



## VETERANS EDUCATION SUCCESS®

February 12, 2021

Thomas J. Murphy  
Acting Under Secretary for Benefits  
U.S. Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington, DC 20571

**Re: VA Compliance with 38 U.S.C. § 3696(a) regarding the Center for Excellence in Higher Education**

Dear Mr. Murphy,

We are writing to request your immediate adherence to 38 U.S.C. § 3696(a) regarding the Center for Excellence in Higher Education (“CEHE”).

A Colorado state court entered a final judgment against CEHE for violating consumer laws by knowingly making false representations about the schools’ employment statistics, affordability, and program availability. Because CEHE’s executive officers directed the illegal activity<sup>1</sup> and uniformly applied its business model across all CEHE campuses,<sup>2</sup> the court held the CEO and Chairman personally liable, along with CEHE.<sup>3</sup>

Similarly, its accreditor, the Accrediting Commission of Career Schools and Colleges (“ACCSC”) has documented CEHE’s deceptive practices in orders keeping CEHE on probation, and determined that CEHE is continuing to deceptively advertise, including a misleading advertisement that said students would receive a new tablet and laptop without disclosing that this did not apply to certain degree programs.<sup>4</sup> In addition, whistleblowers and students have brought forward complaints that support the court’s findings.

***VA is required to disapprove these schools’ programs under 38 U.S.C. § 3696 for deceptive practices in light of the court’s final judgment.***

This is an urgent matter, as a Colorado state court entered a final judgment against CEHE for deceptive recruiting and concluded “there is a strong possibility”<sup>5</sup> that CEHE continues this

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<sup>1</sup> *Colorado ex rel. Coffman v. Ctr. for Excellence in Higher Educ., Inc.*, No. [14CV34530](#), at p. 147, ¶ 707 (Colo. Dist. Ct. 2020) [hereinafter *Judgment*].

<sup>2</sup> *Id.* at p. 117 (“Defendants Barney and Juhlin have developed a business model that requires CEHE’s campuses to uniformly apply policies and procedures authorized by them.”).

<sup>3</sup> *Id.* at p. 160.

<sup>4</sup> Continued Probation [Order](#) from ACCSC to CEHE p. 25 (July 21, 2020).

<sup>5</sup> *Judgment*, at p. 118.

pattern of behavior. Similarly, its accreditor cautioned that CEHE’s move to online learning creates additional risks.<sup>6</sup> Other federal agencies, the Consumer Financial Protection Bureau<sup>7</sup> and Department of Justice,<sup>8</sup> have been investigating CEHE as well.

CEHE is a non-profit corporation that owns the following schools currently approved for and receiving GI Bill funds:

- *Independence University*
- *Stevens-Henager College*
- *College America*
- *California College San Diego*

**I. 38 U.S.C. § 3696(a) forbids VA from approving GI Bill benefits to schools that engage in deceptive practices.**

38 U.S.C. § 3696(a) forbids the U.S. Department of Veterans Affairs (“VA”) from approving the enrollment of veterans in a school that utilizes deceptive or misleading advertising, sales, or enrollment practices:

38 U.S.C. § 3696(a): “The Secretary shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.”

Please note that VA’s compliance with this statute is not optional, as the statute explicitly states “The Secretary *shall not* approve...” This statutory obligation ensures that VA protects veterans from schools that use misrepresentations to induce veterans to enroll and thereby squander their hard-earned GI Bill benefits on an education unsuitable for achieving their desired career.

Veterans rely on VA’s stamp of approval when choosing a school for their GI Bill benefits. The veterans we serve are understandably angry when they learn that a school that scammed them is a school VA knew was engaged in deceptive practices but nevertheless approved.

For many years, the nation’s leading veterans and military service organizations have been united and clear in our call for VA to abide by 38 U.S.C. § 3696(a).<sup>9</sup> So, too, has VA’s Inspector General, who [warned](#) that VA will waste \$2.3 billion over five years in “improper [GI Bill]

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<sup>6</sup> Continued Probation [Order](#) from ACCSC to CEHE p. 3 (Oct. 28, 2019).

<sup>7</sup> The CFPB issued a civil investigative demand to CEHE regarding CEHE’s private loan programs and any related misrepresentations. See [Decision and Order](#) on Petition by Center for Excellence in Higher Education to Set Aside or Modify the April 12, 2019, Civil Investigative Demand, CFPB (Aug. 18, 2019).

<sup>8</sup> The DOJ filed a complaint against CEHE alleging improper recruiter incentive payments in violation of the False Claims Act. See [Press Release](#), United States Files Complaint Against Stevens-Henager College, Inc. Alleging False Claims Act Violations for Illegal Recruiting, DOJ (May 8, 2014).

