

Commission on Regulation of Postsecondary Distance Education

Inaugural Meeting Summary June 12, 2012

I. Introduction

This summary provides an overview of the inaugural meeting of the Commission on Regulation of Postsecondary Distance Education held on June 12, 2012 in Washington, DC. The Commission was convened by Paul Lingenfelter of the State Higher Education Executive Officers and Peter McPherson of the American Association of Public and Land-Grant Universities and is chaired by former U.S. Secretary of Education Richard Riley. The primary objective of the Commission is to develop and provide recommendations that will address the costs and inefficiencies faced by postsecondary institutions that must comply with multiple state laws and regulations as they endeavor to provide educational opportunities to students in multiple state jurisdictions. In this context, the Commissioners discussed the importance of bringing together a diverse group of leaders in the distance education community to discuss alternatives and solutions for the regulation of distance education, in light of compliance obligations with different and inconsistent state regulatory schemes. The initial meeting focused on addressing some preliminary issues that should be considered as the work of the Commission continues, as well as to identify likely points of prospective consensus, on which to build the Commission's work.

In broad terms, the current system of state regulation was described as costly, inefficient, and inconsistent across the country. Commissioners suggested that the group's recommendations should be practical and politically tenable, with a principal focus on protecting student interests and ensuring that the quality of their education is not undermined by the recommendations that emerge; as well as on the capabilities of the higher education community that is pursuing distance education to do its work well—and efficiently.

In furtherance of these goals, the Commissioners identified key stakeholders and sectors of focus for the recommendations, including state regulators, state legislators, accreditors, and leaders of higher education institutions. One Commissioner commented that the Commission should remain focused on the "value add" of its actions as recommendations are developed.

II. Summary of Issues

Following opening remarks by the Chair and Convening Commissioners, the Commissioners were asked to identify major issues that should be considered during the Commission's work. The Commissioners then participated in a facilitated discussion identifying key issues and perspectives deemed important to the Commission moving forward. (Comments submitted by Commissioners unable to attend the meeting were also shared.) The following summary includes the topics identified by the Commissioners and brief discussion points related to these issues.

1. Cost and Burden

Numerous Commissioners remarked on and described the high cost of compliance with current state regulations. The costs (time, fees, burden, etc.) associated with compliance have driven some

institutions to consider not offering services in certain States. The high costs are especially difficult for public universities and community colleges, which typically do not pass these expenses onto students. Many public institutions are also facing severe budget cuts making it hard to acquire increased staff to manage the demands of compliance.

2. Impact on Students

Commissioners observed that the current compliance demands may lead some institutions to not offer distance education in certain States, thereby creating "States of disadvantage." Consequently, those demands threaten nationwide efforts to increase access to degree completion at postsecondary institutions. In this context, Commissioners discussed a benefit of distance education – the ability for students who are highly mobile to maintain their enrollment when they move from State to State. If certain institutions are now saying "we don't serve students in certain States," opportunities for degree completion and access to education will be lost for students who move from State to State.

Commissioners also discussed efforts to protect students through regulations and policies meant to guard against misrepresentation and fraud by institutions. Commissioners noted that consumer protection is often conflated with quality such that if an institution does not meet the demands of a certain consumer protection model, that institution is considered to be of lower quality. One challenge for the Commission is to provide a baseline description of what consumer protection regulations should do (for example, protect students from fraud and misrepresentation) and distinguish that from regulations intended to ensure the academic quality of institutions.

3. Need for Innovation

Commissioners warned that potential solutions and recommendations should not be so strict as to prevent creativity and innovation in the field. A key to innovation for distance education has been institutional autonomy and there has been a trade-off, then, with oversight. Commissioners agreed there should be a balance of both values. Commissioners expressed concern that taking a "one size fits all" approach towards regulations for higher education would halt or unnecessarily limit innovative practices which ultimately will hurt students. One way to ensure the distance education community has continued room to innovate would be to increase clarity on the issue of outcomes and also to pay attention to eradicating bad practices.

4. Need for Consistent and Coherent Policies

Several Commissioners discussed the inconsistencies and irrationality found in current state regulations for distance education, as well as the various reasons for these variances. Some viewed the most inconsistent feature of state regulations to be the definition of "physical presence" to determine if an institution must seek authorization. Commissioners identified as a goal finding common definitions for States to adopt when defining "physical presence."

The Commissioners also debated the idea of common standards for distance education that would be developed by stakeholders (not federal). The main goal of such standards would be to provide clear expectations for providers instead of the confusion generated by current regulations. Agreed upon standards may help to level the playing field for all sectors and break down distinctions between for-profit, non-profit, private, and public institutions. The Commissioners agreed that it would be worth completing a full landscape scan of state regulations to provide a better understanding of the issues that

would need to be addressed by shared standards. The robust conversation regarding the idea of standards touched upon many issues including the appropriate group to develop such standards (states, institutions, or accrediting agencies) and potential implementation challenges.

