GENERAL

Troubling Policies at Purdue's (Formerly For-Profit) Arm

02.12.19 | Linda J. Rosenthal, JD

Since the end of World War II, "proprietary" post-secondary institutions have popped up around the nation, taking advantage of generous G.I. benefits to lure students into programs that often were shady and didn't produce serious education or vocational training. Governments of both parties cracked down from time to time on these mostly small operations.

About thirty years ago, it all changed. Suddenly, "large for-profit college chains emerged and began expanding, attracting mostly poor students with slick advertisements and devoted recruiters." The heyday was from 2000 to 2010; "publicly listed colleges devoted nearly a quarter of their revenues to marketing and recruiting." Enrollments surged and executive salaries exploded; they became "…the darlings of Wall Street."

Unbound by the norms and restrictions of the nonprofit higher-education world and 501(c)(3) rules, eventually, these behemoths faltered under the weight of scandalous predatory practices, student backlash, media exposes, and – finally – government regulation in the Obama Administration.

For-Profit Rush to Nonprofit World

Recently, those institutions that have managed to survive at all have changed strategies. "(S)ome are focusing on graduate education, where accusations of predatory practice have been less common." Others tried to convert to non-profit status or have been sold to, or absorbed by, nonprofit institutions. In a November 2017 article in the Economist, "*For-profit colleges in America relaunch themselves as non-profits*," the writers explore this trend, despite the much more lenient regulatory posture of the current Administration towards for-profit schools.

Under ordinary circumstances, converting a for-profit entity to a nonprofit institution with tax-exempt 501(c)(3) status is fraught with difficulties, and may not be possible at all.

A strategic alliance with an existing nonprofit in good standing faces hurdles, too: both for the former

for-profit institution as well as for the nonprofit college or university. “Purdue University, a well-regarded public higher education institution in Indiana, has bought the for-profit Kaplan University in the hope of launching an online school.” Kaplan, now “reformed” as a “nonprofit public institution” is called Purdue Global. This union is in the headlines, but for all the wrong reasons. Certain just-announced policies for the new Purdue Global are being criticized as out of place in a nonprofit, higher education environment.

Purdue Unit: Shades of For-Profit?

“Purdue University is emulating corporate America’s practice of requiring employees to agree to confidentiality and non-compete agreements as a condition of employment,” according to The Nonprofit Quarterly. “At the heart of the issue is the intent and meaning of a four-page agreement that all employees of Purdue University Global are required to sign.”

There is criticism as well from the American Association of University Professors (AAUP), which asserts that “the practice sets a dangerous precedent and violates their understanding of the purpose of a nonprofit educational and research organization.” According to Greg Scholtz, that organization’s director of the academic freedom, tenure, and governance department, the new policy is “breathtakingly inappropriate” for higher education and said it was unlike anything he had ever seen in his work, which is focused on nonprofit institutions.”

For its part, Purdue disagrees; critics are “overreacting and making a mountain out of a molehill.”

Agreement Details

There are two aspects of the new mandatory agreement that are, in particular, raising eyebrows. First, the document “includes a one-year, non-compete period and appears to limit the ability of faculty to consult with other teachers and researchers.” Critics worry that this is an unfortunate move by this “Big Ten school to increase control over its instructors and reduce the nature of professional independence.” A Purdue psychology professor, David Nalbone, sees this as a move to “intimidate faculty into keeping their head down and just [be] drones.” He asserts that the “noncompete clause” is “a particularly pernicious poison pill”; many adjunct teachers are in a precarious financial position to begin with and work several jobs to make ends meet.

Second, the “highly legalistic language” of this agreement appears to appropriate the intellectual property ordinarily retained by faculty members; that is, “any ‘written, graphic, audiovisual, audio, visual or other works for purposes of education delivery’ that faculty members produce as employees….are considered to have been ‘commissioned and owned by Purdue Global as a work-for-hire’ and may not be used, duplicated or distributed unless the university waives its rights to the materials. For anything not owned by Purdue Global as a ‘work-for-hire,’ it retains a ‘perpetual nonexclusive, royalty-free license to use, duplicate and distribute all such copyrightable works for all research and educational purposes.’”

In response to this criticism, Betty Vandenbosch, the Purdue Global chancellor, admits that “the agreement’s language may be legalistic and possibly confusing,” but – she asserts – “its meaning is clear.” In explaining why this cryptic language doesn’t mean what it says, Chancellor Vandenbosch fails to give a meaningful response..

Martin Levine, writing for The Nonprofit Quarterly, asks: “If the conditions of the agreement are not intended to be rigorously enforced, then why would Purdue continue to require faculty to sign as a condition of their employment?”

Why indeed?

Conclusion

Mr. Levine concludes by posing the next logical question: "Do these concessions change the nature of a public nonprofit so much that it no longer provides the public with the benefits that justify its status?" Professor Nalbone agrees: "This entity is no longer a private entity" and "it needs to start behaving like one."

In April 2018, Professor Brian Galle of Georgetown University wrote an article about a different for-profit turned nonprofit in *Conversions of For-Profit to Nonprofit Colleges Deserve Regulators' Scrutiny*, arguing that these transactions need a better look. Referring to the for-profit conversion discussed there, he observed: "That is not a charity. It is a trustworthy-looking wrapper around a for-profit business."