

July 19, 2018

ELECTRONIC DELIVERY

[REDACTED]
U.S. Aviation Training Solutions (formerly Bristow Academy)
365 Golden Knights Boulevard
Titusville, Florida 32780

School #M069038
Appeals Panel Decision

Dear [REDACTED]

On May 23, 2018, the Appeals Panel of the Accrediting Commission of Career Schools and Colleges (“ACCSC” or “the Commission”) heard the appeal of U.S. Aviation Training Solutions (“USATS” or “the school”) (formerly Bristow Academy).¹ USATS brought this appeal from the March 23, 2018 decision of the Accrediting Commission of Career Schools and Colleges (“ACCSC” or “the Commission”) to withdraw the school’s accreditation. The school submitted a Letter of Intent to Appeal a Commission Decision dated March 28, 2018 and timely filed its Grounds for Appeal on April 23, 2018. Pursuant to ACCSC’s *Rules of Process and Procedure*, a hearing was held before an independent Appeal Panel at which representatives of USATS appeared to present their appeal and respond to questions from the panel. For the reasons set out below, the Appeal Panel unanimously affirms the decision of the Commission to withdraw USATS’ accreditation and remove the school from ACCSC’s list of accredited institutions.

Bristow Academy’s Change of Ownership

In August of 2017, the Commission reviewed the on-site evaluation report from an unannounced visit conducted at Bristow Academy as well as the school’s response to that report. Based upon this examination, ACCSC voted to defer final action on the on-site evaluation in order to give the school additional time to demonstrate that it complied with the Commission’s Standards of Accreditation particularly as they pertained to successful student achievement, student satisfaction, program advisory committees, admissions, and vocational objectives. The Commission specified that the deferral would run until the Commission’s February 2018 meeting.

Before the Commission could meet in February 2018, however, ACCSC received notice by letter dated December 15, 2017 that ownership of the school had changed effective November 1, 2017. Specifically, the school’s letter stated that “The new owners’ acquisition of Bristow Academy Inc. was effective November 1, 2017.” The letter transmitted Bristow Academy’s Change of Ownership Application-Part I and advised that the Change of Ownership Application-Part II would “be filed immediately after Application Part I and is timely submitted, i.e. within 45 days of the date of the acquisition of Bristow Academy Inc. by Bristow Academy’s new owners.” In its letter, Bristow Academy also asserted that “[t]he Change of Ownership Application Part I was previously legally precluded from being submitted within the thirty days prior to the sale window for the reasons set forth below [and that] [w]e respectfully request that the Part I submission be accepted as timely submitted under the circumstances.”

The December 15, 2017 letter recited several reasons why the Change of Ownership Application could not be filed in accordance with the strict time requirements of the Commission’s *Standards of Accreditation*.

First, Bristow Academy stated that:

¹ When referencing the Commission’s historical review and action, the school is referred to as Bristow Academy herein.

The new owners were legally precluded from disclosing the acquisition of the school within the thirty-day window by U.S. Securities Exchange Commission (SEC) laws and regulations. Prior to its acquisition by the new owners, Bristow Academy Inc. was a wholly owned subsidiary of publicly traded entity Bristow Group Inc. In an effort to comply with the ACCSC thirty-day window requirement, we [Bristow Academy] communicated with the Bristow Group and were advised by its legal department that the Securities Act and related SEC insider trading rules strictly required that, during the negotiation phase, no dissemination of any information regarding the sale could be made until the next quarter financial statements became public and the transaction announced to the public.

Second, Bristow Academy contended that:

In addition to being prohibited by the Securities Act, submittal of Part I before we notified our Government customers and the public of the sale could have derailed the sale. The government contracts with foreign governments and foreign agencies and their representatives abroad, such as Colombia, carry heavy penalties and a hierarchy of notifications of changes such as new ownership prior to public release, breach of which could have subjected new owners and Bristow Academy to substantial monetary penalties of value contract plus 50 percent (or up to \$3 million).

Bristow Academy also asserted that the sale and transition were complicated by the training of Colombian Army Officers at two locations.

Third, the December 15, 2007 correspondence asserted that the school's applications "demonstrate the continuity of business and operational leadership at the acquired academic institution and a revitalization of the academic and business development aspects of running an academy."

Based on the reasons articulated in the letter, Bristow Academy requested that its Part I Change of Ownership Application "be accepted as timely under the circumstances, as we were acting in the best interest of our employees and customers."

