

ARIZONA STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION  
1400 W. WASHINGTON STREET, CONFERENCE ROOM B1  
PHOENIX, AZ 85007

JANUARY 26, 2015 BOARD MEETING MINUTES

Members present:                    Jason Pistillo, Chair                    KC Miller, Vice Chair  
   Trish Leonard                            Dr. Hank Radda  
   Glen Tharp                                David Walser

Also present:                        Teri Stanfill, Executive Director  
   Keith Blanchard, Deputy Director  
   KD, Manager ~ Licensing  
   John Tellier, Assistant Attorney General  
   Frankie Eckberg, Assistant Attorney General

**I.        CALL TO ORDER – 10:00 a.m.**

Chairman Pistillo called the meeting of the Arizona State Board for Private Postsecondary Education to order at 10:01 a.m.

**II.        BOARD MEETING MINUTES: January 6, 2015 Special Meeting Minutes:**

Mr. Walser made the motion to approve the Minutes of the January 6, 2015 Special Meeting Minutes. Ms. Leonard seconded the motion and the motion carried.

**III.        LICENSING:**

**A.        Conditional to Regular Vocational Program License Renewal: Kino College.**  
Represented by Dennis Wilson

Mr. Stanfill introduced this Agenda item. Ms. Leonard was lead.

Mr. Wilson provided an overview of the past year. Mr. Wilson stated the goal was to start 3-5 students and they started 9, 7 have graduated and 7 employed. The second class started with 8 students. Retention rate is 100%.

Ms. Leonard asked about the medical facility used by Kino and any other available sites for externships. Mr. Wilson responded that Kino contracts with the hospital and a contract is pending with a new major medical facility. Many other medical facilities have expressed a strong interest.

Mr. Wilson also explained Kino now offers a “mid-term” externship, but that it is treated as part of the lab. It has been very successful. They do not have any plans to add new programs in the near future.

Ms. Leonard cautioned on consistency of information and statements in the catalog. Ms. Leonard questioned the information on the ATB test and requested it be clarified. Mr. Wilson explained the test has been created by Kino. Ms. Leonard stated the term “ability to benefit test” term cannot be used as it is a specific “term of art.” Ms. Leonard stated this must be clarified.

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Ms. Miller questioned if employers would hire their graduates without a high school diploma or GED. Mr. Wilson stated he has not had an issue with this.

Ms. Leonard noted other areas of concern in the Catalog and Mr. Wilson responded and agreed to revise as required. There was additional discussion regarding the admission requirements (background check) for the program.

Ms. Miller expressed her concern with the financial statements. Mr. Wilson responded the plan is to grow and become sustainable.

Mr. Walser requested clarification of Kino's relationship with the Hospital. Mr. Wilson explained that Kino leases space from the Hospital and some of the Doctors teach in the program.

**Motion:** Ms. Leonard made the motion to approve the Conditional to Regular Vocational Program License with the stipulation that the \$60,000 Surety Bond be maintained and make the necessary revisions. Dr. Radda seconded the motion and the motion carried.

**B. Conditional Vocational Program License Application: 7 Centers Yoga. Represented by Ruth Hartung**

Ms. Stanfill introduced this Agenda Item. Ms. Miller was lead.

Ms. Hartung provided an overview of the Yoga studio and the operation of the Yoga Teacher Training program. Ms. Miller asked if the program has been offered prior to licensure. Ms. Hartung acknowledged the program was being offered without a license and immediately sought licensure.

Ms. Miller requested clarification on programs and policies regarding the graduation requirements, attendance, leave of absence and dismissal. Ms. Hartung sufficiently responded to Ms. Miller's questions/concerns and agreed to make several clarifications.

Ms. Miller expressed concern with the two separate enrollment agreements for the Kundalini I and II modules. Ms. Hartung agreed to combine the two modules as one on the Enrollment Agreement.

Ms. Leonard addressed other concerns with some policies and cautioned that what is written policy must be followed.

**Motion:** Ms. Miller made the motion to approve the Conditional Vocational Program License with the stipulations that the \$15,000 Surety Bond be maintained and revise the Kundalini Enrollment Agreement. Ms. Leonard seconded the motion and the motion carried. Ms. Hartung agreed to the stipulations.

