

**REPORT AND RECOMMENDATIONS FROM THE  
ASHE TASK FORCE ON POSITION TAKING**

**March 20, 2013**

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**PROPOSED DOCUMENT**

The Association for the Study of Higher Education (ASHE) seeks to foster, produce, and share rigorously conducted research concerning higher education. Consistent with ASHE's Principles of Ethical Conduct, ASHE is committed to values of integrity, responsibility, honesty, respect, and fairness, as well as to encouraging the use of research to address public policy issues pertaining to higher education. The Association has frequent opportunities to take positions on public issues regarding higher education. The term "position taking," as used in this document, pertains to occasions when the Association, under the leadership of its President and Board of Directors, must consider whether to use its role and credibility as a scholarly organization to support a particular position concerning an issue relevant to higher education or to the public. This document is intended to provide guidelines to ASHE leaders. Specifically, it outlines a process for reviewing and evaluating requests regarding potential position-taking situations, and then formulating decisions.

**BACKGROUND AND CHARGE**

Over the years, ASHE has received an array of requests from various sources both within and external to the organization that it take specific positions. The requests that the Association take public positions

include, for example, invitations to join other organizations in an *amicus* brief, to make statements to the press with the imprimatur of the Association in regard to various higher education issues, or to add the ASHE name to those of other organizations supporting particular public policy initiatives likely to affect the process of doing research, as well as issues relevant to public life and about which higher education researchers have particular knowledge relevant to the decision to be made.

During the summer of 2012, after the Board had considered one such request, President Anna Neumann appointed an eight-member Task Force to formulate a policy that would guide future Boards in reviewing and considering opportunities and requests for ASHE to take a stance on higher education matters of public or policy interest. In her Charge to the Task Force, President Neumann explained that, in the past, ASHE Boards have handled requests for ASHE to take positions as such issues have arisen, but ASHE leaders have been without the benefit of an articulated policy to guide their decision making. In the Charge, President Neumann stated: "...the leadership of ASHE would benefit from advance policy guidance around the kinds of issues that may merit ASHE taking a public stance, the kinds of issues on which ASHE cannot or should not take a public stance, and a structure and process for review, recommendation to the Board, and Board decision." Thus, the Charge requested that the Task Force develop and recommend a policy to the Board that would address: (1) the kinds of issues on which ASHE could conceivably take a stance; (b) the kinds of issues on which ASHE cannot or should not take a position; (c) a structure/process to guide review and assessment of proposals for position taking by ASHE; (d) a statement regarding conflicts of interest as these may bear on position taking; and (e) other issues as needed. This document responds to that Charge.

## **CONSIDERATIONS**

In developing these guidelines, the Task Force began by analyzing the core organizational documents that frame and guide the work and processes of the Association. Thus, the guidelines presented here are informed by and consistent with ASHE's foundational documents – specifically its Articles of Incorporation and Bylaws. Specific points of relevance, as outlined in these documents, are delineated below and should guide all decision-making processes concerning possibilities for public position taking. We also acknowledge with appreciation our debt to other organizations, including the American Educational Research Association and the American Sociological Association, whose policies concerning position taking were useful references and guides as we developed this document.

### **Authority to Take a Position Based on Mission and Purpose**

As described in the ASHE Bylaws, the Association's mission is "to foster scholarly inquiry of the highest standards of excellence for the purpose of increasing knowledge about the understanding of higher education" (Sec. 2, para. 1). To carry out this mission, the ASHE Articles of Incorporation and Bylaws describe one of the Association's principal activities as "facilitating communication and efforts among individuals and entities concerned with the study of higher education" (Bylaws, Sec. 2, para. 2; see also Articles of Incorporation, Article III). These statements make clear that ASHE, as a scholarly association, has an obligation to engage in discussions and advance knowledge about issues pertaining to higher education by conveying the findings of rigorous research to a wide audience (e.g., researchers, administrators, policymakers, trustees, public agencies, and the public itself). Position taking is one way in which the Association may carry out its mission.

## **Limits, Obligations, and Other Organizational Matters**

While ASHE may participate in position taking, the Task Force investigated the limits and obligations associated with these activities. That inquiry led to the identification of several legal and organizational matters that should be considered whenever a potential position-taking situation arises.

