United States Senate
WASHINGTON, DC 20510

December 5, 2016

The Honorable Ted Mitchell
Under Secretary
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Under Secretary Mitchell:

We are writing regarding steps the Department of Education (ED) should take to protect students and taxpayers in the aftermath of the withdrawal of federal recognition from the Accrediting Council of Independent Schools and Colleges (ACICS), which is pending appeal to the Secretary.

ACICS has long shown itself to be an unreliable authority on educational quality and unworthy of the responsibility of being a gatekeeper of billions in federal taxpayer dollars. For example, this rubber stamp accreditor continued to accredit Corinthian and ITT Tech up until the day the companies declared bankruptcy. But those aren't the only troubling institutions ACICS accredited. According to the Center for American Progress, more than half of the \$5.7 billion in federal student aid awarded to ACICS-accredited schools in the past three years went to institutions facing state or federal investigations or lawsuits. The report also found that 20 percent of students at ACICS-accredited schools default on their federal student loans.

Given this poor record of performance, we have joined the chorus of student advocates, state Attorneys General, and others in calling on ED to withdraw federal recognition from this deadbeat accreditor. We are pleased with the recent decision by the Senior Department Official to withdraw recognition. We hope that Secretary King will side with students and taxpayers and promptly uphold the decision of Department staff, the independent National Advisory Committee on Institutional Quality and Integrity, and now the Senior Department Official to withdraw federal recognition from ACICS.

At the same time, it is important that the decision come with new protections for students and taxpayers. In the case of withdrawal of recognition, the Secretary has the authority to allow the nearly 250 ACICS-accredited schools to continue participating in student aid programs under provisional certification for up to 18 months while they seek accreditation from another federally-recognized accreditor. It is likely some of these schools may not seek or may not receive new federally-recognized accreditation, leading to eventual loss of Title IV eligibility and potential closure, which could leave thousands of remaining students in the lurch. Also concerning is the potential for some former ACICS-accredited institutions, while provisionally certified, to attempt to amass as much federal student aid funding as possible to pad the pockets of executives and shareholders without any possibility or intention of continuing once the provisional period has expired.

To prevent these and other hazards to students and taxpayers from former ACICS-accredited institutions, the Department should use its authority under provisional certification to do the following:

1. **Halt new student enrollment at institutions not making progress obtaining new federally-recognized accreditation and place limitations on institutions that pose substantial risks.**
   Within thirty days of the Secretary's decision to withdraw recognition from ACICS, the Department should require institutions to notify the Department of their intent to seek new accreditation from a federally-recognized accreditor. Failure to do so should result in a prohibition on all new student enrollments.

   Within three months of the Secretary's decision to withdraw recognition from ACICS, the Department should require institutions to provide the Department with evidence of a pending application for accreditation with a federally-recognized accreditor or be prohibited from enrolling any new students.

   Not later than one year after the Secretary's decision to withdraw recognition from ACICS, the Department should require institutions to provide the Department with evidence of substantial progress on its application for accreditation or be prohibited from enrolling any new students.

   In addition to these suggested minimum restrictions for all former ACICS-accredited institutions, the Department should consider other enrollment limitations or prohibitions at institutions that pose substantial risk to students and taxpayers to minimize the number of stranded students should an institution not receive new accreditation or close.

2. **Prohibit institutional growth and expansion.**
   Until an institution receives new federally-recognized accreditation, the Department should cap the total enrollment of Title IV students to not exceed the number enrolled on the day before the Secretary's decision on the appeal is announced, and the Department should not approve any new programs or locations.

3. **Require teach-out agreements.**
   In order to prevent students from having their educational experience interrupted by irresponsible institutions, the Department should require all former ACICS-accredited schools to have signed teach-out agreements. These agreements should not include as parties other ACICS-accredited schools or for-profit colleges that are facing state or federal investigations or lawsuits for unfair, deceptive, or abusive practices.

4. **Prohibit the use of mandatory arbitration clauses in student enrollment agreements.**
Mandatory arbitration clauses prevent students from bringing claims against a school for wrongdoing in court. Eliminating this tactic, often hidden in the fine print, would not only protect the rights of students to bring a claim against a former ACICS-accredited institution in court but would also aid state and federal enforcement and oversight. Students at these schools are at heightened risk of abuse, both because these schools have not received proper oversight from ACICS and because schools that do not expect to obtain accreditation from another federally-recognized accreditor may be much more likely to engage in illegal practices.

5. **Prohibit bonuses and other excessive compensation.**
It is imperative to prevent executives and Wall Street investors from stripping the institution of assets that could be used for student loan relief should the institutions go out of business. The Department should prohibit bonuses, severance payments, raises, and retention payments to company executives or Directors. Other activities such as share buybacks or special dividends should also be prohibited by the Department.

6. **Immediately place institutions on Heightened Cash Monitoring 2.**
Institutions placed on Heightened Cash Monitoring 2 no longer receive federal student aid funds up-front under the Advance Payment Method. Instead, institutions must seek reimbursement from the Department after disbursing their own funds to students. Requiring former ACICS-accredited institutions to seek reimbursement guards against taxpayer losses should the schools close. It could also prevent fraud committed by institutions flouting federal student aid rules to amass as much taxpayer money as possible before going out of business.

7. **Require letters of credit.**
Institutions whose accreditor loses federal recognition pose a substantial risk of precipitously closing. Requiring former ACICS-accredited institutions to post letters of credit or other surety to the Department will help guard against taxpayer losses associated with federal student loan discharges in the event of a closure.

8. **Require clear disclosures to students.**
Students deserve to know and be kept updated on the status of their school. The Department should collaborate with the Consumer Financial Protection Bureau, the Department of Veterans Affairs, the Federal Trade Commission, the Department of Defense, and state Attorneys General to write disclosures for students. . The Department should provide these disclosures to all current and prospective students and all students who enroll while the former ACICS-accredited school is provisionally certified. At a minimum the disclosures should include:

    - A statement that the institution is no longer accredited by an agency recognized by the Secretary as a reliable authority on the quality of postsecondary education;

- A statement communicating how long the institution has to become accredited before students will not be permitted to continue their studies using federal student aid funds;
- A statement regarding the likelihood the institution's credits being transferable to other institutions and students' eligibility to sit for state licensure and examination while the institution is provisionally certified; and
- A disclosure of any current state or federal investigations or lawsuits the institution is facing.

9. **Require disclosure of a denial of accreditation.**
The denial of new accreditation to a former ACICS-accredited institution could be an indication that the institution is unlikely to receive accreditation by a federally-recognized accreditor during its provisional certification period. Therefore, the Department must consider continued provisional certification extremely risky to students and taxpayers. The Department should require institutions to inform ED within 24 hours of any denial of accreditation to allow the Department to consider further restrictions on the institution, and itshould also require institutions to promptly notify students of any denial as well.

While we applaud the Department for its actions to hold ACICS accountable to date, we believe these additional steps are essential for protecting students and taxpayers as we clean up the mess that this irresponsible accreditor has created. We encourage the Department to promptly notify institutions of these and any other requirements and restrictions upon a final decision on ACICS' appeal by the Secretary.

We appreciate your consideration and look forward to your prompt response.

Sincerely,

Richard J. Durbin
United States Senator

Patty Murray
United States Senator

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Richard Blumenthal
United States Senator