

What the Securities & Exchange Commission Can Teach Us About College Accreditation

by Rick O'Donnell
Senior Research Fellow

*This paper is the 6th in
a series on the state of
higher education in Texas.*

RECOMMENDATIONS

- Create a new, alternative path to college accreditation.
Components would include:
 - complete public disclosure of tuition and fees, graduation rates, faculty qualifications and the refund policy;
 - self-certification that the data has been disclosed and externally-validated;
 - consumer protection through a surety bond to refund tuition and fees; and
 - less regulation with audits and prosecution based off of complaints and fraud.

ACCREDITATION'S SHORTCOMINGS

It is more difficult to open a private college or career school in Texas than it is for a doctor to open a medical clinic, a principal to open a private elementary school, or a company to sell its stock to the public. Yet few would argue that medical care, the education of children, or protecting investors is any less important than ensuring a quality higher education. So why does Texas have such a costly bureaucratic regulatory approach to its private higher education institutions?

To receive state approval or accreditation to open and operate a private degree-granting college or university in Texas requires the prior approval of the Texas Higher Education Coordinating Board. To open a private career school (be it for barber or auto mechanic school) requires the prior approval of the Texas Workforce Commission.

Obtaining this prior approval is not easy. Both agencies have dozens of pages of rules and regulations that specify everything from the qualifications of the administration, faculty and teachers, to the composition and duties of the governing board, to details on the curriculum, the library, and the operation of branch campuses. These are largely process-oriented and input measures with little focus on the actual outcome of student learning.

It would be as if, when J.D. Powers & Associates rates the quality of automobiles, rather than focusing on comfort, how the car handles, accelerates, and protects passengers in an accident, it wanted to know who was on

the board of General Motors, the location of Toyota's manufacturing plants and the qualifications of BMW's assembly-line workers.

This heavy-handed, micro-managing approach to accrediting colleges creates problems in Texas and across the country. The U.S. Secretary of Education's Commission on the Future of Higher Education recently reported:

Accreditation, the large and complex public-private system of federal, state and private regulators, has significant shortcomings.

Accreditation agencies play a gatekeeper role...

Federal and state policymakers should relieve the regulatory burden on colleges and universities by undertaking a review of the hundreds of regulations with which institutions must comply and recommend how they might be streamlined or eliminated.¹

Building on reforms already occurring in other states, Texas has an opportunity to create a new, alternative path to accreditation for its colleges that accomplishes the goals and recommendations of the Secretary's Commission for reforming accreditation:

“(i) allow comparisons among institutions regarding learning outcomes and other performance measures, (ii) encourage innovation and continuous improvement, and (iii) require institutions and programs to move toward world-class quality relative to specific missions and report measurable progress in relationship to their national and international peers.”

THE FTC AND SEC APPROACH

Many important industries affecting the education and health of Texans do a fine job with much less bureaucratic hassle than Texas colleges. For example:

Texas does not require a physician opening a doctor's office to get pre-approval for the number of exam rooms, nurses, and administrative staff employed, how many patients will be seen, and the billing processes for patients. Physicians are required to report certain infectious diseases they diagnose. Private sector organizations including health insurers are increasingly rating the quality of physicians and posting that information on the Internet to help consumers choose. Yes, physicians and nurses are licensed, but Texas regulators only investigate physician malpractice and problems at a doctor's office if there is a complaint.

Private and parochial K-12 schools require little pre-approval to open and operate in Texas. Beyond basic building codes and, if they are going to have a cafeteria, certain food-safety regulations, there are few other requirements a private K-12 school must meet to operate. There is no regulation of the curriculum or teacher qualifications or how many resources are available in the library—and these private schools successfully educate more than a quarter million Texas children each year.

It is nonsensical that colleges—educating adults—face more hurdles to operate than a doctor's office treating patients or a K-12 school educating young children.

This alternative process would involve the full disclosure of the important information a student or parent will need to reasonably judge whether to attend a particular school, certification that the information is accurate

and true, and give the Texas Attorney General authority to prosecute anyone defrauding students.

