





TO: Higher Education Committee

FROM: John L. D'Agati 

SUBJECT: DeVry University, Inc. (dba DeVry College of New York):
Transfer of Degree-conferring Authority Based Upon a
Change of Ownership or Control of a Proprietary College

DATE: October 25, 2018

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents approve the transfer of degree-conferring authority based upon a change of ownership of DeVry University, Inc. (d/b/a DeVry College of New York) and DeVry/New York, Inc. (collectively, "DeVry") to Cogswell Education, LLC ("Cogswell Ed")?

Reason(s) for Consideration

Required by State Statute and Regents Rules.

Proposed Handling

The item will come before the Higher Education Committee for a recommendation and then to the Full Board for action at its November 2018 meeting.

Procedural History

Education Law §224(1)(b) and Regents Rule 3.58(e) require the consent of the Board of Regents to a transfer of the degree-conferring authority of a proprietary college in New York State, through a change in ownership or control of the proprietary college.

The current owner of DeVry, Adtalem Global Education Inc. (Adtalem), proposes to sell DeVry University, Inc. and DeVry/New York, Inc. to Cogswell Ed. The Department was notified of the impending sale in February 2018, and an application for transfer of

authority to award degrees was received in March 2018. To assess the institution's compliance with the various laws, rules, and regulations governing degree-granting institutions and to verify the information provided by the prospective owner in the application, the Department conducted a review of the application and documentation regarding the proposed sale and plans for the administration of the institution.

Background Information

DeVry

DeVry College of New York is part of the DeVry University system, a for-profit higher education entity operating in 17 states and offering traditional classroom-based and online distance education. It has three sites in New York: Manhattan, Queens, and Brooklyn. There are 698 students registered and currently enrolled at DeVry College of New York across these three sites. There are an additional 691 students registered and currently enrolled in DeVry online. The Board of Regents first authorized DeVry to operate in New York in 1996. DeVry is currently authorized to award the Associate in Applied Science (A.A.S.), Bachelor of Professional Studies (B.P.S.), Bachelor of Technology (B.Tech.), Master of Business Administration (M.B.A.), and Master of Science (M.S.) degrees.

Over the past several years, DeVry has been the subject of several governmental investigations and lawsuits alleging misrepresentation of graduates' job placement and salary outcomes. As a result, its regional accreditor, the Higher Learning Commission ("HLC"), designated DeVry as "Under Governmental Investigation" and the Department subsequently withheld the registration of any new programs.

By September of 2017, DeVry had settled its major governmental lawsuits admitting no wrong doing. In 2016, for example, DeVry paid \$100 million in consumer restitution and debt relief as a result of a settlement with the Federal Trade Commission. In January 2017, the New York Attorney General's Office entered into an Assurance of Discontinuance with DeVry, which resulted in \$2.25 million in consumer restitution and \$500,000 in penalties, costs, and fees. DeVry also agreed to reform its practices in connection with advertising placement and salary outcomes. Additionally, DeVry reached a settlement with the Massachusetts Attorney General's Office in 2017 in which it agreed to pay \$455,000 in consumer restitution to Massachusetts students.

As a result of settling all of its major governmental lawsuits, DeVry's accreditor, HLC, removed its designation of "Under Governmental Investigation," and DeVry is currently accredited in good standing. It's next scheduled reaffirmation of accreditation with HLC is during the 2019-20 academic year. On September 12, 2018, the HLC approved the extension of DeVry's accreditation wherein Cogswell Education LLC, through a Stock Purchase Agreement, acquires the outstanding equity interests of DeVry University, thereby becoming the parent corporation of the institution.

Cogswell Education, LLC

DeVry's prospective owner, Cogswell Ed, is owned by Cogswell Capital, LLC, an investment firm that is managed by Bradley Palmer. Cogswell Ed is the sole owner of Cogswell College, LLC, which in turn is the sole owner of Cogswell Polytechnical College in San Jose, California. Mr. Palmer additionally has an ownership interest in Post University in Connecticut; Salem International University in West Virginia; Schiller International University in Florida; and Nightingale College in Utah.

Proposed Transaction – Transfer of Ownership

From	To
Adtalem Global Education Inc. 3005 Highland Parkway Downers Grove, Illinois 60515-5682	Cogswell Education, LLC 19 West Elm Street Greenwich, Connecticut 06830

In December 2017, Adtalem and Cogswell Ed requested approval for the sale of DeVry to Cogswell Ed from the United States Department of Education (“USDE”) and the HLC. A letter from the USDE dated June 19, 2018 indicates that it is likely to approve the transaction. In addition, Adtalem and Cogswell are working to submit applications for approval of the proposed transaction in each of the other states in which DeVry operates. The transaction was internally approved by both companies in December 2017.

