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Privatization of Public Education: Balancing the Students and the Bottom Line

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PRIVATIZATION OF PUBLIC EDUCATION: BALANCING
THE STUDENTS AND THE BOTTOM LINE

INTRODUCTION

“A nonprofit raises money to finance its mission. A for-profit has a mission in order to make money.”1 These two structures seem theoretically incompatible, but the deal between the public Purdue University and for-profit Kaplan University is testing this theory by creating a new entity, Purdue University Global.2 Purdue University Global, also called Purdue Global, operates as an online education arm of Purdue University. This deal is being called the first of its kind and has the potential to set a new precedent in higher education.3

Depending on who is asked, the deal between Kaplan, Inc. and Purdue University is either an innovative solution, or a disturbing marriage.4 Bob Shireman was an Education Department official during the Obama administration and described the deal as an “existential threat to public education.”5

While it is commonplace now for non-profit public and private universities to contract with private companies, these deals create online courses which are still under the existing university name, governance, and structure.6 That is not the case with Purdue Global. The creation of Purdue Global is unprecedented. It is the first time a for-profit university corporation has become a part of a public system of higher education.7 This is a move that has deeply worried some Purdue faculty members; over 300 members created a petition opposing the deal.8 Their

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1 Robert Shireman, These Colleges Say They’re Nonprofit – But Are They?, THE CENTURY FOUNDATION (Aug. 23, 2018), https://tcf.org/content/commentary/colleges-say-theyre-nonprofit/.
4 Fain, supra note 3.
5 Id.
concerns largely revolve around the quality of education that Purdue Global will offer.\(^9\)

This comment will outline the history of Kaplan, Inc. and Purdue University separately in order to understand their positions before the deal. Second, the deal is explained by detailing how it was set up, the terms, the structure, and how this agreement is different. Next, this comment outlines how this deal is beneficial to both Purdue University and Kaplan, Inc.. After explaining the arrangement and its benefits, this essay explores whether this deal creates issues, and if those issues are due to its corporate form or its substance. Next, the future of for-profit schools and the future of Purdue Global are discussed, followed by conclusions.

It is the opinion of this comment that the transaction between Purdue University and Kaplan, Inc. has created an entity with neither the regulation of a private company nor the protections and transparency of a public institution. This give and take between Purdue University and Kaplan, Inc. to reach a deal has resulted in Purdue Global being a diluted version of both a public school and private company.

I. HISTORY OF KAPLAN, INC. AND PURDUE UNIVERSITY

It is important to understand the history of Kaplan, Inc. and Purdue University because their past provide context surrounding the choice to create Purdue Global.

Kaplan, Inc. has been an education services provider for over 80 years.\(^10\) Kaplan began as a tutoring business which grew to over 100 centers in the U.S. by 1984.\(^11\) In this same year, Kaplan is acquired by The Washington Post Company.\(^12\) In 2000 Kaplan, Inc. enters the realm of higher education by acquiring a network of publicly-traded for-profit career colleges and Kaplan currently describes its higher education branch as its “biggest business.”\(^13\) Kaplan’s entrance into the realm of for-profit education closely coincides with the general trend in the U.S. for a higher demand in for-profit schooling.

In the early 1990’s for-profit schools were proving themselves as extremely
lucrative businesses and the industry boom began.\textsuperscript{14} Between 1990 and 2010, the number of bachelor’s degrees coming from for-profit schools increased sevenfold.\textsuperscript{15} However, by 2010 these for-profit schools, including Kaplan University, garnered attention by regulators and the media for questionable practices.\textsuperscript{16} In 2012, the United States Senate Health, Education, Labor, and Pensions Committee released a report regarding poor practices by for-profit schools including Kaplan University.\textsuperscript{17}

Before the publication of this Senate report detailing Kaplan’s performance, Kaplan was owned by The Washington Post Company and in 2013 Donald Graham, chairman of Graham Holdings Company, sold The Washington Post but retained Kaplan, Inc. in Graham Holdings. Kaplan is still a subsidiary of Graham Holdings today.\textsuperscript{18}

Purdue University was created in 1869 as a public land grant university.\textsuperscript{19} A land grant university is a school created pursuant to the Morrill Land Grant Act which states that the federal government will turn over land to any state that agrees to use the land sale proceeds to create a college teaching agriculture and the “mechanic arts,” otherwise known as STEM.\textsuperscript{20} In 1930 the Purdue Research Foundation was created, which still operates to manage Purdue University’s intellectual property, accept gifts, administer trusts, acquire property, and negotiate research contracts.\textsuperscript{21} The university’s agriculture and STEM programs continue to be recognized as some of the best in the country.\textsuperscript{22}

Purdue University and Kaplan, Inc. became a part of each other’s history when the two institutions formed Purdue University Global in 2017.\textsuperscript{23}

\begin{itemize}
  \item \textsuperscript{14} James Surowiecki, \textit{The Rise and Fall of For-Profit Schools}, \textit{The New Yorker} (Nov. 2, 2015), https://www.newyorker.com/magazine/2015/11/02/the-rise-and-fall-of-for-profit-schools.
  \item \textsuperscript{15} Id.
  \item \textsuperscript{17} Id.
  \item \textsuperscript{19} Purdue History, https://www.purdue.edu/purdue/about/history.php (last visited Apr. 8, 2019).
  \item \textsuperscript{20} Id.
  \item \textsuperscript{21} Id.
\end{itemize}
II. THE ACQUISITION OF KAPLAN UNIVERSITY

A. Setting Up the Deal

In April 2017, Purdue University announced that it was planning to acquire Kaplan University. Purdue had been in private negotiations for months regarding the acquisition of Kaplan University from Graham Holdings. Mitch Daniels, the president of Purdue University and former Governor of Indiana, has been the vocal leader of this deal. Daniels has been clear that he believes this deal to create Purdue Global expands the mission of Purdue as a land-grant university to provide access to education for as many people as possible. Since the announcement of the deal, information has been inconsistent and released piecemeal as the deal has been moving forward. This paper will clarify the transaction between Kaplan and Purdue University as well as explain the corporate structures created as a result of the transaction.

First, it is important to understand Kaplan, Inc.’s ownership prior to the acquisition. Kaplan, Inc. is a subsidiary of Graham Holdings Company. Kaplan Inc.’s operations are divided into three segments: Kaplan Higher Education, Kaplan Test Prep, and Kaplan International. Under the Kaplan Higher Education section is Kaplan University, and the for-profit corporation Kaplan University is what Purdue aimed to acquire in this deal.

