

Deception, Lies, and A Tangled Mess

The Continuing Case of Decker College—A Case That Could Impact the Entire Sector

By Barbara A. Schmitz, Staff Writer/Features & Reports

*O*h what a tangled web we weave,
when first we practice to deceive!

Sir Walter Scott made that line famous in 1808 in his poem “Marmion” about the Battle of Flodden Field. But he could have been writing about the case involving Decker College and the Council on Occupational Education, or COE, which has been fraught with deception and, at least according to one judge, outright lies.

However, a December 2012 federal court decision that upheld that the council misled the U.S. Department of Education is one step closer to finally resolving the tangled mess for former Decker students, faculty, staff and other creditors. But it proved not to be the final step since in January 2013 the council appealed that federal decision to the U.S. Court of Appeals for the Sixth Circuit.

While nearly 4,000 former students, 500 employees and other creditors are still hoping they’ll get their rightly deserved money, one thing is evident now for other career colleges: Document everything to avoid such a mess.

“A lot of the things we had to prove in trial were meetings,” said Peter D. Coffman, a lawyer with Dow Lohnes in

Atlanta who is representing Decker’s bankruptcy trustee. “You really need to send agendas of what you’re going to talk about, and then send follow-up

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stuff saying we had a meeting, we demonstrated the prototype, and I appreciated your positive feedback.”

Secondly, Coffman said career colleges should beware of the application process, documenting what they are going to do, particularly if they feel the accrediting agency isn’t particularly experienced in the area they are talking about, and even if the application form fails to ask about it. According to the bankruptcy judge’s Finding of Fact, Decker put “online” and “taught through distance education” in its application, and a calendar of online teaching in its self-study a few months later, and

COE still denied knowing anything about it when the Department showed them the calendar and asked if they knew about distance education at Decker. "At this point, everyone is

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doing distance education," Coffman said. "I don't know what the next big thing will be, but whatever it is, if you feel like you're doing something that is innovative or cutting edge, beware. If it is questioned after the fact, and you haven't documented heavily what you told the accreditors, you

can't count on them to 'fess up' and say they were told about that."

Michael Goldstein, an attorney and co-leader of Dow Lohnes's higher education industry practice, said the Decker case transcends career colleges, and is relevant for all of higher education. "It's really a question of an imbalance between the power of an accrediting body and the ability of an institution to carry out its purposes," he said. "Serious mistakes were made by the accreditor, which have now been validated by two federal judges, and it enabled the accreditor to cause the destruction of the institution."

Institutions often consider an accrediting agency its friend, and if they don't get something right they'll say that it's OK and that they will correct it later. "But that is not the right way to go," Goldstein said. "You have to make sure everything is done right, that the accreditor understands things correctly, and if they don't understand, then the institution has to go back

and make a point that an error has been made and defend its position."

That's a particularly important lesson for colleges when there is a question with an accreditor that goes into institutional or program eligibility, he said. "It has to be taken very, very seriously, and it has to be responded to very aggressively."

To understand just how important those lessons are you need only look at what happened to Decker College, a for-profit vocational school with campuses in Kentucky, Georgia, Indiana and Florida that was forced into bankruptcy in 2005 when the Department of Education cut off its student loan funding.

Although Decker College closed in the fall of 2005, its story goes back to 2003 when a private equity group headed by former Massachusetts Gov. Bill Weld and Jeffrey Leeds purchased the school to start a construction program there. "If you think back to that time period, construction was going crazy," Coffman said. "Those two realized it's hard to advance in the trade and get an education when you are working all day and have to go where the work is."

So Decker College partnered with NCCER, The National Center for Construction Education and Research, and Pearson, the largest educational publisher in the world and a leader in online education, to create an online construction curriculum. "Everyone was extremely enthusiastic about it because things that are somewhat repetitive are really perfect for online education," Coffman said. "Learn it online and practice it over and over again until they do it right."

Decker's programs also included an on-campus component with students periodically coming to campus to practice and prove their skills.

Coffman said Decker officials went to the COE with Pearson representatives and showed a prototype of how the on-line curriculum would work. Receiving an enthusiastic response from the council, they started developing the program and applied to the COE to accredit the programs.

The council approved hybrid associate degree programs in carpentry, electrical and heating, ventilation and air conditioning or HVAC, and students started showing up at Decker in 2004. However, about a year later, in June 2005, things started to unfold.

That's when Ralph LoBosco, of the Department of Education's Federal Student Aid Kansas City Case Team, called up the COE at the same time the council itself was up for re-approval by ED, the bankruptcy judge found.



