October 14, 2020

Secretary Betsy DeVos
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202

Dear Secretary DeVos:

We urge the U.S. Department of Education to promptly address issues raised by the recent Colorado state court decision finding pervasive fraudulent abuse of federal financial aid programs by institutions affiliated with the Center for Excellence in Higher Education (CEHE).[1] According to the decision, CEHE engaged in ongoing and "unconscionable" conduct by knowingly making misrepresentations to prospective students about graduates' earnings, job opportunities, employment rates, and loan repayment prospects.[2] The court determined that two executives -- Carl Barney, currently CEHE chairman emeritus, board member, and effective owner, and Eric Juhlin, currently the CEO -- directed this fraud. Both were found individually liable for fraudulent acts, including directing CEHE to systematically deceive low-income students in order to obtain federal financial aid distributed through Title IV of the Higher Education Act (HEA).

CEHE May Not Continue to Receive Title IV Aid

Pursuant to 20 U.S. Code § 1002(a)(4)(B), an institution becomes statutorily ineligible to participate in the Title IV programs if the institution itself, the institution's owner, or the institution's CEO "has been judicially determined to have committed fraud."[3] Furthermore, no Title IV institution may employ or enter into contracts with individuals who have been "judicially determined to have committed fraud" or their employers.[4] Regulations interpret the

[1] *Colorado v. Center for Excellence in Higher Education*, 14CV34530, Findings of Fact, Conclusions of Law, and Judgment (hereinafter, "Order"), filed Aug, 21, 20120, *available at* https://www.republicreport.org/wp-content/uploads/2020/08/FINDINGS-OF-FACT-CONCLUSIONS-OF-LAW-AND-JUDGMENT.pdf. CEHE-operated schools include Independence University, CollegeAmerica, Stevens-Henager College, and California College San Diego. CEHE-affiliated schools include National American University.

[2] In addition to the Colorado case referenced throughout this letter, CEHE-operated schools are the subjects of other law enforcement actions and investigations including a lawsuit based on CEHE's unlawful incentive compensation brought by the U.S. Department of Justice, an investigation by the Consumer Financial Protection Bureau, a system-wide probation action brought by accreditors, and regulatory sanction by Colorado's higher education oversight agency. For sources and discussion, see David Halperin, "Accreditor Again Smacks Carl Barney College Chains As Campuses Close," *Republic Report*, updated Aug. 3, 2020, *available at* https://www.republicreport.org/2020/accreditor-again-smacks-carl-barney-college-chains-as-campuses-close/.

[3] 34 C.F.R. 600.7(a)(3)(ii) restates that an educational institution does not qualify as an "eligible institution" for Title IV purposes if "[t]he institution, its owner, or its chief executive officer . . . [h]as been judicially determined to have committed fraud involving title IV, HEA program funds."

[4] 20 U.S. Code § 1094(a)(16)(A) & (B)(2).

phrase "judicially determined to have committed fraud" to include both civil fraud and "any other material violation of law" involving Title IV or other public funds.[5]

The Department previously relied on this authority in 2016 to stop federal funds flowing to the Minnesota School of Business (MSB). The Department took this action immediately following a state trial court's determination that MSB violated Minnesota's consumer protection law by using false advertising that misrepresented employment outcomes, credit transferability, and the quality of MSB's criminal justice program.[6] Notably, the Department stopped MSB's access to Title IV funds during the pendency of a lengthy appeals process which ultimately proved unsuccessful in overturning the judgments based on MSB's fraud.[7]

Like the MSB decision, the Colorado court order provides a clear judicial determination that CEHE, its former Chair and Board member (Barney), and its CEO (Juhlin) each committed multiple material acts of fraud, which render CEHE-affiliated institutions ineligible for Title IV aid. The list below provides a non-exhaustive sample of Defendants' numerous deceptive trade practices that were found to be in violation of the Colorado Consumer Protection Act ("CCPA"). Colorado courts recognize the CCPA as an anti-fraud statute, which provides "prompt, economical, and readily available remedies against consumer fraud."[8]

