

Consol. Nos. 14-1086 & 14-1136

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

Professional Massage Training Center,

Appellee/Cross-Appellant,

v.

Accreditation Alliance of Career Schools and Colleges,

Appellant/Cross-Appellee.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(The Honorable Liam O'Grady, District Judge)

---

**MOTION FOR LEAVE TO FILE AMICUS BRIEF SUPPORTING APPELLANT AND URGING REVERSAL ON BEHALF OF HIGHER LEARNING COMMISSION, AMERICAN COUNCIL ON EDUCATION, COUNCIL FOR HIGHER EDUCATION ACCREDITATION, ACCREDITING COUNCIL FOR CONTINUING EDUCATION & TRAINING, COUNCIL ON OCCUPATIONAL EDUCATION, ACCREDITING COUNCIL FOR INDEPENDENT SCHOOLS AND COLLEGES, ACCREDITING BUREAU OF HEALTH EDUCATION SCHOOLS, INC., DISTANCE EDUCATION AND TRAINING COUNCIL, THE MIDDLE STATES COMMISSION ON HIGHER EDUCATION, COMMISSION ON INSTITUTIONS OF HIGHER EDUCATION OF THE NEW ENGLAND ASSOCIATION OF SCHOOLS AND COLLEGES, SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS COMMISSION ON COLLEGES, ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES – WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES, ACCREDITATION COUNCIL FOR PHARMACY EDUCATION, ACCREDITATION REVIEW COMMISSION ON EDUCATION FOR THE PHYSICIAN ASSISTANT, ASSOCIATION OF TECHNOLOGY, MANAGEMENT, AND APPLIED ENGINEERING,**

**COUNCIL FOR PODIATRIC MEDICAL EDUCATION, COUNCIL ON  
EDUCATION FOR PUBLIC HEALTH, NATIONAL ARCHITECTURAL  
ACCREDITING BOARD, ASSOCIATION OF SPECIALIZED AND  
PROFESSIONAL ACCREDITORS, COUNCIL FOR ACCREDITATION  
OF COUNSELING AND RELATED EDUCATIONAL PROGRAMS,  
WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES SENIOR  
COLLEGE COMMISSION, AND ACCREDITATION COMMISSION FOR  
ACUPUNCTURE AND ORIENTAL MEDICINE**

---

Mary E. Kohart  
Dean R. Phillips  
Gregory S. Voshell  
Michelle L. Modery  
Elliott Greenleaf &  
Siedzikowski, P.C  
925 Harvest Drive, Suite 300  
Blue Bell, PA 19422  
(215) 977-1000

Kenneth J. Ingram  
Thomas Mugavero  
Whiteford Taylor Preston,  
LLP  
1025 Connecticut Avenue,  
NW  
Suite 400  
Washington, DC 20036-5405  
(202) 659-6800

Ada Meloy  
American Council  
on Education  
One Dupont Circle,  
NW  
Washington, DC  
20036  
(202) 833-4762

Higher Learning Commission, American Council On Education, Council for Higher Education Accreditation, Accrediting Council for Continuing Education & Training, Council on Occupational Education, Accrediting Council for Independent Schools and Colleges, Accrediting Bureau of Health Education Schools, Inc., Distance Education and Training Council, The Middle States Commission on Higher Education, Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, Southern Association of Colleges and Schools Commission on Colleges, Accrediting Commission for Community and Junior Colleges – Western Association of Schools and Colleges, Accreditation Council for Pharmacy Education, Accreditation Review Commission on Education for the Physician Assistant, Association of Technology, Management, and Applied Engineering, Council for Podiatric Medical Education, Council on Education for Public Health, National Architectural Accrediting Board, Association of Specialized and Professional Accreditors, Council for Accreditation of Counseling and Related Educational Programs, Western Association of Schools and Colleges Senior College Commission, and Accreditation Commission for Acupuncture and Oriental Medicine, through the undersigned counsel, respectfully move for leave to participate as *Amici Curiae* and to file the attached Brief of *Amici Curiae* in Support of Appellant and Urging Reversal. Counsel for Appellant/Cross-Appellee

has consented to this motion. Counsel for Appellee/Cross-Appellant informed the undersigned that it intends to oppose this motion.

In support of its motion, *Amici* movants state the following:

1. This is an appeal from a decision of the United States District Court for the Eastern District of Virginia, in which the District Court reversed the accreditation decision of Appellant Accreditation Alliance of Career Schools and Colleges (“ACCSC”) and awarded accreditation to Professional Massage Training Center (“PMTC”). The underlying case was filed following an 18-month accreditation review, after which ACCSC revoked PMTC’s accreditation.
2. Accreditation of higher education institutions is unique, in that the U.S. Department of Education has entrusted the role of accrediting such institutions to private, non-profit accrediting agencies. These accreditation agencies operate through volunteer peer reviewers who have decades of experience in higher education.
3. The *Amici* submitting this Motion consist of a variety of organizations related to the accreditation of higher education institutions across the county. These organizations include independent, not-for-profit agencies that accredit secondary institutions of higher learning, including the Higher Learning Commission and the Accrediting Council for Independent Schools and Colleges; independent, not-for-profit accrediting agencies that accredit institutions offering

degrees in various specialized areas, including the Accreditation Council for Pharmacy Education; the American Council on Education, which comprises more than 1,800 institutions of higher education; the Council for Higher Education Accreditation, a national advocate and institutional voice for the pursuit of academic quality through accreditation; and the Association of Specialized and Professional Accreditors which is composed of accreditors who review more than 12,000 programs nationwide.

4. In their respective capacities, *Amici* have significant knowledge and expertise on several matters relevant to this Court's consideration of the issues on appeal, including the recognition process with the Department of Education and the review process that institutions engage in with accreditors to obtain accreditation. Moreover, *Amici* are intimately familiar with the role accreditation plays in the quality of education offered to consumers and in protecting federal taxpayer money spent on student aid.

5. This appeal raises several issues of first impression in this Circuit relating to the manner in which federal courts review higher education accrediting decisions and corresponding accreditation policies. Indeed, several other federal courts have held that private, non-profit accreditors like ACCSC are to be given great deference when reviewing accreditation decisions. This Court has not yet had occasion to address the deference given to accreditors and the record upon

which the district court must premise its ultimate conclusion. As set forth in its attached Brief, *Amici* are concerned that the District Court departed from this deferential standard of review and substituted its own view for that of the experienced peer review team that reviewed PMTC.

6. The depth and breadth of accrediting experience *Amici* offer will help demonstrate to the Court the importance of deference and the administrative record in the accreditation context. It will further provide the Court critical background concerning the relationship between the Department of Education, accreditors, and institutions of higher educations. All of these topics provide content and character to the issues on appeal, which this Court is poised to address for the first time.

7. Therefore, pursuant to Federal Rule of Appellate Procedure 29(a), *Amici* move for leave to participate in this appeal and to file the attached brief. This filing is timely because the motion and *Amicus* brief have been filed within seven days of the Appellant's brief, which *Amici* support. *See* Fed. R. App. P. 29(e).

WHEREFORE, *Amici* movants respectfully request that this Court grant leave to file the attached Brief in support of Appellant ACCSC and urging reversal of the district court's decision.

