NYC Consumer Affairs

Comments Received by the Department of Consumer Affairs

on

Proposed Rules Prohibiting Deceptive Trade Practices by Certain For-Profit Schools

October 17, 2019

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor, New York, NY 10004

Re: Comments on proposed rules to prohibit deceptive trade practices by certain for-profit schools.

Hello, my name is Christina Craig.

I am a senior at Berkeley College majoring in Health Services Management.

Since my first semester of attending Berkeley College in September of 2017, all the staff, including President Michael Smith, have helped me to grow into the empowered leader I am today.

The New York City Department of Consumer Affairs' (DCA's) proposed rules to prohibit deceptive trade practices by certain for-profit schools are unwarranted. All colleges and universities enroll and admit students who are seeking to earn a college degree. I don't understand why the DCA is singling out colleges like Berkeley, which is an accredited, degree granting institution, from other colleges.

Berkeley College has provided me with excellent academic advisement, counseling, and employment assistance in my journey to a college education.

The staff from Student Development and Campus Life always reach out to me regarding events that are happening on and off the campus to complement my learning experience. I have participated in leadership summits and volunteer activities such as supporting homeless shelters and children in hospitals.

Because of this focus on community service and volunteerism, I have had the opportunity to be part of the Breast Cancer Walk, the Domestic Violence Awareness Walk, and the American Heart Associate Walk with other members of the College. I have had the privilege of going to Puerto Rico to be part of the rebuilding effort for the people who were hit hard by Hurricane Maria. Each of these events have allowed me to make a difference, build my network, and become confident in my ability to lead.

I am a member of the National Society of Leadership and Success, Sigma Alpha Beta, and Alpha Sigma Lambda. The Center for Academic Success staff and professors have supported and encouraged me to work hard to achieve these honors.

As President of the Health Services Administration Club for more than a year, I have built a strong rapport with my peers on campus. Knowing most of the students has helped me as an Office Assistant for the Career Services Department. I assist fellow students to prepare their resumes and with other career-related tasks they need.

I am at this hearing today as a testament of the dedication and support that Berkeley College provides to me and to many other students. Please treat Berkeley in the same manner as all colleges and universities in the City of New York, which like Berkeley, are accredited by the Middle States Commission on Higher Education and regulated by the U.S. Department of Education, and New York State Education Department.

Christina Craig

190 York Street
14d Brooklyn, NY 11201
Christinacraig201@gmail.com
646-972-0908

Margaret Murray
1371 E 92 Street
Brooklyn, NY 11236

October 13, 2019

New York City Department of Consumer Affairs
42 Broadway, 5th Floor,
New York, NY 10004

Re: Comments opposing the New York City Department of Consumer Affairs' proposed rules to prohibit deceptive trade practices by certain for-profit schools for hearing on October 17, 2019.

Attention DCA:

My name is Margaret Murray and I was a student of Berkeley College from the fall of 2015 until winter of 2017. I have never had a bad experience at the college. I completed a Bachelor's degree in Legal Studies and have had an experience that I will never forget. The faculty and staff were always professional and ready to assist in any way possible.

It is with great sadness that Berkeley College, a proprietary institution, is going through a terrible period with New York City Department of Consumer Affairs (DCA). The college's main focus is always the best interest of its students. I thoroughly understood the financial aspects of my studies as it relates to financial aid, including loans, grants and Federal Student Aid (FASFA). I was interviewed by financial aid representatives who advised me on how to apply for loans, grants and scholarships and also provided lists of agencies to contact to make sure that I was not left with large amounts of student loans after graduating from the college.

Berkeley College is not against preventing deceptive trade practices that negatively impact students. In fact, the college supports federal, state, and city regulations that prevent bad things from happening to all students. At Berkeley College, various departments are instrumental in making sure that students stay on track for graduation. The college provides career assistance and support post-graduation as well. As an alumni, I can go to any campus with any concerns and obtain professional and personal consultations.

Berkeley College is an accredited institution known for upholding the highest standards set by the Middle States Commission on Higher Education, the New York State Education Department and the U.S. Department of Education. It has been my experience that Berkeley College has provided exceptional services to students and alumni. If the New York City Department of Consumer Affairs is interested in protecting students, then it should seek to prevent illegal schools from operating, instead of singling out law-abiding, accredited colleges and universities like Berkeley College, and unfairly targeting these institutions because of their sector.

Sincerely,

M. Murray

Margaret Murray
Telephone (347) 283-5232
Email: mmurray1554@gmail.com

October 16, 2019

Mr. Carlos A. Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Testimony on NYC DCA Proposed Rules Regarding Deceptive Trade Practices of For-Profit Educational Institutions

Dear Mr. Ortiz,

I am writing to you today as an alumna in support of Berkeley College and to express my concerns over the proposed rules targeting for-profit educational institutions. Degree granting colleges and universities should be exempt from the rules proposed by the New York City Department of Consumer Affairs because colleges and universities are regulated by the U.S. Department of Education and New York State education Department. Education is not a consumer good and should not be treated as such.

Choosing a college is a daunting task. Representatives from Berkeley came to talk to my senior class and the school piqued my curiosity. I visited the White Plains campus and was instantly drawn to Berkeley. Furthermore, I was awarded a full academic scholarship for my Associates degree (my major was Accounting). I later enrolled in a Bachelor's degree program at the College, and was awarded a 75% academic scholarship.

This was the best decision I could have made. I come from a working class family that fully supported my decision to go to college, but could not financially support me in pursuit of my continuing education. Berkeley College allowed me the opportunity to study in a field I love, earn my Bachelor's degree (which in today's time is a necessity), and kick start my professional career as an accountant. This allowed me to pay off my tuition within one year of graduating college, unlike many of my peers who went elsewhere.

The experiences I have had, including studying abroad, and the memories and friendships I have made during my time at made Berkeley College are priceless.
Thank you.

Regards,

Emily E. Imbesi
Class of 2001

Mr. Jason A. Raditch
2682 Creston Avenue Apt 3F
Bronx, NY 10468

October 16, 2019

Mr. Carlos A. Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Proposed Rules Regulating For-Profit Colleges

Dear Mr. Ortiz:

I am privileged to attend this hearing and speak in support of Berkeley College. I have been an active part of Berkeley College family for the past 14 years. I first graduated from Berkeley College with an Associate of Science degree in Information Systems Management in 2007. I am currently enrolled at the Berkeley College pursuing a Bachelor's degree in Business Administration and Management. I will be graduating in the fall of 2020. In my personal experience during this time, Berkeley College has not only provided me with an amazing education, but the College has provided me with the tools and opportunities to build the necessary soft and hard skills required to be successful in both my personal and professional life. The professional success is evident based on my acquiring an internship at Sony Music Entertainment which I obtained with the assistance and guidance of the career services department. This internship transformed into an amazing 13-year career at the company.

The proposed DCA rule does nothing to protect students from deceptive trade practices at for-profit institutions and in fact ultimately hurts students. All degree-granting institutions are already regulated in the State of New York. The reality is New York has a regulatory structure that is unlike any other state. For-profit degree-granting colleges are regulated as education institutions and not businesses, which is why the same standards apply to CUNY, SUNY and not-for-profit colleges.

Sincerely,

Jason Raditch
646-465-0452
Jason.Raditch@gmail.com

October 17, 2019

Mr. Carlos A. Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Comment on Proposed Rules Regulating For-Profit Colleges

Good Morning,

My name is Daniyel Bingham, and I am an undergraduate student at Berkeley College, majoring in Business Management. My career aspirations are to grow my small business company into an organization that employs New Yorkers.

I believe achieving a college education is not a right as a U.S. citizen; it is a privilege, and a student should have the freedom to choose which school they attend without any adverse effect, consequence, or outside influence from local, state, or government regulation. College is a student's first opportunity in life to do their due diligence in visiting various college campuses to establish the ideal collegiate institution and environment that supports their educational and career endeavors.

I chose Berkeley College because it places students' success at the forefront of their academic approach. The admissions counselor understood my needs as a Veteran of War and ensured I made use of the mental health support and counseling the school provides. This behavior is not salesmanship. There were Berkeley school officials who sought out scholarships and ways of reducing my overall tuition. Berkeley has a humanistic approach that ensures its students are taken care of in a manner that promotes prosperity and achievement. This includes offering tutoring six days a week, professors with open-door policies, career readiness seminars, and business attire and style workshops. Berkeley College's faculty does everything within their power to assist your career goals through a college education.

In closing, one of the things I have learned studying business management at Berkeley is that you can get historical data to reflect or support any opinion. Seemingly local and government officials have an agenda that is not equitable to schools providing quality education to students. However, schools like Berkeley College deserve equal treatment that applies to all collegiate institutions in the City and State of New York. Anything that persuades future students of anything less than that is purposefully misleading.

Sincerely,

Daniyel Bingham

New York City Department of Consumer Affairs
42 Broadway, 5^{th} Floor, New York, NY
Thursday, October 17, 2019 at 10:30 a.m.

Re: Statement on NYC DCA Proposed Rules Regarding Deceptive Trade Practices of For-Profit Schools

My name is Osvaldo Pena and I am a United States Army Veteran. This is my seventh semester at Berkeley College, and I have not had any issues with the school. While the New York City Department of Consumer Affairs (DCA) says that it wants to protect students from illegal colleges that might deceive students, that is not the case when it comes to Berkeley. When I first contacted someone at Berkeley, I was invited to come in and speak with a Veterans Administration (VA) counselor. I sat that with a representative from the Office of Military and Veterans Affairs, and she explained to me the process of signing up – how I had to take at least four classes to be considered full time to receive benefits – and how every semester I had to certify my enrollment and sign my billing agreement with Student Accounts. Since my first semester at Berkeley my tuition has not changed. The DCA says that some behaviors have been aggressive, I have not experienced any aggression in my seven semesters at Berkeley. What people don't understand is when you go to college you are treated as an adult. That means as students, we have to be responsible, make sure we are constantly checking with our advisors, Student Accounts and so forth, to make sure we are in good standing. I see students who don't really take being in college seriously. I am constantly checking my school email to make sure I am not missing any important information. I make sure I meet with my advisors every semester. While the DCA claims these bad things are happening in some schools, I can truly say I have not had any issues since my first day at Berkeley College. So why is it that you are singling out proprietary schools, and leaving the public sector and private, nonprofit colleges and universities out when we are all accredited and under the U.S. Department of Education and New York State Education Department? Why set up roadblocks and obstacles that will only hurt consumers rather than help them?

I appreciate your reconsidering these rules and exempting Berkeley College and all degree-granting for-profit colleges and universities from these rules.

ADRIANA DELGADO

October 15, 2019

Mr. Casey Adams
Director of City Legislative Affairs
New York City, Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Testimony on NYC DCA Proposed Rules Regarding Deceptive Trade Practices of For-Profit Educational Institutions

Dear Mr. Adams,

On behalf of the Berkeley College Alumni Association as the current President of the Alumni Board, I am submitting testimony in opposition to the "Deceptive Advertising by For-Profit Educational Institutions" Rules as proposed by the New York City Department of Consumer Affairs (DCA).

As a Berkeley College graduate, I am proud to serve as the President of the Alumni Association and have remained connected to the institution ever since I graduated in 2000. I know in my heart that Berkeley College is fully committed to its alumni and graduates, providing lifetime career assistance support and on-going alumni programming designed for life-long success.

Community Service is also a big focus of the Alumni Association. Giving back and service to others is something near and dear to my heart. I have served the past two years as the Alumni Community Service Liaison, encouraging alumni to participate in Community Service Week, part of the Berkeley Cares initiative at the College. Last year Berkeley College contributed 1,800 volunteer hours to community organizations across the New York City metro area and will be doing the same again this May.

Berkeley College prepared me in many ways for the career that I have today as a Visual Merchandising Senior Analyst at Verizon Wireless. The project presentations in my classes prepared me for my current role and helped me to become more comfortable with public speaking, which can be intimidating. Berkeley helped me overcome this as seen by the various leadership roles in which I serve today.

I credit a big part of my career success to my Berkeley College education and feel that the NYC DCA is unfairly attacking the proprietary sector degree granting institutions like Berkeley College and not crediting or acknowledging the many successes of the nearly 60,000 Berkeley College alumni.

In conclusion, it would be much more productive if the NYC DCA got to know our college more and the great impact our graduates have on the City of New York and beyond.

Ms. Adriana Delgado
President, Berkeley College Alumni Association
Berkeley College Class of 2000

Congress of the United States
Washington, DC 20515

October 17, 2019

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

RE: Proposed Rule on Deceptive Advertising

Dear Director Ortiz,

Thank you for the opportunity to comment on this proposed rule. The New York City Department of Consumer Affairs (DCA) has been at the forefront of protecting New Yorkers from bad actors and harmful practices that seek to take advantage of individuals and families throughout New York City.

While we appreciate your efforts to continue to combat consumer fraud, we must express concern for the undue and unintentional consequences that we fear this proposed rule would impose on Monroe College, an institution located in the Bronx that serves many African-American and Latinx students. As the Statement of Basis provided by the DCA stipulates, Monroe College must be accredited by the New York State Education Department, The Middle States Commission on Higher Education, and the U.S. Department of Education. Monroe College has met these standards as it continues to serve low-income and first-generation students whose graduation rates for prospective recipients of associate and bachelor's degrees are comparable to similar degree programs at peer institutions of higher education.

Let us be clear – there are well-documented bad-actors in the for-profit higher education landscape whose students, be they traditional undergraduates, veterans of the Armed Services, or adult learners, have been defrauded due to malintent and horrible practices that place their for-profit interests above the aim of properly educating their students. We all want to make sure these impostors are prevented from participating in higher education and appreciate the DCA's attention to this issue. That being said, we want to ensure that Monroe College – an institution that remains in compliance with local, state, and federal regulations and laws – is not unfairly targeted by this new rule. Over the years, Monroe College has proven itself dedicated to ensuring its diverse student body has a quality education.

We appreciate the opportunity to relay our thoughts regarding the new DCA rule and the impact it will have on Monroe College. We respectfully ask that the DCA please take full and fair consideration of our comments and concerns.

Sincerely,

Adriano Espaillat
Member of Congress
New York's 13th Congressional District

Eliot L. Engel

Eliot L. Engel
Member of Congress
New York's 16th Congressional District

LEGISLATIVE OFFICE
250 BROADWAY, SUITE 1770
NEW YORK, NY 10007
Phone: (212) 482-6697
Fax: (212) 788-8954

DISTRICT OFFICE
940 EAST GUN HILL ROAD
BRONX, NY 10469
Phone: (718) 684-5509
Fax: (718) 684-5510
andy.king@council.nyc.gov

THE COUNCIL OF
THE CITY OF NEW YORK
COUNCIL MEMBER 12TH C.D.
ANDY L. KING
CHAIR OF THE
COMMITTEE ON
JUVENILE JUSTICE

CO-OP CITY OFFICE
135 EINSTEIN LOOP, ROOM 44
BRONX, NY 10475
Phone: (347) 326-8652
Fax: (347) 326-8653

Committees
Civil Service & Labor;
Education; Land Use; Parks and Recreation;
Youth Services;
Subcommittee on Planning, Dispositions & Concessions

October 15, 2019

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Mr. Ortiz:

I am writing to express our opposition to the proposed NYC DCA regulations regarding for-profit colleges. While I understand that your goal is to protect students from fraud and misleading information, the reality is that the proposed rule will harm colleges that have excellent outcomes, such as Monroe College in the Bronx, and will result in misleading and confusing information being presented to students.

The proposal assumes that degree-granting for-profit colleges in New York are unregulated. This is patently false. These colleges are regulated by the Board of Regents of the State of NY, the New York State Education Department, the US Department of Education, and accreditors such as Middle States Commission on Higher Education.

The proposal also falsely assumes that graduation rates are low at for-profit degree-granting institutions. Monroe College has an on-time associate degree graduation rate that is 10 times higher than the local public institutions.

The proposed regulation would have the effect of confusing and misleading New Yorkers since similar information should be available for similar programs at all colleges. For example, the proposed rule would result in one graduation rate being used by for- profit colleges and a separate rate being used by all other institutions. This will lead to massive confusion and is contrary to the mission of consumer protection.

The proposed rule limits communication to a prospective student to two communications in a seven-day period. This will harm students seeking assistance, especially first-generation students who often need outreach.

Lastly, the proposed rule takes a horrible step backward by requiring for-profit institutions to call their admissions advisors “salespeople” and makes it “a deceptive trade practice” to refer to the staff who help students enroll as “advisors” or “counselors.”

Unfortunately, there is a national movement that has now come to New York and New York City that is trying to eliminate the for-profit sector of education. The movement is philosophically opposed to the idea of for-profit education. It is not focused on student outcomes nor does acknowledge the impact these institutions have on our communities.

For these reasons, we ask that the Department of Consumer Affairs not rush to promulgate these ill-conceived rules and rather seek input from a wide range of constituents.

In The Spirit of Unity,

Hon. Andy L. King
Council Member for the 12th District/Bronx

“Our Perseverance In The Future Lies in the Resiliency of Our Past”—Council Member Andy King

VICTOR M. PICHARDO
Assemblymember 86th District
Bronx County

CHAIR
Task Force on New Americans

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

COMMITTEES
Cities
Higher Education
Housing
Real Property Taxation
Small Business
Social Services

Black, Puerto Rican, Hispanic & Asian
Legislative Caucus

Puerto Rican/Hispanic Task Force

October 16, 2019

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Dear Mr. Ortiz,

I am writing to express my concern regarding the proposed For-Profit College Accountability Act. While I support the Department of Consumer Affairs' effort to address deceptive trade practices by certain for-profit schools, I am concerned that the current proposal will harm an effective and ethical institution like Monroe College, while also setting back the Mayor's goal of improving access and equity in the Bronx.

During my time as a State legislator representing the 86th Assembly district in the West Bronx, I have witnessed firsthand the lengths Monroe College gone to help build a better Bronx. They have continuously improved its residents' lives through education and is ranked among the top three institutions in New York State for graduating black and Latinx students and they have done so through comprehensive support programs and services to ensure that students can succeed.

For these reasons alone, I ask that the DCA reconsider the following:

The regulation proposes metrics that will mislead and confuse students given that the disclosures resulting from them will only be required from proprietary institutions. If DCA's stated purpose to protect students is genuine, it's not clear how it believes students can be well-served by such inconsistently applied, divergent metrics. These proposed metrics are not rational and will harm consumer protection rather than advance it.

Additionally, the proposal seeks to reclassify admission advisors as "Salespeople" which is insulting and inaccurate for institutions like Monroe who provide rigorous training to ensure they adhere to a Code of Conduct that requires staff to "Always act in the best interest of students and their families." Contrary to DCA's insinuation, Admissions Advisors are not salespeople. They dedicate considerable time reviewing each applicant's academic and personal backgrounds and speaking with them about their educational goals to determine the applicant's likelihood of success at Monroe.

Furthermore, limiting applicant contacts to twice a week is arbitrary and irrational. While it is understood that the intent of this provision is to prevent unwanted intrusion into a prospective student's life, in practice, the provision is impractical, especially with first-generation students who tend to have many questions about the application process and require multiple contacts and campus visits to properly complete the process.

Lastly, New York students and their families deserve accurate, easy to understand and consistent information on the programs or colleges they are considering for enrollment. Yet, the DCA's proposed rule will mislead students and the public since it only applies to for-profit institutions and does not provide a prospective student the same information from public or non-profit institutions. Accountability and consumer protection measures should be extended equally across the higher education landscape to ensure all students are equally well-served.

For these reasons, I ask that you take these concerns into consideration.

Thank you for your attention regarding this matter.

Sincerely,

Victor M. Pichardo
Member of Assembly
86th Assembly District

ALBANY OFFICE: Room 602, Legislative Office Building, Albany, New York 12248 • 518-455-5511, FAX: 518-455-5449
DISTRICT OFFICE: 2175 Jerome Avenue, Suite C, Bronx, New York 10453 • 718-933-6909, FAX: 718-933-2613
EMAIL: pichardov@nyassembly.gov

ADTALEM
GLOBAL EDUCATION

October 16, 2019
Attn: Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

RE: New Rules to Prohibit Deceptive Trade Practices by Certain For-Profit Schools

Dear Mr. Ortiz,

Adtalem Global Education and its institutions appreciate the opportunity to comment on your Department's proposed rules regarding deceptive trade practices. Adtalem's purpose is to empower its students to achieve their goals, find success, and make inspiring contributions to our global community. One of Adtalem's institutions, Chamberlain University, had more than 1,500 students from New York City enrolled in its online nursing degree and certificate programs in the 2018-2019 academic year. With a projected nursing shortage in the state of more than 23,000 nurses by 2025, Chamberlain plays an important role in filling key nursing workforce needs with a dedication to quality.

We are committed to standards of best practice and transparent accountability metrics that enable us to best serve our students and graduates. Chamberlain has committed to receiving no more than 85% of its revenue from federal funding, which is less than the federal requirement of 90%, as part of its broader voluntary Student Commitments. In the most recently completed fiscal year, Chamberlain derived only 65% of revenue from federal funds. Several other examples of Chamberlain's dedication to our students include providing:

- A one-page disclosure (attached) that includes information about program or institutional performance metrics, such as total program costs, debt and default rates, completion and graduation rates, and earnings and licensure data;
- Access to *Manage My Loans*, a dynamic online tool that gives students ongoing visibility into overall program progression, outstanding loan balance (including estimated repayment obligations), financial position as compared to academic progress, and credits required to graduate.

We support efforts to protect consumers and provide meaningful disclosures. The proceeding pages include recommendations to enhance the proposed rule.

Thank you for your consideration of these recommendations.

Sincerely,
Christen Bollig
Vice President, Regulatory Affairs
(630) 512-8912
Christen.Bollig@adtalem.com

Recommendation 1: Clarify Institutions and Programs in Scope

We recommend exclusion of institutions who participate in the National Council for State Authorization Reciprocity Agreement (NC-SARA) from the definition of for-profit schools. NC-SARA, of which New York is a member state, provides a voluntary approach to state oversight of postsecondary distance education. When states join SARA, they agree to follow uniform processes for approving their eligible institutions' participation, which includes possessing accreditation, and meeting certain notification and disclosure requirements. NC-SARA consumer protection provisions require the home state to investigate and resolve allegations of dishonest or fraudulent activity by the state's SARA-participating institutions, including the provision of false or misleading information.

A recommended approach is to strike the definitions for both "for-profit institution" and "for-profit school" and replace[1] them with the following, consolidated definition:

> ***Unregulated for-profit educational institution****. "Unregulated for-profit educational institution" means any certificate or degree-granting institution who operates a campus location within New York City or offers distance education courses to New York City residents that:*
>
> *a) Is either a for-profit corporation, partnership, firm, organization, or other business entity that charges tuition or fees related to instruction OR an institution formally organized as a not-for-profit institution if one or more members of the governing board (other than ex officio members serving at the pleasure of the remainder of the governing board and receiving a fixed salary), or any person with the power to appoint or remove members of such governing board, receives any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract) from the nonprofit institution of higher education;*
>
> *b) is neither licensed by the New York State Education Department nor accredited by the New York State Board of Regents, regardless of exemption; or*
>
> *c) is not a degree-granting institution authorized to offer distance education programs through the National Council for State Authorization Reciprocity Agreements (NC-SARA)*

[1] And replace similar references throughout the rules to correspond with the change.

Recommendation 2: Standardize Student Disclosure Requirements

As a prospective student, deciding where to complete your post-secondary education can be challenging, particularly given that comparative data across institutions often use varying methodologies, thus creating the appearance of conflicting information. With this need for consistency and transparency in mind, we ask the Department to consider using already-established data points like those provided through the U.S. Department of Education's *College Scorecard*.

An additional option would be to focus on schools that advertise job placement rates as means of attracting students to enroll, by requiring the disclosure of information listed in New York Education Law 101, §5005 *Disclosure to students*.

In regards to the definitions, we have detailed recommendations below which are intended to clarify, use commonly recognized definitions, and alleviate any potential confusion to students or institutions.

- The *Enrollment Cohort* definition should include commonly allowable exclusions such as military service, official church mission, or foreign aid service of the federal government.