- Defendants engaged in deceptive trade practices, in violation of the CCPA "by knowingly making false and misleading representations about the potential wages and types of employment" a student could obtain after completing a CEHE program. Defendants engaged in this deceptive trade practice with the intent of inducing low-income students to take out federal Title IV loans.[9]
- Defendants knowingly directed CEHE recruiters to advertise starting salaries associated with specific programs that were twice as high as the actual starting salaries achieved by CEHE's graduates.[10]
- From 2006 on, Defendants specifically directed sales representatives to use national earnings data from the Bureau of Labor Statistics to generate a false impression that CEHE graduates' earnings were commensurate with national averages. Meanwhile, defendants intentionally withheld data showing that CEHE graduate earnings were much lower than national averages.[11]

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[5] 34 C.F.R. 668.14(b)(18)(i) & (iii)(B).

[6] U.S. Department of Education, Dec. 6, 2016 Letter to Mr. Jeffrey Myhre, President, Minnesota School of Business, "Re: Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs."

[7] *See Minnesota v. Minnesota School of Business, Inc. d/b/a Minnesota School of Business and Globe University, Inc. d/b/a Globe University*, A17-1740, Decision filed Nov. 6, 2019, available at https://law.justia.com/cases/minnesota/supreme-court/2019/a17-1740.html.

[8] Order p. 101.

[9] *Id.* ¶ 585.

[10] *Id.* ¶ 589.

[11] *Id.* ¶¶ 587-597, 605.

- Defendants violated consumer protection law by knowingly giving accreditors and prospective students false, inflated numbers on graduates' likelihood of obtaining employment in their fields of study. Defendants knew that lying about job placement would increase enrollment in CEHE schools.[12]
- Defendants engaged in deceptive trade practices by advertising a "Medical Specialities" program as training for X-Ray Technicians when they knew graduates would not qualify to sit for the licensing exam.[13] Defendants also advertised EMT certificate training that was not included in their curriculum[14] and a sonography program that never existed.[15]

While defendants are expected to appeal the decision, unless and until any appeal overturns the numerous findings of fraud, CEHE-affiliated institutions are ineligible for Title IV funds, and the Department should take immediate steps to halt additional Title IV funds flowing to CEHE institutions. Complying with the statute, and adequately protecting students and taxpayers from harm, requires the Department to act now, not years into the future. At a minimum, the Department should protect taxpayers interests: if CEHE institutions receive Title IV funds while pursuing appeals, then the Department should require a dollar-for-dollar letter of credit (or other guarantee) to ensure a full return of any funds distributed to CEHE during the pendency of failed appeals.

Provide Borrower Defense Relief to CEHE Students

In addition to taking action to stop additional Title IV funds flowing to the CEHE institutions, given the breadth of evidence of systemic misleading, deceptive and even fraudulent practices established in the decision, the Department should also take immediate action to stop collection on and cancel the student loans of borrowers taken for the purpose of attending CEHE schools from 2006 forward.[16] The "Borrower Defense to Repayment" and related laws clearly establish that in the case of a state court judgement such cancellation is warranted.[17] The Colorado court held that CEHE, Juhlin, and Barney violated state law by knowingly deceiving prospective students in order to obtain their federal aid revenue. This establishes a clear basis for granting borrower defense relief. [18] Moreover, the terms of federal student loan agreement Master

[12] *Id.* ¶ 607; see also ¶¶ 599-601.
[13] *Id.* ¶¶ 623-31.
[14] *Id.* ¶¶ 641-44.
[15] *Id.* ¶¶ 645-48.
[16] The decision found a pattern of deceptive practices reaching back to 2006. *See, e.g.,* Order ¶¶ 36, 54-55, 62, 70, 72, 90, 146. The decision also found "current" and ongoing deceptive practices and a strong likelihood that defendants would engage in additional deceptive practices in the future. *See* ¶ 417 and p. 119.
[17] 20 U.S.C. 1087e(h).
[18] *See Vara v. DeVos.* No. CV 19-12175-LTS, 2020 WL 3489679 (D. Mass. June 25, 2020). As with *Vara*, the 1995 Borrower Defense regulations apply to the relevant period of fraudulent activity (at least 2006 to 2017). Under the 1995 Borrower Defense regulations, 34 C.F.R. § 685.206(c)(1) (eff. until Oct. 16, 2018), student loans are subject to discharge when "any act or omission of the school . . . would give rise to a cause of action against the school under applicable State law."

