



## **Middle States Commission on Higher Education**

3624 Market Street, Philadelphia, PA 19104-2680. Tel: 267-284-5000. www.msche.org

*Policy*

### **Conflict of Interest: Peer Evaluators and Commissioners Effective June 23, 2011 (Revised October 2012)**

Peer evaluators and Commissioners provide a vital service to the organization. The quality of the organization and the integrity of its actions are dependent upon the diligence, good faith, and integrity of its volunteers. This policy summarizes the fiduciary duty and conflict of interest standards that govern service for the Commission on Higher Education. Strict adherence to these standards will assure the continued independence, integrity and highest reputation of the organization.

Individuals covered by this policy may serve in the capacity of Commissioner, Commissioner *Pro Tempore*, or in the volunteer peer evaluator roles of Team Chair, Team Member, Substantive Change Committee Member, Periodic Review Report Reviewer, and Finance Associate.

All Commissioners and volunteer peer evaluators will exercise their best efforts to comply with these guidelines. However, failure to comply with these guidelines does not invalidate Commission actions nor constitute grounds for liability of the individual peer evaluator, individual Commissioner, the Commission itself, or staff, unless applicable law so requires.

#### **I. CONFLICT OF INTEREST POLICY**

The purpose of this policy and the attached “Conflict of Interest Disclosure Statement” is to ensure objectivity in the accreditation process by maintaining integrity, credibility, and codes of good conduct in accreditation and policy making processes and avoiding actual conflicts, potential conflicts, or even the appearance of conflicts of interest in the Commission’s actions.

##### **A. Accreditation Activities**

###### *1. Institutional Conflicts*

To avoid an actual, potential or the appearance of a conflict, the Commission will not assign a volunteer peer evaluator under any of the following circumstances known to the Commission. The Commission also expects any volunteer peer evaluator acting on behalf of the Commission or any Commissioner to recuse him or herself from any discussion or accreditation decision if any of the following conditions exist.

- The individual’s home institution is part of the same public or private system.

- The individual has been a candidate for employment in the evaluated institution within the past year.
- The individual has been employed by the institution within the past five years.
- The individual belongs to the governing body of the institution.
- The individual has a personal, business, consultative, or other interest in or relationship with the institution under review and consideration, or with its affiliates, partners, or other constituents or interested parties, that could affect his or her objectivity.
- The individual or the individual's institution has a material interest in a particular accreditation outcome based on a significant business or other fiduciary agreement (excluding routine articulation or similar inter-institutional agreements).
- The individual has a family member who is an employee, board member, candidate for employment, applicant for student enrollment, or enrolled student at the institution. A "family member" is a spouse, partner, parent, grandparent, child, grandchild, sibling, aunt, or uncle, whether by blood, marriage, or adoption, or any other person in the individual's household.
- The individual or his or her immediate family member is an alumnus or alumna of the institution. An "immediate family member" is a spouse, partner, minor child, other dependent, or any other person in the individual's household.
- The individual or his or her immediate family members hold shares of stock (excluding shares held indirectly through mutual funds, insurance policies or blind trusts) in an applicant, candidate or accredited institution, or their respective parent company or affiliated entity.
- In the individual's or the Commission's judgment, there is any other circumstance that could be perceived as a conflict of interest.

Prior to making assignments, the Commission shall take measures to assure that no peer evaluator will be assigned to review an institution with which the individual has a conflict or appearance of a conflict.

No Commissioner will knowingly be assigned as a Commissioner-reader or reviewer of any institution for which a conflict exists.

## 2.. *Consulting*

Peer evaluators and Commissioners are prohibited from soliciting or receiving consulting fees or any other form of remuneration for any accreditation-related consulting from any Commission member or candidate institution. Seminars or workshops for faculty or administrators to share institutional or discipline-related information or expertise are not considered to be accreditation-related.

No member of a visiting team may serve as a paid consultant to the institution being visited for a period of one year following the official accrediting action. The institution is expected to respect the process by not engaging any team member as a consultant for one year following evaluation or considering any team member for permanent employment within one year of the evaluation.

Individuals should decline to serve on behalf of the Commission, including participation in any discussion or decision related to accreditation, for any institution for which she or he has served as a consultant in the past year.

## **B. Commission Activities**

### *1. Service as a Commissioner*

Commissioners and Commission-appointed trustees on the Association's board of trustees serve in a fiduciary capacity. Avoidance of any conflict or potential conflict in such service is critical to maintaining the quality, integrity and reputation of the organizations.