- The *Employment in the Field of Study* definition implies that all programs pursued must be required for employment or a student is not employed in the field. This methodology is not appropriate though, for programs that prepare students to advance in their field. For example, students pursuing certain advanced nursing degrees will not necessarily need that advanced degree to be employed as a nurse. Instead, they pursue such programs to improve their chances of increased responsibility in their field or higher wages. The California Bureau for Private and Post-Secondary Education (BPPE) has been very successful with their "in field" definition. We propose mirroring that same methodology here, which requires the graduate to be employed in a job classification under the United States Department of Labor's Standard Occupational Classification codes, using the Detailed Occupation (six-digit) level, for which the institution has identified the program prepares graduates to either obtain or continue/advance their careers. The specific SOC codes could be required to be published in the institutions catalog to provide transparency to prospective students about the outcomes considered to be in field.

- The definitions for both *Graduate Placement Rate* and *Graduation Rate* exclude part-time students which does not paint an accurate picture of students' experiences[2]. We recommend including part-time students and extending the timeframe from 100% to 150%[3] which more accurately reflects the extended timeframe of completion for these students.

- Lastly, the definition for *Total Placement Rate* may be confusing or misleading to consumers. We recommend eliminating this definition altogether or conducting consumer testing to evaluate the value.

To incorporate these considerations, we have provided an amended version of the proposed definitions at the end of the comment.

---

[2] The Government Accountability Office (GAO) has indicated in numerous reports that part-time students should be included in such calculations. (Example: Education Should Strengthen Oversight of Schools and Accreditors)

[3] At minimum, we recommend changing to 150% to align with USDE's College Scorecard.

Recommendation 3: Revisit Procedural Implications

In regards to the restriction on number of contacts to students, federal consumer protections laws such as the *Telephone Consumer Protection Act* and the *Telephone Sales Rules* are in place to protect consumers from harassing telemarketing behavior. We appreciate the clarification that it does not apply to a direct response to an inquiry, but would request an expansion as to not arbitrarily restrict contact with consumers where an established business relationship exists, including those that have applied or have provided express written consent to be contacted.

We recommend the following language:

(6) To initiate communication with a prospective student without their express written consent or prior to completing their application, via telephone (either voice or data technology), in person, via text messaging, or by recorded audio message, in excess of two communications in each seven-day period to the prospective student's residence, business or work telephone, cellular telephone, or other telephone number provided by such student. Responses to a prospective student's inquiry to the for-profit institution is not an initiated communication.

Amendments

§ 5-52 [[Reserved]] For-Profit Schools.
(a) Definitions.

Employment in the Field of Study. "Employment in the field of study" means employment ~~doing the type of work specified in the name of the program or in the certificate, diploma, or degree conferred by the school from which the employee graduated, or the reasonable equivalent therof.~~ in a job classification under the United States Department of Labor's Standard Occupational Classification codes, using the Detailed Occupation (six-digit) level, for which the institution has identified, within the catalog, the program prepares graduates to either obtain or continue/advance their careers. ~~A job for which: (1) training in the program is not required; and (2) the entry level salary is less than 80% of the entry level salary for the type of work specified in the name of the program is not a reasonable equivalent.~~

[no changes]

Enrollment Cohort. "Enrollment cohort" means all the students who began enrollment in a program for the first time during the period of time from July 1 of a given year through June 30 of the following year (the "award year"), except allowable exclusions, which include the death of the student, permanent disability, military service, official church mission, or foreign aid service of the Federal government[4]. ~~any such students who, before graduation, became unable to continue enrollment on at least a half-time basis due to an incident resulting in their total and permanent disability or death.~~ For example, the students who began enrollment in a program during the 2017-2018 award year constitute the enrollment cohort for that award year.

[no changes]

~~For-profit institution. "For-profit institution" means both any for-profit school and any institution that charges tuition or fees related to instruction and is formally organized as a not-for-profit institution if one or more members of the governing board of the not-for-profit institution, or any person with the power to appoint or remove members of such governing board, receives from the not-for-profit institution any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract), excluding a fixed salary received by any ex officio member serving at the pleasure of the remainder of the governing board.~~

~~For-profit school. "For-profit school" means a for-profit corporation, partnership, firm, organization, or other business entity that charges tuition or fees related to instruction and qualifies as exempted from the licensing requirement of section 5001 of the Education Law pursuant to paragraph (a) of subdivision 2 of such section, excluding (1) any school that waives such exemption and is licensed pursuant to subdivision (2-a) of section 5001 of the Education Law and (2) any school that is accredited pursuant to section 4-1.3 of part 4 of chapter 1 of title 8 of the New York Codes, Rules, and Regulations.~~

[4] Used from the Integrated Postsecondary Education Data System (IPEDS)

ADTALEM
GLOBAL EDUCATION

Amendments, Continued

Graduate Placement Rate. "Graduate placement rate" means, of the number of ~~full-time~~ students ~~in the enrollment cohort~~ who completed the program ~~within 100% of the length of the program~~ during the award year, the number of students obtaining ~~full-time (at least 32 hours per week),~~ non-temporary employment in the field of study within 6 months ~~after the time for~~ of completion of their program, divided by the number of ~~full-time~~ students ~~in the enrollment cohort~~ who completed the program ~~within 100% of the length of the program~~ during the award year excluding those who died, were serving in the military, were continuing their education, or for whom post-graduate status is unknown. The graduate placement rate disclosed pursuant to subdivision (d) of this section must be for the most recent ~~enrollment cohort of students~~ award year of graduates to have reached 6 months after the time for completion of their program.

Graduation Rate. "Graduation rate" means the number of ~~full-time~~ students in the enrollment cohort who completed the program within ~~100~~150% of the length of the program divided by the number of ~~full-time~~ students in the enrollment cohort. The graduation rate disclosed pursuant to subdivision (d) of this section must be for the most recent enrollment cohort to have reached 6 months after the time for completion of their program.

[no changes]

~~Total Placement Rate. "Total placement rate" means the product of the graduate placement rate and the graduation rate. The total placement rate disclosed pursuant to subdivision (d) below must be for the most recent enrollment cohort of students to have reached 6 months after the time for completion of their program.~~

Unregulated for-profit educational institution. "Unregulated for-profit educational institution" means any certificate or degree-granting institution who operates a campus location within New York City or offers distance education courses to New York City residents that:

a) Is either a for-profit corporation, partnership, firm, organization, or other business entity that charges tuition or fees related to instruction OR an institution formally organized as a not-for-profit institution if one or more members of the governing board (other than ex officio members serving at the pleasure of the remainder of the governing board and receiving a fixed salary), or any person with the power to appoint or remove members of such governing board, receives any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract) from the nonprofit institution of higher education;
b) is neither licensed by the New York State Education Department nor accredited by the New York State Board of Regents, regardless of exemption; or
c) is not a degree-granting institution authorized to offer distance education programs through the National Council for State Authorization Reciprocity Agreements (NC-SARA)

Amendments, Continued

[no changes for section (b)]

(c) Prohibited Practices. [no changes (1)-(5)]

(6) to initiate communication with a prospective student without their express written consent or prior to completing their application, ~~prior to enrollment,~~ via telephone (either voice or data technology), in person, via text messaging, or by recorded audio message, in excess of two communications in each seven-day period to the prospective student's residence, business or work telephone, cellular telephone, or other telephone number provided by such student. ~~A direct~~ Responses to a prospective student's inquiry to the for-profit institution is not an initiated communication.

[no changes]

(d) Required Disclosures.

(1) The disclosures required by this subdivision ("Required Disclosures") must be signed or initialed by each consumer or prospective student prior to entering into an enrollment agreement, and a signed copy must be retained by the for-profit institution for five years and made available for inspection by the Department. The Required Disclosures must be made available on the for-profit institution's website for each program currently offered by the for-profit institution. If a program has 10 or more students in the enrollment cohort to have most recently graduated, the Required Disclosures must be based on the individual program. If a program has fewer than 10 students in the enrollment cohort to have most recently graduated, the Required Disclosures must be based on all programs offered by the for-profit institution with the same length of the program as said program, and the disclosures must identify the programs on which they are based. If there are still fewer than 10 students, then it should be noted that the Required Disclosures cannot be provided due to an insufficient number of students. ~~A summary of the methodology used by the for-profit institution to calculate the graduate placement rate for each enrollment cohort must be created and retained by the for-profit institution for five years and made available for inspection by the Department.~~

(2) It is a deceptive trade practice for a for-profit institution to fail to make the following disclosures to consumers and prospective students in the form and manner required by the Department or to fail to make the following disclosures available on its website:

(i) the total program cost;
(ii) the graduation rate;
~~(iii) the graduate placement rate;~~
~~(iiiv) the total placement rate;~~
(iv) the median time in which students complete the program; and
(v~~i~~) the median cumulative debt amount.

(3) If the institution advertises graduate placement rates as means of attracting students to enroll in the school, the graduate placement rate must also be disclosed.

[end of recommended changes]

"KNOW BEFORE YOU GO" FACT SHEET

RN TO BSN DEGREE COMPLETION OPTION

chamberlain.edu/rnbsn

What Will I Learn & Experience in My Studies?

- Provides individualized comprehensive care based on theories and principles of nursing and related disciplines to individuals, families, aggregates and communities, from entry to the healthcare system through long-term planning
- Communicates effectively with patient populations and other healthcare providers in managing the healthcare of individuals, families, aggregates and communities
- Implements professional nursing standards by practicing within the legal definitions of nursing practice and acts in accordance with the nursing code of ethics and American Nurses Association (ANA) standards of practice
- Incorporates evidence-based practice in the provision of professional nursing care to individuals, families, aggregates and communities
- Practices in established professional roles consistent with entry-level pre-licensure BSN graduates to provide cost-effective, quality healthcare to consumers in structured and unstructured settings

What Services Will I Receive?

- A dedicated student service advisor to help plan coursework and develop a financial plan
- Online tutoring
- Early assessments identifying potential barriers
- A customized support plan
- Academic coaching
- Professional and peer tutoring
- Customized workshops and academic assessments
- ASPIRE Student Assistance Program – Counseling, legal and financial planning services
- Career Services guides the career search process
- Complimentary membership in the Chamberlain University Alumni Association

Program Costs & Student Loans

$28,870* Total program costs for a RN to BSN student with no transfer credits is $28,870*

* For students enrolled in the RN to BSN option in Washington, the total program cost is $29,460.

$21,145 Median tuition, books and fees paid by graduates who entered the program in the 2015-16 school year was $21,145

$15,955 Median student loan debt of graduates who entered the program in the 2015-16 school year was $15,955

Earnings Outcomes

$49,000 The median earnings of former Chamberlain students who received federal student aid was $49,000 10 years after entering Chamberlain, whether they completed or not

$34,300 The median earnings of all former U.S. college students who received federal student aid was $34,300 10 years after entering college, whether they completed or not

Completion Rates

41% Chamberlain's completion rate for first-time, full-time students is 41 percent

76% 76 percent of all new full-time students entering the institution, including students who attended another college before Chamberlain, graduated

42% National completion rate for first-time full-time students at all U.S. schools is 42 percent

Loan Default Rates

3.5% 3.5 percent of students who last attended the Chamberlain pre-licensure BSN degree program and received student loans and entered repayment in the year ending 9/30/2014 defaulted on their student loans

3.4% 3.4 percent of students who attended Chamberlain and received federal student loans and entered repayment in the year ending 9/30/2014 defaulted on their student loans

9.0% 9.0 percent of students who attended any 4-year U.S. college and received federal student loans who entered repayment in the year ending 9/30/2014 defaulted on their student loans

Legend: ■ Chamberlain RN to BSN students ■ All Chamberlain RN to BSN and pre-licensure BSN students ■ All Chamberlain students ■ All U.S. college students

For more information regarding sources for the information listed above, see the next page of the fact sheet.

Rev. 07/24/2018
0818pflcpe

IMPORTANT INFORMATION ABOUT THE RN TO BSN DEGREE COMPLETION OPTION "KNOW BEFORE YOU GO" FACT SHEET

How relevant is this information to me? The Know Before You Go Fact Sheet provides information about Chamberlain University and its RN to BSN Degree Completion Option, and information about U.S. colleges as a whole. Certain information, such as earnings outcomes, can be different depending on where you plan to live and your individual situation and experience. The Fact Sheet information is intended to help you compare some information about Chamberlain and its RN to BSN option to other colleges as you think about your choices.

Information Sources

Total program costs is the total tuition, fees and average estimated textbook and equipment expense for a student attending full-time who takes and passes every course currently required by the program at Chamberlain a single time at the current tuition rate.

Median tuition, books and fees paid is the median amount paid to Chamberlain by students using Title IV aid who graduated from this program within the normal program length who started in the 2015-16 academic year. This amount is different than the total program costs and may be different for each student because students may transfer credits from other colleges, repeat courses that are not passed the first time or choose the RN to BSN option after first choosing other programs at Chamberlain.

Median student loan debt is the median total debt (federal, private and institutional loans) of students using Title IV aid who completed this program within the normal program length and started in the 2015-16 academic year.

The median earnings 10 years after entering college (Chamberlain or all 4-year schools) is calculated or compiled and reported by the U.S. Department of Education as part of the College Scorecard available at: **https://collegescorecard.ed.gov/**. Numbers reflect the CY2013 and CY2014 earnings (inflation-adjusted to 2016 dollars) for students entering the school in 2002-2003 and 2003-2004. The amount is the median earnings of students who are working and not enrolled 10 years after entry. THIS DOCUMENT DOES NOT GUARANTEE EMPLOYMENT OR A CERTAIN SALARY RANGE.

Completion rate for first-time, full-time students (for both Chamberlain and all 4-year schools) is the U.S. Department of Education's measure of the percentage of students who are new to college and entered full-time who complete the program within 150 percent of program length [for a bachelor's degree program, normal time is usually four (4) years, and 150 percent of normal time is six (6) years]. The national average for all U.S. colleges is provided by the U.S. Department of Education as part of the College Scorecard available at **https://collegescorecard.ed.gov/**.

Completion rate for all new full-time Chamberlain students is defined similarly to the "first-time, full-time" completion rate above except it includes those who previously attended another institution. Chamberlain calculates this measure based on Chamberlain data for the program.

The loan default rate for the program is calculated by the institution and is based on the program of study for which the student was last enrolled before entering repayment. The default rate measures the percentage of students entering repayment in 2014 who defaulted on their loans within three (3) years.

Loan default rate is the percentage of borrowers (4 year U.S. Colleges and Chamberlain) entering repayment in 2014 who defaulted on their loans within three (3) years. The rate is provided by the U.S. Department of Education and can be found at **http://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html**. In addition, a loan repayment rate for former Chamberlain students as well as those who attended other institutions can be found on the College Scorecard at **https://collegescorecard.ed.gov/**.

Licensure pass rates are provided by state licensing regulatory bodies to the institution. Where appropriate, state results are aggregated to produce a national average for the institution. Public availability of the testing results varies by profession and state.

National Management Office | 3005 Highland Parkway | Downers Grove, IL 60515-5799 | Fax: 877.308.8663

APC Oral Testimony – Give by David Cohen –

Thank you for the opportunity to provide testimony on behalf of the Association of Proprietary Colleges.

My name is David Cohen and I am the APC Board of Trustees Chair, and the President of Five Towns College. Like many APC schools, Five Towns is a family owned institution, which has been proudly educating New Yorkers for decades.

APC represents 12 degree-granting proprietary colleges – 6 of which are located here in NYC. Every member of APC is fully committed to educational excellence, access and affordability.

~~I am sure~~ It MAY come~~s~~ as a surprise, that some of our member colleges are in fact proprietary.

The reason why, is because here in New York, unlike every other state in our union, proprietary colleges are regulated as educational institutions – not as businesses – and thus, are subject to the same standards as every other degree granting

college, including CUNY, SUNY and NYU for example. New York is unique in this way, and it is the principle reasons why our Board of Regents is the only Board in all of the 50 states to also be recognized by the USDOE as a Regional Accrediting Agency. The only one.

This means that in order to grant a degree in NY, every program offered by APC Colleges must be approved by NYSED. And no degree granting school – proprietary or otherwise – may legally operate here without meeting the Regent's rigorous rules and regulations.

Unfortunately, APC is here again today because the proposed rules have New York's degree-granting colleges seriously confused with the proprietary institutions that operate in other states or with those operating here illegally.

The illegal operations are a problem. For this reason, the NY AG has entered into numerous actions and settlements with illegal school operators. We support those actions. Those illegal schools do prey upon students. But they are not

New York's regulated proprietary colleges, which are already accountable to NYSED.

The reality is, the proposed rules will only hurt quality schools by requiring that they publish information about graduation and job placement rates that cannot be compared with any other college or university in the City. This is because the data points the rules mandate are inconsistent with how higher education data is actually collected and reported by both NYSED and the USDOE. And also, because the rules would not require all degree granting schools to make the same disclosures for students to compare. Thus, the data would be misleading to the exact students the DCA rules seek to protect.

We also respectfully submit that the regulation of higher education is the sole province of the Board of Regents and NYSED. We firmly believe that SED is uniquely qualified, and deference should be given to it. Indeed, NYSED's longstanding oversight has prevented many of the abuses we all see in the national press from happening here.

As such, APC respectfully requests that the DCA reconsider the proposed rules, and that it exempt proprietary degree-granting colleges. Or, in the alternative, that the rules be revised to truly address the illegal school operations that are actually taking advantage of New Yorkers.

Thank you.

GOTHAM COLLABORATIVE HIGH SCHOOL
Stevenson Campus
1980 Lafayette Avenue
Bronx, New York 10473
Tel: (718) 597-1587
Fax: (718) 597-1371
www.gchs.nyc

October 17, 2019

Dear DCA,

As the Principal of Gotham Collaborative High School, I wanted to take this opportunity to voice my concerns with the DCA's proposed new rules that will be targeting For-Profit Schools. While I support the goal of holding predatory colleges accountable for their disingenuous actions, a blanket policy that affects all for-profit Colleges including ones that operate with integrity will result in collateral damage to the very population the DCA is meant to protect. At Gotham Collaborative High School, 1/6 of our population is in temporary housing, with 45% of our students either designated and an English Language Learner or Student with Disability. Our high needs population traditionally struggle when they enter a state college who are usually trying to support a large population with a limited budget. These situations usually results in the social emotional support dedicated to the neediest students being limited or non-existent.

Monroe College on the other hand has worked extremely hard to cultivate and support my graduates. In the past 5 years of working together, Monroe College has offered Afterschool Colleges Classes; Supported our Dual Enrollment Program; Offered a Presidential Scholarship to any graduate of my school (no out of pocket expenses after financial aid); and most importantly, offered dedicated advisors to ensure each of my graduates are supported once they are in Monroe College.

As a graduate of the CUNY system myself, I know that while the academic opportunities are limitless, the lack of social emotional supports are an institutional challenge in the CUNY system which directly affects the success level of my graduates. Furthermore, our school services the Soundview Section of the Bronx, the nearest CUNY is about an hour away by public transportation. The distance has resulted in poor College Now opportunities both on campus and at our school. Monroe College has met our geographic needs by offering us on site College Level classes to our students, as well as supporting a dual enrollment model where students can earn both a high school credit as well as a corresponding college credit.

At the very least, the DCA should have a commission to study the impact of this rule change. I am confident that any study will reveal the potential disaster if all For-Profit Colleges are treated the same. Most notably, if Monroe College is affected, the impact will be disastrous for not only my school, but all the South East Bronx Schools who serve the neediest congressional district in the Country.

Respectfully,

David Liu, Principal
dliu@gchs.nyc

October 15, 2019

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Dear Mr. Ortiz:

I am writing to you as a proud, active member of the military and an equally proud graduate of Monroe College in the Bronx, New York. My success as a working nurse has everything to do with my experiences at both of those institutions.

Accordingly, when I heard that the Department of Consumer Affairs was proposing new rules that would hurt good schools like Monroe that truly help veterans like me succeed, I had to speak up.

First, a little about me. I enlisted in the United States Army Reserve as a first generation Latino-American for educational benefits while serving my nation. While stationed in New York City, nursing school became a possibility for me at Monroe College with the intent to serve in the military in a greater capacity. Thanks to Monroe College, I am now an Active Duty Air Force Officer as a Registered Nurse stationed in Eglin AFB, FL.

When the time came, I took my college search seriously and looked at many schools in the New York area. I spent a lot of time researching them online and also talked with admissions people at many of the schools. Monroe was the clear choice for me. They offered me an affordable, quality private college education where I would feel welcomed and supported. I knew I wouldn't get lost in the crowd at Monroe. I also knew they'd make sure I didn't fall behind when my obligations to the U.S. Army conflicted with my classroom responsibilities. I was right. They were there for me every step of the way.

I understand that the DCA is trying to protect students with a proposed new rule. However, it does a terrible disservice to many of the good colleges it impacts and the students they serve. Monroe and its students – including the many veterans – would be among them.

If you are going to require colleges to make specific disclosures, then all schools should have to abide by the same rules. Separate and unequal disclosures do not help transparency. They cloud it – especially when the disclosures don't apply to everyone. It doesn't seem right or fair. Compounding this cloudiness is the proposal's requirement that family-owned colleges like Monroe would now need to publish a newly created, untested graduation rate formula that isn't used anywhere else. Prospective students won't understand it.

I heard that just a handful of degree-granting colleges in New York City are actually impacted by this proposal. Students and their families need to make college decisions based on proven data that is *available across the board for all the colleges under consideration.* To not give them that through this rule seems very confusing and misleading to the students you wish to serve.

Thank you for letting me share my experience. I hope that the DCA will rethink this proposal.

Sincerely,
Kathleen Alejandro, BSN, RN
Monroe College Class of 2018
2d Lt, USAF, Nurse Corps

October 3, 2019

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Proposed Rules Regarding Deceptive Trade Practices of For-Profit Educational Institutions

Dear Mr. Adams,

As Executive Vice President/Secretary of the International Women's Entrepreneurial Challenge Foundation, I would like to state my opposition to the "Deceptive Trade Practices by For-Profit Educational Institutions" proposed Rules by the New York City Department of Consumer Affairs (DCA). One of the institutions which these proposed Rules intend to target is Berkeley College, a school I have had the pleasure to work with over the years.

The proposed rules set forth by the DCA to govern Berkeley College are inconsistent with existing standards and practices applicable to other colleges. The way these rules are written by the DCA serves the sole purpose of attempting to shoehorn educational practices into NYC DCA's jurisdiction and would end up harming students. For example, as written in these rules, the DCA is attempting to classify admissions counselors as "salespeople" in an effort to bring the activities of Berkeley College under NYC DCA's purview.

The proposed DCA rule does nothing to protect students from deceptive trade practices at for-profit institutions and in fact ultimately hurts students. In fact, the motives of the DCA appear purely political and part of the anti for-profit college rhetoric that continues to be discussed at a national level.

Education is not a retail transaction, nor a consumer good or service, and admissions counselors are not "salespeople." Salespeople sell a product without regard for consequences, whereas Berkeley College admissions counselors receive training and possess intricate knowledge of admissions requirements and student expectations for academic achievement. To refer to admissions counselors as "salespeople" is to downplay and crudely mischaracterize the critical role they serve in assisting students, especially students from low-income families and who are first-generation college attendees. This mischaracterization is a contrived attempt to regulate an industry that is entirely outside the DCA's authority and expertise.

Under New York State law, and in practice, Berkeley is not a business, but a college. That means the New York State Education Department's Office of

College and University Evaluation, Office of Professions, and Office of Higher Education, all have oversight of the institution. Accordingly, Berkeley must abide by all requirements related to granting degrees and ensuring quality of academic programs.

Berkeley takes very seriously their role in preparing students for a successful future. I have had the pleasure of speaking to Berkeley students and faculty at the institution's annual Women's Leadership event. I am impressed by the determination of the students and the dedication of the faculty and staff to provide students with both the academic rigor and professional insight to launch their careers. I would urge DCA to visit the Berkeley campus and speak to the faculty and students. I guarantee you will be impressed with the community that exists at Berkeley. Their Student Life and Career Service offerings are truly unmatched.

Instead of directing its efforts toward upstanding institutions like Berkeley College, which has been operating for nearly 90 years, the DCA's efforts would be better spent working with the New York State Education Department, the Attorney General, and the local District Attorneys to improve mechanisms for cracking down on these illegal "schools" and holding them accountable for the damage caused to New Yorkers.

