
From: Mangold, Donna <donna.mangold@ed.gov>
To: Yordy, Charles </o=usdoed/ou=external
(fydibohf25spdlt)/cn=recipients/cn=67a99e691eea4dfbb4765f27a556
9c94>; kdbrodie@duanemorris.com <kdbrodie@duanemorris.com>;
Morgan, Sally </o=usdoed/ou=external
(fydibohf25spdlt)/cn=recipients/cn=a76a62c37b834d1fa666394eb18c
14d0>
Cc:
Bcc:
Subject: RE: ACICS Part II submission
Date: Thu May 31 2018 12:33:24 EDT
Attachments:

We also request that ACICS provide us with a duplicate thumb drive of the bates-stamped Part II submission – to ensure that document page references are consistent in the SDO's July 31st submission.

Thank you,

Donna

Donna S. Mangold

Attorney

Office of General Counsel

Division of Postsecondary Education

U.S. Department of Education

400 Maryland Avenue, S.W.

Room 6E108

Washington, D.C. 20202-2110

202-453-6710

From: Yordy, Charles

Sent: Thursday, May 31, 2018 12:24 PM
To: kdbrodie@duanemorris.com; Morgan, Sally; Mangold, Donna
Subject: ACICS Part II submission

I am drafting this email to memorialize several brief conversations we had this morning regarding the ACICS Part II submission. In the interest of logistics, counsel for ACICS will provide the version of the Part II submission that was filed under seal with the court. The Part II submission will be delivered to me at the Office of Hearings and Appeals on a thumb drive along with a brief narrative describing its chain of custody. I can then make the Part II submission available to counsel for the Department if necessary. However, I believe the version ACICS will be submitting is identical in content (except that it is Bates stamped) to versions currently in the Department's possession on other thumb drives, which are presumably already available for the Department to review.

Charles Yordy | Attorney / Secretary's Liaison

Charles.Yordy@ed.gov | Ph: 202-245-8294

Office of Hearings and Appeals

U.S. Department of Education

Potomac Center Plaza

550 12th Street, SW

Washington, D.C. 20024

From: Mangold, Donna <donna.mangold@ed.gov>
To: Hernacki, Andrew T.
<athernacki@venable.com>
Cc: Brodie, Katherine D.
<kdbrodie@duanemorris.com>; Baker, Allyson B.
<abbaker@venable.com>
Bcc:
Subject: RE: ACICS Part II Submission
Date: Fri Jun 01 2018 09:10:04 EDT
Attachments:

Andrew – thanks for sending the drive. I received it yesterday afternoon.

From: Hernacki, Andrew T. [mailto:ATHernacki@Venable.com]
Sent: Thursday, May 31, 2018 3:55 PM
To: Mangold, Donna
Cc: Brodie, Katherine D.; Baker, Allyson B.
Subject: ACICS Part II Submission

Ms. Mangold,

In furtherance of your discussions and email correspondence with Katherine Brodie, ACICS is delivering to you today the flash drive of ACICS's Part II submissions as filed under seal with the court. It will be delivered shortly by courier, along with a hard copy of the attached letter. A duplicate flash drive will be delivered to Mr. Yordy today as well.

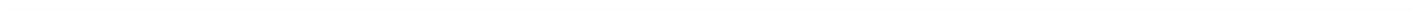
As noted in the letter, the flash drive is password protected. The password is: hnA~5J>Tkw(4]5'H . Please let me know if you have any difficulty accessing the files.

Regards,

Andrew Hernacki

Andrew T. Hernacki, Esq. | Venable LLP
t 202.344.4264 | f 202.344.8300 | m 914.907.9643
600 Massachusetts Ave., NW, Washington, DC 20001

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.



From: Morgan, Sally <sally.morgan@ed.gov>
To: Mangold, Donna </o=usdoed/ou=external (fydibohf25spdlt)/cn=recipients/cn=b822bd81adb4460db93edc96376e414f>; Brodie, Katherine D. <kdbrodie@duanemorris.com>
Cc: Morgan, Sarah E. </o=usdoed/ou=external (fydibohf25spdlt)/cn=recipients/cn=c37f880931444f9191a7630c4c670a81>
Bcc:
Subject: RE: ACICS - Docket 16-44-O
Date: Tue May 22 2018 13:09:22 EDT
Attachments:

Hi Katherine, I agree with Donna on the service issue.

Sally

From: Mangold, Donna
Sent: Tuesday, May 22, 2018 1:06 PM
To: Brodie, Katherine D.; Morgan, Sally
Cc: Morgan, Sarah E.
Subject: RE: ACICS - Docket 16-44-O

Yes.

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Tuesday, May 22, 2018 1:05 PM
To: Mangold, Donna; Morgan, Sally
Cc: Morgan, Sarah E.
Subject: RE: ACICS - Docket 16-44-O

Ok, so you and Sally are the points of contact at OGC on this correct? Thanks!

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Tuesday, May 22, 2018 1:01 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Cc: Morgan, Sarah E. <Sarah.Morgan@ed.gov>
Subject: RE: ACICS - Docket 16-44-O

Re-sending to "Sally Morgan" – I hit reply all to your message and Sarah E. Morgan alerted me to the fact that it didn't go to Sally (also named Sarah).

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Tuesday, May 22, 2018 12:59 PM
To: Mangold, Donna; Morgan, Sarah E.
Subject: RE: ACICS - Docket 16-44-O

Thanks

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Tuesday, May 22, 2018 12:54 PM

To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sarah E. <Sarah.Morgan@ed.gov>
Subject: RE: ACICS - Docket 16-44-O

Hi Katherine, e-mail service absolutely ok on the appearance. Let me check with Sally on the 5/30 submission (we may want to do a courtesy copy paper exchange – but it wouldn't need to be delivered that day).

