



TO: Higher Education Committee

FROM: John L. D'Agati 

SUBJECT: Renewal of Institutional Accreditation: the Institute of Design and Construction

DATE: February 4, 2015

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents grant renewal of accreditation to the Institute of Design and Construction?

Reason(s) for Consideration

Required by State regulation.

Proposed Handling

This question will come before the Higher Education Committee at its February 2015 meeting, where it will be voted on and action taken. It will then come before the full Board at its February 2015 meeting for final action.

Members of the Board of Regents with a conflict of interest or the appearance of a conflict of interest on this application are asked to recuse themselves from participating in the deliberation and decision.

Procedural History

On October 24, 2013, the Regents Advisory Council on Institutional Accreditation (RAC) met to consider the accreditation renewal application of the Institute of Design and Construction ("the Institute" or "IDC"). The RAC's recommendation was to deny accreditation. On November 7, 2013, the Institute sent a letter of intent to appeal the RAC's decision to Commissioner King; materials in support of its appeal were submitted on November 26, 2013. Subsequent updates to information were submitted to the Commissioner by the Institute on December 20, 2013, February 7, 2014 and April 28,

2014. The Commissioner affirmed the RAC's determination on August 19, 2014.¹ On October 16, 2014, IDC requested reconsideration of the Commissioner's August 19, 2014 recommendation based on an alleged misapplication of the Regents Rules. Based on the ambiguous and unclear regulatory language contained in Regents Rule §4-1.5, the Commissioner reopened the prior recommendation. The Commissioner continued to affirm the RAC's determination on December 30, 2014, and his recommendation is hereby transmitted to the Board of Regents for consideration and final action. The full record on appeal is available to the Board, electronically and in hard copy, through the Board Secretary

Background Information

The Institute of Design and Construction (IDC), 141 Willoughby St., Brooklyn (Kings County), has applied for renewal of its institutional accreditation by the Board of Regents and the Commissioner of Education.

The Institute of Design and Construction is a Regents-chartered independent institution offering two registered programs of study leading to an Associate in Occupational Studies (A.O.S.) degree in either Architectural Technology or Building Construction Technology. IDC prepares individuals for employment in the building construction industry. The Institute, founded in 1947 and operated by the same family since its inception, was granted an absolute charter by the Regents in 1975. The Institute describes its purpose as "service to the building construction industry by dedicating itself to programs of instruction that deal with the real world of construction."

Prior to 2000, the Department conducted accreditation and registration functions simultaneously. In 2000, the accreditation function was separated from program registration. IDC was reviewed for accreditation in 2001 and granted accreditation for ten years with the condition that specified reports be made in a two-year period. Accreditation was administratively extended to November 8, 2012 and again to November 8, 2013.

Recommendation

VOTED: That the Board of Regents deny accreditation of the Institute of Design and Construction.

Attachment

¹ The August 19, 2014 Commissioner's Decision was issued by Executive Deputy Commissioner Berlin in her capacity as Acting Commissioner pursuant to §3.8(b) of the Regents Rules (8 NYCRR 3.8(b)).

Information in Support of Recommendation

Peer Review Visit

As part of the accreditation process, the Institute of Design and Construction completed a self-study and prepared supporting documentation. On May 7-8, 2013, a peer review team visited the Institute to assess its compliance with the standards for institutional accreditation. During the visit, the Team interviewed faculty, administrators, staff, Trustees, and students; visited classes; reviewed course syllabi and student work; examined student and faculty folders; examined administrative records and policy statements; and assessed physical facilities, library resources, and instructional equipment. In its report, the Team made a total of 32 recommendations.

The Team found the Institute to be out of compliance with the following accreditation standards as defined under section 4-1.4 of Regents Rules: assessment of student achievement; programs of study; faculty; resources; administration; support services; consumer information; and requirements addressing complaints and public disclosure.

The Team found the Institute to be in compliance with standards addressing institutional mission; admissions; and requirements addressing Title IV and teachout.

Based on the Institute's self-study, the Team's report and the Institute's response, the Department found that the institution was out of compliance with the standards for institutional accreditation in significant areas of assessment, faculty and resources. The Department also noted the persistence of similar issues cited in the previous accreditation report, specifically: lack of formal assessment mechanisms for institutional effectiveness and student achievement; a structure for core faculty involvement in curricular objectives and assessment; and library resources. As a result, the Department did not feel that the actions proposed by the Institute to come into compliance with all of the standards could be achieved in the two-year period required by Regents Rules and federal regulations to enable a recommendation for probationary accreditation.

Regents Advisory Council on Institutional Accreditation (RAC) Review

As required by Subpart 4-1 of the Regents Rules, the Department transmitted the final compliance review report for consideration by RAC. (RAC is established in §3.12(d) of the *Rules of the Board of Regents* "to review applications for accreditation and renewal of accreditation pursuant to Part 4 of this Title, and such other matters as the Department may ask it to review, and make recommendations to the Regents and the Commissioner based on its review.")

