I read with eclectic avidity. As a result, I am conversant with first century Roman poet Juvenal’s *Satires* in which he immortally averred “Quis custodiet ipso custodes?” literally translated as "**Who will guard the guards themselves?**" (Satire VI, lines 347–8). Also, I know that at the end of the second paragraph of his first inaugural address as president, Thomas Jefferson remarked that: “**Sometimes it is said that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found angels, in the form of kings, to govern him? Let history answer this question**” [Independent Journal Wednesday, February 6, 1788. The Papers of Thomas Jefferson, Volume 33: 17 February to 30 April 1801 (Princeton University Press, 2006), 148-52 https://jeffersonpapers.princeton.edu/selected-documents/first-inaugural-address-0]. Also, Jefferson’s protégé, James Madison, who was the motive force in the development of the US Constitution and father of the Bill of Rights, and, of course, he was also later himself President of the United States, had written earlier in the *Federalist Papers, Number 51*, this very famous passage: “**If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.**” Of course, at base level, these admonitions relate to governance issues, which – of course – appear conspicuously on SACSCOC’s radar under the auspices of the DOE.

In last quarter’s column, I discussed Complementarity between Core Requirements and Comprehensive Standards and presaged an upcoming column explicating SACSCOC Federal Requirements (FRs) within the broader context of the U.S. Department of Education’s (DOE)
hegemonic investiture/recognition of certain national and regional (i.e., SACSCOC) accreditors. I indicated that these accreditors – in tandem with their respective state departmental of educations – act as condominial quasi-governmental gatekeepers for those higher education institutions (i.e., SU) seeking accreditation. That contextualization – as SACSCOC states in Resource Manual - explicated FRs as explicitly reflecting “criteria established by the U.S. Department of Education for inclusion in regional accreditation reviews” (p. 113). Recent board changes at another local university have precipitated this column’s interest in SACSCOC governance and administration issues, particularly regarding one of the “governance and administration” standards, i.e.: 3.2.5. Board Dismissal.

Several SACSCOC standards relate to governance: in a 2014 SACSCOC Leadership Orientation PowerPoint by Dr. Belle Wheelan, SACSCOC President, and Dr. Barry Goldstein, SACSCOC VP, entitled “Governance and Administration,” (http://www.sacscoc.org/2016trackaorientation/pres/GOVERNANCEandADMINISTRATION.pdf), the following such standards were referenced:

CR 2.2 (Governing Board)
CS 3.2.1 (CEO evaluation/selection)
CS 3.2.2 (Governing board control)
CS 3.2.2.1 (Governing board control - institution’s mission)
CS 3.2.2.2 (Governing board control - fiscal stability of the institution)
CS 3.2.2.3 (Governing board control - institutional policy)
CS 3.2.3 (Board conflict of interest)
CS 3.2.4 (External influence)
CS 3.2.5 (Board dismissal)
CS 3.2.6 (Board/administration distinction)
CS 3.2.7 (Organizational structure)
CS 3.2.9 (Personnel appointment)
CS 3.7.4 (Academic freedom)
CS 3.7.5 (Faculty role in governance)
Also, SACSCOC presumably considers this topic of such importance that it has created a web-based training module, one of only five produced (•Finance •Governess •Institutional Effectiveness •QEP •Student Services). SACSCOC.org states that these: “web-based training modules have been developed to help peer review committee members become better equipped to address specific review responsibilities. The modules are especially designed for first-time peer evaluators, but should be beneficial to more experienced reviewers as well. The emphasis is on developing professional judgment and on paying special attention to the exact wording of the standards within the Principles of Accreditation.”

The following Core Requirement, CR 2.2 addresses the institution-wide criteria applicable to governing boards. (NOTE: for purposes of this discussion, I left out the non-applicable section [* * * *] that focused on “military institution[s] authorized and operated by the federal government.”):

2.2 The institution has a governing board of at least five members that is the legal body with specific authority over the institution. The board is an active policy-making body for the institution and is ultimately responsible for ensuring that the financial resources of the institution are adequate to provide a sound educational program. The board is not controlled by a minority of board members or by organizations or interests separate from it. Both the presiding officer of the board and a majority of other voting members of the board are free of any contractual, employment, or personal or familial financial interest in the institution.

