

Distressed Higher Education: How to Restructure Colleges and Universities

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Participants

- Bert Weil is managing director of Getzler Henrich & Associates, a Hilco company. He has worked with underperforming for-profit and not-for-profit companies and institutions for nearly 30 years. He was appointed CRO for the closure of the 115-year-old College of New Rochelle and has extensive restructure and insolvency experience.
- Matthew G. Roseman is chair of Cullen and Dykman's Bankruptcy and Creditor rights department. He was debtors counsel for the College of New Rochelle's wind down and chapter 11, represented Dowling College's chapter 11 Oakdale campus purchaser, and advised several regional colleges regarding restructurings and closures.
- Jennifer Taylor is a partner in O'Melveny & Myers' San Francisco office. Her practice focuses on debt finance and restructuring matters. She has acted as financing counsel to a variety of educational institutions, including Corinthian Colleges and Middlebury College.



Where Are We?

Overall enrollment has declined every year since 2014, with public 2-year colleges experiencing a greater than average decline. The COVID-19 pandemic had a significant impact on the enrollment trend in 2020.

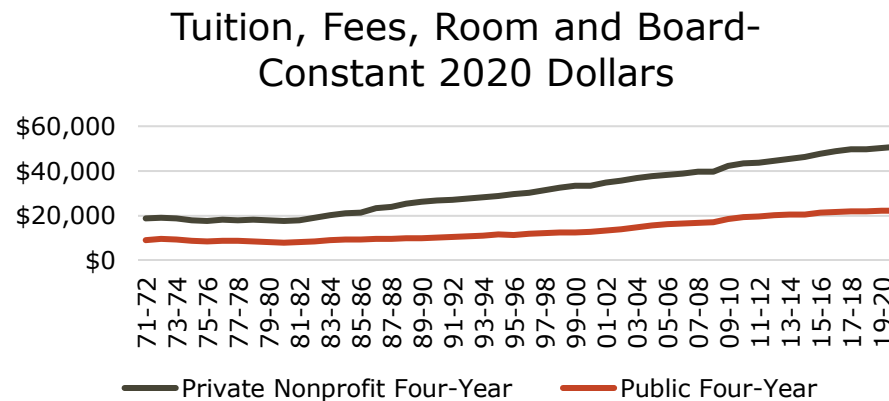
<u>Enrollment & Change from Prior Year</u>		
<u>Enrollment Year</u>	<u>All Institutions</u>	<u>Public 2-Year College</u>
2014	-1.3%	-4.4%
2015	-1.7%	-2.4%
2016	-1.3%	-2.6%
2017	-1.0%	-1.7%
2018	-1.7%	-3.2%
2019	-1.3%	-1.4%
2020	-2.5%	-10.1%
2021	-2.7%	-3.4%

Source: National Student Clearinghouse Research Center



The Cost of an Education?

The cost of college has increased steadily over the last 40 years for both private and public institutions...



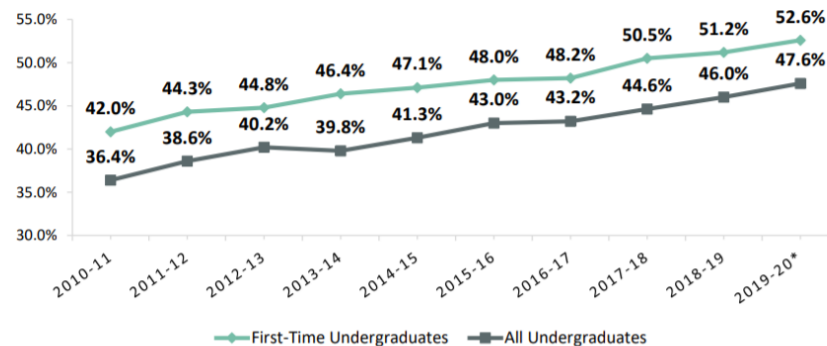
Source: The College Board



Tuition Discounting?

