

Zenith Education Group

Report of Independent Monitor

June-August 2016

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Monitor

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Introduction

On May 27, 2016, the United States Department of Education (the "Department") approved Zenith Education Group's ("Zenith") selection of the law firm in which I am a partner, Squire Patton Boggs (US) LLP (the "Firm"),¹ as the new independent monitor (the "Monitor") to oversee Zenith's compliance with the terms of certain provisions (the "Conduct Provisions")² the Department required Zenith to comply with as a condition of the Department's approval of Zenith's acquisition of certain technical or career-oriented colleges previously owned and operated by the now defunct Corinthian Colleges, Inc. ("Corinthian"). With the acquiescence of the Department, Zenith designated me to lead this engagement.³

A for-profit entity, Corinthian closed its doors last year after the Department expressed concerns about "questionable practices,"⁴ including allegedly falsifying job placement data, grades, and attendance numbers. On February 2, 2015, Zenith, the nonprofit education arm of ECMC Group, acquired more than 50 Corinthian schools known under the trade names, "Everest" or "WyoTech," respectively, operating them as nonprofits. In acquiring the schools, Zenith committed to improving student outcomes, strengthening career training, and ensuring accountability and transparency.⁵

As noted above, the Firm was engaged as the *new* Monitor, replacing the initial one, the law firm of Hogan Marren Ltd. ("HM"). The Department required Zenith to replace HM following an Associated Press investigation that found that the firm had an attorney-client relationship with Zenith, calling into question its independence and, thus, the integrity of its oversight.⁶

The Firm was engaged for a period through at least January 31, 2017, and, at the discretion of the Department, the engagement can be extended for one year. The Firm has no attorney-client relationship with Zenith, and both the Firm as a whole, and I individually and other members of the Monitor's team, agreed to certain additional understandings and restrictions during the period of the monitorship and thereafter to further ensure our independence and, thus, the integrity of our oversight.

HM's last finalized report was that for the month of April 2016. (As of this writing, its May 2016 report is still in process.) To date, the Monitor's reports have been posted on the Department's website.⁷ The last HM report posted is that for the month of July 2015. The Department plans to post the additional HM reports that have been completed as soon as possible. This report, then, covers the period, June – August 2016. In the interest of time, the report is being posted on the Firm's website. Going forward, it is my intention

that there will be a separate report for each month, per usual, and that each such report will be posted on a discrete website set up by me as the Monitor solely for this purpose.

Per the practice we intend to follow throughout the course of the monitorship, we shared a draft of this report with both Zenith and the Department for their review and comments, if any. Any such comments, if incorporated into or otherwise reflected in this final report, are incorporated or reflected only at the Monitor's discretion.

Activities

Over the course of the last two months, we have held a number of lengthy and detailed calls with HM in an effort to understand their methodology; their approach to the task and their conception of the Monitor's role; what they have done; and what remains to be done. We note for the record that HM has gone above and beyond the proverbial call of duty and professional courtesy by responding to our every request for information, sharing helpful insights, and offering valuable counsel.

Likewise, and needless to say, we have held numerous meetings and lengthy and detailed calls with Zenith, and Zenith, too, is to be commended for its full cooperation. As required by the Conduct Provisions, Zenith has met our every request for information, including marketing materials provided to prospective students, enrollment agreements, catalogs, certain recorded telephone calls, and training materials for recruiters, and it has done so in a timely fashion. The large volume of materials to be reviewed, and the fact that there are revisions and updates to them on an ongoing basis in the normal course of business, mean as a practical matter that we must review them on a rolling basis and concentrate on a given category or subset of materials at any one time.

Accordingly, during this reporting period, we have chosen to focus on reviewing the enrollment agreements (and the addenda thereto) and the catalogs, since the enrollment agreements reference the catalogs and implicitly incorporate them thereby. We anticipate having completed (or, at least, substantially completed) that review by the time of next month's report. To the extent there remains time to do so, we will also begin a review of web pages to ensure that the changes HM suggested in its review (provided, of course, we agree with those suggestions) were, in fact, made, and to determine whether we have any suggested changes of our own.

Based on our review to date, we will have extensive comments aimed at ensuring that these materials meet the letter of applicable statutory and regulatory requirements. We will also have suggestions as to how, in our judgment, to make these materials easier to understand and less susceptible to being misconstrued and to make requisite disclosures more conspicuous.