*(Principles, 18-19)*

Of course, other CR’s not specifically referenced in the aforementioned PowerPoint also significantly impact “governance and administration,” notably the following:

CR 2.3 (Chief Executive Officer)
CR 2.4 (Institutional Mission)
CR 2.5 (Institutional Effectiveness)

Then, once past these Core Requirements, the largest set (i.e.: 3.2.1. through 3.2.14, with standard 3.2.2 [Governing board control] also being further subdivided into three sections) of
Comprehensive Standards comprise CR 3.2, which are designated in the *Principles* with what appears to be a “Governance and Administration” subject heading. SACSCOC onsite teams include different specialist, including a president, who presumably is adept at governance and administrative issues. Such is the level of SACSCOC peer-review scrutiny for these standards, that typically the onsite chair and the designated team-member president will be assigned to write the team’s compliance response for these standards. Among the five (5) webscale training modules which SACSCOC has developed for its evaluators is one on “governance and administration:” [http://sacscoc.org/modules/governance/story_html5.html](http://sacscoc.org/modules/governance/story_html5.html)

Of the two public documents where it provides definitions, only the *SACSCOC Resource Manual* [APPENDIX B, Glossary of Terms provides a definition of “governance:”

```
Governance: On the basis of their governance systems, member institutions are classified as one of two primary types of institutions -- Public or Private. Private institutions are further classified as Not-for-Profit and For-Profit. (See also Type of Institution).
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(p. 114)

Like the *Resource Manual*, the other SACSCOC document containing definitions, i.e., the *SACSCOC Handbook for Institutions Seeking Reaffirmation* Glossary and Reference Guide, simply provides the exact same definition under Type of Institution that is listed for Governance. Clearly, these definitions connote a taxonomic governance “structure” more so than a governance “control” (both terms: *Principles*, passim) – terms SACSCOC uses in other documents - for differentiated types of member institution. For purposes of this article, the *SACSCOC Mergers, Consolidations, Change of Ownership, Acquisitions, And Change Of Governance, Control, Form, Or Legal Status Substantive Change For Saccoc Accredited Institutions Policy Statement’s* Glossary of Terms ([Mergers, Consolidations, Change of Ownership, Acquisitions, and Change of Governance, Control, Form, or Legal Sta-](http://example.com) [Revised Dec 2015, Updated July 2016)) provides the following related definition in which I have highlighted the term, “governance:”
Absent a more specific and non-taxonomic definition of “governance,” one must educe a more usable meaning from the standards themselves. However, for such a significant term applicable to so many standards, “governance” only appears eight times in the *Principles*. Notably, “governance” – along with “administration” - constitutes the subject heading for the largest corpus of standards, which fall under CR 3.2: “Governance and Administration.” This administrative governance represents the construct for which I have been searching and accords more with conceptually with a public administration of policy definition of “governance.” For example: in 1993, the World Bank defined governance as the method through which power is exercised in the management of a country’s political, economic and social resources for development; and, according to Jon Pierre, “governance refers to sustaining coordination and coherence among a wide variety of actors with different purposes and objectives. Such actors may include political actors and institutions, interest groups, civil society, non-governmental and transnational organizations. This definition illustrates that while the government of a traditional State has to cope with internal challenges and external challenges from the above actors, some of the functions previously the preserve of government may be taken over some of the same parties. This definition gives credence to the assertion made earlier that governance is broader than government.” *Black’s Law Dictionary* does not define “governance,” but the *American Heritage Dictionary* (AHD) does: “the action, manner or power of governing” (AHD goes on to define “governing” as “to make and administer the public policy of [a state, for example]; exercise sovereign authority over” (p. 761, Fifth ed.). CR 3.2: “Governance and Administration” allows for institutional board of directors/trustees’ exercise of control via the following loci of such authority: CEO evaluation/selection; governing board control; governing board control - institution’s mission; governing board control - fiscal stability of the institution; Governing board control - institutional policy; governing board control - institutional policy; board conflict of interest; external influence; board dismissal; board/
administration distinction; organizational structure; personnel appointment; etc. Related to board dismissal policy development, the Resource Manual, which provides helpful exegetical insights into the standards themselves, references the following “Developing Policy and Procedure Documents” Commission Document:

Southern Association of Colleges and Schools
Commission on Colleges
1866 Southern Lane
Decatur, Georgia 30033-4097

DEVELOPING POLICY AND PROCEDURE DOCUMENTS

Best Practices -

A functional policy is one that is broad enough to encompass all aspects of the issue addressed, not just one or several facets of it. It is approved through the appropriate institutional processes and published in appropriate institutional publications and on the institutional website in order to ensure accessibility to those affected by the policy and its related procedures. In addition to the language of the policy itself, the document includes:

- A concise statement of the purpose of the policy and assurance that it is aligned with institutional or unit purposes.