<sup>9</sup> See, e.g., [Letter](#) from veterans service organizations to the U.S. Department of Veterans Affairs (Feb. 14, 2019); [Letter](#) from veterans service organizations to U.S. Department of Veterans Affairs (May 16, 2016); [Letter](#) from Veterans Education Success to U.S. Department of Veterans Affairs (Jan. 10, 2019).

payments to ineligible colleges,” primarily colleges that use deceptive marketing.<sup>10</sup> VA’s prior failures to abide by the law have already cost tens of thousands of veterans to waste their benefits and have cost taxpayers billions of dollars.<sup>11</sup>

VA paid more than \$9,000,000 in GI Bill funds to CEHE in fiscal year 2019.<sup>12</sup> This is a significant taxpayer investment meant to better the future of veterans. 38 U.S.C. § 3696(a) is vital to protecting that taxpayer investment from deceptive practices that harm veterans.

## **II. CEHE engaged in deceptive practices.**

In proceedings initiated by the Colorado Attorney General, the Colorado District Court ruled that CEHE engaged in deceptive practices that violated the Colorado Consumer Protection Act, § 6-1-105.<sup>13</sup> These findings are further corroborated by ACCSC-issued probation orders that document CEHE’s deceptive practices and by Veterans Education Success’ record of complaints from a former employee whistleblower and student veterans.

### **a. A Colorado state court ruled that CEHE violated the Colorado Consumer Protection Act by deceptively advertising its employment statistics, affordability, and program availability.**

The Colorado District Court entered a judgment on August 21, 2020 against CEHE for violating the Colorado Consumer Protection Act, § 6-1-105. The Colorado Consumer Protection Act is similar to both the federal and other state consumer protection acts in that it was modeled after the Uniform Deceptive Trade Practices Act.<sup>14</sup> Most pertinently, subsection (1)(e) of § 6-1-105 establishes that “[k]nowingly mak[ing] a false representation as to the characteristics, ... benefits, ... or ... services” constitutes a prohibited “deceptive trade practice.”

The court determined CEHE did violate this act. The judicial findings implicated CEHE as a whole. CEHE’s executives directed the illegal activity<sup>15</sup> and uniformly applied its business model across all CEHE campuses.<sup>16</sup> As a result, the CEO and Chairman were held personally liable along with CEHE for \$3 million in damages.<sup>17</sup>

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<sup>10</sup> U.S. Department of Veterans Affairs, Office of Inspector General, *VA’s Oversight of State Approving Agency Program Monitoring for Post-9/11 GI Bill Students*, Dec. 3, 2018.

<sup>11</sup> See Yale Law School, “[VA’s Failure to Protect Veterans from Deceptive Recruiting Practices](#)” (2016); Veterans Education Success, “[VA Still Not Enforcing 1974 Ban on Schools that Engage in Deceptive Advertising and Recruiting](#)” (2019); Veterans Education Success, “[Schools with Repeat Law Enforcement Settlements](#)” (2020); Veterans Education Success, “[Schools Receiving the Most Post-9/11 GI Bill Tuition and Fee Payments Since 2009](#)” (2018).

<sup>12</sup> Statistics aggregated from *GI Bill Comparison Tool*, U.S. DEPARTMENT OF VETERANS AFFAIRS.

<sup>13</sup> *Judgment*.

<sup>14</sup> Jan M. Zavislan, *The Colorado Consumer Protection Act and the Attorney General’s Priorities*, COLORADO BAR ASSOCIATION CLE, at 2 (Oct. 26, 2016), available at [https://cle.cobar.org/cvweb/documents/materials/GA102616\\_m.pdf](https://cle.cobar.org/cvweb/documents/materials/GA102616_m.pdf)

<sup>15</sup> *Judgment*, at p. 147, ¶ 707.

<sup>16</sup> *Id.* at p. 117 (“Defendants Barney and Juhlin have developed a business model that requires CEHE’s campuses to uniformly apply policies and procedures authorized by them.”).

<sup>17</sup> *Id.* at p. 160.

The court ruled that CEHE violated the statute by misrepresenting three key aspects of its schools: (i) employment statistics, (ii) affordability, and (iii) program availability.

