

April 19, 2023

Dr. Nasser H. Paydar
Assistant Secretary for Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: Docket ID ED-2023-OPE-0039, Negotiated Rulemaking Public Hearing Comments

Dear Assistant Secretary Paydar:

Since its founding in 1915, the American Association of University Professors (AAUP) has endeavored to advance principles of academic freedom, tenure, and shared governance. Higher education can serve the common good only when faculty members are free to teach and conduct research without fear of external reprisal. As an association of over 44,000 faculty members at over 500 institutions, we look forward to the Department of Education convening a negotiated rulemaking committee on issues of interest to our members including accreditation, state authorization, and third-party servicers.

Our comments today are made against a backdrop of increasing state political interference in teaching and learning, areas that should be the purview of faculty members. We fear that such interference threatens the distinctive features of higher education in the United States making it the best in the world—an environment where students can be challenged by differing ideas and perspectives, including those that may be controversial and thought-provoking. Faculty members require the academic freedom to determine course materials and curriculum, and the protection of tenure, which provides economic security, to ensure that faculty can pursue their teaching and research without undue influence from corporate or political pressures. Recent legislation introduced or passed across numerous states threatens this hallmark of American higher education by limiting what can and cannot be taught, eliminating entire fields of study, or gutting the protections of faculty tenure. We have also witnessed state legislation that would curtail collective bargaining rights at public institutions or centralize governance of state institutions in the hands of political entities, which would further restrict the faculty's role in shared governance at their institutions.

The AAUP believes that the U.S. Department of Education has a duty through the rulemaking process to ensure that accreditation is more than just a rubber stamp. The regulatory triad, inclusive of federal governments, state agencies, and accrediting agencies, must understand their duty to uphold academic freedom, tenure, and shared governance. Ensuring students have the freedom to learn from content area experts across fields of study is essential to academic quality.

We ask the Department to consider in this negotiated rulemaking session three critical areas for academic freedom: faculty rights in the accreditation process, accreditation shopping, and online program managers (OPMs).

Strengthening Faculty Voice in Accreditation and the Negotiated Rulemaking Process

The AAUP's policies on accreditation affirm the role of faculty in overseeing curriculum and teaching matters of the institution. The AAUP's statement on the role of faculty in accrediting colleges and universities affirms that "the appraisal of the academic program should be largely the responsibility of faculty members," who play a major role in evaluation of curriculum, library, teaching loads and conditions, research, and other critical areas. Faculty have the primary responsibility over the academic aspects of self-evaluation, which should include conditions of academic freedom and tenure, institutional government, and faculty status and working conditions. Furthermore, a formally adopted institutional policy on academic freedom and tenure, consistent with major provisions of the AAUP's 1940 *Statement of Principles on Academic Freedom and Tenure*, should be a condition for accreditation.

Any changes to accreditation regulations must not infringe on faculty rights to oversee curriculum and participate in the accreditation process. Furthermore, our position on accreditation is that institutions that have committed egregious violations of academic freedom, tenure, or shared governance should have their accreditation revoked if such violations are not corrected.

In addition to ensuring future rulemaking protect academic freedom and shared governance, we also ask that the Department of Education designate a seat at the negotiating table for faculty to represent their interests. Too often, institutional representatives across sectors come from the ranks of the administration, rather than from that of faculty members who know what it is to teach in a college or university classroom, to head a laboratory, or to lead a research project. Issues such as accreditation, third-party servicers, and the approval of programs have a direct impact on faculty work, and their viewpoint deserves to be treated equally at the negotiating table, just as AAUP policy provides for the role of the faculty in the shared governance of postsecondary institutions themselves. The Department must ensure that faculty voices are adequately represented at any negotiated rulemaking table it convenes.

Accreditation Shopping

Many of our members are also concerned with so-called "accreditation shopping," where institutions can change accreditors to evade reporting requirements and oversight. Frequent changes of accrediting agencies introduce inconsistency into the accreditation process and prevent agency oversight of an institution's commitment to academic freedom, tenure, and shared governance. Faculty deserve to have clear and consistent expectations of their regional accreditors and to know the guidelines for shepherding their institutions and programs through the review process. We appreciate the 2022 Dear Colleague Letter for clarifying the conditions under which an institution may change accreditors and the steps that it must take to do so. We urge the Department to use its regulatory power to prevent accreditation shopping and to protect accreditation from additional instances of state political interference wherever possible.

Third-Party Servicers

We are also concerned about Online Program Managers (OPMs), or third-party companies that contract with institutions for online education programs. OPMs proliferated due to 2011 guidance on third-party servicers that allowed for loopholes in the incentive compensation ban for bundled sets of services. We appreciate that the Department recently issued a 2023 Dear Colleague Letter adding oversight, auditing, and information reporting requirements on OPMs. This transparency is greatly needed. The AAUP has long been concerned that the relationship between higher education institutions and OPMs can infringe on academic freedom and shared governance. In our comments on the incentive compensation ban earlier this year, we highlighted how OPM contracts often limit faculty academic freedom and ownership over curriculum matters.

We urge the Department of Education to convene negotiators to provide additional protections with regard to OPMs and to foreground issues of academic freedom and shared governance in policy making. Regulations on accreditation and third-party services should ensure that the faculty's primary responsibilities under AAUP-supported principles and standards, including matters of curriculum and instruction, remains intact.

We thank you for the opportunity to provide comments on the beginning of this year's negotiated rulemaking process, and we look forward to working with the Department of Education on these topics in the months ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Irene Mulvey". The signature is fluid and cursive, with the first name "Irene" and last name "Mulvey" clearly distinguishable.

Irene Mulvey, PhD

President

American Association of University Professors