THE CENTURY FOUNDATION

January 30, 2018
(By e-mail to complaints@hlcommission.org)

Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, Illinois 60604-1411

Re: Purdue University's Misleading Representations and Possible Violation of HLC policies

Dear Higher Learning Commission:

The Higher Learning Commission (HLC) is charged with reviewing a proposed venture between Purdue University and the online programs of Kaplan University, which is owned and operated by Graham Holding Company (GHC). To promote this venture—which has been named "Purdue University Global," and was previously called "NewU"—Purdue University officials highlighted HLC's findings that "Kaplan University acts with integrity, and its conduct through its policies and conduct appear to be ethical and responsible."[1]

But Purdue officials have not been ethical and responsible in providing information to key constituencies about this joint venture. Rather, Purdue officials have made numerous false and misleading statements or omissions in communications with key constituencies. These statements raise concerns about the institution's compliance with HLC accreditation criteria and policies regarding integrity and truthful dealing, including:

[1] Purdue University, "Project Morrill: Acting on 3 Realities" at 19, available at https://www.purduenewu.org/documents/170708-iche.pdf (accessed Nov. 29, 2017). Throughout this letter, I cite to different versions of this presentation (on file with The Century Foundation), which have been shown to various Purdue constituencies: in addition to the version posted above, an April 25, 2017 version was presented to Purdue trustees and a May 4, 2017 version was presented to Purdue faculty by Purdue president Mitch Daniels.

- CRRT.A.10.010 - 16 (“The institution has no record of inappropriate, unethical, and untruthful dealings with its students, with the business community, or with agencies of government”);
- CRRT.B.10.010 - 1.D.2. (“The institution’s educational responsibilities take primacy over other purposes, such as . . . supporting external interests”);
- CRRT.B.10.010 - 2.A (“The institution operates with integrity in its financial, academic, personnel, and auxiliary functions”); and
- CRRT.B.10.010 - 2.B. (“The institution presents itself clearly and completely to its students and staff with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships”).

Purdue officials cannot claim ignorance with regard to their misleading statements and omissions. They have insisted that, regarding this venture, they “did five months of due diligence and did it very thoroughly.”[2] Purdue president Mitch Daniels said, “we were extremely cautious.”[3] Given these statements, Purdue officials knew or should have known the truth.

Yet after their thorough inquiry, Daniels and other Purdue representatives made multiple

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[2] Maureen Groppe, “Senators Urge Purdue to Protect Students, Reputation in Purchase of Kaplan,” Indianapolis Star, September 29, 2017, https://www.indystar.com/story/news/politics/2017/09/29/senators-urge-purdue-protect-students-reputation-purchase-kaplan/714397001/.

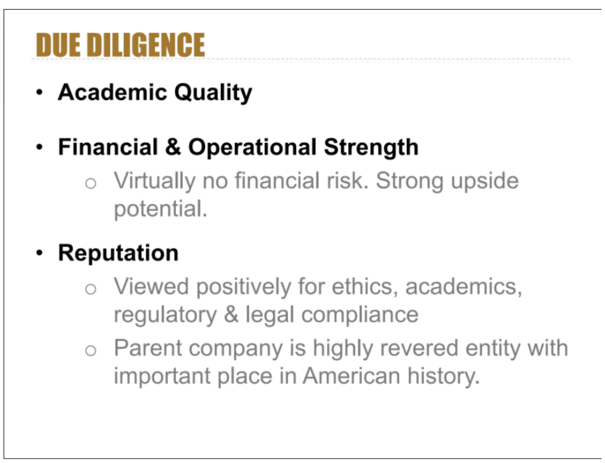
[3] Kimberly Hefling, “PoliticoPro Q&A: Mitch Daniels, Purdue President,” Politico, May 8, 2017, https://www.politico.com/tipsheets/morning-education/2017/05/trump-defends-support-for-hbcus-amid-controversy-220186.

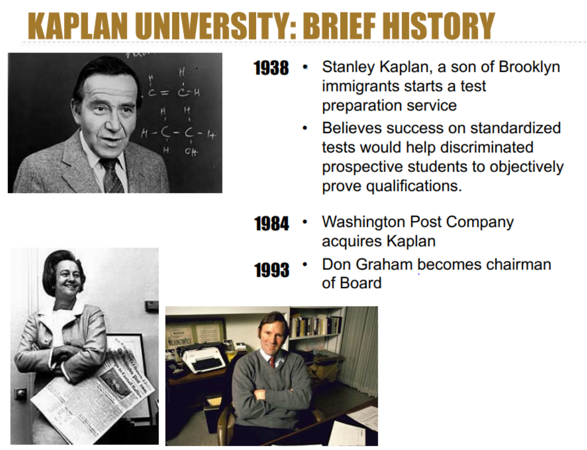
false and misleading representations, detailed below, regarding Kaplan's history, graduation rates, job outcomes, default rates, lawsuits and complaints, and structure of governance and control.

1. Kaplan's history

Purdue officials repeatedly misled key constituencies with revisionist history that obscures Kaplan's "shameful" past.

