

UNITED STATES OF AMERICA



DEPARTMENT OF JUSTICE
Washington, DC 20530

September 9, 1997

Dr. Karen W. Kershenstein
Director, Accreditation and
Eligibility Determination Division
United States Department of Education
600 Independence Avenue, S.W.
Room 3915, ROB-3
Washington, D.C. 20202-5244

Re: Interim Report, Southern Association of Colleges
and Schools - Commission on Colleges ("SACS")

Dear Dr. Kershenstein:

The Department of Justice is responding to the request for comments that was published in the Federal Register in July, 1997. This comment is directed to SACS' Interim Report to the Secretary of Education regarding its compliance with Criteria for Recognition 602.22(b)(3) and its "update" on bringing SACS' practice with regard to the transfer of credit into conformance with its stated policy.

In late 1994, SACS revised the language of its transfer of credit criteria and, apparently, the manner in which its transfer of credit criteria were applied. These changes have greatly increased the difficulty of obtaining credit at SACS-accredited institutions for coursework completed at institutions accredited by three Department of Education-recognized national accrediting agencies - the Accrediting Commission of Career Schools and Colleges of Technology ("ACCSCT"), the Accrediting Council for Independent Colleges and Schools ("ACICS"), and the Council on Occupational Education ("COE"). SACS' 780-member institutions constitute nearly all of the likely "receiving" institutions for the transfer of postsecondary coursework in the South. The consequence of SACS' unreasonably restricting the transfer of credit for coursework completed at ACCSCT, ACICS, and COE accredited institutions may be to foreclose continuing higher education for students at those institutions; the one immediate effect is to restrict competition among accrediting agencies.

The Justice Department submits these comments because of our concern that SACS' restrictive transfer of credit criteria may unreasonably injure competing Department of Education-recognized accrediting agencies, institutions accredited by those agencies, students attending or who have attended those institutions, and the federal and state governments that subsidize the education of those students. Accordingly, we urge the Department of Education to require SACS to adopt less restrictive transfer of credit criteria and practices.

The Justice Department's Interest

For 107 years since the enactment of the Sherman Antitrust Act, the Justice Department has sought to promote competition in all sectors of the American economy. Unreasonable restraints on competition impose unnecessary costs on consumers. Accordingly, such restraints concern us, whether they are imposed in a traditional "smokestack" industry or in a learned profession. The Justice Department's criminal and civil litigation enforcement programs are directed at eliminating unreasonable restraints on competition. Additionally, we support competition through participation in regulatory matters and by submitting competition advocacy letters such as this one.¹ This is not the first Justice Department involvement in accreditation matters. Two years ago, we filed suit against the American Bar Association, challenging, among other practices, its unreasonably restrictive transfer of credit standard. U.S. v. American Bar Association, Civ. No. 95-1211 (CR) (D.D.C., filed June 27, 1995). The ABA agreed to less restrictive practices in the consent decree, including liberalizing its transfer of credit standard.

Our interest in this matter was anticipated by the Department of Education whose staff recognized SACS' transfer credit criteria and practices as a possible "major problem" in the Staff Analysis of SACS' petition for continued recognition (p. 27) and who hoped for no "recurrence of what happened with the American Bar Association" during the November, 1995 National Advisory Committee hearings on SACS' petition. (Tr. 118.) At the hearing, the Department of Education staff described the intent and effect of SACS' revised transfer of credit criteria as follows:

¹ Earlier this year, the Justice Department filed another competitive advocacy letter opposing a proposed Unauthorized Practice of Law opinion before the Virginia Supreme Court that would have eliminated competition from lay residential real estate settlement services in Virginia. Subsequently, the Virginia legislature enacted legislation preserving that competition. Va. Code Ann. §§ 6.1-2.19-6.1-2.29 (Michie 1997).

MR. PORCELLI: The intention is not to exclude the transfer of credit but to make it as difficult as possible, asking registrars to take time out of their busy schedules to justify [the acceptance of transfer credit with] written documentation. It would be easier for them to just say let's exclude and use the written policy of the Southern Association as an excuse. That's the unintended effect or possibly intended effect.

