

Third-Party Providers Policy and Procedures

Summary of Call for Public Comments

January 5, 2024

Summary:

The Middle States Commission on Higher Education issued a call for public comments for its *Third-Party Providers Policy and Procedures* from October 4-20, 2023. The Commission solicits widespread feedback about the proposed changes to the policy and sends a notification to the general mailing list of more than 10,000 contacts. The Commission posts the open call for public comments on its website (available to the general public), sends an email notification to its general mailing list, and posts the call for public comments on its social media accounts. During the call for public comments timeframe, the Commission received feedback in the form of 25 comments.

<i>Primary Affiliation</i>	<i>Number</i>
<i>Representative from MSCHE Member Institution (unduplicated)</i>	13
<i>State or Private System Representative</i>	1
<i>Other</i>	
<i>Higher education Association</i>	2
<i>Non-profit/ advocacy group</i>	1
<i>Independent think tanks or policy institute</i>	2
<i>Higher education consulting firm (OPMs)</i>	1
<i>Applicant Institution</i>	1
<i>None Provided</i>	4
	25

The following summary describes the changes made by the Commission and, where appropriate, provides additional discussion to explain the rationale for the Commission's decision. This summary is not an exhaustive list of each comment but is instead grouped by topic.

Topic 1: Definition of third-party providers and the scope of the policy

The majority of comments requested clarification about the definition of third-party provider and what is considered a third-party provider under the policy. These comments requested consistency in the definition of third-party providers as well as a clear scope of the policy. One commenter suggested that a definition for student learning opportunities be added. Other

comments expressed concern about the expansiveness of the definition of third-party provider including some commenters who were concerned that every contract for every software program would fall under the policy. One commenter also noted that it would be useful to have operational definitions for all terms, specifically "delivering" and "outsourcing." Other comments asked how arrangements would be reviewed, including if the policy would be applied retroactively to existing arrangements or focused on new arrangements (Section IV.A) and random checks or monitoring.

Changes made in the final policy based on feedback to Topic 1:

The Commission made a number of clarifications to the definition of third-party provider and stated how that term is limited in scope under the policy and procedures. A third-party provider is broadly defined as an entity, institution, or organization with which the member institution has a written arrangement and/or contract to provide services to the institution. However, the policy is limited to third-party providers as they are articulated under the *Standards for Accreditation and Requirements of Affiliation (Fourteenth Edition)*, *Evidence Expectations by Standard Guidelines*, policies and procedures, and applicable federal regulatory requirements. This is consistent with previous guidance provided by the Commission.

The policy covers arrangements with third-party providers that include but are not limited to, the following types of services:

1. Student learning opportunities (Standard III and IV);
2. Student support services (Standard IV);
3. Services for the assessment of student learning (Standard V); and
4. Operational or business functions (Standard VI).

To provide further clarification, the Commission added a definition for student learning opportunities in the Definitions section of both the policy and procedures. Student learning opportunities are covered under Standard III and IV of the Commission's *Standards for Accreditation and Requirements of Affiliation (Fourteenth Edition)* and include but are not limited to non-credit offerings, workforce development, internships, clinical experiences, student teaching, study abroad, and/or credit bearing educational courses or programs. *Written arrangements* are a subset of student learning opportunities when an ineligible third-party provider will deliver 25 percent or more of a credit bearing educational program. In accordance with federal regulation, the Commission is required to review and approve written arrangements prior to implementation (through substantive change). A third-party provider is considered ineligible if it is not accredited by a United States Department of Education (USDE) recognized accreditor and is not certified to participate in Title IV programs.

The Commission clarified in Section II.C of the Procedures that it continues to exclude contracts that are solely for goods, books, supplies, products, equipment, or software programs as currently outlined in the *Substantive Change Guidelines*.

The Commission added a definition for outsourcing in both the policy and procedure definitions. Outsourcing is an agreement in which one entity hires another entity to provide a service or program which otherwise is or could be carried out internally.

The Commission made clarifications that Online Program Managers (OPM) are a type of third-party provider that the Commission will review. The Commission currently requires evidence and analysis of the institution's use of OPMs in the *Evidence Expectations by Standard Guidelines (Standard IV, criterion 5)*. In the Definitions section, the Commission added clarification that an LMS may be included in a bundled services relationship with an OPM, which is subject to Commission review. The LMS alone is not a contract that requires Commission review.

Discussion relating to Topic 1:

The assertion that the policy includes each and every single contract with every vendor with which an institution works and each of these would be subject to review and approval of MSCHE is simply incorrect. The policy and procedures state that *written arrangements* are defined in federal regulation as an agreement when an ineligible third-party provider will deliver 25 percent or more of a credit-bearing educational program. The Commission is required to review and approve written arrangements with ineligible third-party providers prior to implementation. The Commission approves written arrangements for 25 percent or more of a credit-bearing educational programs only through the substantive change process.