First, while announcing its proposed venture in April 2017, Purdue obscured a problematic history at GHC and Kaplan. Purdue officials portrayed Kaplan University to trustees and press in glowing terms, noting Kaplan's association with the *Washington Post*[4] and describing GHC as a "revered entity" that is "[v]iewed positively for ethics, academics, regulatory and legal compliance."[5]





[4] Daniels has since accepted a position as a guest columnist for the *Washington Post*. Andrew Clark, "Washington Post adds former Indiana Gov. Mitch Daniels as contributing columnist," *IndyStar*, Nov. 22, 2017, https://www.indystar.com/story/news/2017/11/22/washington-post-adds-former-indiana-gov-mitch-daniels-contributing-columnist/889015001/.
[5] Purdue University, "Project Morrill" at 26-27 (filed dated April 25, 2017).

Mike Berghoff, chair of Purdue's board of trustees and the NewU board of trustees, said that the joint venture would have an "overall commitment to the highest standards of quality and integrity" and praised Kaplan's pre-existing protocols as "exemplary."[6] But the record shows otherwise.

Purdue's partial history of GHC omitted the unsavory record of Kaplan University. In 2012, the U.S. Senate Committee that handles education found that Kaplan "had poor student outcomes," misled students, and used predatory tactics to enroll potential customers.[7] Undercover recordings "showed multiple instances of deceptive and misleading recruitment,"[8] including strong-arming potential students into signing enrollment contracts *before* speaking to a financial aid counselor.[9] Moreover, Kaplan trained recruiters to uncover "PAINS AND FEARS" to create a sense of urgency and enroll more students.[10] Contrary to Purdue's representation of Kaplan as "very different [from] some of the more problematic institutions," the Senate found that Kaplan exemplified the abusive practices typical of for-profit colleges.

Even GHC executives came to recognize problems with Kaplan's business model. Faced with the Senate's preliminary findings in 2011, GHC CEO Donald Graham labeled Kaplan's practices

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[6] Purdue University News, "NewU board approves statement of ethical principles, academic programs," Dec 8, 2017, https://www.purdue.edu/newsroom/releases/2017/Q4/newu-board-approves-statement-of-ethical-principles,-academic-programs.html.

[7] U.S. Senate Committee on Health, Education, Labor and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," July 30, 2012, 592 *et seq*., https://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf. For Kaplan-specific material only, see https://www.help.senate.gov/imo/media/for_profit_report/PartII/Kaplan.pdf.

[8] *See* https://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf at 607.

[9] *Id*.

[10] *Id*. at 605. The Senate uncovered Kaplan's employee training materials, which "provided the takeaway for recruiters in capitalized, bold letters:

> **IT IS ALL ABOUT UNCOVERING THEIR PAINS AND FEARS. ONCE THEY ARE REMINDED OF HOW BAD THINGS ARE, THIS WILL CREATE A SENSE OF URGENCY TO MAKE THIS CHANGE**.

[Emphasis in original.]

shameful.[11] To his credit, Graham undertook "significant reforms that showed a commitment to becoming . . . far more focused on student success."[12] But even after the reforms, problems persisted. In February 2012, Kaplan was forced to close a dental assistant training program that continued to operate without accreditation from the American Dental Association—leaving students unable to advance in their careers.[13] In 2015, Kaplan and GHC paid $1.3 million to settle a whistleblower lawsuit alleging that Kaplan employed unqualified teachers from 2008 to 2013.[14] Again, Kaplan promised to do better in the future. These incidents were absent from Purdue's presentations on Kaplan and GHC.

In a May 4 meeting with faculty, President Daniels acknowledged problems within Kaplan, but falsely claimed that the problems were contained within Kaplan's brick-and-mortar schools and therefore did not impact Purdue's proposed venture with Kaplan's online programs.[15] The Senate

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[11] Donald Graham is quoted, "Shame on us. We shouldn't have been recruiting students that way." Steven Mufson and Jia Lynn Yang, "The Trials of Kaplan Higher Ed and the Education of the Washington Post," *Washington Post*, April 9, 2011, https://www.washingtonpost.com/business/the-trials-of-kaplan-higher-ed-and-the-education-of-the-washington-post-co/2011/03/20/AFsGuUAD_story.html?utm_term=.488f23eec9d6.

[12] The Senate committee recognized that Kaplan undertook "significant reforms" from 2010 to 2012. https://www.help.senate.gov/imo/media/for_profit_report/PartII/Kaplan.pdf.

[13] Charles Huckabee, "Kaplan Suspends a Dental-Assistant Program in North Carolina and Reimburses Students," The Chronicle of Higher Education, Feb. 1, 2012, https://www.chronicle.com/blogs/ticker/kaplan-suspends-a-dental-assistant-program-in-north-carolina-and-reimburses-students/40153.

[14] Department of Justice, U.S. Attorney's Office, Western District of Texas, "For-Profit College Kaplan To Refund Federal Financial Aid Under Settlement With United States," Jan. 5, 2015, https://www.justice.gov/usao-wdtx/pr/profit-college-kaplan-refund-federal-financial-aid-under-settlement-united-states. The settlement agreement is available at https://www.republicreport.org/wp-content/uploads/2017/05/coleman-kaplan-settlement.pdf.

[15] In a presentation to Purdue faculty, Daniels said that claims about predatory behavior by Kaplan are the result of "innocent confusion." This statement echoes an approach that Kaplan has used to deflect blame in past incidents: following the 2012 closure of an unaccredited dental assisting program, Kaplan's national compliance officer, Janice Block, indicated to reporters "there had been no attempt to mislead students, yet 'a misunderstanding occurred.'" *See* Charles Huckabee, "Kaplan Suspends a Dental-Assistant Program," https://www.chronicle.com/blogs/ticker/kaplan-suspends-a-dental-assistant-program-in-north-carolina-and-reimburses-students/40153.

investigation, however, found serious problems with Kaplan University's online operation. For example, the Senate reported that Kaplan's online students were 91 percent more likely to drop out than those enrolled in ground campuses.[16] Across "every category of degree, online Kaplan students are far more likely to withdraw from their programs than they are to complete."[17] Purdue's failure to acknowledge problems in the histories of GHC Kaplan University, in general and its online programs in particular, is understandable, but misleading.

