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Considerations When Closing an Institution of Higher Education

This statement has been prepared to be helpful to governing boards and administrative leadership of institutions when closing the institution is contemplated.

Preparing the Way

A decision to close an educational institution requires thoughtful planning and careful consultation with all affected constituencies. Every effort should be devoted to informing each constituency as fully as possible about the conditions requiring consideration of a decision of such importance, and all available information should be shared. Before closing, such alternatives as merging with another institution, forming a consortium, or participating in extensive inter-institutional sharing and cooperation should be carefully considered. As much as possible, the determination to close an institution should involve a consultative process, but responsibility for the final decision to close rests with the governing board.

Tradition and sentiment are important considerations, but sentimentality should not be allowed to determine events. A decision to close should never be made or reversed simply on the basis of fears, hopes or aspirations that have little relation to reality. Neither should it be delayed to the point where the institution has lost its viability and its educational program no longer retains quality and integrity. Since the immediate interests of current students and faculty are most directly affected, their present and future prospects require especially sensitive attention and involvement.

It is assumed that closing an institution means a decision permanently to discontinue its educational activities, not merely to suspend them for an indefinite period in the hope that circumstances may someday permit their resumption. But it should be noted that most institutions of higher education are corporations established under the provisions of state law, and as such may have legal responsibilities (holding title to real property, for example) that may necessitate the continued existence of the corporation after the educational activities of the institution have been terminated. Indeed, it is probable that such continued corporate existence, at least for a time, will prove to be the usual situation. It is unlikely that in most cases corporate existence and educational activities can be terminated simultaneously.

Closing an Institution

A decision to close requires specific plans for providing in appropriate ways for the students, the faculty, the administrative and support staff, and for the disposition of the institution's assets. Many considerations bear upon closing an educational institution, and each situation will be unique. The nature and sponsorship of each institution require different emphases and pose particular conditions to be met in reaching and carrying out the ultimate decision. Nevertheless, general guidelines may be helpful to each institution considering closing.

This guidance makes only incidental reference to such corporate responsibilities and always in the educational context. It is imperative, therefore, that a governing board considering closing an institution under its care be guided not only by guidelines such as these and by the state educational authorities, but also by advice of legal counsel who can advise with respect to the problems associated with closing. Institutional and specialized accrediting bodies should also be consulted and be kept fully apprised of developments.

Those planning for the closure of an institution, are advised to give special attention to:

A. **The Students**

Federal regulations implementing the Higher Education Opportunity Act require that accrediting agencies approve a teach-out plan from an institution intending to close before all students have completed their program of study. Consult the Commission's *Policy on Teach-Out Plans and Teach-Out Agreements* for further information. Arrangements for transfer to other institutions will require complete academic records and all other related information to be gathered so that it can be transmitted promptly to receiving institutions. Agreements made with other institutions to receive transferring students and to accept their records should be documented. Where financial aid is concerned, particularly federal or state grants, arrangements should be made with the appropriate agencies to transfer the grants to the receiving institutions. Where such arrangements cannot be completed, students should be fully informed. In cases where students have held institutional scholarships or grants and there are available funds that can legally be used to support students while completing degrees at other institutions, appropriate agreements should be negotiated.

B. **Academic Records and Financial Aid Transcripts**

All academic, financial aid, and other records should be prepared for permanent filing, including microfilming or electronic archiving. Arrangements should be made with the state department of higher education or other appropriate agency for the safekeeping of student records. If there is no state educational agency that can receive records, arrangements should be made with another college or university or with the state archives to preserve the records. Once the location is finalized, notification should be sent to every current and past student indicating where the records are being stored and what the accessibility to those records will be. Where possible, a copy of a student's record should also be forwarded to the individual student.

C. **Completion of Institutional Obligations**

When a student chooses to continue at another institution but is within a year or 18 months of completing an academic degree in the closing institution, arrangements may be made to permit that student to complete the requirements for a degree elsewhere but to receive it from the closed institution. This may require special action by the appropriate state agency. Such arrangements should also include provision for continuation of the institution's accreditation only for this purpose by the accrediting agency involved. These steps normally require the institution to continue as a legal corporate entity for 12 to 18 months beyond the closing date, but any such arrangement must be established in careful consultation with the appropriate authorities and with their written consent. The institution should work closely with Commission staff to ensure the arrangements are appropriate for the circumstances.

D. **Provision for Faculty and Staff**

In every possible case, the institution should arrange for continuation of those faculty and staff who will be necessary for the completion of the institution's work up to the closing date. When faculty and staff are no longer needed, the institution should make every effort to assist them in finding alternative employment. It should be understood that the institution can make no guarantees, but genuinely good faith efforts to assist in relocation and reassignment are essential. In the event that faculty or staff members find new positions, early resignations should be accepted.

E. **Closing Expenses**

When budgeting for a wind down and closure, it is critically important to address the following categories of expenses that are likely to increase significantly:

1. Professional Fees. There will be a need for professional advice to fulfill the fiduciary duties of officers and trustees including legal, financial, audit, and communications, among others. Institutions will need guidance on regulatory compliance, responses to legal claims, selling real property and monetizing other assets, negotiations with creditors and debt holders, financial projections, final audits and carefully crafted communications for both internal and external audiences.