The complex purchase agreement includes an “earn-out” agreement, in which Cogswell will make a maximum of \$20 million in payments to Adtalem based on DeVry's performance over the next ten years, and a provision of initial working capital from Adtalem to Cogswell Ed between \$7.5 million and \$20.1 million.

The purchase agreement is subject to a number of conditions, and the agreement may be terminated if they are not met. These include, but are not limited to:

- Approval by DeVry's accreditor and applicable federal and state agencies
- DeVry's continued eligibility for Title IV programs
- Enrollment thresholds
- Threshold for claims seeking discharge of federal student loans
- Closing date prior to January 15, 2019

Regulatory Provisions

Section 3.58(e) of the Regents Rules includes the standards, requirements, and procedures the Department shall use in determining whether to recommend to the Board that it consent to the transfer of degree-conferring authority to the new owner of a proprietary college. These standards, as well as a brief description of DeVry and Cogswell Ed's status toward meeting them is identified below.

Standard 3.58(e)(6)(ii)(a): Evidence confirming the prospective owner's capacity to operate the institution in compliance with the Education Law, program registration standards set forth in Part 52 of this Title, other Rules of the Board of Regents and Regulations of the Commissioner of Education, other State statutes and regulations, and Federal statutes and regulations, relevant to the operation of degree-granting institutions.

DeVry and Cogswell Ed report that DeVry's governance, operational, and corporate structure will not change as a result of its acquisition by Cogswell Ed. DeVry has been operating in New York for over 20 years, and the prospective owner has stated that it will not make major changes to the administration, faculty, or staff at the institution. Given that the governance, operational and corporate structure, and personnel are not changing as the result of the acquisition, and given the fact that DeVry is currently in compliance with Part 52 of Commissioner's Regulations, the Department determined this standard has been met.

Standard 3.58(e)(6)(ii)(b): Evidence confirming that the prospective owner has sufficient financial resources to ensure satisfactory conduct of degree programs and achievement of the institution's stated educational goals.

The USDE utilizes a composite score to gauge the financial responsibility of an institution. The score is a composite of an institution's primary reserve ratio, equity ratio, and net income ratio as derived from the institution's audited financial statements. The composite score reflects the overall relative financial health of institutions along a scale from negative 1.0 to positive 3.0. A score greater than or equal to 1.5 indicates the institution is considered financially responsible. Schools with scores of less than 1.5 but greater than or equal to 1.0 are considered financially responsible but require additional oversight. These schools are subject to cash monitoring and other participation requirements. A school with a score less than 1.0 is considered not financially responsible. [Federal Student Aid Composite Scores](https://studentaid.ed.gov/sa/about/data-center/school/composite-scores)
(<https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>)

The chart below indicates composite scores for 2014-2015, the most recent data available from the United States Department of Education. All institutions in which Bradley Palmer has an ownership interest have scores that put them in the "financially responsible" range, as defined by the USDE.

2014-2015 Composite Scores	
Institution	Score
Cogswell Polytechnical College	1.6
Post University	2.1
Salem International University	1.5
Schiller International University	1.7
Nightingale College	2.0

NYSED’s Office of Audit Services (OAS) reviewed Cogswell Ed’s audited financial statements for the most recent three fiscal years available. OAS calculated composite scores for each year and provided a more detailed analysis for 2016. For 2016, OAS found that revenues exceeded expenses, and assets exceeded liabilities. They had \$1.54 million in cash/equivalents and stockholders’ equity of \$4.14 million. As seen in the chart below, Cogswell’s composite score for each year showed the entity as financially healthy.

Composite Scores for Cogswell Education, LLC Calculated by NYSED Office of Audit Services		
Fiscal Year	Composite Score	Interpretation of Score
2014	1.6	“financially healthy”
2015	1.7	“financially healthy”
2016	2.0	“financially healthy”

Given the fact that NYSED’s Office of Audit Services has determined Cogswell Ed’s financial responsibility score to be within the “financially healthy” range for the past three years and given the fact that all five of the other colleges owned by Bradley Palmer are within the “financially healthy” range, the Department has determined this standard to have been met.

Standard 3.58(e)(6)(ii)(c): Evidence of the prospective owner’s experience operating an educational institution or other business or enterprise in an effective manner which demonstrates the prospective owner’s capacity to operate a degree-granting institution.

Although there is a proposed change at the ownership level, the applicant asserts that DeVry College of New York will continue to be operated by DeVry University, Inc., with no major change to those persons occupying leadership roles at the institution. Furthermore, Bradley Palmer, who is ultimately the new owner through his LLCs, has an ownership stake in five other institutions of higher education, all of which are accredited by USDE-recognized accrediting bodies and authorized to operate in their home states. (See below for more information about accreditation status and state authorization). Based on this information, the Department has determined this standard to have been met.