The DCA Rules would only harm the dedicated students at Berkeley College, a population that thrives in Berkeley's small class sizes and individualized attention. Berkeley's population is diverse, by both ethnicity and age, and the College serves a large population of international students. At the International Women's Entrepreneurial Challenge Foundation, we know the critical role that institutions like Berkeley play in welcoming international students.

Berkeley College is an important engine in New York City's economy and is preparing our future workforce. I urge DCA to have a better understanding of how they serve the unique needs of their students before introducing policy that, on its premise, is misleading and unfair.

Sincerely,

Nancy Ploeger
Executive Vice President/
Secretary of the Board of Directors

54 W. 40th St., Suite 1117 | New York, NY | 10018 | Telephone (917) 796-4201
www.iwecfoundation.org

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

HEARING:
"New Rules to Prohibit Deceptive Trade Practices by Certain For-Profit Schools"

Contact: Jackie Ruegger
914-740-6455
jruegger@monroecollege.edu

October 17, 2019

WRITTEN COMMENT

Marc Jerome
President, Monroe College

Monroe College supports New York's agenda to expand access and equity for students in NYC. Indeed, for the past 86 years, we have worked hard to help build a better Bronx and improve its residents' lives through education.

We agree with the Department of Consumer Affairs that students should be protected from too much debt, low graduation rates, and false and misleading information. However, the proposed rule will not accomplish those goals. Instead, it will harm effective and ethical institutions like Monroe College and the students they serve – most of whom are underserved and underrepresented on college campuses nationwide. This proposal will especially set back the progress made to improve college access and equity in the Bronx.

Monroe is making a difference in our community. We rank among the top three institutions in New York State for graduating Black and Latinx students, and take pride in the comprehensive support programs and services in place to ensure that our students can succeed. More than 60% of our students identify themselves as first-generation students.

Last year, Monroe awarded nearly $30 million in institutional aid to help students afford a quality, private college education. We have one of the highest graduation rates for low-income New Yorkers and one of the lowest student loan default rates. With Division I teams in New Rochelle and Division III teams in the Bronx, Monroe enrolls more PSAL student-athletes pursuing sports in college than any other institution in New York.

We believe strongly there are three faulty assumptions underlying the proposal:

- **Faulty Assumption #1: Degree-granting proprietary colleges are unregulated.** To the contrary, we are regulated by three main bodies: The New York State Education Department (NYSED), The Middle States Commission on Higher Education, and the U.S. Department of Education.
- **Faulty Assumption #2: Degree-granting proprietary colleges are aggressive marketers, spending a disproportionate percentage of their budgets on advertising.** At Monroe College, less than 2% of our budget goes to advertising and marketing. Non-profit and public colleges—both in-state and out-of-state—are aggressively spending advertising dollars targeting NYC students. To the best of our knowledge, no NYC degree-granting proprietary college is currently spending large dollars on advertising.
- **Faulty Assumption #3: Proprietary degree-granting colleges have weak outcomes.** Currently, the on-time graduation rate for full-time students attending local two-year public college programs is 5.5%, according to NYSED and the U.S. Department of Education's College Navigator database. Monroe College's on-time rate for the same cohort of students is 10 times better at 50% for full-time students. Please see the chart on page four for data on NYC institutions with the weakest on-time graduation rates.

The Regulation Proposes Metrics That Will Mislead and Confuse Students and Are Out of Step with Those Established by Federal and State Higher Education Regulators

The proposed rule requires degree-granting proprietary colleges operating in New York City to disclose data using several new and untested student outcomes metrics.

Using unproven formulas that do not mesh with the reporting practices required by NYSED or the U.S. Department of Education is not good public policy. The new DCA-only metrics will be incredibly confusing and misleading to any students who rely on them, especially given that the disclosures resulting from them will ONLY be required from proprietary institutions. If the goal is to protect students, it's not clear how students will be well-served by inconsistently applied, divergent metrics.

If these metrics were applied to local two-year public colleges, many institutions would likely be forced to report DCA's new "graduate placement rate" of less than 1%. These proposed metrics are not rational and will harm consumer protection rather than advance it.

Limiting Applicant Outreach to Twice a Week Is Arbitrary and Irrational

We understand that the intent of this provision is to prevent unwanted intrusion into a prospective student's life. However, in practice, the provision is counter-productive, especially with first-generation students and veterans who tend to have many questions about the application process and require multiple contacts and campus visits to properly complete the process. They benefit from the one-on-one, high-touch personal support that Monroe offers. As such, this provision that will absolutely harm students.

Reclassifying Admissions Advisors as "Salespeople" Is Insulting and Inaccurate

This is the second time that the DCA has proposed requiring proprietary colleges like Monroe to call our admissions professionals "salespeople." This proposal makes it a "deceptive trade practice" if we call them advisors or counselors. This is incredibly insulting.

We pride ourselves on the integrity of our staff. We provide rigorous training to ensure they adhere to a Code of Conduct that requires them to "Always act in the best interest of students and their families." Our Admissions Advisors are not salespeople. They dedicate considerable time reviewing each applicant's academic and personal backgrounds and speaking with them about their educational goals to determine the applicant's likelihood of success at Monroe.

New York Students and Their Families Deserve Accurate, Easy to Understand, and Consistent Information on the Programs or Colleges They Are Considering for Enrollment

Monroe College has long advocated for public policies that serve students well and protect them from falling prey to false and misleading practices.

Yet, the DCA's proposed rule will mislead students and the public since it only applies to for-profit institutions, and does not provide a prospective student the same information from public or non-profit institutions. They cannot make informed college decisions if they only have half the information to do so.

All students should be able to compare information about similar programs and be warned if outcomes are weak. Accountability and consumer protection measures should be extended equally across the higher education landscape to ensure all students are equally well-served.

Higher Education is Changing

The world of higher education has changed dramatically.

Competition has increased exponentially in the face of declining national enrollment trends. If you turn on the radio, open the newspaper, or drive down the highway, it is the non-profit and public colleges that are spending the big dollars on advertising. Southern New Hampshire University, for example, reportedly spends more than $300 million on advertising. It is a non-profit institution. Arizona State University is aggressively marketing its online programs on satellite radio. Closer to home, CUNY recently had full-page ads in the *New York Daily News*, *The New York Times*, and the *New York Post* – all in the same weekend.

Monroe College, in comparison, allocated less than 2% of its budget to marketing and advertising in the current fiscal year.

I believe that we can help develop effective solutions to the DCA's concerns, but the current proposal will harm ethical institutions and confuse students. This cannot be what was intended.

In light of the above, we recommend that DCA put the regulation on hold and instead create a task force to include DCA, NYSED, consumer groups and higher education institutions. This task force should facilitate quicker information sharing to address any problematic institutions or practices. Let the relevant parties partner together to identify where New York City's students are being harmed by dishonest, unethical, or substandard practices and develop well-informed, rational solutions that are grounded in reliable data to address and resolve them. It would seem that leveraging external perspectives, expertise, and experiences would greatly benefit the DCA and students alike.

NYC Institutions with the Lowest On-Time Graduation Rates *Source = NYS ORIS DATA*	
Bronx Community College	2.8%
Medgar Evers College	3.5%
Borough of Manhattan Community College	3.8%
Eugenio Maria De Hostos Community College	3.8%
New York City College of Technology	5.7%
York College	6.5%
Queensborough Community College	7.0%
Fiorello H. Laguardia Community College	7.8%
New York Career Institute (proprietary / now closed)	7.8%

CELIA CRUZ
BRONX HIGH SCHOOL OF MUSIC
Walton Campus / Lehman College
www.ccbxhsm.org

Jerrod Mabry, Principal

Vern Ram, APO
David Fink, APS

To Whom It May Concern:

I am writing in support of our higher learning institution partner Monroe College. Over the past several years, Monroe College has open its door to the entire Walton Educational Campus consisting of five (5) high schools where students were given the opportunity to attend there on the Presidential Scholarship. President Marc Jerome created this scholarship to give students the opportunity to earn an Associate or Bachelor's Degree without any cost to them or their parents. The Presidential Scholarship was made available to undocumented, students of color, low income, and those who did not receive any type of tuition assistance.

The college is accredited and our students have earned degrees on time in their field of study. In addition to the academics, President Jerome and his staff created a strong and fundamental personal/social program to make sure students receive counseling, mentoring, and career support to graduate and enter the 21st Century Global Economy. Our students have been fortunate enough to attend Monroe's Jump Start Program to receive academic support while they're completing a high school diploma. Monroe made it possible for our students to be enrolled in various Dual Enrollment College Courses taught by their professors at our Campus where students were able to earn college credits while attending high school. They have supported our Borowide Financial Aid Completion Event, Parent Teacher Conferences, College Access Workshops, and Family Events by sending numerous experts from the college educate to our students and their families on the college admissions process.

As an educator for over 20 years, I have known Monroe College to be the only institution to go above and beyond to provide financial, academic, and personal/social support without the extra burden of debt on our largely underprivileged residents. Monroe has been accepting our students since the first graduating class. Our alumnus have visited and recommended Monroe to current students because of the support available to all students. Recently, a current student visited my office and asked that I call President Jerome to recommend her for Monroe. She is on track to graduate with a 93 average. She stated, "Monroe College made it possible for me to be alive". Her parents met while attending Monroe and both of them graduated and she wants to follow in their foot steps. Monroe made it possible for students with IEPs and English Language Learners to attend and graduate at very high rate.

Any decision to change Monroe's admissions status will greatly affect students in our school community and NYC. Communication between college reps and prospective students/families is critical during the college process. Students must be able to make a sound decision regards to their future.

I am available to discuss the success of our students who attending Monroe in person or on the phone. I can be reached at (646) 469-1295.

Yours truly,
Vern Ram

Vern Ram,
Assistant Principal

2780 Reservoir Avenue ~ Bronx, New York 10468 ~ (718) 329-8550 ~ Fax (718) 329-8559

Bronxwood Preparatory Academy

921 East 228th Street, Bronx, New York 10466 (718)696-3820
Fax (718) 696-3821

Mrs. Gallardo, Principal

October 17, 2019

Dear Mr. Carlos Ortiz, Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Mr. Ortiz:

I write this letter to express my concern with the proposed NYC DCA regulations regarding for-profit colleges and its potential negative impact on academic institutions that are truly making a difference in the lives of our youths. While I support making colleges accountable when they commit deceitful actions, I am concerned that those for profit institutions that are exercising integrity in their policies will suffer and be penalized unfairly like Monroe College.

I am the Principal for Bronxwood Preparatory Academy and have been fortunate to work with Monroe College for the past three years. Through our collaboration with Monroe College, a number of my students have benefitted and have received scholarships accordingly. This has enabled them to fulfill their college dreams whereas, they may not have been able to because of financial hardships.

Monroe College has provided my students with an outstanding education, preparing them for future success for the past three years. Monroe College has offered Afterschool College classes, Jumpstart classes, offered a Presidential Scholarship to any graduate of my school with no out of pocket expenses after financial aid and most importantly, offered dedicated advisors to ensure that each of my graduates are supported upon arrival into Monroe College. Additionally, I receive updates on my graduates' progress and transition into college periodically which is a unique and appreciative experience. Monroe College goes above and beyond to help new freshmen acclimate to college with dedicated staff and collaborative experiences.

I would encourage the Department of Consumer Affairs to create a commission to study the impact of this legislation more closely. I can honestly say that if Monroe College is affected, the impact would be disastrous for not only my school, but all the public schools who serve an inner city population. Monroe College deserves the attention and recognition for their tremendous efforts and extraordinary work in helping us bridge the gap and help fulfill our students' dreams by making college possible for all through their hard work and integrity.

Respectfully,

Mrs. Gallardo Mrs. Gallardo, Principal

DeVry College of New York

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

October 15, 2019

Commissioner Lorelei Salas
NYC Department of Consumer and Worker Protection
42 Broadway, 8th Floor
New York, NY 10004

Via: cortiz@dca.nyc.gov

Dear Commissioner Salas,

DeVry College of New York is a degree-granting higher education institution serving over 1,400 New York students across three campus locations and online. I am writing to provide the New York Department of Consumer and Worker Protection (Department) with our position and insights regarding proposed "New Rules to Prohibit Deceptive Trade Practices by Certain For-Profit Schools."

Founded in 1931, our mission is to foster student learning through high-quality, career-oriented education integrating technology, science, business and the arts, which we pursue via practitioner-oriented undergraduate and graduate programs. More than 7,000 DeVry alumni currently reside in New York.

DeVry has permission to operate its academic programs in New York from the University of the State of New York Board of Regents, is registered with The State Education Department, and is regulated by the New York State Higher Education Services Corporation. Additionally, DeVry is regionally accredited by The Higher Learning Commission (HLC), and regulated by the US Department of Education.

DeVry wholeheartedly supports the Department's efforts to ensure prospective and enrolled students are provided with clear and transparent information related to enrollment, degree completion, financing, course transfers, and other information needed to make informed decisions. We recommend that the Department's proposed oversight be expanded to include all institutions in New York City, regardless of sector or tax status. We believe it is critically important that all students are protected, and that every institution is expected to operate with the highest standards of conduct. Recent events like the college admissions scandal, sudden closure of struggling institutions, athletic academic fraud, and sexual abuse illustrate the importance of strong oversight and transparency for all.

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

DeVry maintains the highest standard of transparency and student engagement practices, and has a long history of championing equitable and effective oversight of all higher education institutions. DeVry has taken a leadership role by voluntarily adopting our own accountability standards in 2016, which we refer to collectively as our Student Commitments.

One example is our commitment to Informed Student Choice. We provide all prospective students with a disclosure containing key information about program performance, such as total cost, debt and default rates, as well as completion and graduation rates. Additionally, our enrollment agreements do not require students to arbitrate disputes with us, nor do we prohibit students from participating in or seeking class action remedies.

Another example is our commitment to Student Success. 88% of DeVry students in New York are over the age of 25, many with competing career and family obligations. This presents a unique set of challenges, which DeVry focuses on by dedicating resources to help students persist and complete their degree program. For example, we proactively engage with students who may be at risk for program completion. We use student success predictors to provide faculty and Student Support Advisors with course-level engagement information for each individual student. A full overview of these commitments is provided below in Appendix B.

It's important to note that at both the federal and state level, standards are in place to ensure that all prospective and enrolled students across degree-granting institutions – whether public, not-for-profit, or for-profit - are provided with information. The Department seeks to bolster these existing regulations and increase local enforcement.

DeVry has reviewed the Department's proposed regulation and seeks to provide feedback in an effort to:

- Support the intent of the regulation.
- Provide prospective and current students with the most accurate information and data.
- Prevent conflicts between federal, state, and municipal regulations.
- Improve the rules to make them more effective for all consumers/students pursuing a degree.

With 88 years of experience in higher education, we respectfully make the following recommendations based on our knowledge of federal and state regulations across the nation, and our genuine commitment to protect and educate our students. Below,

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

please find a summary of our suggested Amendments, as well as the Red-Lined Rule in Appendix A.

We hope to work closely with the Department to craft language that accomplishes the intent of the rules, improves the student experience, and protects all prospective and enrolled students.

SUMMARY OF RED-LINED RULE

Amendments to Definitions: DeVry recommends amendments to five of the definitions outlined in the attached rule:

1. **Employment in the Field of Study**

    a. As currently written, this definition bases its methodology on the *title* of a student's program or coursework, which may or may not be relevant to the content of the program or the graduate's job. For example, a student may complete a "Bachelor of Arts in Communications" and then secure a career as a Legislative Assistant in municipal government; the title of the degree does not clearly align with the job, but the skills learned in the course are directly relevant.

    Recommendation: Utilize the well-established definition used by the Texas Workforce Commission which defines "Employment in the Field of Study" as "employment in the same or substantially similar occupation for which the student was trained, or the reasonable equivalent thereof."

    b. This definition outlines job description criteria for which there is no existing baseline measurement:
        i. "A job for which: (1) training in the program is not required"
        How would it be determined if a job requires a training program? What constitutes a training program?
        ii. "A job for which: (2) the entry level salary is less than 80% of the entry level salary for the type of work specified in the name of the program is not a reasonable equivalent"

How is entry-level salary determined? Does the Department expect to gather average salary for each occupation?

In order to enforce the above requirements, the Department would have to dedicate resources to creating and maintaining a public database of training programs and average entry-level salaries for all jobs within New York City to reference and use as a baseline. Furthermore, if a graduate is employed in a job outside of the jurisdiction, the figures would be skewed.

Recommendation: DeVry recommends removing these additional criteria, as they are inaccurate data points, highly burdensome for both the Department and educational institutions, and do not add significant value for prospective or current students. Please see specific language in Appendix A.

2. **Enrollment Cohort**

   a. As written, the Department defines "Enrollment Cohort" and relates it to the tracking of student outcomes. Relying on the date of enrollment to track student outcomes will produce inaccurate results for prospective and current students. Modern students personalize their attendance schedules and have drastically different timeframes and approaches to complete their degrees. Today, less than one third of college students are considered traditional learners. Some choose full-time schedules, and others part-time, because they are working or caring for family members or loved ones. These different tracks result in starkly different graduation completion timeframes.

   Recommendation: DeVry recommends amending this definition to "Cohort," and following federal and state definitions which define a Cohort by the student's graduation date. For example, when measuring employment, the recommended definition will provide data on the most recent graduating cohort of students who have entered the workforce. This provides more timely and more accurate information to prospective students. Please see specific language in Appendix A.

3. **Graduate Placement**

   a. The Department's use of the phrase "Graduate Placement" will likely mislead students, because the term "placement" implies some guarantee by the institution to "place", or find employment for, students.

      Recommendation: DeVry suggests utilizing the definition "Graduate Employment Rate," as it is much clearer for students, and avoids misleading communication to the student. Please see specific language in Appendix A.

   b. The Department proposes to measure a cohort by those who complete their program within 100% of the program period. Modern students rarely complete their degrees within this timeframe. The US Department of Education measures a school's graduation rate for first time, full time students at 150% of the published program length. DeVry prides itself on offering students with diverse lifestyles (parents, working professionals, caretakers, etc.) with flexible degree options that enable them to complete their program within the timeframe that best suits their life circumstances. A 100% program period criteria is a significant deviation from well-established federal and state consumer information standards, and would also misconstrue data, because students who are indeed employed within six months of graduating, but who did not complete their degree in the 100% timeframe, would not be counted.

      Recommendation: DeVry recommends updating this language to measure the Cohort based on those who "obtained employment in the field of study within 6 months after completing the program, as a percentage of all students in the cohort." This language is based on the existing language utilized by the Texas Workforce Commission and best measures Employment Rate data to accurately inform prospective and current students. Please see specific language in Appendix A.

4. Graduation Rate

a. The Department seeks to define graduation rate by completion of the program within a 100% timeframe. Please see above Section 3 for explanation of how this criterion distorts data.

   Recommendation: DeVry recommends adhering to the federal definition of "Graduation Rate" in order to avoid confusing and misleading students with conflicting data. New York City students receive the Federal Graduation Rate on several documents, including the NYS-mandated Shopping Sheet, federally mandated disclosures, the federal College Scorecard, and College Navigator. If the Department mandates a new, different Graduation Rate formula, this will confuse students. Additionally, the Department's rule does not apply to all higher education institutions, and therefore the unique Graduation Rate definition would preclude any comparability with other schools in other sectors. Please see specific language in Appendix A.

5. Total Placement Rate

a. The Department seeks to combine an institution's graduation rate and employment rate in a single metric.

b. **Recommendation:** DeVry recommends removing this definition**.** This disclosure requirement mirrors several existing disclosure requirements at the federal and state levels, and includes information required elsewhere within the Department's proposed rule. This data point will only confuse prospective and enrolled students since it is comprised of two metrics already being provided. Students would have no context within which to understand the number, or to compare with other institutions. It's important to note that because as drafted this requirement only applies to institutions in certain sectors, and not to all schools, and does not exist elsewhere, students will be unable to compare the performance of schools across sectors. Please see specific language in Appendix A.

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

Section C-6: Prohibited Communication with Prospective Students

a. The Department seeks to regulate communication with a prospective student prior to “enrollment”. DeVry seeks to clarify this language and regulate communication with a prospective student prior to “application” to the institution.

The process to enroll in an institution of higher education requires a prospective student to make application, submit several documents for review, and work with the institution to ensure the application is complete. Transactional communication is required between the institution and student between the time of their application and the time of their enrollment on issues such as: general information, financial aid, transcripts, credit transfers, etc.

Recommendation: DeVry recommends clarifying language to reflect the application period to ensure that prospective students who apply to the institution are able to send and receive all necessary information to complete the enrollment process. Please see specific language in Appendix A.

Section D-1: Required Disclosures

a. As currently written, the Department asks that institutions provide Disclosures for Cohorts of 10 or less students that are based not on that program, but on aggregate data from *all* programs provided by the institution. Because a Cohort with 10 or fewer students is statistically insignificant and would provide data that is not an accurate representation of the whole, the federal government has set the precedent that programs of 10 or fewer Cohorts do not provide data and instead report “Not Applicable”.

Recommendation: DeVry recommends that the Department follow federal standards and not require reporting on Cohorts of 10 students or less. By requiring institutions to provide aggregate data based on all programs offered, institutions would be forced to provide inaccurate data that will misinform students.

DeVry College of New York is dedicated to working with the Department to craft language that best serves and protects the students of New York. We believe our proposed recommendations will support the Department's intent, and have a positive impact on students.

We welcome the opportunity to discuss any of our recommendations with the Department further, or answer any questions the Department may have.

Thank you for the opportunity to testify, and for working to protect the students of New York City.

Sincerely,

Marcus D. San Marino
Director, Government Relations
DeVry College of New York
msanmarino@devry.edu

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

Appendix A:

Proposed Rule Amendments

Section 1: Part 5 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new section 5-52 to read as follows:

§ 5-52 [[Reserved]] For-Profit Schools.

(a) Definitions.

Employment in the Field of Study. "Employment in the field of study" means employment *in the same or substantially similar occupation for which the student was trained* ~~doing the type of work specified in the name of the program or in the certificate, diploma, or degree conferred by the school from which the employee graduated,~~ or the reasonable equivalent thereof. ~~A job for which: (1) training in the program is not required; and (2) the entry level salary is less than 80% of the entry level salary for the type of work specified in the name of the program is not a reasonable equivalent.~~

Employment opportunity. "Employment opportunity" means any employment sought by graduates of a school.

Enrollment Agreement. "Enrollment agreement" means a contract or agreement under which a consumer agrees to pay tuition or fees to a for-profit institution or to obtain a loan or grant to pay tuition or fees to a for- profit institution.

~~Enrollment~~ Cohort. "~~Enrollment cohort~~*Cohort*" means all the students who ~~began enrollment in~~ *completed* a program during the period of time from July 1 of a given year through June 30 of the following year (the "award year"), except any such students who, before graduation, ~~became unable to continue enrollment on at least a half-time basis due to an incident resulting in their total and permanent disability or death~~ *who entered another postsecondary education program or the military full-time, were incarcerated, or died*. For example, the students who ~~began enrollment in~~ *completed* a program during the 2017-2018 award year constitute the ~~enrollment~~ cohort for that award year.

False Representation. "False representation" means any false, untrue, unsubstantiated, or deceptive representation or any representation which has the tendency or capacity to mislead or deceive students, prospective students, or any other person.

For-profit institution. "For-profit institution" means both any for-profit school and any institution that charges tuition or fees related to instruction and is formally organized as a not-for-profit institution if one or more members of the governing board of the not-for-profit institution, or any person with the power to appoint or remove members of such governing board, receives from the not-for-profit institution any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract), excluding a fixed salary received by any ex officio member serving at the pleasure of the remainder of the governing board.

For-profit school. "For-profit school" means a for-profit corporation, partnership, firm, organization, or other business entity that charges tuition or fees related to instruction and qualifies as exempted from the licensing requirement of section 5001 of the Education Law pursuant to paragraph (a) of subdivision 2 of such section, excluding (1) any school that waives such exemption and is licensed pursuant to subdivision (2-a) of section 5001 of the Education Law and (2) any school that is accredited pursuant to section 4-1.3 of part 4 of chapter 1 of title 8 of the New York Codes, Rules, and Regulations.

