

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO,)	
LLC, <i>et. al.</i> ,)	
)	
Defendants.)	

EMERGENCY MOTION OF MARK E. DOTTORE, RECEIVER OF ARGOSY
EDUCATION GROUP LLC AND ARGOSY UNIVERSITY, FOR AN ORDER
AUTHORIZING THE RECEIVER TO ENTER INTO AN ARTICULATION
AGREEMENT WITH SOUTH UNIVERSITY

Mark E. Dottore, (the “**Receiver**”) duly appointed and acting Receiver, hereby moves this honorable Court, pursuant to the Order appointing him, federal common law and Fed. R. Civ. P. 66, and Rule 66.1(c) and (d) of the Local Rules for the United States District Court for the Northern District of Ohio for the entry of an Order authorizing him to enter into an Articulation Agreement between South University and Argosy University to allow Argosy students in specific programs to transfer to South University (“**South**”) under certain terms and conditions, including discounted tuition for transferring Argosy students. The Articulation Agreement is attached hereto as Exhibit A, and the terms and conditions of the final agreement will be substantially similar or better than those in Exhibit A. Specifically, the Receiver and South are discussing better credit transferability with accreditors and educators. In support of this Motion, the Receiver says as follows:

PROCEDURAL HISTORY

1. This Court appointed the Receiver on January 18, 2019, on an emergency basis, pursuant to its Order Appointing Receiver [Dkt. No. 8] (the “**Initial Receiver Order**”). On January 25, 2019, after discussions with the secured lenders of the Receivership Entities, the Receiver filed his *Motion of Mark E. Dottore, Receiver for Entry of Order Clarifying Order Appointing Receiver* [Docket No. 12], pursuant to which the Court entered the Clarifying Order, *nunc pro tunc* to the entry of the Initial Receiver Order. [Dkt. No. 14].

2. On February 25, 2019, the Receiver filed his *Motion of Mark E. Dottore Receiver for Entry of Amended Order Appointing Receiver*, seeking the entry of an Amended Order Appointing Receiver (the “**Amended Receiver Order**”), incorporating changes requested by persons with significant interests in the Receivership Entities and the operations of the receivership proceedings, including government entities and lenders. The Amended Receiver Order provides that the Receiver’s authority to negotiate and effect a sale of the assets is subject to Paragraphs 13 and 14 of the Amended Receiver Order. Paragraph 13 affirms that the regulatory authority of the United States may not be stayed or constrained and Paragraph 14 affirms the validity of the Federal Priority Statute, 31 U.S.C. § 3713.

3. The various iterations of the orders appointing the Receiver shall be referred to herein as the “**Receiver Order**,” when the differences between the Initial Receiver Order, the Clarifying Order and the Amended Receiver Order (if entered by the Court) are insignificant for the purposes of this Motion.

JURISDICTION AND AUTHORITY OF THE RECEIVER

4. The relief requested in this motion is governed by FED. R. CIV. P. 66, Rule 66.1(c) and (d) of the Local Rules for the United States District Court for the Northern District of Ohio (the “**Local Rules**”), federal common law and the Receiver Order.

5. The Interim Receiver Order provides,

2.c. The Receiver shall have the authority to operate and manage the Receivership Entities and the Property as he deems prudent in his sole discretion throughout the litigation, subject to further order of this Court. The Receiver shall preserve and care for any and all of the Property and utilize any and all of the Property to preserve and maximize the value of the Property.

2.d. The Receiver shall secure the business premises, business equipment, data and documents; take control of all means of communication with students, investors, secured and unsecured lenders, landlords, vendors, agents and others doing business with the Receivership Entities (the “**Business**”). The Receiver shall have the authority to communicate and negotiate with and enter into agreements with the Department of Education regarding the “teach-out” or any other issue. The Receiver shall have the authority to take all reasonable and necessary steps to wind-down and liquidate the business operations.

FACTS AND HISTORY OF ARGOSY

6. Dream Center Education Holdings LLC (“**DCEH**”) is a not for profit holding company. Prior to the commencement of this case, DCEH held the equity interests of Argosy University of California, LLC, Dream Center South University, LLC, and The Arts Institutes International, LLC. Please see the First Report of Receiver [Dkt. No. 91], which is fully incorporated herein for further information as to DCEH’s structure.