- (i) CEHE misrepresented its employment statistics by advertising national salary averages that were unrepresentative of school-specific averages.<sup>18</sup> The advertisements did not make clear that the data was based on national wage averages, as opposed to CEHE averages.<sup>19</sup> This “had the effect of leading prospective students to believe that [CEHE’s] outcomes were commensurate with the national averages.”<sup>20</sup> In reality, CEHE knew their school-specific wage numbers were much lower than national averages.<sup>21</sup>

CEHE also misrepresented its employment statistics with faulty job placement numbers.<sup>22</sup> CEHE advertised numbers for which they “fail[ed] to obtain proper documentation before reporting graduates as employed in field, report[ed] graduates as employed in field when they were actually employed in an unrelated occupation, and improperly classif[ied] graduates as exempt/unavailable for employment.”<sup>23</sup> CEHE knew of the proper standards for calculating job placement numbers, but declined to meet those standards.<sup>24</sup>

- (ii) CEHE misrepresented its affordability by advertising its private loans program, “EduPlan,” as a means to make college more affordable and re-establish credit.<sup>25</sup> It emphasized the availability of “EduPlan” as a reason to attend CEHE.<sup>26</sup> Staff were trained to downplay the total loan amount by quoting low monthly payments.<sup>27</sup> In reality, CEHE knew most of its students could not afford the “EduPlan” loan.<sup>28</sup> The “vast majority” of its students defaulted and, between 2010 and 2016, 80% of the loans incurred late fees.<sup>29</sup>

- (iii) CEHE misrepresented its program availability by advertising programs it did not legitimately offer.<sup>30</sup> CEHE advertised the availability of x-ray training, EMT training, and a Sonography degree program.<sup>31</sup> In reality, CEHE did not offer legitimate programs

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<sup>18</sup> *Id.* at p. 121, ¶ 597.

<sup>19</sup> *Id.* at p. 121, ¶ 598.

<sup>20</sup> *Id.* at p. 121, ¶ 527.

<sup>21</sup> *Id.* at p. 121, ¶ 599.

<sup>22</sup> *Id.* at p. 123, ¶ 607.

<sup>23</sup> *Id.* at p. 124, ¶ 610.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at p. 125, ¶ 618.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at p. 125, ¶ 620.

<sup>28</sup> *Id.* at p. 125, ¶ 617.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at p. 125-29.

<sup>31</sup> *Id.*

in any of these areas.<sup>32</sup> The x-ray training did not qualify students to sit for the relevant certification exam, and the EMT training and Sonography degree did not even exist.<sup>33</sup>

The court described these misrepresentations as **deliberate efforts to deceive prospective students into enrolling**.<sup>34</sup> The court found that CEHE magnified the effects of its misrepresentations by rushing prospective students through the enrollment process.<sup>35</sup> CEHE focused on finalizing same-day enrollments of prospective students, which prevented “the prospective student from having time to reflect, and perhaps consult with others, regarding the wisdom of incurring the substantial debt associated with a [CEHE] education.”<sup>36</sup> Admission consultants rushed through six-page enrollment agreements within minutes and were trained to push through any objections from prospective students.<sup>37</sup>

**b. CEHE’s accreditor, ACCSC, has expressed “great concern” about the Colorado court findings and further documented CEHE’s deceptive practices.**

CEHE’s accreditor, ACCSC, expressed “great concern” that “the [state court’s] findings raise very serious questions about CEHE’s compliance with the Commission’s accreditation standards and policies.”<sup>38</sup> ACCSC specifically highlighted the court’s findings that CEHE inflated employment numbers and rushed unfit prospective students through enrollment, and that members of school management coordinated the deceptive practices.<sup>39</sup> ACCSC further noted that CEHE may have committed the “extreme offense” of lying to ACCSC in the process of it all.<sup>40</sup>

ACCSC’s prior probation orders further substantiate the findings of deceptive practices by the Colorado state court. For example, in its original probation order, ACCSC listed claims that CEHE made in advertisements, including “Your fast track to becoming a professional healthcare hero” and “IT jobs are booming with no sign of slowing down!”<sup>41</sup> ACCSC found these claims to be unsubstantiated.<sup>42</sup> ACCSC also condemned CEHE’s advertising of scholarships without adequate disclosure of eligibility requirements<sup>43</sup> and advertising of programs that did not legitimately exist.<sup>44</sup> In a continued probation order issued just within this past year, ACCSC found that CEHE is continuing to deceptively advertise, including a **misleading advertisement** that said students would receive a new tablet and laptop without disclosing that this did not apply to certain degree programs.<sup>45</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at p. 154, ¶ 728.

<sup>35</sup> *Id.* at p. 144, ¶ 692.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> [Letter](#) from ACCSC to CEHE p. 1-5 (Oct. 26, 2020).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at p. 3.

<sup>41</sup> [Probation Order](#) from ACCSC to CEHE p. 10 (Sept. 6, 2018).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at p. 14.

<sup>44</sup> *Id.* at p. 12.

<sup>45</sup> Continued Probation [Order](#) from ACCSC to CEHE p. 25 (July 21, 2020).