Before the deal could be finalized, this acquisition required the approval of three major institutions: The Department of Education, The Indiana Commission for Higher Education, and the Higher Learning Commission. The Indiana Commission was the first to grant approval by a unanimous vote in August 2017. The Department of Education granted initial approval in September 2017, but the approval included stipulations. Not all the details of the

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24 Id.
25 Id.
26 Id.
27 Id.
29 Id.
31 Id.
Department’s stipulations to Purdue have been made available, but one was that the new university must include the name “Purdue.” \footnote{Kaplan to become Purdue University Global, THE COURIER (Jan. 13, 2018), https://wcfcourier.com/news/local/education/kaplan-to-become-purdue-university-global/article_7e770cac-ae1a-5873-b964-4f18bc820a88.html; U.S. Department of Education acts on Purdue NewU plan to acquire Kaplan, supra, note 30.} Finally, this acquisition required the ultimate approval of change of control granted by the Higher Learning Commission (HLC), which is the regional accreditor for Purdue University and Kaplan University. \footnote{U.S. Department of Education acts on Purdue NewU plan to acquire Kaplan, supra note 30.} This approval for change of control was granted on February 22, 2018 and stated that Purdue Global will be a separately accredited institution from Purdue University. \footnote{Public Statement from Higher Learning Commission on Approval of Change of Control by Purdue University and Kaplan University (Mar. 5, 2018) available at https://www.hlcommission.org/download/_PublicStatements/Purdue-Kaplan%20Public%20Statement%203-2018.pdf.} Upon these approvals, Purdue officially acquired Kaplan University on March 22, 2018, which completed the transaction with Kaplan Higher Education. \footnote{Transaction Complete for Purdue Global, PURDUE UNIVERSITY (Mar. 23, 2018), https://www.purdue.edu/purduemoves/initiatives/online/story-purdue-global.php.}

\subsection*{B. Terms of the Deal}

For the purchase price of $1, Purdue acquired Kaplan University’s assets and operations, which includes 14 campuses and learning centers, 30,000 current students, and approximately 2,100 employees. \footnote{Id.} Kaplan, Inc. will continue to provide Purdue Global with back-office services including technology, marketing, admissions, and financial aid. \footnote{Goldie Blumenstyk, Purdue’s Purchase of Kaplan Is a Big Bet – and a Sign of the Times, THE CHRONICLE (Apr. 28, 2017), https://www.chronicle.com/article/Purdue-s-Purchase-of-Kaplan/239931?cid=rclink.} In addition to these services, some of which are common between private companies and non-profit institutions, there are more requirements on the private company which are not ‘back-office’ services. \footnote{Shireman, supra note 18.} These include editorial services, advertising, front-end student advising, international student recruitment, test preparation, business offices, human resources, facilities and property management, and general administrative functions. \footnote{Id.}

Purdue signed on to a 30-year agreement with Kaplan, Inc. for providing services to Purdue Global. \footnote{Rick Seltzer, Pushing Public Higher Ed Boundaries, INSIDE HIGHER ED (May 4, 2017), https://www.insidehighered.com/news/2017/05/04/purdues-deal-kaplan-packs-low-front-costs-long-terms-and-boundary-pushing-details.} Purdue will compensate Kaplan, Inc. for its services
by paying Kaplan 12.5 percent of Purdue Global yearly revenue; however, Kaplan, Inc. will only be paid this percentage after Purdue and Kaplan have recuperated their direct costs.42

For the first five years of this 30-year agreement, Kaplan, Inc. will pay Purdue a “priority payment” of $10 million annually beyond its operating costs before Kaplan can be repaid for its revenue percentage or direct costs.43 As summarized by Rick Seltzer, “Kaplan anticipates receiving payment for services provided plus a share of revenue. It is also, however, guaranteeing that Purdue’s new university will generate at least $10 million per year in new revenue for five years.”44

This deal contains an option which states that after six years, Purdue has the option to buy out Kaplan and its operations of Purdue Global, or Purdue may contract with another online program management company.45 If Purdue chooses either of these options, it must pay a fee of 125 percent of Purdue Global’s total revenue from the previous year.46 This termination fee to be paid by Purdue Global would be in the form of debt, 10-year senior notes, and Purdue Global would also have the opportunity to receive some of Kaplan’s support services assets at no extra cost.47

C. Structure of the Deal: Creating Purdue University Global

Purdue University Global is a non-profit corporation incorporated in Indiana.48 On the Purdue Global website under “ownership,” it states:

Purdue University Global, Inc., is an Indiana public benefit corporation controlled by its sole member, The Trustees of Purdue University, a statutory body corporate that manages and conducts Purdue University, the State of Indiana’s land-grant university. Purdue Global operates as a public postsecondary state educational institution affiliate pursuant to IC 21-7-13-26.5(a).49

Purdue Global will have its own board of trustees separate from Purdue

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42 Blumenstyk, supra note 38.
43 Seltzer, supra note 41.
44 Id.
45 Blumenstyk, supra note 38.
46 Seltzer, supra note 41.
47 Id.
University, and the new board will be selected by Purdue.50 Betty Vandenbosch, former president of Kaplan University, has been selected as the first Purdue Global Chancellor.51 The Chancellor reports to the Purdue University president and Purdue Global’s six person board of trustees.52 This six member board will be comprised of five Purdue University trustees and one “external” trustee, as described in a Purdue University press release.53 In an interview, Donald Graham stated that the sixth member of the board will be a trustee from Kaplan University.54 Purdue Global will be entirely funded by tuition and donations; it will not be receiving funds from the state of Indiana.55

Purdue Global will be exempt from some open records laws to which other Indiana public universities and public universities around the country are subject.56 This exemption was created by the state legislature.57 It inserted language into the state’s budget stating that Indiana public benefit corporations will not be subject to open records requirements.58 It was scheduled to be signed into law the same week Purdue announced its plan to acquire Kaplan.59 Journal & Courier reports Purdue was instrumental in crafting the legislation and “put it in the hands of legislators.”60 Upon reviewing the six bill versions, the 39 proposed Senate amendments, 20 proposed House amendments, and committee reports, there is absolutely no mention of the addition of section 142, defining postsecondary SEI affiliated educational institutions.61 The first mention of section 142 that allows Purdue Global to operate as a non-profit public school is in the final version that was passed.

The exemptions for public benefit corporations cover “open door laws,
access to public records laws and accounting for public funds codes – each on the books to offer basic public scrutiny that governs the state’s governmental bodies and universities, including Purdue (University).” 62 Purdue’s legal counsel Steve Schultz says this measure was taken because Purdue Global will operate like a nonprofit corporation and will not “meet the definition of a public agency” under state laws on open records and meetings.63

The terms of the agreement were at one time available on Graham Holdings’ website, and were distributed in other ways, but it is practically impossible now to find all of the official terms of the Purdue-Kaplan agreement online. This is likely because Purdue Global is exempt from open records laws.64 Because Purdue Global is exempt from open records laws, all records of the transaction kept by Purdue Global as opposed to Purdue University will be unreachable to the public.65 Purdue stated it would not release the full agreement because “most of the appendices to the agreements governing the transaction, which is itself a unique and novel concept, contain trade secret information…Purdue is not allowed to disclose that information under Indiana’s Access to Public Records Act.”66

D. How This Is Different from Traditional Online Program Management Deal

The role of Kaplan Higher Education after this acquisition will be similar to an online program management (OPM) company, a familiar deal in higher education; however, this is an OPM deal “on steroids.”67

OPM companies originated by creating online programs for public and private non-profit colleges and universities around twenty years ago when schools were “ill-equipped and unprepared” to create such programming.68 These eager tech companies took a school’s existing course content and adapted it to online courses, and in exchange for creating the content and marketing the program, the school paid the OPM company a percentage of tuition generated from the new programs.69 Little has changed in this model over the past twenty

63 Id.
64 Fain, supra note 3.
65 Id.
66 Id.
67 Shireman, supra note 18.
69 Id.
years, as tuition sharing is still common practice. In 2019, up to 80 percent of the 2,600 (and growing) colleges offering online education outsource the management of these programs, and most of these colleges pay for the services by tuition sharing. This background of traditional OPM agreements should help serve as a frame of reference to analyze the differences between these deals and the Purdue Global deal.