7. Argosy University of California, LLC held the equity of Argosy Education Group, LLC which owned 25 university campuses and Western State College of Law at Argosy University. On March 6, 2019, the Receiver filed an Emergency Motion to Sell, Transition or Close Argosy University Campuses and Art Institute Campuses [Dkt. No 112]. South wishes to provide students with transfer opportunities on the terms and conditions in the Articulation Agreement.

THE TRANSACTION

8. The Articulation Agreement spells out the terms that will be offered to each Argosy student, including enrollment, credit transferability and financial arrangements. Each student would evaluate South's offer of transfer for him/herself. South's proposal may be appealing to Argosy students because South uses the same computer platform as Argosy, and therefore, the transition would be made easier for students. South also may hire Argosy faculty members and acquire Argosy curriculum for the programs that are listed in the Articulation Agreement. This would allow a smoother transition for students.

THE ARTICULATION AGREEMENT IS CONSISTENT WITH SOUND BUSINESS JUDGMENT AND IS IN THE BEST INTEREST OF CREDITORS AND OTHER INTERESTED PARTIES, INCLUDING STUDENTS

9. From the time of his appointment, the Receiver has been approached by various groups and institutions who were interested in acquiring parts of Argosy and the other campuses. The Receiver has actively pursued discussions with 15 different potential purchasers, six for Argosy and nine for the other campuses. Although there has been no specific advertisement for sale, this case has been the subject of extensive press coverage. Through the press coverage and through his

predecessor's earlier efforts to sell the Receivership Entities, the Receiver's interest in a sale transaction and its financial situation are widely known among educators and educational institutions. To date, the Receiver and/or those assisting him have discussed selling various parts of Argosy, South and AI with many different groups who expressed interest in the purchasing the Assets.

10. On February 27, 2019, the United States Department of Education (the "DOE") published a letter denying Argosy any further Title IV funding (the "Denial Letter"). The Receiver is now accepting offers on an expedited basis.

11. All interested parties were invited to submit bids. Stated simply, South's Articulation Agreement offers students organized transfer opportunities and minimum interruption in their education path.

12. A transaction with South is consistent with good business judgment and the Receiver here asserts that South is a bona fide, good faith contract partner. For all of these reasons, it is the Receiver's opinion that this Court should authorize the Receiver to enter into the Articulation Agreement with South.

13. In order to transfer as many students as possible and allow students to continue their education, the Receiver must complete the transaction with South immediately. Argosy cannot continue as an educational institution for even a short time without financial assistance, and there is no one to provide it. The school's financial situation is endangering its accreditation, and Argosy's accreditor, WASC Senior College and University Commission (the "Accreditor") is carefully and strictly monitoring the progress of student transfers to insure that the students are

properly cared for. The Accreditor is prepared to take swift and appropriate action if the transaction is not approved. Thus, time is of the essence, and the Articulation Agreement must be entered into at the earliest possible time.

LAW AND ARGUMENT

14. The Court's authority to impose and administer this receivership is derived from its inherent powers as a court of equity. See *S.E.C. v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *U.S. v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996); see also Fed. R. Civ. P. 66 ("The practice in the administration of estate by receivers . . . shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district court."). A federal court exercises "broad powers and wide discretion" in crafting relief in an equitable receivership proceeding. See *S.E.C. v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).

15. Under Local Rule 66.1, the Court is to administer receivership estates "similar to that in bankruptcy cases." It is a bedrock principle of bankruptcy law that bankruptcy courts (which are courts of equity like courts administering receivership estates) may authorize the entering into contracts that benefit the estate. See 11 U.S.C. § 363.

OBJECTIONS

16. Any person who has an objection to this Motion, must submit it in writing and file it with the Clerk of the United States District Court for the Northern District of Ohio **on or before 4:00 p.m. (Eastern Time) on March 11,**

2019, and must serve the same to those on the Court's filing system, and upon the following persons:

Jonathan E. Jacobson, Esq.
Trial Attorney
United States Department of Justice
Civil Division
Commercial Litigation Branch
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044-0875

WHEREFORE the Receiver moves this honorable court for an order authorizing the Receiver to enter into the Articulation Agreement with South University on substantially similar or better terms as are included in the attached Exhibit A, and for such other and further relief as is just.