All other arrangements with relevant third-party providers are reviewed during accreditation activities such as application, candidacy, grant of accreditation, self-study evaluation, substantive change, and follow-up reporting directed by the Commission. For clarity, arrangements that do not include credit-bearing educational programs do not require prior approval. The list of required evidence for these arrangements are articulated in the *Evidence Expectations by Standard Guidelines*. Commission representatives will not conduct a retroactive review of existing contracts but applies the policy and procedures as of the effective date. The Commission, through peer review, will review the required evidence listed in the *Evidence Expectations by Standard Guidelines* during accreditation activities. The Commission conducts ongoing monitoring activities and will request a supplemental information report if an issue with a third-party provider is identified in accordance with the *Accreditation Review Cycle and Monitoring Policy and Procedures*.

It is important to note that the Commission is combining content related to third-party providers that is currently in separate documents including *Contracts by Accredited and Candidate Institutions for Education-Related Services*, *International Programs Offered by Accredited Institutions*, and *Third-Party Providers Guidelines*.

Topic 2: Third-Party Servicers (TPS)

Several comments specifically referenced *Third-Party Servicers* (TPS) or “TPS guidance” and asserted that the Commission was adopting the expansive definition of TPS from the recent (and since rescinded) Dear Colleague Letter related to Third-Party Servicers (TPS) from the United States Department of Education (USDE). Commenters were concerned that the Commission’s new policy may conflict with the definitions or guidance finalized by USDE or may confuse or burden institutions on this issue. One commenter suggested that the Commission should postpone any changes to policy until it is clear that the USDE planned to move forward with new federal requirements.

Changes made in the final policy based on feedback to Topic 2:

The Commission made a number of clarifications to the definition of third-party provider and tried to clarify how that term is limited in scope under the policy and procedures.

Discussion relating to Topic 2:

The Commission wishes to make it clear that it is not providing TPS guidance. Third-party servicer is a term specific to the United States Department of Education (USDE). The Commission will not be monitoring each third-party *servicer* although it does require compliance with applicable laws and regulations. A definition for third-party servicer is provided in the definitions section for context. The Commission’s requirements for third-party providers are not the same as federal requirements for third-party servicers (TPS), and the two should not be conflated. Instead, the Commission’s policy is focused on the institution’s ethical use of third-party providers as articulated in the Commission’s *Standards for Accreditation and Requirements of Affiliation, Evidence Expectations by Standard Guidelines*, policies and procedures, and applicable federal regulatory requirements.

Topic 3: Online Program Managers (OPMs)

One commenter provided information about their prior experience working at an OPM, noting that there is a lack of transparency in these arrangements around marketing and advertising practices and that institutions end up signing long and costly contracts with OPMs without results.

Changes made in the final policy based on Topic 3:

In Section III.F, the Commission made clarifications that OPMs are a type of third-party provider that the Commission will review. The Commission currently requires evidence and analysis of the institution’s use of OPMs in the *Evidence Expectations by Standard Guidelines (Standard IV, criterion 5)*. The institution should be prepared to provide evidence and analysis of its use of OPMs during accreditation activities such as application, candidacy, grant of accreditation, self-study evaluation, substantive change, and follow-up reporting as directed by the Commission.

Discussion relating to Topic 3:

As a point of clarity, the Commission would require approval of an arrangement with an OPM prior to implementation through substantive change when it is considered a written arrangement (for example, the OPM will deliver 25 percent or more of an educational program). Please see the *Substantive Change Guidelines* for more information about what is (or is not) considered a written arrangement that requires Commission review and approval through substantive change.

Topic 4: Written Arrangements Prior to Implementation (Substantive Change)

Several commenters expressed confusion about which arrangements require approval prior to implementation and which ones do not. These comments suggested that further clarity about the approval process was necessary.

Changes made in the final policy based on Topic 4:

The Commission added clarification to Section IV: Procedures for Commission Review and Approval of Written Arrangements Prior to Implementation (Substantive Change). This section is devoted to written arrangements, a type of arrangement with a third-party provider, which require approval prior to implementation in accordance with federal regulations. Written arrangements are a subset of student learning opportunities that are credit-bearing. The types of written arrangements (defined in federal regulation) that require approval prior to implementation are when an ineligible third-party delivers 25 percent or more of a credit-bearing educational program. The Commission clarified that “delivery” of a portion of an educational program is defined as instruction or teaching, but the third-party may also and commonly does provide other services which could also include curriculum development, counseling, advising, assessment, and/or other services. This description of “delivery” is consistent with the *Substantive Change Guidelines*.