Robert Shireman and Margaret Mattes at the Century Foundation analyzed hundreds of OPM contracts from 76 public universities, and found that none of the 76 contracts grant the for-profit entity the breadth of rights that Purdue University grants Kaplan Higher Education. While common OPMs agree to create the platform and market the program, Kaplan agrees to much more as previously mentioned, such as student advising, admissions support services, human resources, technology support, and facilities and property management. A benefit for Kaplan, Inc. that goes far beyond the normal OPM contractor is that the Purdue Global budget must be approved by Kaplan, Inc., and Kaplan, Inc. has veto power over the budget. These terms of the Purdue-Kaplan agreement are currently only available through second-hand publications because the link to the agreement on Graham Holdings website now says “page not found.”

III. THE BENEFITS OF PURDUE GLOBAL FOR KAPLAN, INC. AND PURDUE UNIVERSITY

This deal between Kaplan, Inc. and Purdue University allowed both parties to gain something they could not have otherwise obtained through a traditional online program management agreement. Kaplan, Inc. and Purdue University were each facing their own struggles and this acquisition gave each party just what they needed.

A. Benefit for Purdue

While there has been speculation and accusation as to Purdue’s motives for doing this deal, Mitch Daniels addressed his reasoning in his annual open letter

70 Id.
71 Id.
72 Robert Shireman, supra note 18.
73 Id.
74 Id.
75 GRAHAM HOLDINGS, http://www.ghco.com/phoenix.zhtml?c=62487&g=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJlLmNvbS5hSSNmaWxpbnRvcmVuG1sp2JwYWdPTExNTQ4OTQxJkRTRVVE9M CZTRVE9MCZTUURFU0M9U0VDVElT9FTIRJUkUmcc3Vic2lkPTU3 (last visited Apr. 9, 2019).
to Purdue in January 2018.76 Daniels, the President of Purdue University, has been consistent in sharing Purdue’s number one reason for acquiring Kaplan University: to fulfill the university’s land-grant mission to offer opportunities for higher education to as many people as possible.77 His second reason is that Purdue was far behind similar universities in providing online learning, but acquiring an entirely developed and operational online school has allowed Purdue to catch up in one move.78 Daniels further defends the deal by stating that financially, this is a low-risk deal for Purdue.79 Additionally, he acknowledges in the open letter that many critics fear this deal will diminish Purdue’s reputation; however, Daniels is confident this will not be an issue as this argument was raised by critics over online education programs at Penn State and University of Maryland, and these schools still enjoy respectable reputations.80

One reason people outside of Purdue believe Purdue was especially eager to take this deal is the fact that the university’s funding has basically flatlined for several years partially due to a freeze on tuition, causing “considerable financial constraints.”81 Under these conditions, a new stream of revenue at a minimum of $10 million per year looks appealing.82

B. Benefit For Kaplan

There appear to be many benefits Kaplan Higher Education will receive for the sale of Kaplan University that go beyond the 12.5% cut of the profits. In this deal, Kaplan gains use of the “Purdue” brand, new corporate structure, and use of prospective student information. Kaplan also gains more freedom as it is no longer subject to gainful employment regulation or the 90/10 rule.

The for-profit education sector has recently seen decreasing enrollment and increasing criticism, and this deal allows for a lucrative exit strategy from this sector and entrance into a more stable area.83

This deal is especially beneficial for Kaplan because they are acquiring

77 Id.
78 Id.
79 Id.
80 Id.
81 Seltzer, supra note 41.
82 Id.
83 Blumenstyk, supra note 38.
something invaluable: Purdue’s brand. The ability to advertise and market using the Purdue name is much more attractive to students than the Kaplan name. While some critics including Purdue professors worry the use of the name will water down the Purdue brand, this is not a concern for Kaplan, as Kaplan’s acquisition of the Purdue brand is a huge benefit even if there is a long term “watering down” of the Purdue brand.

The details of the transition of corporate structure to a benefit corporation have been discussed above as to its terms, but this change of structure has great benefit to Kaplan in particular. The first major benefit to Kaplan is that the operations of the school remain largely unchanged despite the change in structure. This means that practices used when the school was profit driven are still in place despite Purdue University’s label as a non-profit public school. While that may be of concern to others, this makes the transition from Kaplan University to Purdue Global virtually seamless for Kaplan and its employees. Second, Purdue Global being dubbed a public school by the state of Indiana is a “huge marketing benefit.” The ability to market the school as a public institution engenders trust in prospective students and gives Purdue Global a new advertising advantage over online for-profit schools.

The value of this deal is enhanced for Kaplan by the contract’s lack of limitations placed on Kaplan for use of prospective student information. The deal does not set out limitations on Kaplan’s use of student information in marketing outside of Purdue Global, which allows for the possibility for Kaplan to utilize these contacts for future marketing of other colleges Kaplan may enter a deal with, or schools purchased by Kaplan. This is a notable benefit for Kaplan because what is essentially a perk of this deal is generally a very expensive transaction. For example, UC Berkeley agreed to give prospective student information to an online program manager for $4.2 million over 14 years.

Kaplan is no longer subject to the gainful employment regulation due to its

84 Id.
86 Blumenstyk, supra note 38.
87 Id.
88 Id.
89 Shireman, supra note 18.
90 Id.
91 Id.
92 Id.
change in status from a for-profit to a non-profit public institution. This regulation monitors employment rates out of certain programs depending on if the institution is for-profit or non-profit:

Generally, in order to be eligible for funding under the Higher Education Act Title IV student assistance programs, an educational program must lead to a degree at a non-profit or public institution or it must prepare students for “gainful employment in a recognized occupation.” Therefore, with very few exceptions, any non-degree program offered by non-profit or public institutions and all educational programs offered at for-profit institutions must lead to gainful employment.93

Kaplan has discontinued its non-degree programs; all programs are now degree programs within a non-profit institution and therefore now fall outside of the gainful employment rule set out by the Department of Education.94

Another rule Kaplan is no longer subject to is known as the “90/10 rule” which states that any for-profit or proprietary school must derive no more than 90% of its revenue from Title IV, therefore at least 10% of revenue must come from other sources.95 As Purdue Global is considered a public non-profit school, there are now no limitations as to how much revenue may come through Title IV.96 There is also a rule which requires that any for-profit school that converts to a non-profit must report its compliance with the 90/10 test after the conversion for one year.97

IV. THE FORM: PUBLIC BENEFIT CORPORATION

Part of what makes Purdue Global unique is its structure as a public benefit corporation. There are only a handful of educational institutions that are organized as public benefit corporations and of those few, Purdue Global is the sole institution claiming to be public. It is important to analyze if this innovative form is capable of supporting Purdue Global as well as understand if the corporate form itself is problematic or if Purdue Global’s use of the form is the problem. First, the history of the public benefit corporation is explained, followed by an explanation and interpretation of the Indiana public benefit

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94 Fain, supra note 3.
95 34 C.F.R. § 668.28(a)(1).
96 Fain, supra note 3.
corporation statute. Using general history of the corporate form and Indiana’s interpretation, this section will compare Purdue Global’s utilization of the form with American College of Education, a public benefit corporation, and with Delaware’s parallel statute. While form of Purdue Global as a benefit corporation may appear to show good will by its executives, this form has done little to change the for-profit ways of Kaplan and may simply create different problems rather than solving them.