(Tr. 22.) At this hearing, one National Advisory Committee member also appeared to view SACS' revised transfer criteria as replacing an institutional prerogative with a prohibitory restraint:

DR. ADAMANY: . . . I agree that there is an institutional prerogative to accept [or] to not accept transfer credits, but that's not what we're discussing here. What we're discussing is an agency policy that has prohibitory language and then imposes burdens on institutions if they fail to follow the prohibitory language and consequently deprives institutions of the latitude they have historically had to accept or not accept transfer credits.

(Tr. 121.)

SACS' Transfer Of Credit Criteria

Prior to 1994, SACS' transfer of credit criteria required that coursework "must be completed at an institution accredited as degree-granting" by one of the six regional accrediting agencies to be accepted for transfer credit. The enumerated exceptions included one for coursework completed at an institution accredited by an accrediting agency recognized by the Council on Postsecondary Accreditation ("COPA").² Another exception permitted the transfer of "block" credit from non-degree-granting institutions accredited by an accrediting agency recognized by COPA, if the receiving institution reviewed the "block" on a course-by-course basis.³ The transfer of credit

² COPA ceased existence on December 31, 1993 and was immediately succeeded by the Commission on Recognition of Postsecondary Accreditation ("CORPA"). CORPA was succeeded this year by the Council on Higher Education Accreditation ("CHEA"), albeit with a more limited membership.

³ SACS' pre-1994 criteria for accepting coursework for credit toward a graduate degree also required its completion at a regionally-accredited institution and also allowed an exception for coursework completed at an institution accredited

(continued...)

criteria required "documentation" to justify each enumerated exception. We believe, however, that the documentation requirement was generally waived for the enumerated exceptions prior to the 1994 revisions.

In 1994, SACS revised its transfer of credit criteria. Initially, we understand that SACS proposed to drop the "COPA" exceptions and not replace them. Following complaints by the Accrediting Association of Bible Colleges ("AABC") and a number of its members, SACS adopted revisions replacing the two "COPA" exceptions with an exception for undergraduate coursework completed at a "degree-granting institution accredited by a professional accrediting body responsible for free-standing institutions within a specialty," and an exception for "block" credit from "non-degree-granting institutions accredited by a professional accrediting body responsible for free-standing institutions within a specialty." The "COPA" exception for the acceptance of graduate school credits was also replaced by SACS with an exception for the transfer of coursework completed at a "degree-granting institution accredited by a professional accrediting body responsible for free-standing institutions within a specialty." The effect of the revision was that COE, ACICS, and ACCSCT member institutions were no longer within an enumerated exception, but, among others, AABC-accredited schools were.

Subsequently, at the November 1995 National Advisory Committee hearing, SACS' representative stated that the "COPA" exception was not replaced by a "CORPA" exception because CORPA was a "fledgling organization" (Tr. 99).⁴ SACS did not replace the "COPA" exception with one for Department of Education recognition because new Department regulations were not yet in effect and SACS preferred to "identify" with another private entity (Tr. 102). SACS claimed that the revisions to its transfer of credit criteria were not motivated by anticompetitive considerations, stating:

It was not motivated by competitive market considerations or the defection of the COE institutions, as some have alleged. The commission has no need to market its services or quash competition. The decision was motivated by academic responsibility. Certainly it was not the intent to make transfer as difficult as possible simply for the purpose of making transfer as difficult as possible.

³(...continued)

by a COPA-recognized accrediting agency.

⁴ On December 12, 1993, three weeks before COPA's demise and CORPA's succession to it, SACS' Commission on Colleges agreed to join and pay dues to CORPA.

(Tr. 43.)