Further, ACCSC challenged an apparent attempt by CEHE to evade the consequences of its deceptive practices.<sup>46</sup> CEHE placed a clause in its enrollment agreements that waived its liability for any misrepresentations that students relied upon when enrolling.<sup>47</sup> The waiver clause gave students only 90 days to discover misrepresentations before “forever and completely releas[ing]” all liability.<sup>48</sup> ACCSC concluded: “By attempting to establish a limitation of 90 days on students’ rights to redress, CEHE appear[ed] to be interested primarily in protecting the schools rather than in fulfilling the schools obligations to students.”<sup>49</sup>

ACCSC has summed up CEHE tactics as having “fostered the creation of a student population that the schools are ill-prepared to educate” and “persistent below-benchmark rates of graduation and employment reported throughout the system of CEHE-affiliated institutions.”<sup>50</sup>

**c. Veterans Education Success has received complaints from a former campus director and former students that corroborate the deceptive practices found by the Colorado state court and ACCSC.**

Complaints submitted to Veterans Education Success corroborate CEHE’s deceptive practices by describing an atmosphere of unethical recruitment and poor student outcomes.

Whistleblower Debbi Potts reached out to us in September 2020. Ms. Potts worked as campus director at College America’s Cheyenne, Wyoming branch from 2009-2012. She left the school out of frustration with the management’s intense focus on profits at the expense of the students. Ms. Potts describes a lawless environment coupled with an attitude of “asking for forgiveness later.”<sup>51</sup> With first-hand knowledge, Ms. Potts confirms CEHE’s use of deceptive advertising to misrepresent employment statistics, affordability, and available programs (amongst additional misrepresentations). Please know that Ms. Potts is already in direct contact with VA’s Inspector General.

Further, Veterans Education Success has received several student veteran complaints about CEHE’s deceptive practices.<sup>52</sup> One student enrolled to pursue a career in medicine after returning from a tour of duty in Iraq. After earning an associate’s degree in healthcare administration, she came to find that the degree was not useful towards getting a job in the field and that her credits were non-transferable to most other schools. Another student began attending school with the impression that his tuition would be covered by the G.I. Bill, but instead found out that the school was taking out student loans on his behalf to the tune of \$55,000.

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<sup>46</sup> Probation Order from ACCSC to CEHE p. 7-9 (Sept. 6, 2018).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at p. 9.

<sup>49</sup> *Id.* at p. 8.

<sup>50</sup> *Id.* at p. 6.

<sup>51</sup> Notes on file at Veterans Education Success.

<sup>52</sup> Notes on file at Veterans Education Success.

### III. CEHE's actions necessitate VA disapproval under 38 U.S.C. § 3696(a).

In the past, VA has considered deceptive practice claims by States to be evidence that a school must be disapproved for GI Bill under 38 U.S.C. § 3696(a).<sup>53</sup> But the facts before you regarding CEHE are even stronger because not only has a State alleged deceptive practices by a school, but the state court definitively determined that CEHE deceived students and ruled against CEHE in a final order. Here, the Colorado final court ruling is definitive proof that the school engaged in deceptive practices, because the court made factual findings that CEHE's misrepresentations about employment rates, affordability, and program availability constituted "a deceptive trade practice" by "knowingly mak[ing] a false representation as to the characteristics. . . of goods."<sup>54</sup> Under 38 U.S.C. § 3696(a), VA is forbidden from continuing to approve GI Bill benefits to CEHE. The statute provides: "The Secretary shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation."


Several U.S. Senators recently expressed that it would be a failure of "responsibility to allow CEHE to continue to defraud students" in the wake of the Colorado state court ruling.<sup>55</sup> The court decision is only further corroborated by evidence from ACCSC and Veterans Education Success. Other red flags exist as well in the form of a U.S. Department of Justice investigation<sup>56</sup> and U.S. Consumer Financial Protection Bureau investigation<sup>57</sup> on ancillary issues.

We respectfully request that the VA immediately disapprove CEHE from all VA education funding programs, as required by 38 U.S.C. § 3696(a). If VA decides that it still needs more information, we are happy to assist in any way we can.

Sincerely,



Carrie Wofford  
President



Aniela K. Szymanski  
Senior Director of Legal Affairs

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<sup>53</sup> See, e.g., [Letter](#) from U.S. Department of Veterans Affairs to Bellevue University (July 2, 2020) ("Information contained in a complaint filed by the Nebraska State Attorney General in the District Court, Sarpy County, against Bellevue... constitutes evidence that Bellevue may have failed to meet the section 3696(a) requirements.").

<sup>54</sup> Colorado Consumer Protection Act, § 6-1-105(1)(e).

<sup>55</sup> [Letter](#) from U.S. Senators Durbin, Brown, & Bennet to U.S. Department of Education (Nov. 6, 2020).

<sup>56</sup> See footnote 4.

<sup>57</sup> See footnote 3.