To avoid the potential for a conflict of interest, Commissioners may not receive honorary degrees from any Commission member or candidate institution. Commissioners may not be employed by the Middle States Association or the Commission on Higher Education within a one-year period following their tenure in office.

### *2. Association/Commission Conflicts*

#### *a. Service as an Association Trustee*

The Commission on Higher Education appoints four persons to serve as voting members of the Association's board of trustees. The Commission may appoint individuals currently serving on the Commission to serve as Association trustees. The Commission adopted a separate conflict of interest policy to guide Commissioners serving as Association trustees. A copy of that policy is available from the Commission's President.

#### *b. The Commission's Delegated Fiduciary Responsibility to the Association*

The Commission also serves the Association in a fiduciary capacity. The Commission on Higher Education is responsible for all accreditation and accreditation-

related activities for higher education institutions in the Middle States region. The Department of Education regulations specify that the Commission must be separate and independent of the Association with respect to accreditation and accreditation-related functions. In recognition of the Commission's legal responsibilities under the Higher Education Act and other applicable laws and regulations, Article VI and other sections of the Association's Bylaws delegate the full fiduciary responsibility for the day-to-day financial, administrative and operational affairs of each commission's accreditation and accreditation-related activities to each commission. Accordingly, the Commission, when acting on an accreditation matter delegated under Association bylaws, stands in a fiduciary relation to the Association and must perform its duties in good faith, in a manner it believes to be in the best interest of the Association.

### *3. Fiduciary Responsibilities*

The fundamental legal duties of a fiduciary are the duties of due care, loyalty and obedience:

- The **duty of due care** requires Commissioners to act in a fully-informed manner and to exercise that degree of care and prudence that would be expected of them in the management of their own affairs. The duty of care requires Commissioners to inform themselves of all reasonably available information that is material to their decisions, to devote sufficient time to considering such information, and to deliberate over their decisions.
- The **duty of loyalty** requires a Commissioner to place the interests of the organization and its members above any personal interest when making decisions that affect the organization. The duty of loyalty generally prohibits a Commissioner from using his or her Commission position to realize personal gain at the expense of the organization. Included in the duty of loyalty is the concept of good faith that requires Commissioners to act in the best interests of the organization and its members. Commissioners must act honestly and in a manner that is not knowingly unlawful or contrary to public policy. Deliberate indifference or inaction in the face of a known duty to act are hallmarks of bad faith conduct.
- The **duty of obedience** requires Commissioners to determine the organization's central mission and act consistently with it, follow its governance documents, including the Association's articles of incorporation and bylaws, and assure that the organization acts in accordance with the laws applicable to tax-exempt organizations and the Commission's mission.

Commissioners must refrain from self-dealing, usurping corporate opportunities and receiving improper personal benefits.

All decisions made on an informed basis, in good faith and in the honest belief that the action was taken in the best interest of the organization will be protected by the “business judgment rule.” Commissioners may rely on the advice and reports of staff, independent advisors and experts, if such individuals are known to be reliable.

Absent a breach of fiduciary duty, any action of the Commission, when acting for itself, or on behalf of the Association, shall be presumed to be in the best interests of the organization.

### **C. Other Financial Conflicts**

Restrictions regarding insider trading of the stock of publicly held companies apply to Commission members, Commission staff, and any other representative of the Commission. No person who has non-public information about any issuer of securities of a public company, including without limitation because of Commission matters (including without limitation proposed or final actions about individual member or Candidate institutions), may personally or on behalf of others buy or sell any security of such issuer, disclose or use such information until it is public or use it for personal gain or the gain of others, or for any other purpose that would be or appear to be inappropriate use of such information.

Commissioners and staff who hold securities in a publicly traded institution, the parent corporation of a for-profit institution, or affiliated entity must disclose the conflict of interest on the attached form and recuse themselves from any discussion, deliberation, or decision making regarding the institution.

## **II. CONFLICT OF INTEREST DISCLOSURE STANDARDS**

Each peer evaluator shall submit a completed conflict of interest disclosure statement prior to commencing an institutional assignment. Each Commissioner shall submit a completed conflict of interest statement annually, or when a relevant change in circumstances occurs.