The public benefit corporate form has become popular in state corporate law over the past twenty years; thirty-three states, including Indiana, have passed legislation allowing it.98 This corporate form legally requires the entity to pursue not only profits, but a social mission as well.99 Benefit corporations are being utilized as an alternative to the traditional corporate form rather than as an alternative to nonprofit status, as evidenced by the underrepresentation of benefit corporations in sectors where non-profit organizations have a strong presence, overrepresentation in agricultural crop production, and gaining popularity of for-profit educational institutions transitioning to the benefit corporate model.100

There are six known formerly for-profit educational institutions which have recently made the switch to the benefit corporation model including Purdue Global. The ability to advertise as a public benefit corporation may serve as a means for market differentiation, or viewed through a more sinister lens, “for schools that engage in exploitative practices, deceptive corporate branding…[it] makes the university seem altruistic and trustworthy.”101

Two major issues with benefit corporations at large is the lack of oversight and the low bar to claiming benefit corporation status.102 If states have a low bar to become a benefit corporation, it is argued the form will be overly adopted, and therefore lose its intended purpose as a marker of genuine social enterprise.103 The laws of benefit corporation are written to ensure accountability of proper use of the form by requiring an annual benefit report, but this provision is mostly ignored.104

It is important to differentiate a benefit corporation from a B Corp

99 Id.
100 Id. at 68-71.
101 Id. at 70-71.
102 Id. at 100.
103 Id.
104 Id.
certification. A ‘benefit corporation’ refers to a corporate structure created by the state which allows a corporation to have a dual mission of creating profit and fulfilling a social mission whereas a B Corp certification is an accreditation given to a company that is not necessarily a benefit corporation, or even a corporation. The B Corp certification is awarded by several organizations, the most prominent being B Lab, which sets a rigorous standard for businesses to pass, but the only legal requirement of this certification is to “amend their legal governing documents to require their board of directors to balance profit and purpose.” If a public benefit corporation, or any business form, is a B Corp, it has good reasons for publicizing its certification as B Corps status is well-branded and has an identifiable logo.

A. Indiana’s Benefit Corporation Laws

The Indiana legislature enacted law allowing creation of benefit corporations that became effective January 1, 2016. Benefit corporations are defined as corporations that have a ‘general public benefit’ as part of its purpose. A “general public benefit” is defined as “a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation.”

The initial steps to form a benefit corporation are akin to traditional method of incorporation including filing articles of incorporation, drafting by-laws in accordance with the Indiana Code, and establishing corporate tax structure.

Additional steps that are required to operate as a benefit corporation in Indiana include: electing the benefit director, preparing annual benefit reports on the public benefits the company has had, distributing report to the shareholders, and posting the report on the corporation’s web site. The corporation may choose to elect a benefit officer, but it is not required. The benefit report must include an “assessment of the overall social and

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105 Id. at §4-85.
107 Id.
109 IND. CODE ANN. § 23-1.3-2-7 (LexisNexis 2016).
111 IND. CODE ANN. § 23-1.3-8-1 (LexisNexis 2016).
112 IND. CODE ANN. § 23-1.3-8-1 (LexisNexis 2016).
environmental performance of the benefit corporation against a third party standard.”113 This third-party standard may be the B Lab’s B Corp certification standard, or some other standard which complies with the definition as described in section 13.114 It is also worth noting that Purdue Global is not currently a certified B Corp, it is only incorporated under the benefit corporation structure. This may be due to the newness of Purdue Global and could gain the certification given more time.

The Indiana benefit corporation statute creates a right of action, called a “benefit enforcement proceeding” which is standard in other benefit corporation statutes as well.115 This proceeding is an action against a benefit corporation, its directors, or its officers for either a “failure to pursue or create…general public benefit or a specific public benefit” or a “violation of an obligation, duty, or standard of conduct under this article.”116 A benefit enforcement proceeding can be commenced or maintained by only the corporation or derivatively by a director or shareholders holding a certain percent of stock.117 Since this right is given to such a discrete group, the scope of potential future enforcement proceedings is minimized.118 Purdue Global is a benefit corporation that is controlled by its sole member, the Trustees of Purdue University.119 Therefore, if Purdue Global fails to pursue a general public benefit, only the corporation itself or the Trustees of Purdue University have the right to bring this claim.

Since the law’s enactment in 2016, there has not been a benefit enforcement proceeding case in an Indiana state court. In fact, there is no record of any benefit enforcement proceeding being brought against any corporation in any state. Benefit corporation laws acquired popularity in 2009 and gained momentum in 2011, but despite this right of action being in place for eight to ten years in some states, not one enforcement proceeding has been filed.120 This may be an example of ineffective oversight of the benefit corporate form because this right of action is the only way to properly bring a case if a benefit corporation is not

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113 IND. CODE ANN. § 23-1.3-10-1 (LexisNexis 2016).
114 IND. CODE ANN. § 23-1.3-2-13 (LexisNexis 2016).
116 Id.
117 IND. CODE ANN. § 23-1.3-9-3 (LexisNexis 2016).
119 Ownership, PURDUE GLOBAL, https://catalog.purdueglobal.edu/contact-information/ownership/ (last visited Apr. 9, 2019).
adhering to its stated purpose. With such a narrow right of action, oversight of
benefit corporations in the court will be limited or absent. Other avenues of
oversight will need to be utilized to ensure benefit corporations are adhering to
their stated purpose.

The transaction of Purdue Global acquiring Kaplan University was official
as of March 22, 2018 and Purdue Global Articles of Incorporation are amended
through February 13, 2018 so Purdue University is just approaching its first full
year of incorporation. According to the Indiana Code, the annual benefit
report shall be sent to each shareholder on the earlier of 120 days following the
end of the fiscal year of the benefit corporation or the same date that the benefit
corporation delivers any other annual report to shareholders. There is no
mention of deadlines for when the annual benefit report must be posted on the
corporation’s website. After the initial secrecy of the deal, Purdue University
has published frequent updates on Purdue Global including the progress of the
acquisition, announcing the new chancellor, terms of the deal, and benefits new
students may receive. However, there is no mention of a benefit director or
benefit report in these press releases, nor are they mentioned anywhere on the
Purdue Global website, bylaws, or articles of incorporation.