Graduate ~~Placement~~ *Employment* Rate. "Graduate ~~placement~~ *Employment* rate" means, ~~of~~ the number of ~~full-time~~ students in the ~~enrollment~~ cohort, who *obtained employment in the field of study within 6 months after completing the program, as a percentage of all students in the cohort.* ~~completed the program within 100% of the length of the program, the number of students obtaining full-time (at least 32 hours per week), non-temporary employment in the field of study within 6 months after the time for completion of their program, divided by the number of full-time students in the enrollment cohort who completed the program within 100% of the length of the program.~~ The graduate ~~placement~~ *employment* rate disclosed pursuant to subdivision (d) of this section must be for the most recent ~~enrollment~~ cohort of students to have reached 6 months after ~~the time for completion of~~ *completing* their program.

Graduation Rate. "Graduation rate" *shall be defined as the institutional Graduation rate required for disclosure and/or reporting under the Federal "Student Right to Know Act," as defined by the National Center for Education Statistics. This rate is calculated as the total number of completers within 150% of normal time divided by the revised adjusted cohort, as defined*. ~~means the number of full-time students in the enrollment cohort who completed the program within 100% of the length of the program divided by the number of full-time students in the enrollment cohort.~~ The graduation rate disclosed pursuant to subdivision (d) of this section must be for the most recent ~~enrollment~~ cohort to have reached 6 months after the time for completion of their program.

Length of the program. "Length of the program" means the amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

Median cumulative debt amount. "Median cumulative debt amount" means the median amount of cumulative debt, including private, institutional, and federal, incurred by students who completed a program. The median cumulative debt amount disclosed pursuant to subdivision (d) of this section must be for the most recent ~~enrollment~~ cohort to have reached 6 months after the time for completion of their program.

Misleading limited time offer. “Misleading limited time offer” means any representation that an offer is limited in time when the limitation does not exist, or a representation that enrollment in a particular program is only open or available for a particular period of time or until a date certain when enrollment in the program in fact occurs on a rolling, ongoing, or regular basis (including monthly and seasonally).

Misleading money back guarantee. “Misleading money back guarantee” means any representation that a student may receive money back, a refund, or any other similar offer, without clearly and conspicuously stating any limitations, conditions, or other requirements which must be met to receive the refund.

Placement. “Placement” means a student’s employment opportunities, career, or occupation after leaving a for- profit institution, or the employment opportunities, career, or occupation a school program qualifies or prepares students to enter or obtain.

Placement Services. “Placement services” means services or assistance provided by a for-profit institution in connection with the securing or attempting to secure employment opportunities for students.

Program. “Program” means a course of study for which a for-profit institution confers a certificate, diploma, or degree.

Program Cost. “Program cost” means the tuition and fees charged for completing a program, including the typical costs for books and supplies (unless those costs are included as part of tuition and fees) and the cost of room and board (whether on or off campus), assuming completion within the length of the program.

Representation. “Representation” means any statement made orally or in writing, whether directly or indirectly, in any medium, including, but not limited to, printed or electronic forms. Representations include, but are not limited to, advertisements, promotional materials, and statements made by sales or recruitment personnel or other employees or agents of the school.

~~Total Placement Rate. “Total placement rate” means the product of the graduate placement rate and the graduation rate. The total placement rate disclosed pursuant to subdivision (d) below must be for the most recent enrollment cohort of students to have reached 6 months after the time for completion of their program.~~

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

(b) Prohibited False or Misleading Representations. In addition to other practices that violate § 20-700 *et seq.* of the Administrative Code, it is a deceptive trade practice for a for-profit institution:

(1) to make or publish, or cause or permit to be made or published, any false representation concerning the school, including, but not limited to, the school's enrollment activities, the character, nature, quality, value, or scope of any course or program offered, the school's influence in obtaining employment opportunities for its students, graduation rates, graduation time, program cost, loan amount, median cumulative debt amount, repayment amount, or the transferability of credits.

(2) to make any false representation regarding actual or probable earnings in any employment opportunity of the school's graduates.

(3) to make any representation which states or implies that persons employed in a particular position will earn a stated salary or income or that persons completing some program will earn the stated salary or income or "up to" the stated salary or income, including by using the words "Earn $" or "Earn up to $", unless:

(i) the salary or income is equal to or less than the average entry level salary of persons employed in the occupation in the State of New York; and

(ii) the representation states clearly and conspicuously any limitations, conditions, or other requirements such as union membership, service of an apprenticeship, or acquisition of an occupational license, which must be met before the stated salary or income can be earned; and

(iii) the representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised services will obtain employment opportunities or will earn the stated salary or income, unless the guarantee is actually offered by the school.

(4) to make any false representation regarding the institution's graduate placement rates, total placement rates, placement services, or placement of its students.

(5) to make any false representation regarding:

(i) any employment opportunity;

(ii) the necessity, requirement, or utility of any program in obtaining professional licensure, employment in the field of study, or admission to a labor union or similar organization;

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

(iii) the necessity of, or qualification(s) for, certification or licensure in any placement, including but not limited to: (A) any cost to obtain or maintain the certification or licensure, if the cost is not included in the for- profit institution's tuition or fees; and (B) any continuing education requirement to obtain or maintain the certification or licensure; and

(iv) any opportunity to qualify for membership in a society or association or union, or to obtain a license, or any opportunity to enroll in a future program or field of study, as a result of the completion of its program, without further education, study, externship, internship, or clinical experience.

(6) to make any representation that the school or a program has been:

(i) approved by any government agency, unless the representation clearly and conspicuously indicates the scope, nature, and terms of that approval; or

(ii) accredited by an accrediting body that has not in fact accredited the school or program.

(7) to misrepresent the amount of time it takes to finish a program, including by misrepresenting the median or average completion time to obtain a certificate, diploma, or degree.

(8) to make a misleading limited time offer.

(9) to make a misleading money back guarantee.

(10) to represent any component or service related to a program as "free" when in fact the component or service is included as part of the program for which tuition is required.

(11) to falsely represent that faculty members have particular teaching, instructional, or professional qualifications, certifications, or degrees.

(12) to make a false representation concerning the nature or character of classroom instruction provided by the school, including, but not limited to, representing that classroom instruction is in-person if instruction is in fact provided by non in-person methods, including video or computer terminals, and/or through self-guided study.

(13) to make a false representation concerning the existence, quality, or availability of facilities or equipment used or made accessible by the for-profit institution.

(14) to falsely represent that a program is approved or licensed.

(15) to represent that a program teaches a subject, skill, or materials that are not part of the curriculum of a program.

(16) to represent that its credits are transferable to another educational institution when they are not.

(17) to fail to disclose the actual cost of the examination or test prior to the time of enrollment, if a for-profit institution offers or requires students to take an examination, certification examination, or similar test of the students' competence to enter, continue with, or graduate from a program, or to be certified in a particular occupational field, and the examination or test is available directly from an outside vendor.

(18) to conceal or fail to disclose any fact relating to the school or program, the omission of which is material to the student's decision to enroll in, or continue to attend, the school.

(c) Prohibited Practices. In addition to other practices that violate § 20-700 *et seq.* of the Administrative Code, it is a deceptive trade practice for a for-profit institution:

(1) to misrepresent or falsify a student's attendance or academic progress or record in order to permit a student to continue to receive financial aid or to graduate from a program or for any other reason.

(2) to obtain personal information, including names, home or electronic addresses, telephone numbers, or other contact information from lead generators or website operators that do not clearly and conspicuously disclose to consumers that their personal information will be provided to schools.

(3) to promise an internship or externship (collectively "internship"), or include an internship as a required element of a program, unless the school ensures that all such internships prepare the student for employment in the field of study, and provides school-based personnel to assist in locating and arranging such internships.

(4) to enroll or induce retention of a student in any program when the school knows, or should know, that due to the student's educational level, training, experience, lack of language proficiency, or other material disqualification, the student will not or is unlikely to:

(i) graduate from the program; or

(ii) meet the requirements for employment in the field of study. If a student has a disability, the determination that the student is disqualified shall be made based on the student's ability to graduate from the program or meet the requirements for employment in the field of study with the provision of a reasonable accommodation for that disability.

(5) to enroll a student without taking reasonable steps to communicate the material facts concerning the school or program in a language that is understood by the prospective student. Reasonable steps a school might take to comply with this regulation include but are not limited to:

(i) using adult interpreters; and

(ii) providing the student with a copy of the enrollment materials and disclosures required by these regulations or by any other applicable state or federal law, regulation, or directive translated into a language understood by the student.

(6) to initiate communication with a prospective student, prior to ~~enrollment~~ *application*, via telephone (either voice or data technology), in person, via text messaging, or by recorded audio message, in excess of two communications in each seven-day period to the prospective student's residence, business or work telephone, cellular telephone, or other telephone number provided by such student. A direct response to a prospective student's inquiry to the for-profit institution*, and subsequent communication necessary to facilitate the enrollment process*, is not an initiated communication.

(7) to refer to salespersons or recruiters as "counselors" or "advisors" or imply that a salesperson or recruiter is an academic or financial advisor or counselor, when:

(i) the primary role of such person is to market the school's programs or enroll students in the school; or

(ii) such person is evaluated or compensated in any part based on his or her ability to recruit students.

(d) Required Disclosures.

(1) The disclosures required by this subdivision ("Required Disclosures") must be signed or initialed by each consumer or prospective student no later than 72 hours prior to entering into an enrollment agreement, and a signed copy must be retained by the for-profit institution for five years and made available for inspection by the Department. The Required Disclosures must be made available on the for-profit institution's website for each program currently

offered by the for-profit institution. If a program has 10 or more students in the ~~enrollment~~ cohort to have most recently graduated, the Required Disclosures must be based on the individual program. If a program has fewer than 10 students in the ~~enrollment~~ cohort to have most recently graduated, *the Required Disclosures shall not include the following elements: 1) the graduate employment rate; 2) median cumulative loan debt; 3) the median time in which students complete the program.* ~~the Required Disclosures must be based on all programs offered by the for-profit institution with the same length of the program as said program, and the disclosures must identify the programs on which they are based.~~ A summary of the methodology used by the for-profit institution to calculate the graduate ~~placement~~ *employment* rate for each ~~enrollment~~ cohort must be created and retained by the for-profit institution for five years and made available for inspection by the Department. (2) It is a deceptive trade practice for a for-profit institution to fail to make the following disclosures to consumers and prospective students in the form and manner required by the Department or to fail to make the following disclosures available on its website:

(i) the total program cost;

(ii) the graduation rate;

(iii) the graduate ~~placement~~ *employment* rate *(only required if the institution utilizes graduate employment statistics for marketing or recruiting)*;

~~(iv) the total placement rate;~~

(v) the median time in which students complete the program; and

(vi) the median cumulative debt amount.

§ 2. Section 6-47 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 6-47 Consumer Protection Law Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty pursuant to Local Law 153 of 2013.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-700	Engaged in an unlawful deceptive or unconscionable trade practice	$260	$350	$315	$350	$350	$350
6 RCNY § 5-23	Failure to meet the requirement(s) for layaway plans	$260	$350	$315	$350	$350	$350
6 RCNY § 5-24	Failure to meet requirement(s) for credit card limitations	$260*	$350*	$315	$350	$350	$350
6 RCNY § 5-32	Failure to meet the requirement(s) for documentation of transactions	$260	$350	$315	$350	$350	$350
6 RCNY § 5-36	Failure to meet the requirement(s) for sale of used items	$260	$350	$315	$350	$350	$350
6 RCNY § 5-37	Failure to comply with disclosure of refund policy requirements	$260*	$350*	$315	$350	$350	$350
6 RCNY § 5-39	Failure to meet the requirements for cancellation of home appointment	$260	$350	$315	$350	$350	$350
6 RCNY § 5-40	Improper limit or disclaimer of liability for negligence	$260	$350	$315	$350	$350	$350
6 RCNY § 5-40(e)	Improper posting of sign that business is not liable for negligence	$260*	$350*	$315	$350	$350	$350
6 RCNY § 5-41	Collected sales tax on sale of good or service not subject to such tax under Article 28 of the NYS Tax Law or rule and regulations promulgated thereunder	$260	$350	$315	$350	$350	$350
6 RCNY § 5-46	Failure to meet the requirement(s) for a car rental business	$260	$350	$315	$350	$350	$350
6 RCNY § 5-46(d)	Failure to post notice of consumer protection law	$260*	$350*	$315	$350	$350	$350
6 RCNY § 5-47	Failure to meet the requirement(s) for jewelry sellers and appraisers	$260	$350	$315	$350	$350	$350

6 RCNY § 5-51	Failure to meet the requirement(s) for retail sale of gasoline	$260	$350	$315	$350	$350	$350
<u>6 RCNY § 5-52</u>	<u>Failure to meet the requirement(s) for for-profit institutions</u>	<u>$260</u>	<u>$350</u>	<u>$315</u>	<u>$350</u>	<u>$350</u>	<u>$350</u>
6 RCNY § 5-54	Failure to meet the requirement(s) for repairs of consumer goods	$260	$350	$315	$350	$350	$350
6 RCNY § 5-55	Failure to meet the requirement(s) for meat and poultry advertising	$260	$350	$315	$350	$350	$350
6 RCNY § 5-56	Failure to meet the requirement(s) for window gates	$260	$350	$315	$350	$350	$350
6 RCNY § 5-57	Failure to meet the requirement(s) for utility bill payments	$260	$350	$315	$350	$350	$350
6 RCNY § 5-58	Improper offer of sale of food in damaged containers	$260	$350	$315	$350	$350	$350
6 RCNY § 5-59	Improper imposition of restaurant surcharges	$260	$350	$315	$350	$350	$350
6 RCNY § 5-60	Failure to meet the requirement(s) for franchises	$260	$350	$315	$350	$350	$350
6 RCNY § 5-61	Failure to meet the requirement(s) for public performance seats	$260	$350	$315	$350	$350	$350
6 RCNY § 5-63	Failure to meet the requirement(s) for catering contracts	$260	$350	$315	$350	$350	$350
6 RCNY § 5-68	Failure to meet the requirements for dealers at flea markets	$260	$350	$315	$350	$350	$350
6 RCNY § 5-69	Failure to meet the requirements of blood pressure reading services	$260	$350	$315	$350	$350	$350
6 RCNY § 5-70	Failure to meet the requirements for retail service establishments	$260	$350	$315	$350	$350	$350
6 RCNY § 5-73	Failure to meet the requirement(s) for the sale of box cutters	$350	$350	$350	$350	$350	$350
6 RCNY § 5-75	Failure to post the Buyer’s Guide when selling or offering to sell any used automobile	$260	$350	$315	$350	$350	$350
6 RCNY § 5-87 through 6 RCNY 5-103	Prohibited conduct in offering sales or discounts and related recordkeeping requirements	$260	$350	$315	$350	$350	$350

Appendix B:

DeVry Student Commitments

1. **Informed Student Choice**:

    We provide all prospective students with a disclosure containing key information about program performance, such as total cost, debt and default rates, as well as completion and graduation rates.

2. **Responsible Recruitment and Enrollment**:

    We provide individualized financial and academic advising to all prospective students, and discus with them any questions or concerns before making any financial commitment.

    We record all admissions conversations, and have a process to evaluate a subset to ensure compliance and clear student communication.

    We publically report our use of revenues for marketing, instruction and academic support, student services and scholarships.

3. **Responsible Participation in the Federal Loan Process**:

    We have committed to derive no more than 85% of our revenue from federal funds, which includes military and VA funding. This exceeds the existing “90/10” federal requirement, which does not include military or VA funding in the federal portion.

    Before implementing new academic programs, we review the planned program’s pricing and expected career outcomes to ensure alignment with the student’s ability to repay debt upon successful completion of the program.

4. **Financial Literacy and Academic Transparency:**

    We provide each student with an annual Borrower Advisory Notice, which contains a detailed outline of the student’s borrowing and repayment obligations.

    We provide students with clear information and assistance throughout their educational experience regarding progress and financial investment towards their academic goals.

    We provide all students with access to Manage My Loans, a dynamic online tool that gives students ongoing visibility into overall program progression, outstanding loan

MIDTOWN MANHATTAN CAMPUS
180 Madison Ave.
Suite 900
New York, NY 10016
212-312-4300

balance (including estimated repayment obligations), financial position compared to academic progress, and credits required to graduate.

5. **Improving Student Satisfaction:**

   Our enrollment agreements do not require students to arbitrate disputes with us, nor do we prohibit students from participating in or seeking class action remedies.

   We maintain clear and transparent student complaint resolution policies readily available to students via DeVry's website and academic catalog or student handbook.

   We provide students with an escalation pathway and contact information to state oversight bodies with jurisdiction over student consumer complaints.

6. **Successful Student Outcomes and Accountability:**

   We identify and proactively engage with students who may be at risk for program completion. One example of our dedication to student outcomes is our partnership with Civitas Learning to implement a tool called Inspire. The tool uses algorithms based on student success predictors to provide faculty and Student Support Advisors with course-level engagement information for each individual student to identify underperforming students at risk of failing a particular course.

   DeVry Student Support Advisors target proactive outreach to at-risk students at the right time with personalized advising strategies that take into account student-specific insights from Inspire, such as student background, course information, warning flags and outreach history.

An independent third party reviewed and confirmed DeVry's adherence to these commitments to our students in 2017 and 2018, demonstrating DeVry's commitment to student outcomes, transparency and accountability.[1]

[1] http://newsroom.devry.edu/student-commitments/

Testimony from Taela Dudley, The Century Foundation

Commissioner Salas:

Thank you for this opportunity to provide testimony on the importance of the proposed rules to prohibit Deceptive Trade Practices by Certain For-Profit Schools.

The Century Foundation (TCF) is a progressive, nonpartisan think tank that seeks to foster opportunity and reduce inequality at home and abroad. Our higher education team addresses issues of college affordability, consumer protection, and accountability.

DCA's proposed rules are a critical step toward preventing -- and hopefully one day eradicating -- consumer harm inflicted on vulnerable students by predatory actors that are heavily concentrated within the for-profit sector of higher education.

Some for-profit schools in New York are actually generating more defaults than degrees for their students. How can this be? For one thing, for-profit schools as a sector have a bad report card when it comes to helping students succeed. The majority of students who enroll in these schools will default within twelve years.

It is no surprise that in the last year alone, DCA received 169 complaints against for-profit schools; 113 of these concerned misrepresentation and false advertising. The sheer number of complaints alleging misrepresentation highlights the need for oversight that curbs deceptive practices concentrated in the for-profit sector.

An overwhelming number of these complaints, 112, were against Berkeley College, with 71 concerning misrepresentation. There is a direct correlation between misrepresentation and poor student outcomes. Berkeley's student outcomes were so poor that New York City sued the school in 2018 for deceptive and predatory lending, and "voracious greed." In a separate, recent lawsuit, former "admissions counselors" of Berkeley college alleged that each employee of Berkeley's Admissions Office was evaluated "solely on the number of students they each successfully enrolled," an illegal practice which underscores DCA's findings that Berkeley recruiters would say whatever they thought a prospective student wanted to hear to convince them to enroll, regardless of the truth.

The New York State Education Department (NYSED) currently provides no relief to students who are ripped off by the largest for-profit chains in New York.

Through a public records request, The Century Foundation has obtained all of the records for student complaints and reimbursement requests that have been processed by NYSED within the last three years. While we are still analyzing the thousands of pages of complaints that NYSED has processed, one thing is abundantly clear: New York is not providing students with enough help when they are defrauded by predatory for-profit schools. NYSED has only distributed $200,000 in relief for all of the students who filed for relief in the past three years. That amount of money barely covers the sticker price for a four-year degree for a single student at New York's most expensive for-profit schools.

These rules are an important step to ensuring that higher education remains a pathway to success and not a pipeline to debt and default.

Taela Dudley
1 Whitehall Street, 15th Floor
New York, New York 10004
August 14, 2019

Records Access Officer
New York State Education Department
89 Washington Ave, Room 121 EB
Albany, NY 12234

Dear Records Access Officer,

Under the New York Public Officers Law §87 et. seq., I request access to obtain or inspect the following records from the Office of College and University Evaluation, the Office of the Professions, and the Bureau of Proprietary School Supervision:

- All records relating to student complaints concerning academic programs submitted to the Office of College and University Evaluation[1] from 2015 through present, including documentation of complaint exhaustion, corresponding complaint resolutions, complaint forms with all personally identifiable information redacted, and complaint logs of all complaints submitted to the Office of College and University Evaluation within this timeframe.
- All records relating to student complaints submitted to the Office of the Professions[2] from 2015 through present, including documentation of complaint exhaustion, corresponding complaint resolutions, complaint forms with all personally identifiable information redacted, and complaint logs of all complaints submitted to the Office of the Professions within this timeframe.
- All records relating to student Tuition Reimbursement Fund complaints and claims filed to the New York State Education Department[3] from 2015 through present, and corresponding complaint resolutions.
- All records relating to student complaints concerning academic programs within the State Authorization Reciprocity Agreement and corresponding complaint resolutions.
- All records relating to student complaints or institution-generated reports detailing student complaints made regarding distance education, as specified under New York's Distance Education (non-SARA) website for out-of-state institutions that are not

---

[1] http://www.nysed.gov/college-university-evaluation/filing-complaint-about-college-or-university
[2] http://www.nysed.gov/college-university-evaluation/filing-complaint-about-college-or-university
[3] http://www.acces.nysed.gov/bpss/student-rights#complaint

participating in the State Authorization Reciprocity Agreement[4] and corresponding complaint resolutions.

I write as a representative of The Century Foundation, a non-profit research and policy institute with a record of publishing information for the public good. This information will not be for commercial use, but rather to facilitate transparency of funding in education.

If there will be a cost associated with gathering these records, please notify me if the cost is expected to exceed $20.

Thank you for your consideration of this request.

Sincerely,

Taela Dudley

###

Quotes from complaints submitted in tuition reimbursement claims:

"They told me that the refund would be transferred to my bank card in 8 weeks. It has already been 11 weeks now and still no refund. Today I just found out that the school is closing"- Student, ALCC American Language

"I was unable to finish school due to its closing, they no longer offer a graduation, job placement...There has been no guidance or help with the school closing."- Student, Star Career Academy

"I have finished the coursework and was waiting for placement in my externship when the school closed suddenly...Your NYSED letter states that until I complete my internship, I am still a current student. The school has tried to "graduate me," but I am missing one third of my training and cannot get a job."- Student, Star Career Academy

[4] http://www.nysed.gov/college-university-evaluation/distance-education-approval.

Legal Services NYC
DEMAND JUSTICE

October 17, 2019

Commissioner Lorelei Salas
Carlos Ortiz
Director of City Legislative Affairs,
New York City Department of Consumer Affairs,
42 Broadway, 8th Floor
New York, NY 10004

Via: http://rules.cityofnewyork.us

Re: Comments on Proposed Rules to prohibit deceptive trade practices by for-profit schools, with public hearing at 42 Broadway on October 17, 2019.

Dear Commissioner Salas and Carlos Ortiz,

Summary

Legal Services NYC submits these comments regarding the Department's efforts to regulate for-profit, degree granting schools that operate within the five boroughs. Prohibiting these schools from lying about employment rates, prospective salaries, costs, and the availability of seats is valuable, especially given the Department's broad powers to shut-down businesses that deceive New Yorkers. However, Legal Services NYC believes the disclosure requirements are weak, easily gamed, and probably counterproductive. Few if any students given the required disclosure will think twice about enrolling. Moreover, schools that deceive students will point to the disclosure and falsely claim students chose their school knowing its positives and negatives.

Legal Services NYC believes that consumers would be less prone to abuse by unscrupulous for-profit schools if the Department adopted a different disclosure that cannot be gamed and which focuses on outcomes and instruction. We suggest it consist of three parts and disclose:

1. The percentage of students earning less than a high school graduate ($28,000) six years after leaving the school.

Legal Services NYC
DEMAND JUSTICE

2. The percentage of students unable to pay down their student loan debt due to low wages and high debt five years after leaving the school. Paying down means reducing the principal owed on the debt by $1.00 a month.