The Commission's March 28, 2018 Decision

When the Commission met in February 2018, it considered Bristow Academy's request that it approve the school's change of ownership that took effect prior to receiving approval from ACCSC. For the reasons articulated in a March 23, 2018 letter to Bristow Academy, the Commission declined to approve the change of ownership, voted to withdraw the accreditation of the school, and removed Bristow Academy from the list of accredited institutions effective as of November 1, 2017.

ACCSC's decision letter recited the clear requirements which govern a change of ownership by a school accredited by the Commission. *Section IV (E)(2), Rules of Process and Procedure, Standards of Accreditation* provide in pertinent part:

A change of ownership of an accredited school that results in a change of control requires approval of a transfer of accreditation to the new owner prior to the consummation of the change of ownership. In such a case, the Commission reviews a proposed transfer of accreditation to determine whether there is a substantial likelihood that the school will remain in compliance with accrediting standards after the ownership change. If the school fails to obtain the Commission's approval prior to the change of ownership, the accreditation of the school will not transfer. Consummation of a change of ownership without the Commission's prior approval will result in

withdrawal of the accreditation of the school effective as of the date of the ownership change. Appropriate state and federal agencies will be notified [emphasis added].

Section IV (E)(2)(i), Rules of Process and Procedure, Standards of Accreditation also directly addresses the consequences of failing to secure prior Commission approval of a change of ownership:

Failure to Obtain Advance Approval: Failure to obtain approval of the transfer of accreditation in advance of the change of ownership will result in the removal of the school from the list of ACCSC-accredited schools as of the date that the change of ownership occurred.

Against these clear requirements, the Commission reviewed the arguments advanced by Bristow Academy to support its request that ACCSC accept its Application for Change of Ownership even though it was filed 45 days after the change of ownership had become legally effective. With respect to the school's contention that Securities and Exchange Commission laws and regulations precluded Bristow Academy from disclosing the acquisition of the school in accordance with ACCSC rules, "the Commission found that Bristow Academy provided no evidence to support its assertions that SEC restrictions prevented the school from notifying ACCSC of the change of ownership in advance. The school provided no citation from any statute, regulation, or other legal authority to support its assertion. In the Commission's experience, no such restrictions have prevented other publicly-traded owned schools from notifying ACCSC in advance of a change of ownership resulting in a change of control." The Commission also observed that its rules specifically contemplate changes of ownership involving publicly-traded corporations and, while they may involve additional considerations, the Commission's requirement that a school secure ACCSC approval prior to the consummation of a change of ownership remains in full force and effect.

Based on this analysis, the Commission's decision letter concluded "that the school failed to meet the burden to demonstrate continuous compliance with the *Standards of Accreditation* in that the school failed to apply to the Commission for a change of ownership and to receive prior approval for the transaction as required." Specifically, the Commission determined that:

- a. Bristow Academy completed a change of ownership prior to receiving Commission approval;
- b. The ACCSC *Standards of Accreditation* explicitly state that consummation of a change of ownership without the Commission's prior approval **will result** in the withdrawal of a school's accreditation effective as of the date of ownership change; and
- c. Bristow Academy failed to provide any evidence, other than wholly unsupported assertions, to show that the school could not have complied with ACCSC's requirements. [Emphasis in original].

For these reasons, the Commission withdrew Bristow Academy's accreditation and removed the school from the list of accredited schools effective as of November 1, 2017.

Appeal Panel Findings and Conclusions

USATS' Grounds for Appeal, dated April 23, 2018, were filed with ACCSC in a timely manner. The school posited several reasons why the Commission's decision should be overturned by the Appeal Panel. The Appeal Panel carefully considered each of the school's contentions in light of the burden of proof which a school has on appeal. *Section VIII (B) of the Commission's Rules of Process and Procedure, Standards of Accreditation*, provides that on appeal, the school has the burden of proving that the Commission's decision to withdraw the school's accreditation "was arbitrary, capricious, or otherwise in substantial disregard of the criteria or procedures of the Commission, or not supported by substantial evidence in the record on which the Commission took action." *Section VIII (B)(4), Rules of Process and Procedure, Standards of*

Accreditation also stipulate that with the exception of certain financial information, “[t]he Appeals Panel will only consider that information that was before the Commission at the time that the adverse action was taken....” ACCSC’s *Rules of Process and Procedure* provide that the Appeals Panel has the authority to affirm, reverse, remand, or amend the Commission’s decision to withdraw the school’s accreditation.

The Appeal Panel’s findings and conclusions with respect to each of the school’s contentions are set out below.

