

U.S. Department of Education

**Staff Report
to the
Senior Department Official
on
Recognition Compliance Issues**

RECOMMENDATION PAGE

1. **Agency:** New England Association Of Schools and Colleges, Commission on Institutions of Higher Education (1952/2008)
(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)
2. **Action Item:** Petition for Continued Recognition
3. **Current Scope of Recognition:** The accreditation and pre-accreditation ("Candidacy status") of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving pre-accreditation, initial accreditation, and adverse actions.
4. **Requested Scope of Recognition:** The agency is requesting a change in its scope of recognition, from the current "This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving pre-accreditation, initial accreditation, and adverse actions." to the proposed "This recognition extends jointly, to the Commission for accreditation and pre-accreditation decisions and to the Board of Trustees of the Association and the Commission for the appeal of adverse actions."
5. **Date of Advisory Committee Meeting:** June, 2013

6. **Staff Recommendation:** Modify the agency's scope of recognition to remove references to the Board of Trustees and to joint decision-making. The modified scope would read: The accreditation and pre-accreditation ("Candidacy status") of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via distance education within these institutions.

Continue the agency's recognition and require the agency to come into compliance within 12 months, and submit a compliance report that demonstrates the agency's compliance with the issues identified below.

7. **Issues or Problems:** It does not appear that the agency meets the following sections of the Secretary's Criteria for Recognition. These issues are summarized below and discussed in detail under the Summary of Findings section.

-- The requested revision in the agency's scope of recognition does not accurately reflect the agency's structure and decision-making bodies. The agency needs to modify its requested scope to remove references to the joint decision-making authority of the Board of Trustees and the Commission for appeals. [§602.12(b)]

-- The agency is requested to provide additional information and documentation establishing that it operates separately and independently of the Association's Board of Trustees. [§602.14(a)]

-- The agency is requested to demonstrate that it has both budget and staffing autonomy, as required under this section and to clarify in its policies what entity is responsible for selecting appeals panel pool members.
[§602.14(b)]

-- The agency is requested to revise its policies to address the establishment of representative samples of additional locations for review during focused on-site visits.
[§602.22(c)(2)]

EXECUTIVE SUMMARY

PART I: GENERAL INFORMATION ABOUT THE AGENCY

The New England Association of Schools and Colleges, Commission on Institutions of Higher Education is a regional accreditor that currently accredits 232 institutions in the six states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. The agency's accreditation is used by 229 institutions in the region to establish eligibility to participate in the federal Title IV student financial assistance programs under the Higher Education Act. The agency is recognized for the accreditation and pre-accreditation ("Candidacy status") of institutions of higher education that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving pre-accreditation, initial accreditation, and adverse actions. In this petition for renewal of recognition the agency is requesting a modification of its scope of recognition to not include the Board of Trustees of the Association.

Recognition History

The agency has been on the Secretary's list of recognized accrediting agencies since 1952. Its last full petition for continued recognition was reviewed at the Fall 2007 NACIQI meeting, and the Secretary subsequently renewed the agency's recognition in 2008 for a period of five years.

As part of this review, Department staff observed a Commission meeting on April 18-19, 2013.

PART II: SUMMARY OF FINDINGS

§602.12 Accrediting Experience

(b) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(NOTE: Only recognized agencies seeking an expansion of scope need to respond.)

The agency is not requesting an expansion of its scope of recognition. However, it is requesting a revision of its scope of recognition, from the current "This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving pre-accreditation, initial accreditation, and adverse actions." to the proposed "This recognition extends jointly, to the Commission for accreditation and pre-accreditation decisions and to the Board of Trustees of the Association and the Commission for the appeal of adverse actions." The rewording is reportedly intended to clarify that the Commission is solely responsible for making pre-accreditation/accreditation decisions, whereas the Commission and the Board will both be involved in appeals of adverse actions. This is being requested to reflect changes made to the Association's bylaws in December 2011.

As documentation of the roles played by the Commission and the Board, the agency provided a copy of the association's amended bylaws (Ex. 801) detailing the responsibilities of the Commission and the Board (Ex. 801, Article IV, Section 7). The agency also provided two sample notification letters to demonstrate that prior to the 2011 amendments, the Commission made recommendations to the Board regarding candidacy status (Ex. 509), whereas after the 2011 amendments, the Commission took its own actions regarding candidacy status (Ex. 901).

