

United States Senate

WASHINGTON, DC 20510

July 27, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Secretary DeVos:

We write today to express my concern with the Department of Education's (Department) conduct with regard to National Advisory Committee on Institutional Quality and Integrity's (NACIQI) review of the Higher Learning Commission (HLC) currently scheduled for July 29-30.

According to media reports¹, NACIQI will be reviewing a report by the Office of Postsecondary Education² that alleges HLC was out of compliance with accreditation criteria related to actions it took in the Dream Center case. The issue stems from HLC's accreditation decisions in the wake of the announced purchase of the former Education Management Corporation schools by Dream Center Education Holdings (DCEH)—a transaction that raised concerns from the beginning.³

In June 2018, it became clear that DCEH was misleading students in Illinois and Colorado about its accreditation status with HLC.⁴ What followed was a long and embarrassing saga for the Department that appears to have included attempts by top Department officials—including Principal Deputy Undersecretary Diane Auer Jones—to inappropriately pressure and publicly discredit HLC in an effort to distract from the Department's own wrongdoing and mishandling of Dream Center.⁵

Now, the Department appears to be inappropriately using NACIQI—an independent federal advisory board—toward that same goal. It has been longstanding practice to solicit public comment prior to NACIQI's review of an accreditation agency. Troublingly, the Department has abandoned this practice for NACIQI's review of HLC. In its Federal Register notice announcing the July 29-30 NACIQI meeting and agenda, the Department declared that, "Given the time constraints of this review and multiple time extensions provided to the agency

¹ <https://www.republicreport.org/2020/devos-advances-trump-like-vendetta-against-college-accreditor/>

² <https://assets.documentcloud.org/documents/6981648/Final-Staff-Report.pdf>

³ https://www.warren.senate.gov/files/documents/2017-6-22_Letters_to_accreditors_re_EDMC.pdf

⁴ <https://www.durbin.senate.gov/newsroom/press-releases/durbin-calls-on-accreditor-to-investigate-reports-of-misleading-practices-by-dream-center-education-holdings>

⁵ <https://www.durbin.senate.gov/newsroom/press-releases/durbin-warren-blumenthal-brown-seek-response-to-allegations-that-dept-of-education-official-advised-dream-center-education-holdings-to-misrepresent-accreditation-status-to-students->
<https://edlabor.house.gov/imo/media/doc/Chairman%20Scott%20Threatens%20to%20Subpoena%20Secretary%20DeVos.pdf>

for response to the Department’s inquiries, the Department determined that it was not practicable to invite the public to submit written comments in advance of the NACIQI meeting.”

This decision appears to lack sufficient justification and be largely without precedent. We are aware of no other instance—in at least the past 10 years—where the Department has refused to hold public comment on a similar review due to “practicability.”⁶ Specifically, we request your responses to the following:

1. What are the “time constraints” to which the Department refers in its notice?
2. Why do multiple time extensions provided to HLC for response to Department inquiries nullify the public’s right to provide input for the benefit of NACIQI’s review?
3. Please provide any examples and corresponding justification of instances where the Department has similarly skipped the public comment opportunity for NACIQI reviews of specific accreditation agencies over the past ten years.

Further, the Department of Education Inspector General⁷ and the House Education and Labor Committee⁸ are currently investigating the Department’s handling of the Dream Center case. The results of these investigations could have serious implications for NACIQI’s review of HLC. A credible review of HLC cannot be accomplished without a clear understanding of the role and actions of the Department—and specifically Principle Deputy Under Secretary Diane Auer Jones—in the matter. That is unlikely to happen prior to the conclusion of these two critical investigations.

A rushed review that shuts out public input and precludes the findings of critical government investigations into matters relevant to the review would have little credibility. The credibility and independence of NACIQI, itself, would be called into question. Therefore, we respectfully ask that the Department delay NACIQI’s review of HLC in this matter until the current investigations into the Department’s handling of Dream Center and a proper public comment period is completed. Thank you.

Sincerely,



Richard J. Durbin
United States Senator



Richard Blumenthal
United States Senator



Sherrod Brown
United States Senator

⁶ Review of past notices conducted by Congressional Research Service.

⁷ <https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-de-lauro-call-for-oig-investigation-into-department-of-educations-handling-of-dream-center-transaction-possible-misuse-of-federal-funds->

⁸ <https://edlabor.house.gov/imo/media/doc/Chairman%20Scott%20Letter%20to%20ED%20re%20Dream%20Center.pdf>