



August 19, 2016

The Honorable John B. King, Jr.
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Attention: Sophia McArdle and Scott Filter, Room 6W256

RE: Docket ID: ED-2016-OPE-0050

Dear Secretary King:

On behalf of the 813 member institutions of the American Association of Cosmetology Schools (AACS), the students these institutions prepare to become licensed professionals in the thriving U.S. beauty and wellness industry, and the employers who rely on these trained professionals to meet ever increasing consumer demand for spa and salon services, we respectfully submit comments to the U.S. Department of Education's (Department) Program Integrity and Improvement Notice of Proposed Rulemaking (NPRM) published on July 25, 2016.

AACS' primary concerns are:

- The applicability of these regulations to the state entities which still, predominately, oversee our institutions – the state cosmetology and barbering boards;
- The roadblocks contained in the proposed regulations that will prohibit advances which are beneficial to students in the form of reduced time to course completion, reduced cost and therefore potential for reduced debt burden; and
- The rush by the Department to finalize this rule, with an abbreviated public comment period of 30 days in order to publish a final State Authorization rule by the end of the current Administration, has undermined the care, thoroughness and legal grounding that normally supports broad deference to agency rulemaking.

The comments that follow are focused on significant aspects of the NPRM that we believe may impact AACS member schools, their students, their employers, and the beauty and wellness sector of the U.S. economy as a whole. These comments may not represent all of the issues that each AACS member school may have individually with the NPRM or the process by which it was developed. Further, AACS reserves the right to raise with the Department and other stakeholders any other issue associated with this rulemaking deemed problematic even if not covered specifically in these comments.

I. Overview

While AACS continues to support efforts in Congress to repeal the state authorization regulations for reasons we will not revisit in this response, we have made a concerted effort to work collaboratively with our membership, the Department and Dr. McArdle, and the States to fully implement and comply with the state authorization regulations under 34 CFR, §600.9.

As the Department knows all too well, this undertaking has been particularly challenging for the beauty and wellness community due to the unique characteristics of our institutions and their governance structure. It is these unique characteristics which once again give rise to questions and concerns which we seek to address in our response to the extension of the state authorization regulations to distance education, on-line, and correspondence programs.

As was the case with the prior regulations, AACS' primary concern is the applicability of these regulations to the state entities which still, predominately, oversee our institutions – the state cosmetology and barbering boards. While not a large portion of our current program offerings, AACS seeks to retain the ability of our community to have the opportunity to provide education through distance, on-line, and correspondence programs.

Much of what AACS will seek to discuss is theoretical, as, to the best of our knowledge, there are very few, if any, interstate cosmetology program offerings at the present time. Limitations which are once again the direct result of States' individual requirements on the number of hours of instruction, curriculum, faculty, exam, and licensure prerequisites.

AACS and our membership look forward to once again partnering with the Department, Dr. McArdle and Mr. Filter, and the States to address these issues in development of the final regulations and guidance and support throughout the implementation of regulations which follow.

II. Discussion

§600.2 Definitions.

In general, AACS does not oppose the Department's efforts to establish a new definition of "state authorization reciprocity agreement". AACS is familiar with the considerable efforts of the four regional higher education interstate compacts to meld four individual sets of standards into one set of oversight rules governing all participating states and institutions distance education programs. We applaud them for their efforts and the ultimate development of the *Unified State Authorization Reciprocity Agreement*.

However, at the present time, neither AACS institutions nor any of the schools recognized by our state licensing boards are eligible to participate. In fact, our institutions are prohibited from participating as non-degree granting institutions, and, in most cases, are regulated by a cosmetology or barbering boards that is not the state higher education authorizing entity participating in the reciprocity agreement.

Such distinctions, which are out of the control of our community, effectively disqualifying us from the intended benefits of §600.9(c)(1)(ii).

Moreover, under the current structures there would be no way for us to develop a similar type of structure as SARA due to the drastic difference from state to state in the characteristics we keep coming back to – program length, curriculum and examination requirements, and licensure prerequisites.

This leads us to seek guidance from the Department and share with you our concerns as noted below.

Does the Department have any recommendations on how we can address this issue?

Without some form of accommodation, students within our community stand to be harmed as a result of issues which again fall outside of the students', institutions', or Departments' control. Issues which, it would appear, would once again require revisions in state law to address.

