



Middle States Commission on Higher Education
1007 North Orange Street
4th Floor, MB #166
Wilmington, DE 19801

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Re: Public Comments on Third-Party Providers Policy and Procedures

Thank you for the opportunity to provide comments on the Third-Party Providers Policy and Procedures, which are intended to protect students from the risks posed by outsourcing program functions to non-accredited, third-party companies. We, the undersigned, represent a coalition of researchers, advocates, and organizations working to protect students, military veterans, and taxpayers from deceptive practices in higher education.

We write largely in support of the new Third-Party Providers Policy and Procedures and to commend MSCHE for defining expectations for member institutions electing to enter into written contracts with third-party providers. We note that regardless of the adoption of the new policy, institutions are responsible and liable for their agents' conduct under the law. The expectations outlined in this policy, however, will allow and require MSCHE, in its role as an accreditor, to more effectively hold member institutions accountable for overseeing responsible relationships with third-party servicers like Online Program Managers (OPMs).

While we strongly support the intent of the proposed policy, we have several recommendations for strengthening and clarifying the policy. We detail our recommendations for specific provisions below in order of their appearance in the proposed Third-Party Providers Policy and Procedures document.

II. Procedures for the Development of Written Arrangements and/or Contracts with Third-Party Providers

The proposed procedures for the development of written arrangements and/or contracts provide broad guidance for institutions and affirm basic principles, including that “the institution is responsible for the management, assessment, oversight, and support of third party providers.”

We commend MSCHE for developing this policy to address the risks posed by outsourcing to third-party providers. However, to fully address these risks, we recommend that MSCHE establish more specific requirements for institutions concerning the need for institutions to retain control over key program functions, such as the provision of instruction, curriculum

development, and setting admissions standards and enrollment targets, and to explicitly set out the consequences that institutions will face for failure to maintain control over key functions or failure to maintain adequate oversight of their third-party providers. MSCHE should also explicitly define which adverse actions could arise if institutions fail to properly oversee the activities of their third-party servicer.

Preventing Aggressive and Deceptive Recruiting Practices

OPMs frequently enter into tuition-sharing agreements with nonprofit and public institutions that create financial incentives for the company to increase enrollment in order to boost their own profits. As a result, OPMs have a financial incentive to engage in aggressive or deceptive recruiting practices; water-down admissions requirements to enroll students who may not benefit from the program; and promote high-cost, low-value programs,^{1 2} sometimes by targeting low-income students, students of color, and military veterans.

MSCHE's proposed policy around marketing recognizes this issue and seeks to address it. For example, the policy provides that "[t]he institution is responsible for the accuracy of promotional materials related to the arrangement with the third-party provider, including the accurate representation and required public disclosures of the role of the third-party provider." The policy further provides that "contracts that outsource marketing will receive intense scrutiny." These provisions are a good first step towards deterring misconduct and holding member institutions accountable for misconduct by third-party providers. Holding institutions accountable for ensuring the accuracy of the promotional material can help alleviate predatory recruitment and deceptive marketing and protect students.

While these provisions are constructive, the proposed policies are inadequate to fully address the risks of outsourcing recruiting and related functions via tuition-sharing arrangements. As noted above, even without accreditation standards, institutions have a legal responsibility to monitor the conduct of their third-party providers and are liable for misconduct by their agents, regardless of whether the institution violates accreditor standards. However, accreditation standards for oversight of third-party providers can provide an important added layer of safeguards for students. To better address the risks posed by arrangements with OPMs, the proposed policy should:

1) require institutions to continuously manage and oversee marketing and recruiting efforts and approve all promotional materials, communications with prospective students, recruitment training and scripts,

¹ Stephanie Hall, "Colleges Need to Avoid Misleading Claims." The Century Foundation, November 20, 2020, <https://tcf.org/content/commentary/colleges-need-avoid-misleading-ad-claims/>.

² Lisa Bannon, "USC Pushed a \$115,000 Online Degree. Graduates Got Low Salaries, Huge Debts," *Wall Street Journal*, November 9, 2021, <https://www.wsj.com/articles/usc-online-social-work-masters-11636435900>.

2) require institutions that enter into third-party servicer contracts to maintain control of the governance of programs and control over setting enrollment targets, establishing admissions standards, and making enrollment decisions, and

3) provide that contracts that do not clearly define institutional control of core functions such as marketing and setting enrollment targets and admissions standards will be flagged for revision by MSCHE and/or denied approval by MSCHE.

As an entity, MSCHE’s commitment to providing “intense scrutiny” of written arrangements that outsource marketing, recruitment, and advertising should include utilizing publicly available information about the third-party provider being contracted. Assessment and evaluation of third-party providers requires deep knowledge of their prior work and engagement with other institutions as well as information that can be acquired through press, legal filings, shareholder meetings, and more. MSCHE should both actively collect and disseminate data and information about OPMs and their past performance to their member institutions. Sharing information about which OPMs have been involved in closures or misconduct, for example, would guide member institutions as they decide where to partner.

III. Procedures for Commission Review of Outsourcing to Third-Party Providers During Accreditation Activities

MSCHE’s proposed policy provides that “excessive outsourcing of key business operations will receive intense scrutiny.” We commend MSCHE’s recognition that excessive outsourcing of key institutional operations warrants additional oversight. Indeed, institutions should maintain control over core and student-facing functions. We recommend that the policy further define “key business operations” and explain what “intense scrutiny” entails. This will strengthen the policy by clarifying for institutions which functions should be outsourced in a limited manner and what consequences they might be subject to if they outsource these key functions to third-party providers. For example, contracts could be subject to “intense scrutiny” if they include “high risk” elements³ such as: outsourcing 100% of services, 2) outsourcing entire program catalogs, 3) providing for revenue sharing, 4) multi-year or indefinite contract duration, 5) auto renewal provisions, 6) outsourcing key functions such as setting target enrollments or establishing admissions requirements. ⁴ These types of clarifications will provide institutions with more concrete information about problem practices.