Although the change in wording reportedly reflects changes made in the by-laws, the by-laws do not address the distinction noted in the agency's narrative, which states that the Commission now makes its own decisions. Instead, the by-laws state that "Each Commission shall also have the responsibility and duty to recommend to the Board of Trustees its affirmative decisions, regarding the affiliation of candidates for accreditation and the election to initial accreditation of institutions within its own group." This does not appear to support the agency's position that each Commission "now makes all accreditation decisions without ratification or confirmation by the Trustees" as is stated in the agency's narrative.

Although the agency is not requesting an expansion of scope, its request for a revision of its current scope relates to staff concerns related to the separate and independent requirements found under 602.14. Therefore, prior to any revision of the agency's scope, additional clarification is requested as to the role played by the Board of Trustees in the agency's processes and procedures.

Analyst Remarks to Response:

The agency has submitted documentation demonstrating that the NEASC Board of Trustees no longer has an accreditation decision-making role and that such decisions are made solely by the Commission and that an independent appeals panel makes decisions on appeals. The documentation is sufficient to support the first part of the requested change in scope. The final sentence of the requested scope description does not accurately reflect the role of the Commission and the Board of Trustees, as neither of these entities is the decision-making body for appeals. Because the regulations in 602.25 require the establishment of an independent appeals decision-making body, the Department considers that its review/approval of an agency's appeals process is considered sufficient to implicitly include the appeals decision-making body in an agency's scope and has applied this to all agencies reviewed under the new regulations. Therefore, to accurately reflect the revised structure of the agency, and the appeals process, the revised scope should not include the final sentence in the proposed revision.

The agency has been cited under 602.14(b) for failure to meet the "separate and independent" requirements.

§602.14 Purpose and organization

(a) The Secretary recognizes only the following four categories of agencies:

The Secretary recognizes...

(1) An accrediting agency

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and

(iii) Satisfies the "separate and independent" requirements in paragraph (b) of this section.

(2) An accrediting agency

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and

institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.

(3) An accrediting agency for purposes of determining eligibility for Title IV, HEA programs--

(i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and

(ii) Either satisfies the "separate and independent" requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.

(4) A State agency

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.

The agency seeks continued recognition as an accrediting agency under 602.14(a)(1).

Voluntary membership

The agency notes that its accreditation is voluntary, both in its commissioners handbook (Ex. 542, p. 10) and on its web site, which ED staff viewed. Staff accepts the agency's documentation that it meets the requirements related to having a voluntary membership.

Institutions of higher education/HEA programs

As noted previously, the agency accredits institutions of higher education in six states within the New England region. The agency accredits over 230 institutions (Ex. 374) and provided a list of the 229 institutions that use its accreditation as a link to HEA Title IV funding (Ex. 702). Staff accepts the agency's documentation that it meets the requirements related to having as a principal purpose the accreditation of higher education institutions and the provision of a link to HEA Title IV funding.

Separate and independent

As noted previously, staff has concerns regarding the Commission's ability to function separately and independently of the Association's Board of Trustees. The agency provided a copy of the Association's bylaws, which were revised in December 2011 (Ex. 801). Some requirements of the bylaws state that certain

Commission actions are subject to review by the Board. For example: the Commission may not change its scope without approval of the Board; standards and procedures are subject to approval by the Board; affirmative actions must be recommended to the Board; and all recommendations and decisions must be reported to the Board (Ex. 801, Article IV, Section 7). This calls into question the Commission's independence. The agency is therefore requested to provide additional information and documentation establishing that it operates separately and independently of the Association's Board of Trustees.

Staff determination: The agency does not meet the requirements of this section. The agency is requested to provide additional information and documentation establishing that it operates separately and independently of the Association's Board of Trustees.

Analyst Remarks to Response:

In the draft staff analysis, the agency was requested to provide additional information and documentation establishing that it operates separately and independently of the Association's Board of Trustees.

Staff concerns related to the agency's compliance with the "separate and independent" requirements will be discussed in detail under the next criterion, 602.14(b).

The agency does not meet the requirements of this section. The agency is requested to provide additional information and documentation establishing that it operates separately and independently of the Association's Board of Trustees.

