

FLORIDA DEPARTMENT OF EDUCATION



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Commissioner of Education



February 26, 2013

Sophia McArdle, Ph.D.
U.S. Department of Education
Office of Postsecondary Education
Policy, Planning and Innovation
1990 K Street, Room 8019
Washington, DC 20006

Dear Dr. McArdle:

The Commission for Independent Education has received information indicating the United States Department of Education's position on Florida's licensure requirements as they relate to federal State Authorization regulations. Enclosed, please find the official response from the Commission which was prepared by our legal counsel. It is the Commission's position that institutions licensed by means of accreditation (LBMA) in Florida are not exempt from approval or the licensure requirements of the Commission based upon accreditation or any other exemption.

Commission staff and I are available to answer any questions that you may have about the licensure process in Florida and we welcome the opportunity to begin a dialogue on the issues surrounding licensure by means of accreditation. The Executive Director or I will be in contact with you next week so we can make progress on the resolution of this issue.

Sincerely,

A handwritten signature in cursive that reads "Nancy M. Bradley".

Chair

Commission for Independent Education

SAMUEL L. FERGUSON
Executive Director
Commission for Independent Education

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To: Sam Ferguson, Executive Director

From: Judy Bone, Deputy General Counsel

Date: 2/26/2013

You have requested an opinion on whether an institution that is licensed by means of accreditation by the Commission for Independent Education (Commission) is exempt from licensure based upon accreditation, under the provisions of 34 C.F.R. § 600.9(a)(1)(ii).

In summary, institutions that are licensed by means of accreditation are not exempt from approval or the licensure requirements of the Commission based upon accreditation or any other exemption.

The federal regulation noted above sets forth the requirements for an institution to be considered an eligible institution of higher learning in order to participate in federal financial aid and provides, in part, that an institution is qualified,

[i]f an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, . . . , the institution –

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

34 C.F.R. § 600.09(a).

OFFICE OF THE GENERAL COUNSEL

As you are aware, the Commission for Independent Education is the entity in the state of Florida that regulates private post-secondary institutions. See, Section 1005.21; 1005.31, F.S. All colleges or schools operating in this state must obtain licensure from the Commission unless the law exempts the institution from licensure. See, Section 1005.31(1)(a), F.S. In Florida, there are seven categories of institutions that are exempt from licensure. See, Section 1005.06(1)(a)-(g). For example, these include institutions that are operated by the state, certain religious institutions and institutions regulated by the Federal Aviation Administration. There is no exemption from licensure based upon accreditation.

There are three types of institutional licenses issued by the Commission; these are a provisional license, an annual license and a license by means of accreditation. See, Rule 6E-2.002, F.A.C. While the standards for these three types of licenses differ, in order to be issued any one of these licenses, an institution must meet the licensure standards set forth in rule and statute.

With regard to a license by means of accreditation, the Commission is authorized to approve accrediting agencies that have standards that are substantially equivalent to the Commission's licensure standards. See, Section 1005.32(1)(b), F.S.; see also, Rule 6E-2.002(3)(a), F.A.C. In order to be considered for approval by the Commission, an accrediting agency must be one that is recognized by the United States Department of Education. See, Rule 6E-2.002(3)(a)1., F.A.C.; see also, Section 1005.02(1), F.S. However, not all accrediting agencies recognized by the United States Department of Education are approved by the Commission. Only where an accrediting agency has been found to have standards that are substantially equivalent to Commission's standards, have effective mechanisms to evaluate an institution's compliance with those standards and timely share information about accredited institutions with the Commission, is an accrediting agency eligible for approval by the Commission. See, Rule 6E-2.002(3)(a), F.A.C.

Where an institution is accredited by an accrediting agency approved by the Commission, the institution may apply for a license by means of accreditation. See, Rule 6E-2.002(3)(a), F.A.C.; see also, Section 1005.32(1), F.S. Institutions that are licensed by means of accreditation are permitted to rely on evidence of compliance with the accrediting entity's standards for some, but not all, of the Commissioner's standards. See, Rule 6E-2.002(3)(c)-(d), F.A.C.

However, an institution that is licensed by means of accreditation is nonetheless subject to the licensure requirements of the Commission. The institution must apply for a license by means of accreditation and it must apply for an annual review. See, Section 1005.32, F.S.; Rule 6E-2.002(c)-(d), F.A.C. In order to maintain the license, the institution must annually document that it has complied with the statute and rule establishing fair consumer practices. See, Section 1005.34; 1005.32, F.S.; see also, Rule 6E-2.002(3)(d),

F.A.C. This requires that the institution demonstrate that it publishes and follows procedures for handling student complaints. See, Section 1005.04(1)(h), F.S. It also requires that the institution submit an annual audit prepared by an independent certified public accountant that demonstrates that the current assets of the institution exceed current liabilities. See, Rule 6E-2.004(5)(c), Rule 6E-2.002(3), F.A.C. The license is subject to denial and revocation and the license may be placed on probation. See, Section 1005.32(7), F.S.; see also, Rule 6E-2.0061, F.A.C. Complaints against these institutions that are received by the Commission are reviewed just as complaints against other institutions are reviewed. See, Section 1005.34, F.S. Like other institutions, they may receive site visits. See, 6E-4.007, F.A.C. Further, institutions licensed by means of accreditation are charged licensure fees. See, Rule 6E-4.001, F.A.C.

Relying on the express terms of the statutes and rules, and the manner that the statutes and rules are implemented, it is clear that an institution licensed by means of accreditation is not exempt from any of the licensure requirements of the Commission as a result of accreditation. Instead, licensure by means of accreditation is a form of licensure that permits a licensed institution to rely on evidence of approval of its accrediting agency to meet some, but not all, of the standards set by the Commission for licensed institutions.

If you need additional information or you would like to discuss, please let me know.