The Decision was Not Supported by Substantial Evidence in the Record

USATS argued that the Commission failed to take into account several “facts” when it made its decision including that the school was “legally precluded” from submitting the application by SEC requirements; that prior to its acquisition the school was a wholly-owned subsidiary of a publicly-traded company; that Bristow Group’s legal department had advised that no dissemination of sale information could be made public; that insider trading rules prohibited the dissemination of information about the sale; that news of the sale could have derailed the transaction; that government contracts with foreign companies complicated matters; and that the 45 day period occurred during the training of Colombian Army Officers at two locations. The school argued that the Commission ignored these “factual assertions” and in doing so, was acting in a manner inconsistent with its “prior practice to consider claims made by School in letter submittals, and/or practice to request clarification, documentation or other information as needed, prior to making its determinations” (Grounds for Appeal at 3-4).

The Appeal Panel looked closely at these arguments and was not persuaded that they demonstrated that the Commission’s decision was not supported by the evidence on the record. First, the statements that the school characterized as “facts” are not facts, they are unsupported assertions. For example, the school repeatedly asserted that SEC law and regulations precluded the disclosure of the sale transaction to ACCSC but did not give a citation to a single statute or regulation which definitively precludes a publicly-traded company from timely filing an application for approval of the transaction by an organization recognized by the Secretary of Education and whose standards (also approved by the Department of Education) require such pre-approval. Second, the school stated that it relied on advice from the legal department at the Bristow Group but it did not provide a copy of an opinion of counsel or any other writing memorializing such advice. Third, the school did not explain how the insider trading rules would be violated by filing an Application for Change of Ownership with ACCSC nor did the school make even the slightest attempt to determine if ACCSC could have handled the transaction on a confidential basis at least in the pre-public stages. Fourth, the school’s contention that the Commission should not have withdrawn its accreditation “without requesting clarification of the facts and information available to it” is without basis. ACCSC’s *Rules of Process and Procedure, Standards of Accreditation* place the burden of proof squarely on the appealing school and ACCSC has no obligation to assist the school in making its case for relief by doing legal research for the school.

In addition to the foregoing, the Appeal Panel was troubled by discourse at the May 23rd appeal hearing which indicated that the parties to the sale transaction were far more concerned about the impact of disclosure of the transaction on the quarterly financials and the company’s stock price than they were about complying with an express ACCSC requirement. When asked about the directive from the seller’s legal department that the sale could not be disclosed, [REDACTED], General Counsel for USATS, stated “in this case, it was contractual, that was a prerequisite to going forward with the contract. And their concern was based on what was going on with their stock and the volatility of the market.” (Appeal Hearing Transcript at 38). As to the reason why the disclosure issue was material to Bristow Group, [REDACTED] explained “It

was material because it was an acquisition of one of their subsidiaries. And it was a significant event that was going to impact their stock. And secondly – and an acquisition of an entity that was losing money on a month-to-month basis.” (Appeal Hearing Transcript at 39). [REDACTED], provided additional information on this point: “And I had a conversation with legal counsel inside of Bristow around the requirement to notify in front of ACCSC, more specifically out in front of the transaction. And the answer was that it was not okay. It’s a – potentially will do exactly what [REDACTED] described, which is impact the shareholders return and the earnings call that’s going to come out in November” (Appeal Hearing Transcript at 49). “The primary concern is, how does this impact Bristow and the second quarter earnings call which happens first part of November?” (Appeal Hearing Transcript at 49-50).

The Commission’s Decision was Arbitrary

In its Grounds for Appeal, the school argued that the “Commission acted arbitrarily by not conducting the appropriate level of due diligence in order to understand the basis of School’s expressed dilemma regarding its inability to disclose SEC regulated non-public information, relative to the change of ownership notification process” (Grounds for Appeal at 5). The school also observed that SEC regulations are public information and “easily researchable” so the Commission could have validated the school’s claim. The school also claimed, without pointing to any Commission standard or rule or any other source of legal authority that “Once the school presented its assertions, the burden of proof shifted to the Commission to dispute those facts, or to request clarification, documentation or other information as needed, prior to making its determination” (Grounds for Appeal at 5).

The Appeal Panel found nothing in the school’s Grounds for Appeal to support the claim that the Commission’s decision was arbitrary. In the first instance, the Commission’s change of ownership rules are clear and unmistakable – ACCSC must approve the Application for Change of Ownership before the change of ownership is effective or the accreditation of the school will be withdrawn. The school’s change of ownership was legally consummated long before the Commission was asked to consider the application. Under ACCSC’s rules, withdrawal of accreditation was the required action. The Appeal Panel finds nothing arbitrary about the Commission’s action in that regard. Furthermore, as noted above, the burden of proof on appeal rests exclusively with the appealing school and it is not enough for it to claim that it has made various assertions that it is then the responsibility of the accrediting body to rebut. The school offers no authority to support this contention and the Appeal Panel finds none in ACCSC’s *Rules of Process and Procedure or Standards of Accreditation*.