Date: March 7, 2019

WHITMER & EHRMAN LLC

/s/ Mary K. Whitmer
Mary K. Whitmer (0018213)
James W. Ehrman (0011006)
2344 Canal Rd., Suite 401
Cleveland, OH 44113
Telephone: (216) 771-5056
Facsimile: (216) 771-2450
Email: mkw@weadvocate.net

Attorneys for the Receiver

CERTIFICATE OF SERVICE

In accordance with Section 1.4 of the Electronic Filing and Procedures Manual of the Northern District of Ohio and Federal Rule of Civil Procedure 5(b)(2)(E), a copy of the foregoing has been served through the Court's filing system on all counsel of record on March 7, 2019.

/s/ Mary K. Whitmer _____
Mary K. Whitmer (0018213)

South

UNIVERSITYSM

ESTABLISHED 1899

ARTICULATION AGREEMENT
between
South University and Argosy University

I. PURPOSE

The purpose of this articulation agreement (the Agreement) is to establish procedures and guidelines for eligible students to transfer from Argosy University to the following list of South University (SU) degree programs listed below:

Argosy Program	South Program
Associate of Arts of Psychology	Bachelor of Arts in Psychology
Associate of Science in Business Administration	Associate of Science in Business Administration
Associate of Science in Information Technology	Associate of Science in Information Technology
Bachelor of Arts of Psychology	Bachelor of Arts in Psychology
Bachelor of Science in Business Administration	Bachelor of Business Administration
Bachelor of Science in Criminal Justice	Bachelor of Science in Criminal Justice
Bachelor of Science in Information Technology	Bachelor of Science in Information Technology
Doctor of Business Administration	Doctor of Business Administration
EdD of Organizational Leadership	Doctor of Business Administration
Master of Science in Management	Master of Business Administration
Masters of Business Administration	Masters of Business Administration
Masters of Clinical Mental Health Counseling	Masters in Clinical Mental Health Counseling
Masters of Human Resources Management	Master of Human Resources Management
Masters of Public Health	Masters in Public Health
MS of Organizational Leadership	Master of Science in Leadership
Pastoral Community Counseling EdD	Doctorate in Ministry
RN to Bachelor of Science in Nursing	RN to Bachelor of Science in Nursing

II. ELEMENTS OF THE AGREEMENT

A. Admission to South University

1. **Argosy University** transfer students will be reviewed as pre-qualified applicants for South University degree programs. Applicants will be required to complete all South University admissions requirements in effect at the time of application. South University admissions requirements are detailed in its most recent catalog.

ARTICULATION AGREEMENT
between
South University and Argosy University

2. To be eligible for application to the identified programs, a student must be a current or former student in good standing with Argosy University, meeting the eligible student definition above and enrolled in one of the designated Argosy University programs covered by this agreement.
3. Upon acceptance and signing of the South University enrollment agreement, transfer students will be subject to all South University policies, codes of conduct, college procedures, and requirements. These are described in the most recent South University catalog.

B. Credit Transferability

1. South University and Argosy University will draft and maintain Course Transfer Guides, as an addendum to this Agreement, which identify the Argosy University courses, which satisfy specific course, general education or unrestricted elective requirements at South University.
2. Transfer guides will be used for associate and bachelor's degree students at Argosy University in programs that exist in parallel with those at South University.
3. Argosy University transfer students will be eligible for a course-by-course review for transfer of credits to South University.
4. South University will complete a course-by-course review of all transfer credits submitted on official transcripts from Argosy University .
5. Argosy University transfer students who are unable to fulfill South University prerequisites at Argosy University must complete them at South University. Prerequisites are listed in the current South University catalog and vary based on the bachelor's degree program and emphasis chosen.
6. Argosy University transfer students must fulfill South University requirements, which entail completion of no less than 25 percent of their program requirements at South University, including a minimum of 50 percent of the major requirements, including the capstone course, at South University. Other stipulations are outlined in the Academic Policies section of the South University catalog. Credit earned through any combination of Transfer Credit, Challenge Credit or Experiential Credit will not exceed 75 percent of total credits required for graduation (70% for those students who reside in Virginia).