### ***LIMITS TO POSITION-TAKING ACTIVITIES***

Honoring ASHE’s Purposes: Under corporation law, Board Members and Officers have a legal duty to honor the Association’s purpose by adhering to its corporate documents, such as its Mission and Bylaws, when it establishes new policies (i.e., the “duty of obedience”). As an “educational” association founded primarily “to foster scholarly inquiry of the highest standards of excellence for the purpose of increasing knowledge about the understanding of higher education” (Sec. 2, para. 1), position taking is consistent with ASHE’s purpose. Based on the Association’s Bylaws, ASHE’s role is to “facilitat[e] communication and efforts among individuals and entities concerned with the study of higher education” (Sec. 2, para. 2). This role implies that the Association’s primary purpose is not to initiate and advocate actively for positions within higher education, and such position taking is expected to be a rare occurrence, appropriate only under certain conditions as outlined below. Further, an evaluation of ASHE’s mission/purpose and resource capacity would demonstrate that ASHE has neither the fiscal nor staffing resources to take a leadership role in position taking.

IRS Limitations on Advocacy: ASHE is a nonprofit, scholarly association established “for educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code” (Articles of Incorporation, Article III(a)). In order for ASHE to retain its status as a nonprofit organization, position taking in the form of lobbying is limited under the IRS Code. The IRS prohibits a nonprofit organization from lobbying as a “substantial part” of its activities. The IRS uses multiple measures to define this phrase, but, as a rule of thumb, ASHE should never exceed 15% of its operating budget on position taking. Further, the IRS Code prohibits ASHE from participating in political campaigns, such as taking a position on candidates running for office or inviting only one candidate to speak in order to influence that candidate’s campaign.

### ***MANAGING INQUIRY, INFORMATION, AND REPRESENTATION***

As organizational stewards, Board Members and Officers maintain several legal obligations requiring them to act in the best interest of the Association.

Sufficient Information for Prudent Decision Making: Board Members and Officers have a legal “duty of care” (i.e., an obligation) to act in good faith as a reasonable person in a similar position would act under like circumstances. This legal duty includes the Officer and Board’s exercise of due diligence by gathering sufficient information for decision making. This policy provides guidelines to assist ASHE Board Members and Officers in being informed and thoughtful when considering a position-taking proposal.

Disclosures and Information Management: Board Members and Officers also have a legal obligation to advance the interests of the Association and avoid conflicts of interest (i.e., the “duty of loyalty”).

Under this legal obligation, Board Members and Officers may not use their position for personal advantage at the expense of the Association. Accordingly, this duty requires a process to review possible

conflicts of interest. In addition, this duty addresses standards to avoid Board Members' and Officers' misuse of information to their advantage or breach of confidentiality standards. This duty requires conflict disclosures and careful management of potentially sensitive or confidential information.

Authority and Representation: A position-taking activity requires a spokesperson. The Task Force considered questions of authority and representation as a legal and organizational matter. In cases regarding position taking, the President or his or her designee speaks for the organization.

#### ***ALIGNING WITH ORGANIZATIONAL CHARACTERISTICS AND EXISTING DOCUMENTS/POLICIES***

Organizational Characteristics: As referenced earlier in the discussion of the legal considerations, the Task Force also acknowledges that several organizational characteristics provide practical limits on the Association's choices regarding potential position-taking situations. These might include the Association's size, complexity, staffing, and resources (including its capacity to respond to requests within a short time frame or to contribute to an extensive document, such as an *amicus* brief).

Governing Documents and Policies: In addition to the Association's Mission and Bylaws, the Task Force reviewed other policies, such as the Principles of Ethical Conduct and the Policy Statement on Site Selection. The Task Force kept these documents in mind in order to be consistent with existing policies, and to maintain consistency in language.

#### **TYPES OF POTENTIAL POSITION-TAKING SITUATIONS**

Occasions when ASHE must consider whether to use its leadership and credibility as a scholarly organization to support a particular public position are likely to fall into one of three categories: (a) issues directly related to ASHE's mission; (b) issues related to public policy topics relevant to the scholarly expertise on higher education represented in ASHE; and (c) issues related to the internal governance and business of ASHE which have implications concerning public issues. Each category is discussed below. While descriptions and examples are provided in the discussion, these should be understood as illustrative. The Task Force expects that the issues that will be relevant to position taking will be of broad national interest; however, there may be occasions where actions or issues within an individual state may invite consideration in regard to position taking. Furthermore, other issues and situations, outside the boundaries of these categories, may arise and be identified as requiring consideration in regard to position taking. Thus, the Task Force designed this document to lay out general principles that are expected to be useful guidelines even when potential position-taking situations seem to fall outside the specific categories discussed.