It appears patently incongruous to the Appeal Panel that the school argues that the Commission’s decision was arbitrary when the testimony at the appeal hearing demonstrated that the participants to the sale transaction made a conscious decision to ignore the Commission’s requirement that the change of control be approved in advance of consummation, believing that they could deal with it later. During the hearing, the following exchange occurred between [REDACTED] and [REDACTED]

[REDACTED]: *At the time, [REDACTED] was the person designated to deal with the Commission. And at the time, [REDACTED] aware of the requirement [for prior approval] and informed his superiors of that requirement.*

[REDACTED]: *Yes, he did.*

[REDACTED]: *And there was a decision made to ignore it, correct?*

██████████ Yes, sir.

(Appeal Hearing Transcript at 53). Later in the hearing, ██████████ clarified: “Well, it’s not me that accepted it, it’s my owners. They made a business decision” (Appeal Hearing Transcript at 54).

Testimony at the appeal hearing also indicated that the seller believed that “they could get a reprieve from ACCSC” apparently by trading on their 24 years of relationship with ACCSC, the availability of an appeal process, and the fact that USATS was keeping the school’s management structure intact (Appeal Hearing Transcript at 59-65). In short, the Appeal Panel’s impression was that the seller made a business decision to protect the financials and stock price by not following ACCSC’s explicit requirement for prior approval of a change of ownership gambling that it could later persuade the Commission to give them a “reprieve.” Under these circumstances, the Appeal Panel found nothing arbitrary about the Commission’s decision to withdraw accreditation.

The Commission’s Decision was Capricious

USATS contends on appeal that *Section IV (E)(2), Rules of Process and Procedure, Standards of Accreditation* “is not constructed in a manner that provides sufficient consideration or indemnification to SEC regulated entities, or individuals acting on behalf of SEC regulated entities, with respect to disclosure of non-public information” (Grounds for Appeal at 5-6). The absence of an indemnification provision in the Commission’s rules, the school submits, exposes the seller to liability and creates a dilemma regarding the disclosure of non-public information. The Commission’s rules are capricious, according to USATS, because they do not contain such protections or take into account situations such as the one in which USATS perceives itself.

The Appeal Panel also finds this claim to be without merit. First, as the Commission pointed out in its March 23, 2018 decision letter, in its experience, no SEC restrictions have prevented other publicly-traded owned schools from seeking required approval from ACCSC in advance for a change of ownership resulting in a change of control. USATS has offered no explanation why its situation is unique and requires a special dispensation from a core accreditation requirement. Second, there is no evidence in the record, and the school has offered none, to show that it made any attempt to communicate with ACCSC about its situation and determine whether there was a way to handle it without running afoul of any potentially applicable legal requirement. Finally, it is telling that USATS did not state that it would have followed the Commission’s rules and sought prior change of ownership approval if there was an indemnification provision in the *Rules of Process and Procedure, Standards of Accreditation*.

Conclusion

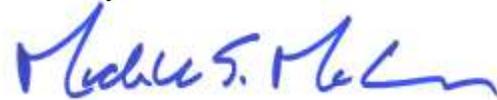
Based upon the analysis presented above, it is the unanimous opinion of the Appeal Panel that the record clearly supports the Commission’s decision to withdraw the accreditation of USATS and to remove the school from the list of ACCSC-accredited schools. The Commission’s March 23, 2018 decision is, therefore, affirmed and in full effect.

In accordance with the provisions set forth in *Section X, Rules of Process and Procedure of Process and Procedure, Standards of Accreditation*, the Commission will make public the reasons for the withdrawal of accreditation and notify the appropriate state and federal agencies. The school may submit comments on or before July 30, 2018 in accordance with the enclosed Public Comment Disclosure Form. Comments

submitted by the school will accompany any public disclosure of a final Commission action pursuant to *Section X (C)(4) & (D)(4), Rules of Process and Procedure, Standards of Accreditation.*

For additional information regarding this matter, please contact me directly at [REDACTED]

Sincerely,



Michale S. McComis, Ed.D.
Executive Director

Encl.: ACCSC Public Comment Disclosure Form