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Tuesday, May 22, 2018 12:51 PM
To: Mangold, Donna; Morgan, Sarah E.
Subject: ACICS - Docket 16-44-O

Hi Donna and Sarah:

I am assisting ACICS with its written response to the Secretary pursuant to the attached April 2018 Order. I spoke with Dan Shapiro at OHA today regarding how this response should be filed, and he informed me that ACICS may use the OHA e-filing system to upload the response into that system by May 30.

I have used the system before, and have been added to the case as of today. I will also enter a Notice of Appearance for the matter (with service to you both on that), and wanted to know if email service is acceptable in lieu of paper service for the Entry of Appearance and for the May 2018 filing.

Thanks and please give me a call if you would like to discuss.

Sincerely,

Katherine D. Brodie
Special Counsel

Duane Morris
505 9th Street, N.W., Suite 1000
Washington, DC 20004-2166
P: +1 202 776 5241
F: +1 202 478 2629
C: +1 202 365 5114

kdbrodie@duanemorris.com
www.duanemorris.com

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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From: Brodie, Katherine D.
<kdbrodie@duanemorris.com>
To: Mangold, Donna </o=usdoed/ou=external
(fydibohf25spdlt)/cn=recipients/cn=b822bd81adb4460db93edc96376e
414f>
Cc: Canada, June </o=usdoed/ou=external
(fydibohf25spdlt)/cn=recipients/cn=bbac5fb45b0740179ec6e1a798e6
017d>
Bcc:
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order
Date: Fri Jun 01 2018 14:21:09 EDT
Attachments:

Ok, will do.

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Friday, June 1, 2018 2:21 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>
Cc: Canada, June <June.Canada@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Hi Katherine,

I am teleworking – have the courier tell the front desk to direct it to “June Canada in OGC” and I will get it on Monday.

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Friday, June 01, 2018 2:18 PM
To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Hi Donna:

The hard copy set is being delivered to your office this afternoon.

Katherine

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Thursday, May 31, 2018 2:00 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

See below for the avoidance of doubt!

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Thursday, May 31, 2018 1:19 PM
To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Hi Donna – Just for the avoidance of doubt, you wanted both the thumb drive containing Part II (YES) and the hard copy set of yesterday’s filing (YES) delivered to your attention at the OGC address at Maryland Avenue (YES), correct, and the separate thumb drive to Mr. Yordy at OHA (YES)?

The thumb drives will be coming from Venable LLP, litigation counsel for ACICS who has preserved the chain of custody of the Part II. OK

The hard copy of the filing will come from me/Duane Morris LLP (regulatory counsel for ACICS). OK

Thanks, and let me know if you have any questions.

Katherine

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Thursday, May 31, 2018 12:37 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Katherine – along with the thumb drive, can you please deliver one paper copy (including all other exhibits).

Many thanks!

From: Mangold, Donna
Sent: Wednesday, May 30, 2018 5:48 PM
To: 'Brodie, Katherine D.'; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Katherine – you should probably talk to OHA about alternative means for getting the Part II submission to them for the Secretary's review as part of the record on remand.

We will get back to you about paper copies.

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Wednesday, May 30, 2018 4:53 PM
To: Mangold, Donna; Morgan, Sally
Subject: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Dear Ms. Mangold and Ms. Morgan:

The ACICS Response to the Secretary's Order was filed via OHA's electronic filing system today. A copy of the cover transmittal letter is attached.

We have completed the entire exhibit upload.

Due to amount of PII in the Part II submission, it was not filed as a separate exhibit, but is referenced throughout in our response. If the Part II needs to be uploaded to the OHA system, we should discuss how best to do that efficiently.

Please let me know if you need paper copies of today's filing served as a courtesy and, if so, how many sets you would like.

Thanks and please do not hesitate to contact me with any questions.

Sincerely,

Katherine Brodie

Katherine D. Brodie
Special Counsel

Duane Morris
505 9th Street, N.W., Suite 1000
Washington, DC 20004-2166
P: +1 202 776 5241
F: +1 202 478 2629
C: +1 202 365 5114

kdbrodie@duanemorris.com
www.duanemorris.com

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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From: Brodie, Katherine D.
<kdbrodie@duanemorris.com>
To: Menashi, Steven </o=usdoed/ou=external
(fydibohf25spdlt)/cn=recipients/cn=menashi, steven45b>
Cc:
Bcc:
Subject: Fwd: Motion to Intervene in SDNY Litigation
Date: Mon Apr 30 2018 12:12:15 EDT
Attachments: 9 - Letter Motion to Judge Buchwald re MTI.PDF
9-1 - Decl. of S. Sheikh with Exhibit.pdf
9-2 - Decl. of M. Edwards with Exhibit.pdf
ATT00001.htm
ATT00002.htm
ATT00003.htm

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600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

April 27, 2018

VIA ECF & HAND DELIVERY

Honorable Naomi Reice Buchwald
United States District Judge
Southern District of New York
500 Pearl Street, Room 2270
New York, New York 10007

Allyson B. Baker

T 202-344-4708
F 202-344-8300
abbaker@Venable.com

Re: *The Century Foundation v. United States Department of Education, No. 18-cv-3581*

Dear Judge Buchwald:

The Accrediting Council for Independent Colleges and Schools (“ACICS”), an interested non-party in the above-captioned FOIA litigation, respectfully moves this Court to intervene as of right, pursuant to Fed. R. Civ. P. 24(a)(2), or alternatively, by permission, pursuant to Fed. R. Civ. P. 24(b)(1)(b). Specifically, ACICS seeks to protect its unrepresented, direct and substantial interest in this litigation and prevent the improper disclosure of FOIA exempt materials. Pursuant to Section 2 of Your Honor’s Individual Practices, ACICS respectfully submits this application for intervention in the form of a letter motion but additionally seeks leave to file a memorandum of law in order to more fully present its arguments in support of intervention as well as to challenge the disclosure of the “written draft staff analysis” (the “Draft Staff Report”), which the Department of Education (“ED”) intends to otherwise disclose imminently. *See* Decl. of S. Sheikh, Ex. 1.