SACS' Revised Transfer Of Credit Criteria Appear
More Restrictive Than The Standards Of The
Other Regional Accrediting Agencies And The
Policy Recommended By COPA And CORPA

In general, SACS' accreditation criteria are generally more detailed and prescriptive, and rely more on the executory "must" (bolded in their text), than the accreditation criteria of the other regional accrediting agencies. Although SACS' Interim Report states that its revised transfer of credit "policy and criteria are comparable to all other regional accrediting bodies" (p. 13), we disagree.

SACS' prohibitory transfer criteria are contrary to the principle of institutional autonomy set forth in the 1978 Joint Policy Statement on Transfer and Award of Academic Credit:⁵

Basic to this statement is the principle that each institution is responsible for determining its own policies and practices with regard to the transfer and award of credit. Institutions are encouraged to review their policies and practices periodically to assure that they accomplish the institution's objectives and that they function in a manner that is fair and equitable to students. Any statements, this one or others referred to, should be used as guides, not as substitutes, for institutional policies and practices.

The Joint Policy Statement recognizes that, for reasons of social equity, educational effectiveness, and the wise use of resources, institutions should adopt policies and procedures that "provide maximum consideration for the individual student who has changed institutions or objectives." It sets forth three general considerations to guide the receiving institution: the quality of the sending institution; the comparability of the earned credit to that offered by the receiving school; and the appropriateness and applicability of the earned credit to the receiving institution's program and the student's goals.

The Joint Policy Statement lists as proxies for the quality of the sending institution its accreditation by CORPA-recognized regional, national, or certain professional accrediting agencies.

⁵ The Joint Policy Statement was adopted by COPA, the American Council on Education/Commission on Educational Credit, and the American Association of Collegiate Registrars and Admissions offices. It was subsequently adopted by the American Association of Community and Junior Colleges in April, 1990 and by CORPA on January 16, 1994. It is attached as Exhibit 1.

In its revised criteria, SACS maintains the proxies for the regional and professional accrediting agencies, but not for the national accrediting agencies recognized by CORPA and the Department of Education. Oddly, perhaps, SACS' revised criteria appear to accept the proxy for quality afforded by the New England regional association's Commission on Vocational, Technical, Career Institutions, but not COE's, even though the two agencies accredit similar postsecondary institutions, and both originated as commissions within regional accrediting associations.

In addition to departing from the Joint Policy Statement, SACS' revised transfer of credit criteria appear to be a more restrictive outlier when compared to those of the other five regional accrediting agencies.⁶ SACS is the only regional accrediting agency requiring, as a general matter, that "Coursework transferred or accepted for credit . . . **must be completed** at an institution accredited . . . by a regional accrediting body. . . ." [bolded emphasis in the original], and it is the only regional accrediting agency that requires the receiving institution to document extensively exceptions to the transfer criteria.

Moreover, the transfer of credit criteria of the other regionals are neither so prescriptive nor so prohibitory as SACS'. For example, Middle States' transfer of credit criteria state that:

It is important for all institutions to develop reasonable and clear policies and procedures for acceptance or non-acceptance of transfer credit. Transfer of credit is a concept that may involve transfer between similar or dissimilar institutions and curricula. It may also involve recognition of extra-institutional learning, as well as transfer between institutions and curricula of similar characteristics. As their personal circumstances and their educational objectives change, students seek to have their learning recognized by institutions where they apply for admission. An institution's policies and procedures should provide appropriate consideration, consistent with good educational practice, for the individual student who has changed institutions or objectives. To facilitate the smooth transition of students from one institution to another and the transfer of their credits, colleges should make clear the process and manner by which such transfer credits will be accepted.

⁶ SACS' transfer credit criteria and those of the other regionals are attached as Exhibit 2.

Colleges should work towards establishing articulation agreements where appropriate with other institutions.

The North Central Association's transfer credit standard states that:

Commission policy holds that each institution determines its own policies and procedures for accepting transfer credits, including credits from accredited and non-accredited institutions, from foreign institutions, and from institutions that grant credit for experiential learning and for non-traditional adult learner programs.

