



**STATE BOARD OF EDUCATION MEETING**

**June 5, 2025**

**Office of the State Board of Education**

**650 West State Street, Suite 307**

**Boise, ID 83720**

**Public Streaming:** <https://www.youtube.com/channel/UC7j4VGGyNzPa6g6a-zVTHnA>

**Thursday, June 5, 2025, 3:00 p.m. (Mountain Time)**

**BUSINESS AFFAIRS AND HUMAN RESOURCES**

1. University of Idaho – Termination of Asset Purchase Agreement – Action Item
2. Boise State University – Pac-12 Conference Agreements – Action Item

If auxiliary aids or services are needed for individuals with disabilities, please contact the Board office at 208-332-1571. While the Board attempts to address items in the listed order, some items may be addressed by the Board prior to, or after the order listed.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 5, 2025**

**UNIVERSITY OF IDAHO**

**SUBJECT**

Termination of Asset Purchase Agreement

**REFERENCE**

May 18, 2023	Board of Regents Approval of Asset Purchase Agreement
June 28, 2024	Board of Regents Approval of Amendment 1 to the Asset Purchase Agreement

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.C.1.c Spending Authority, University of Idaho and Regents of the University of Idaho  
Idaho Constitution, Article IX, Section 2. Board of Education. General supervision of the state educational institutions.

**BACKGROUND/DISCUSSION**

The University of Idaho seeks approval from the Board of Regents for the execution of a Termination Agreement (Attachment 1) which will end the obligations of the parties related to the proposed acquisition of the University of Phoenix by Four Three Education, Inc. under an Asset Purchase Agreement dated as of May 31, 2023 (the “APA”).

The parties to the APA are The University of Phoenix, Inc. (“Phoenix”) an Arizona corporation, as Seller, Four Three Education, Inc. (“43EI”) an Idaho nonprofit corporation with the Board of Regents as the Sole Member, as Buyer, and also by the Regents of the University of Idaho, for purposes of certain specific terms of the APA, and by Apollo Education Group, Inc., an Arizona corporation, also for purposes of specific terms of the APA. The APA contemplated purchase of substantially all of the assets of Phoenix by 43EI with the purchase funds provided through tax-exempt bonds to be issued by 43EI, and for the purchase to close no later than May 31, 2024 (the “Outside Date”).

The proposed transaction under the APA met with challenges from the Idaho Attorney General who filed suit in District Court claiming a violation of Idaho’s Open Meetings Law by the Regents. The District Court initially held for the Regents; however, this decision was appealed to the Idaho Supreme Court by the Attorney General, where the Idaho Supreme Court reversed the District Court judgment and remanded the case for a new trial. The transaction met further challenge by the Idaho Legislature which raised concerns about process and authority that would have needed legislative resolution. As a result, the parties were unable to achieve closing by the Outside Date of May 31, 2024.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 5, 2025**

The parties then chose to enter into Amendment No. 1 to the Asset Purchase Agreement (Amendment One) dated as of June 28, 2024, under terms favorable to the University which included payment by Phoenix of an Alternative Transaction Fee (\$20M) should Phoenix terminate the APA in favor of another transaction prior to June 10, 2025, and an Outside Date Termination Fee (\$10M) should the parties otherwise fail to achieve closing by June 10, 2025.<sup>1</sup> This Amendment gave additional time for the parties to work to resolve the Attorney General litigation, to address the needs and concerns of the Idaho Legislature, and to achieve a closing by June 10, 2025.

However, the parties have been unable to achieve a closing, in part due to the remanded litigation impacting Board approval and bond financing required to close the intended transaction. In addition, the Seller has been considering alternative transactions, as allowed under the Amendment.

**IMPACT**

The Termination Agreement will accomplish the following:

1. Terminate all obligations of the parties to complete the transaction contemplated under the APA.
2. Phoenix will pay a Termination Fee of \$17,244,420.11, with credit for the Extension Fee paid under Amendment No. 1 (\$5M) for a net payment of \$12,244,420.11.
3. 43EI has designated the University to receive this payment as it previously designated the University to receive the \$5M Extension Fee.