ACICS is a longstanding accreditor of higher education institutions that has been recognized by ED, and its predecessor, for approximately 60 years. At issue in this litigation is the Draft Staff Report, which ED staff prepared exclusively in connection with ACICS’s Petition for Initial Recognition (the “Petition”). ACICS filed the Petition in December, following questionable findings and reports that led ED to de-recognize ACICS as an accrediting agency. True to the spirit of ACICS’s challenge, the U.S. District Court for the District of Columbia held that the decision to remove ACICS’s recognition status violated ED’s own regulations and was arbitrary and capricious. *See Accrediting Council for Independent Colleges and Schools v. DeVos*, No. 16-244 (D.D.C. March 23, 2018) (“the Court concludes that the Secretary violated the APA by failing to consider the Accrediting Council’s Part II submission and evidence of its placement verification and data integrity programs and procedures.”) Following this decision, the Department reinstated ACICS’s recognition status and ACICS, accordingly, withdrew its Petition.

At issue in this litigation is the Draft Staff Report that was prepared exclusively by ED staff on the basis of the now withdrawn Petition and as mandated under the rules governing the recognition process. 34 CFR 602.32 (“Procedures for Department review of applications for recognition”). The Draft Staff Report reflects only the pre-decision deliberations and analysis of ED staff and did not incorporate any response from ACICS. Included in the Draft Staff Report are observations and information obtained through sites visits, conducted on an “announced or unannounced basis,” to the agency or location where activities such as “training, review and

VENABLE_{LLP}

Honorable Naomi Reice Buchwald, U.S.D.J

April 27, 2018, Page 2

evaluation panel meetings.” 34 CFR 602.32(b)(1). Similar observations are additionally made on the basis of such announced or unannounced visits conducted to “one or more of the institutions” the agency accredits. *See id.* Critically, the Report included factual inaccuracies that ACICS would have had the opportunity to correct in its response, if it had proceeded with the Petition. To be sure, the ED regulations governing the recognition process contemplate the necessary opportunity for the petitioning agency to respond. *See* 34 CFR 602.32(f)(3). But the Petition became unnecessary, and was withdrawn, as a result of U.S. District Judge Walton’s opinion, which concluded that the ED staff’s prior decision to remove ACICS’s recognition status had been based on incomplete information and in violation of the regulations that govern the process.

The Draft Staff Report is a one-sided, preliminary report consisting of pre-decision deliberations and information that were never contemplated for public dissemination. *See* 34 CFR 602.32(c). Indeed, the confidential ED portal through which ACICS accessed information about its Petition stated that the Draft Staff Report is exempt from FOIA disclosure. *See* Decl. of M. Edwards, Ex. 1. It is well understood that “[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 US 214, 242 (1978). But, here, disclosure would undermine the purpose of FOIA and undoubtedly cause public confusion, including further harm to ACICS’s reputation and business viability, as well as to institutions ACICS has accredited and students attending those institutions.

Accordingly, and for reasons that will be set forth fully in a memorandum of law to be filed with leave of the Court, the Draft Staff Report is protected under the enumerated FOIA exemptions on the basis that it: consisted of confidential trade secret, commercial and/or financial information the ED staff obtained through visits and other investigatory means; was prepared solely for pre-decision deliberations as contemplated under the process; was clearly stated to be exempt from disclosure on the ED’s own website; and disclosure of such information would cause public confusion and harm to institutions and students making significant decisions, including immigration decisions.

ACICS Satisfies Requirements for Intervention

ACICS meets the requirements for intervention. To intervene under Fed. R. Civ. P. 24(a)(2), an applicant must “(1) file timely, (2) demonstrate an interest in the action, (3) show an impairment of that interest arising from an unfavorable disposition, and (4) have an interest not otherwise adequately protected.” *Farmland Dairies v. Comm’r of New York State Dep’t of Agric. & Markets*, 847 F.2d 1038, 1043 (2d Cir. 1988) (quotations and citations omitted). Each of these requirements is easily satisfied here.

ACICS files this letter seeking intervention within days of the commencement of this action and upon learning of the Department’s intention to produce the requested materials. On these facts, there can be little dispute that ACICS’s intervention is timely. *See, e.g., Dow Jones & Co., Inc. v. U.S. Dep’t of Justice*, 161 F.R.D. 247, 251 (S.D.N.Y. 1995). Further, as described above, ACICS has an interest in the subject of this action, which involves the production of the Draft Staff Report

VENABLE LLP

Honorable Naomi Reice Buchwald, U.S.D.J
April 27, 2018, Page 3

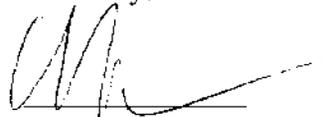
based on ACICS's initial Petition for Recognition. ACICS also has an interest in the relief that TCF seeks. *See United States Postal Service v. Brennan*, 579 F.2d 188, 191 (2d Cir. 1978). Moreover, ACICS's interest would be adversely affected if ED discloses the draft Staff Report. The disclosure of the Draft Staff Report would undermine the integrity of the purely deliberative process contemplated by ED regulations concerning recognition. *See e.g.* 34 CFR §§602.32 (c-f) and the public dissemination of the trade secret and confidential business information contained therein would undermine ACICS' competitive advantage.

Finally, ACICS's interests are unique and not adequately represented by the parties to this litigation. *See Rios v. Enterprise Association Steamfitters Local Union # 638*, 520 F.2d 352, 355 (2d Cir. 1975); *Chance v. Board of Education*, 496 F.2d 820, 826 (2d Cir. 1974). Although the Department has an interest in regulating the recognition process, the Department's interest does not account for that of ACICS, or ACICS accredited schools and their students, all of whom will be impacted by the disposition of this litigation. The Department's willingness to disclose the materials despite applicable exemptions is further indication that its interests are divergent from those of ACICS.