Editor's Note:

The Wall Street Journal reported the following on December 16, 2009:

"Former Massachusetts Gov. William F. Weld is accusing an Education Department official of sabotaging the Kentucky college where he served as chief executive, ultimately forcing the school to seek bankruptcy protection and shut its doors, according to the *Associated Press*.

"The official, Ralph LoBosco, resented Weld for leading a criminal probe against LoBosco's former employer (Wilfred-American Educational Corp.) back in his days as a federal prosecutor, an attorney for Weld told the *AP*. The eventual fall of that employer 'diminished the lifestyle that [LoBosco] and his wife enjoyed.'

"LoBosco's grand plan to get back at Weld involved pressuring an accreditation agency to unfairly withdraw its approval of Decker College, a lawsuit filed Tuesday alleges. With its accreditation gone, the college lost \$30 million in government financial aid and was unable to continue operating. It filed for bankruptcy protection, leaving 3,700 students without a school and 500 employees without jobs."



According to court records, LoBosco asked the COE why Decker's student enrollment increased from several hundred to 4,000 and questioned if the accrediting agency knew they were teaching construction through distance education. LoBosco also told COE that he had called John Barth, the person at the Department of Education responsible for reviewing COE's petition, to see if they were allowed to accredit distance education programs.

"In the first call, LoBosco says, 'You're not really doing this, are you? And by the way, I called the guy who is looking at your petition right now and I asked him if you were allowed to do this,'" Coffman said.

What was COE's response when questioned by LoBosco?

"They said, 'We're shocked,'" Coffman said. "We're shocked to find out that there is distance education going on at Decker." The bankruptcy judge wrote, "Mr. Puckett testified that he felt the need to assure Mr. Barth of [COE's] position."

Additionally, COE made no effort to contact Decker College and tell them what was happening or what it was telling the Department about the college.

Later that summer, LoBosco sent Puckett the calendar of online learning that was in the self-study and asked again whether COE approved the courses as outlined. Puckett scheduled a trip to Washington to meet with Barth of DOE in person to emphasize again COE's position. COE then wrote back to LoBosco at the Department of Education, saying they did not know Decker's programs were distance education programs when they approved them.

The leader of the site team even wrote on the document that construction was being taught through distance education. Yet in court, COE officials denied reading it.

“And now two federal judges have found that to be factually erroneous, false and dishonest,” Coffman said.

At the time, Decker College refuted COE’s inaccurate statement, but the Department of Education didn’t believe the school. Thus, on Sept. 30, 2005, on the basis of COE’s statements that the construction trades programs were not accredited, the DOE declared Decker’s

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Decker College Bankruptcy Trustee***

hybrid programs not to be eligible for federal student aid, terminated Decker’s eligibility to participate in federal student financial aid programs and sought

recovery of \$32 million of previously awarded financial aid funds. By October 2005, Decker College closed and its creditors filed a petition for Chapter 7 liquidation.

Decker sought a temporary restraining order to prevent its precipitous collapse, but COE argued that since Decker College had other problems, the restraining order wouldn’t necessarily save them. “Decker’s other problems were the kind of stuff you typically work through,” Coffman said. “Disputes whether refunds were being made quickly enough typically don’t kill schools.”

But the judge hearing the case agreed with COE, and Decker went into bankruptcy. Seven years later, however, the bankruptcy judge ruled that the council’s statements to the Department were in fact false, and the COE appealed that decision.

In the December decision, District Court Judge John H. Heyburn II wrote that the COE was “dishonest when it told the Department (of Education) it did not approve” certain programs in the construction trades that were

offered using a hybrid format of online and residential delivery. Judge Heyburn wrote, “This court finds no error in Bankruptcy Judge Fulton’s reasoning and finds his factual findings to be fully supported by the record evidence.”

While a serious matter, Coffman said the trial had some high points.

Coffman had deposed COE executive director and president Gary Puckett previously, so he had his sworn testimony. “When he backed up on a couple of things, I had to pull out the transcript and read it to him. He denied that he had already called John Barth and I had to refresh his recollection on that. Alex Wittig of COE similarly claimed at trial he had not read the portion of the application that said the courses were to be ‘taught through distance education,’ but he had to grudgingly admit that he had read it after being confronted with his deposition testimony.”

Coffman said it was also enlightening when witnesses would come in and say how thorough they are, often reading reports twice. “But when they figured out what I was asking, they always said they didn’t read that.”