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<sup>1</sup> The material terms of the Amendment included:

- An extension of the Outside Date for closing to June 10, 2025 (Section 2);
- Removal of the exclusivity terms under the APA such that Seller was free to seek other purchasers for the University of Phoenix, either through a private sale or through an Initial Public Offering (IPO), and to terminate the APA in favor of another sale or an IPO (Sections 3 and 5);
- Payment of sums by the Seller as follows:
  - Payment of \$5 million to Buyer promptly after execution of Amendment No. 1 as an Outside Date Extension Fee (Extension Fee) (Section 4);
  - Payment of \$10 million to Buyer (net of the Extension Fee) in the event the parties are unable to close the anticipated transaction before the June 10, 2025, extended Outside Date (Section 6(b));
  - Payment of \$20 million to Buyer (net of the Extension Fee) in the event Seller chooses to terminate the APA in favor of another sale or an IPO (Section 6(c)).
- Subsequent Amendment to be Considered by the Regents:
  - Recognition that during the extension of the Outside Date the parties will work in good faith to negotiate an additional amendment to the APA that reflects a structure and terms that address the requirements of applicable law and that eliminate the legal obstacles that impact the ability to complete the transaction, including marketing of bonds to finance the closing of the transaction. The terms of this additional amendment must be satisfactory to all parties and must be approved by their respective governing boards, including the Regents in a public meeting. (Section 15)

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 5, 2025**

4. The payment, in combination with the \$5M Extension Fee received earlier, will effect reimbursement for the full amount of outside transaction costs and expenses paid by the University since the outset.

The University has consistently recognized the potential benefit for the state of Idaho in a collaboration with the University of Phoenix. After the extension of June 28, 2024, the parties continued to work diligently and in good faith to come up with ways to resolve the challenges to the transaction. Over time, however, it became apparent to Phoenix that they needed to fully pursue potential alternative transactions that could yield a sales price substantially higher than the price agreed to under the APA.

At that point, the Seller could have forced the University out by declaring a termination for an alternative transaction and paying the designated termination fee of \$20M. Without a formal termination, the University could have required the Seller to continue to use good faith efforts to bring the transaction under the APA to a close. Instead, the parties informally agreed to temporarily halt efforts under the APA to give the Seller the opportunity to arrive at an alternative transaction but leave open the possibility that the parties would refocus on the transaction under the APA at a later time.

As the extended outside date of June 10, 2025, approaches, the Seller has not reached finality on an alternative transaction. While the University continues to see the value of a collaboration with Phoenix, and the Seller would like to see the University continuing to wait on the sidelines, doing so has become cost-prohibitive for both. In light of these circumstances, the parties are proposing a compromise for termination of the APA.

For the Buyer, while the compromise amount is less than the full Alternative Transaction Fee it is sufficient to reimburse the University for the out-of-pocket expenses paid in advancing the transaction. For the Sellers, though the compromise amount is more than the Outside Date Termination Fee, it is less than the full Alternative Transaction Fee, and the Sellers have the added benefit of focusing on advancing their alternative transaction opportunities free of the obligation of working towards closing under the APA.

Of equal or greater import, we will be parting on amicable terms.

The University requests the Board's approval of this compromise.

**ATTACHMENTS**

Attachment 1 – Proposed Termination Agreement

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

Board staff has reviewed the proposed Termination Agreement, which formally ends the Asset Purchase Agreement between Four Three Education, Inc. and the

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 5, 2025**

University of Phoenix. The University of Idaho (UI) has negotiated terms that will fully reimburse the institution for all external transaction related costs through a net payment of approximately \$12M. The agreement avoids continued legal and financial uncertainties, while maintaining constructive relations between the parties.

Given the inability to close under the original or amended agreement terms due to legal and financial challenges, staff finds the negotiated Termination Agreement to be in the best interest of the UI and consistent with the Board of Regents fiduciary responsibilities.

Staff recommends approval.

**BOARD ACTION**

I move to approve the proposed Termination Agreement in substantial conformance to Attachment 1, and to authorize the president of the University of Idaho, or the president's designee, to execute and deliver the Termination Agreement as well as all such other necessary documents, instruments, certificates, filings and other agreements, and to do and perform all such other acts as may be required to effectuate the intent and purposes of the Termination Agreement.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**TERMINATION AGREEMENT**

This Termination Agreement (this “Agreement”) is made and entered into by and among Four Three Education, Inc. (f/k/a NewU, Inc.), an Idaho non-profit corporation (“Buyer”), The University of Phoenix, Inc., an Arizona corporation (“Seller”), Apollo Education Group, Inc., an Arizona corporation (“AEG”) and The Regents of the University of Idaho (“UoI”) as of June [5], 2025 (the “Effective Date”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below).