Conclusion

In review, and for purposes of the instant application, ACICS has a direct, substantial and unique interest in this FOIA litigation. ACICS should, therefore, be permitted to intervene as of right or, alternatively, by permission for the purpose of preventing the improper disclosure of the Draft Staff Report, which is protected under one or more of the FOIA exemptions.

Sincerely,



Allyson B. Baker (*pro hac vice*)
NY Bar No. 3996535

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE CENTURY FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

No. 1:18-cv-03581 (NRB)

DECLARATION OF SAMEER P. SHEIKH

I, Sameer P. Sheikh, hereby declare as follows:

1. I am over 18 and competent to testify to the matters herein.
2. I am an associate with the law firm of Venable LLP, counsel for Proposed Intervenor, Accrediting Council for Independent Colleges and Schools ("ACICS").
3. Attached hereto as Exhibit 1 is a true and correct copy of a webpage that I accessed and viewed on the website of the National Student Legal Defense Network.

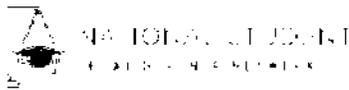
I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2018.



Sameer P. Sheikh

Exhibit 1



All Posts Litigation Press Releases Transparency



Dept. of ED Changes Course Within Hours of Lawsuit Filed Demanding the Release of ACICS Records

NEW YORK, N.Y. (April 23, 2018) – Earlier today, less than two hours after a federal lawsuit was filed against it, the U.S. Department of Education made an abrupt decision to release its staff analysis regarding an embattled accreditor of institutions of higher education, the Accrediting Council for Independent Colleges and Schools (ACICS).

On December 12, 2016, the Department terminated ACICS's status as a recognized accreditor, finding "pervasive noncompliance" with over 20 separate Department criteria such that ACICS would "not [be] capable of coming into full compliance within 12 months." Following litigation brought by ACICS challenging that decision, on March 23, 2018, U.S. District Judge Reggie Walton remanded the matter back to the Department for consideration of additional evidence submitted by ACICS. See *ACICS v. DeVos, et al.*, No.16-cv-2448 (RBW) (D.D.C. Mar. 23, 2018). Notably, Judge Walton's Order did not vacate the December 2016 decision terminating ACICS's authority to accredit institutions of higher education. But on April 3, 2018, Secretary DeVos took Judge Walton's order a step further, unilaterally vacating the December 2016 decision and reinstating ACICS as a recognized accrediting agency.

On a parallel track, in the fall of 2017, ACICS filed an application to once again be recognized as an accreditor. As part of that process, the Department career staff was to conduct a rigorous analysis of ACICS and provide a copy of that analysis to ACICS no later than March 13, 2018. Shortly after that date passed, The Century Foundation (TCF) submitted a Freedom of Information Act request seeking a copy of that analysis. On Friday, April 20, the Department sent TCF an email stating that the request "seeks documents that will require a thorough search" and that it "regrets the delay." As late as 2:01 pm this afternoon, the Department refused to commit to releasing a copy of the analysis, stating instead that they were still conducting a search for the materials, that they "do not have a specific completion time available" and to "[p]lease accept our apologies for any inconvenience."

At 3:09 pm, just over one hour after receiving the Department's communication, the National Student Legal Defense Network (NSLDN), on behalf of TCF, electronically filed a lawsuit in the U.S. District Court for the Southern District of New York (S.D.N.Y. Case No. 1:18-cv-0358) seeking to compel the Department to release the requested records. Less than two hours later, the Department capitulated and announced that it would be releasing the records "in full."

"The Secretary's decision to restore ACICS's standing as an accreditor came just over two weeks after the Department's career staff were to have submitted initial findings regarding ACICS's compliance with the Department's criteria," said Alex Elson, senior counsel at NSLDN. "Now that the Secretary has summarily reinstated ACICS as gatekeeper to federal taxpayer funds, the public is looking forward to knowing the

results of the career staff review.”

“It is deeply troubling that the public has to resort to a costly litigation process in order to receive documents which are supposed to be made public under federal open government laws,” continued Elson. “This suit highlights a practice by this Administration of refusing to release documents relating to its oversight of for-profit colleges, including by an accreditor that turned a blind eye to some of the most predatory actors in higher education.”

This is the second lawsuit in which NSLDN has represented TCF seeking copies of records relating to ACICS. In January 2018, TCF sought and obtained the first temporary restraining order against Secretary DeVos, which spurred the Department to release approximately 18,000 pages constituting the application submitted by ACICS. See *The Century Foundation v. Betsy DeVos & U.S. Department of Education*, Case No. 1:18-cv-00128-PAK (S.D.N.Y.). NSLDN is separately representing TCF in two other lawsuits seeking the release of documents relating to Secretary DeVos’ oversight of for-profit colleges and injuries to student loan borrowers.



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CONTACT

National Student Legal Defense Network

1015 15th Street NW, Suite 800
Washington, D.C., 20005
202 734 7493
info@nsldn.org

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE CENTURY FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

No. 1:18-cv-03581 (NRB)

DECLARATION OF MICHELLE EDWARDS

I, Michelle Edwards, hereby declare as follows:

1. I am over 18 and competent to testify to the matters herein.
2. I am the President and CEO of the Accrediting Council for Independent Colleges and Schools ("ACICS").
3. Attached as Exhibit 1 is a true and correct copy of a screenshot of the confidential Department of Education web portal that I accessed and viewed when I downloaded the Draft Staff Report.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2018.


