

Zenith is concerned that the latest monitor report (July-December 2017) contains several apparent misunderstandings and in some cases misstatements of Zenith's business practices and regulatory requirements.

As an initial matter, the monitor's "overview" section doesn't address compliance with Zenith's Conduct Provisions but rather expresses opinions on Zenith's business decisions where he misinterprets many of the facts. For example, the monitor claims that former Zenith CEO Peter Taylor was replaced on August 31 (despite a press release noting he was still CEO just a week later) and that this "bringing in new management," coupled with Zenith's July rebranding of the Everest campuses "were not enough to stave off the closure of all but a handful of schools."

But as the monitor-cited August 31 press release plainly announces, Jeremy Wheaton was appointed CEO of *ECMC Group*, Zenith's parent company. Peter Taylor remained CEO of Zenith when the decision was made to narrow Zenith's focus to a smaller number of campuses. The monitor's "obvious inference" that new management and rebranding were some sort of failed last-ditch effort is simply without merit.

Most prominent is the monitor's misstatement and misunderstanding of law in regard to the Gainful Employment Disclosure requirements. For example, he declares that Zenith's system-wide homepage fails to comply with 34 CFR 412(d) and the May 12, 2017 Department of Education guidance thereunder. Inexplicably, the monitor omits the fact that on July 5, 2017, section 412(d) was delayed and returned to negotiated rulemaking by the Department of Education. That is, the regulation he cites in criticizing Zenith has never been implemented, and Zenith is not subject to it. The notice in the Federal Register, is as follows:

"The Department believes that it should evaluate the utility of these disclosures to students and the implementation of this requirement prior to requiring institutions to include the disclosure template, or a link thereto, in their GE program promotional materials and to directly distribute the disclosure template to prospective students under 34 CFR 668.412(d) and (e). Moreover, the Department expects to further review these requirements as part of its review of the GE regulations and their implementation, including through negotiated rulemaking. **Accordingly, the Department is allowing institutions additional time—until July 1, 2018—to comply with the provisions in 34 CFR 668.412(d) and (e).**"

<https://www.federalregister.gov/documents/2017/07/05/2017-14186/program-integrity-gainful-employment>

Not only does the monitor rely on a not-yet-implemented requirement, he also misstates the requirements for "program pages" by claiming that the disclosures are not sufficiently accessible on those pages. Zenith's pages are set up as intuitively as possible for a multi-campus, multi-OPEID/program system, as required by the regulations. For example, if a user goes to the actual Medical Assistant program page covering all Zenith campuses (<https://www.altierus.edu/program/healthcare/medical-assistant>), one can either scroll down to the campus for which the disclosures are sought, click on that campus and be taken directly to the disclosures (one click); or click the "Disclosures" link prominently featured below the program title on that page (as shown below), and then choose the campus of interest to be taken, again, directly to the program's disclosures for that campus.

It is also noteworthy that Zenith's disclosure pages have been reviewed by both outside auditors and the Department of Education itself, and neither those auditors nor the Department shared the monitor's regulatory interpretation; and both found Zenith's disclosures to be in compliance with all applicable regulations.

Additionally concerning is the monitor's fundamental lack of understanding of what a "teach out" means for Zenith students. The monitor claims in his report that a "teach out" means "allow(ing) current students to complete their courses." He then relies on that misstatement to allege that previous concerns by Zenith students that Zenith's financial condition might result in their school closing on them were "well-founded." The facts are to the contrary. Zenith has never closed its doors on its students and current students will be permitted to complete their entire programs – not just courses -- or have the option to transfer to a teach-out partner before their campuses close. Thus, the monitor's previous, and now restated, concerns about a precipitous closure remain unsupported.

Regarding admissions calls,¹ the monitor committed more than a year ago to identify potential admissions call compliance issues for remediation on a timely basis. (See Zenith Response to September-November 2017 Report, noting that Zenith "requested, and the Monitor agreed, to alert Zenith to any identified compliance issues so that Zenith can remediate them more quickly.") It is surprising, then, that Zenith was not informed until very recently of any of the Monitor's concerns about calls dating back to November 2016.

Substantively, out of 1,609 calls reviewed for this period, the monitor identified nine that he found concerning, a rate of roughly half of one percent. But even as to these calls, the monitor's concerns are misguided. For instance, the monitor creates what he calls "virtual guarantees" out of true statements without any implied or actual guarantees. But much more troublesome are the monitor's flat mischaracterizations of some calls.

For example, on a call that allegedly raised "serious privacy concerns," the monitor asserted the caller was seeking a laptop password. In reality, the caller was seeking to have Zenith remotely remove a Zenith-imposed security lock on the Zenith-issued laptop. Further, not only did the admissions representative verify the student date of birth and a portion of the social security number before proceeding, but the call ended with the representative attempting, unsuccessfully, to connect the caller with information technology for further assistance. The representative then advised the caller to call IT. Contrary to the monitor's assertion, at no point did the representative "give [the caller] the requested information."

For another call, the monitor claimed that a representative guaranteed a job to a prospective student. But in fact, the prospective student and representative were discussing the student's potential interest in a bachelor's degree program not offered by Zenith. The representative asked the student "Let's just say you had to commit two years, maybe even four years toward a bachelor's, but you had to get student loans, is that worth it to you?" The student tied her analysis to whether she would have a job to get her out of debt,

¹ The monitor also inexplicably states, in regard to February 2017, that "Zenith has assured the Monitor that all of that month's calls, like those in previous months, were randomly selected for review." Zenith's understanding remains that calls are randomly selected through the Monitor's partnership with the National Opinion Research Center. Zenith does not participate in the selection of calls for review, other than to provide the monitor with a full list of recorded calls.

and the representative was agreeing with that assessment – a perfectly appropriate exchange about the student’s thought process in considering student loans.

Finally, the monitor’s assertion that a representative helped a potential student “cheat on the admissions test” is false. The call at issue involved a representative walking an already-admitted student through Zenith’s online *student orientation module*, with questions about, for example, where the student might be able to locate contact information for faculty members.

Final Statement

The monitor’s “Final Statement” raises additional concerns with Zenith.

For instance, the monitor provides a brief overview of three “concerning” calls, of 474 reviewed. Zenith has had no prior communication with the monitor about these calls, nor has it been able to review them on its own. Given previous mischaracterizations, Zenith is concerned that these, too, may have been misconstrued.

As to the monitor’s “repeated” requests to visit a campus or review complaints, at the monitor’s request, Zenith made arrangements for the monitor to visit the Woodbridge campus on November 1. Zenith ensured the campus Executive Director would be at the campus ready to provide the monitor with a tour of the school and access to whatever information was requested however the monitor did not make the meeting.

As to an assessment of Zenith’s complaint resolution process, we assume the monitor is referring to formal complaints escalated through Zenith’s “Internal Dispute Resolution Process” as reflected in the conduct provisions. While what the monitor characterizes as “repeated requests” appears to be a single request made in January 2018, in any event, Zenith had not received any such escalated disputes.