#### **Category A: Issues Directly Related to ASHE's Mission**

ASHE's mission is "to foster scholarly inquiry of the highest standards of excellence for the purpose of increasing knowledge about and the understanding of higher education" (Sec. 2, para. 1). Thus, as an organization, ASHE is interested in (1) issues that relate directly to the work of higher education researchers and scholars, and (2) conditions pertaining to the scholarly enterprise of conducting research on higher education. Such issues relevant to ASHE's mission of increasing knowledge about higher education range from those that pertain to federal or national investment in educational research or the infrastructure that relates to education, to issues pertaining to aspects of a specific field of research on higher education, to issues pertaining to the work conditions and resources available to higher education scholars and researchers.

For example, topics relevant to ASHE's mission and which could be considered potential position-taking situations include: academic freedom (e.g., efforts to restrict freedom of inquiry on topics pertaining to higher education); research ethics and integrity (e.g., if a decision under consideration were to shift the balance of attention so heavily toward protection of human subjects that it would tend to obstruct or impede important educational research); a policy that would effectively dictate the research methods to be used in ways not strictly germane to the topic of study; obstructions to data collection (e.g., if availability of or accessibility to certain kinds of data relevant to research on higher education issues were restricted without compelling justification); funding issues (e.g., if a federal funding agency were considering making substantial cuts in research programs which might reduce higher education-related research and training opportunities for graduate students and post-doctoral scholars).

Issues of broad concern such as those listed would constitute topics on which ASHE might choose to take a position. Issues pertaining to specific situations of individual scholars at particular institutions, however, would likely not be appropriate arenas for ASHE position taking. For example, while academic freedom issues with broad relevance to the whole academic enterprise of research concerning higher education might be deemed relevant to decision making, taking positions on academic freedom cases at specific institutions would not be appropriate. Similarly, issues such as student-faculty ratios, the appropriateness or extent of hiring part-time faculty, or the specifics of curriculum choices within institutional programs, would generally not be considered appropriate domains for ASHE's involvement. These issues fall within the domain of institutional decision making and institutional circumstances, which can vary widely.

#### **Category B: Issues Related to Public Policy**

In addition to issues related directly to the mission of ASHE to foster research on higher education, broader issues may also arise concerning current or proposed public policies regarding higher education or issues relevant to the bodies of research-based knowledge and to the scholarly expertise on higher education represented within ASHE. On such issues, ASHE leaders, members, or others may on occasion believe that the weight of scholarly evidence relevant to an issue, as well as the importance of the issue, deserve the attention and public position-taking stance of the Association. Several criteria define situations in which ASHE might consider position taking on a public policy issue to be appropriate. First, the issues should be ones of a public policy nature or with implications for broad public impact. Second, the weight of research evidence should be extensive and should demonstrably support a particular position over other positions that could be taken. ASHE's involvement should be based on clear evidence that the scholarship and knowledge represented among education scholars is extensive, consistent, and widely recognized, and that the Association's involvement would be beneficial to the public's interest and to public policy makers. The organization's collective expertise on matters relevant to higher education policy carries a professional obligation to inform public debates with the best available evidence.

This category comprises a continuum of potential position-taking situations. At one end of the continuum might be occasions in which ASHE chooses to provide or synthesize research relevant to an issue without asserting a specific conclusion or recommendation based on that research. For example, such research might be presented in a session at a conference specifically devoted to a public issue. The research highlighted through such venues might be made public beyond the Association, for example, through the ASHE website or through a monograph.

At the other end of the continuum of situations within this category could be those in which the Association chooses to take a specific position on a public policy issue. For example, the ASHE Board decided in 2012 to join in an *amicus curiae* brief prepared by AERA and submitted to the U.S. Supreme Court in regard to the *Fisher v. University of Texas, Austin* case (involving a challenge to an admissions policy that considers race as one among many factors for consideration).

