



Strategic Growth: Planning and Executing Complex Transactions from Acquisitions to Other Institutional Partnerships

2026 MAACS Annual Conference
Lancaster, Pennsylvania

Jonathan Tarnow, Esq., Faegre Drinker Biddle & Reath
Dave McClintock, CPA, McClintock & Associates

Disclaimers

- This presentation is provided for informational purposes only.
- All views expressed in this presentation, or during the accompanying discussion, are solely those of the presenters.
- The contents of this presentation and the accompanying discussion do not constitute legal or accounting advice.
- No party should act or refrain from acting on the basis of this presentation without seeking individualized legal counsel or accounting representation.
- The contents of this presentation should not be redistributed or republished without consent.

Evaluating Opportunities for Mission-Aligned Growth

The following are six strategic opportunities for institutional growth of varying significance, emphasizing mission alignment as the threshold criterion. Each strategic opportunity involves various (and often distinct) operational, fiscal and legal and regulatory considerations for planning and successful execution.

Affiliation Agreements

Academic collaborations between independent institutions

Shared Services Agreements

Pooling administrative functions across institutions

Third-Party Program Management

Partner with external entities for program development/delivery

Organic Program Development

Internal design and launch of new academic programs

Customized Employer Programs

Workforce training tailored to specific employer needs

Mergers & Acquisitions

Structural combinations or acquisitions among institutions

Affiliation Agreements

Operational

- Continue as standalone entities; each institution controls its own academics, admissions, and personnel
- Institutional culture alignment is critical; differing missions or operating philosophies can generate friction
- Public-private models (e.g., community college partnerships) expand access while leveraging complementary strengths
- Effective vehicles for workforce development without duplicating infrastructure
- Address branding, co-marketing, and reputational risk allocation

Fiscal

- Negotiate transparent cost-sharing for infrastructure, personnel, technology, and overhead
- Weigh increased costs vs increase revenue, market share, visibility
- Revenue-sharing for jointly offered programs should reflect each party's contribution
- Include periodic true-up mechanisms in allocation models
- Potential 90/10 positive impacts

Legal & Regulatory

- Moderate due diligence to avoid operational and reputational risk
- In certain circumstances, may require notice or approval by regulatory agencies
- Address IP ownership, data sharing and privacy matters, joint liability, dispute resolution, and wind-down obligations (i.e., account for teach-outs)

Shared Services Agreements

Operational

- Precisely define scope: distinguish administrative functions suitable for consolidation from core academic functions
- Public-private structures (e.g., shared IT, library, or facilities with community colleges) yield independent economies of scale
- Service-level agreements must include measurable performance standards, escalation procedures, and accountability
- Manage workforce implications: reductions in force, retraining, and reassignment require careful planning

Fiscal

- Revenue option for a larger private school with well designed and staffed back-office services
- If the outsourcing school, prepare credible cost-benefit analysis: model savings against transition costs and integration expenses
- Accounts Receivable collection from partner institution receiving the services
- Revenue recognition to be determined based upon how services are provided and billed
- Estimate and contractually address exit costs; unwinding integrated support services can be expensive

Legal & Regulatory

- Moderate due diligence to avoid operational and reputational risk
- Common data systems (student records, financial aid, employee files) must comply with FERPA, GLBA, and state privacy laws
- Be mindful of Title IV third-party servicer requirements
- Clearly designate data ownership, access rights, and breach notification responsibilities
- Address indemnification, liability limits, insurance, and termination rights

Third-Party Program Management

Operational

- Institution must retain meaningful control over curriculum, faculty selection, admissions, and credentialing
- Evaluate technology platforms for interoperability and data portability upon contract termination
- Ensure third-party understands regulatory environment that applies to the program management activities and relationship (including program approval requirements)
- Assess bundled versus unbundled/fee-for-service models against institutional capacity and risk appetite

Fiscal

- Carefully assess revenue-sharing percentage and net margin considerations
- Negotiate reasonable term lengths, performance benchmarks, and rights to bring services in-house
- Revenue recognition considerations
- Internally developed software and curriculum development costs/capitalization policy when sold versus developed for yourself

Legal & Regulatory

- Incentive compensation regulations and Dear Colleague guidance
- Accreditation standards require the institution to bear ultimate responsibility for program quality
- Address ownership of student data, marketing materials, curriculum content, and transition assistance
- Be mindful of Title IV third-party servicer requirements
- Clearly designate data ownership, access rights, and breach notification responsibilities
- Address indemnification, liability limits, insurance, and termination rights