C. Financial Arrangements

1. Any tuition and fees charged to the Transfer Students by the South University will match current tuition and fees as listed in the most current Academic Catalog. All Argosy University transfer students will be eligible for a 30% discount of the tuition listed in the catalog.

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between
South University and Argosy University

D. Coordination

1. South University (SU) and Argosy University (AU) agree to:
 - a. Coordinate their efforts to facilitate a collegial and mutually beneficial relationship;
 - b. Provide accurate and timely information about the articulation agreement to prospective SU students, and;
 - c. Designate academic alliance coordinators as primary contact persons for the respective institutions to facilitate coordination of this agreement.
2. South University agrees to:
 - a. Provide Argosy University relevant transfer information and current South University brochures and/or catalogs;
 - b. Communicate with Argosy University students, via e-mail, postal mail, telephone, and other means to offer them the opportunity of enrolling in one of the listed programs at South University.
3. Argosy University agrees to:
 - a. Work with South University to promote this agreement to eligible students through on-site events and distribution of marketing materials and by communicating the benefits of this articulation agreement to Argosy University students;
 - b. Make a summary available to students, staff, and faculty about the agreement to which South University and Argosy University mutually agree, and;
 - c. Cooperate with SU to establish data transfer of curriculum and of student records, when applicable, and with student permission in accordance with all applicable laws and regulations.

III. Terms

- A. This Agreement is effective for the South University academic term beginning with the date of the fully executed document, and shall continue until terminated. Both parties must approve amendments to the Agreement in writing.
- B. Either party may terminate the Agreement upon 90 days' written notice to the other party.
- C. Notwithstanding the foregoing, either party may terminate the Agreement immediately in the event that participation under the Agreement may give rise to a violation of any requirement of federal or state law or regulation or the requirements of any accrediting agency having jurisdiction.

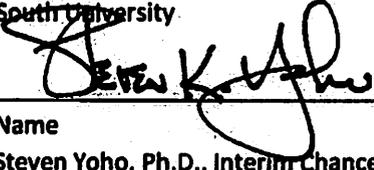
ARTICULATION AGREEMENT
between
South University and Argosy University

- D. Admission criteria and academic and other requirements will be subject to the South University Catalog at the time of the student's admission to SU. Active students at the time of termination will be grandfathered into their selected program.
- E. The Agreement may be executed by either electronic or facsimile transmission in one or more counterparts, each of which shall be deemed an original.
- F. Confidentiality – Any information shared between the parties which by their nature should be reasonably understood by the receiving party as confidential or proprietary information, shall remain confidential.

Notice:

The person(s) signing this Agreement represent and warrant that he or she has the authority to contractually bind his or her organization to the terms and conditions of this Agreement. This Agreement and any attachments* constitutes the full and complete understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties related to the subject matter hereof.

Signed by:

_____	_____
Name	Date
Name, Title	
Argosy University	
	3/6/2019
_____	_____
Name	Date
Jay Stubblefield, PH.D., Vice Chancellor for Academic Affairs	
South University	
	3/6/2019
_____	_____
Name	Date
Steven Yoho, Ph.D., Interim Chancellor	
South University	

*Course Transfer Guide for each program listed above are only attachments.



Memorandum of Understanding

Transfer Grant for students enrolled at an Argosy University campus or fully online program that is no longer enrolling students

The following information outlines the eligibility requirements and conditions for the Transfer Grant. This grant is being offered to students who are enrolled at an Argosy University campus or fully online program that has ceased enrolling new students. South University is offering this Transfer Grant to ease the burden of transferring to another institution and offset the cost of credits ineligible for transfer due to different curriculum requirements or campus transfer criteria.