For instance, Puckett said in court that the COE didn’t read Decker’s self-study schedule, which outlined how many weeks students were taught on campus and online. “But the members of the commission who went on the site visit in September 2004 are supposed to read it, and all the guidelines say they are supposed to read it. Yet, the two that COE brought to trial said they didn’t notice it.”

The leader of the site team even wrote on the document that construction was being taught through distance education. Yet in court, COE officials denied reading it, even though Puckett sent Decker a letter in March 2005 saying they read the site visit report and they had some problems, but

the letter did not mention unapproved distance education as one of them.

“How many times can they say they are going to do something, and then say they didn’t do it?” Coffman said. “They want everyone to believe them, but when we have a third-party witness like Pearson saying we demonstrated this program to them, it became obvious to the court who was telling the truth.”

Bob Keats, of the Louisville firm Keats & Schwietz PLLC, Decker College’s court-appointed bankruptcy trustee is a patient man, but he is hoping to

right the wrong, and to do it soon. Creditors filed \$57 million in claims against the school, but with the case in limbo, he has not been able to pay those claims.

“I’m saddened that this case continues to go without any relief from claims,” he said. About 500 former Decker College employees never did get their final paychecks, and they filed \$1.4 million in claims for wages.

Yet Decker students were hurt even more and many were devastated when the school closed in 2005, he said.

Who’s Who in the Decker College Case

Council on Occupational Education, Inc. (COE) — An accrediting association recognized by the U.S. Secretary of Education that had accredited Decker College.

John Barth — director of the Department of Education’s Accreditation and State Liaison Office. Barth was in charge of the staff members who were investigating COE’s then-pending petition for re-recognition by the Secretary and who, based on that investigation, would issue a report to NACIQI, or the National Advisory Committee on Institutional Quality and Integrity, containing its recommendation as to what action NACIQI should take on COE’s then-pending petition.

Peter D. Coffman — a lawyer with Dow Lohnes PLLC in Atlanta who is representing Decker’s bankruptcy trustee.

Judge Thomas H. Fulton — U.S. Bankruptcy Court for the Western District of Kentucky, who found that the COE’s representations to the Education Department were false, saying that Decker officials had made clear to the council on numerous occasions that the college was using distance education to offer the programs, and that the agency had approved the programs nonetheless.

Michael Goldstein — an attorney and co-leader of Dow Lohnes’s higher education industry practice.

Robert W. Keats — Decker College Bankruptcy Trustee of Keats & Schwietz PLLC, Louisville, Ky.

Ralph LoBosco — U.S. Department of Education’s Federal Student Aid Kansas City Case Team who initially questioned COE if it had accredited Decker College’s distance learning programs.

John G. Heyburn II — District Court judge who found that the COE was “dishonest when it told the Department (of Education) it did not approve” certain programs in Decker’s construction trades that were offered using a hybrid format.

Gary Puckett — COE executive director and president, who on numerous occasions said Decker offered its distance education programs without their knowledge.

Sue Schooler — COE associate executive director.

William Weld — Former Massachusetts governor and Decker College president who started the hybrid construction trades programs. Weld later accused LoBosco of sabotaging Decker College, saying LoBosco resented him for leading a criminal probe against LoBosco’s former employer (Wilfred-American Educational Corp.) when Weld was a federal prosecutor.

Alex Wettig — COE associate executive director.

“Students were angry that they were cheated out of an opportunity to receive an education in those unique fields,” Keats said. But the closing also left students with debt. Some tried to get out of it by filing individually for bankruptcy, but they found that the federal student loans cannot be discharged in bankruptcy.

“Some of them have just given up,” Keats said. “They still have debt and they can’t get any more money to go back to school.”

“There is a lot of discussion in the accreditation community as to why this happened and how to keep it from happening again. This could prove fatal to COE. Two federal judges have agreed that the COE either made a mistake or affirmatively lied, but that caused tens of millions of dollars of harm to Decker students, employees and creditors. If this is not otherwise resolved, it will result in a liability being assessed against COE that will be far beyond COE’s resources.”

***– Michael Goldstein,
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Just as frustrating to Keats was the fact that the school’s reputation was damaged. At the time of Decker’s closing, there were a lot of unsubstantiated negative rumors going around about the college, he said. But he said his investigation showed that there was little truth to those rumors.

“As trustee, I ordered the executive officers to meet

with me every Wednesday until I was satisfied with the level of information,” he said. “Every week they all showed up, and they showed up with documents. I visited their offices, went through their desks and filing cabinets ... and amassed a picture of one professional operation. I was impressed with all I saw. If they were in the business of doing something evil, I couldn’t find it.”

In fact, a criminal investigation into the school ended in January 2009 without any charges being filed.

