

To: Betty Coughlin
Tracy Nave
Ron Bennett
Steve Finley
From: Jay Urwitz
Re: University of Maine System Classification as IHE
Date: March 28, 2019

I. Request

This memorandum summarizes the University of Maine System's (UMS) structure and authority that we believe meet the requirements for recognition as an institution of higher education under 20 USC 1001 and 34 CFR 600.4. As you know, UMS is considering whether to seek recognition by FSA as a single institution of higher education, with the constituent units of UMS to become locations of UMS. It would do so if it chooses to seek accreditation as such from the New England Commission on Higher Education. Currently, each of the System's units has its own accreditation and they are recognized by the Department as separate institutions with their own OPEIDs.

The Chancellor of the University of Maine System, James Page; its General Counsel, James Thelen; the President of the New England Commission of Higher Education (the Commission), Barbara Brittingham; and I would like to meet with you as soon as possible to discuss our belief that other than the accreditation for which UMS will apply from the Commission, UMS will qualify for its own eligibility, with an OPEID, a program participation agreement and Title IV eligibility.

II. UMS Meets the Requirements to be an IHE

There are five statutory requirements to be an IHE, reflected in the regulations. Two of the requirements under 1001 are met through compliance with state law: 1001(a)(2) requires state authorization to provide a post-secondary education. Maine provides authorization under Maine Revised Statutes Title 20-A, Chapter 411, Section 10902.4 (the MRS). Section 1001(a)(4) requires an institution be public or non-profit. The MRS at Sections 10903 and 10952 provide this for UMS.

A third requirement is that an institution be accredited. UMS would seek and expect to receive Commission accreditation before seeking Department recognition.

A fourth requirement is that the institution admits persons who graduated from secondary school or the equivalent. Under Maine law, UMS sets the standards for admission to its units and makes the decision to delegate the choice of which students to admit to which of its units to the units. The students are only admitted if they meet the Higher Education Act requirements. Maine Private and Special Laws 1865, c. 532, and Maine revised Statutes Title 20-A, Chapter 411, Section 10901-A.

UMS also meets the requirement that it *provide* an educational program. Under the specific circumstances of the Maine system and Maine law, the System fulfills all the criteria for providing the program: UMS admits students, hires the faculty that provides the education, provides the facilities where the education is provided, determines the curriculum that constitutes a program, creates the budget for each location and each program, and awards credits and degrees.

Neither the statute nor the regulations require that the IHE that is providing the program itself be an accredited institution at which the courses themselves are physically taught. The separate requirement is that an IHE be accredited. The statutory requirement is for causing the set of academic credits to exist (the provision), and for those credits to constitute a program. That is what UMS causes to happen through its campuses, which are not legal entities unto themselves under Maine law.¹ UMS's accreditor, the New England Commission of Higher Education, decides that this educational aspect of being an IHE is sufficient, and that the degree of

¹ Under Maine law, only one higher education legal entity exists: The University of Maine System, which is an instrumentality of the State of Maine (20-A MRS § 10903) and comprised of the University of Maine (and its regional campus, the University of Maine at Machias); the University of Southern Maine; the University of Maine at Augusta; the University of Maine at Farmington; the University of Maine at Fort Kent; and the University of Maine at Presque Isle (Id., § 10901-A). The University of Maine System holds all liabilities and title to all assets and real property on which its universities operate (Maine Private and Special Laws 1865, c. 532, §102(4-C) and controls all funds for its component universities (20-A MRS § 10906(1)(A)). The University of Maine System employs all individuals who work for its universities (PSL 1865, c. 532, §102(4-D), has police powers (Id., §102(8-A), and is the only entity with the authority to execute contracts for its universities (Id., §102(4-F)). In law and fact, the universities that make up the System are not themselves legal entities, but instead subunits, or operating units, of the single legal entity known as the University of Maine System.

control and oversight it exercises makes it worthy of accreditation even if the academic credits are not currently delivered there.

This division of responsibility between FSA and the accrediting agency is recognized throughout higher education when accredited IHEs award credit for coursework which is taken at an accredited institution but constitutes the educational program of the awarding institution. For example, Excelsior College is recognized by the Middle States Commission on Higher Education. As Excelsior notes in its materials: “If you’ve earned a lot of college credit, or earned credit many years ago, Excelsior offers a bachelor’s program that lets you transfer up to 117 credits, without time limits. This means you may be able to complete your degree with a 3-credit capstone and a 1-credit information literacy course.” The Department of Education recognizes Excelsior when Excelsior accepts the vast majority of its credits from other recognized institutions.

In the case of UMS, however, UMS is establishing the content of the courses, at which campuses the courses will be taught, the courses which constitute a program, and the professoriate that teaches those courses. UMS awards the degrees that students attain from these programs, regardless of the System unit-university at which the credits were completed. The System is thus providing the educational program through these accredited institutions. Once it is itself accredited, UMS will be able to continue to provide programs through its locations and will have met the final standard for being an IHE under the HEA.

We look forward to discussing these matters with you in person shortly.