

ISSUES OF INSTITUTIONAL INTEGRITY

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14.1 OVERVIEW

This chapter addresses three topics going to the heart of the operation of every school and college: the federal intermediate sanctions laws that penalize “sweetheart” deals with trustees or other insiders; accreditation and the related topic of state licensing; and antitrust statutes that prohibit unreasonable restraints on commerce or suppression of competition. Although at first blush they may appear to have little to do with each other, these topics raise common and fundamental issues. Vexing questions of institutional integrity are inevitable when insiders are overcompensated or unjustly enriched, accrediting agencies are misled to conceal deficiencies, or business relationships are formed to compete

unfairly. Other common features are the wide array of activities leading to the questionable conduct and the impact on virtually all constituencies either because they somehow participated in the activity or were responsible for compliance. The severe consequences for improprieties in these three areas include: the most expensive and disruptive litigation imaginable, penetrating governmental investigations, loss of accreditation, and other harsh sanctions and penalties that could threaten the very existence of a school or college. These topics impose special responsibilities on members of the governing board and require proactive strategies by the legal counsel who advise them.

In Section 14.2, we address the strict federal-tax laws governing financial dealings with “disqualified persons” and the penalties called *intermediate sanctions* that could be imposed on those who received any “excess benefit” or approved the improper financial dealings. Accreditation and state licensing, the topics of Section 14.3, are essential to every educational institution. Section 14.4 introduces the basic concepts of antitrust and unfair competition, and alerts schools and colleges to those business relationships and activities that could be subject to scrutiny under these laws.