Further, as referenced above, we have recently obtained access to recordings of the telephone calls made during the months of May and June to and by agents whose job is to solicit prospective students. HM had contracted with the noted research and data analysis firm, the National Opinion Research Center at the University of Chicago ("NORC"), to determine a statistically valid number of calls to review so as to draw empirically sound conclusions. Having satisfied ourselves of the soundness of NORC's methodology and so as not to reinvent the wheel, we have retained NORC to perform

¹ <http://www.ed.gov/news/press-releases/us-education-department-accepts-selection-new-independent-monitor-zenith-education-group>

² <http://www2.ed.gov/documents/press-releases/zenith-conduct-provisions.pdf>

³ It should be noted that Zenith suggested to the Department that there be a Monitor to ensure its compliance with the Conduct Provisions. Typically, monitorships are imposed by the government as part of a consent decree or deferred prosecution agreement.

⁴ <http://blog.ed.gov/2015/04/working-to-protect-students-and-borrowers-as-corinthian-colleges-ceases-operation/>

⁵ <http://www.ed.gov/news/press-releases/more-50-Corinthian-campus-es-transition-nonprofit-status-under-zenith-education-group>

⁶ <https://www.insidehighered.com/quicktakes/2016/03/15/education-dept-fires-law-firm-overseeing-zenith-group>

⁷ <http://blog.ed.gov/2015/10/operating-with-accountability-and-transparency/>

the same function for us.⁸ We are beginning our review of the calls during this reporting period and anticipate having some findings and recommendations by the next reporting period.

Additionally during this reporting period, commendably, Zenith has reached out to us proactively to seek the Monitor's counsel as to initiatives that it is contemplating, so as to avoid negative findings if and when these initiatives are implemented. One initiative concerned the prospect of providing bonuses for certain personnel responsible for overseeing campuses that would not violate the ban on incentive compensation,⁹ and the other concerned providing certain incentives to encourage prospective students to enroll and prospective employers to hire Zenith graduates.

We believe that our reviewing these kind of requests is proper and, even to be encouraged, to the extent that our responding to them can prevent Zenith from unintentionally running afoul of applicable laws and regulations or otherwise violating the letter and spirit of the Conduct Provisions. In providing our views on these matters, we have stressed that the Monitor is not acting in an attorney-client capacity, and that Zenith should seek the advice of counsel. We have also made it clear that whatever our views may be about prospective initiatives, if and when such initiatives are actually implemented we would review them with the same degree of independence and objectivity that we will review every other initiative or activity. Moreover, we have stressed that even when we conclude that a given prospective initiative on its face does not appear to violate applicable laws, regulations, and/or any of the Conduct Provisions, it may nonetheless violate them in its implementation. Additionally or alternatively, an initiative that appears unobjectionable on its face can nonetheless inadvertently incentivize behavior that is violative of these laws, regulations, and/or provisions.

With respect to our intended approach to reviewing calls, in those instances where individual agents make statements that are inaccurate and/or misleading, we intend to follow up to ensure that these particular agents are not making such statements as a matter of course, and that they are in fact provided any necessary remedial training and, if appropriate under the circumstances, subjected to graduated discipline, up to and including termination.

Further, we learned from consultations with NORC that "outbound calls," meaning, one would think, only recruitment calls made by agents to prospective students, actually includes *any* outbound call an agent makes, including personal ones. Accordingly, we have advised Zenith to re-emphasize to agents that all outbound calls on Zenith phones should be made only for the purpose of recruiting students, in hopes that, going forward, our sample of recorded calls is truly representative of calls made to try to persuade prospective students to enroll in Zenith schools. To the extent, additionally, any revision in the sample size is warranted, NORC will so revise it.

Moreover, we intend to examine the sampling process Zenith uses to assess the accuracy of statements made by recruiting agents during face-to-face meetings with prospective students. To the extent we deem any changes in that process to be necessary or advisable, we will make that observation and recommendation.

Also, we intend to examine the process for handling complaints about matters within the scope of the Conduct Provisions in considerable detail to ensure that students and prospective students know that they can make a complaint and how to do so, and to understand how complaints are handled. To the extent complaints indicate the need for changes in policies or procedures, we intend to recommend them; to the extent they indicate the need for individual training or administrative discipline, we intend to recommend that.

Similarly, we intend to examine the dispute resolution process in considerable detail to ensure that it works as intended and to determine whether any changes thereto are necessary or advisable.

Conclusion

In general, though mindful of "mission creep," we intend, then, to take an expansive view of our mandate with a view to ensuring that Zenith carries out both the letter and spirit of applicable laws, regulations, and the Conduct Provisions.

⁸ Additionally, like HM, we have engaged NORC to verify the accuracy of Zenith's calculation of program completion rates and job placement rates.

⁹ The federal ban on "incentive compensation" bars institutions that receive federal financial aid from providing bonuses or other monetary awards for success in securing enrollments or financial aid to any person engaged in student recruiting or the awarding of student financial aid.