GRAND CANYON INSTITUTE

Analysis for Arizona Board of Regents

November 18, 2020

Link to updated analysis including correction-available Dec. 2, 2020

University of Arizona Global Campus:

Critical Ethical and Legal Issues for Consideration[1]

Summary

The pending acquisition of for-profit, online Ashford University by the University of Arizona raises a range of ethical and legal issues.

- Ashford University is an exceptionally low-quality university
    - It has a very low graduation rate—most students drop out—and leave with outstanding federal loans and no degree.
    - It has been subject to numerous lawsuits—future liability for which the University of Arizona would inherit.
    - Its poor performance led to a formal letter of concern from its accrediting agent Western Association of Schools and Colleges (WASC) in 2019.
- Ashford University relies primarily on adjunct faculty with a questionable level of academic rigor and integrity.
- Ashford's enrollment has declined significantly in the last decade and it operates at a loss despite what appears to be a low-cost education model.
    - It has a continued pattern of operating losses.
    - Despite a common stock price of 1 cent, in the last two years "Goodwill"—a nontangible and questionable asset component of its US Securities and Exchange Commission unaudited balance sheet has risen from $12 million to $42 million, suggesting that actual operating losses are being understated.
- The University has tried to have it both ways.
    - On one hand, the Ashford acquisition, to be rebranded as University of Arizona Global Campus (UAGC), has been discussed as a new revenue center, suggesting that the intention is not to improve Ashford but to milk it for profits (assuming profits are forthcoming despite current losses).

[1] This is a preliminary analysis—GCI will release a final analysis the week of November 30.

    - On the other hand, the University claims it will not tolerate Ashford's previous poor performance once acquired—yet has not committed to the financial investment to turn it around.
        - Instead 19.5% of revenues will be funneled back to its current owner Zovio[2], who has been responsible for the poor performance and will continue operating the institution post acquisition.
        - The University plans to continue the current faculty model and the faculty will not be part of the University faculty.
        - The University is not bringing UAGC under its accreditation with the Higher Learning Commission. Rather, it plans to keep it separately accredited with the Western Association of Schools and Colleges
- The acquisition raises critical questions regarding whether the University and by extension the Arizona Board of Regents are violating the credit and stock clauses of the Arizona Constitution with this transaction.

Ashford University is an exceptionally low-quality university

Ashford University offers a lower quality university experience relative to the University. Any documentation related to its pending acquisition provide no indication that the University intends to invest in improving the quality of education provided to students. Rather, the focus seems to be on expanding the University's presence in the online higher education market while creating an additional revenue source, without apparent concern given for the quality of education provided. This has potentially serious implications for the University's brand. Key issues identified with Ashford University's performance include:

- Ashford University has a very low graduation rate—most students drop out—and leave with outstanding federal loans and no degree.
- It has been subject to numerous lawsuits—future liability for which the University of Arizona would inherit.
- Its poor performance led to a formal notice of concern form its accrediting agent WASC in 2019.

Based on data from CollegeFactual.com, Ashford's freshman retention rate ranked 3,347th out of 3,392. Only 22.5% of undergraduates finish their degree in six years and only 23.4% finish in eight years. Of 57,027 students tracked that had not completed a degree (76.6%), 443 were still working on their degree, 22,437 had transferred to another

[2] Note the actual number is 64-72% of ACGC revenue most likely based on an outside analysis that seems reasonable—what the 19.5% appears to be is a profit margin above costs.

institution and 34,146 had lost contact and presumably dropped out.[3] All would likely have outstanding college debt. The Eller Faculty analysis from June found typical debt was about $36,000 per student.[4]

Not surprisingly, Ashford has been the subject of numerous lawsuits. As the Eller Faculty analysis noted (Antelope is Ashford and Zebra is Zovio in the following text):

> For example, the California attorney general filed a lawsuit with Antelope University in 2017, which is ongoing to our knowledge. In 2014, Zebra settled a lawsuit with the State of Iowa for $7.25 million. In 2016, the Consumer Financial Protection Bureau levied an $8 million penalty on Zebra and required them to refund $23.5 million in student loans.[5]

Future liabilities from current and future lawsuits for past poor service to students would fall on the University of Arizona as the new operator.