Moreover, these aspects of Kaplan's history draw into question the joint venture's compliance with HLC policies, including:

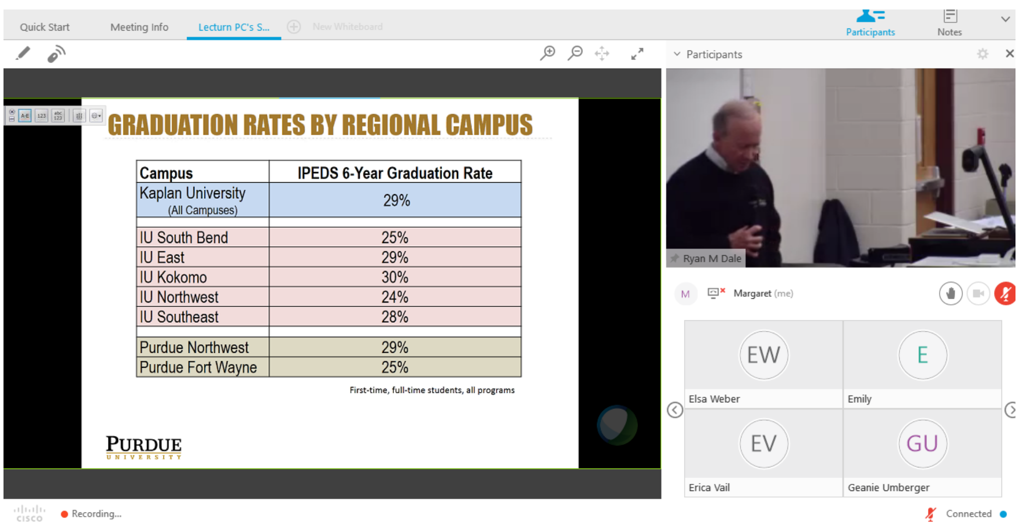
- CRRT.B.10.010 - 2.B. ("The institution presents itself **clearly and completely** to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships.") [emphasis added];
- CRRT.B.10.020 - 3.C.2. ("All instructors are appropriately qualified");
- CRRT.B.10.020 - 7.a ("The institution makes clear to students the distinction between . . . licensure and the various types of accreditation."); and
- FDCR.A.20.010 ("An institution shall not engage in . . . practices or procedures that are designed or have the tendency to create a falsification or deceive students").

[16] U.S. Senate Committee on Health, Education, Labor and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," July 30, 2012, at 610-11, https://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf.
[17] *Id*.

2. Low graduation rates

Purdue officials cherry-picked data to obscure the low graduation rates of Kaplan University's online programs.

In a July 2017 interview, President Daniels claimed that "at 29-30 percent, [Kaplan campuses] have a higher on-time graduation rate by far than our community colleges or our regionals."[18] This comparison, reproduced below, is misleading in several ways.[19]



First, President Daniels inflated the graduation rate for Kaplan's online programs. Kaplan University's online "campus" (previously based in Davenport for reporting purposes) claimed a

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[18] Anya Kamenetz, "One University President's Candid Take On The Future Of Higher Ed," NPR, July 18, 2017 https://www.npr.org/sections/ed/2017/07/18/537265624/one-university-presidents-candid-take-on-the-future-of-higher-ed.
[19] "Project Morrill" (May 4, 2017 version). This image was captured from President Daniels's May 4 presentation to faculty.

graduation rate of just 25.8 percent.[20] Because the proposed joint venture would only involve Kaplan's online programs, the 25.8-percent graduation rate is the most appropriate data point for a comparative analysis.[21] But, in order to boost the graduation rate to 28.7 percent, the reviewer aggregated data from eight other Kaplan campuses that are not part of the proposed joint venture with Purdue.[22] A three-point boost is not much, but in combination with other deceptive tactics, the effort casts Kaplan as comparable to at least some of Indiana's public colleges.

Second, Daniels's comparison of graduation rates is misleading because he excluded the success rates of high-performing campuses within Indiana's public university system in favor of cherry-picked low-performing members of the system. Graduation rates at the campuses below are not in line with the 25.8 percent rate at Kaplan's online programs:

Indiana University Bloomington	77%
Purdue Main	75%
IU-PU Indianapolis	44%

In a subsequent version of the "Project Morrill" slide presentation,[23] Purdue added the national graduation rate for the University of Phoenix—which is not and has never been a public university

[20] This figure is the IPEDS GR2015 rate reported to the Department of Education.
[21] This is particularly notable given that when confronted with the negative history at Kaplan's brick-and-mortar programs, Purdue officials have taken pains to emphasize that only data from Kaplan's online programs should be considered relevant to this proposed joint venture.
[22] All of the Indiana campuses' rates in the slide matched rates in IPEDS GR2015 rates (with Calumet and North Central combined to produce the Purdue Northwest rate). The Kaplan University online campus (Davenport) had a rate of 25.8 percent. When the numerators and denominators for eight other locations were added in, the rate reached 28.7 percent.
[23] Purdue University, "Project Morrill (accessed Nov. 29, 2017), https://www.purduenewu.org/documents/170708-iche.pdf.

or associated with Purdue University—while continuing to exclude the graduation rates of higher-performing public Indiana universities like the three listed above. Below are the corresponding slides that appeared in a presentation to Purdue faculty, and the expanded version posted online at PurdueNewU.org.

