

October 20, 2023

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

Re: Third-Party Providers Policy and Procedures

Dear Members of the Middle States Commission on Higher Education,

We write to provide input on the Middle States Commission on Higher Education (MSCHE)'s third-party providers policy and procedures. While we appreciate MSCHE's attention to this critical issue and hope other accreditors follow suit, we believe the proposal falls short of achieving its stated goal. MSCHE can improve on its policy with the addition of concrete guidelines for the review and approval of written arrangements and the review of arrangements that include recruitment services.

In 2022, the Government Accountability Office estimated that hundreds of institutions had outsourced functions like student recruitment, advertising, student retention, course development, and instruction to for-profit companies commonly referred to as online program managers (OPMs).¹ In a typical bundled-services contract, the institution compensates the OPM on a revenue-sharing basis. Outsourcing core and other functions to OPMs in this way poses risks to students and institutions. Students may face high-pressure sales tactics during the application process. OPMs also have access to sensitive student and school data and therefore present reputational and legal risks to their client institution. These risks are also financial since institutions or programs could face penalties or lose access to federal funds if their OPMs don't comply with regulations. Finally, OPMs are deeply involved in academic processes, and depending on contract details, institutions could lose ownership of program materials if they terminate the partnership. Despite such numerous risks, OPMs are not subject to the same direct, regulatory scrutiny as institutions. Instead, accreditors are meant to provide that quality assurance.

The Department of Education reiterated the importance of accreditors in the oversight of written arrangements between institutions and third parties like OPMs when it issued new guidance last year.²

¹Government Accountability Office, "Higher Education: Education Needs to Strengthen its Approach to Monitoring Colleges' Arrangements with Online Program Managers," (2022), <https://www.gao.gov/products/gao-22-104463>

² Federal Student Aid, "Written Arrangements Between Title IV-Eligible Institutions and Ineligible Third-Party Entities Providing a Portion of an Academic Program," (2022), <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-06-16/written-arrangements-between-title-iv-eligible-institutions-and-ineligible-third-party-entities-providing-portion-academic-program#>

That guidance clarified the parameters of academic program outsourcing and passed the regulatory baton to accreditors who are charged with ensuring the institutions they oversee are operating well within the bounds of Title IV rules.

However, one of the primary flaws of the proposed policy is that it lacks clear guidance on how schools should calculate outsourcing levels and how MSCHE will verify reported calculations. There is ample evidence that schools and their OPMs have incorrectly calculated or even willfully manipulated these numbers.³ MSCHE should refer to the Department of Education's guidance to offer more meaningful instructions to its commission and thus to institutions. Those instructions should draw clear lines on what is and is not considered an element of an academic program for calculating outsourcing levels. For example, most bundled service OPM contracts include instructional and/or course design or even curricular consulting services. The Department of Education's guidance indicates these should be included in outsourcing calculations, while MSCHE's policy and procedures make no mention of the issue and leave it to the institution to simply provide calculations to the commission.

In a similar vein, we are pleased to see MSCHE intends to apply greater scrutiny to its reviews of arrangements that include marketing and recruitment, though we encourage the Commission to indicate what this means in action. It is not uncommon for OPM contracts to give the third party implied or nearly-automatic approval of marketing materials and recruitment scripts.⁴ MSCHE should start at the contract level when applying intense scrutiny and also develop a list of examples of evidence and circumstances that an institution could provide to indicate it is maintaining control over how its outsourced programs are presented. We are grateful to see an emphasis on compliance with disclosure requirements, since the involvement of OPMs has historically been hidden from students. MSCHE should consider disclosure matters in tandem with its scrutiny of marketing and recruitment activities and require that disclosures be consistent and constant. Meaning, disclosure of an OPM's involvement should be clear to students throughout the recruitment and enrollment process and not only found in fine print on a static webpage.

³ Stephanie Hall, "It's Time to Make Repairs to Online Higher Ed," The Century Foundation, (2022), <https://tcf.org/content/commentary/its-time-to-make-repairs-to-online-higher-ed/>

⁴ Taela Dudley, Stephanie Hall, Alejandra Acosta, and Amy Laitinen, "Outsourcing Online Higher Ed: A Guide for Accreditors," The Century Foundation, (2021), <https://tcf.org/content/report/outsourcing-online-higher-ed-guide-accreditors/>

Finally, we appreciate that MSCHE intends to also apply intense scrutiny to reviewing instances of excessive outsourcing. We encourage you to consider there are numerous ways an institution might cross the ‘excessive’ threshold. Indicators of excessive outsourcing can be seen in student body enrollment levels or in tuition revenue and expenditure data. In making determinations of excessive outsourcing, MSCHE should consider what level of risk the arrangement or series of arrangements at hand present to the institution’s stability.⁵

To more fully account for the risks students and institutions face in today’s outsourced higher ed market, we urge MSCHE to add the suggested details to its policy and procedures. Should you have questions regarding these comments, please contact Stephanie Hall at shall@americanprogress.org.

Sincerely,

⁵ Ibid.