(b) For purposes of this section, the term separate and independent means that--

(1) The members of the agency's decision-making body--who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both--are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

Decision-making

The agency has three decision-making bodies; the commission, an executive committee, and appeals panels. The agency's policies specify that the commission will be comprised of up to 27 members who are nominated and elected by member institutions (Ex. 739). Following the solicitation of nominations, the commission develops a slate that is voted on at the agency's annual meeting. Nominations may also be made from the floor. The agency provided a copy of a solicitation of nominations (Ex. 736) and a sample ballot (736a) as documentation of the selection process. Commissioners who are chosen outside the normal election cycle are filled by the commission and serve until the next annual meeting, at which time they may be nominated for election. The agency's policies state that "Vacancies occurring on the Commission at a time other than that of the annual business meeting are filled by the Commission, subject to the approval of the Association's Board of Trustees." (Ex. 739). The fact that these members are subject to the Board's approval raises concerns regarding the agency's independence, and more information is requested in this area.

The commission's executive committee is elected by the commission from within its own membership. The executive committee is comprised of five to seven members. According to documentation provided by the agency, the current executive committee consists of five members (Ex. 741). Appeals panels consist of between five and seven members who are selected by the president of the Board of Trustees on an as-needed basis (Ex. 739b, Section 5). The agency's appeals procedure states that panel members are drawn from an "ad hoc list supplied by the Commission to the Association" (Ex. 739a). The agency states that it has had only one recent appeal, in 2010. Documentation related to the panel for that appeal listed five members, four of whom were former commissioners and one of whom was a former on-site review team chair (Ex. 742). No information was provided regarding the current appeals panel pool. More information is needed regarding the selection of appeals panel members and the involvement of the Board in the selection process.

Public representatives

The agency's policies specify that the Commission will be composed of up to 27 members and that one-seventh of the Commissioners will be public members (Ex. 739). The agency's commissioners handbook also contains the same information (Ex. 542, pp. 4, 8). The agency provided a list of its current commissioners, noting four current public members (Ex. 740). One of the public members serves on the executive committee (Ex. 741). The agency provided copies of forms signed by the public members stating that they are not affiliated with any of the agency's pre-accredited/accredited institutions, that they are not members of a related organization or association, and that they are not related to a person in either of the first two categories (Ex. 819). The agency notes that its appeals panels are subject to the same public member requirements as the

commission, as noted in its appeals procedure (Ex. 739a). The agency states that it has only had one recent appeal. A list of the appeals panel members documented that one member was a public member (Ex. 742). The agency also provided a signed copy of the form stating that the public member met the agency's public member definition (Ex. 823).

Conflicts of interest

The agency's policy on the selection of its commissioners states that commissioners must adhere to a conflict of interest policy (Ex. 739). A copy of the policy was provided (ex. 547). The policy refers to examples of conflicts related to affiliations, significant relationships, and other associations. The policy applies to commissioners (and therefore to the executive committee), but does not refer to appeals panel members, nor does the Board's appeals panel policies and procedures document (Ex. 739b) cover this group. The agency is requested to amend its conflict of interest policies to include appeals panel members.

The agency provided sample copies of two signed conflict of interest forms as evidence of its implementation of its policy for its commission members.

Dues

A December 2012 agreement between the Commission and the Association, effective for three years, specifies that the agency will establish and collect its own dues (Ex. 742a, Action Item 1). As documentation, the agency provided a sample invoice to a candidate institution specifying that its dues should be made payable to the Commission (Ex. 902). Although dues are currently payable to the Commission, ED staff has a concern that the agreement is for three years and is not a permanent arrangement. The Association and the Commission are requested to amend their procedures to ensure that dues will be paid to the Commission on a permanent basis and not to the Association, as had apparently been the case previously.

Budget

The agency states that, as of the December 2012 agreement between the Commission and the Association, it now establishes its own budget without review by any other entity. However, the agreement states that salaries and other compensation will be established collaboratively between the Association and the Commission (Ex. 742a, Action Item 1). The agreement also mentions finance, personnel, and other committees with have a "material relationship" to the Commission's capacity and decision-making authority (Ex. 742a, Action Item 4). A timeline provided as documentation notes that the Association's personnel committee will recommend salary guidelines (Ex. 903) for the Commission. The same document states that the Association's budget, which includes the Commission's budget, will be reviewed by the Association's finance committee, which will then provide the budget to the Board, which will also review the budget and give final approval of it. It is therefore unclear from the information and documentation provided that the Commission has complete control of its budget and that it is not subject to both input and approval by the Association. Additional information and documentation are requested regarding the agency's

budget autonomy.