3. How much of a tuition dollar goes to instruction.

The U.S. Department of Education provides data that answers all of these questions. (Available at https://collegescorecard.ed.gov/data/). To give the disclosure meaning, side-by-side averages of similar, public schools should be presented. This enables comparison shopping.

Who We Are

Legal Services NYC (LSNYC) is the largest civil legal services provider in the country with offices in the Bronx, Brooklyn, Queens, Staten Island and Manhattan. For 50 years, LSNYC has provided critical legal help to low-income residents of New York City. Our organization works to reduce poverty by challenging systemic injustice and helping clients meet basic needs for housing, access to high-quality education, health care, family stability, and income and economic security.

In the student loan context, LSNYC represents low-income New Yorkers who have defaulted on or are having trouble repaying their student loans. In the last six years, we have sued two student loan servicers, one who withheld information regarding how to get out of default to maximize its profit, and another who bombarded our client with collection calls. We have participated in two negotiated rulemakings to police predatory for-profit schools and to craft repayment plans for student loan borrowers struggling with debt. We have trained dozens of pro bono lawyers in New York City to help student loan borrowers.

We have eliminated hundreds of loans by filing discharge applications due to For-Profit malfeasance or the disability of the borrower. We have guided hundreds of borrowers into affordable repayment plans. And we have sued federal agencies for failing to provide due process when offsetting Social Security payments of disabled persons who owe student loan debts.

Legal Services NYC
50 years
DEMAND JUSTICE

The For-Profit Education Problem

Every few weeks, a new story arises in which low-income students are left with mountains of debt and few skills by a for-profit college.[1] This spurs arguments by for-profit advocates that the malfeasance was isolated, the product of a few bad actors. However, numerous studies and law suits disprove such spin.[2] The majority of for-profit students (73%) earn less than a high school graduate ($28,000 per year) ten years after leaving their for-profit school.[3] Tuition at for-profits is high. For example, a medical assistant degree at the Brooklyn for-profit, ASA College, costs $28,000 as compared to $2,200 at Kingsborough Community College.[4]

Low earnings and high debt result in a life-time of repayment for for-profit students. Indeed, two out of three students who attend for-profits in New York are earning so little that they are unable to pay down their debts, meaning that their debts are *growing*

---

1 A sample of recent For-Profits news follows: For-Profit Schools Target The Black Community. Here's How You Can Avoid The Scam *BET*, 9.18.19; Arts Institute of Las Vegas again faces possible closure Aleksandra Appleton, *Las Vegas Review-Journal*, 9.16.19; The One Thing Every Two-Year College Student Should Know About Transferring To A For-Profit Institution Michael Nietzel, *Forbes*, 10.03.19; CFPB Investigating Loan Program at College Chain, Andrew Kreighbaum, *Inside Higher Ed*, 10.1.19; Will colleges with sky-high default rates face consequences? Sarah Butrymowicz & Meredith Kolodner, *Hechinger Report,* 10.03.19; Donna Shalala bill aims to stop sudden shuttering of for-profit colleges Ryan Nicol, *Florida Politics*, 10.04.19; Struggling Law School's Dean Unexpectedly Resigns Amid News Of Missing Student Loan Funds Staci Zaretsky, Above The Law, 9.11.19; Growing Price Tag for College Shutdowns, Andrew Kreighbaum, *Inside Higher Ed*, 9.4.19.

2 Tom Hilliard, Center for an Urban Future, *Keeping New York's For Profits on Track*, (April, 2018), available at https://nycfuture.org/research/keeping-new-yorks-for-profit-colleges-on-track ; Yan Cao, The Century Foundation, *Grading New York's Colleges*, at 6 (March 23, 2018) available at https://tcf.org/content/report/grading-new-yorks-colleges/; U.S. Senate Committees on Health, Education, Labor, and Pensions, *For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,* at 590 (2012), available at https://www.help.senate.gov/imo/media/for_profit_report/PartII/Lincoln.pdf; Dvorkin, Bowles, Shaviro, , Center for an Urban Future, *Deeper in Debt: For-Profit Schools Driving Student Loan Defaults in New York State Keeping New York's For Profits on Track*, (Dec., 2018), available at https://nycfuture.org/pdf/CUF_Deeper_in_Debt_Student_Loan_Default_Data_Brief.pdf

3 Hilliard, supra n. 2.

4 College catalogues with 2018 tuition schedule available with author.

despite monthly payments. This is not the case at public and private non-profit education institutions, where 70% and 58%, respectively, are paying down their debts. And those who ignore their debts pay dearly. Each spring, the U.S. Department of Education intercepts more than $2 billion in tax refunds owed to workers with defaulted student loans. [5]

For Profit Schools Covered by the Proposed Rule

Fourteen for-profits that grant degrees and operate within New York City would be covered by this rule. These schools enroll over 25,000 students and include seven large institutions (Mildred Elley, Monroe, ASA, Berkeley, DeVry, the School of Visual Arts, and LIM College).

A Stronger Disclosure Is Needed

The proposed rule requires a school to disclose total program cost, graduation rate, graduation job placement rates, median time for program completion, and medium debt.

Our experience with students who attend for-profits is that they often are sold on the promise of a better future well before signing an enrollment agreement, at which the proposed disclosure statement would be presented. Consequently, a disclosure statement really needs to shock a prospective student about the danger of enrolling (if that is the case.) Completion rates and average cost and debt are not going to challenge those assumptions. Indeed, many prospective students think a pricy education means a better education. Completion rates are overlooked because students believe their moxie will allow them to succeed even where others have failed.

Nor will job placement rates influence behavior. This is largely because lying about job placement is easy and hard for regulators to detect. Given their profit-motive and need to recruit new students, most schools will purport to disclose high employment rates for their graduates, some of which will simply be false or inflated. For example, the Art

[5] GAO- 17-45, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permanent Relief*, p.18 (December 2016), available at https://www.gao.gov/assets/690/681722.pdf.

Institute of New York lied about its job placement rates.[i6] While it was eventually put out of business following protracted litigation (2007-2015), it fleeced tens of thousands of student who remain liable for their loans, including more than 1,800 students in New York City.[7]

Required Disclosures Should Focus on Outcomes that cannot be Gamed or Distorted.

A more effective disclosure requirement would employ three metrics:

1. What percentage of students are earning less than a high school graduate six years after leaving the for-profit institution.

2. What percent of students are unable to make progress on paying down their student loan debt five years after leaving the for-profit.

3. How many cents out of each tuition dollar goes to instruction.

Furthermore, disclosures without comparison information will not be effective. Because deceit within the for-profit sector is rampant and well-documented, such a comparison should be with public schools that serve similar populations in New York City (the CUNY and SUNY schools located within the five boroughs.)

Finally, as a point of illustration, included below are sample disclosures involving four for-profits within New York City that have reputations as being particularly good or particularly bad. You can see that the disclosures highlight those differences.

---

[6] False Claim Act suit filed in 2007 is unsealed and served in 2011. *United States ex rel. Washington et al. v. Education Management Corp. et al., Civil No. 07-461 (W.D. Pa.)*. https://www.justice.gov/opa/pr/us-files-complaint-against-education-management-corp-alleging-false-claims-act-violations.

[7] The case settled eight years later in 2015. https://ag.ny.gov/press-release/ag-schneiderman-announces-1028-million-settlement-edmc-forgive-student-loans-and.

Legal Services NYC
50 years
DEMAND JUSTICE

Percent of former students earning *less* than a high school graduate
Six Years after leaving college.

ASA College:	71% earn less than a high school grad
Berkeley College:	55%
LIM College:	26%
St. Paul's School of Nursing:	17.5%
CUNY's and SUNY's:	**41%**

Former Students *Unable* to pay their loans Five Years after Leaving the For-Profit

ASA College:	76%.
Berkeley:	60%:
LIM:	36%:
St. Paul's School of Nursing:	30%
CUNY's and SUNY's:	**44%.**

Tuition dollar towards instruction (instruction/tuition)

ASA College:	34 cents: ($5,267 / $15,285)
Berkeley College:	30 cents ($5,598 / $18,607)
LIM College:	17 cents: $4,442 / $25,495)
St. Paul's School of Nursing:	52 cents: ($15,139 / $ 29,110)
CUNY's and SUNY's:	**$3.13: ($18,500 / $5,897**).

Conclusion

The disclosure statement, if not carefully crafted, could undercut the important goal the Department seeks: protecting New Yorkers from for-profit schools who leave students with few skills with which to pay large debts. Disclosing earnings and repayment rates may shock a prospective student to consider other schools with better outcomes, and thereby better serve the communities within New York City who have been long victimized by unscrupulous for-profit schools.

For further information, contact Johnson M. Tyler at 718-237-5548 or jtyler@lsnyc.org

Office of the President
president@sva.edu

S V A School of VISUAL ARTS

October 17, 2019

Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

RE: Comments on NYC DCA Revised Proposed Rules Regarding Deceptive Trade Practices of For-Profit Educational Institutions

Dear Mr. Ortiz,

As the President of the School of Visual Arts – a proprietary college located in Manhattan offering 11 undergraduate and 22 graduate programs, all registered by the State of New York – I write to express my concern with the revised proposed rules put forth by the New York City Department of Consumer Affairs. I believe this proposal is motivated by nothing more than animus towards proprietary higher education as a whole, driven by national rhetoric that proves itself to be both misinformed and inapplicable when considered against New York State's unique and rigorous regulation of all sectors of higher education.

The School of Visual Arts (SVA) was co-founded in 1947 by my father, Silas Rhodes, as the Cartoonist and Illustrators School. In its early days, the institution was a single purpose trade school preparing young men returning from World War II for new careers. At its opening, C&I had 35 students and 3 faculty members. In 1956, the institution's name was changed to the School of Visual Arts to reflect its expanding program offerings and my father's belief that there is more to art than mere technique. In 1972, SVA became the first proprietary college in New York State to award baccalaureate degrees. In 1978, SVA became accredited by the Middle States Commission on Higher Education. That same year, I was named as SVA's President and I have continued to serve SVA's students in that role for the last 40 years.

In addition to my role at the College, I currently serve as the Vice Chair of the New York State Board of Regents' Advisory Council on Institutional Accreditation,[1] and I served as a Commissioner for the Middle States Commission on Higher Education from 2004 to 2007 and again from 2010 to 2016. I am an experienced evaluator and have chaired or served on 25 evaluation teams for Middle States, the National Association of Schools of Art and Design, and the New York State Education Department.

---

[1] For further information regarding the Advisory Council, please see NEW YORK STATE EDUCATION DEPARTMENT, Office of College and University Evaluation, *Institutional Accreditation by the Board of Regents: Advisory Council*, http://www.nysed.gov/college-university-evaluation/advisory-council.

In all my years in educational leadership and oversight, I have never seen a proposal quite like this one by the NYC Department of Consumer Affairs – except, perhaps, for its first attempt at this rule. This rule is not only flawed, it is irrational, arbitrary, and capricious. It claims to protect students, its definition of "proprietary school" covers only 13 institutions operating in New York City. All the truly fraudulent schools are excluded from DCA's regulation.

For example, DCA prescribes a definition for "placement", claiming it needs to do so because colleges like mine are lying to students about their real rates. In reality, SVA doesn't even publish placement rates* for our students, because there is no accepted, uniform formula for placement rates. The formula for placement rate varies by accreditor and the calculation is only deemed appropriate for certain types of programs. Advertising a placement rate would not make sense for most of our academic programs, which focus on the arts and various disciplines of design. DCA's definition of placement rate only works for students who pursue 9 to 5 jobs – this might be the case for some of our advertising, design, and interior design students, but for students who study illustration, sculpture, film, photography, and other forms of the visual arts, their careers will inevitably be freelance, contract-based, or entrepreneurial.

By way of example: the SVA photography alumnus, who was a producer on the Oscar winning film *The Grand Hotel Budapest*, would not be counted as "successful" by DCA's proposed regulation because he is not employed to make photographs.

Similarly, a recent advertising graduate employed by Google to create murals would not be counted as successful because she is not employed by an advertising agency.

Additionally, students who enroll in graduate school or receive Fulbright fellowships or other post-baccalaureate awards would be counted by this proposed definition as failures without jobs. These standards would be – in a word – crazy to apply in a city like New York, where artists and designers without traditional office jobs are major drivers of our both our economy and cultural scenes. These proposed rules are so flawed that the only conclusion to be drawn by any reasonable person is that DCA simply does not know what it is doing.

DCA not only clearly lacks the expertise to set standards for academic institutions, the very premise of these proposed rules is a farce. The stated basis and purpose of the rules includes the suggestion that my college is operating without a license from the New York State Education Department, is unregulated, that my accreditation is unrecognized, and that my college officials engage in deceitful behavior towards students. Nothing could be further from the truth.

*except Interior Design as required by its programmatic accreditor.

This proposal is an insult to SVA and its long history in New York City – where both my institution and my family have invested and contributed to helping making New York City a global destination for arts and design education.

Given that these proposed rules clearly fall short of having any beneficial impact for students – and, rather, would seem to undermine the clear and consistent information already made available to students under federal and state standards – I can identify no rationale for this proposal beyond animus. Indeed, this proposal would not serve students at all, but merely is a thinly veiled attempt to cast proprietary colleges in a bad light. This anti-proprietary rhetoric may well be justified in other states, such as California, that regulate proprietary institutions as mere businesses and, accordingly, lack effective mechanisms for ensuring institutions meet certain educational quality standards. In New York State, where proprietary institutions are – like public and non-profit institutions – treated as colleges serving academic missions, this anti-proprietary rhetoric is entirely inappropriate.

If the New York City Department of Consumer Affairs wishes to protect New York City students, as it claims, it should focus on helping the State close down the real unlicensed schools and diploma mills that preys upon New Yorkers, and leave good institutions like SVA alone. Enclosed with these comments is additional information regarding SVA's excellent student outcomes.

I thank the Department of Consumer Affairs for the opportunity to submit comments on these proposed rules, and I offer my time and guidance to the Department of Consumer Affairs, if it should have any additional questions regarding the oversight and regulation of institutions of higher education by federal and State officials or accrediting experts.

Sincerely,

David Rhodes

David Rhodes
President
School of Visual Arts

Michael J. Smith, President
Berkeley College
Comments on NYC DCA Proposed Rules Regarding Deceptive Trade Practices of For-Profit Schools
New York City Department of Consumer Affairs
42 Broadway, 5th Floor, New York, NY

Thursday, October 17, 2019 at 10:30 a.m.

Good morning. I am Michael Smith, President of Berkeley College.

I am here today on behalf of Berkeley College, to express our opposition to the New York City Department of Consumer Affairs' (DCAs') proposed rules pertaining to deceptive trade practices of for-profit schools. The concerns I am expressing today are similar to those I shared at DCA's first public hearing on a similar set of proposed regulations held on April 4.

Berkeley College has been educating students in New York City for 83 years. In the 2019 – 2020 academic year, there are more than 1,800 students enrolled at Berkeley College in Manhattan, including a large population of military and veteran students and international students.

At Berkeley College, every student has a name, a family, a dream. Our students and alumni contribute to the rich diversity and vitality of New York City. We are your neighbors.

We question the origin of the rules and the intentions of the DCA in proposing regulations aimed at higher education, an area that is outside of its domain of consumer goods. Is the DCA seeking to help consumers or to cause harm to proprietary-sector colleges and universities and our students?

Public and private independent colleges and universities educate approximately 94% of the 300,000 undergraduate students enrolled at New York-City based institutions, yet the DCA does not include all of these colleges and universities in its proposed rules. Proprietary sector colleges and universities educate less than 6% of the total student population in New York

City – or some 18,000 undergraduate students. What about the other 282,000 students? Don't they deserve the same protection under the DCA's proposed rules? The State University of New York (SUNY) and City University of New York (CUNY) institutions and private nonprofit colleges and universities conduct advertising campaigns, inform prospective students of program costs and student outcomes. Why are those colleges and universities not included in the proposed regulations?

Is the DCA's true intent to penalize colleges and universities that do not operate in the public sector and in the private non-profit sector? By targeting a narrow subset of colleges that are already regulated in the same manner as all public and independent private colleges and universities, the DCA is exhibiting behavior that is biased. Berkeley College is accredited by the same agency as other institutions of higher education in this region – the Middle States Commission on Higher Education.

It is disconcerting that a New York City agency is attempting to usurp the regulatory authority of the U.S. Department of Education and New York State Education Department. The DCA is stretching its jurisdiction so far as to create its own set of metrics for measuring higher education outcomes.

The DCA's metrics are not aligned with those required by the U.S. Department of Education. This would mean hundreds of thousands of prospective students would be unable to make fair comparisons when researching colleges and universities across all sectors. This is because only proprietary-sector institutions would be required to report outcomes based on a new set of metrics not required of public and private nonprofit institutions. These metrics are not approved by the U.S. Department of Education or New York State Education Department.

Not only will prospective students be unable to make fair comparisons when researching colleges due to the inconsistent metrics, but these prospective students will likely be confused and misled by the inconsistent and conflicting metrics. Prospective students will be left with no useful information. Creating such confusion is not in the best interest of consumers.

The DCA's metrics include inequitable comparisons pertaining to total program costs, graduation rates, graduate placement rates, total placement rates, median time to graduate and median cumulative debt amount incurred by students, based on methodology that is inconsistent with metrics already required by the U.S. Department of Education. In view of the federal and state metric requirements promulgated by agencies serving higher education, anything inconsistent or tending to cause confusion should be stricken.

If the intention of the DCA is to protect all students and eliminate illegal schools that are not properly licensed, then the agency should work together with the New York State Attorney General's Office, the District Attorneys from New York City's five boroughs, state and federal education agencies, all colleges and universities, financial institutions, lawmakers, and other relevant stakeholders to address the DCA's concerns.

As I stated at the DCA's April 4 hearing, an inclusive, more collaborative process with all of New York City's colleges, the Mayor's office, State and federal education agencies, business organizations, K-12 educators, students, parents, and other stakeholders, would better ensure a transparent process that addresses tuition, cost and outcomes at all postsecondary institutions, rather than a process that discriminates intentionally against one sector and harms our students.

We invite the Mayor, DCA Commissioner, and all members of the New York City Council and City agencies to visit our College, and meet our students, alumni, faculty and staff. They would see firsthand that Berkeley College is a college structured in the same manner as many fine colleges in New York City, with a mission of educating students to succeed professionally and in life.

Accredited and regulated degree-granting colleges such as Berkeley deserve exemption from biased and unnecessary rules like those being proposed by the DCA.

Michael J. Smith
President
Berkeley College

BROOKLYN (KINGS COUNTY) HISPANIC CHAMBER OF COMMERCE, INC.
CAMARA DE COMERCIO HISPANA DE BROOKLYN
BUILDING BRIDGES FOR BUSINESS WITH BUSINESS
CONSTRUYENDO PUENTES PARA NEGOCIOS CON NEGOCIOS

October 15, 2019

Mr. Carlos A. Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor New York, NY 10004

Re: Proposed Rules Regulating For-Profit Colleges

Dear Mr. Ortiz,
I write this letter on behalf of the Brooklyn Hispanic Chamber of Commerce to express my concern regarding Department of Consumer Affairs (DCA) rules that unfairly target proprietary sector colleges. Our Chamber collaborates with a number of colleges, including Berkeley. I can speak to the quality and commitment of Berkeley College.

Berkeley College plays a vital role in workforce development. It provides education to thousands of Latino and African-American students, many who are the first in their families to attend college. These students deserve the opportunity to advance their futures freely and unconditionally. Berkeley College's students have positive partnerships in our community. The College is an economic engine and serves as a workforce pipeline, capable of identifying the needs and opportunities to work with organizations like the Brooklyn Hispanic Chamber.

Rules of particular concern are the ones proposed by the DCA that seek to apply a standard of whether an institution "knows or should know" that a student will not, or is unlikely to, graduate and meet requirements for future employment. This proposed rule would be detrimental to the hardworking students enrolled at proprietary-sector institutions and the tens of thousands of alumni who work, and help their families and our communities thrive.

We know Berkeley College to be a trustworthy partner in the community. For Berkeley College to offer lifetime career assistance to graduates at no charge is a blessing to keep our community and workforce thriving. Access to flexible course scheduling and affordability to a quality career-oriented college are important factors to students who are juggling work, school and caregiving responsibilities, often at the same time.

On behalf of the Brooklyn Hispanic Chamber of Commerce, I urge the DCA to reconsider these rules and explore how the agency can work more collaboratively with Berkeley College and all educational institutions that are helping New York residents succeed. Berkeley College has a good record of preparing students and graduates for success and helping New Yorkers gain upward economic mobility. We should strengthen our support of New York City's colleges, regardless of sector, for the good of all of all of New York residents and students.

Sincerely,

Rick Miranda

Rick Miranda
President/CEO

Business Enlightenment, Advocacy and Empowerment
Instrucción, Apoyo, y Empoderamiento Empresarial
237 21st St 2nd Floor, Brooklyn, NY 11215
Tel. (646) 770-2009 • www.brooklynhcc.org

Salvatore Candela

Fri, 10/04/2019 - 10:30am

Comment:

The penalties are far too insignificant for any school to be worried about performing deceptive practices. Raise the penalties, then there may be the desired result of curbing the undesired activites.

Excellence. Access. Affordability.

October 17, 2019

Carlos Ortiz
Director of Legislative Affairs
New York City, Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Comments on NYC DCA Revised Proposed Rules Regarding Deceptive Trade Practices of For-Profit Educational Institutions

Dear Mr. Ortiz,

As the President of the Association of Proprietary Colleges (APC), I am here today to express my concerns with the revised rules proposed by the New York City Department of Consumer Affairs ("NYC DCA" or "Department") to regulate the speech and practices of degree-granting colleges in New York City.

I have reviewed the Department's revisions to the proposed rules put forth earlier this year and, while it seems the Department has taken some of APC's concerns under consideration in revising its proposal, the Department has failed to do so in other respects.

First, the revised proposed rules continue to contain several problematic definitions, metrics, and expectations regarding practices of certain educational institutions. Second, as I stated in our comments on the Department's first iteration of these proposed rules, our institutions are colleges (not "schools") and are currently regulated by both the federal and State governments as educational institutions, not as businesses.[1] As such, stating that proprietary colleges are not licensed or regulated is misleading and inaccurate because, in New York State, licensure is reserved for non-degree schools and, in other states with less rigorous higher education oversight, proprietary institutions are issued licenses only because they are treated as businesses, not colleges. As we have informed the Department previously, in New York State, proprietary colleges are treated as colleges and, accordingly, are held to all the same exacting standards as any public or non-profit college.[2]

---

[1] *See, e.g.*, New York State Education Department, *Testimony of New York State Education Department Commissioner MaryEllen Elia before the New York State Senate Committee on Higher Education*, April 10, 2019, https://www.nysenate.gov/sites/default/files/for_profit_oral_testimony_transcripts.pdf, in which the State makes it explicitly and pointedly clear that "for-profit degree-granting colleges in New York are evaluated against the same standards as our not-for-profit public or independent colleges," a fact which is "not true across the country." This testimony is also included as Exhibit B of these comments and provides an excellent overview of the ways in which New York State's regulation of higher education is unique.

[2] One major mechanism of the State for ensuring colleges and universities – whether public, non-profit, or proprietary – are providing students with high quality academic programs is the review, approval, and registration of all academic

Moreover, NYC DCA lacks any authority to regulate educational institutions for the following reasons: (1) Colleges and universities, including proprietary ones, are so comprehensively regulated by federal and State officials that NYC DCA is preempted from doing so;[3] and (2) NYC DCA is not even statutorily empowered to oversee educational institutions in that the power delegated to NYC DCA by the New York City Council is limited to ensuring fair dealings in the sale of consumer goods and services for personal and household use, such as perishable foods, cigarettes, and second-hand items – educational activities, at any level, have never been considered a mere "household good" and, accordingly, have always remained firmly outside both NYC DCA's authority and expertise.

Therefore, I reiterate my request that these proposed rules be further modified to ensure that degree-granting proprietary colleges are exempt from any rules or regulations put forward by the NYC DCA related to for-profit schools.