Michelle Edwards

Exhibit 1

From: Brodie, Katherine D.
<kdbrodie@duanemorris.com>
To: Mangold, Donna </o=usdoed/ou=external
(fydibohf25spdlt)/cn=recipients/cn=b822bd81adb4460db93edc96376e
414f>; Morgan, Sally </o=usdoed/ou=external
(fydibohf25spdlt)/cn=recipients/cn=a76a62c37b834d1fa666394eb18c
14d0>
Cc:
Bcc:
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order
Date: Wed May 30 2018 18:05:36 EDT
Attachments:

Thanks. I did speak to OHA about the Part II submission on Tuesday morning, due to the extensive PII in the files, and they said we did not have to file it because the Department has it. As you know, it was also filed under seal in the litigation due to the PII. However, the OHA rep I spoke with (Dan) did indicate they would let us know if it needed to be uploaded. I will call OHA again tomorrow morning to check on what the current recommendation is.

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Wednesday, May 30, 2018 5:48 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Katherine – you should probably talk to OHA about alternative means for getting the Part II submission to them for the Secretary's review as part of the record on remand.

We will get back to you about paper copies.

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Wednesday, May 30, 2018 4:53 PM
To: Mangold, Donna; Morgan, Sally
Subject: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Dear Ms. Mangold and Ms. Morgan:

The ACICS Response to the Secretary's Order was filed via OHA's electronic filing system today. A copy of the cover transmittal letter is attached.

We have completed the entire exhibit upload.

Due to amount of PII in the Part II submission, it was not filed as a separate exhibit, but is referenced throughout in our response. If the Part II needs to be uploaded to the OHA system, we should discuss how best to do that efficiently.

Please let me know if you need paper copies of today's filing served as a courtesy and, if so, how many sets you would like.

Thanks and please do not hesitate to contact me with any questions.

Sincerely,

Katherine Brodie

Katherine D. Brodie
Special Counsel

Duane Morris
505 9th Street, N.W., Suite 1000
Washington, DC 20004-2166
P: +1 202 776 5241
F: +1 202 478 2629
C: +1 202 365 5114

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To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sarah E. <Sarah.Morgan@ed.gov>
Subject: RE: ACICS - Docket 16-44-O

Hi Katherine, e-mail service absolutely ok on the appearance. Let me check with Sally on the 5/30 submission (we may want to do a courtesy copy paper exchange – but it wouldn't need to be delivered that day).

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Tuesday, May 22, 2018 12:51 PM
To: Mangold, Donna; Morgan, Sarah E.
Subject: ACICS - Docket 16-44-O

Hi Donna and Sarah:

I am assisting ACICS with its written response to the Secretary pursuant to the attached April 2018 Order. I spoke with Dan Shapiro at OHA today regarding how this response should be filed, and he informed me that ACICS may use the OHA e-filing system to upload the response into that system by May 30.

I have used the system before, and have been added to the case as of today. I will also enter a Notice of Appearance for the matter (with service to you both on that), and wanted to know if email service is acceptable in lieu of paper service for the Entry of Appearance and for the May 2018 filing.

Thanks and please give me a call if you would like to discuss.

Sincerely,

Katherine D. Brodie
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Canada, June

From: Brodie, Katherine D. <KDBrodie@duanemorris.com>
Sent: Friday, June 01, 2018 2:18 PM
To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Hi Donna:

The hard copy set is being delivered to your office this afternoon.

Katherine

From: Mangold, Donna [<mailto:Donna.Mangold@ed.gov>]
Sent: Thursday, May 31, 2018 2:00 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

See below for the avoidance of doubt!

From: Brodie, Katherine D. [<mailto:KDBrodie@duanemorris.com>]
Sent: Thursday, May 31, 2018 1:19 PM
To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Hi Donna – Just for the avoidance of doubt, you wanted both the thumb drive containing Part II (YES) and the hard copy set of yesterday's filing (YES) delivered to your attention at the OGC address at Maryland Avenue (YES), correct, and the separate thumb drive to Mr. Yordy at OHA (YES)?

The thumb drives will be coming from Venable LLP, litigation counsel for ACICS who has preserved the chain of custody of the Part II. OK

The hard copy of the filing will come from me/Duane Morris LLP (regulatory counsel for ACICS). OK

Thanks, and let me know if you have any questions.

Katherine

From: Mangold, Donna [<mailto:Donna.Mangold@ed.gov>]
Sent: Thursday, May 31, 2018 12:37 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Katherine – along with the thumb drive, can you please deliver one paper copy (including all other exhibits).

Many thanks!

From: Mangold, Donna
Sent: Wednesday, May 30, 2018 5:48 PM

To: 'Brodie, Katherine D. '; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Katherine – you should probably talk to OHA about alternative means for getting the Part II submission to them for the Secretary's review as part of the record on remand.

We will get back to you about paper copies.

From: Brodie, Katherine D. [<mailto:KDBrodie@duanemorris.com>]
Sent: Wednesday, May 30, 2018 4:53 PM
To: Mangold, Donna; Morgan, Sally
Subject: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Dear Ms. Mangold and Ms. Morgan:

The ACICS Response to the Secretary's Order was filed via OIIA's electronic filing system today. A copy of the cover transmittal letter is attached.

We have completed the entire exhibit upload.

Due to amount of PII in the Part II submission, it was not filed as a separate exhibit, but is referenced throughout in our response. If the Part II needs to be uploaded to the OHA system, we should discuss how best to do that efficiently.

Please let me know if you need paper copies of today's filing served as a courtesy and, if so, how many sets you would like.

Thanks and please do not hesitate to contact me with any questions.

Sincerely,

Katherine Brodie

Katherine D. Brodie
Special Counsel

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Canada, June

From: Brodie, Katherine D. <KDBrodie@duanemorris.com>
Sent: Friday, May 25, 2018 12:16 PM
To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition

Dan at OHA just let me know that the OHA system is down over the weekend, so this won't be possible. We will manage it on Tuesday assuming the system is back up.