This is a tried and true approach to regulating industries in America. For example:

The Federal Trade Commission (FTC) does not require companies to submit in advance detailed information about their television ads, the energy efficiency of their appliances, or the type of fabric used in clothes. The FTC does require companies to fully disclose and label such things as energy efficiency or if a shirt is made of cotton or polyester and then let consumers use the information to decide whether to purchase a product. Only if it receives complaints does the FTC investigate product problems or violations of truth in advertising.²

The Securities and Exchange Commission (SEC) is similar. If a company in America wants to do an initial public offering and list its shares, the SEC requires lots of public disclosure about the firm and its finances. The SEC does not pre-approve this information but requires the company's officers to certify that it is accurate (and have an outside auditor do so as well). The SEC lets people who buy and sell stocks judge a company's performance. Only if there is suspected fraud does the SEC (and as we have seen in recent years state attorney generals and U.S. attorneys) investigate and prosecute.³

COMPONENTS OF AN SEC APPROACH

What would an FTC or SEC approach to higher education accreditation look like in Texas? It would have three key components:

Self-Certification

A college wanting to operate in Texas would submit to the Workforce Commission or Higher Education Coordinating Board a

TalkingPoint:

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completed checklist of all the items that they have publicly disclosed about their institution. This checklist would be signed and dated, acknowledging full compliance with disclosure requirements (including accuracy); along with an attestation statement signed by the chief executive officer or equivalent. This is much like the SEC requiring specific items be disclosed by a public company and the CEO certify that it is accurate.

What would need to be disclosed? Those items necessary for students and parents to make an informed decision and choice about an institution. Clearly, items at the heart of the student experience need to be disclosed, including:

- How do you apply?
- What are the tuition and fees?
- How many students receive financial aid?
- What courses are offered?
- Who are the faculty and what are their qualifications?
- What are the requirements to earn a certificate or degree?
- How many students graduate and in what time period?
- What type of career placement services are available?
- What is the refund policy and student rights if there is a problem with the college?

Just as important are an institution's outcomes. Financial markets want to know if a company generates cash and profits. Students and parents want to know what the college promises to deliver in terms of education—and the quality of that education. Thus the self-certification statement would need to disclose not only what the institution promises it will deliver, but also how they evaluate their effectiveness in achieving desired outcomes. The statement would also include, where applicable, student outcome data such as graduation rate, post-graduate

employment data, post-graduate scores on regulatory, licensure or other external exams, and results from post-graduate and/or employer satisfaction surveys.

Additionally, much like the SEC requires an independent audit of a company, the institution would have to disclose who conducted the assessments of student outcomes and that they are externally-validated, reliable and comparable with other institutions or programs of the same type.

With complete disclosure, students and parents—in addition to third party rating organizations such as *U.S. News and World Report* and regional accrediting bodies—would be able to determine what the college promises and if it delivers on its promise.⁴

Consumer Protection Bond

When a college submits a certification of disclosure statement, it would also submit a surety bond. This bond would need to be adequate to provide refunds to students for any prepaid tuition or fees should the college go bankrupt, cease operations or for some reason be unable to educate students. The bond would be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school the year. The bond serves to provide additional insurance on top of full disclosure, which is especially important for new colleges without a long track record for students and parents to judge. Colleges could be exempt from posting a bond if they can demonstrate a high score on the U.S. Department of Education's measurement of financial responsibility.

Audit and Prosecution

The Workforce Commission and Higher Education Coordinating Board would have the power to audit an institution's disclosure statements if there were certain triggers, such as complaints about inaccuracies. If they

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With complete disclosure, students and parents—let alone third party rating organizations—would be able to determine what the college promises and if it delivers on its promise.

find incomplete or false information, they can demand remediation and/or shut down a school. Additionally, the Texas Attorney General will be empowered to prosecute fraud by any college.

