

## ***A Quick Reference Guide to Accreditation***

### **Foundational Principles in Federal Law on Accreditation and Higher Education\***

#### **Introduction**

Both higher education and accreditation were established and connected in a highly productive working relationship long before Congressional authorization of the US Department of Education (USDE) or its immediate predecessor agencies. As the federal government became increasingly involved in funding higher education, and as it began to use the results of accreditation, federal laws provided structures to ensure continuing adherence to certain principles. These federal laws have been updated from time to time, but basic foundational principles remain. These principles are deeply ingrained in American values. Continuing to respect and fulfill the requirements of these principles is essential to the success of higher education, accreditation, their relationship with each other, and all that this relationship means to the future capability and capacity of the United States.

#### **Principles**

Three of the most important principles are identified and described and documented with federal statutory examples. This is followed by a short list of corollary principles.

#### **I. Independence**

##### ***A. Independence and Relationships***

The law respects and explicitly confirms the independence of institutions of higher education, accrediting organizations, the federal government, and state government. Under the law, the relationships among these entities and the responsibilities these entities have to each other are structured to retain this independence. The law confirms a separation of powers.

When the USDE was created in 1979, Congress wrote the following statutes that are still in effect:

1) In relation to the rights of local governments and educational institutions:

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve the control of such governments and institutions over their own educational programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

2) In relation to curriculum, administration, and personnel; library resources:

No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any directions, supervision or control over the curriculum, program of instruction, administration or personnel of any educational institution, school, or school system, [or] over any accrediting

agency or association....

[(Pub. L. 96-88, title I, Sec 103, Oct. 17, 1979. 93 Stat. 670)]

## *B. Accreditation Agency Independence*

Consistent with the statutes just cited and previous iterations of the HEA, the HEOA of 2008 explicitly requires accrediting agency independence, especially with regard to standards setting, decisions about the accredited status of institutions and programs, and operational autonomy.

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The statutory language indicates that an “agency or association [eligible to be recognized to fulfill specific federal purposes] is [or functions in a manner that is] separate and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization.”

[(Pub. L. 110-315, Subpart 2 – Accrediting Agency Recognition, Sec. 496 (a) (3), August 14, 2008)]

Separate and independent is further confirmed by four definitional requirements in Sec. 496 (b).

## **II. Academic Decisions are the Responsibility of Institutions and Accreditors**

In addition to the statutes quoted above, statutes defining the relationship between accrediting agencies and the Secretary explicitly confirm that that the Secretary must respect the decisions of institutions and accreditors in academic matters, and that the Secretary’s recognition process is not to be a means for regulating or otherwise intervening in these decisions.

Further, the Secretary is not to attempt to regulate the academic decisions of institutions by developing recognition requirements for accreditors.

The 2008 HEOA states:

Section 496 (g) Limitation on Scope of Criteria -- Nothing in this Act shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this Act shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution’s success with respect to student achievement.

Section 496 (o) Regulations -- ...Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an agency or association described in subsection (a)(5).

Section 496 (p) Rule of Construction – Nothing in subsection (a)(5) shall be construed to restrict the ability of (1) an accrediting agency or association to set, with the involvement of its members, and to apply accreditation standards for or to institutions or programs that seek review by the agency or association; or (2) an institution to develop and use institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

Sections 496 (o) and (p) both refer to Section 496 (a)(5). Section (a)(5) is important

because it requires the Secretary to ensure that the standards for accreditation of the agency or association assesses the institution's academic programs and their results. Sections (o) and (p) make clear that Secretarial authority to ensure the presence of standards addressing various academic categories is not to be construed as the Secretarial authority to define or regulate or otherwise set accreditation standards.

The academic categories listed in (a)(5) to which the prohibitions apply are (A) success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs as established by the institution...; (B) curricula; (C) faculty; (D) facilities, equipment and supplies; (E) fiscal and administrative capacity as appropriate to specified scale of operations; (F) student support services; (G) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising; (H) measures of program length and the objectives of the degrees or credentials offered; (I) ...student complaints...; (J) [certain institutional program responsibilities under Title IV]

### III. Rule of Law -- Checks and Balances

Rule of law and checks and balances principles are evident in many federal statutes regarding the relationship of the federal government to the work of accrediting organizations and institutions. The statutes require certain applications of these principles as the Secretary reviews accrediting organizations for recognition [e.g., Section 496 (n)], and as accrediting organizations review institution and programs [e.g., Section 496 (a)(6)].

As we have shown above, the statutes state the responsibilities of the Secretary, the accreditors, and the institutions in ways that define and set boundaries on authority and scope. On the federal side, the Secretary may not recognize accreditors that serve no federal purpose [Section 496 (m)]. Under this and other provisions, it is clear that USDE does not "own" accreditation or higher education. USDE has authority to recognize accrediting organizations under specified conditions, but no authority to authorize or license their existence.

### IV. Corollary Principles

The above principles and the statutes themselves support many other principles. Some of these have explicit statutory manifestations; others are more implicit. Among the most important are:

Differences in institutional purposes, missions, goals, and methods of teaching and evaluation are to be respected and valued.

Differences in disciplines and professions inform a variety of structures and approaches to higher education in various fields.

Expertise and peer review -- defined as expertise in content and conducted by experts in the field or discipline -- are essential.

Volunteerism is the basis for participation at all levels, including accreditation and the USDE recognition process.

Procedural fairness is required for purposes of trust, consistency, and effectiveness.

Reviews are to be conducted and judgments made according to published standards, criteria, and procedures.

Appropriate confidentiality is essential to the effective functioning of accreditation. This allows for communication between the accrediting body and the program/institution being accredited to allow for honest dialogue with a shared goal of educational quality and improvement if needed.

## Conclusion

History shows that systems of “ordered liberty” are more productive than centralized bureaucratic control. The principles outlined above are derived from historic goals for “ordered liberty.” They support oversight under a broad legal framework rather than micromanagement under regulations of ever-increasing detail and specificity. Minimizing the effect of these principles or abandoning them or failing to uphold them either in law or in regulatory applications ultimately results in losses of freedom by institutions and accreditors, especially freedom to make academic decisions. The loss of such freedom can occur almost invisibly over a long period of time, small decision by small decision, as well as through highly publicized proposals for major change.

It is troubling that many ideas disregard these principles even when they claim a basis in public good.

Creativity and flexibility cannot thrive in the absence of the principles outlined above. But, in today’s rapidly changing environment, creativity and flexibility are essential if higher education and accreditation are to meet their many new challenges and opportunities. There are multiple ways to preserve these principles and continue to build anew on the foundations they provide. Building in this way will lead to the kind of federal policy development that is needed to ensure future American achievement and productivity.

\*This briefing paper is posted on the ASPA website.