CHAIRMAN KEISER: Paul?

DR. LeBLANC: -- staff recommendation, she can put forward any subsequent motion around term length or anything else, correct?

CHAIRMAN KEISER: Right.

DR. LeBLANC: Is that what you --

CHAIRMAN KEISER: Right. You can make a second, a third, a fifth motion, as many as you want, but on the first motion, we just voted. And we have six for, three against. So, I would -- unless some -- did anybody not vote? There are nine votes, there are more than nine people here.

Does Jill have a question or is that her vote? Anne, are you voting? You don't have your vote in. Claude, you have one. David has one. Jill, you don't have question, you have a
hand raised, but you don't have a vote. Go to the megaphone.

EVENT PRODUCER: Your phone is muted, Jill.


Paul, you had a second motion?

DR. LeBLANC: I have a motion, I mentioned this earlier, a request to read the House Committee Report, more importantly, it's a supporting document, which are things like the transcript of the interview with Barbara, into the record. I believe that needs a vote, actually, from NACIQI.

Our General Counsel took a look at Department of Ed's regs and felt that as long as it's germane, it doesn't have to be materials that were provided to us for today, but it has to be germane to the topic, which it is.

And of course, voting into the record does not force the Secretary to do anything with
it that she doesn't want to, she can ignore it or not.

But I think it's important enough to be read into the record. I'd like to make a motion that we include all the supporting documents into the record of today's hearing.

CHAIRMAN KEISER: Is there a second?

DR. ALIOTO: I'll second it.

CHAIRMAN KEISER: Who seconded?

Kathleen?

DR. ALIOTO: I'll second it.

CHAIRMAN KEISER: Okay. Motion is made and seconded. Is there any further discussion or discussion on this motion?

MS. NEAL: I'm always in favor of more information rather than less. I'm just curious, in the past, I don't recall our being allowed to submit documents after the discussion has occurred.

CHAIRMAN KEISER: I'm not sure that we would be prohibited from adding to the record, Anne.
MS. NEAL: Okay. I'm in favor of more information, rather than less.

CHAIRMAN KEISER: Okay. Any further discussion? If not, please vote using the megaphone. Okay. That looks like the motion is unanimous. Now, did anyone else want to make another motion? Well, that was a long one.

MS. NEAL: I have a question, Art. And so --

CHAIRMAN KEISER: Yes, go ahead, Anne.

MS. NEAL: -- since we have rejected the recommendation, so what is the status, then, of HLC?

CHAIRMAN KEISER: The status will be what the Secretary wants it to be, or her person. We're just an advisory committee, we are advising that the recommendation by the staff was not acceptable to us and we made a recommendation to the Department. So, whatever the Secretary wants is the way it's going to be.

DR. BOOTH: HLC is not --

CHAIRMAN KEISER: Does that make
sense, Anne?

(Simultaneous speaking.)

DR. BOOTH: HLC was not at the end of their cycle, this was coming mid-cycle for them.

VICE CHAIRMAN PRESSNELL: That's correct, HLC was approved in 2018, so they're not up for renewal. This entire hearing was based on that one issue. So, it was not based on the renewal of the accreditor. So, they're in the midst of their cycle.

CHAIRMAN KEISER: Ronnie, did you have a question?

DR. BOOTH: I was just going to make that comment, that they were in the middle of their cycle, this was a one-off issue that has nothing to do with their standing.

CHAIRMAN KEISER: Okay. Well, folks, it's --

DR. ALIOTO: I just wanted --

CHAIRMAN KEISER: -- a little late to bring up New York -- what, I'm sorry? Kathleen?

DR. ALIOTO: I just wanted to thank
everyone and I'm sure you'll thank me that I
didn't give my speech at the end.

(Laughter.)

CHAIRMAN KEISER: Well, you're
certainly welcome to.

DR. ALIOTO: The time has passed and
it is time to get out of here.

(Laughter.)

CHAIRMAN KEISER: Okay. We will do
tomorrow, New York tomorrow, George?

DR. SMITH: Yes, we'll start with New
York, exactly.

CHAIRMAN KEISER: Okay. I don't think
there's too much controversy the rest of the
meeting. It is 4:36, thank you all. I would
entertain a motion for adjournment for today?

DR. LeBLANC: So moved, Mr. Chairman.

DR. VanAUSDLE: Second.

DR. FRENCH: Mr. Chairman?

CHAIRMAN KEISER: Moved by Paul,
second by Steve, it looked like. Somebody said
something to me?
DR. FRENCH: Yes, this is George French. I just wanted to thank you for your leadership on this call, this was not the easiest thing to do, using technology, but you did an excellent job. Thank you.

CHAIRMAN KEISER: Well, thank you for being patient with me. It was tough. So, the other motion we should make is that the Department get a better technology system.

(Laughter.)

CHAIRMAN KEISER: Okay. Thank you all, we'll see you in the morning. We start at what time, George?

DR. SMITH: Nine.

CHAIRMAN KEISER: Nine. Try to log in around 8:30, 8:40 so we'll be all ready to go at 9:00. Thank you.

(Whereupon, the above-entitled matter went off the record at 4:37 p.m.)
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In the matter of: Institutional Quality and Integrity  
National Advisory Committee Meeting

Before: US DED

Date: 07-29-20

Place: teleconference

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_________________________
Neal R. Gross
Court Reporter