GRADUATION RATES BY REGIONAL CAMPUS

Campus	IPEDS 6-Year Graduation Rate
Kaplan University (All Campuses)	29%
IU South Bend	25%
IU East	29%
IU Kokomo	30%
IU Northwest	24%
IU Southeast	28%
Purdue Northwest	29%
Purdue Fort Wayne	25%

First-time, full-time students, all programs

GRADUATION RATES BY REGIONAL CAMPUS

Campus	IPEDS 6-Year Graduation Rate
Kaplan University (All Campuses)	29%
U. of Phoenix (All Campuses)	16%
IU South Bend	25%
IU East	29%
IU Kokomo	30%
IU Northwest	24%
IU Southeast	28%
Purdue Northwest	29%
Purdue Fort Wayne	25%
	3-year Graduation Rate (150% time)
Ivy Tech	11%

First-time, full-time students, all programs & degrees.

Third, Purdue's focus on graduation rates is misleading because many students at Indiana's public colleges transfer to other institutions, generating positive educational outcomes that are not captured by the graduation rate alone. Kaplan University, by contrast, does not report any transfers. Taking a fuller spectrum of federally-reported outcomes into consideration, Kaplan Davenport reports a 28-percent graduation rate and zero transfers or students still enrolled, while the combination of graduation, transfer, and still enrolled outcomes is 74 percent at IU Northwest; 70 percent at IU South Bend; and 43 percent at Purdue Fort Wayne. [24]

[24] These figures combine graduations and transfers, as captured by the number of students who are still enrolled. These data were available to Purdue when the Kaplan deal was being analyzed.

Purdue's choice to exclude transfer rates from student outcomes is particularly salient because Kaplan students report being misled about their ability to transfer credits from Kaplan University to nonprofit and public colleges. As one former Kaplan student, a veteran, recounts:

> When I applied to Kaplan University, I was told by my recruiter that the school was accredited and that my credits would transfer to any other school I attended. I specifically asked her, 'Will the credits transfer to the University of Alabama once I return from Iraq?' and she assured me that the[y] would. Well, when I returned home I found that the credits were worthless. They wouldn't even transfer to the local community college here in Birmingham.[25]

Another student said of the transfer options: "They say that if you transfer schools, you can transfer credits. But when you try to actually do that, you suddenly find out that you can't."[26] In fact, a study of ninety-four complaints made by veterans and servicemembers against Kaplan programs revealed that 44 percent of these complaints included concerns about transferring of credits.[27] Given students' lack of transfer options, Kaplan's graduation rates may reflect students who wished to leave but were unable to transfer credits elsewhere.

Viewed this way, Purdue's representations concerning Kaplan University's graduation rates for online programs are misleading in violation of several HLC policies, including:

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[25] J.W., Alabama, *in* Project on Predatory Student Lending, Legal Services Center of Harvard Law School, "Veteran and Servicemember Complaints about Misconduct and Illegal Practices at Kaplan Schools." at 22, December 2017, https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5a255afee2c4830aaaca4b9e/1512397566685/Kaplan+Veteran+Complaints.HLS.Public.pdf.

[26] R.V., Missouri, *in* Project on Predatory Student Lending, "Veteran and Servicemember Complaints," at 21.

[27] *Id*. at 4. This category includes complaints "that Kaplan falsely promised [students] that they could apply credits earned at other institutions to their Kaplan degrees and, in some cases, Kaplan falsely promised to give veterans and servicemembers degree credits for their military experience." *Id*. at 20.

- CRRT.B.10.010 - 2.B. (“The institution presents itself clearly and completely to its students and to the public with regard to its . . . accreditation relationships.”);
- CRRT.B.10.020 - 3 (“The institution provides high quality education, wherever and however its offerings are delivered.”);
- CRRT.B.10.020 - 6 (“The institution assures that all data it makes public are accurate and complete, including those reporting on student achievement of learning and student persistence, retention, and completion.”); and
- CRRT.B.10.020 - A.5.d (“The institution makes readily available to students and to the general public clear and complete information including . . . policies on acceptance of transfer credit”).

3. Poor job outcomes of Kaplan graduates

Purdue representatives falsely described Kaplan’s employment outcomes as stellar when, in fact, the data they referenced place Kaplan among the worst for-profit colleges.

When the U.S. Department of Education released its so-called “gainful employment” findings in January 2017—data on employment outcomes for student loan borrowers who attend occupational programs—President Daniels called Kaplan’s gainful employment results “best in class.”[28] In fact, when compared against other for-profit colleges, Kaplan was in the bottom quintile. More than four-fifths of all for-profit colleges had no programs that failed to satisfy gainful employment

[28] Daniels is quoted as saying that Kaplan was “in solid shape with respect to gainful employment—best in class—but you always want to be better than that.” Anya Kamenetz, “One University President’s Candid Take On The Future of Higher Ed,” NPR, July 18, 2017, https://www.npr.org/sections/ed/2017/07/18/537265624/one-university-presidents-candid-take-on-the-future-of-higher-ed.

metrics.[29] Kaplan, however, was in the remaining fifth of for-profit colleges that did have failing programs. In fact, Kaplan contains five failing programs and sixteen programs in the danger zone for being close to failing.[30]

Purdue's misleading claims about student outcomes raise concerns regarding HLC policy, including the following:

- CRRT.B.10.010 - 2.B. ("The institution presents itself clearly and completely to its students and to the public with regard to its programs"); and
- CRRT.B.10.010 - 3.B.3. ("Every degree program offered by the institution engages students in collecting, analyzing, and communicating information; in mastering modes of inquiry or creative work; and in developing skills adaptable to changing environments.")