**C. Regular Degree-Granting License Renewal and Supplemental License Application for a Change of Ownership:** Everest College Phoenix (3 locations: Phoenix, Mesa and Online). Representing the licensee: Dr. Ed Johnson, ECP President; Marilyn Clute, CFO; Thomas Waite, Provost; Elaine Raker, Compliance. By phone: Dan Fisher, Exec. V.P./General Counsel for ECMC; Mary Ritter, Phoenix Campus President and Mary Nisbet, Dean of Academic Affairs.

Ms. Stanfill summarized the Report to the Board as follows:

January 2014 - the United States Department of Education ("ED") sent a request to Corinthian Colleges Inc. ("CCI") for extensive information about placement results, attendance and grade changes for certain prior periods (from June 8K). In April and May, CCI received subsequent requests from ED expanding the "scope of information requests".

June 12, 2014 - CCI was notified by ED that outstanding documentation and data had not yet been provided. In addition, ED informed CCI that "it has transferred all Company schools from Advance Payment to Heightened Cash Monitoring I (HCM1) effective immediately, as a result of the extended time the Company has taken to provide requested documents and data." ED imposed another stipulation "delaying drawdown of the requested funds for a period of 21 days". CCI stated they were seeking relief of the 21 day delay with ED. If relief was not granted, CCI would not have sufficient cash balances and would need to immediately seek alternative financing. As stated in the 8K, "If the Company is unable to timely obtain alternate financing, the Company's cash flows will not be sufficient to meet its obligations as they become due, which would cause the Company to be unable to continue as a going concern."

June 19, 2014 – CCI and ED entered into a "Memorandum of Understanding" that provided for the immediate release of certain Title IV funds and establishing the framework for a transition plan that is intended to result in the sale of certain of the Company's schools and the teach-out of certain other schools, together with oversight of the Company's ongoing operations.

Everest College Phoenix (ECP) was identified as a "sale school".

Accordingly, Everest College Phoenix has been on the Board and Finance Committee agenda. Dr. Ed Johnson, President of ECP has addressed the State Board and provided updates regarding the continued operations of ECP and the sale of ECP.

November 2, 2014 – the 2015 Degree-Granting License Renewal was submitted as required and are pending review and action by the State Board at this meeting.

November 19, 2014 – a pending sale was announced to sell the assets of ECP to ECMC Group Inc. ("ECMC"), through a newly formed 501(C)(3) and wholly owned subsidiary, Zenith Education Group.

ECP has submitted the Change of Control application to the Higher Learning Commission. HLC is not expected to take action until its meeting in February 2015.

**January 5, 2015 – Supplemental License Application for a Change of Ownership was submitted.**

**LICENSE RENEWAL:** A copy of the License Renewal applications for the three locations are attached.

Mr. Walser was lead. Mr. Walser requested an update on the sale of ECP to ECMC.

Dr. Johnson responded that the final benchmark is the approval of the Change of Ownership by HLC. HLC is scheduled to review the Change of Ownership on February 26 and 27<sup>th</sup>.

Dr. Johnson stated the ECP administration, faculty and staff are very supportive of this change for the following reasons: 1) Will remain accredited by HLC, remain an AZ institution and maintain the independent governing board; 2) mission will remain the same and 3) ECMC and ECP share a strong stewardship and the available resources that will be available from ECMC.

Mr. Fisher explained ECMC has a strong confidence in the pending closure, which will be in two phases. Other CCI institutions, not including ECP, intends to close on February 2, 2015. The closure for ECP will be after the HLC determination.

Mr. Walser stated initially he was inclined to recommend approval of the Change of Ownership as ECP would become financially more stable and the current administration, staff, faculty and programs would remain the same. However, after he had read and reviewed the many press releases regarding the sale, he has concerns.

Mr. Walser asked about the financial relationship between the U.S. Department of Education (USDE) and the sale. Mr. Fisher responded that the U.S. Department of Education will be receiving funds that is intended to be an escrow fund to provide refunds to the students. This was one of the provisions of the Operating Agreement between CCI and the USDE in July 2014.

Mr. Pistillo expressed his concern this was not clearly addressed in the Purchase Agreement. Mr. Fisher responded that it was not USDE is not a signatory on the agreement, but that it was a part of the operating agreement.