B. Comparison of Purdue Global with American College of Education

There are currently four former for-profit schools that are now benefit
corporations, as previously mentioned. These schools are American College
of Education, Rasmussen College, Walden University, and Purdue Global. American College of Education (ACE) is incorporated in Indiana and became a
benefit corporation in 2016. Since it is also in Indiana, ACE is granted

121 Transaction Complete for Purdue Global, PURDUE UNIVERSITY (Mar. 23, 2018),
https://www.purdue.edu/newsroom/releases/2018/Q1/transaction-complete-for-purdue-global.html; Amended and Restated Articles of Incorporation of Purdue University Global, Inc., PURDUE GLOBAL,
123 IND. CODE ANN. § 23-1.3-10-5. (LexisNexis 2016).
124 Annual Open Letter to the People of Purdue from Mitch Daniels, PURDUE UNIVERSITY (Jan. 2018),
125 Berrey, supra note 98 at 70-71.
126 Id. at 68-71.
127 Jaleesa Jones, Year in Review: ACE’s First Year as a B Corp, AMERICAN COLLEGE OF EDUCATION
accreditation by the Higher Learning Commission, the same accreditor as Purdue Global.\footnote{128}

American College of Education advertises that it is the first and only company in Indiana that is both incorporated as a benefit corporation and is also a certified B corp.\footnote{129} ACE incorporated in fall of 2016 and claimed B Corp accreditation in December 2017, which is a fast turnaround as gaining B Corp accreditation is rigorous.\footnote{130}

Purdue Global makes no indications on their website regarding who serves as the benefit director or officer; however, ACE’s publications identify a B Corps benefits officer.\footnote{131} KK Byland is identified as the “B Corps benefit officer” so this role originates from B Corp certification and not from the Indiana benefit corporation statute that states a benefit officer may be selected.\footnote{132} Purdue is not a B Corp so it is not directly comparable, but nonetheless ACE identifying the benefits officer allows for greater transparency by notifying the public and ACE students what individual is responsible for maintaining the social benefit goals of the company.

ACE is subject to releasing benefit reports once a year as a benefit corporation under Indiana law, and this report must be posted on the company website.\footnote{133} While it is too early to know how Purdue Global will deal with this requirement, ACE has been a benefit corporation for over three full years but there is no sign of the yearly benefit reports anywhere on ACE’s website. The only recourse for the failure to adhere to Indiana law is a benefit enforcement proceeding brought by a stockholder or director of the company.\footnote{134} There is no indication any action has been taken, and there likely will not be action taken. Derivative suits are not initiated often, and stockholders in this instance are probably not seeing decreased stock values due to the lack of publicizing a yearly report, and therefore have no incentive to bring suit.

American College of Education’s website states the ownership of the school which Purdue Global posted as well. According to its website, ACE is a “wholly

\footnotesize{\textit{128} Statement of Accreditation, \textit{Higher Learning Commission}, https://www.hlcommission.org/component/directory/?Action=ShowBasic&Itemid=&instdid=1067 (last visited Apr. 9, 2019).}  
\footnotesize{\textit{129} Jones, \textit{supra} note 127.}  
\footnotesize{\textit{130} Id.}  
\footnotesize{\textit{131} Id.}  
\footnotesize{\textit{132} Leadership, \textit{American College of Education}, https://www.ace.edu/about/leadership (last visited Apr. 9, 2019).}  
\footnotesize{\textit{133} IND. CODE ANN. § 23-1.3-10-5 (LexisNexis 2016).}  
\footnotesize{\textit{134} IND. CODE ANN. § 23-1.3-9-1. (LexisNexis 2016).}
owned subsidiary” of ACE Holdco PBC. No further information about ACE Holdco PBC can be found online. If this is in fact the business structure, ACE’s current position is akin to Kaplan University before it was sold to Purdue. In other words, ACE’s current corporate structure resembles a for-profit college model.

American College of Education has been making headlines but not for the same reasons as Purdue Global. ACE has been ranked as one of the best places to work in Indiana for three years. ACE has seemingly not received any public criticism despite transitioning from for-profit to benefit corporation in the same state as Purdue Global. This suggests it is not the benefit corporate model or non-profit claims alone that are bothering critics, but rather Purdue Global stands out for its claim to be a public school.

Overall, neither of these two benefit corporations are completely adhering to the Indiana benefit corporation law and there does not seem to be public concern over the disregard for the law.

C. Comparison of Purdue Global with Delaware Benefit Corporation School

Comparing Purdue Global to a higher education public benefit corporation in another state will show if there are similarities in how the schools follow the corporate structure and if there are differences in the state laws that affect the schools. Rasmussen College was a for-profit school that transitioned to a benefit corporation in January 2014 and incorporated in Delaware, making it the first of the four for-profit schools that became benefit corporations.

Rasmussen College was similarly situated to Kaplan University in 2010 as it was also identified in the Senate report as having predatory practices and low graduation rates. Another similarity between Rasmussen and now Purdue Global is that they are both accredited by the Higher Learning Commission.
Unlike Purdue Global, Rasmussen College does not advertise to students on its website that it is a public benefit corporation. The Rasmussen website only says at the very bottom of the page in small font that this is a public benefit corporation, therefore Rasmussen is not using the change in structure as a differentiator in the market as proponents suggested it would.¹³⁹

Delaware public benefit corporation law states that at least once every other year the corporation must “provide its stockholders with a statement as to the corporation’s promotion of the public benefit or public benefits identified in the certificate of incorporation and of the best interest of those materially affected by the corporation’s conduct.” This Delaware provision is distinguished from Indiana’s benefit corporation law because it only requires the benefit report to be released once every two years rather than every year, as the Indiana law mandates.¹⁴⁰ A second distinction is that Delaware law does not require benefit corporations to publish the benefit report on their website, but rather states the corporation “may” be made publish if so provided in the bylaws or articles of incorporation.¹⁴¹ Unlike Purdue Global, Rasmussen has not posted their bylaws and articles of incorporation on their website so it is unknown if either mandates the posting of the benefit report. Since the requirement is to share the report every other year, Rasmussen should have two or three reports by this point but none are available online. The unavailability of benefit reports is consistent across Rasmussen, Purdue Global, and American College of Education.

V. THE SUBSTANCE: ISSUES FROM THE DEAL AND KAPLAN UNIVERSITY’S BAGGAGE

While it is known what problems Kaplan University had as a for-profit institution, it is still too early to know what issues associated with for-profit education will carry on in Purdue Global. However due to vocal opponents and the release of the Higher Learning Commission report, some possible issues of Purdue Global have been identified. The issues that have been raised are student and faculty rights, mixed signals from Purdue Global to the public, and having two boards of trustees.

A. Faculty and Student Rights

The American Association of University Professors (AAUP) obtained a

¹³⁹ Berrey, supra note 98 at 70-71.
¹⁴¹ Id.
copy and reported on a nondisclosure agreement that was intended for Purdue Global employees and faculty to sign as a term of employment. An AAUP director Greg Scholtz called this agreement “breathtakingly inappropriate in higher education” and stated he has “never seen anything like it.” The “Confidentiality and Restriction Agreement” restricts faculty’s ownership of their material and limits academic freedom.