- The implementation date and the dates of any subsequent revisions to the policy. Procedures for implementation and review of the policy and attendant procedures are also published as above. Well-defined procedures identify:
  - Designated personnel responsible for implementing the policy
  - The means by which institutional constituents are informed of the policy and procedures it entails
  - A timeline for completion of procedures
  - A methodology for monitoring compliance with the policy and reporting results
  - A schedule for reviewing the effectiveness of the policy and its attendant procedures.

In addition, an institution clarifies the relationship between the policy itself and the procedures proposed to implement it by addressing the following questions:

- By what process are the procedures developed, approved and amended?
- Is compliance with the procedures mandatory?

Adopted: SACSCOC Board of Trustees, June 2010
Anent the SACSCOC “governance and administration” issue currently in the local news, the SACSCOC Handbook for Institutions Seeking Reaffirmation provides the following excerpt citing CR 2.2 noncompliance:

And, more relevantly, the following for CS 3.2.5, Board dismissal noncompliance:

“In due to the role of the Congregation in the governance of the institution, the possibility of control by a minority of the Board and by a separate entity arises. Furthermore, an apparent contractual or employment interest by the Chairman of the Board of Directors is not in compliance with this Core Requirement.”

(p. 74)

In this column, whenever the word “policy” comes up within the context of SACSCOC, I have repeatedly reminded readers that the word “implicit” appears only three times in the Principles of Accreditation. In each of those three instances, “implicit” introduces the following prescriptive statement before each of the three main categories of principles, i.e.: before the

3.2.5 The governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process. (Board dismissal)

For four standards – CS 3.2.3 (Board conflict of interest), CS 3.2.5 (Board dismissal), CS 3.7.5 (Faculty role in governance), and FR 4.5 (Student complaints) – institutions must explicitly document implementation and enforcement of the required policy in addition to publication. [The “appropriate reasons” should be identified and the “fair process” fully described.]

Excerpt citing noncompliance: “Policy regarding the dismissal of members of the Board is stated in one sentence in the Bylaws. The Compliance Certification states that the Conflict of Interest Policy could apply, but that policy does not address dismissal of a Board member. The possible reasons for dismissal are not stated, nor is the process for dismissal provided. Therefore, without a more definitive dismissal policy, the Committee has determined that the institution is not in compliance with this Comprehensive Standard.”