Keats said this case has taken a lot of commitment, perseverance and

occasionally, humor. “But I’m still here doing it because of the many people who were hurt. I’m offended by what happened, especially since an official with the Department of Education caused this mess....”

And a mess like this could happen again, Goldstein said.

“Can an accrediting agency make a mistake? Yes. They are run by people, and the rules are complicated and getting more complicated,” he said. “The Department of Education is putting more and more pressures on accreditors to be surrogates for the Department. That means the likelihood of this sort of thing is greater. Accreditors are looking harder and harder at things that relate to not just the quality of an institution.... They are also looking at the way an institution complies with federal rules and they are not necessarily equipped to do that.”

Still, the Decker case has been a wake-up call to accrediting agencies, as well as colleges. “There is a lot of discussion in the accreditation community as to why this happened and how to keep it from happening again,” Goldstein said.

Can the COE survive the recent controversy?

Coffman said he doesn’t know. “I’m not an expert on accreditation review, but they were harshly criticized for their handling of Decker in the 2005 review because they had done such a poor job. And that didn’t get into the question of whether or not they lied. Can the Department continue to rely on them as a reliable evaluator of curriculum when they don’t tell the truth? Time will tell.”

Goldstein isn’t as optimistic.

“This could prove fatal to COE,” he said. “This is a case brought by the bankruptcy trustee, and his job is to recover for the estate what is left,

including damages from anyone who caused harm to the institution. Two federal judges have agreed that the COE either made a mistake or affirmatively lied, but that caused tens of millions of dollars of harm to Decker students, employees and creditors. If this is not otherwise resolved, it will result in a liability being assessed against COE that will be far beyond COE's resources."

What happens now that the council has appealed the district court decision to the Court of Appeals?

"We wait," Goldstein said. The Court of Appeals will set a schedule for briefs, and both sides will prepare briefs arguing why they are right.

Kenneth Ingram, a partner with Whiteford | Taylor | Preston in Washington, D.C. and a COE attorney, would not comment on the case. "This case is active litigation and it would be inappropriate to comment," he wrote in an email.

However, in the federal court case the council argued that the bankruptcy court had violated its due process rights and exceeded its authority. Among other things, the COE argued that the bankruptcy court erred by failing to consider critical pieces of evidence that tended to show that Decker actively concealed the nature of its hybrid program by failing to consider the misrepresentations and omissions Decker made in its hybrid program application.

However, Goldstein said he doesn't believe there is anything to appeal. "They can restate the argument made to the district court, but we think the

district court got it exactly right and got it right several different ways."

So would that mean that ending is finally in sight for Decker's former students, employees and creditors?

"Part of the problem is that the judicial system in these types of cases moves very slowly," Goldstein said. "There is nothing the trustee can do until the adjudication is completed."

The next step would be determining the damages against COE and getting the Department of Education to release funds owed to the school and its students, he said.

Coffman said he wonders how the Department can fail to recognize reality now that two judges have found COE's statements to be dishonest and thus release the \$24 million owed to the school. "Can they still stand behind a letter that has twice been found to be false?" he questioned.

In addition, the monetary claims against COE will also be moving forward at some point, he agreed.

Coincidentally, the hybrid construction trades program that Decker was using has now been adopted by hundreds of institutions around the country, Goldstein said. "It is making a significant difference in training craftspeople in the building trades, which is obviously something much needed."

"This was not bad teaching," Coffman said. "This was good teaching, a good school and a good business that got killed."