Respectfully submitted,

/s/ Mary E. Kohart

Mary E. Kohart  
Dean R. Phillips  
Gregory S. Voshell  
Michelle L. Modery  
Elliott Greenleaf & Siedzikowski, P.C  
925 Harvest Drive, Suite 300  
Blue Bell, PA 19422  
(215) 977-10000

Kenneth J. Ingram  
Andrew J. Terrell  
Thomas C. Mugavero  
Whiteford, Taylor & Preston L.L.P.  
3190 Fairview Park Drive Suite 300  
Falls Church, Virginia 22042  
(703) 280-9260

Ada Meloy  
American Council on Education  
One Dupont Circle, NW  
Washington, DC 20036  
(202) 833-4762

## CERTIFICATE OF FILING AND SERVICE

I, Mary E. Kohart, an attorney, hereby certify that on Wednesday, April 16, 2014, I caused the foregoing **Motion for Leave to File a Brief of *Amici Curiae* in Support of Appellant and Urging Reversal** to be filed with the Clerk of the Court, United States Court of Appeals for the Fourth Circuit using the Court's CM/ECF system, which will send notice of such filing to the registered CM/ECF users. I further certify that pursuant to this Court's Rules, I will cause the appropriate number of copies of the above named filings to be transmitted to the Clerk's office within two days of this filing date via overnight delivery.

/s/ Mary E. Kohart  
Mary E. Kohart



Consol. Nos. 14-1086 & 14-1136

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

Professional Massage Training Center,  
Appellee/Cross-Appellant,

v.

Accreditation Alliance of Career Schools and Colleges,  
Appellant/Cross-Appellee.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(The Honorable Liam O'Grady, District Judge)

---

**BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT AND  
URGING REVERSAL ON BEHALF OF HIGHER LEARNING  
COMMISSION, AMERICAN COUNCIL ON EDUCATION, COUNCIL  
FOR HIGHER EDUCATION ACCREDITATION, ACCREDITING  
COUNCIL FOR CONTINUING EDUCATION & TRAINING, COUNCIL  
ON OCCUPATIONAL EDUCATION, ACCREDITING COUNCIL FOR  
INDEPENDENT SCHOOLS AND COLLEGES, ACCREDITING BUREAU  
OF HEALTH EDUCATION SCHOOLS, INC., DISTANCE EDUCATION  
AND TRAINING COUNCIL, THE MIDDLE STATES COMMISSION ON  
HIGHER EDUCATION, COMMISSION ON INSTITUTIONS OF HIGHER  
EDUCATION OF THE NEW ENGLAND ASSOCIATION OF SCHOOLS  
AND COLLEGES, SOUTHERN ASSOCIATION OF COLLEGES AND  
SCHOOLS COMMISSION ON COLLEGES, ACCREDITING  
COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES –  
WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES,  
ACCREDITATION COUNCIL FOR PHARMACY EDUCATION,  
ACCREDITATION REVIEW COMMISSION ON EDUCATION FOR THE  
PHYSICIAN ASSISTANT, ASSOCIATION OF TECHNOLOGY,  
MANAGEMENT, AND APPLIED ENGINEERING, COUNCIL FOR  
PODIATRIC MEDICAL EDUCATION, COUNCIL ON EDUCATION FOR  
PUBLIC HEALTH, NATIONAL ARCHITECTURAL ACCREDITING**

**BOARD, ASSOCIATION OF SPECIALIZED AND PROFESSIONAL  
ACCREDITORS, COUNCIL FOR ACCREDITATION OF COUNSELING  
AND RELATED EDUCATIONAL PROGRAMS, WESTERN  
ASSOCIATION OF SCHOOLS AND COLLEGES SENIOR COLLEGE  
COMMISSION, AND ACCREDITATION COMMISSION FOR  
ACUPUNCTURE AND ORIENTAL MEDICINE**

---

Mary E. Kohart  
Dean R. Phillips  
Gregory S. Voshell  
Michelle L. Modery  
Elliott Greenleaf &  
Siedzikowski, P.C  
925 Harvest Drive, Suite 300  
Blue Bell, PA 19422  
(215) 977-1000

Kenneth J. Ingram  
Thomas Mugavero  
Whiteford Taylor Preston,  
LLP  
1025 Connecticut Avenue,  
NW  
Suite 400  
Washington, DC 20036-5405  
(202) 659-6800

Ada Meloy  
American Council  
on Education  
One Dupont Circle,  
NW  
Washington, DC  
20036  
(202) 833-4762

## CORPORATE DISCLOSURE

The *Amici Curiae* submitting this Brief include a variety of organizations related to the accreditation of higher education institutions across the county. These organizations include independent, not-for-profit entities recognized by the U.S. Department of Education as accrediting agencies for degree-granting, post-secondary institutions of higher learning within particular geographic regions of the United States: Higher Learning Commission; Middle States Commission on Higher Education; Southern Association of Colleges and Schools Commission on Colleges; Accrediting Commission for Community and Junior Colleges – Western Association of Schools and Colleges; Commission on Institutions for Higher Education of the New England Association of Schools and Colleges; and Western Association of Schools and Colleges, Senior College Commission. Each of these organizations is also recognized by the Council for Higher Education Accreditation (CHEA), also a party to this *Amicus* Brief, as meeting its standards for accrediting agencies.

Several of the *amici* are independent, not-for-profit organizations that accredit programs in various specialized and professional disciplines; some of them are recognized by the USDE. They are: Accreditation Commission for Acupuncture and Oriental Medicine; Accreditation Council for Pharmacy Education; Accreditation Review Commission on Education for the Physician

Assistant; Association of Technology, Management, and Applied Engineering; Council for Podiatric Medical Education; Council on Education for Public Health; Council for Accreditation of Counseling and Related Educational Programs; and National Architectural Accrediting Board. The Association of Specialized and Professional Accreditors (ASPA) is comprised of sixty specialized and professional accreditors who review more than 12,000 programs nationwide.

In addition, Accrediting Bureau of Health Education Schools; Accrediting Council for Continuing Education & Training; Accrediting Council for Independent Schools and Colleges; Council on Occupational Education; and Distance Education and Training Council are agencies that accredit hundreds of postsecondary institutions across the country. They are recognized by the U.S. Department of Education.

CHEA is an association of 3,000 degree-granting colleges and universities and recognizes those accrediting organizations which meet its standards for accreditation excellence. As previously noted with regard to the regional accrediting agencies, many of the other *amici* accrediting agencies are also recognized by CHEA. The American Council on Education represents approximately 1,800 institutions of post-secondary education, which span the breadth of higher education and include a substantial majority of all colleges and universities in the United States.