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Friday, May 25, 2018 12:14 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition

No objection

Sent from my Verizon 4G LTE smartphone

----- Original message -----

From: "Brodie, Katherine D." <KDBrodie@duanemorris.com>
Date: 5/25/18 12:10 PM (GMT-05:00)
To: "Mangold, Donna" <Donna.Mangold@ed.gov>, "Morgan, Sally" <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition

Hi Donna and Sally:

Would OGC have any issue with us uploading Exhibits to the May 30 response filing early (over the weekend)? We are trying to avoid last minute rush given the holiday weekend. The responsive filing (narrative portion) would still be filed closer to May 30, but getting the exhibits on file would be a great help to us on this end.

Thanks and please let me know. I also have a call out to Dan Shapiro at OHA to see if their system will allow that.

Thanks,

Katherine

From: Mangold, Donna [mailto:Donna.Mangold@ed.gov]
Sent: Tuesday, May 22, 2018 5:07 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition

It was not part of the administrative record before the SDO or the Secretary (except to the extent a handful of documents were uploaded by ACICS in support of the ACICS response to the draft staff analysis in May 2016)

From: Brodie, Katherine D. [mailto:KDBrodie@duanemorris.com]
Sent: Tuesday, May 22, 2018 4:44 PM

To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition

Question:

Does the entire May 16, 2016 Part II submission to the Accreditation Group need to be uploaded through the OHA site? It was provided to the Accreditation Group in May 2016. The alternative would be simply to cite to the submission and its exhibits as provided to the Accreditation Group. I guess my question is, is it part of the administrative record already? I am assuming the answer is yes, but if it is not, we need to upload it and it will be voluminous.

Thanks!

Katherine

From: Brodie, Katherine D.
Sent: Tuesday, May 22, 2018 1:29 PM
To: 'Mangold, Donna' <Donna.Mangold@ed.gov>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: Docket No. 16-44-O - ACICS Recognition

Dear Ms. Mangold and Ms. Morgan:

Attached please find a Notice of Appearance in the matter of ACICS recognition as entered into the OHA docket today. Please accept this email as electronic service to OGC.

ACICS will be filing a response to the April 3, 2018 Order by May 30, 2018 through the OHA system. Please advise as to whether a paper copy will also be required.

Please feel free to contact me if you have any questions or require any additional information.

Sincerely,

Katherine Brodie

Katherine D. Brodie
Special Counsel

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505 9th Street, N.W., Suite 1000
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Canada, June

From: Brodie, Katherine D. <KDBrodie@duanemorris.com>
Sent: Tuesday, May 22, 2018 1:29 PM
To: Mangold, Donna; Morgan, Sally
Subject: Docket No. 16-44-O - ACICS Recognition
Attachments: Respondent Counsel Notice of Appearance (16-44-O).pdf

Dear Ms. Mangold and Ms. Morgan:

Attached please find a Notice of Appearance in the matter of ACICS recognition as entered into the OHA docket today. Please accept this email as electronic service to OGC.

ACICS will be filing a response to the April 3, 2018 Order by May 30, 2018 through the OHA system. Please advise as to whether a paper copy will also be required.

Please feel free to contact me if you have any questions or require any additional information.

Sincerely,

Katherine Brodie

Katherine D. Brodie
Special Counsel

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

<i>In the Matter of</i>)	
)	Docket No. 16-44-O
Accrediting Council for Independent)	
Colleges and Schools)	Accrediting Agency
)	Recognition Proceeding
Respondent.)	
)	
)	
)	

NOTICE OF APPEARANCE

Please enter the appearance of the undersigned as counsel of record for Accrediting Council for Independent Colleges and Schools:

Katherine D. Brodie, Esq.
Duane Morris LLP
505 9th Street N.W., Suite 1000
Washington, D.C. 20004-2166
Tel: (202) 776-5241
Fax: (202) 776-7801
kdbrodic@duanemorris.com

Respondent consents to the use of the Office of Hearings & Appeals Electronic Filing System (OES) for filing and service.

Respectfully submitted,

_____Katherine Brodie_____

Katherine D. Brodie, Esq.
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2018, a true and correct copy of the foregoing Notice of Appearance was served by e-mail on counsel for FSA:

Sarah W. Morgan, Esq. (Sally.Morgan@ed.gov)
Donna Mangold, Esq. (Donna.Mangold@ed.gov)
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W., Room 6E320
Washington, D.C. 20202
Tel: (202) 401-6000
Fax: (202) 401-5391

_____Katherine D. Brodie_____

Katherine D. Brodie, Esq.
Counsel for Respondent

Canada, June

From: Mangold, Donna
Sent: Wednesday, May 30, 2018 5:48 PM
To: Brodie, Katherine D.; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Katherine – you should probably talk to OHA about alternative means for getting the Part II submission to them for the Secretary’s review as part of the record on remand.

We will get back to you about paper copies.

From: Brodie, Katherine D. [<mailto:KDBrodie@duanemorris.com>]
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To: Mangold, Donna; Morgan, Sally
Subject: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order

Dear Ms. Mangold and Ms. Morgan:

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Thanks and please do not hesitate to contact me with any questions.

Sincerely,

Katherine Brodie

Katherine D. Brodie
Special Counsel

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Canada, June

From: Brodie, Katherine D. <KDBrodie@duanemorris.com>
Sent: Tuesday, May 22, 2018 5:10 PM
To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition

OK. We will submit it in its entirety along with our narrative explanation of how it relates to the 21 criteria as directed by the April 2018 Order.

From: Mangold, Donna [<mailto:Donna.Mangold@ed.gov>]
Sent: Tuesday, May 22, 2018 5:07 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Subject: RE: Docket No. 16-44-O - ACICS Recognition

It was not part of the administrative record before the SDO or the Secretary (except to the extent a handful of documents were uploaded by ACICS in support of the ACICS response to the draft staff analysis in May 2016)

From: Brodie, Katherine D. [<mailto:KDBrodie@duanemorris.com>]
Sent: Tuesday, May 22, 2018 4:44 PM
To: Mangold, Donna; Morgan, Sally
Subject: RE: Docket No. 16-44-O - ACICS Recognition

Question:

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Thanks!