4. Kaplan's high student loan default rate

Purdue President Mitch Daniels made misleading statements about Kaplan's high student loan default rate.

[29] 82 percent of for-profit colleges had no programs that failed, and a majority of for-profit colleges (807 of 1541) had no programs that either failed or were in the danger zone. They included major chains like American Public University, Capella University, Empire Beauty School, Grand Canyon University, and Strayer University. Robert Shireman, "What Does the Gainful Employment Rule Mean for Career Schools Seeking Access to Federal Aid?" The Century Foundation, March 27, 2017, https://tcf.org/content/facts/gainful-employment-rule-mean-career-schools-seeking-access-federal-aid/

[30] Kaplan has appealed these findings. *See* Gainful Employment data file, available at https://studentaid.ed.gov/sa/sites/default/files/GE-DMYR-2015-Final-Rates.xls.

Journalists report Daniels as placing Kaplan's student loan default rate between 4 percent[31] and 12 percent.[32] However, an independent study produced by the Brookings Institution cross-referenced federal loans with IRS records and found that 53 percent of Kaplan students default within a five-year period.[33] That study showed that Kaplan had the *worst default rate* of the twenty-five institutions with the highest student loan debt.[34] According to this study, the only other school where borrowers were more likely to default than to stay above water on their loans was the now-defunct ITT Tech, accredited by ACICS. While omitting reference to this troubling 53-percent default rate, Daniels has yet to explain the 41- to 49-percent discrepancy in reported default rates.[35]

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[31] Samantha Thieke, "Daniels Addresses Senator's Claims About Kaplan," WLFI Channel 18 News, November 19, 2017 (updated November 20, 2017), http://www.wlfi.com/content/news/Daniels-addresses--458714393.html

[32] Anya Kamenetz, "One University President's Candid Take On The Future Of Higher Ed," NPR, July 18, 2017 https://www.npr.org/sections/ed/2017/07/18/537265624/one-university-presidents-candid-take-on-the-future-of-higher-ed.

[33] Adam Looney and Constantine Yannelis, "A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults," *Brookings Papers on Economic Activity, Brookings Institution*, Fall 2015, available at https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults/.

[34] *Id*. The five-year rates were based on a sample of borrowers, from the National Student Loan Data System, who who entered repayment in 2009.

[35] The most recent cohort default rates (CDR) reported by Kaplan University for its online campus, based in Davenport, Iowa, can be found here: https://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html. The two-year default rates reported for 2011, 2010 and 2009 were 15.3, 16.8 and 17.2 percent, respectively, *available at* https://ifap.ed.gov/DefaultManagement/press/.

Institution	Total debt[a]	Total borrowers	5-year cohort, default rate[b]
	2014		
University of Phoenix, Phoenix campus	35,529,283	1,191,550	45
Walden University	9,833,470	120,275	7
Nova Southeastern University	8,748,887	94,350	6
DeVry University, Downers Grove campus	8,249,788	274,150	43
Capella University	8,043,635	104,450	19
Strayer University, Washington campus	6,693,570	144,400	31
Kaplan University, Davenport campus	6,664,067	220,125	53

Furthermore, when U.S. senators Richard J. Durbin and Sherrod Brown expressed concern to Daniels that more than half of Kaplan students were defaulting on their federal student loans,[36] the Purdue president doubled down on his misleading position. Daniels said flatly, "Durbin has his facts wrong.[37] But in fact the senators' letter cited the 53-percent default rate from the Brookings Institute report. Purdue and Daniels have yet to clarify why this default rate is "wrong."

The 53-percent five-year default rate is plausible, given Kaplan's history of manipulating its default rate. According to internal documents uncovered by a Senate investigation, Kaplan's executive team included a "Director of Default Management & Strategy" who focused on short-term tactics to push defaults just outside of the relevant monitoring window. When the monitoring period was

[36] The Durbin-Brown letter, dated September 28, 2017, is available at https://www.durbin.senate.gov/imo/media/doc/Durbin%20Brown%20letter%20to%20Daniels%209.28.17.pdf.
[37] Samantha Thieke, "Daniels Addresses Senator's Claims About Kaplan," WLFI Channel 18 News, November 19, 2017 (updated November 20, 2017), http://www.wlfi.com/content/news/Daniels-addresses--458714393.html.

set to change, Kaplan's vice president of financial aid asked this director: "Under the two year plan, we could use deferments or forbearances to get out of danger. Can we do the same for the 3 year CDR?" The answer was yes; Kaplan hired default management contractors to ensure that when students default, it would be "outside the 2-year, soon to be 3-year, statutory window."[38] Kaplan hired seventy full-time internal employees to steer students into short-term default avoidance plans. In the first half of 2009, Kaplan also paid an external team of private investigators $500,000 for this work. Commissions as high as $1,000 were paid for each default that was temporarily avoided. This unsustainable short-term default management strategy could help to explain the discrepancy between the 12-percent default rate that Daniels has stated, which may have applied to a 2-year or 3-year period, and the 53-percent 5-year default rate found by independent researchers.[39]

Purdue's lack of clarity with respect to Kaplan's performance metrics on student loan default suggests incompatibility with HLC policies, including the following:

- CRRT.B.10.010Id. - 2.B. ("The institution presents itself clearly and completely to its students and staff with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships").
- CRRT.B.10.010 - 5.D.1 - ("The institution develops and documents evidence of performance in its operations.")