Ms. Leonard asked if this fund will only be for the Title IV students and how will this affect the students who have private loans.

Mr. Fisher explained the problem with the "in-house genesis loans" and that CCI had been sued by the CFB.....that the students who had the genesis loans had been misled. Mr. Fisher stated that in the agreement, ECMC has agreed to reduce all genesis loans by 40%.

Ms. Leonard asked about the students who have paid by cash or paid in full, how will they be protected. Mr. Fisher stated he could not respond to that but that the refunds would be based upon the hierarchy of student loans.

Mr. Walser requested an explanation about the additional payments that are to be made to USDE based upon the future performance. Mr. Fisher explained that it is intended to cover the potential liability of the previous owner through the open USDE program reviews. It is intended to waive the potential unknown liability, it is intended to "cap" the potential liability of CCI.

Mr. Pistillo expressed his concerns with the proposed transaction. Mr. Fisher acknowledges that it is a unique transaction, but Zenith (ECMC) believes this transaction is in the best interest of the students for the institutions to continue and maintain the mission.

Mr. Pistillo asked if ECMC currently collects on CCI defaulted loans. Mr. Fisher explained ECMC does have CCI students that have graduated or left school several years ago prior to the change of the FFELP program. ECMC will not collect on Zenith loans.

Mr. Walser expressed his concern that this particular transaction may be contrary to the normal process in the closing of a business in terms of creditors. Mr. Fisher responded and cited the

federal statute and regulation regarding the filing of a bankruptcy of a Title IV institutions and how this fundamentally changes the normal process in the closing of CCI.

**Motion:** Mr. Walser made a motion to go into Executive Session for legal advice. Mr. Pistillo seconded the motion and the motion carried.

Regular meeting adjourns at 11:13

Executive Session begins at 11:15

Executive Session ends at 11:33

Regular Meeting resumes at 11:38

Mr. Pistillo called the meeting back to order at 11:38 a.m.

Mr. Fisher wished to address the concerns expressed with the liability issued. Mr. Fisher stated that the many of the prior creditors are in fact being paid by ECMC in the Asset Purchase Agreement. Specifically the landlords, and all of the vendors are also being paid thru the transaction. Additionally, the students will be able to continue as well as the employees of ECP.

Mr. Pistillo asked what knowledge ECMC has in running an institution. Mr. Fisher responded ECMC does not have prior experience in operating an institution and that is one of the primary reasons the current management, staff and faculty of the campuses will remain in place after the transaction. Zenith is working with a national Executive Search firm to bring in educational executive to oversee the corporate education activities.

Mr. Pistillo requested clarification on the relationship between the Zenith board and ECP Board of Trustees.

Mr. Fisher explained that Zenith Board will govern the Zenith corporate operations and that ECP will continue to maintain its independent governing board with its own Bylaws with full budgetary, academic strategic authority of ECP. The primary change is that at least 2 Zenith members will replace the three CCI members, with the overall advice and consent of the ECP board.

Mr. Walser asked if one of the pending lawsuits were to award damages, there doesn't appear to be a provision for that liability. Mr. Fisher stated that is correct as ECMC did not assume the liabilities for the prior conduct of CCI. However, there is a provision of \$8 million of the purchase price set aside to pay the liability for the prior conduct.

Mr. Walser stated his primary concern is there may be Arizona students who have paid cash that may feel they have been harmed prior to the transaction and are unable to be protected by this transaction.

Mr. Fisher could not validate the number of students that have paid cash. However, Mr. Fisher stated that Zenith will institute a student choice option for students that may be in programs that are poor performing programs (option to transfer or refund of amount of tuition paid).

Mr. Pistillo asked where that policy is stated. Mr. Fisher stated it is in the agreement with USDE that is on their website.

Mr. Pistillo expressed his concern if the USDE is a party to this transaction and requests clarification from the A.G.

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Mr. Walser stated there are enough unknowns at this time to make a decision. Specifically, HLC's determination and legal clarification if the Department is a party to the transaction from the Attorney General.

Mr. Fisher provides the federal regulation citation, 20 USC 1002(a)(4) that he cited earlier regarding the liability of the closed institution.

