



Ensure Non-Discrimination Policies and Science-Based Curricula are not undermined by Religious Exemptions to Accreditation Standards

Issue

Language regarding accreditation of religious institutions of higher education that was added to the Higher Education Opportunity Act (“HEOA”) in the 110th Congress could be interpreted to require accrediting bodies to accredit religious institutions that discriminate or that do not meet science-based curricula standards.¹

Short Answer

The Secretary of Education should begin the notice and comment process to issue a regulation clarifying that this amendment, which requires accreditation agencies to “respect the stated mission” of religious institutions, does not require the accreditation of religious institutions that do not meet neutral accreditation standards including non-discrimination policies and scientific curriculum requirements.

Background

Recent language added as an amendment to the HEOA could pose a threat to the gay, lesbian, bisexual, and transgender (“GLBT”) community. The language would require educational accrediting agencies or associations to consistently apply and enforce standards that “respect the stated mission of the institution of higher education, including religious missions.”² There is a danger that religious universities will use this language to circumvent non-discrimination requirements or science-based curricula standards.

The concern that some universities would use this amendment as authority to force accrediting bodies to accredit universities that engage in discrimination is not far-fetched. There have been attempts to circumvent the non-discrimination requirements of private accrediting bodies, including the American Bar Association and the American Psychological Association, that include sexual orientation among the list of prohibited categories for discrimination. For example at Regent University Law School the school’s honor code has a category entitled “Sexual Misconduct,” which states the following: “Disorderly conduct or lewd, indecent or obscene conduct or expression,

¹ Examples of this would include a university’s attempt to gain accreditation by the American Psychological Association while including reparative therapy in their curricula.

² The amendment states:

such agency or association consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions, and that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education or correspondence courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered...”

Higher Education Opportunity Act, H.R. 4137, 110th Cong. § 496 (2008) (as passed by both houses of Congress and awaiting Presidential signature).



involvement with pornography, premarital sex, adultery, homosexual conduct or any other conduct, which violates Biblical standards, is prohibited.”³ While the Law School is currently accredited due to its supposed differentiation between “conduct” and “orientation,” if the language of HEOA is not properly clarified, accrediting agencies might be prohibited from taking Regent’s anti-GLBT policies into account in the accreditation process, leading to even more onerous discrimination towards the GLBT community including potential exclusion from the University.

These actions have occurred even though these accrediting associations specifically provide that religious universities can prefer members of their own religion and have the protection that the Constitution would provide to them. As a result, the Department of Education should ensure that this provision is not used to commandeer private accrediting associations to compel the accreditation of universities that engage in discrimination.

Recommendation

The Secretary of Education should issue regulations clarifying that the amendments to the Higher Education Act of 1965 at 42 U.S.C. § 1099b in Section 496 do not require the accreditation of institutions that discriminate or do not meet curricular standards regardless of religious affiliation.⁴

Authority

The Secretary of Education has a statutory mandate to issue regulations to implement this provision.⁵

Proposed Implementation

“The Department of Education has determined that, for the purposes of determining the accreditation of religious institutions, a regulation should be issued such that Section 496 of the Higher Education Opportunity Act does not require the accreditation of religious institutions that do not meet neutral accreditation standards including non-discrimination and scientific curriculum requirements.”

³ REGENT UNIV. STUDENT HANDBOOK, http://www.regent.edu/admin/stusrv/student/Student_Handbook.pdf (rev. June 2008).

⁴ *See id.*

⁵ *See* 42 U.S.C. § 1099b(o); *and* H.R. 4137, § 102.