

April 6, 2015

The WASC Senior College and University Commission ("WSCUC" or "the Commission") has issued a revision of its policy on agreements between accredited institutions and unaccredited entities, such as service providers. Entitled *Agreements with Unaccredited Entities Policy* (the "Policy"), the new statement replaces the Commission's former policy statement entitled *Contracts with Unaccredited Entities*. The revised Policy has been issued in response to the growing number of institutions that have or are contemplating entering agreements with unaccredited service providers. While there is little in the new Policy Statement that is radically different from prior practice, for the first time the Commission has provided an unusually clear indication of what it expects and, importantly, areas both of potential concern and those where institutions and service provider should not fear to tread. We anticipate that this approach will be viewed favorably by the other regional accrediting commissions, and may indeed foretell a common policy.

The revised policy focuses on the Commission's expectations of WSCUC-accredited institutions and the concomitant responsibilities of each institution to protect the quality and integrity of all activities carried out in its name or on its behalf, regardless of whether undertaken by the institution itself or by an outside provider. In accordance with federal regulations that govern the recognition of accrediting bodies<sup>1</sup> regarding agreements with unaccredited entities, an accreditor is required to conduct a substantive change review if an institution enters into an agreement with an unaccredited entity for the delivery of 25% or more of the educational content of a program offered by the institution. The WSCUC policy also echoes federal rules in stipulating that it will not approve "[a]rrangements with unaccredited entities that provide 50% or more of academic services for at least one academic program<sup>2</sup> ..." adding, however, an interesting variation: "except under exceptional circumstances and in cases in which Title IV funds are not an issue." This is in itself an important provision, allowing institutions greater flexibility in collaborations that are outside of its conventional programs. It is also important to note that the federal 50% rule and the parallel WSCUC 50% policy applies to the provision of *educational programs*; that is, instruction. They do *not* apply to support services such as recruiting or even course development, so long as the courses are ultimately reviewed, approved and taught by the institution's own faculty.

The revised policy includes *Guidelines for Good Practice in Agreements with Unaccredited Entities* (the "Guidelines"). Through the use of these Guidelines, the Policy describes the Commission's expectations for the establishment of agreements between WSCUC-accredited institutions and unaccredited entities relative to the role and responsibilities of the institution, the components of the agreement, financial arrangements, articulation of the educational activities encompassed in the agreement and, if applicable, the submission of the agreement for review and decision regarding approval. The Guidelines delineate certain core academic activities for which a WSCUC-accredited institution must be *solely* responsible. These include:

- establishing the admissions criteria for students and making final admissions decisions;
- selecting, approving, and appointing faculty;
- setting the standards for, awarding and recording of academic credit and credentials; and
- reviewing and approving course content and program curriculum.

Also included among the mandatory institutional functions is providing for the assessment of student learning (i.e. defining outcomes, analyzing and interpreting evidence of outcomes, and using the information for institutional improvement).

Perhaps equally as important, the Guidelines clarify those activities that *will not* require Commission approval if such services are provided by an unaccredited entity, such as the provision of the following:

- technology services;
- auxiliary services;
- instructional and non-instructional facilities;
- advertising, recruiting, and advising students regarding enrollment;
- collecting student data; and
- support services; and
- publisher-developed instructional and courseware, as long as materials are subsequently reviewed and approved by the

institutions own facility.

The Policy also includes a new, and very useful, *Outsourced Services Table*, which describes various types of services that may be outsourced to an unaccredited entity and those that generally may not. This clarifying element of the Policy is perhaps the most interesting and while there are few surprises as to which services may appropriately be outsourced and which should not, the *Outsourced Services Table* reduces the need to guess about what is acceptable. It is also very important to note that the Commission has acknowledged that the table is exemplary rather than absolute. The fact that an activity is on one list or the other is not dispositive, but the burden shifts to the institution to demonstrate that the outsourcing to an unaccredited provider is not contrary to the overarching purpose of the Policy, which is to ensure that academic control and assurance of quality and integrity remains with the institution.

The table is arranged according to the types of services that institutions are likely to consider and outside providers likely to offer, followed by specific activities related to each topic and a separate column that indicates whether the Commission considers each activity, on its face, to be acceptable to be outsourced. The full table is attached, along with the full text of the Policy.

For the first time, the Policy provides a reasonably clear road map delineating that which an institution is expected to hold dear and that which it can entrust to an outside provider. The Policy also suggests areas for exploration—with the very clear admonition that if it isn't clear in the guidance, an institution is expected to consult with its liaison. All told, however, the Policy seems to be responsive to the growing value presented by outside service providers in helping institutions control costs while improving services. At the same time, it makes clear that it doesn't matter who performs the task and that the institution will be held accountable.

This evolution is also evidenced in the Commission's new *Incubation Policy* that is intended to guide the "incubation" relationship between a WSCUC-accredited institution and an unaccredited entity as the latter may evolve and itself becomes "separately accreditable."

Finally, please note that there are several related *federal* laws and regulations that bear on agreements between institutions and third party providers. Notable is the *Prohibition Against Incentive Compensation*<sup>3</sup> and the special rules that apply to entities that by virtue of the services they provide qualify as *Third Party Servicers*.<sup>4</sup> For further guidance respecting these two areas, please contact [Greg Ferenbach](#).

Please contact us with any questions you may have regarding how these policies may affect your institution or organization, and to discuss how Cooley's Education practice can provide additional assistance.

#### NOTES

1. 34 CFR §602.22(a)(2)(vii)
2. The Higher Education Act provisions governing the federal student aid programs stipulate that an institution is not eligible for Title IV funds if it enters into an agreement with an unaccredited entity to provide 50% or more of educational program. 34 CFR §668.5(c)
3. 34 CFR §668.14(b)(22) and related Department of Education guidance respecting "Bundled Services" (See DCL GEN-11-05, March 17, 2011.)
4. 34 CFR §668.25

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

# Key Contacts

<p>Jay Vaughan Washington, DC</p>	<p>jvaughan@cooley.com +1 202 776 2031</p>
---------------------------------------	--

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.