INTRODUCTION TO THE ASSOCIATION OF PROPRIETARY COLLEGES

The Association of Proprietary Colleges (APC) represents twelve degree-granting colleges across New York State, six of which are located in New York City:[4]

- Berkeley College – Established 1931 – Located in Manhattan and Brooklyn
- LIM College – Established 1939 – Located in Manhattan
- Monroe College – Established 1933 – Located in the Bronx
- Plaza College – Established 1916 – Located in Queens
- School of Visual Arts – Established 1947 – Located in Manhattan
- Swedish Institute – Established 1916 – Located in Manhattan

All six institutions were well-established at the time of the New York State Board of Regents' 1971 decision to allow select proprietary schools to become degree-granting colleges. In fact, LIM College, Monroe College, and the School of Visual Arts were among the first proprietary institutions to receive degree-granting authority the very next year. Since that time, these proprietary colleges have earned excellent reputations for producing strong outcomes for students of diverse backgrounds, and they place particular emphasis on working closely with key employers in industries essential to the New York City economy, including business, healthcare, fashion, and the arts. Today, these institutions, their leadership, and their faculty share a common commitment to academic excellence, access to education, and affordability.

APC and its member colleges regularly consult with State and federal decision makers and advocate in favor of legislation and policies that support the goals of higher education and protect

---

programs by the New York State Education Department and New York State Board of Regents pursuant to 8 NYCRR 52.1 et seq. (often referred to simply as "Part 52"), which prescribes standards that must be met by each academic program in order to be recognized and registered by the State.

[3] NYC DCA's preemption is two-fold: Its proposed regulations are field preempted due to the comprehensive and complex regulatory frameworks already put in place by federal and State lawmakers, but also conflict preempted in that NYC DCA's proposed standards directly conflict with federal and State standards.

[4] For further detail regarding these six member institutions' backgrounds and student outcomes, please see Exhibit A.

the interests of students. While NYC DCA's intent to protect students is laudable, we hope NYC DCA will hear our comments on its proposal and take them under due consideration. APC certainly would welcome the opportunity to further discuss with NYC DCA any concerns it may have regarding proprietary colleges in New York City, as the proposed regulations make what appear to be factual claims that are unsupported by evidence.

CONCERNS WITH THE NYC DCA REVISED PROPOSED RULES

A. NYC DCA's revised proposed rules do not warrant adoption because they fail to achieve their stated purpose.

In NYC DCA's "Statement of Basis and Purpose" for these revised proposed rules, the Department states that it proposes these rules would "address problems experienced by consumers when they seek to enroll, or are already enrolled, in for-profit schools that are neither licensed by the New York State Education Department nor accredited by the New York State Board of Regents" and which "intensively market degree programs to consumers and are supported almost entirely by State and federal loans." The problems in question, according to the Department, include the provision of misleading information regarding "the availability and impact of certain types of financial aid; the transferability of credits to and from the for-profit school; and the actual cost of attendance, among other things." Further, the Department states that, once enrolled, "students can be deceived about the cost of continued attendance and are often subjected to manipulation by the school designed to extend the period of enrollment to maximize the tuition received by the school" and that graduation rates are "very low", resulting in "many" students leaving without a diploma and getting "saddled with outsized debt that they can ill afford". On this basis, NYC DCA urges that its revised proposed rules are necessary to ensure for-profit schools "operate fairly and honestly, and utilize business practices that are not deceptive." None of these claims are supported by evidence and, indeed, some claims are demonstrably false.

APC questions whether the Department's stated goal – the protection of students from deceptive business practices – is truly served by the Department's proposed regulations, which neither achieve anything not already achieved by existing State or federal law nor are narrowly tailored enough to address the real perpetrators engaging in the deceptive practices at hand: illegally-operating non-degree schools and diploma mills in New York City's most vulnerable neighborhoods.

New York City's illegally-operating schools are not a new phenomenon. For decades, black market "schools" have popped up on street corners overnight – often advertising computer classes, coding "boot camps", English language classes, and short-term programs in trades such as carpentry, automotive repair, truck driving, cosmetology, and other vocations. Recruiters stand on street corners handing out flyers and admissions officers accept cash tuition and enroll students on-demand. Often, these schools close down just as quickly as they open. When they do persist, they typically are unable to deliver on their promises to students because they do not have the facilities and resources necessary to actually do so. For example, we have heard anecdotes of students enrolling in computer classes at such "schools" only to find out that their "school" does not possess a single computer for student use.

These illegal "schools" are completely different from the "degree-granting for-profit schools" accused in NYC DCA's "Statement of Basis and Purpose" of committing such egregious conduct. First and foremost, we remind NYC DCA – once again – that "degree-granting for-profit schools" are colleges, not "schools", and they certainly do not operate illegally, unlicensed, or unregulated. Not only are proprietary colleges recognized by New York State as legitimate and respectable academic institutions, but the State considers them to be of "critical importance" to the expansion and development of higher education in New York State.[5] Indeed, as we have advised NYC DCA in our comments on the first iteration of these proposed rules, in New York State, proprietary colleges are held to all the same rigorous standards of institutional quality as any public or non-profit college. All institutions, regardless of sector, are similarly held to the same standards under New York State's Banking Law and corresponding regulations by the New York State Department of Financial Services which require all degree-granting institutions of higher education recognized and approved by the New York State Board of Regents (regardless of sector) to issue uniform information to prospective students regarding the cost of attendance (both for the current year and an estimate for future years), the amount and type of any financial aid available (including from the federal government, the State, and the institution itself) along with an explanation as to which types of aid require repayment, the median amount borrowed by the institution's students, and the institution's graduation rate and student loan default rate, among other things.[6]

Unlike colleges and universities and legally-operating non-degree institutions – both of which operate with the approval and oversight of the New York State Board of Regents and New York State Education Department – <u>these illegally-operated "schools" hold no authorization to operate in New York State whatsoever</u>. Perhaps unsurprisingly, considering these illegal schools haven't been granted permission to exist in the first place, these illegal schools frequently engage in unethical, immoral, and often criminal behaviors and practices, including the unorthodox and unscrupulous practices delineated throughout NYC DCA's revised proposed rule – such as making false representations regarding the necessary qualifications for licensure, opportunities to qualify for membership in a union or other association, approval or accreditation that has not been awarded, limited time offers, money back guarantees, and "free" services which are not actually free.

Ironically, these illegally-operated "schools" have been promoted, advertised, and even funded with taxpayer dollars by New York City itself. For example, in 2014, the New York City Department of Small Business Services contracted with the Flatiron School, an unlicensed and illegally operating "school", to offer a free, 22-week course to low-income New Yorkers that would typically carry a price tag of $12,000.[7] Shortly thereafter, the New York State Attorney General pursued legal action against the Flatiron School for operating without a license from the

[5] *See, e.g.*, Education Beyond High School: The Board of Regents Statewide Plan for Development of Post-Secondary Education, New York State Education Department, November 1972, available at the New York State Legislative Library. In 1972, the Regents first awarded proprietary institutions the same degree-granting powers held by public and non-profit institutions in acknowledgment that "many proprietary institutions are among the oldest resources for post-secondary education in the State" and that "their recognition is a prerequisite toward realizing the goal of equal educational opportunities and providing a variety of alternatives necessary for a truly comprehensive system of post-secondary education."

[6] New York State Banking Law § 9-w and New York Banking Regulation Part 421.

[7] Rachel Swarns, *Creating Unexpected Opportunities in a Recovery Economy*, NEW YORK TIMES, June 22, 2014, https://www.nytimes.com/2014/06/23/nyregion/flatiron-school-program-expands-new-yorks-web-developer-ranks.html.

New York State Education Department and – most notably – a variety of deceptive and misleading conduct, including advertising inflated placement rates and starting salaries of program graduates.[8] We cannot ignore the absurdity of NYC DCA claiming oversight of deceptive conduct by schools while other City agencies actively dole out taxpayer-funded contracts to those same entities. Notably, the State Education Department does survey and scrutinize the field of institutions across the State in order to identify schools that are operating illegally, receives complaints and conducts investigations regarding illegal schools, and is empowered both to pursue its own enforcement actions against illegal schools, including shutting them down, as well as to refer enforcement actions to other State officials as appropriate, such as when criminal conduct has occurred. Indeed, the Attorney General's enforcement action against the Flatiron School was a consumer complaint action referred by the State Education Department itself.[9] Amazingly, the Flatiron School's egregious conduct would not even be addressed by NYC DCA's proposed regulations because non-degree schools like the Flatiron School are excluded from its definition of "for-profit school".

APC and its member colleges agree with NYC DCA that institutions should not engage in these bad practices or anything remotely resembling them, and believe that no legitimate educational institution worthy of its degree-granting powers engages in them. We urge NYC DCA to recognize that the best way to protect students from falling victim to these practices is *not* to propose regulations that, inadvertently or intentionally, accuse well-respected proprietary colleges of misconduct. Rather, it would be far more effective to pursue partnerships and memoranda of understanding with the State Education Department, the Attorney General, and District Attorneys to assist in the enforcement of existing laws against deceptive practices and the illegal operation of institutions and encourage the development of a legitimate and effective mechanism to crack down on the underground "education" industry that exists in some of New York City's most vulnerable neighborhoods.

B. Even after revision, NYC DCA's proposed definitions, metrics, and expectations continue to be flawed and contrary to existing standards set by qualified experts.

The proposed rule would mandate that certain institutions in New York City – specifically, only its degree-granting proprietary colleges, which are few in number and hold degree-granting powers granted by the State – disclose data on several student outcome measures, including total program costs, graduation rate, graduate placement rate, total placement rate, median time in which students complete each academic program, and median cumulative debt amount held by students. While we believe transparency is important, the information in question is both already required to be disclosed pursuant to other regulations – including the U.S. Department of Education's disclosure requirements, the New York State Education Department's institutional auditing requirements, and institutional accrediting agency reporting requirements – and are readily and publicly available through other sources, such as the federal College Scorecard and College Navigator websites, the federal IPEDS database, annual data published by the New York State Education Department, and the Financial Aid

[8] Office of the New York State Attorney General, Press Release, *A.G. Schneiderman Announces $375,000 Settlement with Flatiron Computer Coding School for Operating Without a License and For Its Employment and Salary Claims*, Oct. 13, 2017, https://ag.ny.gov/press-release/2017/ag-schneiderman-announces-375000-settlement-flatiron-computer-coding-school.

[9] For examples of Attorney General enforcement actions against illegally-operating schools, please see Exhibit C.

Award Information Sheet jointly prescribed by the New York State Department of Financial Services and the New York State Higher Education Services Corporation.[10] Most significant, however, is not that the NYC DCA's proposed data disclosures would be duplicative, but rather that the proposed methods of calculation would directly conflict with established reporting practices prescribed by the federal government, undermine public confidence in available data, and confuse students as to which published metrics are accurate.

The methodologies to calculate data for these disclosures are not only well-established, but were developed by experts in the field of higher education, student success, and statistical analysis. In contrast, the NYC DCA's proposed calculation methodologies for graduation and placement rates are flawed in structure, developed by an entity with no expertise in these areas, and would cause widespread confusion by creating competing concepts of crucial metrics with no basis in logic. Because NYC DCA's proposed metrics would be limited to the handful of proprietary colleges in New York City – instead of, say, all colleges in New York City – students would have no direct apples-to-apples metric by which to compare various colleges' outcomes.[11] If the Department's stated purpose is to protect students, we wonder why it wishes to "protect" only *some* students and why it believes such a divergent and flawed metric would even be beneficial to students.

APC explicitly raised this concern in its comments on the Department's first iteration of these proposed rules, yet the Department seems to have only doubled-down on its efforts to prescribe faulty metrics for educational institutions.

For example, the revised proposed rule would require graduation rates to be calculated as follows:

> "Graduation rate" means the number of full-time students in the enrollment cohort who completed the program within 100% of the length of the program divided by the number of full-time students in the enrollment cohort. The graduation rate disclosed pursuant to subdivision (d) of this section must be for the most recent enrollment cohort to have reached 6 months after the time for completion of this program. *[sic]*

This definition is flawed as a metric for all programs and is inconsistent with State and federal graduation rate disclosure requirements. Graduation rates are defined as the calculated percentages of students who graduate or complete their program within a specified timeframe. This metric is calculated by federal and State oversight entities[12] by dividing the number of students who completed

---

[10] *See, e.g.*, New York Financial Aid Award Information Sheet Template, NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES, https://www.dfs.ny.gov/docs/consumer/shopping_sheet/shopping_sheet_default.pdf, which is required by New York State Banking Law § 9-w to be provided to prospective students when responding to applications.

[11] For example, if a prospective student is considered applying to several nursing programs in New York City – say, one offered by CUNY, one offered by NYU, and one offered by Monroe College – rather than being able to rely on a single metric for graduation rate prescribed by the federal government, NYC DCA would require that only Monroe College publish an entirely different graduation rate which is worthless to the student because it is not directly comparable to the programs offered by the other institutions. The Department's proposed metrics deprive students of the context necessary for understanding how institutions compare across the State and nation, as opposed to only on their city block.

[12] *IPEDS Survey Components: Graduation Rates*, National Center for Education Statistics, U.S. DEPARTMENT OF EDUCATION, https://nces.ed.gov/ipeds/use-the-data/survey-components/9/graduation-rates. *See also* Higher Education Trend Tracker, NEW YORK STATE EDUCATION DEPARTMENT,

their program within a specific percentage of its normal time to completion by the number of students in the entering cohort.

Both the U.S. Department of Education and the New York State Education Department calculate graduation rate as the number of students who complete in 100%, 150%, and 200% of their programs' normal time to completion. In other words, for a bachelor's degree program normally taking 4 years to complete, an institution's published graduation rate will be three-fold, reflecting the number of students finishing in 4 years, as well as the number of students finishing in 6 years and 8 years. Furthermore, this graduation rate metric is published only for "full-time, first-time" students, meaning they are enrolled in a given number of credits and are attending college for the first time in their lives. Graduation rates for part-time students and non-first-time students (including transfer students) are generally published as a separate metric from this regular graduation rate and are identified as being representative of this particular student population. These distinctions are made in order to disaggregate – and better understand – the progress and retention of students with no prior postsecondary educational experience compared to students who have some prior experience, as well as the progress of full-time students compared to part-time students.

In contrast, NYC DCA's graduation rate metric is calculated using <u>only</u> 100% normal time to completion and is calculated for <u>all</u> full-time students, with no stated justification for deviating from the federal and State metric. This proposed methodology strays needlessly and significantly from these well-established standards, would result in our institutions publishing false and misleading information and would cause confusion for potential and current students.

Similarly, the proposed calculation of "Graduate Placement Rate" is described as follows:

> "Graduate Placement Rate" means, of the number of full-time students in the enrollment cohort who completed the program within 100% of the length of the program, the number of students obtaining full time (at least 32 hours per week), non-temporary employment in the field of study within 6 months after the time for completion of their program, divided by the number of full-time students in the enrollment cohort who completed the program within 100% of the length of the program. The graduation rate disclosed pursuant to subdivision (d) of this section must be for the most recent enrollment cohort to have reached 6 months after the time for completion of this program. *[sic]*

It is critical to understand that the federal government requires <u>accreditors</u> – the third leg in the regulatory triad overseeing higher education[13] – to determine whether it is appropriate, based on the

---

http://eservices.nysed.gov/orisre/NYStotalParams.jsp (citing the federal IPEDS survey results as a source for graduation rate data).

[13] The higher education "regulatory triad" is a system of checks and balances intended to ensure program integrity. Under the triad, institutions must be licensed or otherwise legally authorized to operate in the state in which they are located, accredited or pre-accredited by an agency recognized as an accreditor by the U.S. Department of Education, and certified by the U.S. Department of Education as eligible to participate in Title IV programs. In other words, the only entities entrusted with overseeing the quality and operations of colleges and universities in New York State are the U.S. Department of Education, the New York State Education Department, and the respective accrediting agencies of each institution. This triad configuration is "intended to provide a balance between consumer protection, quality assurance, and oversight and compliance." Notably, "rather than creating a centralized authority to assess quality, the federal government chose to rely in part on the existing expertise of accrediting agencies." *See* Alexandra Hegji, *Institutional Eligibility for Participation in Title*

nature of an institution and its academic programs, to collect placement rate data,[14] and accepted placement rate calculations vary from accreditor to accreditor, with some accrediting agencies not finding value in the metric at all.

As with the graduation rate, publishing such a metric calculated using the Department's proposed methodology serves no other purpose than to skew and misrepresent data of impacted institutions and would have little or no benefit to students. The Department inexplicably proposes adopting two metrics so counter to existing norms and practices prescribed by federal and State regulators that they would result in institutions actually publishing false and misleading information. NYC DCA declares student protection as its purpose in proposing these rules, yet undermines that goal by designing metrics that would only cause confusion for potential and current students and their families.

In addition to the Department's problematic metrics, the revised proposed rule includes other definitions that will be unworkable – not due to existing regulatory standards, but rather on the basis of longstanding legal doctrine and principles of justice.

For example, the proposed rule would prohibit for-profit institutions from making false or misleading representations and using deceptive trade practices. NYC DCA proposes defining "false representation" as follows:

> "False representation" means any false, untrue, unsubstantiated, or deceptive representation or any representation which has the tendency or capacity to mislead or deceive students, prospective students, or any other person.

As an initial matter, let me make clear that neither APC nor its member colleges nor, presumably, any other legitimate educational institution in New York State, condones misleading students. Not only are institutions of higher education already prohibited by both State and federal laws from using deceptive practices and making false representations, such practices are contrary to the missions of the individual APC member colleges, who have been serving students for over 100 years, on average, and are committed to academic excellence, access to education, and affordability.

However, this definition as drafted cannot stand – it lacks any element of duty, reasonableness, materiality, *mens rea*, reliance, causation, or injury that would normally be required by a law or regulation of this nature. Indeed, as the Department is likely aware, deceptive acts and practices, fraudulent misrepresentation, false advertising, negligent misrepresentation, and fraud are all already prohibited and defined under New York State statute and common law. The elements of these acts – which can be either tortious or criminal – have been set in Western jurisprudence for literally hundreds of years and share core themes that are so glaringly absent from the NYC DCA's own proposed definition.

IV Student Financial Aid Programs, CONGRESSIONAL RESEARCH SERVICE, Feb. 14, 2019, https://www.everycrsreport.com/files/20190214_R43159_c3b6e4794352b00014783b91d4508e366e0900c1.pdf. As leading experts in the field of higher education have stated, "accreditation is the strongest and most viable arm of the triad." Terry Hartle, *Statement of Terry Hartle, Senior Vice President of the American Council on Education before the Health, Education, Labor, and Pensions Committee of the U.S. Senate*, Sept. 19, 2013, https://www.help.senate.gov/imo/media/doc/Hartle.pdf.

[14] *See* 34 CFR 602.16 (a)(1)(i).

For example, New York State General Business Law § 349 (GBL § 349)[15] prohibits "deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in this State." New York's courts have held that "whether a representation or omission is a 'deceptive act or practice' [under GBL § 349] depends on the likelihood that it will 'mislead a reasonable consumer acting reasonably under the circumstances' [and] 'in the case of omissions in particular, GBL § 349 surely does not require businesses to ascertain consumers' individual needs and guarantee that each consumer has all relevant information specific to [his or her] situation'."[16]

Similarly, in New York State, common law fraudulent misrepresentation requires a person to allege "a misrepresentation or a material omission of fact which was false and known to be false by [the speaker], made for the purpose of inducing the other party to rely upon it, justifiable reliance [by the listener] on the misrepresentation or material omission, and injury."[17] Further, both fraudulent misrepresentation and negligent misrepresentation require showing that the speaker "had a duty to disclose material information and that it failed to do so," which, in turn, requires demonstrating "the existence of a special or privity-like relationship imposing a duty [on the speaker] to impart correct information."[18]

Not only have the courts held that such a duty does *not* exist between academic institutions and prospective students,[19] but even if such a duty were to exist, NYC DCA's proposed definition of "false representation" would still be overbroad in that it captures "any" misstatement – no matter how minute or immaterial – which has the "tendency or capacity" to mislead "any person" – regardless of the rationality of the person or the circumstances involved. Moreover, the prescribed definition amazingly does not even require that such person rely on the misstatement, nor that such reliance lead to actual injury to the person. In short, under the Department's prescribed definition, a proprietary college could be fined based simply on an employee making a statement to a complete stranger, even if the statement is clearly ludicrous, totally irrelevant, and results in no harm whatsoever. We urge NYC DCA to revisit – once again – its revised proposed rulemaking and give proper consideration to the manner in which its contemplated offenses should be defined.

In addition to its drafting issues, NYC DCA's revised proposed regulations contain numerous oddities in regard to the practices that would be deemed to constitute "deceptive trade practices" in that the prohibited activities listed are either perfectly routine and widely accepted educational practices common across the field of higher education or are completely unorthodox, unscrupulous practices that no New York State-authorized college or university (including the "degree-granting for-profit institutions" captured by the proposed regulation) ever performs. As a result, the proposed regulations

[15] NYC DCA should agree that GBL § 349 is sufficient protection from deceptive practices, given that its own proposed regulations indirectly refer to it. Indeed, in the Department's "Statement of Basis and Purpose", it cites 8 NYCRR 4-1.1 as subjecting institutions to regulations regarding deceptive business practices. Notably, 8 NYCRR 4-1.1 itself merely requires institutions to conduct themselves in a manner consistent with GBL§ 349 and its surrounding provisions.

[16] Gomez-Jimenez v. New York Law School, 103 A.D.3d 13, 16 (1st Dep't 2012) (quoting New York Univ. v. Continental Ins. Co., 87 N.Y.2d 308, 320 (N.Y. Ct. App. 1995) and Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 N.Y.2d 20, 25 (N.Y. Ct. App. 1995)) (emphasis added).

[17] *Gomez-Jimenez*, 103 A.D.3d at 18 (quoting Mandarin Trading Ltd. V. Wildenstein, 16 N.Y.3d 173, 178 (N.Y. Ct. App. 2011).

[18] *Gomez-Jimenez*, 103 A.D.3d at 18.

[19] *Gomez-Jimenez*, 103 A.D.3d at 19.

are simultaneously overbroad and ineffective.

Among the routine, accepted educational practices captured by the Department's revised proposed rule are its prohibitions on referring to certain employees as counselors or advisors, discussing the transferability of credits earned, using "lead generators" to obtain student information, and initiating communication with prospective students more than twice per one week period.

As stated in our first comments on the Department's original iteration of these proposed rules, defining these activities as "deceptive business practices" is inconsistent with federal and New York State regulations already in place, effectively requires degree-granting institutions to engage in the very conduct which the proposed rule purports to address, and would result in harm to students.

For example, the proposal provides that making false representations regarding transferability of academic credits, including representing that credits are transferrable when they are not, are deceptive trade practices. What the proposal fails to acknowledge is that, under existing State and federal law, the transfer of academic credits is entirely at the discretion of the receiving institution. Even within the CUNY and SUNY educational systems, no institution is ever obligated to accept the academic credit awarded by another institution, as each institution makes an individualized, detailed assessment of whether a given curriculum or program of study is in harmony with its own academic programming.

Similarly, the proposal prohibits institutions from using "lead generators" to obtain students' personal information that do not disclose to consumers that their information will be provided to institutions. In support of this provision, the Department points to aggressive marketing tactics allegedly being used by for-profit institutions – ignoring the fact that, not only do legitimate and necessary lead generators exist (such as those administered by The College Board as part of college entrance exams) but, moreover, that public and non-profit institutions regularly engage in highly competitive and, arguably, aggressive marketing tactics themselves.[20]

Again, NYC DCA's inclusion of such practices in its proposal reflects either that the Department misunderstands certain practices of higher education institutions or that the Department is intentionally attempting to mischaracterize the use of legitimate, common, and longstanding practices used by public, non-profit, and for-profit colleges alike.

On the flip side, among the unorthodox, unscrupulous practices captured by the Department's revised proposed rule are its prohibitions on making false representations regarding the necessary qualifications for licensure, opportunities to qualify for membership in a union or other association,

[20] NYC DCA's proposed regulation would only capture misleading statements made by a small fraction of institutions – indeed, only approximately twelve out of hundreds of universities, colleges, and non-degree institutions in New York City – and would not address deceptive and misleading statements made by public or non-profit institutions. This is illogical given that public and non-profit institutions regularly undertake aggressive marketing campaigns and make statements that would be considered misleading and deceptive under NYC DCA's proposed rule. For example, CUNY schools regularly run bus advertisements proclaiming "free tuition" without stating qualifying conditions. See Exhibit D for an example of an ad by a local public institution which is misleading at face-value and further information on the aggressive marketing practices of a well-known non-profit institution. Exhibit D also includes information regarding the exceedingly high levels of advertising spending by public and non-profit institutions, which actually outpaces that of for-profit institutions.

approval or accreditation that has not been awarded, limited time offers, money back guarantees, and "free" services which are not actually free.