Decker College Case Timeline

- **1992–2005** – The Council on Occupational Education, or COE, serves as Decker College’s accrediting agency.
 - **January 2003** – Decker College begins work with the National Center for Construction Education and Research, or NCCER, and Pearson Education, Inc. to develop an online curriculum for construction, electrical, and heating, ventilation and air conditioning programs that would be blended with on-site classroom teaching and testing.
 - **February 19, 2003** – Decker officials meet with COE to review and discuss proposed hybrid construction-related programs that would be offered through a combination of online and on-site education.
 - **May 21, 2003** – Compass Educational Holdings, Inc., the parent company of Decker College, and Pearson sign an agreement providing for Pearson to develop the online construction trades curriculum as it had been presented to COE two months before.
 - **September 2003** – Decker College representatives meet again with COE officials to discuss the progress of the distance education curriculum, at which time Decker makes an electronic presentation to COE.
 - **November 2003** – At a breakfast meeting held in Atlanta, during COE’s annual meeting, William Weld and others from Decker speak to COE’s Gary Puckett, Sue Schooler and Commission members regarding the upcoming hybrid programs.
 - **March–May 2004** – Decker submits applications to COE for three associate degree programs in electricity, carpentry and HVAC. All three applications note instruction would be done “day/night/online.”
 - **June 2004** – The COE approves Decker’s hybrid programs without any limitation as to their mode of delivery.
 - **August 2004** – COE’s visiting teams review Decker’s self-study report, which explains that its hybrid programs were being offered through a combination of 53 weeks of online instruction and nine weeks of on-site instruction. Members of the visiting team see the actual operation of the hybrid programs. The written report of the COE visiting team states that there was no substantive change in the hybrid programs offered from the manner in which COE had approved them.
 - **February 2005** – Decker’s self-study and site visit report are forwarded to COE’s governing body for review. After that, Puckett tells Decker in writing that the Commission reviewed the report, which discussed the hybrid programs and their mode of delivery in detail, and the subsequent written report of the visiting site team as COE procedures require.
 - **May 2005** – Gary Puckett, COE’s executive director, Decker CEO William Weld and others meet in Washington, D.C. with U.S. Rep. John Boehner, R-Ohio. Weld describes in detail the three online programs.
 - **June 2005** – Ralph LoBosco of the Department of Education asks COE administrators whether they knew Decker was teaching the hybrid programs mostly online. Puckett and his staff tells LoBosco that COE never would have approved the programs to be offered in their hybrid format and that they were surprised to learn that they were being offered primarily online. At the same time, COE’s re-recognition petition as an approved accreditor is before the DOE. The COE also petitions the Department for explicit recognition to accredit distance education programs, which had previously been implied with its grandfathered scope of recognition. Puckett called John Barth, the Department of Education official reviewing COE’s petition for recognition, after the call with LoBosco to assure him that COE was not aware of distance education at Decker.
 - **June 17, 2005** – COE Associate Executive Director Alex Wittig sends a letter to LoBosco stating on behalf of COE that Decker’s hybrid programs “were not perceived as online programs by COE.”
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- **June 22, 2005** – COE sends a second visiting team to Decker to allow the accrediting agency to conduct a “focused review site visit” to verify that Decker was now in compliance in areas where recommendations were written during the August 2004 team visit. However, none of those areas related to the method of delivery of the hybrid programs.
- **June 30, 2005** – COE officials again tell LoBosco that they were unaware of the distance education components in the construction trades at Decker College.
- **July 28, 2005** – COE sends a third team to do a site visit at Decker, instructing the team in a memorandum that prejudged the issues and prejudiced the team with false information that the college had changed its construction craft associate degree programs. In addition, the council writes in the memo, “Because of the sensitive nature of this information, I recommend that you do not bring this handout with you on the trip.” This third COE site team concluded that the distance education components of the hybrid programs were a substantive change where the two prior teams had not.
- **August 1, 2005** – LoBosco writes to the COE again, asking about the programs and their accreditation.
- **August 18, 2005** – Puckett, Wittig and other COE executives meet with John Barth and his staff at the Department of Education and tell them the council hadn’t approved the three programs to be taught online.
- **August 23, 2005** – COE’s Puckett writes to LoBosco and states that COE had not approved the hybrid programs “to be offered primarily through distance education” but rather that COE had approved the hybrid programs “to be delivered using the traditional delivery mode including classroom/lecture hours and shop/lab hours.” Puckett copies John Barth, who is with the Department of Education’s Accreditation and State Liaison Office.
- **August 30, 2005** – After learning about the COE letter to LoBosco, Decker’s Weld sends COE a letter requesting that the association issue a letter to the Department correcting the false statements.
- **September 30, 2005** – The U.S. Education Department terminates Decker’s eligibility for federal student financial aid, largely based on the COE’s statements that Decker had delivered three of its programs online without the agency’s approval.
- **October 2005** – Decker College closes and its creditors file a petition for involuntary bankruptcy for Chapter 7 liquidation.
- **November 4, 2005** – Robert Keats is appointed Decker College bankruptcy trustee.
- **July 2012** – A federal bankruptcy judge in Kentucky rules that COE’s representations to the Education Department were false, saying that Decker officials had made clear to the council on numerous occasions that the college was using distance education to offer the programs, and that the agency had approved the programs nonetheless.
- **December 2012** – A federal court upholds the bankruptcy court ruling that the COE misled the U.S. Department of Education in a proceeding that results in Decker College’s bankruptcy.
- **January 2013** – COE appeals the December decision to the U.S. Court of Appeals for the Sixth Circuit.

Sources: Findings of Fact, Decker post-trial brief, various news articles