Organic Program Development

Operational

- Conduct market research: BLS data, employer surveys, competitor offerings, enrollment modeling
- Potentially leverage public-private partnerships (community colleges and workforce boards) for market intelligence and pipelines
- Honestly assess internal faculty expertise, instructional design capacity, and administrative support
- Allow 12-24+ months from conception through internal/external approvals and initial enrollment
- Exercise caution with fields outside areas of school's expertise: poor alignment risks student outcomes and regulatory scrutiny

Fiscal

- Capitalization versus expense
- Determine whether new programs leverage existing resources or require standalone investment
- Evaluate ROI to account for upfront investments: faculty, curriculum, technology, marketing, and student support before any tuition revenue
- Prepare break-even analysis and multiyear projections with stated assumptions on enrollment ramp-up
- Internally developed software and curriculum development costs/ capitalization policy and amortization life
- Impairment considerations

Legal & Regulatory

- Evaluate 90/10 and Earnings Premium compliance impacts
- Regulatory approval processes with state agencies, accrediting bodies and ED (for Title IV)
- Online/distance programs may require certain additional state authorizations
- Certain regulated fields (nursing, education, social work) require additional programmatic accreditation or licensure approvals

Customized Employer Programs

Operational

- Dedicate institutional capacity for relationship management, needs assessment, and curriculum customization (i.e., will it be a distraction from core business)
- Balance employer-specific responsiveness with academic rigor, breadth, and credential transferability
- Assess scalability risk: single-employer programs are vulnerable if the relationship ends or employer needs shift
- Stackable credential ladders (non-credit → associate → baccalaureate) can be highly effective structures

Fiscal

- Typically lower cost for short-term programs
- May have 90/10 benefits
- Employer-funded tuition assistance improves collections, but requires clear contractual terms on payment, credit risk, and employee eligibility
- Evaluate whether programs generate sufficient margin or serve broader strategic and mission-based goals

Legal & Regulatory

- Balance employer influence over curriculum, student selection, or credentialing with accreditation and other regulatory concerns
- Clear contractual terms on IP ownership of customized materials, confidentiality of proprietary employer information
- Address indemnification, liability limits, insurance, and termination rights
- Ensure Title IV compliance for employer-sponsored students, particularly if not fully employer-paid (including enrollment status, satisfactory academic progress, and fund returns)

Mergers & Acquisitions

Operational

- Comprehensive operational due diligence across all areas: academics, enrollment, faculty, facilities, technology, culture
- Public-private transactions and “quasi-mergers” add unique regulatory, public accountability, and political considerations
- No shared control until closing, but integration planning must begin well before closing
- Management and employee succession matters can be among the most consequential

Fiscal

- Financial due diligence must cover quality of earnings, taxes, audited financials, debt, deferred maintenance, endowment restrictions (if target is nonprofit)
- Model realistic enrollment, revenue, and expense scenarios over multi-year horizon including integration costs
- Transaction costs mainly expensed at closing; not capitalized in intangible
- Intangible and possibly PPE / lease fair value valuations
- Amortization of intangible post-closing

Legal & Regulatory

- Comprehensive legal and regulatory due diligence
- Extensive stock or asset purchase agreement, and potential ancillary agreement(s), commensurate with the scale of the transaction
- Typically involve full change of ownership/control processes with states, accreditors and ED
- Legal considerations might weigh in favor of a combined closure, teach-out and asset transfer, instead of the usual change of ownership approach
- Evolving ED policies on growth restrictions and letters of credit

Cross-Cutting Themes & Closing Principles

Mission Alignment

Growth must advance the institution's core mission; reactive or opportunistic expansions into areas outside institutional expertise carry significant risk.

Public-Private Partnerships

Arise across all six strategies; require attention to governance differences, public accountability, open-records laws, and political dynamics.

Realistic Financial Modeling

Honest assessment of institutional capacity and multi-year projections are essential before committing to any strategy.

Early Regulatory Engagement

Proactive engagement with accreditors, state regulators, and federal agencies reduces surprises and may improve approval timelines.

Stakeholder Communications

Timely and transparent communications with applicable stakeholders (e.g., board members, faculty and staff, students, employers) are critical throughout.

Expert Advisors

Experienced legal counsel and financial advisors are essential in structuring and negotiating any of these arrangements.

Contact Info

Jonathan Tarnow, Esq., Faegre Drinker Biddle & Reath

jonathan.tarnow@faegredrinker.com

(202) 354-1357

Dave McClintock, CPA, McClintock & Associates

DMcClintock@Mcclintockcpa.com

(412) 838-0206

Additional Resources

McClintock Higher Ed Insights



Faegre Drinker Updates

