

Purdue Unbound: The Road Ahead for Conversions and Shared Services Transactions

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Almost a year ago, we wrote what turned out to be 2017's most read CooleyEd blog post: "[Assessing Kaplan-Purdue](#)." We highlighted the ways in which that deal was more evolutionary than revolutionary, and we forecast its eventual approval.

As we predicted, this week the Higher Learning Commission gave [final approval](#) to that transaction. To the surprise of some observers, and the dismay of a few antagonists, HLC appears to have granted its approval without any special limitations, other than a requirement that certain areas of performance, including governance arrangements, are to be verified in the course of the customary six-month review.

So, why did this happen? First, and most obviously, we are in a different regulatory environment – at least as far as the federal Department of Education is concerned. In late 2017, the Department of Education dropped its opposition to for-profit conversions [vehemently articulated by then-Secretary John King](#), most recently approving the [sale of South and Argosy Universities and the Art Institutes](#) owned by Education Management Corporation to a nonprofit created by the Dream Center Foundation. This change in federal policy shifted the emphasis on approvals back to the accreditors and the states.

At the accreditor level, the politics may be less important in understanding the outcome than the process. At about the same time that Kaplan-Purdue was first announced, HLC began working on revising its policies and procedures to establish new benchmarks by which such transactions would be measured. HLC made two significant changes: it updated its procedures for review of Change of Control transactions and, in a politically astute move, also established a policy that Department of Education approval must be obtained *before* HLC acts on a change of control application, thus insulating itself from second-guessing in Washington. (HLC's change was telegraphed in late 2016 when it deferred acting on the sale of the parent of the University of Phoenix to a private equity group pending prior ED approval.)

Then, last November, HLC published new guidelines for what it calls [Shared Services Arrangements](#). The new policy details the commission's expectations for agreements that shift certain operating functions or services of an institution to another entity. The new policies reflect the reality that such arrangements are in wide use throughout higher education. While in some respects relatively prescriptive, the new policy not only provides much clearer guidance as to what arrangements would meet with HLC approval and what might not but also, very importantly, what kinds of arrangements might require HLC approval (or at least review) in the first place. Interestingly, each of the categories of relationships are in fact based on currently emerging models:

- An institution that forms a relationship with an entity that has no corporate or financial relationship with the institution to perform certain services (e.g., an Online Program Management agreement).
- An institution that works with other related accredited institutions to pool or consolidate services into another related entity that may be another corporation or may be a division of one of the institutions (e.g., Strayer-Capella).
- An institution that has a parent or affiliated corporation that provides various services (e.g., Kaplan-Purdue).
- An institution that enters into an agreement with a related or separate corporation into which the institution transfers some of its existing operations and/or services (e.g., Grand Canyon).

Of course, the accrediting community has long been attentive to contractual agreements involving the outsourcing of institutional functions as a way to assure that such arrangements do not adversely affect the mission, quality of instruction or the integrity of member institutions. The growth in both number and scope of such arrangements has led to closer scrutiny in recent years, and there is a trend towards the development of more formalized guidelines and processes with which to gauge the appropriateness of outsourcing arrangements. For example, in 2015, the WASC Senior College and University Commission established [guidelines](#) and revised its policy on agreements between accredited institutions and unaccredited entities. Above all, each of these guidelines and policies demonstrate that accreditors expect institutions to adhere to a simple principal: that they, not the contractor or partner, retain ultimate control over the outsourced functions, particularly those related to the core academic enterprise.

So, like WASC before it, what HLC's new policies did was provide a roadmap for institutions like Purdue to follow. As the higher education community continues to explore different types of partnerships with institutional and non-institutional entities and establish new shared service arrangements, we expect accreditors (along with the Department of Education and state regulators) will continue to explore how best to view and manage such agreements. But for now, the road map is becoming reasonably clear:

- First, shared service arrangements must be carefully crafted to ensure compliance with relevant accreditation guidelines and standards.
- Institutions must provide appropriate prior notification to accreditors and other regulators about their plans to formulate such arrangements so that they can collaboratively resolve any issues before they jeopardize the project.
- In developing plans for shared services, institutions must demonstrate that they have incorporated effective processes to monitor and evaluate the performance of service providers and be prepared to demonstrate the effectiveness of those processes at subsequent accreditation visits and reviews.

Viewed from a broader, historical perspective, HLC's actions this week are not at all surprising. While other complex considerations are often at play in conversions and shared services transactions (including, from a regulatory perspective, obtaining consents from a diverse mix of regulators including, in addition to the Department of Education, the Internal Revenue Service, state regulators and attorneys general and programmatic accreditors), there is now much greater confidence that such deals ultimately will be approved. While the process remains complex and highly regulated, the Kaplan-Purdue deal means that opportunities for institutions to collaborate with other entities to improve the quality and scale of their educational programs and to reduce their costs are sure to proliferate in new and interesting ways.

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