**Report of the NACIQI Subcommittee on
Governing Board Independence and Political Interference**

**July 22, 2020**

The subcommittee has concluded its work and has a brief report.

In our effort to examine accreditor response to potential political interference, we heard from representatives of the Southern Association of Colleges and Schools Commission on Colleges, Northwest Commission on Colleges and Universities, American Council of Trustees and Alumni, and the Association of Governing Boards. We sought to hear directly from governors and trustees, but for scheduling or other reasons were unable to do so.

The accrediting agency witnesses said that, over the last decade, they believe there were very few instances of investigating political interference in an institution’s governance or otherwise. One non-agency witness disagreed, asserting instances involving the University of Kentucky, the University of Alaska, higher education systems in Florida and Alabama, the University of South Carolina, and the University of Virginia.

Additionally, representatives of the agencies advanced that agency actions into external interference were typically inquiries about potential gubernatorial interference in actions of public governing boards, typically around presidential selection, and that most actions by the agency tended to resolve themselves with the provision of further information. Representatives of the agencies said that, in recent memory, there was no negative action or termination of accreditation due to issues of political interference in governance. They noted that actions involving governance matters are rarely stand-alone and often involve other matters such as financial insolvency or fraud.

The subcommittee acknowledges that there is great diversity and complexity when it comes to boards and the “owner” of an institution. Public, religious, private, tribal, and for-profit institutions can have very different governance and ownership structures. In all cases, boards’ value rests upon their exercise of independent judgment. Institutional accrediting agencies and governance associations appearing before the subcommittee address these issues in various ways. There were disagreeing views as to whether there was clear evidence presented to the subcommittee that demonstrated that accreditors had overstepped the application of their standards regarding political interference in such areas, though there were several cases where this was the topic of interactions with governing boards.

The subcommittee recognized that there are other areas where board governance and external influence may result in interactions with accrediting agencies. The Department of Education and the Higher Education Act make clear that accreditors may not intrude in matters regarding institutional mission and must tread gingerly. This often arises in cases where institutions have a religious mission and board members are appointed by a religious denomination.

In the case of public institutions, the subcommittee acknowledges that legislatures set the budgets for many institutions and systems, not the boards. In such cases, boards are engaged most often in the distribution of budget allocations with varying degrees of specificity set by the legislature. In an era of declining state funding and declining enrollments, the subcommittee believes that boards and elected leaders must inevitably engage in hard discussions about cuts, closures, and consolidation. Such issues arose in one of the cases discussed by the subcommittee with one of the regional association presidents. In such cases, the subcommittee agreed the accreditors should not be a barrier to inevitable change necessitated by shifting state priorities that impact funding and other issues, even as they monitor the impact of those hard decisions on compliance with their standards.

Lastly, the subcommittee discussed at length the provisions of the Higher Education Act and the role of accreditors as gatekeepers of Title IV funding.

Acknowledging that the HEA allows accreditors to establish additional standards (including governance) beyond the statute and regulations, the subcommittee noted that the HEA (and accompanying regulations) specifically set out only 10 criteria for determination of Title IV funding. The Department has, in turn, ruled that it (and by extension NACIQI) has no authority to review or act on accreditor application of standards specifically outside the Act.

The subcommittee discussed how best to resolve the tension between what is allowed and what is required, as just described. A majority of the subcommittee believes that the accreditor sanctions on governance come up rarely, that there was no evidence presented in which accreditation was actually revoked based on the governance standard (or that standard alone), and that accreditors are allowed to include criteria for approval beyond the 10 mandated by the Act. These subcommittee members argue that there is no evidence that the threat of revocation of Title IV eligibility has constrained governing boards or institution ownership entities from acting as they wish. It is the majority sense of the subcommittee that the present legislative arrangement is necessary and important to preserve board independence.

However, a minority of subcommittee members find it problematic that an agency could revoke or deny accreditation, and thus terminate access to Title IV, for reasons that the Department (and NACIQI) has no authority to review or oversee. These subcommittee members agree with testimony from a non-agency witness that this may amount to unconstitutional delegation of governmental authority to private bodies.

These subcommittee members fear that the mere threat of revocation of Title IV eligibility might create a chilling effect on governing boards attempting to address challenging issues of cost and quality.

There was general (but not unanimous) agreement that governance is often a gray zone where boards are not as fully independent as they may seem on paper (as in those aforementioned examples) and that accreditation agencies need to recognize that reality and wade into those waters in a measured and careful way. A minority of subcommittee members believe that governance for public institutions is established by state law and that accreditor intrusion in these matter is inappropriate and outside the proper purview of accreditors in their role as Title IV gatekeepers.

Much as the previous subcommittee on substantive change, we ask that this report be provided to the full membership of NACIQI for discussion. While a majority of the subcommittee believe no further action is warranted, a minority of the subcommittee believe that this report should be shared with the relevant members of Congress and Department of Education officials.

*Members of the Subcommittee: Rick O’Donnell, chair; Kathleen Alioto, Jill Derby, Paul LeBlanc, Anne Neal, and Ralph Wolff.*