BENEFITS

By creating this alternative and optional accreditation process, Texas would reap many benefits, including:

- Saving colleges and regulators time and money by avoiding the lengthy and costly application process.
- Creating incentives for new colleges and more educational opportunity as entrepreneurs respond to the reduced barriers to entry.
- Utilizing a more flexible college-centered process rather than one imposed by regulators from above.
- Allowing more robust disclosure in the three areas of quality:
 - Assets (quality of faculty, learning resources, student body demographics),
 - Process (what are the specific learning/curriculum objectives, what is the tuition refund policy, how are student records maintained), and
 - Outcomes (what have you promised and delivered and how do you know).

- Providing greater transparency, accountability, and comparison between schools;
- Protecting students from fraud or mismanagement;
- Evaluating institutions by students and parents rather than regulators; and
- Fostering innovation by allowing those who want to prove their ability to educate students more effectively and efficiently the opportunity to do so.

HAS THIS BEEN DONE BEFORE?

Texas would lead the nation if it were to adopt an SEC-like option for all of its colleges by building on the work of other states, including Virginia and Colorado. In 2002-2003, Virginia replaced its prior approval process with a certification process for private and out-of-state post-secondary institutions. As part of this self-certification process, Virginia requires the posting of a bond. Colorado also requires its occupational career schools to post a bond.⁵ ★

ENDNOTES

¹ A Test of Leadership: Charting the Future of U.S. Higher Education, Final Report of the U.S. Secretary of Education's Commission on the Future of Higher Education, September 2006. For more information on the problems with accreditation, see "The Need for Accreditation Reform," Robert C. Dickeson, white paper presented to the Commission.

² For an example of the FTC's approach to disclosure, see "Dot Com Disclosures," FTC Consumer Alert, <http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/#III>.

³ For more background on the SEC's approach to regulation, see "Regulation in a Global Environment," Speech by Alan L. Beller, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, American Academy in Berlin, Berlin, Germany, April 20, 2004.

⁴ The disclosure statement would need to cover several additional areas to comply with federal law for institutions receiving Title IV financial aid funding. These disclosure items can basically be broken down into: Institutional Description; Student Profile; Recruitment, Admissions, Courses & Student Complaints. Student Records; Curriculum, Total Credits, General Education, Satisfactory Progress, Institutional Effectiveness and Systematic Program of Review; Faculty Qualifications; Management, Financial Capacity and Information Sharing; and, Learning Resources.

⁵ Virginia's regulations associated with approval of private and out of state institutions are available at [http://www.schev.edu/AdminFaculty/forms/iApproval/final regs 8-24-06.pdf](http://www.schev.edu/AdminFaculty/forms/iApproval/final%20regs%208-24-06.pdf). The regulations for Colorado's career school bonds are available at <http://www.state.co.us/cche/dpos/regulations/rules.pdf>.

About the Author

Rick O'Donnell is founding president of The Fund for Colorado's Future, a nonprofit charity that identifies policies and implements proven practices to boost student achievement in low-performing K-12 public schools.

Mr. O'Donnell previously served as executive director of the Colorado Department of Higher Education, overseeing all 29 public institutions of higher education in the Colorado that cumulatively enroll nearly 270,000 students. His accomplishments include implementing the nation's first taxpayer voucher funding of higher education, establishing the nation's leading performance accountability contracts for colleges and universities, and launching the largest effort in state history to expand college access for under-served and under-represented students.

Mr. O'Donnell served as Executive Director of the Colorado Department of Regulatory Agencies, where he oversaw more than 500,000 licensed professionals and the banking, insurance, securities, telecommunications and energy industries. While at the Department, one of his leading accomplishments included the establishment of the Office of Economic Competitiveness and Regulatory Reform that helps the private sector keep track of regulations via the Internet and get involved in the regulatory process; this system is also the first of its kind in nation.

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The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, private property rights, free markets, and limited government.

The Foundation's mission is to lead the nation in public policy issues by using Texas as a model for reform. We seek to improve Texas by generating academically sound research and data on state issues, and recommending the findings to policymakers, opinion leaders, the media, and general public.

The work of the Foundation is primarily conducted by staff analysts under the auspices of issue-based policy centers. Their work is supplemented by academics from across Texas and the nation.

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