(p. 81)
Core Requirements; before the Comprehensive Standards; and, before the Federal Requirements:

In many SACSCOC Focused Reports for 3.2.5, the off-site committee found that existing policies were not implement or enforced per the “implicit” statement(s), e.g.:

**3.2.5** The governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process. *(Board dismissal)*

**Findings of the Off-Site Reaffirmation Committee:** All board members of the Board of Regents and the Board of Supervisors are subject to the Louisiana statutes should removal by impeachment, for suit, and for cause become necessary. Specific documentation is provided verifying the existence of these guidelines. Any such action may be appealed as specified by the Louisiana Code of Government Ethics Appeals. The institution provided no information regarding implementation of this policy. [http://sacs.uno.edu/focused-report/responses_answers/5.htm](http://sacs.uno.edu/focused-report/responses_answers/5.htm)

And, this example from Hillsborough Community College:

[https://www.hccfl.edu/sacs/focusedreport/fr3_2_5.htm](https://www.hccfl.edu/sacs/focusedreport/fr3_2_5.htm)
And, lastly, this example with response from Angelo State (Texas) University:

3.2.5

Governance and Administration: Board dismissal

The governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process.

Compliance Report Narrative

The Texas Tech University System, which includes Texas Tech University, the Texas Tech University Health Sciences Center, and Angelo State University, is governed by a board of nine regents appointed by the governor with the advice and consent of the senate (TEC §§109.21–109.22). The members hold office for staggered terms of six years, with the terms of three members expiring January 31 of odd-numbered years. A
A non-voting student regent is also appointed by the governor for a one-year term from June 1 to May 31 (TEC §51.355). Members of the Board of Regents are considered state officials and are subject to the Texas Government Code §572.051, which enumerates the standards of conduct and conflict of interest provisions applicable to state officers or employees. Texas Government Code §572.058 defines the procedures necessary for removing from office those state officials who are found to violate the standards of conduct. The process involves a petition by the attorney general identifying the cause and a decision by due process of a court or jury that the individual violated a standard of conduct for a state official.

Off Site Team Comments

The Compliance Report cited Texas Government Code §572.051 and §572.058 which, respectively, prohibit conflicts of interest and spell out the procedure by which a state officer (including TTUS Regents) might be removed from office for violating the conflict of interest prohibition. Code §572.051 further requires all state agencies to adopt code of ethics policies implementing the provisions of the law. In its response to CS 3.2.3, Board Conflict of Interest, Angelo State University documented fulfillment of this legal requirement by providing pertinent TTUS Regents Rules from Sections 1 and 3. However, the documentation provided does not indicate the possibility of removal of office for any cause other than violating conflict of interest and does not present process procedures for removal for cause of any member of the Board.

University Response

Angelo State University is part of the Texas Tech University System (TTUS) and is accountable to no board except the Texas Tech University System Board of Regents. TTUS regents may only be removed for appropriate reasons (e.g., nepotism, private interest in a decision, breach of trust) and by certain process procedures. TTUS governing board practices and the Regents' Rules, which are the policies of the TTUS, are based on Texas Government Code (TGC), which in turn is based on the Texas Constitution. A memo from TTUS General Counsel John Huffaker summarizes reasons and process. More detail is provided below. TGC Chapter 572.002 Item 1B includes regents in
its definition of appointed officers and Section 051, Subsection (a) defines the standards of conduct expected of appointed officers. Subsection (b) in section 051 describes possible sanctions for violations of behaviors described in Subsection (a) and applicable ethics policies referred to in Subsection (c) such as Chapter 03.01 of the TTUS Regents' Rules. Subsection (b) also states that a state officer who violates Subsection (a) "is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule." TGC Chapter 572 section 058, Item (b) defines removal from office for violation of private interest in a measure of decision. Board conduct is outlined in the Regents' Rules Chapter 01.03. Chapter 03 of the TTUS Board of Regent Rules outlines proper conduct (03.01.1), ethical behavior (03.01.2), conflict of interest (03.01.3), and regent conduct in relation to benefits, gifts, and honoraria (03.01.4). Section 03.01.8, Item j defines removal for violation of nepotism rules. Section 03.02 defines conduct including breach of trust (03.02.1) and subsequent adjudication (03.02.3). Chapter 9.02.4 sets out the provisions relating to conflicts of interest and investments. TGC Chapter 572.058 subsections b and c, as stated in ASU's original response, describes removal from office by the attorney general or by a district court. As appointed officers of the State, board members can be impeached. TGC Chapter 665 subsection A defines impeachment; section 002 lists individuals, including regents, who may be impeached; sections 003 and 004 define, respectively, the process procedures for impeachment when the House is and is not in session; and sections 022 and 023 define, respectively, the process procedures for subsequent removal from office when the Senate is and is not in session if the impeachment process goes that far.