Katherine

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Subject: Docket No. 16-44-O - ACICS Recognition

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ACICS will be filing a response to the April 3, 2018 Order by May 30, 2018 through the OHA system. Please advise as to whether a paper copy will also be required.

Please feel free to contact me if you have any questions or require any additional information.

Sincerely,

Tracey Sasser

Katherine Brodie

Katherine D. Brodie
Special Counsel

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Canada, June

From: Brodie, Katherine D. <KDBrodie@duanemorris.com>
Sent: Tuesday, May 22, 2018 1:05 PM
To: Mangold, Donna; Morgan, Sally
Cc: Morgan, Sarah E.
Subject: RE: ACICS - Docket 16-44-O

Ok, so you and Sally are the points of contact at OGC on this correct? Thanks!

From: Mangold, Donna [<mailto:Donna.Mangold@ed.gov>]
Sent: Tuesday, May 22, 2018 1:01 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Cc: Morgan, Sarah E. <Sarah.Morgan@ed.gov>
Subject: RE: ACICS - Docket 16-44-O

Re-sending to "Sally Morgan" – I hit reply all to your message and Sarah E. Morgan alerted me to the fact that it didn't go to Sally (also named Sarah).

From: Brodie, Katherine D. [<mailto:KDBrodie@duanemorris.com>]
Sent: Tuesday, May 22, 2018 12:59 PM
To: Mangold, Donna; Morgan, Sarah E.
Subject: RE: ACICS - Docket 16-44-O

Thanks

From: Mangold, Donna [<mailto:Donna.Mangold@ed.gov>]
Sent: Tuesday, May 22, 2018 12:54 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sarah E. <Sarah.Morgan@ed.gov>
Subject: RE: ACICS - Docket 16-44-O

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Sent: Tuesday, May 22, 2018 12:51 PM
To: Mangold, Donna; Morgan, Sarah E.
Subject: ACICS - Docket 16-44-O

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I have used the system before, and have been added to the case as of today. I will also enter a Notice of Appearance for the matter (with service to you both on that), and wanted to know if email service is acceptable in lieu of paper service for the Entry of Appearance and for the May 2018 filing.

Thanks and please give me a call if you would like to discuss.

Sincerely,

Katherine D. Brodie
Special Counsel

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Canada, June

From: Brodie, Katherine D. <KDBrodie@duanemorris.com>
Sent: Wednesday, May 30, 2018 4:53 PM
To: Mangold, Donna; Morgan, Sally
Subject: Docket No. 16-44-O - ACICS Recognition - ACICS Response to Order
Attachments: ACICS Response to Order - May 30 2018.pdf

Dear Ms. Mangold and Ms. Morgan:

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Katherine Brodie

Katherine D. Brodie
Special Counsel

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ACICS Response to Order of the Secretary

May 30, 2018

Via OHA E-Filing System

Betsy DeVos
Honorable Secretary of Education
c/o Docket Clerk
Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: ACICS Response to April 3, 2018 Order of the Secretary
Case Name: *In the Matter of Accrediting Council for Independent Colleges and Schools*
Docket No.: 16-44-O
Filing Party: Respondent, Accrediting Council for Independent Colleges and Schools

Dear Secretary DeVos:

This responds to the April 3, 2018 Order permitting ACICS to provide the following information:

(1) an explanation of how the May 2016 Part II submission (“Part II submission”) documents are relevant to demonstrating that substantial evidence exists that ACICS is compliant with the criteria deemed deficient in the December 2016 Decision of Secretary King (that explanation is attached here as **Exhibit A-O: ACICS Part II Submission Explanation (May 2018)**); and

(2) additional relevant evidence to demonstrate ACICS compliance with criteria deemed deficient in the December 2016 Decision of Secretary King (that information is attached here as **Exhibit B-O: ACICS May 2018 Supplement**).

Respectfully Submitted,

Michelle Edwards
President and CEO
Accrediting Council for Independent Colleges and Schools

Enclosures

Service List

Greer Armandroff, Esq.
Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Sarah W. Morgan, Esq.
Donna Mangold, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Allyson B. Baker, Esq.
Vcnable LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601

Kenneth J. Ingram, Esq.
Whiteford Taylor Preston LLP
1800 M Street, N.W., Suite 450N
Washington, D.C. 20036

Katherine D. Brodie, Esq.
Duane Morris LLP
505 9th Street N.W., Suite 1000
Washington, D.C. 20004

CERTIFICATON OF SERVICE

I hereby certify that on the 30th day of May 2018, I caused a copy of the ACICS Response to the Secretary's Order to be filed via the OHA E-Filing System for delivery to the following recipient:

Betsy DeVos
Honorable Secretary of Education
c/o Docket Clerk
Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202


Michelle Edwards

Canada, June

From: Mangold, Donna
Sent: Tuesday, May 22, 2018 1:06 PM
To: Brodie, Katherine D.; Morgan, Sally
Cc: Morgan, Sarah E.
Subject: RE: ACICS - Docket 16-44-O

Yes.

From: Brodie, Katherine D. [<mailto:KDBrodie@duanemorris.com>]
Sent: Tuesday, May 22, 2018 1:05 PM
To: Mangold, Donna; Morgan, Sally
Cc: Morgan, Sarah E.
Subject: RE: ACICS - Docket 16-44-O

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Sent: Tuesday, May 22, 2018 1:01 PM
To: Brodie, Katherine D. <KDBrodie@duanemorris.com>; Morgan, Sally <Sally.Morgan@ed.gov>
Cc: Morgan, Sarah E. <Sarah.Morgan@ed.gov>
Subject: RE: ACICS - Docket 16-44-O

Re-sending to "Sally Morgan" – I hit reply all to your message and Sarah E. Morgan alerted me to the fact that it didn't go to Sally (also named Sarah).