Promissory Notes set forth contractual rights which restate that violations of state consumer protection law establish a defense against collection of student loans.[19]

The Department's prior actions supply clear precedent for granting group relief under the 1995 Borrower Defense regulations: In 2017, the Department discharged federal loans associated with American Career Institute (ACI) following state enforcement action finding purposeful deception on graduates' job placement rates.[20] While the Colorado decision clarifies defrauded students' entitlement to relief, the Department is authorized to expand relief beyond the findings of a state court, and should provide discharges without further delay.

Recover Costs Associated with Borrower Defense Discharges and Other Liabilities from CEHE Defendants

By acting expeditiously, the Department can, for the first time, actually ensure that the institution responsible for defrauding students bears the cost of discharging their loans. Regulations empower the Secretary to "collect from the school whose act or omission resulted in the borrower defense the amount of relief arising from the borrower defense." 34 CFR § 685.206(c)(3). To date, because the Department has granted borrower defense relief only under circumstances where fraudulent schools have already closed and filed for bankruptcy, it does not appear that the Department has successfully recouped borrower defense funds from the perpetrators responsible for defrauding students.

Furthermore, the Department should protect its financial interest by immediately requiring a letter of credit and evaluating other CEHE liabilities and obligations to return unlawfully obtained Title IV funds. Title IV institutions must be able to cover all liabilities to the Department, including liabilities based on borrower defense.[21]

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[19] *Id.* 2020 WL 3489679 at *4.
[20] U.S. Department of Education, Press Release: *"American Career Institute Borrowers to Receive Automatic Group Relief for Federal Student Loans*," Jan. 13, 2017, *available at* https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans.
[21] 20 U.S.C. 1099c(c)(1)(c) requires that Title IV institutions are able to meet their "financial obligations, including (but not limited to) refunds of institutional charges and **repayments to the Secretary for liabilities and debts incurred** in [Title IV programs]."

Pursue Further Investigation and Action Regarding CEHE

Finally, the Colorado Court's findings establish a factual basis for additional potential violations of federal law and the terms of CEHE's Title IV participation agreement, including:

- Violations of incentive compensation ban based on findings that recruiters "received financial bonuses for each student they enrolled"[22] and were required to meet quotas;
- Discrimination and targeted sale of predatory products to women, mothers, and students from underrepresented minority groups[23] in violation of constitutional and HEA civil rights protections;
- Violation of non-profit status and the federal 90/10 rule[24]; and
- Failure to report "credible information" of ongoing unlawful conduct, inviolation of HEA administrative capability standards.[25]

Following the ruling in the CEHE matter, it is incumbent on the Department to take steps to protect the integrity of the student loan system by immediately terminating CEHE's access to Title IV, by providing the full student loan relief that borrowers who attended CEHE institutions are entitled to receive, and by proceeding against CEHE and its owners in order to recover liabilities stemming from the defendants' fraud.

Sincerely,

American Federation of Teachers
Americans for Financial Reform
Association of Young Americans
Center for Public Interest Law
Children's Advocacy Institute
Clearinghouse on Women's Issues
Consumer Action
David Halperin, Attorney
Economic Justice Project of the Duke University School of Law
Feminist Majority Foundation
Government Accountability Project
Housing and Economic Rights Advocates

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[22] Order ¶ 124; *see also* ¶¶ 123-138.
[23] *Id.* ¶¶ 8-9.
[24] ¶¶ 420-435.
[25] Under 34 CFR 668.16(g)(2) CEHE has an ongoing obligation to report "credible information" that could point to ongoing unlawful conduct. A July 16, 2015, preliminary injunction order found a reasonable probability that CEHE misrepresented graduate wages. Either CEHE failed to report this and o
ther credible evidence of a decade-long fraud, or the Department of Education abdicated its duty to stamp out unlawful abuse of Title IV funds.

National Consumer Law Center on Behalf of Its Low-Income Clients
Public Law Center
The Education Trust
The Institute for College Access and Success
Veterans Education Success
Voters for Common Sense
Yan Cao, Fellow, The Century Foundation
Young Invincibles