Standard 3.58(e)(6)(ii)(d): Evidence that postsecondary education institutions that the prospective owner operates in New York State or elsewhere, if any, are in compliance with Federal and State statutes and regulations and accreditation requirements relevant to the operation of such institutions.

Bradley Palmer, the prospective owner, has not owned other postsecondary education institutions in New York State. However, through his investment companies, he has an ownership stake in several out-of-state institutions (identified in the table below). All of these institutions are authorized to operate by the designated regulatory agency in their home state. In addition, all five institutions are accredited by accrediting

bodies recognized by the United States Department of Education, although Schiller’s accreditor, ACICS, only recently had its recognition reinstated by the U.S. Department of Education, pending a final decision on its status. In addition, all the institutions identified below are approved to offer distance education through the State Authorization Reciprocity Agreement (SARA), with the exception of Cogswell Polytechnical College, which is located in a state that does not participate in SARA. Given the authorization and accreditation status of the five affiliated institutions, the Department determined that this standard has been met.

Institution	Location	State Authorizer	Accreditor
Cogswell Polytechnical College	San Jose, CA	Bureau for Private Postsecondary Education	Western Association of Schools and Colleges – Senior College and University Commission [WSCUC] (Accredited on Warning ¹ 2/16/2018)
Post University	Waterbury, CT	Connecticut Office of Higher Education	North East Association of Schools and Colleges – Commission on Institutions of Higher Education (Continued in Accreditation September 2014; Next Comprehensive Review Spring 2024)
Salem International University	Clarksburg, WV	West Virginia Higher Education Policy Commission	Higher Learning Commission (Accredited, next evaluation 2022-2023)
Schiller International University	Tampa, FL	Florida Department of Education – Commission for Independent Education	Accrediting Council for Independent Colleges and Schools [ACICS] (Accreditation expired 12/31/2017; extended to 9/10/2018)
Nightingale College	Salt Lake City, UT	Utah Department of Commerce – Division of Consumer Protection	Accrediting Bureau of Health Education Schools (Accredited through 8/31/2018)
<p>¹ The Department has received information regarding Cogswell Polytechnical College’s warning from WSCUC. They state that they have begun addressing WSCUC’s concerns regarding leadership and governance. A follow-up visit by WSCUC is scheduled for fall 2019. It is important to note that, although Cogswell Education is the owner of Cogswell Polytechnical College through a subsidiary, the proposed sale of DeVry will not result in a merger of the two institutions.</p>			

Standard 3.58(e)(6)(ii)(e): Evidence that the prospective owner has not engaged in fraudulent or deceptive practices.

The Department has not been presented with any evidence that the prospective owner has engaged in fraudulent or deceptive practices.

DeVry after the Transaction

The Transfer of Ownership Application makes the following assertions about DeVry's operations and structure after completion of the sale:

- DeVry's management, day-to-day operations, policies, and academic program offerings will not change after the sale.
- The administration, faculty, and staff of DeVry employed at the time of the sale will continue to be employed in the same roles after the transfer of ownership.
- The proposed transaction will not change DeVry's legal status or result in a merger of DeVry with another postsecondary institution.
- DeVry will maintain its existing accreditations and retain the same Office of Postsecondary Education Identification (OPEID) with the U.S. Department of Education.
- DeVry's current governance structure, operational, and corporate structure will remain the same under the new ownership.
- The four existing independent members of DeVry University Board of Trustees will remain the same, and Cogswell will have the right to appoint two additional trustees.
- Cogswell Ed expects to reinvest any profits generated by DeVry back into the institution's programs and operations for the next several years.

Summary

On the bases that DeVry has resolved previous governmental investigations and that the transaction has been approved by its accreditor, that the prospective owner has experience with ownership interest in other accredited institutions of higher education and plans no major changes to the day-to-day operations of DeVry, it is recommended that the Board of Regents approve the transfer of degree-conferring authority.

Related Regents Items

[Merger of DeVry Institute of Technology and Keller Graduate School of Management November 2007](http://www.regents.nysed.gov/meetings/2007Meetings/December2007/1207heppca6.htm)

<http://www.regents.nysed.gov/meetings/2007Meetings/December2007/1207heppca6.htm>

Recommendation

It is recommended that the Board of Regents take the following action at its November 2018 Board of Regents meeting:

VOTED: That, contingent upon the sale and transfer of ownership of DeVry University, Inc. (dba DeVry College of New York) and DeVry/New York, Inc. to Cogswell Education, LLC, resulting in Cogswell Education, LLC having full ownership of DeVry, the Board of Regents consents to the transfer of degree-conferring authority of DeVry College of New York to Cogswell Education, LLC.

Timetable for Implementation

The transfer of degree conferring authority for DeVry College of New York will take effect immediately upon the transfer of ownership of DeVry to Cogswell Education, LLC.