2. Borrowing Costs. Institutions that are winding down present a higher risk profile to lenders and debt holders. Consequently, the cost of borrowing could increase substantially. Institutions should expect higher interest rates and penalties, greater collateral requirements, as well as fewer options to choose from. In some cases, it lmay not be possible to obtain commercial loans and credit lines.

3. Insurance Premiums. Because institutions that are winding down present a higher risk profile, it will cost more to renew insurance coverage or buy extended coverage. In some cases, renewals or extended coverage may be cost prohibitive or insurers may decline to offer it.

4. Supply Contract Payments. Vendors with larger supply contracts will often require earlier payment terms or even advance payment. They may also refuse to renew or extend supply contracts.

5. Student Refunds and Discharges. Closing institutions will need to refund deposits and federal financial aid awards for students who withdraw within the specified time periods and for academic terms that are not completed. In addition, students receiving federal aid who do not complete their academic programs at the closing institution or at another campus may receive a loan discharge from the US Department of Education, in which case the Department will seek to collect the amount of the loan discharge from the closing institution.

6. Employee Compensation and Benefits. Institutions may have severance payment obligations to tenured faculty and executives, contributions to employee benefit plans, negotiation obligations to unions, and obligations to resolve pending employment disputes, particularly uninsured claims.

The Final Determination

Determinations must be made to allocate whatever financial resources and assets remain after the basic needs of current students, faculty and staff are provided for. When the financial resources of the institution are inadequate to honor commitments, the Board should investigate what alternatives and protection are available under applicable bankruptcy laws before deciding to close. If funds are insufficient to maintain normal operations through the end of the closing process, the institution should not overlook the possibility of soliciting

one-time gifts and donations to assist in fulfilling its final obligations.

Every effort should be made to develop publicly defensible policies for dividing the resources equitably among those with claims against the institution. One of the best ways of achieving this goal is to involve potential claimants in the process of developing the policies. Time and effort devoted to carrying the process to a judicious conclusion may considerably reduce the likelihood of lawsuits or other forms of confrontation.

It is impossible to anticipate in advance the many claims that might be made against remaining resources of an institution but the following three principles may help to sort out possible claims and to set priorities:

A. Students have the right to expect basic minimal services during the final semester, not only in the academic division, but also in the business office, financial aid office, registrar's office, counseling and other essential support services. Staff should be retained long enough to provide these services. It may be appropriate to offer special incentives to keep key personnel present.

B. Reasonable notice should be given to all employees explaining the possibility of early termination of contract and that the reasons for retaining some personnel longer than others are based on satisfying the minimal needs of students and the legal requirements for closing.

C. Every effort should be made to honor long-term financial obligations (loans, debentures, etc.) even though parties holding such claims may choose not to press them.

The Closing Date

The governing board should take a formal vote to terminate the institution on a specified date. That date will depend on a number of factors including the decision to file or not to file for bankruptcy. Another key factor is whether or not all obligations to students will have been satisfactorily discharged. This is particularly important if the decision is made to allow seniors in their final year to graduate from the institution by completing their degree requirements elsewhere. If such arrangements are made, the Board must be sure to take the legal action necessary to permit awarding degrees after the institution otherwise ceases to function. Normally, formal vote to award a degree is made after all requirements have been met, but it is legally possible to make arrangements for a student to complete the requirements for a degree at another institution and to receive the degree from the closed institution. These requirements must be clearly specified along with a deadline for completion. Also the Board must identify the person or persons authorized to determine whether or not these requirements have in fact been satisfied. Arrangements must be completed with the appropriate state and accrediting agencies in advance in order to assure that the degree is awarded by a legally authorized and accredited institution.

Disposition of Assets

In the case of a not-for-profit institution, the legal requirements of the state and the federal government must be carefully examined with respect to the disposition of institutional assets. Arrangements for the sale of the physical plant, equipment, the library, special collections, art, or other funds must be explored with legal counsel. In the case of wills, endowments, or special grants, the institution should discuss with the donors, grantors, executors of estates, and other providers of special funds arrangements to accommodate their wishes. State laws regarding the disposition of funds from a non-profit institution must be meticulously followed.

All concerned federal and state agencies need to be apprised of the institution's situation

and any obligations relating to estate or federal funds need to be cleared with the proper agencies.

Other Considerations

The institution should establish a clear understanding with its creditors and all other agencies involved with its activities to assure that their claims and interests will be properly processed. Insofar as possible, the institution should assure that its final arrangements will not be subject to later legal proceedings that might jeopardize the records or status of its students or faculty.

Conclusion

The closing of an educational institution is never a happy event. Nevertheless, such action can be rendered less traumatic by careful attention to the details of the legal and moral obligations of the institution. Closing will be marked by sadness, but well-planned and conscientious efforts to assure that the institution's students, faculty, and staff will be optimally provided for and that its assets will be used in ways that will honor the intentions of the original donors should help in avoiding bitterness and rancor. A final report on the closing should be submitted to the appropriate accrediting and state agencies for their records.

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