5. The Triad (Federal Government, States, and Accrediting Agencies)

Commissioners noted the need to examine the role of actors represented in the "triad" (Federal, State and accreditors) affecting distance education, which are distinct from (but related to) the question of substantive issues.

a. Federal Government

Commissioners expressed apprehension about the federal government's most recent action through regulation in demanding compliance in every state where a provider has students and any additional effort by the Department to put this regulation in place. (As noted in the meeting, that regulation has been ruled invalid by a federal court, and at the time of the meeting the action contemplated by the Department of Education in response was not yet been communicated. At the same time, existing state laws that require institutions to become authorized are not affected by either this court ruling or Departmental actions.)

b. States

States were often identified as the central focus for Commissioner recommendations. Some states, like some institutions, were unprepared and overwhelmed by the Department of Education's requirement of compliance in every state where students are enrolled. The State role was recognized as traditionally being that of consumer protection but States are also sometimes performing facets of the role served by accrediting agencies with respect to quality assurance. One Commissioner commented that states do not currently understand and/or trust the accreditation process enough to defer quality control to accrediting agencies. A few Commissioners suggested that if institutions and accreditors could come together to develop industry standards, states could concentrate on the tasks of providing consumers with an access point for complaints and act to shut down bad actors.

The goal of changing state laws nationwide was considered to be a significant challenge. Commissioners suggested that if a small group of states were to adopt recommended actions, change might then accelerate based on that action. Commissioners questioned whether most States currently have the capacity to support any significant change to authorization policies.

c. Accrediting Agencies

Commissioners recognized that accrediting agencies could play a pivotal role in alleviating some of the problems currently presented by the distance education regulatory scheme. Higher education institutions could develop operational standards for providing distance education and these standards could be affirmed by the accrediting agencies. Several of the Commissioners suggested that accreditors may not embrace a transformed and expanded role in the triad given additional costs and staffing implications.

6. Quality

The question of quality came up several times in the Commissioners' discussions. There were several suggestions of how to address quality and some agreement that some national consensus on standards for distance education, other than through state regulation, could help increase quality and reduce the desire by some to have states play a direct role in determining quality.

III. Continuing the Process

The meeting concluded with a discussion of the next steps for continuing the work of the Commission. It was agreed that:

- Consistent with its broader facilitation and policy/legal support role in support of Commission efforts, EducationCounsel would receive information and feedback from Commissioners and others between meetings and communicate that information between meetings, as appropriate.
- A landscape of current state authorization requirements, particularly as they pertain to "physical presence," should be compiled for background purposes.
- Prior to the next meeting, information, comments, and testimony should be solicited from other stakeholders. Specifically, representatives of accrediting agencies, state governments, and education innovators should be consulted. A full list will be compiled and shared with the group for consideration, as well as to determine who should address the Commission in person at the next meeting. EducationCounsel, in consultation with the Commissioners, will develop a set of questions to guide conversations with identified stakeholders and Commission members.
- The next Commission meeting will be held in Washington, DC in September, 2012. The meeting time will be extended to allow for more in-depth discussion and deliberation of those issues identified in the first meeting and through Commissioner and stakeholder outreach.

IV. Background Materials

Several materials provided a foundation from which the Commissioners based their discussion. The background materials include:

- The Commission White Paper (attached)
- American Council on Education, "Assuring Academic Quality in the 21st Century: Self-Regulation in a New Era," available at:
http://www.acenet.edu/AM/Template.cfm?Section=Government_Relations_and_Public_Policy_&CONTENTID=45266&TEMPLATE=/CM/HTMLDisplay.cfm (June 2012)
- Presidents' Forum and Council of State Governments, "State Authorization Reciprocity Agreement: Working Draft," available at:
http://presidentsforum.excelsior.edu/projects/State_Authorization_Reciprocity_Agreement_April_2012_Working_Draft.pdf (April 2012)
- Presidents' Forum, "Aligning State Approval and Regional Accreditation for Online Postsecondary Institutions," available at:
http://presidentsforum.excelsior.edu/projects/State_Approval_Regional_Accreditation.pdf (Fall 2009)

Commissioners Attending

Secretary Richard Riley (Chair)

Paul Lingenfelter
State Higher Education Executive Officers

M. Peter McPherson
Association of Public and Land-Grant Universities

Meg Benke
Empire State College
State University of New York

George Peterson
ABET, Inc.

Rufus Glasper
Maricopa Community Colleges

Michael Plater
Strayer University

Terry W. Hartle
American Council on Education

Pamela K. Quinn
LeCroy Center/Dallas County Community College
District

Marshall A. Hill
Nebraska Coordinating Commission for
Postsecondary Education

Paul H. Shiffman
Presidents' Forum

Arthur F. Kirk, Jr.
Saint Leo University

Ronald L. Taylor
DeVry, Inc.

Observers Attending

Bruce N. Chaloux
The Sloan Consortium, Inc.

Bob Moran
American Association of State Colleges and Universities

Kay Gilcher
U.S. Department of Education

Travis Reindl
National Governors Association

A. Frank Mayadas
Alfred P. Sloan Foundation