WHEREAS, the parties hereto are parties to that certain Asset Purchase Agreement, dated May 31, 2023 (as amended by Amendment No. 1 (as defined below), the “Asset Purchase Agreement”), by and among (a) Buyer, (b) Seller, (c) AEG, solely for purpose of Section 2.09 (*Non-Assignable Assets*), ARTICLE V (*Representations and Warranties of AEG*), Section 8.08 (*Confidentiality*), Section 8.09 (*Non-Disparagement; Non-Competition; Non-Solicitation*), Section 8.25 (*Pre-Closing Reorganization*), Section 8.26 (*Certain Other Investments*), Section 8.29 (*Further Assurances*) and ARTICLE XII (*Miscellaneous*) therein and (d) UoI, solely for the purposes of ARTICLE VII (*Representations and Warranties of UoI*), Section 8.10(d) (*Approvals and Consents*), Section 8.29 (*Further Assurances*), and ARTICLE XII (*Miscellaneous*) therein;

WHEREAS, the parties hereto amended certain terms of the Asset Purchase Agreement by entry into that certain Amendment No. 1 to the Asset Purchase Agreement, dated as of June 28, 2024 (the “Amendment No. 1”), to, amongst other things, amend certain termination provisions contained in the Asset Purchase Agreement;

WHEREAS, Section 11.01(a) of the Asset Purchase Agreement provides that the parties the Asset Purchase Agreement may be terminated at any time prior to the Closing by the mutual written consent of Seller and Buyer; and

WHEREAS, the parties hereto wish to terminate the Asset Purchase Agreement and document certain agreements as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Termination of Asset Purchase Agreement. Seller and Buyer agree, pursuant to Section 11.01(a) of the Asset Purchase Agreement, that the Asset Purchase Agreement shall be terminated effective as of the Effective Date. Except as set forth in paragraph 2 of this Agreement, and in Section 8.08 (*Confidentiality*) and ARTICLE XII (*Miscellaneous*) of the Asset Purchase Agreement, on the Effective Date, the Asset Purchase Agreement shall forthwith become void and there shall be no liability on the part of any party thereto.

2. Termination Fee. Within ten (10) Business Days following the Effective Date, Seller shall pay or cause to be paid to Buyer or its designee, by wire transfer of immediately available funds to one or more accounts designated in writing by Buyer, a termination fee equal to \$17,244,420.11 less an amount equal to the Extension Fee (the “Termination Fee”). The Termination Fee shall be the only termination fee that Seller or any of its Affiliates is required to pay, or cause to be paid, to Buyer in connection with the termination of the Asset Purchase

Agreement, and notwithstanding anything to the contrary set forth in the Asset Purchase Agreement, including Amendment No. 1, neither Seller nor any other Person shall be required to pay, or cause to be paid, the Outside Date Termination Fee nor the Alternative Transaction Fee in connection with the termination of the Asset Purchase Agreement.

3. Expenses. Notwithstanding anything to the contrary in the Asset Purchase Agreement (including Sections 8.13(d) and 12.01 thereof), from and after Effective Date, Buyer (and its Affiliates), on the one hand, and Seller (and its Affiliates), on the other hand, shall not have any obligation whatsoever to reimburse the other party for any fees, costs or expenses incurred in respect of the Asset Purchase Agreement or any transactions contemplated thereby (including the Financing).

4. Representations and Warranties. Each party hereto represents and warrants to the other parties here to that the statements in this Section 3 are true and accurate as of the date of this Agreement:

(i) Such party is an entity duly organized, validly existing and in good standing under the Laws of the state of such party's organization.

(ii) Such party has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by such party of this Agreement and the performance of its obligations hereunder have been duly and validly authorized and no additional corporate or shareholder authorization or consent is required in connection with the execution and delivery by such party of this Agreement or the performance of its obligations hereunder.

(iii) This Agreement has been duly executed and delivered by such party, and (assuming due authorization, execution and delivery by the other parties hereunder) this Agreement constitutes a legal, valid and binding obligation of such party enforceable against such party in accordance with its terms, except to the extent that the enforceability thereof may be limited by the Equitable Exceptions.

5. Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute one and the same agreement.

6. Miscellaneous. The provisions of Article XII of the Asset Purchase Agreement shall apply *mutatis mutandis* to this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

**BUYER**

FOUR THREE EDUCATION, INC. (f/k/a NEWU, INC.)

By \_\_\_\_\_

Name:

Title:

*[Signature Page to Termination Agreement]*

**SELLER**

THE UNIVERSITY OF PHOENIX, INC.

By \_\_\_\_\_  
Name:  
Title:

**AEG**

APOLLO EDUCATION GROUP, INC.

By \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Termination Agreement]*

**UOI**

THE REGENTS OF THE UNIVERSITY OF  
IDAHO.