In July 2019 its accreditor the Western Association of Schools and Colleges issued a formal notice of concern which stated:

> The Formal Notice of Concern is being issued due to the Commission's longstanding concerns regarding Ashford University's student persistence and completion rates and performance on other student success metrics. The University is in danger of being found out of compliance with Standard 2 unless significant improvements are realized in the near future.[6]

Ashford University relies primarily on adjunct faculty

Ashford University does not detail on its website anything about its faculty except a bit of information found in a blog area that is quite challenging to locate. CollegeFactual.com indicates only 8% of the faculty are full-time, which seems consistent with other data found online.[7]

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[3] "Ashford University Graduation Rate & Retention Rates," https://www.collegefactual.com/colleges/ashford-university/academic-life/graduation-and-retention/.

[4] Mergenthaler, Rick, Nathan Podsadoff, Hope Schau, Bin Zhang, David Brown, and Tiemen Woutersen (2020), Eller School of Business Faculty Letter to Board of Regents, President Robbins, Dean Goes and Provost Folks, June 19.

[5] Mergenthaler, Rick, Nathan Podsadoff, Hope Schau, Bin Zhang, David Brown, and Tiemen Woutersen (2020), Eller School of Business Faculty Letter to Board of Regents, President Robbins, Dean Goes and Provost Folks, June 19.

[6] Studley, Jamienne S.-President (2019), Letter from Western Association of Schools and Colleges to Dr. Craig Swenson President of Ashford University, July 12.

[7] "Academics at Ashford University—Majors, Faculty & More," https://www.collegefactual.com/colleges/ashford-university/academic-life/.

Indeed.com provides 709 reviews from employees or former employees in faculty positions. The snapshot below raises concerns.[8] There are more positive reviews as well—but from the responses it appears to be a canned curriculum and an environment where students are under prepared and under supported—even despite help from faculty. Professional development is highly questionable. This raises questions about the academic integrity of the institution that the University of Arizona is lending its brand to.

The following are several reviews by Ashford University faculty:

> **Uniformed course work for all instructors**
>
> Associate Faculty (Current Employee) - San Diego County, CA - February 19, 2018
>
> Requires a lot of time for little pay and no praise; hyper critical supervisors from people who are not credentialed teachers themselves; supervisors do not look at student feedback, just the length of your responses to students
>
> **Remote work - convenient**
>
> Associate Faculty (Current Employee) - Remote - January 25, 2018
>
> Convenient and self-paced. No advancement for associate positions and almost no communication by superiors (I don't even know who mine is after 7 years here).
>
> **Faculty expectations very demanding; Compensation for hours worked not adequate**
>
> Online Associate Faculty (Former Employee) - San Diego, CA - May 18, 2017
>
> Faculty expectations are very labor intensive. There is a reason that you are only allowed to teach one class at a time. One course requires over 24 hours per week in labor. With courses being five weeks, students really struggle with trying to keep up.
>
> **Ashford is not education**
>
> Associate Faculty-Online (Former Employee) - Online - May 13, 2017
>
> Courses are more suitable for high-school sophomores. Ashford is about profit, not education. Incompetent department chairs not understanding content and rigor for legitimate course offerings.

[8] "Ashford University Employee Reviews for Faculty," https://www.indeed.com/cmp/Ashford-University/reviews?fjobtitle=Faculty&fcountry=US.

Ashford's enrollment has declined significantly in the last decade and it operates at a loss

According to the *Wall Street Journal*, Ashford's enrollment has declined substantially from 85,000 in 2011 to 35,000 before the pandemic struck in 2020.[9]

Ashford/Zovio has experienced operating losses as stated in SEC filings as follows:

Three months ending March 31 (quarterly report)[10]:

2018: ($620,000)

2019: ($7.2 million)

Six months ending June 30[11]:

2019: ($27.5 million)

2020: ($5.2 million)

The consolidated balance sheet in March of 2018 and March of 2019 valued "Goodwill" at $12 million.[12] "Goodwill" is supposed to mean market value above what a balance sheet would indicate—which in the context of Zovio seems like a rather dubious proposition with a common stock price of 1 cent per share. Yet as of December 31, 2019 and June 30, 2020, "Goodwill" had jumped to $44 million and $42 million, respectively.[13] These balance sheets are unaudited.

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[9] Korn, Melissa (2020), "University of Arizona to Acquire Ashford University in Online Push," The Wall Street Journal, Aug. 3, https://www.wsj.com/articles/university-of-arizona-to-acquire-ashford-university-in-online-push-11596452400.

[10] Zovio, Inc., United States Securities and Exchange Commission, Form 10-Q, quarterly period ending March 31, 2019, https://www.sec.gov/Archives/edgar/data/1305323/000130532319000063/bpi033119form10-q.htm.

[11] Zovio, Inc., United States Securities and Exchange Commission, Form 10-Q, quarterly period ending June 30, 2020.