When the Association extends its voice into political arenas, there is a particular need for sensitivity to the degree of consensus on the empirical evidence. It is critical to weigh the degree of convergence and divergence in the evidentiary basis for a possible public position because, as scholars, our ability to inform such debates, and ASHE's and its members' professional credibility, are inextricably linked to the strength of the evidence.

### **Category C: Issues Related to Organizational and Governance Issues within ASHE**

In conducting its own business, ASHE should be guided by principles embedded in its history, mission, and operating guidelines. A commitment to transparency, ethical behavior, and collegiality, for example, is a respected value within the Association and expressed in its committees and work. In making decisions about its own business, occasions sometimes arise in which the decisions imply public position taking about issues of broad societal concern. ASHE history includes instances when the Board has made decisions in regard to the internal affairs of the Association guided by such principles. For example, an ASHE Board voted to change venues for the annual conference when social justice issues involving a potential hotel venue arose. Board-voted guidelines for deciding conference venues now call for consideration of the social justice record of a hotel or location. Although most ASHE business decisions are somewhat different from public stances regarding higher education issues (Category A) or public policy topics on which research regarding higher education is relevant (Category B), we address Category C because such internal matters may involve position taking, if only indirectly or by implication, and, as such, we believe the ASHE leadership might benefit from guidelines. There may also be occasions, such as being asked to join an "umbrella" organization composed of constituent associations, that initially appear as Category C issues but may ultimately be identified as having larger reach to Category A or Category B. In such cases, the President and Board can be guided by the procedures for those categories.

### **PROCEDURES FOR POSITION TAKING FOR CATEGORIES A AND B**

Having recommended the considerations entailed in position taking and the types of issues on which the Association might take a position, we now outline specific procedures to guide the President and Board of Directors in deciding how to address a situation of potential public position taking. The procedures recommended in this section pertain particularly to issues that seem to fit within Categories A and B.

Issues may arise or be initiated internally from ASHE's own members, or externally from parties outside the Association. ASHE members concerned about a particular issue would be expected to contact the Executive Director or President with a letter that outlines the issue and offers a rationale for its relevance and consistency with ASHE's mission and with the proposed guidelines for position taking. Whether an issue arises internally or externally, the President and Board would be expected to follow the procedures below. In both instances, the President will have the responsibility to determine whether the issue has the potential to meet the criteria for public position taking and, thus, whether to refer the issue to a "Standing Committee on Position Taking" (recommended and described below).

After deciding whether to refer the issue to the Standing Committee, the President will notify the Board and allow five days for Board members to comment. (If the President determines the issue is more time-sensitive, s/he may shorten that time allowed for Board comment).

### **Standing Committee on Position Taking**

The Task Force recommends that the Board create a new Standing Committee on Position Taking to assist the President and Board in considering potential position-taking situations. This committee would have responsibility, on request of the President, to make an initial assessment of an issue that may involve public position taking and to offer recommendations to the President and the Board concerning the Association's response.

The Committee would have five members, with staggered three-year appointments. Members would be appointed via the same procedures used for other committee appointments. One committee member should be a current member of the Board of Directors, preferably the President-Elect.

### **The Standing Committee's Responsibilities**

The Task Force recommends that the Standing Committee on Position Taking should have three duties:

#### **1. Initial consideration:**

The Committee should use the guidelines proposed herein regarding types of potential position taking (i.e., regarding Categories A, B, and C) to analyze and determine whether the issue presented constitutes a situation for potential position taking. Recognizing that any recommendation involving position taking may have considerable implications for the Association, the Task Force recommends that the committee consider, in order, the following issues: the issue's relevance to ASHE's mission; the significance of the issue for higher education; the availability, empirical rigor, and consistency of relevant evidence; the likely impact of a decision on ASHE; any financial implications of a decision; and the time sensitivity of making a decision.

The committee should make a decision, based on the analysis described above, about whether the issue constitutes a potential position-taking situation. The decision may take either of the following forms:

- a. If the Standing Committee determines the issue does not constitute a situation for position taking, the Committee will return the issue to the President for appropriate disposition.
- b. If the Standing Committee determines the issue merits consideration as a potential position-taking situation, the Committee will develop a memorandum to the President and Board summarizing why the issue should be reviewed more fully as a potential position-taking situation.