The Northwest Association's transfer credit standard is nearly as simple:

2.C.4 The institution's policies for the transfer and acceptance of credit are clearly articulated. In accepting transfer credits to fulfill degree requirements, the institution ensures that the credits accepted are comparable to its own courses. Where patterns of transfer from other institutions are established, efforts to formulate articulation agreements are demonstrated.

* * *

3.C.4 Transfer credit is accepted from accredited institutions or from other institutions under procedures which provide adequate safeguards to ensure high academic quality and relevance to the students' programs. Implementation of transfer credit policies is consistent with 2.C.4 as well as Policy 2.5 - *Transfer and Award of Academic Credit*, pages 41-44. The final judgment for determining acceptable credit for transfer is the responsibility of the receiving institution.

The New England Higher Education Commission also has a simple transfer of credit accreditation standard. It cautions that the "institution does not erect barriers to the acceptance of transfer credit that are unnecessary to protect its academic quality and integrity, and it seeks to establish articulation agreements with institutions from which and to which there is a significant pattern of student transfer" (§ 4.36). Similarly, the Western Association's Senior Colleges Commission transfer of credit standard only requires that:

4.B.8 The institution has clearly articulated policies for the transfer of credit to ensure that students who

transfer in with general education course credits meet its own standards for the completion of the general education requirement. Where patterns of transfer from specific community and junior colleges are established, efforts are undertaken to formulate articulation agreements regarding general education.

The Western Association's Junior College Commission has a similar transfer of credit standard.

Not only are SACS' transfer of credit criteria different from the standards of the other five regional accrediting agencies and the Joint Policy Statement, SACS' application of its criteria may also be more restrictive. Educational Management Corporation ("EMC"), which operates 14 Art Institutes throughout the United States, believes that SACS is more restrictive. Local Art Institutes have applied for accreditation from five regional accrediting agencies. Because EMC deals with five of the six regional accrediting agencies, it is well situated to assess the differences between SACS and the other regionals. EMC has observed that the SACS' criteria have the practical effect of causing SACS-accredited institutions to deny transfer credit because of the burden of complying with SACS' documentation requirements. While EMC operates Art Institutes that have SACS accreditation, its Fort Lauderdale Art Institute is accredited by ACCSCT. The Fort Lauderdale Art Institute has 31 articulation agreements with regionally-accredited institutions, but only one is with a SACS-accredited school. EMC is not even certain that one institution will honor the agreement because of SACS' revised, more restrictive transfer of credit criteria.⁷

SACS' prohibitory transfer of credit criteria are contrary to the Joint Policy Statement. The plainly restrictive language of SACS' revised transfer of credit criteria and its apparent restrictive effect also distinguish SACS from the other regional accrediting associations. This strongly indicates that SACS' policy is inconsistent with accepted educational policy and is a departure from the policy of the other regionals and the accreditation community.

Under Antitrust Analysis, SACS' Transfer Of Credit Criteria And Practices Appear To Be A Boycott Of Institutions Accredited By Competing Accrediting Agencies

SACS and the other five regionals accredit all or nearly all of the traditional, non-profit colleges and universities. The regionals have historically operated in contiguous but separate

⁷ EMC's letter to the Department of Justice is attached as Exhibit 3.

geographic areas. Department of Education recognition is now essential to the regionals for students at their member institutions to retain eligibility for Title IV funding. The regionals seek recognition to operate in their traditional areas. Hence, their exclusive territories are now enforced, as a practical matter, by Department of Education recognition that limits each regional accrediting agency to its historic geographic area. Many of the 780 postsecondary institutions accredited by SACS do not have a real choice of accrediting agencies because the other regionals lack recognition to operate in the South, and the various national and specialized accrediting agencies may not be qualified (and also lack recognition) to accredit many or most of SACS' institutions.