IDC was invited to submit additional written material for the RAC to consider. On September 3, 2013, and October 14, 2013, the Institute submitted an action plan and strategic plan timeline to the RAC, addressing recommendations made in the Team's report.

On October 24, 2013, the RAC met to consider IDC's application. In a public meeting, it met with representatives of the Institute, a member of the peer review team, and Department staff. IDC presented information on actions taken since the site visit to address compliance issues noted in the Team report. RAC members discussed their observations and asked questions of the Institute. The RAC determined that the Institute's response did not demonstrate that the Institute could reasonably be expected to meet the standards within the two years required under Regents Rules and federal regulations for probationary accreditation. Specifically, the RAC felt that the Institute for Design and Construction did not have the resources nor the expertise to meet all the standards in two years. The RAC then voted unanimously on the following accreditation action regarding the Institute of Design and Construction:

Denial of accreditation.

Appeal

The Institute was notified by mail of RAC's recommendation on November, 1 2013. On November 7 2013, the Institute of Design and Construction sent correspondence to Commissioner King notifying him of an intent to appeal pursuant to §4-1.5(a)(9) of the Rules of the Board of Regents. The Institute submitted materials in support of its appeal on November 26, 2013, and provided supporting material to the Commissioner on December 20, 2013, February 7, 2014 and April 28, 2014. Those documents included information on the Department's approval of the sale of IDC's building and information on the conclusion of the sale agreement. The Institute offered evidence of continued development of an Institutional Effectiveness Plan, the establishment of committees and, assessment measures recommended in the Team report, and personnel changes.

Commissioner's Review

As required by Subpart 4-1.5(a)(9)(iv) of the Rules of the Board of Regents, the Commissioner reviewed the appeal papers, written responses filed, the record before the RAC, the record of its deliberations and its findings and recommendations. The Commissioner found that IDC would be unlikely to come into full compliance with the standards of institutional accreditation within two years. As a result, the Commissioner affirmed the recommendation of the RAC to deny the renewal of IDC's institutional accreditation. The Commissioner's decision was rendered on August 19, 2014 and transmitted to the Institute.

Request for Reconsideration

By letter dated October 16, 2014, IDC submitted a written request for reconsideration based on an alleged error of law. Specifically, IDC challenges the Commissioner's failure to consider its October 2013 letter, included as part of its appeal papers dated November 26, 2013, as well as information submitted on December 20, 2013 and February 7, 2014, both of which were provided after IDC's appeal was filed, pertaining to the sale of IDC's building and its alleged realization of \$28 million. IDC

asserts that these materials should have been considered and that the failure to do so was in violation of Regents Rule §4-1.5, and that, upon reconsideration, a recommendation of probationary accreditation is required. Regents Rule §4-1.5 is unclear as to what materials may be submitted in an appeal to the Commissioner as it states that the institution may commence an appeal by filing with the Commissioner, “the original appeal papers.” Due to the ambiguous regulatory language, IDC’s request for reconsideration was granted and all the papers submitted by IDC as part of its appeal papers dated November 26, 2013 were considered. The Commissioner reaffirmed the recommendation of the RAC to deny the renewal of IDC’s institutional accreditation. The Commissioner’s decision was rendered on December 30, 2014 and transmitted to the Institute.

The attachment to this item sets forth the range of accreditation actions authorized under Subpart 4-1 of the Rules of the Board of Regents and section 4-1.5 concerning appeal of a Regents determination, and section 3.12 regarding the institutional accreditation appeals board.

Rules of the Board of Regents

Subpart 4-1, Voluntary Institutional Accreditation for Title IV Purposes

§4-1.2 Definitions.

As used in the Subpart:

(a) *Accreditation* means the status of public recognition that the Commissioner of Education and the Board of Regents grant to an educational institution that meets the standards and requirements prescribed in this Subpart.

(b) *Accreditation action* means accreditation, accreditation with conditions, probationary accreditation, approval of substantive changes in the scope of accreditation, and denial, revocation, or termination of accreditation.

(c) *Accreditation with conditions* means accreditation that requires the institution to take steps to remedy issues raised in a review for accreditation, and provide reports and/or submit to site visits concerning such issues, provided that such issues do not materially affect the institution's substantial compliance with the standards and requirements for accreditation.

(d) *Adverse action* or *adverse accreditation action* means suspension, withdrawal, denial, revocation, or termination of accreditation or preaccreditation.

(q) *Probationary accreditation* means accreditation for a period of time, not to exceed two years, during which the institution shall come into compliance with standards for accreditation through corrective action.