## **III. CONFLICT OF INTEREST PROCESS**

If an action comes before the Commission or a committee of the Commission for which a Commissioner, a committee member or his or her educational institution has a material financial or other material non-economic interest, there is a process that should be followed to assure that the Commission’s action is not subject to challenge. In its essence, the process includes (1) disclosure of the actual or potential conflict to the Commission (or committee), (ii) a good faith action by the Commission (with or without the vote of the conflicted Commissioner) and, (iii) documentation of the disclosure and the action.

Under Pennsylvania law, an action of the Commission, including an action involving a Commissioner or his or her educational institution, is not void solely for such reason or solely

because the Commissioner with the interest is present or participates in the meeting on such matter, if:

- The material facts as to the relationship or interest are disclosed or known to the Commissioners and the Commission in good faith authorizes the action by an affirmative vote of a majority of disinterested Commissioners, even though the disinterested Commissioners are less than a quorum;
- The material facts as to the relationship or interest and as to the action are known or disclosed to the Commissioners and the action is specifically approved in good faith by vote of the members, or
- The decision is fair as to the Commission or the Association as of the time it is authorized, approved or ratified by the Commissioners.

The minutes of any Commission or committee meeting where any action is taken that involves an actual or potential conflict of interest should address the conflict of interest subject and identify the potential interest of the Commissioner(s), record that the material facts as to the relationship and interest known or disclosed at the meeting and state which of the three alternate bases for the action listed above was relied upon in making the decision.

Commissioners shall absent themselves during any substantive discussion and recuse themselves from any accreditation-related decision involving an institution with which they have a conflict. Any abstention by a Commissioner should also be duly recorded in the minutes of the meeting.



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## Conflict of Interest Disclosure Statement

In accord with the Commission’s policy statement, “Conflict of Interest: Peer Evaluators and Commissioners,” please **read carefully the disclosure statement below** and, to the best of your judgment, **disclose any conflicts or potential conflicts of interest at the bottom, and sign and return the form to the Commission office as soon as possible**. The Commission will use the information provided to help control the compilation and distribution of information for participants in the accreditation process, to monitor the participation of readers and representatives on visits, and to determine who participates in discussions or decisions concerning institutions. If, in your opinion, you are not involved in any situations or circumstances which would be considered conflicts or potential conflicts of interest, simply write “None” on the form.

*Please indicate how you are participating in the accreditation process.* You may be asked to complete a form each time you participate in a different aspect of accreditation. If you are a Commissioner or being considered as a Commissioner, please also indicate whether you are a Public Representative of the Commission.

A Public Representative is an individual who is **not** an employee, governing board member, owner, shareholder, or consultant of an institution accredited by the Commission or a candidate for accreditation by the Commission; who is **not** a member of any trade association or membership organization related to, affiliated with, or associated with the Commission; and who is **not** a spouse, parent, child or sibling of any of the above.

### I am serving or being considered as a:

- Commissioner
- Commissioner *Pro Tempore*
- Team Chair
- Team Member
- Substantive Change Committee Member
- PRR Reviewer
- Finance Associate

### If you are serving or being considered as a Commissioner, please indicate your status:

- I **am** (being considered as) a Public Representative of the Commission
- I **am not** (being considered as) a Public Representative of the Commission

I have read and fully understand the attached “Conflict of Interest: Peer Evaluators and Commissioners” policy. To the best of my knowledge, I have disclosed below all situations and circumstances which may be considered conflicts of interest or potential conflicts of interest. Also, during my service to the Commission, I will voluntarily disclose any situation or circumstance which may, in my judgment, be considered a conflict or potential conflict of interest as it arises.

*Attach separate sheet(s), if necessary:*

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Signature: \_\_\_\_\_

Please print or type: \_\_\_\_\_ Date: \_\_\_\_\_

**Please note: if you are currently serving as a Public Representative or are being considered as a Public Representative on the Commission, the Appeals Panel, or in any other decision making role, please also complete, sign, and return the attached Certificate of Eligibility to Serve as a Public Member.**



## Certification of Eligibility to Serve as a Public Member

A Public Representative is an individual who is **not** an employee, governing board member, owner, shareholder, or consultant of an institution accredited by the Commission or a candidate for accreditation by the Commission; who is **not** a member of any trade association or membership organization related to, affiliated with, or associated with the Commission; and who is **not** a spouse, parent, child, or sibling of any of the above.

I have read and fully understand the definition of a *Public Representative*. By signing this document, I hereby certify that I meet this definition for service as a Public Representative. I agree that, should my circumstances change and I no longer meet the definition of Public Representative, I will immediately notify the Commission and will resign my position as a Public Representative.

Please Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_