

Legal Costs and Obligations Policy

Purpose

The specific purposes of the WASC Senior College and University Commission (WSCUC or the Commission) are to promote the welfare, interests and development of higher education through the continued improvement of educational institutions, close cooperation among colleges and universities within the region it serves, and effective working relationships with other educational organizations and accrediting organizations. Dues and fees paid to WSCUC by accredited and applicant institutions are charged to support those primary purposes. As an accreditor that serves the public interest, on occasion WSCUC may be called on to respond to government inquiries or subpoenas about an institution or group of institutions. WSCUC may also be required to defend against legal actions. WSCUC has adopted this Legal Costs and Obligations Policy to assure that any financial burden arising from information requests and legal proceedings can be managed fairly and without disruption to WSCUC's core purposes. Therefore, each applicant institution and institutions holding accreditation, pre-accreditation or another status with WSCUC agrees to the following provisions.¹

Costs of Compliance with Third Party Discovery Requests

WSCUC will comply with requests for information pertaining to accredited and applicant institutions as required by law and regulation, including information sought by a government agency, subpoena or court order. To the extent permissible, the Commission will notify institutions of such requests and may, in its discretion, require reimbursement by the institution for all production costs, including document retrieval, copying, and delivery, and staff time required to fulfill the request.

Litigation Costs

In the event WSCUC is the prevailing party in any action or proceeding brought by an institution, or brought by WSCUC to enforce any provision of this policy, as the prevailing party WSCUC shall be entitled to, and as required, will petition the court for all reasonable costs incurred, including staff time, court costs, attorney's fees, and all other related expenses incurred in the preparation for, prosecution of or response to any such litigation ("litigation costs").² If the Commission is named as a party to litigation initiated by a third party that relates to activities or omissions of an institution, the institution shall be responsible for the payment of all litigation costs.

Costs and litigation expenses must be paid in full within 45 days following the institution's receipt of a Commission invoice, unless other arrangements are approved in advance.

The Commission shall not be entitled to recover costs if judgment is entered for the institution and against the Commission, and the court awards the relief or damages requested from the Commission.

Indemnification

WSCUC accredited or applicant institutions shall indemnify and hold harmless WSCUC and its Commissioners, staff, representatives, and volunteers for claims arising out of any alleged wrongdoing on the part of an institution (or by any person acting on behalf of an institution) or alleged acts or omissions by WSCUC related

¹WSCUC understands that the implementation of this policy, in particular the provisions on indemnification, may require reconciliation with applicable law and regulation.

²Costs include, but are not limited to, reasonable attorney's fees, staff time, discovery, and travel costs.

to an institution. More specifically, institutions will reimburse WSCUC for loss, cost, damage, liability and expense including attorneys' fees, litigation costs, costs of document production, time and travel expenses, and other costs associated with any arbitration, litigation, discovery, subpoena, or any investigation conducted by a federal or state agency or law enforcement body related to the institution.

Legal and Financial Reviews

An institution shall be responsible for reimbursing WSCUC for all expenses incurred in the event WSCUC determines it is necessary to consult (beyond its ordinary preparation for reviews) with specialists or professional advisors regarding legal or financial agreements, projections, or proposals submitted by an institution as part of its request for review and approval, including consultations required during substantive change reviews. Since the purpose of such consultations is to inform the Commission's review and decision, any reports or memoranda generated as a result are shared only with Commissioners, panel members, staff, and as appropriate evaluation team members and advisors involved in the Commission process.

Non-Payment Remedies

WSCUC may take any action it deems appropriate under the circumstances in the event of an institution's failure to submit payment in full when due, including without limitation and in WSCUC's sole discretion, sanctions up to and including withdrawal of the institution's accreditation status as well as other remedies available at law.

Choice of Law, Jurisdiction, and Venue

WSCUC and each institution understands that "Notwithstanding any other provision of law, any civil action brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary of the Department of Education for the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42 and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court." (See 20 U.S.C. 1099b(f)).

Institutions consent to the United States District Court for the Northern District of California, located in Alameda County, California, exclusively as the "appropriate United States district court" for purposes of the above statute. Each institution further agrees that jurisdiction and venue for any other civil action that might arise out of or as a consequence of an institution's active or inactive accreditation status or the pursuit of such status with WSCUC shall exclusively be brought in the United States District Court for the Northern District of California located in Alameda County, California, or the state courts of Alameda County, California, whichever court has proper subject matter jurisdiction. Each institution submits to the personal jurisdiction of such courts.

*Approved by the Commission, June 2015
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