http://www.angelo.edu/content/files/18804-fr-325--governance-and-administration-board

Michael Johnson, SACSCOC VP/Chief of
(Dec 3, 2016) ACCSHE (Accreditation in
Southern Higher Education) listserv email:
Good examples. Maybe I can shed even more light. The most frequently referenced policy where there is no evidence of implementation is Board dismissal (CS 3.2.5). If no member of the governing board has ever been dismissed, then the institution should make that point in its narrative. On the other hand, if a dismissal has occurred, the narrative should make clear the policy was followed. For some smaller institutions (probably never for a School of Medicine), the institution still must have an intellectual property policy (CS 3.2.14). I would be surprised that a copyright policy has never been implemented or enforced, but a policy concerning ownership of intellectual property generated by the institution’s faculty or staff might never have come up as an issue; in that case, the narrative should make it clear the policy has not had a need to be implemented.

On the other hand, as you point out, the admissions policy (CS 3.4.6) is implemented lots! Does it call for a review committee to look at applicants? If so, is there evidence it meets (minutes, summary statistics, etc.)? Are there specific admissions criteria? If so, do applicants meet those criteria? Are exceptions admitted according to policy governing exceptions? I can think of lots of ways to document implementation/enforcement of an admissions policy.

Another example would be a policy on Board conflict of interest (CS 3.2.3). It is easy to show the actual policy from the Bylaws or a Board handbook, and reasonably easy to show it was adopted according to procedure. How to show implementation? Well, if the policy calls for Board members to sign statements disclosing conflicts, then there would be signed statements for each Board member. If the policy calls for recusal from votes where there is a conflict, then Board minutes would show examples of recusals. If the policy calls for annual or initial training of Board members on conflict of interest, then there should be a record that the training occurred (again, probably in board minutes). Use your judgment as to how much evidence is enough; the goal is not to have a narrative that is hundreds of pages for each standard, but instead enough to convince a reviewer not familiar with your institution that you implement and enforce policies.

I hope these examples help.

Mike

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https://listserv.uhd.edu/cgi-bin/wa?A2=ind1602&L=ACCSHE&P=R2204&1=ACCSHE&9=A&I=3&J=on&d=No+Match%3BMatch%3BMatches&z=4

on&d=No+Match%3BMatch%3BMatches&z=4
I will remind you of the following SACSCOC document related to analyzing a case’s NARRATIVE and EVIDENCE for compliance:

http://www.sacscoc.org/pdf/ANALYZING%20A%20CASE%20FOR%20COMPLIANCE_SEPT2010%20_2_.pdf

<table>
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<tr>
<th>COMPONENT</th>
<th>UNACCEPTABLE</th>
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<td>The narrative includes a statement of the</td>
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<td>The narrative includes a general statement of the institution’s</td>
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<td>with the requirement</td>
<td>to the specific accreditation requirement.</td>
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<td>The narrative is not clear, concise, nor focused.</td>
<td>The statement is focused solely on the requirement.</td>
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<td>The rationale for the assertion</td>
<td>The narrative provides no explanation of reason(s) for the assertions</td>
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<td>The narrative provides a clear and concise statement of the reason(s)</td>
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<td>regarding compliance with all aspects of the requirement.</td>
<td>determining compliance with all aspects of the requirement.</td>
<td>for the assertion regarding the institution’s perception of compliance</td>
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<td>The evidence supporting the assertion</td>
<td>Either no evidence is presented to support the institution’s case or the</td>
<td>Either the evidence provided is uneven in its support of the</td>
<td>with the requirement.</td>
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<td>evidence provided is unacceptable because of two or more of the following</td>
<td>institution’s case because of at least three of the following</td>
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For state universities, corresponding state statutes invariably provide the policy whereby they may be dismissed from boards. This is certainly the case for Kentucky universities as reflected in the Kentucky Revised Statutes (KRS), e.g.: **164.821 Board of Trustees of University of Louisville -- Membership -- Terms.** In part, this statute states that “Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of fact by the council.” A collateral KRS, related to the government reorganization, i.e.: **12.028 Governor and elected state executive officers to submit proposals for change to General Assembly -- Review of temporary changes by interim joint legislative committee -- Restrictions on changes -- Reorganization plans -- Committee action -- Termination of temporary reorganization -- Legislative monitoring -- Lapsed funds,** also seems to be a point of bipartisan contention. The courts will likely end up deciding both issues. However, in researching litigations involving SACSCOC and member schools - though none focusing specifically on dismissal of board members), the courts ruled in many cases - with inevitable consequences - that membership in SACSCOC is voluntary (NOTE: this is the very first characteristic which SACSCOC lists in its “Fundamental Characteristics of Accreditation,” *Principles*, p. 3).