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[38] U.S. Senate Committee on Health, Education, Labor and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success" at 613-616, https://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf.

[39] The Senate committee also found that aggressive use of short-term default management strategies can be harmful for students in the long term: "some students will end up paying much more over the life of their loan after a forbearance or deferment." *Id.* at 616.

5. Lawsuits

President Daniels made misleading statements about student complaints and lawsuits against Kaplan University.

Daniels told faculty that Kaplan University had "not had a lawsuit from a student in more than ten years."[40] The claim is misleading, however, because Kaplan forces all of its students to sign an enrollment agreement with fine print (see below) waiving the student's right to sue. In fact, Kaplan's policy was to require students to waive their right to bring a lawsuit before they could meet with financial aid counselors.[41] In this context, Daniel's statement that Kaplan has not been sued by former students is highly misleading: regardless of whether students felt violated by Kaplan's practices, Kaplan's enrollment contract strips all students of their right to sue.[42]

SIGNATURES

Any controversy or claim, no matter how pleaded or styled, shall be settled by arbitration in accordance with the Commercial Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction.

How many students might have sued if Kaplan had not taken away their right to bring lawsuits? Data recently released by the U.S. Department of Education reveal that schools owned by Graham

[40] This statement was made during Daniels's May 4, 2017 "Project Morrill" presentation to faculty.

[41] The Senate Committee's investigation found "that the undercover agent [posing as a prospective student] could not speak to someone in financial aid before signing an enrollment agreement" and "Kaplan documents indicate that what the undercover student found was company policy." U.S. Senate Committee on Health, Education, Labor and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," July 30, 2012, at 607, https://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf.

[42] Kaplan requires students to sign forced arbitration clauses, which frequently result in complaints never being made public. See Tariq Habash and Robert Shireman, "How Enrollment Contracts Limit Students' Rights," The Century Foundation, April 28, 2016, https://tcf.org/content/report/how-college-enrollment-contracts-limit-students-rights/.

Holdings have generated 450 claims for "borrower defense" relief, alleging fraud or misleading tactics by Kaplan schools.[43] With 450 claims, GHC ranks among the ten higher education companies that have generated the highest volume of student complaints. By comparison, Purdue's Columbus and Indianapolis campuses generated a total of three student complaints.[44] No public system in the country had even twenty.

Furthermore, Daniels falsely represented that predatory behavior did not occur at Kaplan University's online programs—the ones that would participate in the proposed joint venture. But new data reveal that at least 299 of the 450 student complaints were against the same Kaplan University online program that would now partner with Purdue.[45] In other words, two of every three student complaints of fraud and unlawful behavior by GHC schools were in fact about Kaplan University. The 299 complaints place the school in the top one percent of all schools in the country in terms of fraud claims.

Additionally, Daniels's focus on student-initiated lawsuits is misleading because it omits reference to the many actions brought against Kaplan by law enforcement offices on behalf of students and others. For example, in 2010, the Florida attorney general won a $6 million award for 2,400

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[43] Yan Cao and Tariq Habash, "College Complaints Unmasked," The Century Foundation, November 8, 2017, https://tcf.org/content/report/college-complaints-unmasked/.

[44] Numbers of student complaints were low across Indiana's public universities and community colleges: Indiana State University (1); IU - Bloomington (2); IU - Purdue (2); IU - Purdue, Columbus (1); IU - South Bend (1); IU - Southeast (1); Ivy Tech (11 across 6 schools). Data file available at https://docs.google.com/spreadsheets/d/1sS8Sqj8luX7_f418pC97C_CKPLgTk38c4frSAJ5cLTM/edit?usp=sharing.

[45] In an email to The Century Foundation, GHC stated that, as of September 3, 2015, the Kaplan University location affiliated with OPEID 458600 became the only program that remained under GHC control. This Kaplan University program alone accounts for 299 student complaints. Another 22 complaints were made against other "Kaplan University" programs that were not sold to Education Corporation of America, and that likely remain under GHC control.

students in her state after investigating Kaplan's enrollment and marketing practices and alleging that Kaplan's marketing claims misled students.[46] In 2015, Kaplan agreed to pay $1.375 million to be distributed to Massachusetts students after the attorney general of that state alleged that from 2009 through 2012, Kaplan harmed students with unfair sales tactics and false promises.[47] These lawsuits highlight practices that harmed students, and underscore the deceptive nature of President Daniels's claim that students brought no lawsuits against Kaplan.

This deceptive claim and the truth that it conceals raise concerns regarding compliance with HLC policy, including:

- CRRT.B.10.020 - A.10 ("The institution remains in compliance at all times with state laws including laws related to authorization of educational activities and consumer protection wherever it does business and state law applies."); and
- FDCR.A.20.010 ("An institution shall not engage in fraud and abuse, as outlined in state and federal law and regulation, or in practices or procedures that are designed or have the tendency to create a falsification or deceive students.").