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From: Brodie, Katherine D. [<mailto:KDBrodie@duanemorris.com>]
Sent: Tuesday, May 22, 2018 12:51 PM
To: Mangold, Donna; Morgan, Sarah E.
Subject: ACICS - Docket 16-44-O

Hi Donna and Sarah:

I am assisting ACICS with its written response to the Secretary pursuant to the attached April 2018 Order. I spoke with Dan Shapiro at OHA today regarding how this response should be filed, and he informed me that ACICS may use the OHA e-filing system to upload the response into that system by May 30.

I have used the system before, and have been added to the case as of today. I will also enter a Notice of Appearance for the matter (with service to you both on that), and wanted to know if email service is acceptable in lieu of paper service for the Entry of Appearance and for the May 2018 filing.

Thanks and please give me a call if you would like to discuss.

Sincerely,

Katherine D. Brodie
Special Counsel

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May 31, 2018

VIA HAND DELIVERY

Donna S. Mangold
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Division of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 6E108
Washington, D.C. 20202-2110
Phone: 202-435-6710

Re: Accrediting Council for Independent Colleges and Schools

Ms. Mangold,

Pursuant to your discussions with counsel for Accrediting Council for Independent Colleges and Schools ("ACICS"), Katherine Brodie, enclosed please find a flash drive containing PDF files of ACICS's Narrative Response to Part II of the Office of the Under Secretary's Request and accompanying Exhibits (collectively, ACICS's "Part II submission"). These PDF files are copies of the documents filed in the United States District Court for the District of Columbia on March 31, 2017 in the case entitled *Accrediting Council for Independent Colleges and Schools v. Betsy DeVos, in her official capacity as Secretary of the U.S. Department of Education*, et al., Case No. 1:16-cv-02448-RBW (D.D.C. 2017). As discussed below, these documents are identical to those previously submitted to the Department of Education. The only alteration is the addition of bates-stamps and the footer "under seal," as is customary in submitting documents in litigation.

For the avoidance of doubt, and per the Department's request for a description of the "chain of custody" of these documents, the following describes ACICS's previous submissions of these documents to the Department of Education and the U.S. District Court:

- On May 16, 2016, then-Executive in Charge of ACICS, Anthony Bieda, used the Department of Education's "portal" system to upload ACICS's narrative

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responses and documents responsive to Part II of the Office of Undersecretary's Request ("OUS Request").

- On May 18, 2016, the Department staff member assigned to ACICS's Petition, Steve Porcelli, advised Mr. Bieda that he could view the narrative response and exhibits Mr. Bieda had uploaded. Mr. Porcelli explained, however, that the Department had never before engaged in a multi-layered document submission, such as this Part II submission, and that there could be technical complications if ACICS finalized submission of its materials on the Department's "portal" system.
- Approximately two hours later, Mr. Bieda received an email from Herman Bounds, the Director of the Accreditation Group at the Department. Mr. Bounds explained that due to the limitations of the Department's "portal," and the logistical complications caused by the OUS Request, ACICS should submit its response, including the exhibits, on a flash drive.
- Accordingly, on May 19, 2016, ACICS submitted its Part II submission (including both its narrative response and supporting exhibits) to the Department on a flash drive.
- Subsequently, ACICS's Part II submission became the subject of litigation between ACICS and the Department in the above-referenced case.
- On March 31, 2017, ACICS, through counsel, filed with the Court a Motion to Supplement the Administrative Record. (Dkt. 41). In connection with this motion, pursuant to Local Civil Rule 5.4(f), ACICS concurrently filed an Unopposed Sealed Motion for Leave to File Documents Under Seal (Dkt. 42), which attached an identical copy of ACICS's Part II submission previously submitted to the Department. The only alteration was the addition of bates stamps (ranging AR_Supp_0000001 – 0036277) and a footer with the phrase "under seal." Notably, ACICS publicly-filed its narrative response of its Part II submission as an attachment to its Motion to Supplement the Administrative Record (Dkt. 41-2), and bates labeled this document as AR_Supp_0036278.
- Concurrently, ACICS, through counsel, delivered a copy of the bates-stamped under-seal filings to the Department.

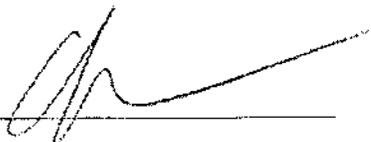
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At the time ACICS filed these documents with the Court, the Department had an opportunity to object to both the Department's previous receipt of the Part II submission, and its contents. As noted, the Department did not oppose ACICS's motion to file these documents under seal. The Department did, however, oppose ACICS's Motion to Supplement the Administrative Record. (Dkt. 59). In its opposition, the Department acknowledged its receipt of the flash drive submitted by Mr. Bieda on May 19. *See* Dkt. 59, at 1 (stating that "the contents of the thumb-drive [were] delivered to the Department"); *see also* Dkt. 59-1, Declaration of Herman Bounds, Jr., at ¶ 11 ("On May 19, 2016, ACICS delivered a thumb-drive to me."). At no point did the Department contest the receipt of ACICS's Part II submission either when it was submitted directly to the Department in May 2016 or when ACICS filed bates-stamped versions of those same documents with the U.S. District Court.

As a result, and in the interest of avoiding any confusion, both ACICS and the Department should treat the bates-stamped versions of ACICS's Part II submission, as filed with the Court and attached to this letter on a thumb-drive, as the "official" version of the Part II submission on which the SIDO's Office and Secretary's office should rely in connection with the April 3, 2018 Order of the Secretary and the ACICS Response that Order filed with the Department's Office of Hearings and Appeals on May 30, 2018.

The thumb-drive attached to this letter is password protected. For security, the password will be transmitted to you by e-mail under separate cover.

Sincerely,



Allyson B. Baker
Counsel for ACICS

Cc: Charlie Yordy, U.S. Department of Education, Liaison to the Secretary
Michelle Edwards, ACICS
Katherine D. Brodie, Duane Morris LLP