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Judge Denies ACICS Motion for a Temporary Restraining Order

December 20, 2016

In an afternoon hearing on December 20, 2016, U.S. District Court Judge Reggie B. Walton denied the motion of the Accrediting Council for Independent Colleges and Schools ("ACICS") seeking a temporary restraining order ("TRO") to stay the decision of the U.S. Department of Education ("ED" or the "Department") terminating ACICS's status as a federally recognized accrediting agency.

Judge Walton has not yet ruled on the merits of ACICS's case or its motion for a preliminary injunction, but the denial of the TRO could be a difficult hurdle to overcome. His denial of the TRO – generally considered a short-term, emergency form of relief reserved for exceptional circumstances – rested primarily on what he considered to be a failure to demonstrate "irreparable harm" to ACICS.* ACICS is requesting expedited discovery as well as an in-depth hearing on its motion for a preliminary injunction.

In the meantime, because the Department's termination decision is not stayed absent a court order (as explained in our prior alert), this means ACICS continues to lack federal recognition, and there is no legal obstacle to ED's implementation of the termination decision or the imposition of additional conditions for the continued receipt of Title IV funds, which for most ACICS schools must be agreed to this week.

Please feel free to reach out with any questions.

** **Update, 12/21/2016:** Although Judge Walton stated in the hearing that he could not side with ACICS on the issue of whether it would suffer "irreparable harm," the Judge's written order (entered the day after the hearing) states that he denied the TRO because ACICS failed to demonstrate (1) "substantial likelihood of success on the merits of the case" and (2) that the "balance of harms and public interest" weighed in favor of its request for emergency relief. The Department has been ordered to file the administrative record in court by January 20, 2017, and the parties are scheduled to appear for a preliminary injunction hearing on February 1, 2017.*

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