The Amici Curiae are not owned by any publicly held company or other entity, with the exception of the Council on Education for Public Health, which is owned by American Public Health Association and Associations of Schools and Programs of Public Health, and Southern Association of Colleges and Schools Commission on Colleges, which is a subsidiary of Southern Association of Colleges and Schools. There are not any publicly held corporations or other publicly held entity that has a direct financial interest in the outcome of this litigation. Finally, this case does not arise out of a bankruptcy proceeding.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Higher Learning Commission

(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Association of Specialized and Professional Accreditors  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Professional Massage Training Ctr. v. Accreditation Alliance of Career

Pursuant to FRAP 26.1 and Local Rule 26.1,

Accrediting Bureau of Health Education Schools, Inc.  
(name of party/amicus)

who is \_\_\_\_\_ amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: 

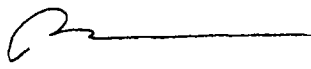
Date: April 16, 2014

Counsel for: Accrediting Bureau of Health Educatio

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

  
 (signature)

April 16, 2014  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Professional Massage Training Ctr. v. Accreditation Alliance of Career

Pursuant to FRAP 26.1 and Local Rule 26.1,

Accrediting Council for Continuing Education & Training  
(name of party/amicus)


who is \_\_\_\_\_ amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: 

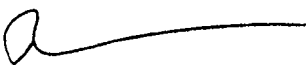
Date: April 16, 2014

Counsel for: Accrediting Council for Continuing Ed

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

  
 (signature)

April 16, 2014  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Professional Massage Training Ctr. v. Accreditation Alliance of Career

Pursuant to FRAP 26.1 and Local Rule 26.1,

Accrediting Council for Independent Schools and Colleges  
(name of party/amicus)

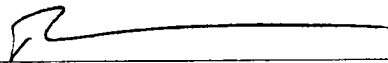
who is \_\_\_\_\_ amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: 


Date: April 16, 2014

Counsel for: Accrediting Council for Independent S

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

  
 (signature)

April 16, 2014  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Professional Massage Training Ctr. v. Accreditation Alliance of Career

Pursuant to FRAP 26.1 and Local Rule 26.1,

Council on Occupational Education  
(name of party/amicus)

who is \_\_\_\_\_ amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

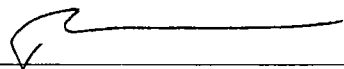
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature:  \_\_\_\_\_

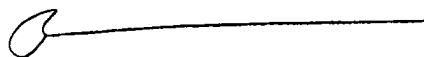
Date: April 16, 2014

Counsel for: Council on Occupational Education

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

  
 \_\_\_\_\_  
 (signature)

April 16, 2014  
 \_\_\_\_\_  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Professional Massage Training Ctr. v. Accreditation Alliance of Career

Pursuant to FRAP 26.1 and Local Rule 26.1,

Distance Education and Training Council  
(name of party/amicus)

who is amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

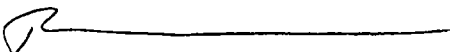
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: 

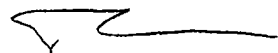
Date: April 16, 2014

Counsel for: Distance Education and Training Cou

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

  
 (signature)

April 16, 2014  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086                      Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Council for Higher Education Accreditation  
(name of party/amicus)

who is \_\_\_\_\_ Amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Accrediting Commission for Community and Junior Colleges, Western Association of Schools and  
(name of party/amicus)

Colleges

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Accreditation Council for Pharmacy Education  
(name of party/amicus)

Colleges

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Association of Technology, Management, and Applied Engineering  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Council on Education for Public Health  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO

If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

American Public Health Association  
Association of Schools and Programs of Public Health

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO

If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Council for Podiatric Medical Education  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Middle States Commission on Higher Education  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

National Architectural Accrediting Board  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Commission on Institutions of Higher Education of the New England Association of Schools and  
(name of party/amicus)

Colleges

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
 If yes, identify all parent corporations, including grandparent and great-grandparent corporations:  
 Commission on Institutions of Higher Education is a constituent element of the New England Association of Schools and Colleges, a 501(c)(3) organization.
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
 If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Southern Association of Colleges and Schools Commission on Colleges  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
 If yes, identify all parent corporations, including grandparent and great-grandparent corporations:  
 Southern Association of Colleges and Schools
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
 If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Professional Massage Training Center v. Accreditation Alliance, etc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

American Council on Education  
(name of party/amicus)

who is \_\_\_\_\_ amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: April 16, 2014

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Accreditation Review Commission on Education for the Physician Assistant  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Council for Accreditation of Counseling and Related Educational Programs  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Western Association of Schools and Colleges Senior College Commission  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-1086 Caption: Prof. Massage Training Ctr. v. Accreditation Alliance of Career Sch.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Accreditation Commission for Acupuncture and Oriental Medicine  
(name of party/amicus)

who is Amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
  
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
 If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
 If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
 If yes, identify any trustee and the members of any creditors' committee:

Signature: Mary E. Kohart

Date: 04/16/14

Counsel for: Amici Curiae

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Mary E. Kohart  
 (signature)

04/16/14  
 (date)

**TABLE OF CONTENTS**

STATEMENT OF INTEREST ..... 1

SUMMARY OF THE ARGUMENT ..... 4

ARGUMENT..... 4

I. Accreditation is a Form of Peer Review that Benefits Students and Protects Taxpayers ..... 4

II. Under the Uniformly Applied Federal Law, the Decisions of an Accrediting Agency Are Reviewed Under a Limited, Deferential Standard ..... 9

III. The District Court’s Decision to Re-Open the Record and Hold a Full Bench Trial in This Case Is Contrary to the Limited Review Applicable to Accrediting Agency Decisions ..... 17

    A. The District Court Should Not Have Re-Opened the Administrative Record ..... 17

    B. In the Alternative, the District Court Should Have Remanded the Case for Additional Review by ACCSC ..... 21

CONCLUSION ..... 22

## TABLE OF AUTHORITIES

### Case Law

<i>Am. Trucking Ass'n v. Fed. Highway Admin.</i> , 51 F.3d 405 (4th Cir. 1995).....	21
<i>Ambrose v. New England Ass'n of Sch. &amp; Colls., Inc.</i> , 252 F.3d 488 (1st Cir. 2001) .....	10, 12
<i>Auburn Univ. v. S. Ass'n of Colleges &amp; Schs., Inc.</i> , 489 F. Supp. 2d 1362 (N.D. Ga. 2002).....	5, 7
<i>Camp v. Pitts</i> , 411 U.S. 138 (1973).....	18
<i>Craig v. Chater</i> , 76 F.3d 585 (4th Cir. 1996).....	18
<i>Laney v. Dep't of Corr.</i> , 2012 U.S. Dist. Lexis 132273 (D.S.C. May 8, 2012) .....	20
<i>Elliott v. Sara Lee Corp.</i> , 190 F.3d 601 (4th Cir. 1999).....	18
<i>Ellis v. Ritchie</i> , 803 F. Supp. 1097 (E.D. Va. 1992).....	21
<i>Emory College of Puerto Rico, Inc. v. Accrediting Council for Continuing Education &amp; Training, Inc.</i> , 1997 U.S. Dist. LEXIS 23487 (E.D. Va. 1997).....	12
<i>Escuela de Medicina San Juan Bautista, Inc. v. Liaison Comm. on Med. Educ.</i> , 820 F. Supp. 2d 317 (D.P.R. 2011) .....	22
<i>Fine Mortuary College, LLC v. Am. Bd. of Funeral Serv. Educ., Inc.</i> , 473 F. Supp. 2d 153 (D. Mass. 2006).....	10