The agreement restricts faculty ownership of work material by having the employee agree that work product, including course material, created by faculty will be considered work-for-hire and therefore Purdue Global property. Scholtz asserts this agreement is contrary to standard academic practice and would be unprecedented for a public non-profit university. This agreement also limits the faculty’s academic freedom and communication by forbidding the faculty from disclosing any “trade secret” information. Such information includes the school’s materials, teaching methods, finances, expenses, practices, and policies “to anyone who is not specifically authorized to receive it.” This can include other Purdue Global employees. This limitation on faculty to openly discuss school matters with other faculty members and employees goes against academic freedom that is standard at public institutions. Under this agreement, Purdue Global faculty would not have the liberty to speak out publicly or even within the school on common issues such as budget or academic policies.

Once this nondisclosure agreement became public, higher education groups condemned the practice and Purdue Global stopped requiring non-disclosure agreements in September 2018. Betty Vandenbosch, Chancellor of Purdue Global, stated in a letter to faculty that a committee had already been reviewing the agreement even before the media reports. Vandenbosch also stated in the letter that this policy was a 10-year-old policy that was used at Kaplan

143 Id.
144 Id.
145 Id.
146 Id.
147 Id.
148 Id.
150 Id.
The second source of concern regarding faculty and student rights at Purdue Global comes from a policy guide within the original 2017 contract between Purdue University and Kaplan. This was obtained through a public records request to the Department of Education for Purdue University records. This contract was completed before the creation of Purdue Global and therefore not under its shield from public disclosure exceptions. There seem to be no other versions of the contract available to the public, so it is unknown exactly what changed from this to any later versions, or even if there were later versions. This policy guide showed that Purdue agreed to make Purdue Global students agree to forced arbitration, maintain high spending on marketing and recruiting, keep admissions standards currently used by Kaplan, and keep tuition from decreasing.

Forced arbitration for students is a common practice in for-profit schools and is apparently carrying over to the public Purdue Global. A copy of the “Arbitration Agreement and Waiver of Jury Trial” document is available online and is current through 2018. This agreement is supposed to be signed by students as part of the enrollment process, and this is concerning because such forced arbitration agreements are “virtually non-existent” at public schools.

Another concerning provision in the policy guide was the agreement to keep spending high for marketing and recruiting. This is apparently highly important to Kaplan because the policy guide states that Purdue may be subject to penalty fees if the Purdue Global budget does not allocate enough money to outreach, media, and admissions to meet the “target outreach and admissions spend.” Similarly inflexible are the low admissions standards which Purdue has agreed to keep. If Purdue wants to increase the difficulty for standards of admission,
Kaplan maintains a right to veto that decision.\textsuperscript{161} 

The final issue in the policy guide that could negatively impact students is an agreement to keep tuition from decreasing.\textsuperscript{162} If Purdue Global chooses to lower tuition, somehow over the veto of Kaplan, Purdue could be responsible to Kaplan for revenue lost.\textsuperscript{163} However if tuition is raised, there are no penalties against anyone.\textsuperscript{164} President Mitch Daniels hails Purdue Global as an opportunity to provide widespread affordable and accessible education, however, with an agreement to keep tuition from ever decreasing, this seems to cut against that mission.

B. Mixed Signals from Purdue Global to Prospective Students

After a campus visit but before the release of Higher Learning Commission’s final decision for Purdue Global accreditation status, Robert Rucker of HLC sent President Daniels a report voicing concerns about the deal.\textsuperscript{165} A major concern involved how Purdue was planning to keep Purdue Global separate from the main University in the minds of prospective students. The report stated that Purdue Global “must be clear and consistent in its messaging, especially as it pertains to the status (Kaplan University) students will have as Purdue students...Purdue must create a clear, articulate communication and marketing plan stating a consistent message as to the relationship and the autonomy of each campus and its respective ethos.”\textsuperscript{166} A webpage from Purdue Global’s website is shown below. The photograph of Purdue University campus behind Purdue Global’s webpage could not be more flagrantly disregarding the HLC’s

\begin{flushright}
\textsuperscript{161} Id.
\textsuperscript{162} Id.
\textsuperscript{163} Id.
\textsuperscript{164} Id.
\textsuperscript{166} Id.
\end{flushright}
recommendation.

C. Two Boards of Trustees

The report from the Higher Learning Commission expressed concern regarding two separate boards of trustees and which board had ultimate authority in which situations. The report specifically questioned why the regional campuses report to President Daniels and the Purdue Board of Trustees, but Purdue Global is afforded its own board comprised of Purdue and Kaplan trustees. Neither Purdue nor Purdue Global offered a clear rationale for the two board or what differentiates them to the HLC.

The chairman of the Board of Trustees of Purdue University, Michael R. Berghoff, is also the chairman of the Board of Trustees of Purdue Global. The Higher Learning Commission did not make note of this specifically in their report, however, it is an interesting point to note. There is no explanation for why the chairman is the same on both boards and it adds to the confusion HLC

167 Id.
168 Id.
169 Id.
170 Board of Trustees, PURDUE UNIVERSITY, https://www.purdue.edu/bot/trustees/trustee-bios/michael-berghoff.html; Mike Berghoff, PURDUE UNIVERSITY GLOBAL, https://www.purdueglobal.edu/about/leadership-board/michael-berghoffE.
voiced regarding why a separate board is warranted if the governance of both schools is the same.

D. Kaplan University’s Troubled Past

Questionable practices by for-profit schools led to scrutiny, which began being seriously covered by the media in 2009 and 2010.171 Regulators took notice as well, and began cracking down on the industry’s wrongdoings.172 By 2010, Kaplan University had been riddled with dishonest practices publicly exposed by a probing Senate committee report.173 This report from the Health, Education, Labor, and Pensions Committee implicated Kaplan University by name, repeatedly.174

E. The Senate Report

In 2012, the Senate released a thorough report “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success” after an oversight investigation of for-profit institutions was initiated in 2010.175 While the findings of this report were far-reaching, for the purposes of this paper, only the statistics relevant to Kaplan University’s performance will be discussed. This Senate report is being used to illustrate Kaplan’s history before becoming Purdue Global because it includes data and information collected by an impartial fact-finding body. This information is intended to paint a picture of Kaplan University’s practices as well as public appearance in 2012. This report studied fifteen publicly traded companies which included Kaplan, Inc.176

The report found that for-profit schools, including Kaplan, charged significantly higher tuition prices for an associate degree than community colleges offering comparable two-year degree programs.177 Kaplan’s tuition for an Associate in Business Administration is $30,065 whereas community colleges average published tuition is $5,926 for a two-year degree.178

A Kaplan manual stated that the main focus of the recruiter position is the

171 Shireman, supra note 18.
173 MAJORITY STAFF OF S. COMM. ON HEALTH, EDUC., LABOR AND PENSIONS, supra note 137.
174 Id.
175 Id.
176 Id. at 20.
177 Id. at 41.
178 Id.
recruiter’s sales. Recruitment managers created a work environment in which the highest priority was reaching an enrollment quota, which was made clear in a Kaplan recruiter manual which “instructed recruiting managers to clearly ‘establish expectations’ with new recruiters that the enrollment numbers mean everything.”