As noted earlier in these comments, APC believes these concerning practices are being committed by the prolific number of illegally-operating non-degree schools in New York City – not by State-authorized degree-granting colleges and universities. These simply are not the practices of legitimate academic institutions due to the inherent nature of *academic* programs and State regulations overseeing the content and quality of academic course curricula.[21] Rather, these sound like the practices of trade schools, "boot camps", apprenticeship programs, and other short-term certificate programs that are held out as opportunities for a quick career fix or self-improvement. For example, colleges and universities do not generally offer academic degrees in any field for which it would even make sense to advertise opportunities to qualify for union membership. In contrast, union membership is generally of great importance to students pursuing trade programs and apprenticeship programs and would likely be materially relevant to a prospective student's decision to enroll. Yet, contrary to what one might expect, NYC DCA has actually exempted these very schools and programs from its proposed oversight framework: Indeed, if the programs engaging in these practices are operating legally, then they would be doing so under a license pursuant to New York State Education Law § 5001, in which case NYC DCA has explicitly excluded them from its definition of a "for-profit school" prohibited from engaging in such practices. Conversely, if they are operating illegally, then NYC DCA's proposed regulations still do not prohibit their bad behavior, because its definition of a "for-profit school" as drafted fails to capture these schools. Again, this forces APC to raise the question of whether NYC DCA's proposed regulations actually address the problem which they purport to solve, or if instead the regulations are politically motivated by abuses undertaken by proprietary colleges in other states.

C. NYC DCA exceeds its conferred authority by attempting to regulate activities of educational institutions outside its jurisdiction.

We urge NYC DCA to seek solutions to the problem of illegally-operating schools by forming partnerships with State authorities for a reason: The New York City Department of Consumer Affairs has neither the expertise nor the legal authority to do so on its own. As noted at the beginning of these comments, NYC DCA has no powers whatsoever to regulate educational institutions at any level: The Department's attempt to regulate colleges and universities would be an act that is not only *ultra vires* given the narrow and limited activities over which New York City Council has delegated NYC DCA authority, but – even if educational activities were within the Department's powers – any regulations imposed by the Department would be preempted by federal and State law.

As NYC DCA acknowledged in a recent report, many of the Department's recommendations for improving the student loan debt crisis "would require action on the part of New York State or the

[21] The New York State Education Department is careful to exclude unworthy institutions from State authorization. For example, the University of Phoenix, which has a reputation as an online diploma mill, has sought approval from the New York State Education Department to open a campus in the State, but was unable to do so because it failed to meet New York State's stringent regulations and high standards.

federal government."[22] NYC DCA cannot take these actions in its own right because, quite simply, NYC DCA is not empowered to regulate higher education – NYC DCA is empowered to regulate a narrow, defined list of trades, industries, and businesses required to hold licenses under New York City law and certain State laws.[23] These businesses under NYC DCA jurisdiction are limited to a variety of merchants of consumer goods and services, including retail cigarette dealers, pawnbrokers, ticket sellers, bingo operators, laundries, locksmiths, general vendors, purveyors of meats and perishable foods, and other businesses trading in goods or services intended for personal or household use.[24] NYC DCA is not empowered to regulate the provision of a college education because education has never been considered a mere consumer good or service under State and federal laws. Accordingly, the regulation of degree-granting institutions of higher education is beyond the authority of the Department of Consumer Affairs entirely.

Further, even if education were within NYC DCA jurisdiction, higher education is uniformly and comprehensively regulated at the State and federal level and, therefore NYC DCA regulations would be preempted by existing regulatory frameworks. As NYC DCA points out in its report, issues such as the student loan debt crisis are national problems:[25] National student loan debt totals over $1.5 trillion and affects over 44 million Americans[26] – problems of this scale and severity could not be solved by NYC DCA alone, even if it were empowered to do so.

The original notice of proposed rulemaking by the Department repeatedly referred to proprietary colleges as "unregulated" and "subject to no direct oversight or regulation by the government". In our comments on that first proposal, we corrected the Department and advised that proprietary colleges are, indeed, regulated and subject to an enormous level of oversight and regulation by both the State and federal governments. Despite this information, in issuing its revised proposed rules, the Department doubled-down and asserted that "degree-granting for-profit schools" are unlicensed by the State Education Department and may not necessarily be subject to regulations regarding deceptive business practices.[27] It is simply disingenuous of the Department of Consumer Affairs to claim that for-profit institutions exempt from the licensing requirements of New York State Education Law § 5001 with accreditation from a body other than the New York State Board of Regents are either entirely unregulated or subject to less stringent standards. As an initial matter, as noted earlier in these comments, deceptive practices in numerous forms are generally prohibited by New York State statute and common law, as well as by New York State Education Department regulations governing colleges and universities.[28] In addition, institutional integrity is a

[22] *See* Student Loan Debt Distress Across NYC Neighborhoods: Public Hearing and Policy Proposals, NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, February 2019, https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-StudentLoanDebtDistressAcrossNYCNeighborhoods-PublicHearingPolicyProposals.pdf.

[23] The New York City Administrative Code empowers NYC DCA to license "certain trades, businesses, and industries" "engaging in licensed activities" under Chapter 2 of the Consumer Affairs section of the Code.

[24] *See* N.Y.C. ADMIN. CODE § 20-201 et seq. for a full list of such businesses under NYC DCA jurisdiction. See also N.Y.C. ADMIN. CODE § 20-701, defining "consumer goods, services, credit, and debts" as those "which are primarily for personal, household, or family purposes."

[25] *See* Student Loan Debt Distress Across NYC Neighborhoods, *supra* note 18, at 7 ("Scale of the Student Loan Debt Problem").

[26] Zack Friedman, *Student Loan Debt Statistics in 2018: A $1.5 Trillion Crisis*, FORBES, June 13, 2018, https://www.forbes.com/sites/zackfriedman/2018/06/13/student-loan-debt-statistics-2018/#3fb363647310.

[27] We note with irony that this, itself, is a false and deceptive claim.

[28] *See* 8 NYCRR 52.2.

cornerstone of the accreditation process and, accordingly, such practices are likewise generally prohibited by the standards of federally-recognized accreditors as well.

Moreover, we remind NYC DCA that the New York State Board of Regents is responsible for overseeing all educational activities within the State. The Regents preside over The University of the State of New York (USNY),[29] which is comprised of all institutions of higher education in New York State, and preside over the New York State Education Department and all of its programs and activities. The Commissioner of Education reports to the Board of Regents. The Board of Regents is empowered to promulgate its own regulations, and the Board has final approval of any regulations promulgated by the State Education Department. All degree-granting institutions (i.e., colleges and universities, proprietary and otherwise) are subject to their own rigorous permissions and approvals, including those for permission to operate, authority to grant degrees, and approval of each and every academic program proposed to be offered, all likewise overseen by the New York State Education Department.

<u>In other words, there are no colleges in New York State that are unregulated, because all colleges in New York are part of the University of the State of New York (USNY), fall under the purview of the Board of Regents and the Commissioner of Education, and are regulated under numerous regulations and rules of both the Regents and the Commissioner, including the stringent programmatic approval requirements set forth in 8 NYCRR § 52.1 et seq. (more commonly referred to simply as "Part 52").</u>[30] In addition, all colleges and universities in the State, proprietary and otherwise, who elect to participate in federal Title IV student financial aid programs are voluntarily accredited by at least one nationally recognized accrediting agency approved by the U.S. Department of Education – thereby subjecting themselves to additional regulation and oversight both by approved non-governmental entities and by federal regulators. As such, they remain outside NYC DCA's regulatory authority and it would be unfair, a usurpation of regulatory authority, and misleading to the public for NYC DCA to treat them like businesses when neither New York State nor federal regulators do so.

Importantly, under New York State law, our institutions are regulated as colleges, not businesses. As colleges, the New York State Education Department's Office of College and University Evaluation ("OCUE"), Office of Professions ("Professions"), and Office of Higher Education ("OHE") all have oversight of proprietary degree-granting institutions. Accordingly, our colleges must abide by all requirements related to granting degrees and ensuring quality of academic programs offered to students, and programs leading to licensure in certain occupations (e.g., teaching, nursing, dental assisting, massage therapy) are required to meet all licensure qualifying requirements to ensure students who graduate from those programs will be eligible for a license after graduation. Seeking Regents accreditation is entirely voluntary and, to date, only 15 of New York State's 255 degree-granting institutions of higher education are Regents-accredited, most of which are specialized institutions with limited academic programming, such as museums and hospitals.[31] The vast majority of New York State's degree-granting institutions of higher

---

[29] Not to be confused with the State University of New York (SUNY).

[30] *See* Appendix Exhibit B: Comparison of Criteria for Voluntary Regents Accreditation vs. Mandatory Program Authorization.

[31] The fifteen New York State institutions voluntarily accredited by the Board of Regents include the American Museum of Natural History, Holy Trinity Orthodox Seminary, Memorial Sloan-Kettering Cancer Center, Memorial

education are accredited by an accrediting agency other than the Board of Regents,[32] such as the Middle States Commission on Higher Education (MSCHE) or specialty accreditors focused on accrediting colleges offering certain types of programs, such as nursing. Accreditation – by *any* accrediting entity – inherently subjects colleges to additional scrutiny, requirements, and standards to meet on top of the State Education Department's requirements. Most APC member colleges are not only institutionally accredited by MSCHE but also hold additional programmatic accreditations regulating their individual programs. All of these accreditations require ongoing reporting and disclosure requirements, site visits, self-studies, and time and investment from faculty and staff. The NYC DCA revised proposed rules are, therefore, unjustified in asserting that "degree-granting for-profit schools" are unregulated and may have lax oversight that allows them to engage in unscrupulous and predatory practices.

D. In Conclusion

We thank the New York City Department of Consumer Affairs for the opportunity to express our concerns with these proposed rules and reiterate our request that **the proposed rules be modified and that degree-granting proprietary colleges be exempt from any rules or regulations put forward by the NYC DCA related to for-profit schools.**

We have consistently worked hard at the federal and State level to ensure students are protected, college remains affordable, and that rules and regulations benefit students or improve education quality. These proposed rules do not protect students nor do they ensure program or education quality. Moreover, we strongly believe these rules are beyond the authority and jurisdiction of NYC DCA and are, in fact, politically motivated. We urge NYC DCA to re-orient its laudable goal of protecting students to better focus on the real perpetrators of abusive and deceptive acts against students – illegally-operating schools – by pursuing partnerships with State authorities responsible for overseeing higher education. The best way NYC DCA can protect students is to serve as "boots on the ground" in New York City and, when NYC DCA becomes aware of the existence of these illegal schools, have its officials alert the State Education Department and the Attorney General to these despicable practices so that proper, legally-authorized enforcement action can be pursued.

Sincerely,

Donna Stelling-Gurnett

Donna Stelling-Gurnett
President
Association of Proprietary Colleges

College of Nursing, Mount Sinai Beth Israel School of Nursing, Samaritan Hospital School of Nursing, and The Salvation Army College for Officer Training, among others. *See* Directory of Colleges and Universities Accredited by the New York State Board of Regents and Commissioner of Education, NEW YORK STATE EDUCATION DEPARTMENT, http://www.nysed.gov/college-university-evaluation/directory-colleges-and-universities-accredited-new-york-state-board.

[32] *See* Database of Accredited Programs and Institutions, U.S. DEPARTMENT OF EDUCATION, https://www2.ed.gov/admins/finaid/accred/accreditation_pg4.html. MSCHE accredits over 200 colleges and universities in New York State, including each and every SUNY and CUNY college and university.

Exhibits

Exhibit A:

History and Background of the Institutions

- Berkeley College
- LIM College
- Monroe College
- Plaza College
- Swedish Institute
- The School of Visual Arts

History and Background of APC Member Institutions Located in New York City:

Of APC's twelve member colleges, six are located in New York City. These six institutions have been serving students, on average, for 88 years and all six institutions were well-established at the time of the New York State Board of Regents' 1971 decision to allow select proprietary schools to become degree-granting colleges; in fact, LIM College, Monroe College, and the School of Visual Arts were among the first proprietary institutions to receive degree-granting authority the very next year. In expanding degree-granting authority to include proprietary institutions, the Board of Regents acknowledged that institutions with similar programs should be awarding the same credential. Accordingly, the Board of Regents did not create a separate pathway for proprietary schools to issue degrees, but rather applied the same criteria required to be met by public and independent not-for-profit colleges to obtain degree-granting authority. Since that time, the Board of Regents has made parity among its four sectors of higher education and their respective institutions a bedrock of its policies and continues to require all colleges and universities, regardless of sector, to meet the same standards and abide by the same regulations.

Most APC member colleges are privately held, family-owned institutions, handed down from generation to generation. Our six colleges located in New York City have a long history of producing strong outcomes for students of diverse backgrounds and working closely with key employers in industries essential to the New York City economy, including business, healthcare, fashion, and the arts.

Institution	Founded	Governance	Accreditation	Location
Berkeley College	1931	The Luing Family (second generation)	• Middle States Commission on Higher Education	Manhattan, Brooklyn
LIM College	1939	The Marcuse Family (third generation)	• Middle States Commission on Higher Education	Manhattan
Monroe College	1933	The Jerome Family (third generation)	• Middle States Commission on Higher Education • Accreditation Commission for Education in Nursing	Bronx
Plaza College	1916	The Callahan Family (fourth generation)	• Middle States Commission on Higher Education • American Dental Association Commission on Dental Accreditation	Queens
Swedish Institute	1916	Quad Partners (since 2008)	• Accrediting Commission of Career Schools and Colleges • Accreditation Commission for Education in Nursing	Manhattan
School of Visual Arts	1947	The Rhodes Family (second generation)	• Middle States Commission on Higher Education • National Association of Schools of Art and Design	Manhattan

Consider the additional points of pride for these six institutions:

Berkeley College

A leader in providing career-focused education since 1931, Berkeley College is institutionally accredited by the Middle States Commission on Higher Education and offers baccalaureate and associate degree programs, certificate programs, and non-degree professional courses at campuses in New York and New Jersey, as well as through Berkeley College Online®. Students can choose from more than 20 fields of study, including programs in accounting, financial services, international business, legal studies, and other fields that prepare students for success in the professional world. For six consecutive years, U.S. NEWS & WORLD REPORT has recognized Berkeley College as one of the Best Colleges for Online Bachelor's Degrees. In addition, a recent study by the Equality of Opportunity Project spearheaded by Harvard economist Raj Chetty concluded that Berkeley College is among the top colleges in the United States for overall student income mobility, ranking 9th out of 158 colleges in New York State for likelihood that a student's income will rise by two or more income quintiles after attending.[1]

Berkeley College has a longstanding commitment to the welfare and success of students who are active duty service members and veterans, as well as their families. Berkeley College supports the Post-9/11 G.I. Bill and is a participating institution in the federal Yellow Ribbon program, under which institutions of higher education voluntarily contribute additional funds towards covering the cost of student veterans' educations. Berkeley College also has partnered with the U.S. Department of Defense for all Military Tuition Assistance (MTA) programs and operates Veterans Resource Centers at six campuses and online, which aim to help student veterans acclimate to college life, connect with other student veterans, access specialized tutoring services, and achieve success in their academic and career pursuits. Berkeley College adheres to the terms of President Obama's Executive Order 13607, establishing principles of excellence for colleges serving service members and veterans, and supports the "8 Keys to Success" developed by the U.S. Department of Education and Department of Veterans Affairs to assist institutions in transitioning veterans and service members into classroom settings and ensure they receive the best possible educational experience..

LIM College

LIM College was founded in 1939 as the Laboratory Institute of Merchandising by Maxwell F. Marcuse, a retail executive and active proponent of higher education in NYC, who had the vision of establishing a program to train women for careers in retail management with a practical hands-on curriculum. In 2019, the College is proud to be celebrating its 80th anniversary of serving students and helping young women launch careers in some of the world's most exciting industries. The College has come a long way since its establishment, but remains true to its founding ideals: Since 2002, LIM College has been led by President Elizabeth S. Marcuse, the third-generation member of the College's founding family. Today, LIM College's academic programs are focused on the global business of fashion and its many related industries, and students can earn master's, bachelor's, and associate degrees in a variety of fashion- and business-focused areas. In 1977, LIM College became the first proprietary college to receive regional accreditation from the Middle

[1] *See* Economic Diversity and Student Outcomes at Berkeley College, THE NEW YORK TIMES, Jan. 18, 2017, https://www.nytimes.com/interactive/projects/college-mobility/berkeley-college-ny.

States Commission on Higher Education (MSCHE).

Located in the heart of New York City — the nation's fashion and business capital — LIM College provides students with innumerable opportunities for firsthand experience and professional development. The College is widely recognized as a pioneer in experiential education known for fostering a unique connection between real-world experience and academic study in business principles. The College has exceptionally strong ties to the fashion industry and works closely with our Fashion Industry Advisory Board members to continually fine tune and adapt our academic programs to meet the needs of employers and to deliver sought-after talent – making LIM College a strong economic driver and workforce pipeline for one of New York's most important industries. LIM College educates approximately 1,800 students annually and has over 10,000 alumni, most of whom work and live in New York, with many exceling in careers at top companies in their industries. LIM College's unique educational focus and required internship experiences built into the curricula results in high demand for its graduates: For example, over 90% of the undergraduate class of 2017 were employed in the fashion industry or related industries within nine months of completing their program of study.

For the 14th consecutive year, THE PRINCETON REVIEW has honored LIM College among those institutions that are "Best in the Northeast"[2] and, in 2017, THE BUSINESS OF FASHION's Global Fashion School Rankings placed LIM College as one of the Top 10 institutions in the world for graduate business education in fashion.[3] In 2015, the Brookings Institution recognized LIM College amongst the Top 10% of four-year "value-added" colleges nationally.[4]

Monroe College

Founded in 1933, Monroe College is a recognized leader in urban and international education. Among Monroe College's core values is a commitment to students and their accomplishments, which is exemplified by the College's initiatives to increase college access, affordability, and completion outcomes, especially among first-generation students. Monroe College educates close to 8,000 students each year, offering certificate, associate, bachelor's, and master's degree programs. The College's innovative Presidential Partnership Program enables 1,000 students from the Bronx, New Rochelle, Yonkers and surrounding communities – including 80 students without lawful immigration status – to attend Monroe College and receive their degree at no cost. This program has resulted in approximately 90% of participating students attending Monroe College with zero student loan debt. The few participating students who do incur student debt have done so for housing costs or other non-academic costs. The first cohort of scholarship students completed their program with a 75% completion rate. Monroe College's student outcomes are a particular point of pride for the institution: A student attending Monroe is 10 times more likely to graduate on-time than a student attending a local community college,[5] and the College's official

[2] LIM College, THE PRINCETON REVIEW, https://www.princetonreview.com/college/lim-college-1023731.
[3] Global Fashion School Rankings 2017: Graduate, Business, BUSINESS OF FASHION, https://www.businessoffashion.com/education/rankings/2017/business.
[4] Jonathan Rothwell, *Using Earnings Data to Rank Colleges: A Value-Added Approach Updated with College Scorecard Data*, THE BROOKINGS INSTITUTION, Oct. 29, 2015, https://www.brookings.edu/research/using-earnings-data-to-rank-colleges-a-value-added-approach-updated-with-college-scorecard-data/.
[5] Data published by the New York State Education Department reflects that the on-time graduation rate for students in associate degree programs at Bronx Community College is 2.8%, compared to 50.1% at Monroe College. *See*

three-year cohort default rate is 3.9%, which is among the lowest in New York State.[6] Monroe College credits its excellent student outcomes to its investment in student instruction, academic supports, and student services. In fact, the College spends less than 3% of its operating budget on marketing and advertising, dedicating the vast majority of its resources to academics and student support programs and services.

Plaza College

Plaza College has made a profound impact in the educational landscape of the Borough of Queens and its surrounding communities. Founded in 1916 by two New York City teachers, the institution has transformed in size, scope, and breadth to become a comprehensive college offering educational opportunities to a diverse population. Through four generations of family leadership, Plaza College has expanded its academic offerings, improved its outcomes, and enlarged its educational mission – all while remaining true to its founders' shared vision of providing a caring yet vibrant learning environment that challenges and maximizes each student's potential in order to realize their hopes and dreams for a better life through educational advancement. Plaza College prides itself on its career-focused approach to education featuring academic programs designed to meet the needs of students entering the workforce and employers seeking qualified professionals. Rooted in a tradition of excellence, Plaza College educates its students to compete and succeed in professional areas including allied health, business administration, dental hygiene, court reporting, and paralegal studies.

The School of Visual Arts

The School of Visual Arts (SVA) was founded in 1947 as the Cartoonist and Illustrators School (C&I). Originally a single purpose trade school with 35 students and 3 faculty members, in 1956, the School's name was changed from C&I to SVA and the curriculum was diversified: Fields of study in advertising, design, film, fine arts, and photography were added and, by 1965, SVA had established full four-year certificate programs in design and fine arts. In 1972, SVA was granted authorization by the New York State Board of Regents to confer the Bachelor of Fine Arts (B.F.A.) degree on graduates of approved programs, becoming the first proprietary college to be authorized to confer degrees at the baccalaureate level in New York State. In 1983, SVA was authorized by the Regents to confer the Master of Fine Arts (M.F.A.) degree upon graduates of approved graduate-level programs.

SVA has been accredited by the Middle States Commission on Higher Education since 1978 and by the National Association of Colleges of Art and Design since 1980. Today, the School of Visual Arts offers 11 undergraduate programs and 22 graduate programs, with its enrollment increasing from an inaugural class of 35 students to a student body of 4,390 students and its faculty growing

---

Graduation Rates, NEW YORK STATE EDUCATION DEPARTMENT, http://www.highered.nysed.gov/oris/gradrates/. Monroe College's on-time graduation rate for students in bachelor's degree programs is an even more impressive 64.8%. *See id.*

[6] The national average three-year cohort default rate is 10.5%. *Official Cohort Default Rates for Schools*, U.S. EDUCATION DEPARTMENT, Oct. 17, 2018, https://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html. The New York State average three-year cohort default rate is 8.5%. *FY 2015 Official Cohort Default Rates by State/Territory*, U.S. EDUCATION DEPARTMENT, Aug. 18, 2018, https://www2.ed.gov/offices/OSFAP/defaultmanagement/staterates.pdf.

from just 3 to over 1,092 respected artists, scholars, and professionals. SVA students come from across the nation and around the globe, representing 46 states, 2 territories and 53 foreign countries.

The Swedish Institute

The Swedish Institute was founded in 1916 as the Swedish Institute of Physiotherapy and has the distinct honor of being the oldest continuously-operating massage therapy institution in the country. The Institute's founder, Theodore Melander, had a vision of massage therapy as one aspect of a holistic approach to wellness and, with that in mind, he developed a unique curriculum incorporating medical gymnastics, dietetics, exercise techniques, and physiotherapy. Graduates of the Institute's early academic program received a diploma in physiotherapy and practiced in hospitals, clinics, and private practice as physiotherapists.

In 1954, the Institute focused the curriculum exclusively on massage therapy, which was increasingly becoming a recognized profession. At that time, the professional title "massage therapist" was unheard of; graduates were known as masseuses and masseurs, and were required by the City of New York seek licensure to practice. As time passed, massage therapy became a recognized profession, and licensure and curricular requirements were incorporated into the oversight of the New York State Education Department. In 1998, the Institute was granted authorization to issue the Associate in Occupational Studies (A.O.S.) degree to graduates of its massage therapy program and, in 2008, expanded its degree program offerings to include nursing, surgical technologist, and other allied health programs. In 2003, the Swedish Institute received approval from the New York State Board of Regents to award the Bachelor of Professional Studies (B.P.S.) and Master of Science (M.S.) degrees. Since 2008, the Swedish Institute has worked to expand research opportunities for faculty and students, establishing new affiliations with Montefiore Hospital and collaborating on clinical studies regarding acupuncture and pain management with Albert Einstein College of Medicine and Beth Israel Medical Center.[7]

---

[7] *See* M. Diane McKee et al., *The ADDOPT Study (Acupuncture to Decrease Disparities in Pain Treatment): Feasibility of Offering Acupuncture in the Community Health Center Setting*, JOURNAL OF ALTERNATIVE AND COMPLEMENTARY MEDICINE, Sept. 2012, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3429271/.