Some categories of postsecondary institutions in SACS' 11-State territory do, however, have a choice among institutional accrediting agencies. Degree-granting public and proprietary technical and occupational colleges, offering an applied associate degree, may be accredited by SACS, COE or ACCSCT. Similarly, degree-granting private business colleges may be accredited by SACS or ACICS.⁸

ACICS, COE, and ACCSCT accredit a large number of degree-granting institutions in SACS' 11-State territory. ACICS accredits 86 degree-granting institutions in SACS' territory, COE accredits 69, and ACCSCT accredits 68. These institutions enroll over 100,000 students and have thousands more graduates. Many of these institutions appear to be the type that are eligible or could become eligible to seek SACS accreditation, thereby representing a natural market for SACS' expansion.⁹ While some of these institutions may decide on their own to seek SACS accreditation, institutions should not be forced to seek SACS accreditation to ensure that their students' credits will transfer to a SACS institution.¹⁰

⁸ Unlike COE and ACCSCT, ACICS accredits a number of four-year institutions and even a few that grant masters degrees.

⁹ The 781 members of SACS' Commission on colleges are divided into six groups, according to the highest level of education offered by each group. Level I has 313 members awarding the associate degree. Level II has 140 members awarding the baccalaureate degree. Level III has 140 members awarding a masters degree. Level IV has 35 members awarding a masters and an education specialist degree. Level V has 93 members awarding a doctorate in 3 or fewer disciplines, and Level VI has 60 members awarding a doctorate in 4 or more disciplines.

¹⁰ Mathtech, Inc. has been commissioned to conduct a study reviewing accreditation standards for AAS degrees customarily offered by technical colleges and comprehensive community colleges. Mathtech concluded that COE, ACCSCT, and ACICS accredited institutions seek regional accreditation in order to enhance their status or credibility and to improve transfer of credits for students. Mathtech, Inc., Phase II Report, p. IV-9 (June, 1997).

As students and workers in SACS' region seek to continue their education and raise their educational qualifications, many more will seek to transfer credits from non-SACS institutions to SACS institutions than the reverse because SACS accredits all of the higher-level institutions and all of the comprehensive public universities and community colleges in the South. Consequently, the inability of students at non-SACS institutions to transfer credits for coursework completed at those institutions to SACS institutions seriously diminishes the value of non-SACS accreditation. This injures non-SACS institutions, and imposes costs on students and on entities who subsidize the students. Furthermore, the imposition of unnecessary restrictions on the transfer of credit produces inefficient mismatches of students with institutions. Such mismatches occur when transfer of credit restrictions prevent students from pursuing an education at institutions that best match their talents, goals and financial resources, and prevent institutions from enrolling the students.

A refusal to accept coursework completed at another institution is equivalent to a refusal to deal or a boycott. In situations where there is industry self-regulation, as exists here, courts will generally look to see whether the refusal to deal or boycott is intended to accomplish a justifiable goal, and whether the action is reasonably related to that goal. National Society of Professional Engineers v. United States, 435 U.S. 679, 687-90 (1978). Expressed another way, the court will look at the purpose of the challenged conduct and whether the challenged conduct reasonably accomplishes the purpose or whether it imposes undue economic harm. Associated Press v. United States, 326 U.S. 1 (1945). Boycotts have also been challenged as illegal monopolizations. In Lorain Journal v. United States, 342 U.S. 143 (1951), the Supreme Court inferred an intent to monopolize where a local monopoly newspaper refused to accept advertising from customers who also placed advertisements with a local broadcast station. Additionally, a refusal to deal may represent an unlawful attempt to extend monopoly power from one market to another. Otter Tail Power Co. v. United States, 410 U.S. 366 (1973).

SACS is the only institutional Department of Education-recognized accrediting agency for many of its members, accrediting all of the most prestigious postsecondary institutions, public universities, four-year colleges, and comprehensive community colleges in its region. Its "prohibitory" transfer criteria should not be the means to force those institutions in SACS' territory which have a choice of accrediting agencies to choose SACS. If SACS intends to preserve the integrity of the degree and otherwise maintain educational quality, it can accomplish this through much less restrictive criteria and policies. Antitrust doctrine cautions that the breadth of a restriction should be in relation to its legitimate

need, meaning it should be the least restrictive measure necessary to accomplish the quality objective. In this regard, the Joint Policy Statement and the transfer standards of other accrediting agencies indicate that quality can be achieved in a far less restrictive manner than that pursued by SACS.