<i>Florida College of Business v. Accrediting Council for Independent Colleges and Schools,</i> 954 F.Supp. 256 (S.D. Fla. 1996).....	22
<i>Found. for Interior Design Educ. Research v. Savannah College of Art &amp; Design,</i> 39 F. Supp. 2d 889 (W.D. Mich. 1998) .....	12, 17
<i>Hiwassee Coll., Inc. v. S. Ass'n of Colls. &amp; Sch., Inc.,</i> 490 F. Supp. 2d 1348, 1351 (N.D. Ga. 2007) <i>aff'd</i> 531 F.3d 1333 (11th Cir. 2008) .....	12
<i>Huffaker v. Metro. Life Ins. Co.,</i> 271 F. App'x 493 (6th Cir. 2008) .....	20
<i>INS v. Ventura,</i> 537 U.S. 12 (2002).....	22
<i>Krichbaum v. Kelley,</i> 844 F. Supp. 1107 (W.D. Va. 1994).....	19
<i>Lincoln Mem. Univ. Duncan Sch. of Law v. ABA,</i> 2012 U.S. Dist. Lexis 5546 (E.D. Tenn. Jan. 18, 2012).....	10
<i>Med. Institute of Minnesota v. Nat'l Ass'n of Trade &amp; Tech. Sch.,</i> 817 F.2d 1310 (8th Cir. 1987).....	10, 17
<i>Porter v. Montgomery Cnty. Gov't,</i> 141 F. App'x 193 (4th Cir. 2005) .....	20
<i>Rockland Institute, Div. of Amistad Vocational Schools, Inc. v. Association of Independent Colleges &amp; Sch.,</i> 412 F. Supp. 1015 (C.D. Cal. 1976).....	10
<i>Thomas M. Cooley Law Sch. v. ABA,</i> 459 F.3d 705 (6th Cir. 2006).....	9, 10, 11
<i>Transport Careers, Inc. v. Nat'l Home Study Council,</i> 646 F. Supp. 1474 (N.D. Ind. 1986).....	17

*Trinity Am. Corp. v. EPA*,  
150 F.3d 389 (4th Cir. 1998).....18, 19

*W. Va. Highlands Conservancy, Inc. v. Norton*,  
343 F.3d 239 (4th Cir. 2003).....22

*Wilfred Academy of Hair & Beauty Culture v. S. Ass'n of Colls. & Sch.*,  
957 F.2d 210 (5th Cir. 1992).....*passim*

*Zeneca Inc. v. Shalala*,  
1999 U.S. Dist. Lexis 12327 (D. Md. Aug. 11, 1999) .....19

**Statutes**

20 U.S.C. § 1099b(a)(4)(A) ..... 6

20 U.S.C. § 1099b(a)(6)..... 8

20 U.S.C. § 1099b(l)..... 9

5 U.S.C. § 706(2)(A) .....10, 11

**Regulations**

34 C.F.R. § 602.1(a) ..... 6

34 C.F.R. § 602.17.....8, 19

34 C.F.R. § 602.31(a)..... 9

34 C.F.R. §§ 602.1(b), 602.2(a) ..... 7

Id. § 602.21(a) ..... 8

Id. § 602.32(a) ..... 9

## **STATEMENT OF INTEREST**

This appeal is one of first impression for this Circuit and concerns the manner in which a federal court may review accrediting decisions and federally-approved accrediting policies. Other Courts of Appeal have addressed the extent to which a federal court may inject itself into the long-standing peer review accrediting system, and have developed a standard of limited review. As argued below, the District Court here failed to follow this deferential standard. Amici Curiae are concerned that, if affirmed, the District Court's ruling could unravel the great deference federal courts have historically extended to accrediting agencies, chill participation by the education professionals who volunteer their time to ensure that students attend high-quality educational institutions, and embolden higher learning institutions to threaten litigation in an effort to overturn the accrediting decisions, even after they have been accorded lengthy review by, and appellate process within, the accrediting agency.

Accrediting agencies, like Appellant Accreditation Alliance of Career Schools and Colleges ("ACCSC"), play a crucial role in safeguarding consumers (*i.e.*, students and taxpayers) from the perils of deficient educational institutions, many of which are fraudulent in nature. The Department of Education ("DOE") has vested in private, non-profit accrediting agencies the role of identifying institutions of appropriate quality and assuring that taxpayer monies support

financial aid for students attending approved institutions. Accreditors, in turn, publish standards that are reviewed by the DOE during the recognition process and that often reflect requirements the DOE mandates be part of the accreditation process. Each institution seeking accreditation must submit to a rigorous evaluation conducted by these accrediting agencies. These evaluations are generally conducted using volunteer teams of peer reviewers who are extremely knowledgeable about higher education and who perform an exhaustive review of each institution against standards developed by the accrediting agency.

In the rare cases when litigation over accreditation determinations ensues, federal courts have been careful not to substitute their judgment for the judgment of educational professionals with decades of experience in post-secondary and graduate education. The central issue in such cases, therefore, is not whether a District Court believes that the accreditor made the “correct” decision. Rather, the real question is whether the accreditor engaged in a process consistent with its own standards and procedures through an evaluation process previously determined by the DOE to be compliant with applicable federal regulations.

By contrast, the District Court here engaged in a *de novo* review of the facts at issue and substituted its own analysis for the DOE determination that ACCSC’s standards were sufficiently detailed and rigorous based upon the expectations set forth in federal regulations. The District Court’s unprecedented damage award

further shifts the balance in favor of institutions, which often have resources to fight accreditation decisions that far outweigh the resources possessed by non-profit accrediting companies.

Affirmance of the District Court's judgment may transform the peer review process from the evaluative process it has been for more than a century – wherein highly experienced and knowledgeable educators make judgments about the quality of specific academic institutions by applying flexible and broad standards of quality determined by the accrediting agency – to a process confined by strict quantitative metrics that may not readily apply to the broad range of institutions that seek accreditation. Without a strong and effective peer review system, accreditation will not function as it has done effectively for more than one hundred years, and the important protection provided to consumers by accrediting agencies will be adversely affected.

Amici Curiae submits this brief under Rule 29(a) to address these concerns and to preserve the deference accrediting agencies are granted within the federal court system. No party, counsel or other person in this appeal has provided any money to fund the preparation of filing of this brief. The counsel identified below drafted the brief in its entirety.



## **SUMMARY OF THE ARGUMENT**

Throughout the history of accreditation in the United States, the DOE has delegated the responsibility of inspecting and accrediting educational institutions to non-profit organizations, while retaining close oversight and review of those organizations' standards and procedures to ensure that these organizations remain accountable to the institutions that they review, the public, and the federal government. In recognition both of this relationship and of the accrediting agencies' expertise, federal courts have developed an extremely deferential standard of review when an institution challenges an accreditation decision. In the instant case, however, the District Court departed from this deferential standard: it failed to limit its review to the administrative record, and substituted its own, independent findings for those of ACCSC. Finally, even if ACCSC's determination were found lacking under the deferential review, the proper remedy is not to order accreditation and award damages, but to remand the matter back to the accrediting agency for further review.