Requirements to Provide Information to MSCHE about Outsourcing

Information sharing between the agency and its member institutions is a critical component of maintaining oversight of institutions’ relationships with third party providers. In Section III.C of

³ Taela Dudley et al., *Outsourcing Online Higher Ed: A Guide for Accreditors*, The Century Foundation, June 28, 2021, <https://tcf.org/content/report/outsourcing-online-higher-ed-guide-accreditors/>

⁴ Ibid.

the proposed policy, MSCHE requires institutions to provide a minimum level of information regarding third-party servicers, including: the name of the outsourced program, the percentage of program that is outsourced, a description of services offered by third-party providers; a sample of written arrangements and/or contracts with third-party providers; and evidence of the institution's evaluation of third-party providers. This is a common-sense provision that will permit the MSCHE to understand the extent of the services being outsourced to third-party providers and the types of services being outsourced.

We urge MSCHE to strengthen this provision by requiring institutions to provide not only a sample of written contracts, but instead to require either all written contracts, or all written contracts that outsource key business operations such as instruction, curriculum development, setting enrollment targets, establishing admissions criteria, providing student services, and/or marketing and recruitment of prospective students. By requiring institutions to provide these contracts, MSCHE can ensure that it maintains adequate oversight of written agreements to outsource core institutional functions that directly impact students.

Required Disclosures To Prospective and Current Students

Students are not always aware of outsourcing to third-party providers. For example, in many cases where OPMs provide online programs for institutions, the fact that the program is delivered in part or in full by an OPM and not solely by the institution is not made transparent in marketing materials or even on the school's website.⁵ The proposed policy outlined in Section III.D requires MSCHE to verify that institutions have publicly disclosed on their website or program publications their relationship with OPMs, including descriptions of the contract as well as what portion of educational programming the OPM offers and any additional costs students will incur as a result of enrolling in the outsourced program. We commend MSCHE for requiring transparency about outsourcing for their students. Students are entitled to transparency about the education they are paying for, including information about the entity that is providing that education. We urge MSCHE to take this policy a step further by requiring that this information be made available "via website AND program publication" as opposed to "via website OR program publication." This will ensure that students signing up for online programs offered in conjunction with OPMs will have access to information about the program in any medium through which they may be learning about the program.

Additionally, the proposed policy only requires that the disclosures concerning outsourcing contracts be public. It does not specify the need for clear, concise, and student-focused language. This will help students understand how the outsourcing relationship impacts them. MSCHE could further advise programs to disclose specific, key facets of the contract, including the

⁵ Laura T. Hamilton, Heather Daniels, Christian M. Smith, and Charlie Eaton, "The Private Side of Public Universities: Third-party providers and platform capitalism," UC Berkeley Center For Studies in Higher Education, June 2022, <https://escholarship.org/uc/item/7p0114s8>.

percentage of program faculty or classes taught by faculty with full-time appointments at the institution.

For additional transparency about third-party relationships, MSCHE should also require that OPMs use accurate and non-misleading titles for OPM employees who communicate directly with students. For example, the policy should prohibit OPM staff from using titles such as “advisor” or “counselor” and from representing themselves as employees of the institution or using email addresses from the institution. These practices create the misleading impression that the OPM employee is employed by the institution. The policy should require institutions to disclose that OPM staff are employed by an independent company contracted to the institution.

IV. Procedures for Commission Review of Written Arrangements with Third-Party Providers Through Substantive Change

MSCHE’s Oversight of Third-Party Servicer Contracts

We urge MSCHE to engage in effective oversight of OPM contracts by collecting annual information on program enrollment, withdrawal and retention rates for outsourced programs. Programs that demonstrate potential risk to students, such as programs that expand rapidly within a short period of time, fall short of enrollment targets, have uncharacteristically high dropout rates, or rapidly rising tuition, should be flagged for additional review.

Heightened Review of Arrangements to Outsource Marketing

Institutions have rapidly increased the amount they spend on marketing their programs to students. When large amounts of money are being used for marketing and advertising to prospective students, less money is available to be invested in the students who are enrolled in schools. Additionally, OPMs have on some occasions engaged in deceptive marketing practices. Given the risks associated with marketing, additional safeguards around marketing are needed to protect students. Part IV.D of the proposed policy provides that written arrangements about marketing and advertising will be subject to intense scrutiny. We commend MSCHE for recognizing the risks for students when institutions outsource marketing to third-party servicers. However, we recommend that MSCHE clarify the definition of “intense scrutiny.” This would provide institutions with valuable information and could deter problematic contractual arrangements. MSCHE should utilize all tools available to them, including publicly available information from lawsuits, news articles, press conferences, data on similar programs run by the third-party provider, in consideration of the recruitment and marketing practices of the third-party servicer. Likewise MSCHE should outline specific triggers that warrant additional review of third-party arrangements. Examples could include contracts that provide for revenue-sharing agreements, or contracts with lengthy or indefinite duration.

MSCHE's Third-Party Providers Policy has the potential to set a strong precedent for accreditor oversight of outsourcing to third-party servicers. To address the risks to students posed by outsourcing, the policy must explicitly require institutions to maintain control over core educational functions and decisions and maintain control over decision-making and governance of the outsourced programs. MSCHE should strengthen the proposed policy on third-party providers by providing clear guidelines for institutions on control and governance and on the specific procedures institutions should follow when contracting with third-party providers. The implementation of these recommendations will create a pathway for institutions to outsource services to third parties in a responsible manner that allows them to maintain institutional control and protect students.

Sincerely,

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