By \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Termination Agreement]*

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 5, 2025**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Boise State University is seeking Board authorization for the Interim President of Boise State to execute agreements relating to its September of 2024 acceptance of an invitation to join the Pac-12 Conference.

**REFERENCE**

July 1, 2013	Boise State University joins the Mountain West Conference.
September 11, 2024	Boise State accepts invitation to join the Pac-12 Conference and executes Term Sheet.
May 29, 2025	Boise State withdraws from Mountain West Conference.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Code § 33-107  
Idaho State Board of Education Governing Policies & Procedures, Section V.I.2. (Institution Approval Authorization Limits), V.I.10. (Licensure of Assets), and V.X. (Financial Affairs, Intercollegiate Athletics)

**BACKGROUND/DISCUSSION**

At least two documents are expected to be executed by Boise State.

**1. EXPANSION AGREEMENT OVERVIEW**

The Expansion Agreement authorizes the admission of Boise State to the Pac-12 Conference and elaborates on general and specific business terms set out in the September Term sheet, including setting out the responsibilities of each of the parties for liabilities which precede the joining date.

For Boise State, those liabilities include exit fees related to a departure from the Mountain West Conference, which remain the obligation of the University, for instance, and the Pac-12's responsibility for its scheduling agreement liabilities.

Both of these obligations are the subject of litigation with the Mountain West. No media rights distributions will be provided to Boise State for or related to events occurring before the July 1, 2026, entrance date. Withdrawal from the Mountain West Conference has timely occurred, as required by Mountain West bylaws and by virtue of the Expansion Agreement.

Consistent with the Grant of Rights described below, the Expansion Agreement will require joining members to grant media rights to the Pac-12 and participate in discussions regarding additional funding models to the extent those become necessary. The Agreement addresses the consequences of withdrawal from the

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 5, 2025**

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Conference under specific conditions, including joining an A4 Conference, with the payment of associated exit fees. Liquidated damages would apply if any of the six joining universities fails to join the Pac-12 in July 2026.

**2. GRANT OF RIGHTS (GOR) AGREEMENT OVERVIEW**

The GOR Agreement between the Conference and Boise State will become effective from July 1, 2026 for a period of five years, from July 1, 2026, to June 30, 2031.

The GOR outlines the terms under which Boise State (and separately, the other joining members) grant media rights to the Pac-12 so that it may grant the same rights to its media broadcast partner(s). All joining members, including Boise State, will grant the Pac-12 exclusive rights to distribute media content related to athletic events, including live broadcasts and ancillary programming, across various platforms and technologies. The GOR includes provisions for radio/audio rights and event data, with certain exceptions for local terrestrial radio rights and multimedia rights agreements (eg. Boise State's Learfield/Bronco Sports Properties agreement).

Joining members also retain rights to local and campus radio broadcasts, certain ancillary programming, and the use of event data for non-commercial purposes. The Pac-12 and its media partner would enjoy some exclusive rights to sell advertising related to the granted media rights, while joining members keep advertising rights related to their retained rights and venues. Joining members grant the Pac-12 a non-exclusive, royalty-free license to use their logos and marks for marketing and promotional purposes, so long as the quality and integrity of the marks are maintained.

These intended Agreements implicate program funds under Board Policy V.X., and do not obligate institutional or appropriated funds as prescribed under that Policy. These intended Agreements implicate revenue in excess of \$2M.

Time is of the essence with respect to the aforementioned agreements given the University's conference position and to maximize distributions and other strategic and financial benefits. Ancillary documents will be required to be executed from time to time, which can more efficiently and effectively be addressed through Presidential action.

**IMPACT**

Boise State's entry to the Pac-12 will very likely result in a greater media rights revenue distribution than it has ever enjoyed and will raise the University's profile nationally with a conference that has established a strong brand, notable western presence, and excellent media partners.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 5, 2025**

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**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

Board Policy V.I. requires Board approval for transactions involving revenue in excess of \$2M.

Idaho Code 33-107(4)(c) grants authority to the Board to "delegate to the presidents of Idaho's state universities and colleges, if necessary to enhance effectiveness and efficiency, such powers as said officers require to exercise discretionary authority and to perform duties vested in the state board related to the operation, control and management of Idaho's state universities and colleges."

**BOARD ACTION**

I move to delegate Board approval authorization authority under Board Policy V.I. to the President of Boise State University as necessary to enhance effectiveness and efficiency and for the limited purpose of entering into and executing such agreements and ancillary documents on behalf of the University which are necessary to carry out Boise State University joining the Pac-12.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_