WDRB notes on its web page that:

“A judge is expected to make a decision soon on whether or not to issue an injunction..."
in Gov. Matt Bevin’s reorganization of the University of Louisville board of trustees.

On Thursday, a Franklin County Circuit Court judge heard arguments from the Attorney General’s office and Gov. Bevin’s general counsel on whether or not Bevin’s executive order was legal.

In an executive order issued in June, Gov. Bevin abolished U of L’s board and created a new one with 10 appointed members instead of the 17 set by state law.


In a related wfpl.org article:

[The] assistant provost [for Academic Accountability, Institutional Research, Effectiveness, and Analytics] at the University of Louisville, testified that there was no immediate danger of the school losing its accreditation.

“I don’t think we’re talking about anything that’s going to happen tomorrow or next month,” she said. “These things take time.”

http://wfpl.org/judge-questions-bevins-u-l-board-overhaul/

As we all know, SACSCOC is very deliberative in the high-stakes “game” of accreditation. So, they will likely proceed jurisprudentially and very charily in response to this board dismissal compliance issue. For questions related to governance, Jefferson and Madison – as I remarked above - would let the sweeping judgment of history in the presumed form of Lincolnian “better angels of our nature” decide the rectitude of dissenting positions. In the local board dismissal case – to paraphrase Shakespeare - courts and SACSCOC will both attempt to “buckle this distempered cause/Within the belt of rule.” (Macbeth, Act 5, Scene 2) The courts will predicate their findings on the evidentiary precedents of case law. Philosophically, I perpend, the law itself constitutes a form or type of SACSCOC standard, i.e.: “agreed upon requirements.” With the following words, SACSCOC articulates the toplofty “Philosophy” underpinning the standards:
“Self-regulation through accreditation embodies a traditional U.S. philosophy that a free people can and ought to govern themselves through a representative, flexible, and responsive system. Accordingly, accreditation is best accomplished through a voluntary association of educational institutions. Both a process and a product, accreditation relies on integrity, thoughtful and principled judgment, rigorous application of requirements, and a context of trust....The product of accreditation is a public statement of an institution’s continuing capacity to provide effective programs and services based on agreed upon requirements” (Principles, p. 2).

SACSCOC will ultimately decide this issue based on its interpretation of adherence to the “agreed upon requirements” as exemplified by its own compliance case precedents – some of which I have listed above. However, another such case nearer to home is exemplified in the history of Morehead State University, which – according to an August 29, 2016, editorial in The Morehead News, lost its accreditation in 1946 when a governor appointed new board members who fired one president and hired another. Fortunately, SACSCOC forced Kentucky to change its law on such appointments and MSU had its accreditation restored retroactively in 1948 (http://www.themoreheadnews.com/opinion/editorial-u-of-l-governance-fight-could-bring-disaster/article_425e933c-6e1b-11e6-8209-1741e0b934bc.html).

I hope these insights into this particular “SACSCOC matter” have been helpful. If you have questions, kindly let me know.