Mr. Pistillo asked if a student would file a complaint about an issue that happened prior to the transaction, would the Board be able to address it. Mr. Tellier said yes as the licensed in transferred and a bankruptcy has not been filed to stop the process. Mr. Fisher stated that the students will current enrollment agreements will immediately transfer to Zenith and also introducing an internal dispute resolution process but that it would not preclude the student from filing with the proper authorities.

Mr. Walser asked if the Board could require Zenith, as a condition of approval, to accept any prior liabilities, including complaints of former students. Mr. Fisher was not sure how this situation would apply as there would not be a relationship between a former student and Zenith.

Mr. Walser re-iterated his concern that there may be a set of prior students with legitimate claims with Corinthian who closed and are not afforded any protection under the proposed Change of ownership.

Mr. Fisher disagrees this situation may arise as CCI will continue to operate other institution after the close. If CCI would file bankruptcy, then the student would have the process to file a claim through the bankruptcy process.

Mr. Walser does not agree that CCI will continue to operate due to the actions of USDE. Mr. Walser again asks if Zenith would assume the potential liability of the prior student.

Mr. Fisher states that "hypothetical" student is not in any worse position than before.

Mr. Pistillo asked how many or about how much has been paid in cash. Mr. Pistillo stated there should be at least 10% based upon the 90/10 rule. Ms. Clute responded close to the 90%, 10% of the revenue is cash.

Mr. Pistillo states that ECP would be in a stronger financial position than before, but wants to be assured that the State Board would not be a party to an inappropriate transaction.

Dr. Radda expresses his concern of the lack of administrative knowledge in operating an institution at the corporate level.

Mr. Fisher acknowledges this concern and re-iterates the focus is a long-term non-profit mission, the students are provided high quality education. Mr. Fisher stated the focus will focus on outcomes, the current team stays in place and qualified students are enrolled.

Mr. Fisher explained that one of the executive positions at Zenith who will form an executive board for career services to ensure programs will match employer needs. Secondly, marketing and compliance activities will be done by Zenith and not at the school level.

Zenith has also agreed to hire an independent monitor to compliance matters.

Mr. Pistillo asked what action plans are in place to accomplish all of this.

Mr. Fisher explained a RFP has been sent out for the Independent Monitor with potential candidates and created organizational charts. Mr. Fisher also stated that the prior CCI marketing and executive management are not being hired by Zenith.

Dr. Radda stated his concerns are regarding the new leadership and what will be different than before.

**Motion:** Mr. Walser made the motion to defer action on the 2015 Regular Degree-Granting License Renewal and the Supplemental License Application for a Change of Ownership application pending legal advice on the issues raised today and pending the HLC decision on the COO.

Dr. Johnson expresses his concern that HLC requires the State Board's approval prior to their decision.

**Amended motion:** To defer action to obtain legal advice and clarify HLC's requirement regarding the State Board action on the License Renewal and Change of Ownership. Mr. Pistillo seconded the motion.

Mr. Walser re-iterates his request for a clear answer if the new ownership will accept the prior liabilities of the AZ campuses.

Dr. Waite expresses his enthusiasm with the potential change with Zenith.

Mr. Pistillo called for a vote. The motion carried.

The Board members pointed out additional "technical" areas that will need to be addressed in the application (areas noted: consistency, refunds, and SAP, grievance procedure).

Dr. Radda requested clarification on the escrow and other available funds for students.

**IV. Call to the Public** – no one was present

**V. Board Business:** Ms. Stanfill gave a brief update on AZ-SARA and the Anthem student records issues.

**B. Election of Chairman and Vice Chairman**

Ms. Miller nominated Mr. Pistillo to continue as Chairman. Mr. Pistillo agreed to accept the nomination. Ms. Leonard seconded the motion and the motion carried. Mr. Pistillo abstained.

Ms. Miller opened the floor for nominations of Vice Chair. Ms. Miller agreed to remain as Vice Chair. Mr. Walser made the motion to nominate Ms. Miller as Vice Chair. Dr. Radda seconded the motion and the motion carried.

**F. Election of the Members of the Finance and Complaint Committee.**

The current members agreed to remain on the Committees.

VI. Adjournment

The meeting adjourned at 12:39 p.m.

The January 26, 2015 Minutes were approved at the February 26, 2015 Board meeting.

  
Teri Stanfill, Executive Director