## **ARGUMENT**

### **I. Accreditation is a Form of Peer Review that Benefits Students and Protects Taxpayers.**

Accreditation in the United States is a process of independent review that ensures students obtain an acceptable level of quality when pursuing college and

post-graduate degrees.<sup>1</sup> See Judith S. Eaton, *An Overview of U.S. Accreditation*, Council for Higher Education Accreditation 1 (Aug. 2011). Indeed, accreditation “adds value to society through assuring quality, enabling government to make sound judgments about the use of public funds, aiding the private sector in decisions about financial support and easing transfer of credit.”<sup>2</sup> *Id.* at 9. The accreditation process also protects the general public, which ultimately relies upon the services of professionals trained by accredited institutions and programs. Accordingly, there is a strong public interest in a meaningful and reliable accreditation process.<sup>3</sup>

---

<sup>1</sup> See *Higher Education: Accreditation in the United States*, United States Dep’t of Educ., [http://www2.ed.gov/admins/finaid/accred/accreditation\\_pg2.html](http://www2.ed.gov/admins/finaid/accred/accreditation_pg2.html) (last visited Apr. 14, 2014).

<sup>2</sup> “With an accredited institution, a student has some assurance of receiving a quality education and gaining recognition by other colleges and by employers of the course credits and degrees earned. Accreditation is an affirmation that a college provides a quality of education that the general public has the right to expect and that the educational community recognizes.” *Higher Education in Maryland*, Maryland Higher Education Comm’n, [https://www.mhec.state.md.us/higherEd/colleges\\_universities/accreditation.asp](https://www.mhec.state.md.us/higherEd/colleges_universities/accreditation.asp) (last visited Apr. 14, 2014).

<sup>3</sup> The evolution of the current system began in the late nineteenth century when various voluntary associations formed to standardize the nation’s higher education programs. *Auburn Univ. v. S. Ass’n of Colleges & Schs., Inc.*, 489 F. Supp. 2d 1362, 1367 (N.D. Ga. 2002) (citations omitted). “These organizations were not part of the federal government because of the traditional conception that education was not a federal concern, but rather was an issue left to local governments.” *Id.* Over time, the standards used by these associations coalesced into the principle that evaluation standards must be flexible and that “an institution

The DOE does not itself accredit educational institutions or higher education programs. Rather, “[t]he federal government relies on a system of private accreditation in determining which postsecondary institutions are eligible to participate in federal student aid programs.” Jeffrey Martin, *Recent Developments Concerning Accrediting Agencies in Postsecondary Education*, 57 Duke L. & Contemp. Probs. 121, 121 (1994). The DOE recognizes accreditation agencies precisely because they are “reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.” 34 C.F.R. § 602.1(a). Federal and state governments have thus consistently considered accreditation agencies as reliable authorities for ensuring academic quality. Eaton, *supra*, at 1.

By statute, accrediting agencies “ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, . . . are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered.” 20 U.S.C. § 1099b(a)(4)(A). Each accrediting agency – including ACCSC – is independently responsible for assessing numerous aspects of an institution, including: the success of student achievement in relation to the institution’s mission, curricula, faculty,

---

should be evaluated in relation to the education mission it established for itself.”  
*Id.*

and facilities; fiscal and administrative capacity; student support services; recruiting and admissions; academic calendars, catalogs, and publications; and records of the institution's complaints and compliance. *Id.* § 1099b(a)(5). "Under this system, the accrediting agency is typically the sole arbiter of whether the training or education offered by an institution is of sufficient quality to authorize spending federal student aid money there." Martin, *supra*, at 121; *see also id.* at 124 (noting that system allows the federal government to set requirements by which the accreditors must monitor educational institutions).

Accrediting agencies are held accountable to the institutions that they review, the public, and the federal government. Eaton, *supra*, at 1. The DOE is required by law to publish a list of nationally recognized accrediting agencies. 34 C.F.R. §§ 602.1(b), 602.2(a).<sup>4</sup> To be recognized under the DOE regulations, accrediting agencies must meet the eligibility requirements set forth by the DOE. An agency seeking federal recognition "must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely

---

<sup>4</sup> The federal government became involved in accreditation by virtue of its decision to provide student aid, both in 1952 with the enactment of the Veterans' Readjustment Assistant Act and in 1965 with the enactment of the Higher Education Act ("HEA"). Martin, *supra*, at 123; *see* Pub. L. No. 82-550, 66 Stat. 663 (1952). The HEA was amended in 1992, and the amendments "'significantly increased the gatekeeping responsibilities of each member of the triad' by enacting 'requirements that accrediting bodies must meet if they are to be recognized by the Secretary as 'gatekeepers' for Title IV or other Federal purposes.'" *Auburn Univ.*, 489 F. Supp. 2d at 1369 (quoting 59 Fed. Reg. at 22250).

accepted in the United States” by educators and educational institutions, and licensing bodies and professionals. *Id.* § 602.13.

An agency must also maintain administrative and fiscal capacity to carry out accreditation activities. *Id.* § 602.15. The standards that an agency uses to conduct accreditation must be “sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits.” *Id.* § 602.16(a). Significantly, the DOE has acknowledged that an agency’s evaluation of any given institution or program “may include different standards for different institutions or programs, as established by the institution.” *Id.* § 602.16(a)(1)(i). An agency is given discretion to establish any additional standards it deems appropriate. *Id.* § 602.16(e).

A federally-recognized accrediting agency must further demonstrate that it consistently applies its internal standards in reaching an accrediting decision. *Id.* §§ 602.17-19. Moreover, an agency “must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits.” *Id.* § 602.21(a). The DOE also monitors agencies to ensure that they remain separate and independent from trade associations, provide for adequate arbitration procedures and due process, permit institutions to be represented by counsel, and provide notice and an opportunity for a hearing. 20 U.S.C. § 1099b(a)(6).

Accrediting agencies must submit an application for “continued recognition” every five years, providing evidence that the agency continues to comply with the DOE criteria for recognition. 34 C.F.R. § 602.31(a). The DOE then publishes a notice of application in the Federal Register subject to public comment.

*Id.* § 602.32(a). If an accrediting agency fails to meet the criteria for recognition by the DOE, the agency’s recognition may be terminated. 20 U.S.C. § 1099b(l).

ACCSC was granted five additional years of recognition, when it was re-authorized in 2011.