Many of our member schools are located in communities near state borders, and enroll students from two or even more jurisdictions. While a majority of the instruction in licensed cosmetology and related sciences programs consists of hands-on training in a traditional brick-and-mortar classroom, there is a substantial amount of classroom training as well. Continued technical advances in education delivery, and acceptance of such education by state regulatory agencies, may make it possible for AACCS member schools in the future to deliver at least some of this education via approved distance learning.

Although the utilization of technology within our profession and its programs is in its infancy, the proposed regulations create a roadblock that will prohibit advances which are beneficial to students in the form of reduced time to course completion, reduced cost and therefore potential for reduced debt burden. And yet, without considerable recognition and revision or accommodation added to the regulations our community of students will not benefit, and in fact will likely be harmed.

We urge the Department to work with us to address these vitally important concerns, for without them the new definition is useless to our students and schools and therefore inequitable under the premise and mission of the Department to make all regulations equally beneficial and applicable.

§600.9 State Authorization

Proposed Revisions to (c)(1)(i) and (c)(1)(ii)

AACS shares the concerns previously raised by the American Council on Education and the sixty higher education associations and accrediting organizations who previously noted in the March 2, 2011 response to the prior NPRM that the proposed rule that §600.9(c)(1)(i), "essentially places the federal government in the role of enforcing state statutes—a role inappropriate for it to assume." Further, we share their primary support for "States to fulfill their rights and responsibilities to regulate the quality and nature of higher education being delivered within their respective borders."

The first subsection maintains the fundamental problems with the original proposal which were previously opposed by over sixty organizations, attempting to address some of these concerns by adding a second form of review §600.9(c)(1)(ii).

As AACCS has already noted in our response to the definition which forms the basis for the reciprocity agreements that can be used as an alternative, this proposal sets up an unfair and imbalanced two-tier system for determining eligibility.

AACS cannot support such complex and disparate proposals which effectively deny our students and our community the ability to pursue educational advancement through distance, online, or correspondence education.

Instead of promulgating this regulation in its current form, we request the opportunity to work with the Department on ways in which such concepts could be reconstituted to include all types of programs and the students who choose to enroll in them. We support many of the reasons for attempting to regulate in this area, but not if they so clearly provide barriers to entry which will leave our community and our students behind in the use of technology.

§668.50 Institutional Disclosures for Distance or Correspondence Programs

The proposed regulations contemplate the disclosure requirements which would be required for programs offered solely through distance education programs or correspondence courses. Such comprehensive on-line programs do not currently exist within our community because of the required hands-on aspect of our profession, and as such we do not have any specific comments on the proposed regulations in this area.

If the time ever comes when advances in technology do enable such programs to be developed, we again hope that the regulations will provide fair and balanced disclosure requirements and would seek the ability to work with the Department on any required revisions.

III. Conclusion.

The NPRM's proposed revisions and additions remain a concern for AACS for the reasons we have noted throughout our response and we would therefore urge the Department and the Administration to once again pull these regulations back for further consideration and discussion with the impacted communities.

While there certainly have been advances made to address many of the Department's, Administration's, and external concerns, those favorable changes are already in place and do not require the promulgation of new regulations in order to achieve the desired goals of increased state oversight and consumer awareness and protection.

And finally, AACS is very concerned that the rush by the Department to finalize this rule, with an abbreviated public comment period of 30 days in order to publish a final State Authorization rule by the end of the current Administration, has undermined the care, thoroughness and legal grounding that normally supports broad deference to agency rulemaking.

As a result, AACS urges the Department to either abandon or significantly alter this proposed rule.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Nelson", with a long, sweeping underline.

Adam Nelson
Executive Director, AACS

About AACS

Founded in 1924, AACS is a national, non-profit association. Our members offer courses of instruction in the beauty and wellness industry, including cosmetology, skin, nail, barbering and massage programs. Nearly all programs offered by AACS members result in a licensed outcome. Cosmetology and barbering programs are heavily regulated by the states, with varying requirements governing the number of hours of instruction, curriculum, faculty, exam, and licensure prerequisites. AACS members include schools of all sizes, but the overwhelming majority are small, single location schools owned by individuals.