Staff determination: The agency does not meet the requirements of this section. The agency is requested to provide more information regarding the selection of appeals panel members and the involvement of the Board in the selection process and also to amend its conflict of interest policies to include appeals panel members. The Association and the Commission are requested to amend their procedures to ensure that dues will be paid to the Commission on a permanent basis and not to the Association, as had apparently been the case previously. Additionally, information and documentation are requested regarding the agency's budget autonomy.

Analyst Remarks to Response:

In the draft staff analysis, the agency was requested to provide more information regarding the selection of appeals panel members and the involvement of the Board in the selection process and also to amend its conflict of interest policies to include appeals panel members. In response, the agency revised several of its policies and procedures related to appeals panels. The agency's Policy and Procedures for the Appeal of Adverse Accreditation Action states that the commission's director will provide a list of individuals to the association's president to be appointed to the appeals panel. The agency's Commission Procedure for the Appeal of Adverse Actions states that individuals serving on an appeals panel will be drawn by the Commission from the appeals panel pool, and supplied to the association. While it is not explicit in the agency's policy, it appears that the pool members are chosen by the Commission or by agency staff in that the pool is comprised of former Commissioners and evaluation team members. However, the agency should amend its policy to make explicit what entity is responsible for selecting the appeals pool members. The agency has amended its conflict of interest policy to indicate that the policy also applies to appeals panel members. With the one noted exception, staff accepts the agency's revised policies/procedures as evidence that it meets the requirements of this section regarding appeals panels.

In the draft staff analysis, the Association and the Commission were requested to amend their procedures to ensure that dues will be paid to the Commission on a permanent basis and not to the Association. In response, the association/commission entered into a revised memorandum of understanding (MOU) that indicates that the Commission will determine its own budget, establish and collect its dues, determine compensation, and (beginning in FY 2013-14) retain all budget surpluses. Staff accepts the revised MOU as evidence of the agency's compliance with the requirements of this section regarding dues collection.

In the draft staff analysis, additional information and documentation were requested regarding the agency's budget autonomy. In its response, the agency provided a copy of a new MOU between the association and the commission, as noted above, that states that, beginning in FY 2013-14, the commission will be allowed to retain all budget. The agency also provided a copy of the

commission's budget timeline for FY 2015 and its 2013-14 budget. ED staff has several concerns regarding the materials that have been submitted by the agency, and obtained during staff observation of a Commission meeting. The MOU states that the Commission will not be allowed to retain budget surpluses until the 2013-14 fiscal year, which begins on Oct. 1, 2013, meaning that the Commission is not currently being allowed to keep its surpluses. This timing possibly reflects, in part, the fact that currently the Board is recognized jointly with the Commission for decisions involving pre-accreditation, initial accreditation, and adverse actions and that accordingly there need not be compliance with the separate and independent requirement until that is no longer the case (i.e., upon re-recognition under its revised scope). When ED staff observed the April 2013 commission meeting, a budget document was considered by the commission that provided budgeted/actual figures for 2010-11 and 2011-12, as well as budget figures for 2012-13 and 2013-14 (see document uploaded by analyst). The final line item is net income (loss) indicating funds that were to be returned to the association. The budgeted (not actual) figures for 2012-13 were \$434,096 and for 2013-14 were \$101,692. During the Commission's budget discussion, great concern was voiced by Commissioners regarding the "planned contribution" that was being returned to the association. The request was made during the Commission's discussion that the \$101,692 contribution for 2013-14 be moved and reflected above the Total Expenditures line. Commissioners were also adamant that the "contribution" be a one-time payment, rather than a two-year payment, as had apparently been considered previously. The memo accompanying the budget indicates that the budget provides "a transition for NEASC, reducing the cross-subsidy to \$100K, as part of a phase-out process." In reviewing the budget presented in the agency's response, the "net income (loss)" line has been removed, fringe benefits have been increased by \$7,296, and there is a new line item entitled "one-time payment to NEASC" for \$94,396. Together, these adjustments total the \$101,692 line that was listed as funding to be returned to NEASC in the April 2013 meeting document. During the fiscal years when the Board of Trustees and the Commission were both recognized, this sharing of resources did not pose a problem because the two entities did not need to meet the "separate and independent" requirements. However, with the Commission's proposal to be the sole recognized entity, the subsidy payment for FY 2013-14 is an indication that the agency is not yet operating with budget autonomy. In addition, the subsidy payment in FY 2013-14 appears to be in violation of the MOU, which states that the Commission will retain all budget surpluses, except any surplus in the CIHE share of the NEASC overhead. While it could be argued that the "one-time payment to NEASC" is being done voluntarily by the Commission, since they did approve the budget, it is evident from the budget that was considered by the Commission that this amount is the net income of the Commission. Budget autonomy is apparently not currently in place, and the documents provided by the agency, which indicate that the agency will not control its own finances until the beginning of FY 2014 or even FY 2015, raise serious concerns.