## **II. Under the Uniformly Applied Federal Law, the Decisions of an Accrediting Agency Are Reviewed Under a Limited, Deferential Standard.**

Federal courts review common law due process claims for whether a decision of an accrediting agency was “arbitrary and unreasonable or an abuse of discretion and whether the decision is based on substantial evidence.”<sup>5</sup> *Thomas M. Cooley Law Sch. v. ABA*, 459 F.3d 705, 712 (6th Cir. 2006); *see Wilfred Academy of Hair & Beauty Culture v. S. Ass’n of Colls. & Sch.*, 957 F.2d 210, 214 (5th Cir. 1992). Similarly, “judicial review of accreditation decisions is more limited than

---

<sup>5</sup> The rights afforded to an institution under common law due process are more limited than those guaranteed by the Constitution or under the Administrative Procedure Act. A court reviewing a claim for common law due process only focuses on whether the agency “conform[ed] its actions to fundamental principles of fairness.” *Thomas M. Cooley Law Sch. v. ABA*, 459 F.3d 705, 713 (6th Cir. 2006)

review under the [Administrative Procedure Act].”<sup>6</sup> *Thomas M. Cooley*, 459 F.3d at 713. Accrediting agencies are not federal actors and thus are not governed by the procedures in the Administrative Procedure Act. *Id.* at 712. Because accrediting agencies are private organizations, “judicial review is limited to protecting the public interest.” *Id.* at 713; see *Lincoln Mem. Univ. Duncan Sch. of Law v. ABA*, 2012 U.S. Dist. Lexis 5546, at \*32-\*33 (E.D. Tenn. Jan. 18, 2012); *Fine Mortuary College, LLC v. Am. Bd. of Funeral Serv. Educ., Inc.*, 473 F. Supp. 2d 153, 158 (D. Mass. 2006) (“This Court’s review of an accrediting board’s decision, however, is deferential and more limited than agency review under the APA because, even though it performs a quasi-governmental function, an accrediting board is a private organization”).

“Courts give accrediting associations such deference because of the professional judgment these associations must necessarily employ in making accreditation decisions.” *Wilfred Academy*, 957 F.2d at 214; see *Ambrose v. New England Ass’n of Sch. & Colls., Inc.*, 252 F.3d 488, 498 (1st Cir. 2001); *Med. Institute of Minnesota v. Nat’l Ass’n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987); *Rockland Institute, Div. of Amistad Vocational Schools, Inc. v. Association of Independent Colls. & Sch.*, 412 F. Supp. 1015, 1018 (C.D. Cal.

---

<sup>6</sup> The standard of review under the APA is whether the federal agency’s decision was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

1976) (“[D]etermining the reasonableness of the Association’s standards, it has been held that the Court’s review is limited in scope, with the Court extending deference to an association’s determination of the reasonableness of its standards.”).<sup>7</sup>

Because accrediting agencies are afforded such great deference, courts reviewing an accreditation decision “are not free to conduct a *de novo* review or to substitute their judgment for the professional judgment of the educators involved in the accreditation process.” *Wilfred Academy*, 957 F.2d at 214; see *Thomas M. Cooley*, 459 F.3d at 713. Rather, courts must only determine “whether the accrediting body’s internal rules provide a fair and impartial procedure and whether it has followed its rules in reaching its decision.” *Wilfred Academy*, 957 F.2d at 214. This highly deferential standard of review recognizes that accreditation decisions “would not be enhanced by judicial intrusion.” *Parsons Coll. v. N. Central Ass’n of Colls.*, 271 F. Supp.65, 74 (N.D. Ill. 1967).

“The standards of accreditation are not guides for the layman but for professionals in the field of education. Definiteness may prove, in another view, to be arbitrariness.” *Parsons*, 271 F. Supp. at 73. Indeed, flexibility in accrediting

---

<sup>7</sup> This “standard of review resembles the review applied under the [APA].” *Thomas M. Cooley*, 459 F.3d at 713 (citing 5 U.S.C. § 706(2)(A) (“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law”)). While review “resembles” that which applies under the APA, it is actually considered even “more limited” in nature. *Id.*



standards is extremely important, and accrediting companies are “entitled to make a conscious choice in favor of flexible standards to accommodate variation in purpose and character among its constituent institutions, and to avoid forcing all into a rigid and uniform mold.” *Id.* “A certain amount of flexibility in fashioning accrediting standards long has been recognized as a virtue.” *Ambrose*, 252 F.3d at 495.<sup>8</sup> Thus, “[c]ourts give accrediting associations such deference because of the professional judgment these associations must necessarily employ in making accreditation decisions.” *Found. for Interior Design Educ. Research v. Savannah College of Art & Design*, 39 F. Supp. 2d 889, 894 (W.D. Mich. 1998) (quoting *Wilfred Acad.*, 957 F.2d at 214); see *Hiwassee Coll., Inc. v. S. Ass’n of Colls. & Sch., Inc.*, 490 F. Supp. 2d 1348, 1351 (N.D. Ga. 2007) *aff’d* 531 F.3d 1333 (11th Cir. 2008) (noting that a determination under common law due process “is flexible and may vary on a case-by-case basis”).<sup>9</sup>

In contrast to this line of cases applying a limited review, the District Court here applied a more stringent, less deferential standard. For instance, the District Court noted that ACCSC did not “demonstrate any quantitative standards” for

---

<sup>8</sup> In constructing standards for accreditation, “standards that are definitive in theory may easily become arbitrary in application. Flexibility blunts the sharp edges of this potential hazard.” *Ambrose*, 252 F.3d at 495.

<sup>9</sup> In an earlier, unpublished opinion, the United States District Court for the Eastern District of Virginia also adhered to this limited review standard. See *Emory Coll. of Puerto Rico, Inc. v. Accrediting Council for Continuing Educ. & Training, Inc.*, 1997 U.S. Dist. LEXIS 23487 (E.D. Va. 1997).

evaluating the sufficiency of PMTC's library and resource center. (Joint App'x ("JA") at 9 (Op. at 9).) Yet, the burden of proof remained with PMTC to demonstrate that it met the standards for accreditation, not on ACCSC to justify those standards. Through the DOE review and approval process, it had already been determined that "quantitative metrics" were not required. The critical question before the Court was whether the accrediting institution afforded sufficient process to PMTC, not whether the District Court agreed with the ultimate result. Thus, even if the District Court would have reached a different conclusion had it conducted the site visit or drafted the "Standards of Accreditation" in a different fashion, such observations do not speak to the question of whether the 18-month long process PMTC received was adequate.<sup>10</sup>

On the other hand, the District Court cited favorably the "metric" related to "student outcomes." (JA at 6 (Op. at 6).) Yet, the District Court does not identify

---

<sup>10</sup> Moreover, the District Court noted that it was unaware of how large the "MSU" library was – to which PMTC's students allegedly had access – and the district court conceded that it does not know the scope of the library's collection, because such information was not included in the *trial* record. (JA at 8 (Op. at 8) (stating that court was "confident" that the library was extensive).) Yet, that information was part of the record before the ACCSC. (*See* Appellant's Br. at 51.) And, even if the District Court was correct in that accreditation officials should have visited the library, at best, the District Court should have remanded the case back to ACCSC so that it could conduct that review – it was not the District Court's place to assume facts. *See infra* Section III.B. By finding, based upon its own "confiden[ce]" that the library was sufficient and reversing ACCSC's decision, the District Court supplanted the role of the peer reviewers responsible for the review.

why, in its mind, student outcomes should carry significant weight when determining accreditation. Indeed, a poorly qualified institution could graduate all of its students and inflate grades to help with job placement, and this could generate favorable feedback from graduates. Yet, inflated grades or graduation rates (a growing problem) do not reflect the quality of the education provided or the quality of investment that federal taxpayers are being asked to make. The District Court did not address these concerns at all. Thus, the mere existence of “quantitative” statistics (which can be severely misleading and manipulated), standing alone, does not paint the entire picture for accreditors when reviewing the quality of an institution.