[12] Zovio, Inc., United States Securities and Exchange Commission, Form 10-Q, quarterly period ending March 31, 2019, https://www.sec.gov/Archives/edgar/data/1305323/000130532319000063/bpi033119form10-q.htm.

[13] Zovio, Inc., United States Securities and Exchange Commission, Form 10-Q, quarterly period ending June 30, 2020.

Possible violations of the Credit and Stock Clauses of the Arizona Constitution

The Credit Clause of the Arizona Constitution notes that the State of Arizona and its subdivisions shall never "give or loan its credit in the aid of…any individual, association, or corporation."[14]

The Stock Clause prohibits the State of Arizona or any of its subdivisions from becoming "a subscriber to, or a shareholder in, any company or corporation, or…a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state."[15]

The Credit Clause could be violated if to retain eligibility for Title IV funds (essential for UAGC) the U.S. Department of Education (DOE) requires the typical letter of credit valued at 10% to 25% of expected Title IV funds to be access by its students. Title IV funds represent close to 90% of Zovio's revenues likely as student loans. This would require a letter of credit from the University valued at between $40 million and $100 million. If this deal is submitted to the DOE under the Trump Administration, it is likely to get a pass, but under the Biden Administration the deal would receive much closer scrutiny. It is likely that the rush to get the deal consummated as soon as possible is related to the greater risk under the Biden Administration.

In addition, the University will assume responsibility for future liabilities that will come with the transaction. Zovio has a track record of operating losses as well as any future payments resulting from lawsuits for liabilities that will now be assessed to the University. Both scenarios appear to be violations of the Credit Clause.

The University has also gone to great lengths to try and maneuver around the Stock Clause as well. It is clear form reading the purchase agreement, this is the University of Arizona (and therefore the Board of Regents) that is buying Zovio for $1. However, technically the University has tried to create the appearance of a different buyer through the Law College Association of the University of Arizona (LCA).

UAGC is set up as a single member corporation—that single member being not the University, but the LCA—which is a nonprofit corporation separate from the University whose sole purpose has been to raise and manage donations for the University's Rogers School of Law.

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[14] Ariz. Const. Art. IX, Sec. 7.
[15] Ariz. Const. Art. IX, Sec. 7.

While LCA has the authority to dissolve or liquidate UAGC, it has no say according UAGC's articles and bylaws on appointing directors of UAGC or approving any major corporate transaction. Furthermore, the University has an indemnification agreement that indicates both that the articles and bylaws will be amended prior to the closing with Zovio. They stipulate that a majority of independent voting members (including one selected by LCA) and a minority of university-appointed members will compose UAGC's board of directors. That is initially and after that the board is self-perpetuating.

President Robert C. Robbins stated, "There will be a separate academic affiliation agreement between [UAGC] and [the University] where we will provide, in terms of governance, a newly constituted governing board for [UAGC]. We envision a new nine-person board of which four members will be from [the University] or [University]-affiliated. We've talked about even potentially having Regents take one of those board seats on this new board. And then five independent board members that we will get to select and empower."[16]

In other words, LCA is a fairly impotent sole corporate member and the University will hold effective control over UAGC.

The University is also likely be violating the State of Arizona's Credit Clause given it would be acquiring Zovio, a provide corporation, that has been running operating losses which have been partially disguised as "goodwill" in its financial statements. The University will be assuming Zovio's risk and in turn providing it with a 15-year contract to run UAGC in exchange for 19.5% of revenues according to the *Wall Street Journal*.[17]

Conclusion

The Grand Canyon Institute provides this analysis for the Arizona Board of Regents consideration given the variety of ethical and legal issues related to the University of Arizona's planned acquisition of the University of Arizona. At a minimum, if the transaction is to move forward, it warrants greater attention than is afforded under the current rushed timeframe so that these issues can be properly evaluated and resolved.

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[16] See August 20, 2020 Special Meeting of the Arizona Board of Regents (available at https://www.youtube.com/watch?v=WLJ-9TyYp-4, starting at 31:20).
[17] Note the actual number is 64-72% of ACGC revenue most likely based on an outside analysis that seems reasonable—what the 19.5% appears to be is a profit margin above costs.

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The Grand Canyon Institute, a 501(c) 3 nonprofit organization, is a centrist think tank led by a bipartisan group of former state lawmakers, economists, community leaders and academicians. The Grand Canyon Institute serves as an independent voice reflecting a pragmatic approach to addressing economic, fiscal, budgetary and taxation issues confronting Arizona.

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