The timing of SACS' revised transfer criteria suggests that the changes may have been motivated by anticompetitive considerations, rather than by quality considerations. The revisions were proposed and approved in 1994 during the time that COE's predecessor, then one of SACS' four commissions, had announced its plan to separate from SACS. The SACS-COE schism was a result of SACS' refusal to permit COE to continue to accredit technical institutions once they became technical colleges.¹¹ The division of accrediting responsibilities proposed by COE resembles the division of accrediting responsibilities between the two commissions of the New England association. Throughout 1994, while SACS was considering the revised transfer of credit criteria, CORPA had succeeded to the accreditation functions of COPA and SACS was a member of CORPA. Had the 1994 revisions instead replaced the "COPA" exception with a "CORPA" (or Department of Education-recognized) exception, then COE (as well as ACICS and ACCSCT) member institutions would have remained within the exception.

The timing and nature of the revised transfer credit criteria are not the only indication of SACS' possible opposition towards COE. When COE sought Department of Education recognition in 1995 to accredit technical colleges, SACS' executive director solicited opposition to COE's petition. Nearly all of the opposing comments and appearances came from SACS or its membership.¹²

Support for the conclusion that SACS' transfer credit restrictions are unreasonably broad is also found in Mathtech, Inc.'s report on accreditation standards for AAS degrees. Mathtech's study states that the general education accreditation requirements of SACS, COE, the North Central regional association, ACICS, and ACCSCT do not differ significantly. It

¹¹ Aside from whether COE or SACS is better qualified to accredit technical colleges, the decision determined whether COE's market would shrink and SACS' would grow.

¹² Attached as Exhibit 4 is the solicitation that SACS' executive director circulated to SACS' members. Petitioning for government action is, of course, protected constitutional activity and cannot be the basis of an antitrust violation under the so-called Noerr-Pennington doctrine (Eastern Railroad President's Conference v. Noerr Motor Freight Inc., 365 U.S. 127 (1961), and United Mine Workers v. Pennington, 381 U.S. 657 (1965)). Such conduct, however, may be admissible to demonstrate the purpose and character of other conduct. Pennington, 381 U.S. at 670 n.3.

noted that the program length and general education offerings of all the schools in its survey satisfied the standards of all five accrediting agencies. (Mathtech, supra, p. III-13.) Thus, SACS' restrictions on transfer of credits for coursework completed at non-regionally accredited technical colleges are not justified by differences in the standards applied by the national accrediting associations.

**SACS' Revised Transfer Credit Criteria Derogate
Accreditation By Other Recognized Accrediting Agencies**

Pursuant to 34 CFR § 602.22(b), the Department of Education directed SACS to submit an Interim Report "to strengthen its response to the requirements of this section by engaging in dialogue with the accrediting agencies adversely affected by its policies on the transfer of credit." The Department of Education staff's report on SACS' petition for continued recognition noted that the Justice Department may have concerns that accreditation agencies' policies, such as SACS', may "have the effect of restraining trade" (p. 27).¹³ It further observed that other accrediting agencies were concerned that SACS has unnecessarily restricted the autonomy of its member institutions to decide for themselves whether or not to accept transfer credits.

In its Interim Report, SACS denies that it made "substantive changes" in the text of the transfer credit criteria and claims that it created "no new expectations" in its revised transfer criteria. SACS also states that it has informed its membership that exceptions to its transfer credit criteria are allowable and that the enumerated five examples of possible exceptions are not all-inclusive. (Interim Report, p. 11.) SACS claims that its goal "is to facilitate transfer of credit in a manner which ensures that appropriate controls are observed so as to protect the academic integrity of the degree" (p. 12). SACS further claims that its "policy and criteria are comparable to all other regional accrediting bodies" (p. 13), and that the reason it has not required member institutions to document the basis for accepting credits from institutions accredited by the regionals is that the regionals accredit similar types of institutions and generally have similar accreditation standards. SACS also points out that no new applicant, candidate or member institution has been sanctioned for failure to meet its revised transfer criteria