#### **2. Review and analyze the situation**

If the Standing Committee's decision is to review the issue, the committee has two primary options:

- a. They may proceed as a Standing Committee with the review, without outside counsel, and develop recommendations for the President and Board; or
- b. The Standing Committee may recommend that the President, with the advice of the Board, appoint an ad hoc committee of experts from within ASHE to review available data on the issue. The responsibility of any ad hoc committee, presented in a charge from the President, would be to review the available scholarly evidence and summarize that evidence for the Standing Committee for use in its review as it prepares recommendations for the President and Board.

3. Recommend a position-taking action

After conducting its review, the Standing Committee will provide recommendations regarding position-taking actions to the President and Board. Possible actions related to position taking lie on a continuum from no action to modest position taking to more substantive public engagement by ASHE. Possible actions might include: posting information on the Association’s website; commissioning preparation of opinion pieces; providing testimony; issuing public statements in the form of papers, reports, news or media releases; writing letters signed by officers of the Association; signing a legal brief; or engaging in direct contact with public officials or other responsible parties to explain ASHE’s position. In such actions, the Task Force reiterates that the President – or the President’s designee – is the Association’s spokesperson. The form of release of information will depend upon the broad implications of the position, the appropriate forum for the policy discussion, and consideration of timeliness in providing a response.

**Examples to Illustrate the Processes Outlined Above:**

1. The Executive Director receives a request for ASHE to participate in a meeting in Washington, DC to explore the potential impact of the Bologna Process on American higher education. The Executive Director confers with the President, and they decide that this issue does not meet any of the criteria for position taking (neither Category A, B, nor C). The President or the Executive Director may decide to attend the meeting or designate another officer, board member, or other person to represent the Association.
2. The Board receives a petition signed by 100 ASHE members calling on the Association to advocate for increased federal attention to the Dream Act. The President, seeing a potential public position-taking situation at hand (Category B), refers the issue to the Standing Committee. The Standing Committee decides to seek the advice of an expert ad hoc committee and, informed by the advice from the ad hoc committee, then develops its recommendations to the President and Board.

**PROCEDURES FOR POSITION-TAKING REGARDING CATEGORY C**

As noted above, Category C includes issues that arise as ASHE manages its own internal business and affairs. The ASHE President and Board have the ultimate responsibility to make decisions pertaining to the governance and organizational business of ASHE. Thus, in situations where a decision pertains to issues relevant to core values of the Association, the leadership has the right and responsibility to make a decision. This responsibility includes matters that may involve an implied statement about public issues. The decision about appropriate procedures to follow in making a decision on such internal business matters remains within the purview of the President and Board. However, when such occasions

arise, if the leadership wishes guidance or information to inform its deliberations and decision making, it might wish to request input from the Standing Committee on Position Taking.

### **An Example**

The Board learns that a vendor with whom it has been doing business is involved, or alleged to be involved, in actions violating principles of integrity or fairness. ASHE must decide whether to continue utilizing this vendor. The President discusses this matter with the Board and decides to refer the issue to the Standing Committee on Position Taking. The Committee determines that this concern does not represent a public position concerning higher education nor does it involve an issue on which empirical evidence is available (i.e., it falls in neither category A nor B). The Committee does not recommend formation of an ad hoc committee or referendum, but encourages the Board to make its own decision.

### **SITUATIONS WHERE ASHE SHOULD NOT TAKE POSITIONS**

The Task Force recognizes that some situations or requests may involve potential position taking but may require more time, staffing, or financial resources than ASHE is able to provide. In other situations, it may simply be inappropriate for ASHE to take a position. For example, the Task Force perceived that it generally would be inappropriate for the Association to endorse or provide “seals of approval” on books, conferences, products, or curricula that are not covered in this policy statement. It does not seem appropriate or feasible for the Association to take on the role of reviewing and vetting such materials, as would be necessary to provide endorsements, nor to engage in advancing the financial or professional interests of specific individuals. However, the President of the Association has the discretion to consider specific requests for endorsements from ASHE, when the requested endorsement advances the Association’s mission and does not conflict with other organizational guidelines and policies. In that case, the President must seek “formal approval of the board of directors” (Article VII, Sec. 4).