Further, while the District Court cited to the lack of concrete guidelines in some instances to discredit ACCSC, it relied upon that same lack of specificity to support PMTC elsewhere. For instance, when addressing management sufficiency, the District Court relied upon the fact that the “*Standards of Accreditation* do not require multiple staff members.” (JA at 11-23 (Op. at 11-12).) Thus, the lack of specific requirements when it came to library resources was problematic to the District Court, but the lack of similar specificity when spelling out the precise number of management staff needed did not concern the District Court.<sup>11</sup>

---

<sup>11</sup> In other words, while the District Court criticized ACCSC for its flexible standards, it *credited* similar flexibility when assessing PMTC’s policies. (Op. at 10.)

The District Court's subsequent discussion of management at PMTC was similarly flawed. It discredited ACCSC's finding that PMTC did not have adequate management by lauding PMTC's owner, Ms. Juliet Mee. The District Court concluded that, based upon its independent view of Ms. Mee's qualifications, she was capable of managing PMTC by herself (even though Ms. Mee conceded in writings to ACCSC that PMTC had insufficient staffing). (JA at 12 n.3 (Op. at 12 n.3).) In fact, the District Court even credited Ms. Mee alone with guiding the school through a recession, without a discussion of what acts she allegedly took and without eliminating other factors that may have led to the school's survival (including an influx of individuals seeking new skills in light of substantial changes in the job market). Ultimately, the District Court merely reviewed the record and disagreed with the findings of the accreditors on this issue. Factual disagreements in the accrediting context, however, do not rise to the level of a violation of common law due process.

The District Court further erred when evaluating "Standard I(a)(1)(d)." (JA at 12 (Op. at 12).) There, the District Court attempted to draw a distinction between the words "sufficient" and "necessary," criticizing ACCSC's policies for not defining what this meant in terms of actual body count at PMTC. This standard, however, is neither vague nor ambiguous. Rather, the DOE-approved policy merely notes that a school must have a sufficient number of people in

charge to support the school's operations. The number of people will vary depending upon the institution and the degree(s) offered. The District Court suggests that ACCSC should have included specific numbers (*i.e.*, quantitative metrics). Again, however, accreditation is not a "one size fits all" endeavor and such specificity does not lend itself to the accreditation process, nor is it required under the law.

These inconsistencies in the District Court's review illustrate why federal courts have traditionally deferred to the education professionals in the accreditation field: different people (including judges) weigh facts and circumstances differently and may place more emphasis of some facts than others, which is how judgment is exercised. Were the federal courts to accept the role of *de novo* review of accrediting determinations, the accrediting agencies would be unable to apply their standards uniformly. Indeed, given that accrediting organizations review numerous colleges throughout different regions of the country, challenges to accreditation determinations could arise in different federal courts. An accrediting agency could be left handcuffed by inconsistent rulings issued by federal judges engaged in independent review. This outcome would greatly affect the ability of accreditors to function.

Flexibility in the accrediting standards allows accrediting agencies to review a variety of institutions and to adapt to make reasoned judgments about each

institution by applying the flexible and broad standards. Otherwise, an accrediting agency would be required to amend its rules routinely to fit particular institutions, which would be impractical for the agency and would require constant federal review to assure that the changing standards continued to qualify the agency for federal recognition. This would flood the federal government and create an unworkable environment for accreditors. General standards that are adaptable to the varying circumstances of particular institutions, such as requirements that an institution have a “sound financial structure,” are well suited to an agency’s localized inquiry into educational standards. *See Med. Institute of Minn.*, 817 F.2d at 1314. Accordingly, “[t]here is probably no area of the law where deference is as necessary as is it is when a court reviews the decision of an accreditation association . . . .” *Found. for Interior Design*, 39 F. Supp. 2d at 894 (quoting *Transport Careers, Inc. v. Nat’l Home Study Council*, 646 F. Supp. 1474, 1482 (N.D. Ind. 1986)).

**III. The District Court’s Decision to Re-Open the Record and Hold a Full Bench Trial in This Case Is Contrary to the Limited Review Applicable to Accrediting Agency Decisions.**

**A. The District Court Should Not Have Re-Opened the Administrative Record.**

The Amici Curiae also request that this Court address the scope of the record the District Court should have reviewed in this case (and, correspondingly, the standard of review this Court must apply when it reviews the District Court’s

decision). Here, the District Court re-opened the factual record as it existed when ACCSC made its determination and presided over a bench trial. This approach removes the very deference that is granted to accrediting agencies by giving the institution a second chance to present the merits of its position to a federal court. In effect, this approach allows institutions to forum shop – *i.e.*, institutions unhappy with an accrediting decision can seek a “second bite of the apple” in a federal court of their choosing.

This process treats an accrediting agency like a typical party in federal litigation. Yet, federal courts routinely draw comparisons between accrediting agencies and administrative agencies. And judicial review of a decision by an administrative agency “is limited to the administrative record before the agency when it makes its decision.” *Trinity Am. Corp. v. EPA*, 150 F.3d 389, 401 n.4 (4th Cir. 1998). Indeed, “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973). Courts in this Circuit have repeatedly limited the scope of evidence in reviewing an administrative agency’s decision to the record available to the agency at the time that it took the disputed action. *See Elliott v. Sara Lee Corp.*, 190 F.3d 601, 608-09 (4th Cir. 1999) (reviewing an ERISA case involving the denial of disability benefits); *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996) (reviewing a claim for

disability under the Social Security Act); *Trinity Am. Corp.*, 150 F.3d at 401 n.4 (reviewing an order of the Environmental Protection Agency); *Zeneca Inc. v. Shalala*, 1999 U.S. Dist. Lexis 12327, at \*9 (D. Md. Aug. 11, 1999) (reviewing the Food and Drug Administration's approval of an application for a generic drug).

Private accrediting agencies have been delegated the responsibility for accreditation by the DOE. Consequently, when reviewing an accrediting agency's decision to approve or deny accreditation, courts should limit the scope of admissible evidence to that which was before the accrediting agency at the time that it approved or denied accreditation. *See* 34 C.F.R. § 602.17 (setting forth the procedures by which accrediting agencies must obtain evidence to support their decision). When reviewing these decisions, district courts should recognize that, just as they would in reviewing the decision of a federal agency, summary judgment is the appropriate mechanism to resolve a claim that an accrediting agency acted improperly in denying accreditation. *Cf. Krichbaum v. Kelley*, 844 F. Supp. 1107, 1110 (W.D. Va. 1994) ("When the court, as here, reviews the decision reached by an administrative agency, the summary judgment motion stands in a somewhat unusual light, in that the administrative record provides the complete factual predicate for the court's review.").

Not only did the District Court open the record for new evidence, it criticized ACCSC for not submitting *new* findings of fact after the bench trial. (JA



at 10 (Op. at 10).) For example, in its decision, ACCSC cited PMTC's failure to properly verify its faculty and staff, which is a very serious finding. The trial court relied upon the fact that ACCSC did not produce "proposed findings" on this issue following trial. This criticism is misplaced. Notably, the District Court does not cite the original record as it existed before the accrediting agency. Rather, it focused on the new record that existed after trial. Indeed, rather than reference the original record – which was the product of an 18-month review – the District Court "assume[d]" that the finding was incorrect based upon new evidence presented at trial. (JA at 10 (Op. at 10).)