¹³ This concern was stated well before SACS' revised transfer credit criteria came to the attention of the Justice Department.

and that many SACS members accept transfer credit from non-regionally-accredited schools.¹⁴

Despite SACS' representations to the Department of Education, SACS' member institutions appear to understand that SACS' revised transfer of credit criteria require a boycott of credit earned at non-regionally-accredited schools. On August 5, 1997, the admissions director of Daytona Beach Community College ("DBCC"), which enrolls over 12,000 students on its 5 campuses, wrote the president of Jones College that DBCC refused to accept Jones College credits "in order to maintain our regional accreditation" since "Jones College is not accredited by SACS."¹⁵ Jones College opened in 1918 and is ACICS-accredited. Its Corporate President informed the Justice Department that SACS' revised transfer of credit criteria is threatening the continued existence of at least one of its campuses because of the refusal, since 1994, of SACS-accredited institutions to accept Jones College credits, and because students are being told by SACS' members that Jones College is not accredited.

Earlier, we explained that SACS' revised transfer of credit criteria appear different from the transfer of credit standards of the other regionals. Prior to 1994, SACS had the most restrictive transfer of credit criteria of any regional accrediting agency. The 1994 revisions tightened SACS' standards further. SACS has offered no justification for its more restrictive transfer of credit criteria, instead denying that the 1994 changes are significant.

SACS' increased restrictions on transfer of credits are contrary to educational policies supporting institutional autonomy and recognizing that education is increasingly a life-long and continuing process.¹⁶ The other accrediting agencies adversely affected by SACS' revised criteria and their members are no more satisfied today by SACS' "dialogue" with them than they were two years ago. The coincidence between the timing of SACS' revision to its transfer of credit criteria and COE's departure from SACS suggests the likelihood the revisions were intended to injure a competitor. Finally, SACS' prohibitory

¹⁴ A great number of these arrangements appear to involve COE-accredited schools and date to the period when COE's predecessor was one of SACS' commissions.

¹⁵ The letter is appended as Exhibit 5.

¹⁶ Attached as Exhibit 6 is an article in the July 18, 1997 Chronicle of Higher Education describing the public interest in facilitating transfer arrangements. It notes the 280 arrangements now in place between the Georgia technical college system and Georgia's university system. Undoubtedly, there are situations where transfer credit is inappropriate, but an accrediting agency should not erect unnecessary obstacles.

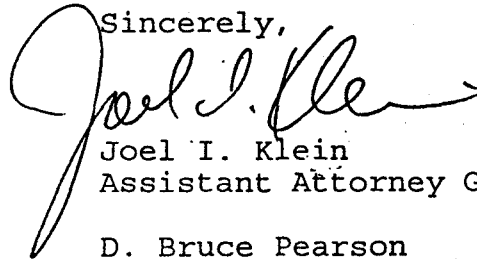
transfer of credit criteria indicate a lack of comity towards other recognized accrediting agencies.

Conclusion

The Department of Justice submits this comment because of its concern that SACS' revised transfer of credit criteria may injure competition, competitors, consumers, and government agencies funding postsecondary education. SACS' revised transfer of credit criteria stand apart from those of other Department of Education-recognized accrediting agencies. They most adversely affect technical, occupational, and vocational students who wish to continue their education, but who may be the least able to bear the burden of unnecessary and redundant courses. They may also cause the waste of educational resources by placing unnecessary restrictions on transfer credit that are bad competition, educational, and public policy. For these reasons, we urge the Department of Education to exercise its oversight of authority to require SACS to adopt more reasonable transfer of credit criteria and policies.

We appreciate the opportunity to file this comment and the courtesies your office has shown us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joel I. Klein". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joel I. Klein
Assistant Attorney General

D. Bruce Pearson
Attorney