In addition to the budget concerns that have been raised, ED staff further notes that the 2013-14 budget indicates that salary adjustments are being phased in

for the commission's staff. ED staff notes that during the discussion at the Commission's April meeting, questions were raised as to whether the agency's staff had employment contracts. It was noted that agency staff do not have formal contracts, but instead serve at the pleasure of the association's director. Commission members expressed concern with this arrangement. ED staff concurs. If the agency is operating separately and independently, the Commission should be in control of staff contracts. Finally, the duration of the MOU is not clearly stated. The MOU is effective as of April 30, 2013, and will be "for five years, coterminous with the period of federal recognition." Five years from the effective date would be April 30, 2018. It appears that the intent is to have the MOU coincide with the maximum five-year federal recognition period. However, it is possible that a decision on the agency's request for renewal of recognition will not be made until 90 days after the NACIQI meeting (or Sept. 6, 2013) and that the decision will be to extend the agency's current recognition and require the agency to submit a compliance report. In that case, the grant of renewal of recognition would not be made until after the agency had demonstrated that it is in compliance with all the criteria for recognition. It would be clearer were the MOU to state that it will remain in effect through the period of federal recognition next granted. Staff does not accept the agency's response and revised documentation as evidence that it meets the requirements of this section regarding budget autonomy. Further, ED staff raises an additional concern regarding the commission's staffing arrangements.

§602.22 Substantive change.

(c)(2) An effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

The agency's Policy on the Review of Off-Campus Programming states that ongoing monitoring takes four forms: annual reports; focused on-site visits; fifth year interim reports; and comprehensive reviews (Ex. 322, p. 6). However, focused on-site visits are only undertaken in cases where there are three or fewer additional locations. A sample of additional locations are reviewed during an institution's fifth-year interim report and during its comprehensive review. However, the agency's policies and procedures do not provide any information about the basis on which the representative sample is established.

The agency's evaluation manual states that off-campus sites must be reviewed as part of a comprehensive evaluation (Ex. 517, p. 33). During off-campus visits, evaluators are instructed to speak to faculty and students, review the resources available at the location, and assess the capacity of the institution to administer its off-campus sites. The agency has also developed procedures for reviewing off-campus sites as part of the fifth-year interim report, which states that the fifth-year evaluation "provides a means of monitoring the institution's capacity to administer its off-campus sites ensuring that the academic programs offered

meet the standards of quality of the institution and the Commission's standards and policies." (Ex. 353).

As documentation, the agency provided sample comprehensive self-studies for institutions that had 3+ locations (Exs. 350, 351, 352), sample fifth-year reports (Exs. 354a, 355, 356), and action letters.

Staff determination: The agency does not meet the requirements of this section. The agency is requested to provide information as to how its policies and procedures address the establishment of a representative sample for focused on-site visits.

Analyst Remarks to Response:

In the draft staff analysis, the agency was requested to provide information as to how its policies and procedures address the establishment of a representative sample for focused on-site visits.

In response to the draft analysis, the agency refers to its Policy on the Review of Off-Campus Programming, which states that during the course of comprehensive evaluations, the agency's staff will consult with the institution and the on-site review team chair and review the number, enrollments, and geographic distribution of the institution's off-campus locations in order to determine an appropriate representative sample (Ex. 1014, p. 6). The policy also states that a representative sample will be reviewed as a part of the fifth-year interim report (Ex. 1014, p. 6). Although the policy addresses focused evaluations, this section does not include any information as to how a representative sample will be established during these visits (Ex. 1014, p. 6). The agency is requested to revise its policies to address the establishment of representative samples for review during focused on-site visits.

The agency is requested to revise its policies to address how it will select representative samples of additional locations for review during focused on-site visits.

PART III: THIRD PARTY COMMENTS

The Department did not receive any written third-party comments regarding this agency.