[46] State of Florida, Office of the Attorney General, *In the Investigation of Kaplan Higher Ed., LLC et al.*, Voluntary Assurance of Compliance, June 10, 2014, *available at* http://myfloridalegal.com/webfiles.nsf/WF/JMEE-9L6QDA/$file/KaplanAVC.pdf.
[47] Commonwealth of Massachusetts,Office of Attorney General Maura Healey, *In the Matter of Kaplan Inc., et al.*, Assurance of Discontinuance, July 23, 2015, *available at* https://perma.cc/D6AB-V3Q7.

6. Liability and Financial Stability

Purdue has also misled by omission with respect to the U.S. Department of Education's incomplete understanding about the financial stability of the proposed venture in the case that Kaplan-related liabilities arise.

Private colleges and universities like Kaplan typically must demonstrate financial stability as a precondition to eligibility for federal aid. However, schools that are part of a state university system like Purdue are presumed to be financially stable—and, more importantly, unlikely to be reckless in their use of, or their efforts to acquire, federal grant and loan funds—because they enjoy backing by the full faith and credit of a home state (in this case, Indiana).[48] In other words, the federal government assumes that if Indiana taxpayers will be on the hook for actions taken by Kaplan, that Indiana's state government will exercise close oversight over Kaplan's role in the joint venture, and accordingly federal oversight can be lighter.

The U.S. Department of Education's pre-acquisition review (PAR) letter states that, based on the Department's understanding of the proposed Purdue-Kaplan joint venture, future liabilities would be backed by the State of Indiana. The federal regulator cites Indiana Code 21-7-13-26.5(a)(4) to support the position that the proposed venture would have "its debts and liabilities backed by the controlling state institution." Full stop. But that's not all the law says.

[48] Public institutions, like Purdue, are therefore exempt from certain financial responsibility regulations that apply to private institutions, like Kaplan. *See, e.g.*, 34 CFR § 668.171; *see also* U.S. Dep't of Ed., Final Rule, Borrower Defense, Nov. 2016, https://ifap.ed.gov/fregisters/attachments/FR110116.pdf. ("We rely, and have for nearly 20 years relied, on the full-faith and credit of the State to cover any debts and liabilities that a public institution may incur in participating in the title IV, HEA programs. . . . [The Department] has never required a public institution to provide financial protection of any type because we already have it in the form of full-faith and credit.").

Indiana law, read accurately, actually reaches the opposite conclusion about liability. The cited provision—which was enacted for the purpose of facilitating a Purdue-Kaplan joint venture—further states that the new institution must [have] its debts and liabilities backed by the controlling state educational institution . . . in the form of a contribution, bond, or other surety **consisting solely of eligible property**" (emphasis added).[49]

"Eligible property," in turn, is defined to exclude both "state appropriations" and "other public money" received from the state.[50] Indiana gave Kaplan access to its bank account, but then quietly removed all public funds.

As a result, the Department of Education's PAR letter reflects an inaccurate understanding of the financial stability of the joint venture. Did Purdue encourage this partial understanding of Indiana law, and if not, what actions has it undertaken to correct the Department of Education's incomplete understanding?

7. Governance and Control

Finally, Purdue's leadership misled concerned faculty about the extent of GHC and Kaplan's ability to control policy and governance of the proposed joint venture.

[49] Indiana Code 21-7-13-26.5 (a)(4).
[50] Indiana Code 21-27-10-4.

Kaplan Inc. spokesman Mark Harrad is reported as saying that Kaplan students "will continue in the same programs, in the same courses earning the same degrees with the same instructors as they have now."[51] According to Harrad, "[t]he only difference will be the school's name on the diploma." How could Harrad provide these assurances if a disinterested Board of Trustees would wield real control over policies at "NewU" program?

The answers may be in "Policy Guide" and "Policy Guide Departures" documents drafted by Kaplan and Purdue, and described in GHC's filings with the Securities and Exchange Commission (SEC) regarding this proposed venture.[52] However, Purdue has refused to make public its proposed policy documents, which would serve as the baseline for any changes. Furthermore, on November 17, 2017, Purdue denied our request for the Policy Guide to be released under the state's public records laws, claiming that its contents are a "trade secret."[53]

When Purdue faculty expressed concern that the proposed venture "would effectively allow GHC to block any and perhaps all actions on the part of faculty with regard to proposing or making

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51 Harrad is quoted as saying of Kaplan that "The students in these schools—including the military students and veterans and their spouses—they will continue in the same programs, in the same courses earning the same degrees with the same instructors as they have now." Natalie Gross, "Purdue University acquires Kaplan, a popular vet destination," Military Times, April 28, 2017, https://www.militarytimes.com/education-transition/education/2017/04/28/purdue-university-acquires-kaplan-a-popular-vet-destination/.

52 The "NU Policy Guide" and "NU Policy Guide Departures" were listed as Exhibits B and D respectively in GHC's Form 8-K filing with the SEC regarding this proposed venture, which GHC called "New U" or "NU" in their filings, *available in part at* https://www.sec.gov/Archives/edgar/data/104889/000095015717000514/ex2-1.htm.

53 In a response to this request from The Century Foundation, Jodie Melton, from Purdue's Office of Legal Counsel, stated: "Your request is denied, in part, to the extent is [sic] seeks records containing trade secret information, which is exempted from disclosure by Indiana Code § 5-14-3-4(a)(4) and confidential financial information, which is exempted from disclosure by Indiana Code §5-14-3-4(a)(5). Purdue University considers this request closed."

changes to academic programs," Purdue's senior vice provost for teaching and learning, Frank J. Dooley responded with the following misleading statements.