In order to attract students in a high cost, declining enrollment environment, many institutions have increased their discounts.

FIGURE 1: AVERAGE INSTITUTIONAL TUITION DISCOUNT RATE, BY STUDENT CATEGORY



Source: NACUBO Tuition Discounting Study, 2010 to 2019; data are as of the fall of each academic year.

*Note: Preliminary estimates.



How Did We Get Here?

Supply and Demand:

- **Changing demographics** – between 2000 to 2017, the U.S. population increased by 15 percent, from 282 million to 325 million. The traditional college age population, 18-24-year-olds, increased 13 percent between 2000 and 2010 (from 27.3 million to 30.8 million), but remained fairly constant between 2010 and 2017, ending at 30.5 million. (*Source: National Center for Education Statistics*)
- **Migration patterns** - people are moving from the Northeast and Midwest to sunbelt and southern states like Florida, Arizona, Texas, and Georgia. Smaller, private colleges have typically drawn from within their region,
 - U.S. census estimates from 2010 to 2018 show that the youth population dropped more than 10 percent in the New England states of Vermont, New Hampshire, and Connecticut. Meanwhile, New England, with over 250 colleges and universities, has disproportionately more four-year private non-profit colleges compared to the rest of the nation. (*Sources: Fitch Ratings, GlobeSt.com*)
- **Increase in supply** – the number of public and private non-profit four-year institutions increased from 1,830 in 2000 to 2,030 in 2019, an increase of 10.9%, while the number of private for-profit 4-year institutions increased from 210 to 300, an increase of 42.9%. (*Source: National Center for Education Statistics*)



Institutions at Risk

Following are common characteristics of institutions most at risk:

- Small liberal arts
- Tuition dependent
- Small endowments
- Weak “product differentiation”
- Less selective admissions



Strategic Overview

- **Lenders** - You can never start talking to your secured creditor too soon.
- **Outside Advisors** - Matters are wildly complicated when dealing with accrediting agencies, government agencies, state attorneys general, and other stakeholders. Resistance to retain professionals for strategy, tactics, and implementation is widespread.
- **Runway** - What you might think of as a normal runway to complete a restructuring, double it, at least, and make sure you have the liquidity complete the mission.
- **Sclerotic Thinking** - Academic institutions don't think like for-profit companies or even non-profits. Presidents and Trustees often think like executive academics. They are not even fully aware of the personal liability exposures they are creating for themselves. CFOs are treated like an after thought, and nobody has any training in the "dark-art skills".
- **Vested Interests** - Trustees, executive leadership, tenured academics, alumni donors, athletic departments, unionized employees, students, federal and state departments of education, attorneys general, various accrediting agencies, local communities, et al, each have deeply vested interests.
- **Annual Strategic Plan** - Schools should produce, and Trustees should annually review, three-to-five-year strategic plans that demonstrate adequate strategy, tactics, and liquidity.



Options



Limitations of Chapter 11

- A Chapter 11 filing is not a viable option for reorganization.
- All Title IV funding will be terminated if the school files Ch. 11.
- Net/Net – You can only file Ch. 11 after all education operations have been terminated.
- The UCC is pursuing recovery from the D&O carrier for negligent financial management, securities fraud, and imprudent decision making. This is a new trend in higher education.
- Chapter 11 does provide a streamlined procedure to liquidate assets and wind down affairs after the cessation of education operations
- Liquidating assets in a single sale which are encumbered by multiple competing liens can create intercreditor problems



Conventional Alternatives

Conventional FA/Outside counsel Options:

- Liquidity & Plan analysis – Runway to Restructure
 - 13-Week Direct Cash Flow
 - 12-Month budget & Business Plan
 - 3-5 Year Strategic Plan – Know your liquidity runway
- Leadership assessment
 - Is leadership effective, silo management, or well integrated?
 - Is the Board proactive, proactive, reactive, or inactive?
 - Does the CFO produce adequate “managerial information” on a timely basis with is effectively deployed within the institution?