The committee found sales tactics to be aggressive and targeted towards vulnerable populations, which included visiting social service agencies. An internal Kaplan email revealed that a recruiter targeted vulnerable groups by leaving their business cards at “an office for section 8 [public housing].” The recruiters were also aggressive. In Kaplan training manuals, recruiters were given directions to “KEEP DIGGING UNTIL YOU UNCOVER THEIR PAIN, FEARS, AND DREAMS. . . . IF YOU GET THE PROSPECT TO THINK ABOUT HOW TOUGH THEIR SITUATION IS RIGHT NOW AND IF THEY DISCUSS THE LIFE THEY CAN’T GIVE THEIR FAMILY BECAUSE THEY DON’T HAVE A DEGREE, YOU WILL DRAMATICALLY INCREASE YOUR CHANCES OF GAINING A COMMITMENT FROM THE STUDENT! IF YOU CAN STIR UP THEIR EMOTIONS, YOU WILL CREATE URGENCY!” [emphasis in original].

The committee studied the data of the top 10 worst companies for student retention for associates and bachelors degree programs. Kaplan was in the top 10 of both degree categories, and the worst performer under bachelor’s degrees with a dropout rate of 68%. For associates degree programs, Kaplan’s dropout rate was 69%, the third highest rate in the category.

Companies estimate the percentage of the amounts they lend to students on which they believe students will default. Kaplan expects up to 80% of its institutional loans will default. This rate is by far the highest rate out of the eight companies measured, with the second highest being 55%. The committee asserted that “these loans underscore the for-profit colleges’ knowledge and expectation that a majority of students will not succeed in

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179 Id. at 50.
180 Id. at 51.
181 Id. at 58.
182 Id. at 58.
183 Id. at 63.
184 Id. at 63.
185 Id. at 75.
186 Id. at 74.
187 Id. at 118.
188 Id. at 118.
obtaining the employment and financial security necessary to avoid default."  

In the 18 months following the report, some of these schools, including Kaplan, introduced orientation programs to help students understand what programs and payment plans are viable for them and to decrease the dropout rate of students. These programs “appear to be having a beneficial impact on the likelihood of success for students enrolling in those schools.” While the committee found Kaplan’s practices to be abysmal, overall the company was enacting “the most significant reforms of any company examined.”

VI. THE FUTURE FOR FOR-PROFIT SCHOOLS AND PURDUE GLOBAL

For-profit schools saw their peak enrollment in 2010, and over the next six years enrollment at for-profit private institutions decreased by 47 percent. During this same period, public university enrollment decreased by 4 percent and private non-profit university enrollment increased by 6 percent. Despite the Trump administration instituting policies that are friendly to for-profit schools, companies are still leaving the sector.

This continued exit may be due to the public scrutiny under the Obama administration, the country’s solid economy rates driving adults into the workforce rather than back to school, or public institutions’ improving online offerings. However, this supposed exiting of the for-profit market could be viewed as more of a shift than an exit. Fifteen for-profit schools have transitioned or are in the process of transitioning to a non-profit model. Some of these new non-profit schools seem to be holding on to for-profit habits, such as paying board members handsomely, contracting with companies owned by executives, and creating ways to increase profits. These schools that are claiming to be non-profit without instituting proper financial controls may able to continue operating undetected by the IRS due to dysfunction and lack of performance.

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189 Id. at 118.
190 Id. at 77.
191 Id. at 119.
192 Shireman, supra note 18.
194 Id.
195 Autumn A. Arnett, More than 100 for-profit institutions closed during past year, EDUCATION DIVE (Jun. 6, 2018), https://www.educationdive.com/news/more-than-100-for-profit-institutions-closed-during-past-year-according-to/525094/.
196 Robert Shireman, These Colleges Say They’re Nonprofit – But are they?, THE CENTURY FOUNDATION (Aug. 23, 2018), https://tcf.org/content/commentary/colleges-say-theyre-nonprofit/.
197 Id.
funding that are necessary to monitor them.\textsuperscript{198}

A. Potential Changes and Their Impact on Purdue Global

On July 26, 2018 Rep. Bobby Scott, a ranking member on the House Committee on Education and the Workforce, introduced the Aim Higher Act, which is a reauthorization of the Higher Education Act.\textsuperscript{199} This proposed legislation includes provisions to narrow the definition of nonprofit and public institutions of higher education as well as provisions to improve the standards used to analyze school conversions to non-profit status. Purdue Global and Purdue President Mitch Daniels are steadfast in defining Purdue global as a public university, and the Articles of Incorporation state the corporation will adhere to the Indiana Nonprofit Corporation Act; therefore, a change to these definitions could impact this designation.\textsuperscript{200}

The proposed bill defines a ‘public institution of higher education’ as an institution

\begin{enumerate}
\item[(A)] for which all obligations of the institution are valid and binding obligations of the State (or of an equivalent governmental entity); and
\item[(B)] for which the full faith and credit of such State (or equivalent government entity) is pledged for the timely payment of such obligations.\textsuperscript{201}
\end{enumerate}

Purdue Global does not accept state funding and therefore is not backed by the full faith and credit of the state of Indiana.\textsuperscript{202} If this provision passes as it is currently written, Purdue Global may face further scrutiny and challenges for defining itself as a public institution.

The bill proposes a new definition for ‘nonprofit institution of higher education’ as an institution which

\begin{enumerate}
\item[(A)] has all obligations of the institution valid and binding obligations of the State (or of an equivalent governmental entity); and
\item[(B)] is not for profit.
\end{enumerate}

\textsuperscript{200} About Purdue Global, PURDUE GLOBAL, https://www.purdueglobal.edu/about/about-purdue-global/
\textsuperscript{201} Amended and Restated Articles of Incorporation of Purdue University Global, Inc., PURDUE GLOBAL, https://www.purdueglobal.edu/faculty/articles-of-incorporation-pg-may-2018.pdf (last visited Apr. 9, 2019).
(A) is a nonprofit, as defined in section 103(13); and
(B) at which no member of the governing board of the nonprofit institution of higher education (other than ex officio members serving at the pleasure of the remainder of the governing board and receiving a fixed salary), or any person with the power to appoint or remove members of such governing board, receives any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract) from the nonprofit institution of higher education.203

Purdue Global likely falls within the parameters of a nonprofit as defined in section 103(13) but it is harder to know if part (B) will impact Purdue Global because the payment structures are not available to the public. One possible issue with part (B) is that there is one member of the Board of Trustees that is from Kaplan, Inc. and this board member might be paid through Kaplan, Inc. which is paid for its services for Purdue Global.204 Such a payment method would be against this proposed definition.

