



Closing or Merging a Postsecondary Institution

Closing or merging an institution means a decision permanently to discontinue its identity as a separate educational entity. Responsibility for the final decision to close or merge rests with the governing body. A governing body considering such actions should consult appropriate educational and legal authorities. Institutional and specialized accrediting organizations as well as state officials also should be consulted and informed. Most institutions of higher education are corporations established under the provisions of state law, and may have legal responsibilities (holding title to real property, for example) that may require the continued existence of the corporation after the educational activities of the institution have been terminated.

A decision to close or merge an educational institution requires thoughtful planning, careful consultation, sharing available information, and disclosure with all affected constituencies. Specific plans are necessary for providing in appropriate ways for the students, the faculty, the administrative and support staff, and disposition of the institution's assets.

The items detailed below are relevant to all institutions planning a closure, and they will apply in varying degrees to institutions planning a merger.

Reporting to the Commission: Teach-out Agreements and Other Key Issues

If an institution is planning to close or merge, or an institution is under a U.S. Department of Education action to limit, suspend, or terminate the institution's participation in any Title IV program, or if the Secretary initiates an emergency action against an institution, the institution should provide students with reasonable opportunities to complete their education and should inform the Commission no later than six months prior to the planned closing/merger date. To the extent feasible, the Middle States Commission on Higher Education will work with the U.S. Department of Education and with the appropriate State agencies to ensure that the institution has met its obligations to its students and that the students are given reasonable opportunities to complete without additional charge.

The closing institution's report to the Commission must include any teach-out agreement that the institution has entered into or intends to enter into with another institution. The report must be approved by the Commission and must demonstrate that the other institution is accredited by a federally recognized accreditation agency and that the agreement is consistent with applicable standards and regulations. The teach-out plan will be approved only if it provides for the equitable treatment of students by ensuring that (1) the teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of

acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the closed institution, and (2) the teach-out institution can provide students access to the program without requiring them to move or travel substantial distances.

In addition to any teach-out agreement, the report to the Commission should address the items below.

The Students

Students who have not completed their degrees should be provided for according to their academic needs. Arrangements for transfer to other institutions will require prompt transfer of complete academic records and all other related information to receiving institutions. Arrangements made with other institutions to receive transferring students and to accept their records should be in writing. If financial aid is involved, particularly federal or state grants, arrangements should be made with the appropriate agencies to transfer the grants to the receiving institutions. If such arrangements cannot be completed, students should be fully informed. If students have held institutional scholarships or grants and there are available funds which can legally be used to support students while completing degrees at other institutions, appropriate agreements should be negotiated.

Academic Transcripts and Financial Aid Records

All academic, financial aid information, and other records should be prepared for permanent retention. Arrangements should be made with the state department of higher education or other appropriate agency for keeping student records.

If there is no state educational agency which can receive records, arrangements should be made with another college or university or with the state archives to preserve the records. Notification should be sent to every current and past student indicating where the records are being stored and how the student can obtain them. If possible, a copy of a student's record also should be forwarded to the individual student.

Completion of Institutional Obligations

When a student chooses to continue at another institution but is within a year or 18 months of completing an academic degree in the closing institution, arrangements may be made to permit that student to complete the requirements for a degree elsewhere but to receive the degree from the closed institution. This may require special action by the appropriate state agency. Such arrangements also should include provision for continuation of the institution's accreditation only for this purpose by the accrediting agency involved. These steps normally require the institution to continue as a legal corporate entity beyond the closing date. Any such arrangement must be established in consultation with the appropriate authorities and with their written consent.

Provision for Faculty and Staff

In every possible case, the institution should arrange for continuation of those faculty and staff who will be necessary for the completion of the institution's work up to the closing date. When faculty and staff are no longer needed, the institution should make every effort to assist them in finding alternative employment. It should be understood that the institution can make no guarantees, but good faith efforts to assist in relocation and reassignment are essential. In the event that faculty or staff members find new positions, early resignations should be accepted.

The Final Determination

Determinations must be made to allocate whatever financial resources and assets remain after the basic needs of current students, faculty, and staff are provided for. When the financial resources of the institution are inadequate to honor commitments, the governing body should investigate what alternatives and protection are available under applicable bankruptcy laws before deciding to close. If funds are insufficient to maintain normal operations through the end of the closing process, the institution should consider the possibility of soliciting one-time gifts and donations to assist in fulfilling its final obligations.

Policies for dividing the resources among those with claims against the institution should be equitable. It is useful to involve potential claimants in the process of developing the policies. Time and effort devoted to carrying the process to a judicious conclusion may considerably reduce the likelihood of lawsuits or other forms of confrontation.

It is impossible to anticipate in advance the many claims that might be made against remaining resources of an institution, but the following three principles may help to sort out possible claims and to set priorities:

- (a) Students have the right to expect basic minimal services during the final semester, not only in the academic division but also in the business office, financial aid office, registrar's office, counseling, and other essential support services. Staff should be retained long enough to provide these services. It may be appropriate to offer special incentives to keep key personnel present.
- (b) Reasonable notice should be given to all employees, explaining the possibility of early termination of contracts and explaining that the reasons for retaining some personnel longer than others are based on satisfying the minimal needs of students and the legal requirements for closing.
- (c) Long-term financial obligations (loans, debentures, etc.) should be honored, if possible, even though the parties holding such claims may choose not to press them.

The Closing Date

The governing body should take a formal vote to terminate the institution on a specified date. That date will depend on a number of factors, including the decision whether or not to file for bankruptcy. Another key factor is whether or not all obligations to students will have been satisfactorily discharged. This is particularly important if the decision is made to allow seniors in their final year to graduate from the institution by completing their degree requirements elsewhere. If such arrangements are made, the governing body must be certain to take the legal action necessary to permit awarding degrees after an institution otherwise ceases to function. Normally, formal vote to award a degree is made after all requirements have been met, but it is legally possible to make arrangements for a student to complete the requirements for a degree at another institution and to receive the degree from the closed institution. These requirements must be clearly specified along with a deadline for completion. Also, the governing body must identify the person or persons authorized to determine whether or not these requirements have in fact been satisfied. Arrangements must be completed with the appropriate state and accrediting agencies in advance in order to assure that the degree is awarded by a legally authorized and accredited institution.

Disposition of Assets

In the case of a not-for-profit institution, the legal requirements of the state and the federal government must be followed with respect to the distribution of institutional assets. Arrangements for the sale of the physical plant, equipment, the library, special collections, art, or other funds must be explored with legal counsel. In the case of wills, endowments, or special grants, the institution should discuss with the donors, grantors, executors of estates and other providers of special funds arrangements to accommodate their wishes.

All concerned federal and state agencies shall be informed of the institution's situation and any obligations relating to state or federal funds should be approved by the proper agencies.

Other Considerations

The institution should establish a clear understanding with its creditors and all other agencies involved with its activities to assure that their claims and interests will be properly processed. Insofar as possible, the institution should assure that its final arrangements will not be subject to later legal proceedings which might jeopardize the records or status of its students or faculty.