Conventional Alternatives

Conventional FA/Outside counsel Options:

- Core Product Assessment
 - Are academic programs, or professors appropriately profitable?
 - Are food, housing, and other revenue stream adequately profitable?
 - Are costs effectively managed for non-revenue services?
- Sales & Marketing –
 - Is the marketing plan effective, are there adequate numbers of applicants, what is the acceptance percent, what is the enrollment yield?



Less Conventional Alternatives

Financial Solutions

- NCAA downgrade from D3 to D1 – University of Hartford, increase revenue producing games – Chopping State
- Sell student housing and other property – Fulton Montgomery Community College, Lesley University
- Debt Reduction – Benedict College; through govt relief as well as asset sales
- Federal funding of apprenticeships at 2-year colleges

Common Service Consolidation

- Public school consolidation of colleges - Penn State System of Higher Ed consolidates six schools into two
- Create non-profit entities to handle back-office services – New Mexico public colleges and universities



Less Conventional Alternatives

Operational Restructuring

- Appoint a Chief Transformation Officer – Westminster College, position was created and assumed by the Board Chair. Change culture to think more like a for-profit business
- Campus Co-location – Paier College, while still independent, created a co-located campus with Goodwin College and Univ of Bridgeport
- Suspend the faculty handbook – Medaille College, by invoking the “Act of God” clause. Terminate professors, cut massive costs
- Restructure & Tenure – Guilford College, laid off 20 tenured professors. When the academics were asked for input, they responded “don’t cut anything”.
- Low Enrollment clause – Marian University, when enrollment dropped 20% school activated this clause to terminate tenured professors and unprofitable programs
- Extraordinary Circumstances Clause or Exigency Clause – Keuka College, when revenue dropped \$7 mil programs and professors were cut.



Less Conventional Alternatives

M&A

- Merger with identity retention – Wheelock College into BU, Goodwin College into Univ of Bridgeport
- Teach out agreement – Mercy College acquires 90+% of the College of New Rochelle Students

Stay Independent

- Internal restructure – Sweet Briar College; Board voted to close the school; other stakeholders mounted a campaign to stay open. A deal was mediated, board was changed, and the school underwent a radical restructuring
- Increase marketing – insert fortune cookies into restaurant & delivery bags. Comarketing deal with OpenFortune who delivers over one billion cookies p.a. – Northern Arizona University
- Free tuition - Alamo College sources funding from the city of San Antonio for “last dollar” scholarships to close student funding gaps
- Crowdfunding textbooks – Tribal colleges, Textbook Media to provide digital textbooks to 5,000 students



Precipitous Closure Risks

Closed School Discharge Liabilities

- Potential officer financial liabilities
- Debarment from future academic employment as an officer

Student impacts

- Student set-back due to lost of credits or loss of recognition for practical work, e.g. nursing programs
- Student attrition due to lost momentum to complete degrees

Involvement of Regulators – Actively participating in the wind-down

- State and Federal Dept of Education
- Attorney General

Faculty: Distressed Higher Education— How to Restructure Colleges and Universities

Matthew G. Roseman is a partner with Cullen and Dykman LLP in Garden City, N.Y., and heads the firm's Bankruptcy and Creditors' Rights department. He represents debtors, secured creditors, landlords and acquirers of assets in bankruptcy proceedings throughout the U.S. Over his years of practice, Mr. Roseman has advised debtors and creditors in corporate reorganizations involving both public corporations and privately held businesses, and he has successfully argued a case of first impression before the U.S. Court of Appeals for the Second Circuit involving an issue of bankruptcy procedure. He also has particular experience representing construction companies and contractors in bankruptcy proceedings and workouts, and he regularly provides true sale, safe harbor and nonconsolidation opinion letters in complex commercial transactions. Mr. Roseman received his B.A. in 1985 from Washington University in St. Louis and his J.D. in 1988 from George Washington University Law School.

