

# Integrity of the system: What happens when the state's higher education oversight and trust is brought into question by a justice department?



**FERNANDO F. PADRO, PH.D.**  
**INTERIM DIRECTOR, EDUCATIONAL LEADERSHIP**  
**CAMBRIDGE COLLEGE**

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# Driving rationale behind the case study



- A response for change by a commission of higher education from a criminal investigation of events at public HEIs in the state.
- 7 recommendations: Agreement/disagreement on what to do between CHE and Attorney General's Office.
- Overall perspective: tighter oversight by state of HEI system to ensure regulatory compliance. However, little reference regarding quality assurance, that remains the realm of accrediting bodies.
- Issues: (1) What is the role of a government oversight board *vis a vis quality assurance*?  
(2) Is it appropriate for accrediting bodies to act as the 3<sup>rd</sup> parties who determine quality independent of a state review?



# Focus of the presentation:



- **Background**
  - What happened?
  - Current CHE structure
  - Recommendations from the SCI Report (2007)
- **Typical state governance structure in USA**
- **NACUBO recommendations**
- **Where things are at**

This case sheds light to one of the perennial issues in higher education in the USA (cf. McGuinness, 2005)



Access to programs

Political reaction to institutional lobbying

Concerns about too many institutions with ill-defined or overlapping missions,

Lack of regional coordination among institutions

Concerns about the state board's effectiveness or continuing relevance to state priorities



# What happened?



- On October 2007, the State of New Jersey's Commission of Investigation (SCI) submitted a report making recommendations on New Jersey's public higher education institutions and the public higher education system in general. The report was a follow-up to the Federal criminal investigations of practices found to be in place at a public university that resulted in the termination of senior institution officials, the indictment of several individuals, the placing the institution on probation by the regional accrediting agency (Middle States), and the temporary takeover of the institution by Federal authorities.

# Current Commission of Higher Education structure



- Statewide planning and research on higher education issues; the development of a comprehensive master plan.
- Advocacy on behalf of higher education. Communicating with the State Board of Education and Commissioner of Education to advance public education at all levels.
- Make recommendations to the Governor and Legislature on higher education initiatives and incentive programs.
- License HEIs in the state; granting university status.
- Adopting a code of ethics for higher education
- Rendering final administrative decisions on: new academic programs that go beyond the programmatic mission of an institution; new academic programs referred to the Commission by the Presidents' Council because they are unduly expensive or duplicative; or a change in the programmatic mission of an institution.

# Current Commission of Higher Education structure



- The role of the CHE serves as the principal advocate for a higher education system. While it provides coordination, planning, and policy development, the emphasis is on advocacy.
- “[G]enerally, state college and university autonomy is working – and working properly.”
- It is not in the State’s best interest to pursue any major changes to the existing higher education governance structure. Restoring the previous state higher education bureaucracy is not the answer as far as the CHE is concerned regarding the state’s HEI quality development.



# Current state use of accreditation: New Jersey (Ewell, Boeke, & Zis, 2010)



- NJCHE is agency that approves private (nonprofit and for-profit) institutions through the provision of a license to operate in the state.
- NJ does not “accredit” institutions or recognize “accreditors”.
- Private and public in-state and out-of-state HEIs need accreditation to operate in the state; however, it is not required for new institutions.
- Accreditation is required to get state funds.
- Transfer policies for private and public HEIs.



# SCI (2007) recommendations and the CHE response



## SCI recommendations

- Establish effective and efficient state oversight of public higher education. (p. 92)
- Strengthen State college and university governing boards. (p. 95)
- Fully enact Sarbanes-Oxley for New Jersey's public higher education system; mandate "best practices" in governance and fiscal accountability. (p. 103) The NACUBO recommendations are not enough to engender trust in the higher education system when it comes fiduciary issues. More needs to be done.
- Enact controls on lobbying. (p. 109)
- Establish Capital Facilities Plans for each institution and strengthen due diligence requirements for capital improvements and bonded indebtedness. (p. 112)
- Strengthen and position Rutgers University as a leader in higher education governance and accountability. (p. 116)
- Define and codify State college and university charters for maximum performance. (p. 119)

## CHE response

- **No.** The role of the CHE serves as the principal advocate for a higher education system in New Jersey. Systemic issues require that institutional autonomy remains
- **Yes**
- **Yes**
- **No.** "[G]enerally, state college and university autonomy is working – and working properly." (p. 2)
- **Yes, on a limited basis.** CHE should be involved with each plan and help to authorize execution through the New Jersey Educational Facilities Authority (EFA). The CHE should be charged with developing a state master plan for capital development in collaboration with the EFA and the HEIs.
- **No.** Does not want to challenge institutional autonomy.
- **Yes**

# Types of governance board structures

Zumeta (1996);  
Richardson et al. (1998)