The Amici Curiae recognize that the District Court engaged in re-opening the record because of an allegation that ACCSC's accrediting decision was improperly influenced by bias. However, a plaintiff "cannot obtain discovery beyond the administrative record . . . merely by alleging a procedural violation" such as bias because otherwise "the policy rationale for constrained district court review would be defeated." *Huffaker v. Metro. Life Ins. Co.*, 271 F. App'x 493, 503 (6th Cir. 2008).<sup>12</sup> Yet here, the District Court erred in crediting PMTC's conclusory and unsupported allegations of "bias" and, on that basis, authorized

---

<sup>12</sup> In fact, under the familiar *Twombly/Iqbal* standard, bare allegations of bias without specific facts to support a reasonable inference that the plaintiff's claims are plausible, must be dismissed. See *Porter v. Montgomery Cnty. Gov't*, 141 F. App'x 193 (4th Cir. 2005); *Laney v. S.C. Dep't of Corr.*, 2012 U.S. Dist. Lexis 132273, at \*11 (D.S.C. May 8, 2012).

PMTTC to open the record and obtain additional discovery. (*See* JA at 97 (Am. Compl. ¶ 106) (asserting general allegation that ACCSC acted out of “bias, spite, malice and ill-will”).) This approach obscured the critical question when reviewing accrediting decisions – whether the accrediting agency’s decision was arbitrary and capricious based on the evidence before it at the time it made its decision. Instead, the District Court’s decision will allow institutions to make bare allegations of “bias” in order to probe for new evidence to support their claims, making an end run around the great deference usually afforded to accrediting agencies’ decisions. This Court should close floodgates that the District Court opened.

**B. In the Alternative, the District Court Should Have Remanded the Case for Additional Review by ACCSC.**

Finally, even were the District Court’s finding appropriate under a limited review, the remedy should have been a remand for further deliberations by ACCSC, rather than an Order directing ACCSC to accredit PMTC. In the analogous administrative law context, where an administrative agency is found to have failed to comply with the law, “the proper remedy is to vacate the agency’s decision at issue and remand the matter for action in accordance with the applicable regulations.” *Ellis v. Ritchie*, 803 F. Supp. 1097, 1107 (E.D. Va. 1992); *see Am. Trucking Ass’n v. Fed. Highway Admin.*, 51 F.3d 405, 414 (4th Cir. 1995). This is because “a reviewing court may not decide matters that Congress has

assigned to an agency.” *W. Va. Highlands Conservancy, Inc. v. Norton*, 343 F.3d 239, 248 (4th Cir. 2003) (citing *INS v. Ventura*, 537 U.S. 12, 16 (2002)).

By making a finding that ACCSC’s standards failed to comply with the law, the proper course for the District Court was to vacate ACCSC’s accreditation decision and remand for proceedings in accordance with federal law. *See Escuela de Medicina San Juan Bautista, Inc. v. Liaison Comm. on Med. Educ.*, 820 F. Supp. 2d 317, 320 (D.P.R. 2011) (vacating and remanding an accreditation decision, and noting that the court “is not ordering the accreditation of the medical school”); *Florida Coll. of Business v. Accrediting Council for Independent Colls. and Sch.*, 954 F.Supp. 256 (S.D. Fla. 1996). At best for PMTC, therefore, the case should have been remanded for ACCSC to reevaluate PMTC. Instead, the District Court stepped into the shoes of the accrediting agency and decided on its own that PMTC deserved accreditation. By doing so, the District Court acted far outside the proper scope of its review and effectively assumed a function that the federal government had clearly delegated to ACCSC.

### **CONCLUSION**

Accreditation agencies perform a crucial role in identifying deficient educational institutions. These agencies do so through dedicated volunteers with decades of experience in higher education and pursuant to policies and procedures scrutinized by the DOE. Federal courts have traditionally and should continue to

apply a deferential and limited review to challenged accreditation decisions. The District Court's *de novo* review in this case, if affirmed, threatens this deference. Thus, Amici Curiae respectfully request that this Court reverse the District Court's opinion and adopt a deferential standard of review that is limited to the record that existed at the time the accreditors reviewed the institution at issue.

Respectfully submitted,

/s/ Mary E. Kohart

Mary E. Kohart

Dean R. Phillips

Gregory S. Voshell

Michelle L. Modery

Elliott Greenleaf & Siedzikowski, P.C

925 Harvest Drive, Suite 300

Blue Bell, PA 19422

(215) 977-10000

Kenneth J. Ingram

Thomas Mugavero

Whiteford Taylor Preston, LLP

1025 Connecticut Avenue, NW

Suite 400

Washington, DC 20036-5405

(202) 659-6800

Ada Meloy

American Council on Education

One Dupont Circle, NW

Washington, DC 20036

(202) 833-4762

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

Consol. Nos. 14-1086 &amp; 14-1136

Professional Massage Training Center,

Appellee/Cross-Appellant,

v.

Accreditation Alliance of Career Schools and Colleges,

Appellant/Cross-Appellee.

**CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2) of 32(a)(7)(B) because:

This brief contains 5,858 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii);

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman style font for both the main text and footnotes.

/s/Mary E. Kohart

Mary E. Kohart

*Counsel for Amici Curiae*

Dated: April 16, 2014

## CERTIFICATE OF FILING AND SERVICE

I, Mary E. Kohart, an attorney, hereby certify that on Wednesday, April 16, 2014, I caused the foregoing **Brief of Amici Curiae in Support of Appellant and Urging Reversal** to be filed with the Clerk of the Court, United States Court of Appeals for the Fourth Circuit using the Court's CM/ECF system, which will send notice of such filing to the registered CM/ECF users. I further certify that pursuant to this Court's Rules, I will cause the appropriate number of copies of the above named filings to be transmitted to the Clerk's office within two days of this filing date via overnight delivery.

/s/ Mary E. Kohart  
Mary E. Kohart

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at www.ca4.uscourts.gov/cmecftop.htm.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. Consol. Nos.14-1086 & 14-1136 as

[X]Retained [ ]Court-appointed(CJA) [ ]Court-assigned(non-CJA) [ ]Federal Defender [ ]Pro Bono [ ]Government

COUNSEL FOR: Amici Curiae Higher Learning Commission et al.

as the (party name)

[ ]appellant(s) [ ]appellee(s) [ ]petitioner(s) [ ]respondent(s) [X]amicus curiae [ ]intervenor(s)

Mary E. Kohart (signature)

Mary E. Kohart Name (printed or typed)

215-977-1073 Voice Phone

Elliott Greenleaf & Siedzikowski, P.C. Firm Name (if applicable)

215-977-1099 Fax Number

925 Harvest Drive, Suite 300

Blue Bell, PA 19422-1956 Address

mek@elliottgreenleaf.com E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on 04/16/14 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

[Empty box for address]

[Empty box for address]

Mary E. Kohart Signature

04/16/14 Date