From NYSED's Handbook of Institutional Accreditation (p.4-5)

At a regularly scheduled public meeting, the Board of Regents considers the Commissioner's findings and recommendation and makes the final determination on accreditation action. The Department's accreditation staff, including the review coordinator, will be available as a resource. Representatives of the applicant institution may be present at this meeting; however, they do not participate in discussion of their application.

The Regents may act or may defer action pending further consideration by the Council or the receipt of additional information. If the Regents take adverse action as defined in Regents Rules §4-1.2(d) on an application for institutional accreditation or renewal of accreditation, a statement of the reason(s) for this action will be provided to the applicant institution.

Possible Accreditation Actions

- Accreditation without conditions. The institution is in full compliance with the standards for institutional accreditation. Any follow-up matters are not, in the judgment of the Regents, of a nature or scope that affects the institution's capacity to maintain adherence to the institutional accreditation standards for the period of accreditation. Recommendations or any follow-up reports relate either to minor compliance matters or to the strengthening of practices that meet the standards of compliance. Accreditation without conditions may be for a period of up to ten years; customarily it is not for a period of less than five years. Accreditation without conditions may apply to institutions seeking initial accreditation or renewal of accreditation.
- Accreditation with conditions. The institution is in substantial compliance with the standards for institutional accreditation. Any areas of non-compliance are not of such nature or scope as to call into question the institution's substantive adherence to the institutional accreditation standards during the term of accreditation. The institution has demonstrated the intent and capacity to rectify identified deficiencies and to strengthen practice in marginally acceptable matters within no more than two years. The institution will be required to take steps to remedy issues raised in the review for accreditation and to provide reports and/or submit to site visits concerning such issues. Accreditation with conditions may be for a period of up to ten years, contingent on a finding of compliance within no more than two years on any areas for deficiency cited in the Regents accreditation action. Accreditation with conditions may apply to institutions seeking initial accreditation or renewal of accreditation.
- Probationary accreditation. The institution is in partial compliance with institutional accreditation standards and may reasonably be expected to meet accreditation standards within no more than two years. During this period, the institution provides documentation of compliance with standards, particularly all standards that were not met at the time of the Regents action. A follow-up visit by Department staff and/or peer reviewers may be required following provision of a required report. Probationary accreditation may apply only to institutions seeking renewal of accreditation.
- Denial of accreditation. The institution does not meet standards for institutional accreditation and cannot reasonably be expected to meet those standards within two years. Denial of accreditation may apply to institutions seeking initial accreditation or renewal of accreditation.

Section 4-1.5 Procedures for accreditation.
[...]

(9) Appeal of advisory council recommendation. Appeal of advisory council recommendation.

(i) Either the institution or the deputy commissioner shall have the right to appeal to the commissioner the findings and recommendations of the advisory council. The institution shall have the right to be represented by counsel during the appeal.

(a) Appeal by the institution. The institution may commence an appeal of the findings and recommendations of the advisory council by filing with the commissioner by first class mail, express delivery, or personal service the original appeal papers, with an affidavit proving the service of a copy thereof upon the deputy commissioner by first class mail, express delivery, or personal service. The deputy commissioner shall transmit to the commissioner the record before the advisory council and the record of its deliberations and its findings and recommendations. The deputy commissioner may also file a written response with the commissioner by first class mail, express delivery, or personal service within 30 days of service of such appeal papers upon the deputy commissioner, with an affidavit proving the service of a copy thereof by first class mail, express delivery, or personal service upon the institution.

(iv) The commissioner shall review any appeal papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations. The commissioner shall also consider any new financial information submitted by the institution as part of its appeal if the information was unavailable to the institution until after the decision subject to the appeal was made, the financial information is significant as determined by the commissioner, and bears materially on the financial deficiencies identified by the agency and the only remaining deficiency cited by the agency is the institution's failure to meet any agency standard pertaining to finances. An institution may seek the review of new financial information only once and any determination on the new financial information does not provide a basis for appeal. Upon such record, the commissioner may affirm, reverse, remand or modify the findings and recommendations of the advisory council. Such determination shall constitute a recommendation regarding accreditation action to the Board of Regents.

(10) Regents decision. The Board of Regents shall review any papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations and any other information considered by the commissioner. At a regularly scheduled public meeting, the Board of Regents shall consider the findings and recommendations of the commissioner and make the determination of accreditation action. If the Board of Regents decision includes an adverse accreditation action or probationary accreditation, the Board of Regents shall notify the institution of its right to a hearing before the institutional accreditation appeals board.

(11) Appeal of a determination of adverse accreditation action or probationary accreditation to the institutional accreditation appeals board.

(i) An institution may appeal a Regents determination of adverse accreditation action or granting probationary accreditation to the institutional accreditation appeals board in accordance with the requirements and procedures of this paragraph. The institution shall have the right to a hearing and to be represented by counsel during the appeal.