- Coordinated Board structure
- Consolidated board structure

California Postsecondary  
Education Commission  
(2004, p. 5)

|                      |   |
|----------------------|---|
| <b>Segmented:</b>    | branches or levels of the post-secondary education system have separate governing boards, each of which acts independently, without any central agency to coordinate their actions. |
| <b>Unified:</b>      | a single board or agency governs all postsecondary education.   |
| <b>Coordinating:</b> | a central agency oversees multiple university governing boards.   |
| <b>Cabinet:</b>      | higher education is governed entirely by the executive branch.  |

## NACUBO (2003) recommendations were the focus of the SCI recommendations – although not seen stringent enough



- This set of recommendations is designed as suggested criteria for HEI's to implement the requirements of the *Sarbanes-Oxley Act of 2002* (SoX), even though these do not apply to universities. The act is formally known as the *Public Company Accounting Reform and Investor Protection Act* (Pub. L. No. 107-204, 116 Stat. 745 (July 30, 2002))
- Sarbanes-Oxley was the result of the Enron scandals from the late 1990s and 2000s. It provides regulatory compliance structure to business reporting practices. It also strengthens ethical requirements within organizational compliance structures. As such, it has impacted the Malcolm Baldrige National Quality Award (the USA's national quality award) criteria 1.2 on social or societal responsibilities (Padró, 2006)
- The NACUBO recommendations are considered the gold standard for non-profit organizations in the USA.

SoX based on the framework established by the Committee of Sponsoring Organizations of the Treadway Commission's (COSO) document entitled *Internal Control – Internal Framework* (1992).

It is a multi-dimensional, integrated process across and within the organization (COSO, 2008).



# NACUBO recommendations



## *Recommended structures/roles*

## *Best practice recommendations*

**Audit Committees**  
[Refer to SoX§301]

- Board should have independent audit committee as part of external review process. There are specific criteria for board composition and actions.
- §403: Conflict of interest

**Independent Auditors**

- The audit committee is directly responsible for hiring/appointment of auditors, compensation, and oversight. Auditors cannot audit their own work. [Refer to SoX§301.]
- According to the GAO, auditors should not perform management functions or make management decisions. [Refer to SoX§201, 202.]
- The lead audit partner should be rotated every 7 years (in contrast to the practice by nonprofits to rotate lead partners every 10 years), with a timeout of 2 years. [Refer to SoX§203, 207.]

# NACUBO recommendations



## Senior Management

- SoX§406 requires a code of ethics for senior financial managers
- Should provide a confidential complaint mechanism made available to all employees to communicate concerns about accounting, auditing, or internal control processes. [Refer to SoX§301.]
- SoX§302 indicates that CEO and CFO required to assert the financial statements have no material misstatements or omissions and that they have evaluated “disclosure controls and procedures”
- SoX§404 indicates institutions should address the documentation and evaluation of internal controls which are fundamental to sound financial reporting over a specified period of time.

## Other

- SoX§401: NACUBO writes that “[h]igher education should follow current and appropriate accounting standard guidance (i.e. FASB, GASB).
- While not applicable, SoX§305 :institutions should consider any SEC action in connection with hiring officers and nominating trustees; also, to ensure employment contracts of senior officers allow removal for financial impropriety.

Notice, little has been said about accreditation or quality of performance regarding student learning. The Middle States standards that are used to determine program quality are:



## **Institutional context standards**

1. Mission and Goals
2. Planning, Resource Allocation, & Institutional Renewal
3. Institutional Resources
4. Leadership & Governance
5. Administration
6. Integrity
7. Institutional Assessment

## **Educational effectiveness**

8. Student admissions & Retention
9. Student Support Services
10. Faculty
11. Educational Offerings
12. General Education
13. Related Educational Experiences
14. Assessment of Student Learning

In a new “The Report of the Governor’s Task Force on Higher Education” (December 2010), the status of the CHE is now about to change ([http://nj.gov/governor/news/reports/pdf/20101201\\_high\\_edu.pdf](http://nj.gov/governor/news/reports/pdf/20101201_high_edu.pdf))



- **It is recommended that:**

1. The Commission on Higher Education should be eliminated and replaced with a new structure
2. A Secretary of Higher Education directly appointed by the Governor and a new advisory Governor’s Higher Education Council should stand at the center of the new structure.
3. Similar to other cabinet members, the Secretary will be recognized as a spokesperson for and leader of policies and initiatives under his or her charge.
4. The Secretary of Higher Education should have the authority to demand the board of trustees of a college or university in New Jersey to take immediate corrective action when an institution either fails or is at risk of failing because of such serious situations as financial difficulty, fraud, or gross mismanagement.
5. Keep the President’s Council to act as a check and balance feedback element.

# Change is reflecting many of the recommendations put forth by the SCI



- Although the recent Task Force report provides evidence of political change, it still does not want the state to actively determine educational quality.
- The report suggests that institutional autonomy is still a critical component of higher education governance and management, but under this direct control under the governor's office, the question of who pays the associated costs of policy steering becomes even more interesting. In the response to the SCI, the CHE indicated that the changes recommended were too costly. Now, it is going to happen, ostensibly.



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