Eligibility Requirements:

- (1) Applicant must be a student attending an Argosy University campus that has ceased enrolling new students as of March 1, 2019; or Inactive students from Argosy University with an enrollment history that have an LDA (last date of attendance) on/after August 1, 2018.
- (2) Award is contingent upon the application and acceptance into a program of study at South University, Campus or Online Programs.
- (3) Must be a newly enrolled student by September 19, 2019.
- (4) Must be continuously enrolled (taking at least one course at a time) with no unapproved breaks.
- (5) Must maintain a minimum cumulative GPA of 3.0 for any graduate level program and 2.0 for any undergraduate program.
- (6) Student must have a signed Memorandum of Understanding on file.
- (7) Employees or immediate family members who are eligible for the Dream Center Education Holdings, LLC (DCEH) Tuition Assistance Program (or future tuition assistance programs that would replace the DCEH Tuition Assistance program) are not eligible to participate in the Grant program, either as recipients or donors.

Additional Conditions:

- (1) The Transfer Grant is awarded in the amount of 30% of tuition per credit hour.
- (2) The Transfer Grant cannot be redeemed for cash; grant will be applied to tuition and fees.
- (3) The Transfer Grant can only be used for one program and will not be offered for additional programs pursued.
- (4) The Transfer Grant will be disbursed to the student account after the completion of each quarter, and after verifying that the eligibility criteria were met.
- (5) In the event that the student's enrollment is terminated either by the student or the institution, including but not limited to withdrawal, cancel, academic termination, financial termination, or expulsion; or in the event that the student fails to fulfill the terms of the grant, only the portion of the grant awarded for terms completed and partial terms attempted up to the date of determination will be honored. Any portion of the grant scheduled to be awarded after the date of determination becomes null and void.
- (6) The Transfer Grant may not be combined with any other institutional awards, including the Military Tuition Scholarship.

General Conditions:

- (1) South University reserves the right to cancel, suspend and/or modify the Transfer Grant or any part of it. If terminated, South University may, in its sole direction, determine the Transfer Grant recipients from among eligible students received up to time of such action using the eligibility procedure outlined above.
- (2) South University, in its sole discretion, reserves the right to disqualify any eligible student who is in violation of student responsibilities as outlined in the University's Academic Catalog and Student Handbook.

Limited Liability:

- (1) South University is not responsible for:
 - a. Any incorrect or inaccurate information whether caused by the student, printing typographical or other errors or by any of the equipment or programming associated with or utilized in the Transfer Grant.
 - b. Printing, typographical, technical, computer, network or human error which may occur in the administration of Transfer Grant, the uploading, the processing or the announcement of the Transfer Grant or in any grant-related materials.
- (2) Disputes: Except where prohibited, eligible students agree that all disputes, claims and causes of action arising out of or connected with this grant program shall be resolved individually, through the Student Affairs Department at South University.



Memorandum of Understanding

Student Acknowledgement

By signing this Memorandum of Understanding, I agree that:

- (1) I have chosen to accept the Transfer Grant.
- (2) If I fail to meet any of the eligibility requirements, the Transfer Grant will be revoked and I will be billed in full for courses taken.
- (3) I have read and agreed to the above terms and conditions of the Transfer Grant and I understand the nature of the grant and the extent of my obligations.

Student Name _____

Signature _____ Date _____

Student ID # _____

If signatory/student is under the age of 18, the Parent or Legal Guardian must also sign below. By signing below said Parent or Legal Guardian represents that he/she has the legal right to and does consent to the terms and conditions of this Transfer Grant. Said Parent or Legal Guardian further certifies to the best of his/her ability; the information contained in this application is accurate.

Parent/Guardian Name _____

Signature _____ Date _____

Address (If different from student's) _____

Daytime Phone Number: _____ Evening: _____

By checking this box, I consent to representatives of South University contacting me about **EDUCATIONAL OPPORTUNITIES** via email, text or phone, including my mobile phone if provided above, using an automatic dialer. I understand that my consent is not a requirement for any purchase. Message and data rates may apply. I understand that I may withdraw my consent at any time.

Programs, credential levels, technology, and scheduling options vary by school and are subject to change. Not all online programs are available to residents of all U.S. states. Administrative office: South University, 709 Mall Blvd, Savannah, GA 31406 © 2019. South University. All rights reserved. Our email address is materialsreview@south.edu.

See [suprograms.info](#) for program duration, tuition, fees, and other costs, median debt, alumni success, and other important info.