The Commission added a provision to cross-reference the requirement that institutions provide *required notifications* or obtain *prior approvals* from the Commission for written arrangements wherein less than 25 percent of a credit bearing educational program is provided by an ineligible third-party provider which is already articulated in the *Substantive Change Policy and Procedures*, *Substantive Change Guidelines*, and federal regulation 34 CFR § 602.22(b)(4).

Discussion relating to Topic 4:

The Commission's requirements to review and approve new or modified written arrangements prior to implementation can be found in the *Substantive Change Policy and Procedures*. The Commission is cross-referencing the requirements for substantive change that relate to third-party providers. The Commission often incorporates by reference other policies and procedures to save space and avoid duplication. It is necessary to locate and review the referenced documents as the content is not repeated.

Other comments

Comment: One commenter wrote in support of the draft policy and procedures but provided several recommendations to strengthen the policy and hold institutions accountable for overseeing responsible relationships with third-party providers. The commenter recommended that the Commission establish more specific requirements for institutions concerning the need for institutions to retain control and oversight, explicitly define which adverse actions could arise if institutions fail to properly oversee the activities of their third-party provider, and urged further action to monitor institutional control of marketing and recruiting. The commenter also encouraged the Commission to define “intense scrutiny,” the consequences when problematic practices are identified in contracts, and more specific requirements about transparency, including disclosures in clear, concise, student-focused language.

Changes made in the final policy based on this comment:

The Commission used a number of suggestions and clarifications provided in the comment, including the addition of a standard provision that the institution can be found out of compliance if there is evidence that the institution failed to properly oversee a third-party provider, or if there are discrepancies or potential violations of Commission policy or procedures or federal regulations. In addition, the Commission will reject a substantive change request for approval of a written arrangement that does not meet the criteria outlined in the substantive change request form. Finally, the Commission added “clear, concise, student-focused language” to the requirements for disclosure.

Discussion of this comment:

The Commission continues to appreciate the practical advice relating to specific criteria and guardrails provided by these types of comments.

Comment: One commenter stated that they appreciate the Commission’s attention to this critical issue and hope other accreditors follow suit; however, 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, including verification during the review process.

Changes made in the final policy based on this comment:

The Commission cross-referenced the substantive change request forms which provide specific guidelines for review and approval of written arrangements, including the specific calculations for determining the percentage of a program delivered by a third-party provider. The forms used by peer evaluators to review written arrangements are posted on the Commission’s website and contain the criteria for approval.

The Commission also added a specific statement in Section III.H (page 6) of the Procedures that outsourcing of 100 percent of operational or business functions is problematic, although review is conducted within the context of the specific institution.

Self-study evaluation continues to be an opportunity for peers to evaluate these arrangements.

Discussion of this comment:

The Commission continues to emphasize the importance of ethical marketing and recruiting practices and accurate representation of a third-party provider in this and other policies and procedures. Further, peer evaluators are required to review these practices as part of each self-study evaluation.

Comment: One commenter requested a screening form for required notifications and prior approvals related to contracts with third-party providers.

Changes made in the final policy based on this comment: None.

Discussion relating to this comment:

The Commission provides a Substantive Change Screening form in the MSCHE Institution Portal which provides screening questions and guidance for Required Notifications and Prior Approvals. The screening questions contain logic to ascertain if the institution needs to do required notifications or prior approvals depending on its accreditation status. The Commission also provides procedures which outline specific action steps that should be taken by the institution in the *Substantive Change Policy and Procedures*. The Commission also offers training on the substantive change process, including the specifics around Required Notifications and Prior Approvals.

Comment: A commenter requested clarification on “appropriately credentialed institution representatives” in Section II.E.

Changes made in the final policy based on this comment:

In the above referenced section, the Commission revised the sentence to state “Review will be conducted by appropriately credentialed institution representatives *such as* legal counsel.”

Discussion relating to this comment:

Legal counsel is trained to review contracts and other legal documents; this is a best practice. The language is not limiting so other qualified personnel may review contracts and written arrangements. The institution should develop and follow its own policy and procedures for review of contracts, written arrangements, and/or binding agreements. Legal counsel working with institutions should understand the expectations of the institution’s accrediting agency.

Comment: One commenter noted a typographic error in the Purpose statement where “contact” was used instead of “contract.”

Changes made in the final policy based on this comment: The Commission appreciates the careful read and has made this typographic correction.

Discussion relating to this comment: None.

Comment: One commenter noted that Section IV. F on page 6 seems to be missing part of the sentence after "program" perhaps "is provided by a third-party..."

Changes made in the final policy based on this comment: The Commission appreciates the careful read and has made this typographic correction.

Discussion relating to this comment: None.

Comment: One commenter stated that it was a very carefully drafted and comprehensive document, establishing policy and procedures for third-party providers of services to accredited institutions.

Changes made in the final policy based on this comment: None.

Discussion relating to this comment: The Commission appreciates the affirmation.