Kristine Southard is the Chief Academic Officer at Eastern International College in Jersey City, N.J., and serves as Dean of Academic Affairs. She is a senior academic advisor in the higher education industry and has more than 25 years of experience with nonprofit and for-profit colleges and universities. She has experience with university academic models, institutional and programmatic accreditation requirements, Allied Health program compliance, and NYSED, OSHE, Middle States, DOE statutory academic and financial compliance. Ms. Southard provides academic and operational advisory services to increase institutional profitability through developing new and revising continuing program offerings; program planning based on researched local, regional and national industry trends; identifying crucial progressive faculty professional development; identifying optimal program/school enrollment strategies; streamlining academic delivery models across multi-school and multi-campus colleges; and developing and implementing rational budget plans. She also directs the academic efficacy and growth of liberal arts programs, general education programs and a variety of Allied Health programs. Ms. Southard has provided operational advisement within stressed and at-risk institutions to facilitate academic and financial restructuring, wind-down processes and bankruptcy, and has in-depth knowledge of consolidation and liquidation processes. She received her Ph.D. in literature from New York University.

Jennifer Taylor is a partner in the San Francisco office of O'Melveny & Myers LLP in its corporate finance and restructuring practice groups. She is also a member of O'Melveny's Fintech and Emerging Technologies industry groups. Ms. Taylor has experience negotiating debt-financing transactions of all varieties, including financings for leveraged buyouts, secured and unsecured working capital facilities, venture debt facilities and other structured financings, including mezzanine loans, high-yield, and DIP financing for debtors in bankruptcy. In the restructuring realm, Ms. Taylor represents clients in connection with workout transactions and chapter 11 reorganizations. She also regularly represents investors in connection with distressed acquisitions of businesses and debt. Ms. Taylor was honored as a member of the 2019 class of ABI's "40 Under 40," and she has been recognized by *Legal 500* (2017) and as a "Rising Star" by *Law360* (2016) and the International Women's Insolvency & Restructuring Confederation (2014). She received her B.A. in political science and economics from Stanford University and her J.D. *cum laude* from the University of California, Hastings College of the Law, where she was a member of the *Hastings Law Journal*, as well as a recipient of the ABI Medal of Excellence, the Witkin Award for Academic Excellence in Bankruptcy, and the CALI Awards in Legal Writing and Research, Bankruptcy and Secured Transactions.

Bert Weil, CTP, CPA is a managing director with Getzler Henrich & Associates LLC in New York and has 25 years of experience as a performance-improvement and restructuring professional, crisis manager and senior-level interim executive (CRO/CEO/CFO). He has advised more than 150 entities, including public, private and nonprofit entities inside and outside of bankruptcy, as well as syndicated lender groups and chapter 11 unsecured creditor committees. Mr. Weil has helped businesses with business plan development, organizational restructurings, balance-sheet restructurings, debt-refinancing and sell-side transactions, liquidations, and operational and profit-improvement programs. He also has worked with syndicated lender groups and unsecured creditors' committees to maximize recoveries. Mr. Weil's industry experience includes light and heavy manufacturing, imported- and domestic-product merchandising and distribution, higher education, food processing, apparel and textiles, trucking, aerospace, professional services, printing, nonprofit and retail. Prior to joining the restructuring community, he learned first-hand the challenges of managing a struggling business while serving as the top financial officer of a New York-based public company with 1,000 employees. Prior to that, he managed the New York-based corporate foreign exchange and derivatives desk for ABN Bank (now ABN-AMRO) and held derivative product business-development roles at Drexel Burnham Lambert and Citibank. He also held positions at Continental Grain Company, AIG and Ernst & Young. Mr. Weil was a 13-year officer and member of the board of the Turnaround Management Association's New York chapter and is a member of the Association for Corporate Growth and ABI. He received his B.S. in accounting from Lehigh University and his M.B.A. from the Stern School at New York University.