First, Dooley stated that "no individual from Kaplan, Inc. will be a member of the board of trustees." This focus on the board of trustees' composition is misleading because under the terms of the Contribution and Transfer Agreement (CTA) filed with the SEC on April 27, 2017, an "Advisory Committee" with 50 percent of membership appointed by GHC subsidiaries would function as a gatekeeper to the board. Through representation on the advisory committee, GHC would play a large role in determining "increase or decrease in the tuition or fees," "development of the New University Budget," and "the implementation and roll out of, any Academic Programs, or the reduction or elimination of any Academic Program."[54] Moreover, as previously brought to HLC's attention,[55] the advisory committee operates on a consensus basis, which further empowers GHC to block recommendations from reaching the board.

> (d) Advisory Committee Recommendations. Prior to submitting to the New University Board of Trustees for approval a Marketing Plan or New University Budget, or any other recommendation, strategy or objective, the members of the Advisory Committee shall seek consensus among all members and will work in good faith to resolve any matter with respect to which all members of the Advisory Committee have not agreed.

Perhaps even more troublingly, Dooley downplayed the import of GHC's power to impose fines should Purdue choose to make any substantial changes to Kaplan's revenue-generating scheme. In

[54] Prior to submitting a marketing plan, budget, or "any other recommendation, strategy, or objective" to the board, members of the advisory committee must "work in good faith to resolve any matter with respect to which all members of the Advisory Committee"—including the GHC representatives—"have not agreed." Transition and Operations Support Agreement, 3.2(b)-(c), available at https://www.sec.gov/Archives/edgar/data/104889/000095015717000514/ex2-1.htm.

[55] Letter from Robert Shireman (The Century Foundation), July 17, 2017, available at https://drive.google.com/file/d/0B7adHdBE6w3ma0FNNTFGV3JZVjA/view?usp=sharing.

response to faculty concerns, Dooley stated “If you search for the work ‘veto’, you will find... the trustees of NewU have the decision-making authority.” But under the fining provision, shown below, Kaplan could seek compensation for any changes that are likely to reduce future revenue. This could potentially impact class sizes, faculty credentials, and quality of education. The power to demand a fine, in this context, is likely to chill any policy changes that would prioritize cost-intensive educational goals over maintaining revenue growth.

> (e) Material Departures from NU Policy Guide. Actions taken by New University which are outside the parameters of the NU Policy Guide (whether by amendment to the NU Policy Guide or otherwise) could change the assumptions on which the Parties based the economic terms in this Agreement and cause Contributor material financial harm. Accordingly, if New University, or the New University Board of Trustees, uses its authority to: (i) materially change the NU Policy Guide; or (ii) take an action that is, or allow an omission that results in being, outside of the parameters the NU Policy Guide as described in Part B of Exhibit D (NU Policy Guide Departures), in each case, in a manner not previously agreed by Contributor, and Contributor believes that there is, or is likely to be, a Significant Adverse Impact, then the Parties shall follow the evaluation process set forth in set forth in Part C of Exhibit D (the “**Evaluation Process**”) to determine whether such action or omission has had, or is likely to have, a Significant Adverse Impact and, if so, whether and to what extent Contributor is to be compensated for such Significant Adverse Impact. “**Significant Adverse Impact**” means the effect of an act or omission that Contributor believes in good faith has, or is likely to have, the effect of decreasing either or both of then-current and/or future Revenues by $5 Million or more.

In addition to the general integrity concerns outlined above, Dooley’s misleading reassurances about the control structure for the proposed venture raise concerns regarding additional HLC criteria, including the following:

- CRRT.B.10.010 - 2.C. (“The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.”)

- CRRT.B.10.010 - 2.C.4. (“The governing board delegates day-to-day management of the institution to the administration and expects the faculty to oversee academic matters.”)

Conclusion

In sum, much of the information provided by Purdue officials about the joint venture with Kaplan is incomplete at best and grossly misleading at worst. When Purdue’s facts are corrected, a more accurate and troubling vision of the proposed venture comes into focus:

- Kaplan’s past practices include shameful tactics that deceived students, and misled regulators and taxpayers;
- The Kaplan program that is slated to become a part of Purdue had low graduation rates when compared to other programs at Purdue or Kaplan;
- The Kaplan program that is slated to become a part of Purdue performed worse than 82 percent of for-profit colleges in terms of graduate outcomes;
- The Kaplan program that is slated to become a part of Purdue had the highest rate of student loan defaults among high-debt colleges;
- The Kaplan program that is slated to become a part of Purdue had more fraud claims filed against it than 99 percent of the postsecondary schools in the country;
- The Kaplan program that is slated to become a part of Purdue purposely prevented students from being able to take grievances to court;
- Purdue and the State of Indiana would leave little recourse for students who are harmed by the proposed venture; and

- Purdue's faculty would have limited voice in changing any of Kaplan's revenue-generating practices.

The pattern of conduct detailed in this letter shows an effort to deflect concerns and misdirect both stakeholders and regulators. Particularly when viewed in light of Kaplan's own record, this conduct places the integrity of Purdue University, and of the proposed venture, into doubt.

Sincerely,

Yan Cao, Fellow
The Century Foundation