In addition to these changes in definitions, the Aim Higher Act proposes to add a provision on for-profit conversions. The provision would grant the Secretary of Education power to decide if a for-profit can become a nonprofit institution of higher education. The institution must submit an application to the Secretary that shows

(1) that such institution is a nonprofit institution of higher education, as defined in section 103(25);
(2) subject to subsection (d), that the institution has not acquired any other institution of higher education (as defined in section 102), or a significant portion of the assets of such other institution, for more than the value of such other institution or such assets, respectively; and
(3) in the case of an institution that has been acquired by another party, that such institution is not controlled by such party.205

These terms seem to leave lots of room for discretion for the secretary as the language is very broad. If the Act is passed, Purdue Global may face problems fulfilling requirement #3. Kaplan University is the educational institution which has been acquired by Purdue University, and the question is if Purdue University controls the institution. The Board of Trustees for Purdue Global is composed almost entirely of Purdue University trustees; however, Kaplan still retains power to veto some decisions by Purdue Global. This split of governance power between Kaplan, Inc. and Purdue University may be enough to fulfill

204 Bylaws of Purdue University Global, Inc., supra note 48.
requirement #3. These three proposed requirements seem to recognize a deal structure that is becoming commonplace in for-profit transitions. The deal structure is as follows: The for-profit school’s owner or parent company either a) converts the school to non-profit status, or b) transfers the school to a non-profit the owner created. Then, the new non-profit school contracts with the owner or parent company to provide all of its services. So, while the school may be non-profit, they are locked in a deal with a parent for-profit company. For example, Ashford University is attempting to contract with its for-profit parent company, Bridgepoint, to pay it 60 to 65 percent of tuition revenues for its services.206 Other companies attempting to utilize this model include Grand Canyon Education, Herzing University, and Remington Colleges.207

CONCLUSION

Purdue Global is a novel creation that is too new to be considered either a success or a failure. However, there are many aspects of Purdue Global and its relation to Purdue University which are troubling even at this stage. In this transaction between a public university and a for-profit company, both parties had to cede some things in order to make the deal agreeable. This give and take resulted in Purdue Global having neither the full support of a public university, nor the regulation required of a private for-profit entity, and therefore became a diluted version of both. The school is considered public, but it does not offer the same protection or advocacy for students. The school is still in a long-term deal with Kaplan, Inc., which has left many of its for-profit practices in place but without the federal regulation required of a for-profit entity. This trade-off has created both a lack of oversight and a governance structure which is ambiguous.

At its core, this transaction and creation of Purdue Global as a non-profit public university is blurring the lines between public and private schools, resulting in an entity with features of both. The new Indiana law regarding Purdue Global’s status as a public school and exempting Purdue Global from public records requirements is one example of how this institution is defined as public when advantageous yet falls outside the definition of public when it is not. This contradiction can also be seen in Purdue Global’s label as a public school to be exempt from the 90-10 Rule and the gainful employment rule, but not “public” in the same way as Purdue University, because Purdue Global is not backed by the full faith and credit of the state of Indiana.

206 Shireman, supra note 196.
207 Id.
Purdue Global utilizes the public benefit corporate form and it is the first public, non-profit school to do so. This corporate form has allowed Purdue Global to operate in ways traditional public schools legally cannot. Purdue Global has used the corporate form as an advertising tool as well as a way to maintain the traditional corporate privileges enjoyed before the acquisition.

Purdue Global has advertised their status as a benefit corporation as a way to differentiate Purdue Global in the higher education market and distance Kaplan, Inc. from their roots in the publicly traded for-profit industry. It is too soon to know if this will attract new students beyond those who were already enrolled in Kaplan University before the acquisition. Purdue Global is at least hoping that this designation will differentiate it from other schools, because Purdue Global advertises its status as a public benefit corporation to students. Beyond advertising, the public benefit corporate form is concerning because it does not necessarily fix the corporate issues of a for-profit and this form does not hold Purdue Global accountable.

One way Purdue Global retained regular corporate privileges as a public benefit corporation was that there was no notable change in governance when converting from a for-profit corporation. The Purdue Global website contains the bylaws and the articles of incorporation of the school, which is at least one aspect of transparency of the school, and it is these very documents that reveal the lack of adherence to the Indiana benefit corporation laws. The Purdue Global bylaws do not contain the mandatory information regarding a benefit officer or a general public benefit. This disregard for the benefit corporation laws shows Purdue Global operations have remained largely unchanged from when the school was a for-profit business.

Another troubling aspect of this corporate form is that Purdue Global is not being held accountable under the public benefit corporation. It is not being held accountable due to the lack of oversight from the State of Indiana and the Board itself, and it isn’t accountable to students or individuals through the court. The Indiana statute outlining how benefit corporations are to be formed and operate does not create a method for the State to take action if the corporation does not adhere to the statute, rather the only individuals who may sue the corporation for not following the Indiana law is members of the corporate board. This is a principle of traditional corporations, however, this supposedly innovative corporate form is intended to benefit the public as a co-equal goal with benefitting the shareholders and the law is not allowing the public to enforce this. This barrier to bringing a claim plus the forced arbitration agreement students sign effectively bar any legal action against Purdue Global in court by
students or faculty. This lack of ability to bring claims against Purdue Global is troubling because there is no such barrier to claims in public universities, which Purdue Global claims to be. The issue of lack of accountability may apply to all public benefit corporation state statutes because the provisions of the Indiana statute are very similar to those in Delaware and other states. If a state’s public benefit corporate law is utilized by a school and is generally unreachable in court for its corporate choices, this may allow schools across the country to incorporate under the public benefit form in order to avoid court proceedings which would otherwise be allowed at public universities.

Finally, the addition in the 2017 Appropriations bill in the Indiana General Assembly which allowed Purdue Global to operate exactly how its corporate leaders want to, is a disturbing maneuver that sets a dangerous example for other states. While it is commonplace for interest groups to draft pieces of suggested legislation for lawmakers, this is alarmingly different. A piece of legislation that was specifically tailored to allow a state educational institution to control a public benefit corporation (which may provide instruction or education online or in person) as its affiliated postsecondary institution, and to back all the debts and liabilities of the affiliated institution is much more targeted than an interest group dropping off suggested legislation on desks across the country. This was the General Assembly of Indiana creating the foundation necessary for a single business transaction involving a private party to continue without obstruction.

In conclusion, Purdue Global is a unique creation combining for-profit and public education that is too new to know if it can be deemed a success. While there is potential for this new educational institution to further Purdue’s mission, there are many reasons at present to be concerned. Purdue Global claims it is a public non-profit school, but many elements of Kaplan University’s for-profit past remain, which is particularly concerning given Kaplan’s history of exploiting students. The corporate form has allowed Purdue Global to remain unaccountable to the communities it purports to serve, the State of Indiana cleared the path for Purdue to write law in order for the school to exist, and the transaction itself contained terms which prioritize Kaplan, Inc. over student experience.

This deal between Purdue University and Kaplan, Inc. may have far-reaching impact as it serves as a model for for-profit schools looking for a

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lucrative exit strategy from a declining market. This deal undoubtedly benefits the for-profit school executives and creates a new revenue stream for Purdue University. These institutions have struck a balance that incorporates elements of a public university with those of a private for-profit and in the process created a novel educational opportunity; however, they neglected to consider the central tenet of higher education when conducting this deal: student welfare.

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