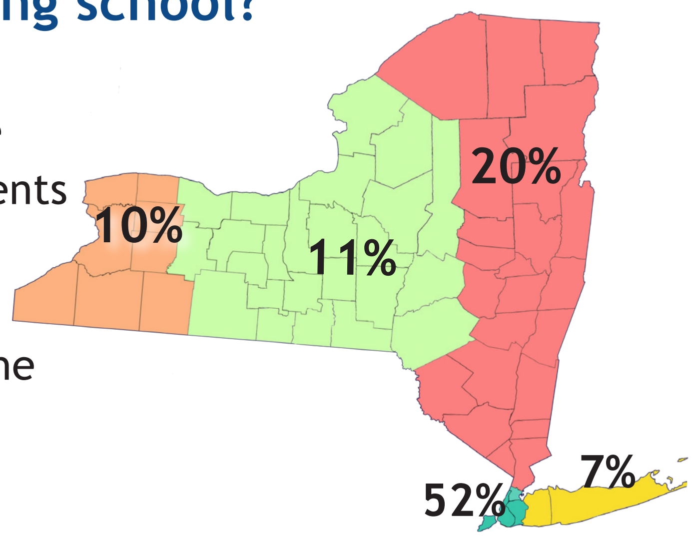
APC Fast Facts

Excellence. Access. Affordability.

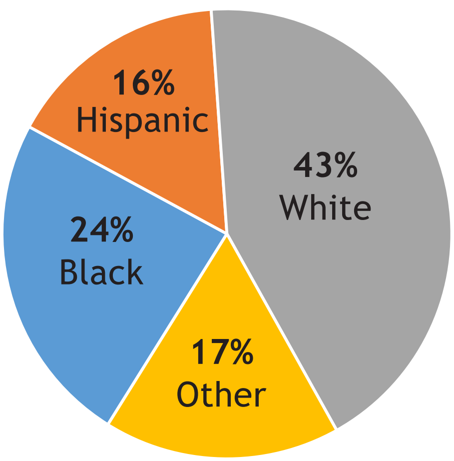
apc
Association of Proprietary Colleges

Where are APC students attending school?

There are **more than 26,000** students enrolled in APC member colleges that are located throughout New York State. Students are enrolled at campuses in Western NY, the Finger Lakes, the Southern Tier, the greater Capital Region, Long Island and the New York City metropolitan area.



Who are APC students?



69% of APC students are women

75% of APC students received a Pell award in 2017

APC member colleges educate more than **2,000** veterans living in communities across New York State.

9 out of 10 APC graduates stay in New York to live and work.

APC member colleges

conferred 7,670 certificate, associate, bachelor, master and doctorate degrees in 2017.

3,209
Associates's Degrees

188
Certificates

3,416
Bachelor's Degrees

857
Master's/ Doctoral Degrees

Source: IPEDS, U.S. Department of Education, 2016-2017 Academic Year

APC college graduates

enter the workforce with loan debt that is 28% lower than the state-wide average.

Average for APC member college graduates:

$22,357

Statewide average for college graduates:

$30,931

Source: US Department of Education, College Scorecard

Did You Know? Each year, APC member colleges provide credits to local high school students through jump start or middle school programs.

College Affordability

Maintaining affordability is a priority. In the 2017-18 academic year, average tuition at APC member colleges increased less than 2% and member colleges provided students more than $95 million in institutional aid.

$95 million
in institutional aid

On-Time Associate Degree Graduation Rates in New York

Proprietary	Independent	CUNY	SUNY
26.8%	18%	4.8%	13.1%

Source: NYS Education Department, 2016 Data

apc-colleges.org @APCColleges /APCColleges

apc Association of Proprietary Colleges **Bulletin**

2019 Commencement Edition

New York State's Proprietary Colleges Celebrate Graduates

The Commencement Edition: Honoring the Class of 2019

For more than a century, New York's proprietary colleges have been a workforce pipeline for businesses in a variety of industries across the Empire State. The 12 members of the Association of Proprietary Colleges (APC) have been educating students on campuses and online from Buffalo to Brooklyn, helping them achieve their personal, professional and academic goals.

Last year, APC member colleges conferred more than 3,500 bachelor's degrees, 3,100 associate degrees, nearly 800 master's degrees and 294 certificates. In total, there are more than 7,600 individuals who made a commitment to enhancing their education and improving their lives. APC is extremely proud of the history of its member colleges and their commitment to providing an affordable and quality education to everyone.

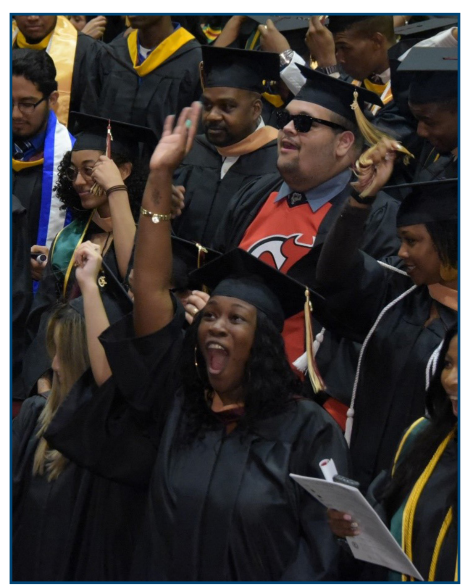
This commencement edition features student achievement and provides a line of sight to the faculty who together make all of those degrees a reality.

The College of Westchester Celebrates its 104th Graduation Commencement

The College of Westchester celebrated its 104th graduation at the Westchester County Center on Thursday, May 30, 2019. As part of the celebrations, the event included opening remarks by President Mary Beth Del Balzo and keynote speaker Thomas A. Kloet, member of the Board of Directors of Nasdaq, Inc., and Chairman of the Board of the Nasdaq Stock Market, LLC.

With more than four decades of service to The College of Westchester, President Del Balzo congratulated the Class of 2019 as the college celebrated its 104th anniversary, "You have what it takes – don't let anyone ever discourage you on your path to continued success. In times of uncertainty, reflect on today's celebration and all that you've achieved. Remind yourself that not only do you have the education to succeed, but you also have determination, motivation, perseverance and confidence – the attributes that got you here today."

[cont. on next page]



The College of Westchester's Class of 2019 graduation ceremony featured two student speakers.

Mario Bravo Jr. earned a bachelor's degree in Business Administration from the College of Westchester.

Brittany Morris earned a bachelor's degree in Healthcare Services Administration and has started working at Columbia University Irving Medical Center.

Graduates move their tassels from right to left, signifying their accomplishments during the commencement ceremony.

Five Towns College 2019 Commencement Features Distinguished Alumnus and Musician Wyclef Jean

On Saturday May 18, 2019, a total of 125 students walked across the stage at the Five Towns College (FTC) 45th annual commencement and received their diplomas in the Eugene Orloff Auditorium at the Half Hollow Hills High School East in Dix Hills, NY.

In addition to recognizing accomplished students, faculty and staff, Five Towns College historically honors esteemed professionals who are an inspiration not only to the graduates but also to society at large, and the May 2019 commencement was no exception. The Distinguished Honorary Doctorate Degrees of 2019 were conferred to Jeannel Wyclef Jean (Doctor of Music), solo superstar and founding member of the popular music group the Fugees, and Vanessa R. Tyler (Doctor of Humane Letters), Emmy award winning and six-time Emmy nominated Reporter/Anchor. Best known for his music with the hip-hop group the Fugees, Wyclef Jean is also a writer, performer, producer, and former FTC student who guided the trio to release the Billboard chart-topping album The Score in 1996. With the smash hit "Killing me Softly," the album was certified six times platinum.

The college was privileged to present an Honorary Doctorate to Vanessa Tyler, executive producer of The Spot with Vanessa Tyler and weekend news anchor for FiOs1 News. She is a former

[cont. on next page]

WPIX-TV reporter as well, with a long-standing record of outstanding accomplishments. Amira Khan was the Class of 2019 Valedictorian. She received a Bachelor of Business Administration Degree in Business Management/Audio Recording Technology.

Following graduation from Five Towns College, Amira Khan already received a few job opportunities, including being part of a production team for a live sound company, working as a photographer for a web e-commerce company, and another opportunity as a production assistant at an entertainment company.

The Class of 2019 Salutatorian Jessica Hancock received a Bachelor of Fine Arts in Theatre Arts. Ms. Hancock addressed her fellow graduates at the 2019 Commencement Ceremony.

Berkeley College Graduates Are in Demand in New York's Workforce

Berkeley College's Class of 2019 includes more than 2,200 graduates, representing the rich diversity of the U.S. with high representation of LatinX and African-American students. Family and friends joined graduates at the commencement on May 10, 2019.

"Every one of us at the Berkeley College Commencement ceremony shares the pride of these graduates because we know the difference a college degree will make in their futures, and how the upward mobility of these graduates will impact future generations," said Michael J. Smith, President of Berkeley College.

"The average age of the Berkeley College undergraduates receiving an award today is 28. Yes, the unemployment rate is low, but these new graduates may well continue to overcome obstacles and work hard to earn their way. They are prepared and ready, and we look forward to their continued success. So many have demonstrated their commitment to give back to their communities and pay it forward."

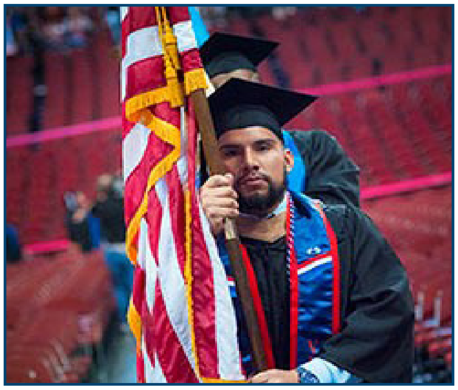
Just under 39 percent of the graduates entered as first time, full-time students; and, 84 percent identify as minorities. Berkeley College offers a career-focused experience with students able to take advantage of traditional and online classes, with programs in more than 20 fields of study.

Michael Iris, Associate Vice President, Alumni Relations and Career Services presented the Alumna of the Year award to Karen Pena, Berkeley College Class of 2009. "In addition to her love of learning, Karen actively gives back to the community through volunteer efforts that promote her Peruvian heritage and helping others," said Mr. Iris. "Karen cites her education and raising four children as a single parent among her greatest achievements thus far. Her own mother, her children and grandson continue to inspire her every day."

Student Development and Campus Life Vice President Dallas Reed, PhD, presented the Outstanding Student Award to Cynthia Caruso, Class of 2019. While Ms. Caruso was initially uncertain about returning to college as an adult, she knew it was the right decision, especially when she found out she could earn her degree online. She received Dean's or President's

[cont. on next page]

List honors every semester. She recently accepted an invitation to serve on the Berkeley College Online Advisory Board.



Mr. Zambrano quickly became a leader at Berkeley's New York campus, where he served as president of the Berkeley Spartans, a student-veterans club affiliated with Student Veterans of America. Mr. Zambrano also interned as a Veterans Outreach Specialist with Bergen County Veteran Services in Hackensack, NJ. Following graduation, he will join the Division of Family Guidance in Bergen County, NJ, a resource for New Jersey families and at-risk youth. He hopes to pursue a Master's degree and to establish a nonprofit for veterans.

Mauro "Ricky" Zambrano of Lyndhurst, NJ earned his Bachelor of Science in Justice Studies – Criminal Justice.

In Morocco, Ms. Bendriss was a middle school art teacher and freelance fashion designer, but when she came to the United States in 1998, she struggled to learn the English language. Ms. Bendriss worked in retail to support her family and two children, finding it difficult to land a job in a creative field without upgrading her knowledge of the software. She thrived at Berkeley College, becoming a Peer Tutor, a high-achieving member of the Honors Program as well as the National Society of Leadership and Success.

Amal Bendriss of Bloomfield, NJ - who is also a native of Morocco, earned her Bachelor of Arts degree with honors, magna cum laude in Graphic Design.

Bryant & Stratton College Graduates Celebrate from Buffalo to Albany

During it's 162nd graduation, Bryant & Stratton College awarded degrees to 827 students during four commencements that took place across the state. Class of 2019 ceremonies took place at the John H. Mulroy Civic Center in Syracuse on April 20; the Empire State Plaza Convention Center in Albany on April 27; the Kodak Center for Performing Arts in Rochester on May 31; and the Kleinhans Music Hall in Buffalo on June 14.

In total, Bryant & Stratton College awarded degrees to 827 students that studied on campuses across New York State.

A distinguished educator, author and member of the NYS Board of Regents, Catherine Collins keynoted the 2019 commencement in Buffalo, NY. She has dedicated her personal and professional life to promoting good health and a sound education, with an emphasis on the needs of underserved youth/women and individuals in Western NY. Collins has received 70 awards and honors throughout her career, and is currently an associate professor at SUNY Empire State College.

[cont. on next page]

On April 27, 2019 the Bryant & Stratton Albany campus held its commencement at the Empire State Plaza Convention Center. Hundreds were in attendance to support the graduating students.

On May 31, 2019 at Kodak Performing Arts Center, the Bryant & Stratton Rochester campus awarded 123 degrees during the Class of 2019 graduation.

Bryant & Stratton's Syracuse graduation took place at the John H. Mulroy Civic Center on April 20, 2019 and featured Sheraton University Conference Center General Manger David Heymann.

Bryant & Stratton's Western New York graduation ceremony featured NYS Regent Catherine Collins on June 14, 2019 at Kleinhans Music Hall, Buffalo.

Island Drafting & Technical Institute Celebrates Graduating Class of 2019

Island Drafting & Technical Institute celebrated their graduates on May 9, 2019. New York State Senator John Brooks keynoted the ceremony, and parents, guests and graduates heard from President James G. Di Liberto and Treasurer John Di Liberto as they gave inspiring speeches to attendees.

President Di Liberto commented that IDTI has been serving the private and business sectors for more than 60 years. In fact, some of the graduate's parents attended IDTI when they were pursuing careers.

As names were called, President Di Liberto handed out diplomas and parents beamed with joy. Graduates filed past instructors and administrators on stage, as well as family members in the audience, while cameras flashed.

President Di Liberto conferred 36 degrees, of which 24 were in Computer Aided Drafting and Design and 12 were in Electronics and Computer Service Technology. President Di Liberto also noted that all students present at the Class of 2019 commencement were employed in occupations directly related to their individual educational program.

The Class of 2019 stands together during their graduation ceremony.

Jamestown Business College Honors Class of 2019

Jamestown Business College (JBC) celebrated its 100 graduates of the Class of 2019 during the College's 133rd commencement ceremony on June 1, 2019 at First Lutheran Church in Jamestown, NY.

JBC graduates and guests were welcomed by Commencement Speaker Cecil Miller III, UPMC-Chautauqua's Vice President of Operations. The graduates also heard addresses from JBC President David Conklin, and faculty speaker Jessica Halftown. JBC conferred 90 associate degrees and 10 bachelor's degrees during the 2018-2019 school year.

Christopher Hammond was recognized for his 4.0 GPA, and Samantha Boutelle, Annalee Alexander, Joseline Trejo, and Jannelly Colon Cruz also received awards for the highest grade point averages in their respective capstone course. Ms. Colon Cruz

Jannelly Colon Cruz proudly holds her diploma at graduation.

[cont. on next page]

recieved her associate degree in applied science with a 4.0 GPA, and after graduation, was hired by The Chautauqua Center as a bilingual care coordinator. She translates for both medical providers and patients in order to ensure patients receive the best care. Ms. Colon Cruz is now working toward a bachelor's in business administration: "I have grown so much and now have a real desire to learn. I will continue to work hard and my goal is to graduate with a 4.0 in my bachelor degree!"

LIM College Celebrates Student Success and Achievement at 80th Commencement

LIM College is focused on the study of business and fashion. Nearly 570 graduates make up the Class of 2019, who hail from 33 states plus Washington D.C. and Puerto Rico, and 23 different countries. Receiving master's, bachelor's, and associate degrees, this is LIM's largest graduating class since the college was founded in 1939. Lauren C. Anderson, a global advocate for women and youth and a former FBI executive, gave the keynote address on May 24, 2019 at Lincoln Center in Manhattan, NYC. Ms. Anderson received an honorary Doctor of Humane Letters degree at the ceremony and received LIM College's Distinguished Achievement Award.

Alexandra Helmer, a Visual Studies major from Waynesville, North Carolina was the 2019 undergraduate valedictorian. Ms. Helmer will join John Varvatos Enterprises at the company's NYC corporate office in the e-commerce/digital department.

(L-R) Ms. Sloe; LIM President Marcuse; Ms. Anderson; Ms. O'Sullivan; and Ms. Caampued.

Kristi Sloe, Class of 1996, received the Maxwell F. Marcuse Award. She is VP of Global Product Development for Laura Mercier. Named for LIM's founder, the award is the highest alumni honor, recognizing a graduate who has reached the pinnacle of success within the business of fashion.

Bianca Caampued, Class of 2007, Co-Founder + Creative Director of Small Girls PR - a digital public relations agency, was this year's Shining Star Alumni Award recipient.

Stefani O'Sullivan, Class of 2013 and Global Brand Marketing Manager at Moda Operandi, received the Rising Star Alumni Award.

Monroe College Confers 2,600 Degrees to Students Representing 84 Countries

Monroe College, a national leader in educating urban and international students, held its 86th Annual Commencement on June 12, 2019 at Radio City Music Hall in midtown Manhattan. Degrees were conferred to more than 2,600 students representing 84 countries. Two separate ceremonies were held to accommodate families and friends of students earning associate, bachelor's, master's degrees, and professional certificates.

Nivia Camara, a valued member of the college's staff who held a number of operations positions during her 49-year tenure at the college, served as Grand Marshal of the processional. New York State Assembly Member Victor M. Pichardo also attended and gave the commencement's keynote address.

[cont. on next page]

The college's three-semester academic calendar enables Monroe students earn 45 or more college credits per year (compared to the 30 credits college students typically earn per year at other institutions). That means that many of the graduates today earned their bachelor's degree in three years or their associate degree in less than two years. In total, the college conferred 372 master's degrees; 1,019 bachelor's degrees; and 1,202 associate degrees this year, as well as awarded 35 professional certificates.

Graduates celebrate at Radio City Music Hall in New York City during Monroe College's 2019 commencement.

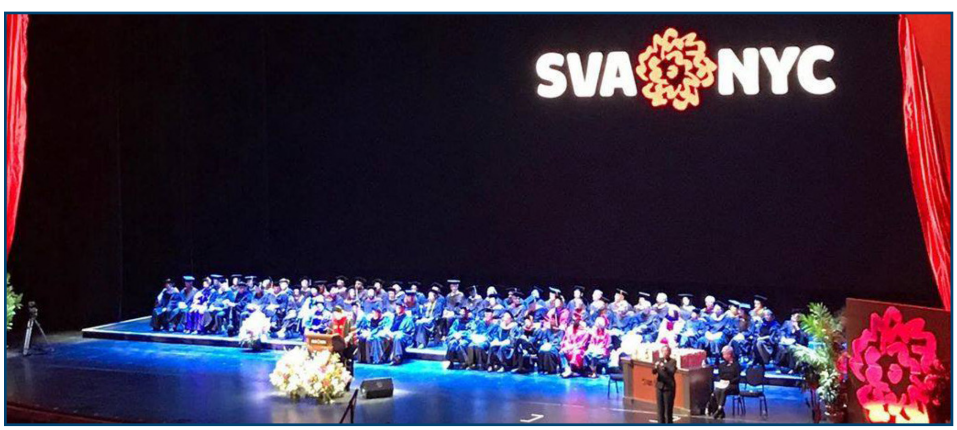
The School of Visual Arts Confers 1,218 Degrees

The School of Visual Arts (SVA) celebrated the Class of 2019 at Radio City Music Hall in New York City on May 15, 2019. During the college's 44th commencement, SVA President David Rhodes conferred degrees while SVA Provost Dr. Christopher Cyphers acted as the director of ceremonies. Musician, writer and artist Patti Smith was this year's commencement speaker.

In total, the college conferred 1,218 degrees to graduating students who participated in the School of Visual Arts' 32 academic programs.

"It would appear that your futures as artists, teachers and writers will be bright—congratulations," Rhodes remarked during his President's address. "You have made your mark at SVA; it is now time for you to make your mark in the larger world."

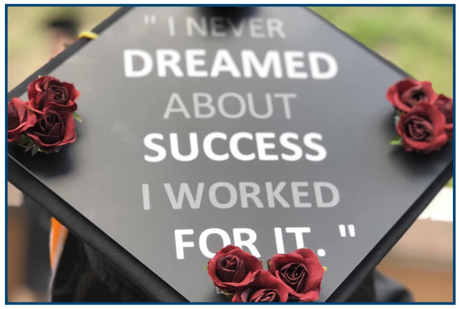
Sammy Savos earned a Bachelor's of Fine Arts degree in cartooning and gave the Bachelor's Candidate Address at graduation. For the Master's Candidate Address, Jason Branch spoke to the Class of 2019 about having the courage to make hard decisions. Branch earned a Master's of Fine Arts in design.



SVA academic and administrative staff fill the stage at Radio City Music Hall.

Swedish Institute College of Health Sciences Confers 174 Degrees and Certificates

The Swedish Institute held its 2019 graduation at the Tribeca Performing Arts Center in New York City on May 20, 2019. Swedish Institute Alumna Rachael Bieber, a licensed massage therapist, addressed the graduates during the 2019 commencement.



Graduates celebrate with decorated caps and cheers after the ceremony.

In total, the college conferred 21 certificates and 153 associate degrees. The college is the oldest continuously operating massage therapy institution in the U.S., and over the years it has grown to offer a number of well regarded programs for students interested in becoming clinical and administrative medical assistants, medical billing and coding experts, and surgical technologists. Programs in massage therapy, nursing, personal training and advanced personal training are also offered. The Swedish Institute College of Health Sciences continues to provide to-notch programs that are recognized by the Accreditation Commission for Education in Nursing, National Strength and Conditioning Association, and the Accrediting Commission of Career Schools and Colleges.

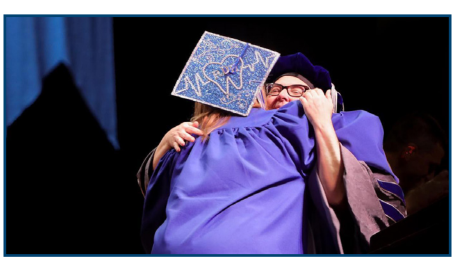
Plaza College Celebrates 102nd Graduating Class

Plaza College recognized its outstanding graduates on June 23, 2019. In total, 45 bachelor degrees and 195 associate degrees were conferred during the College's 102nd commencement ceremony.

The Class of 2019 includes students with degrees from the School of Allied Health, School of Dental Studies, School of Business & Technology, and School of Legal Studies. Students of these schools benefit not only from state-of-the-art technology on campus, but hands-on learning experience gained through externships in their programs. The College has a robust network of Workforce Partners for externship placement and career opportunities after graduation. This year also marked the first graduating class of the Plaza Dental Hygiene program, which began in September 2017. These students treated over 1,500 community patients, providing oral hygiene assessment, treatment, and education services.

Associate Director of Plaza College's Court Reporting Program Oscar Garzon congratulates a 2019 School of Legal Studies graduate.

Alumni Association President Eliana Londono inducts 2019 graduates into the association with Associate Director of Student Activities Risa Cohn.



EBI Career College Congratulates Class of 2019

EBI Career College held its commencement to celebrate this year's graduating class on August 6, 2019 at Johnson City High School in Johnson City, NY.

Graduates pose with diplomas following EBI's 2019 commencement.

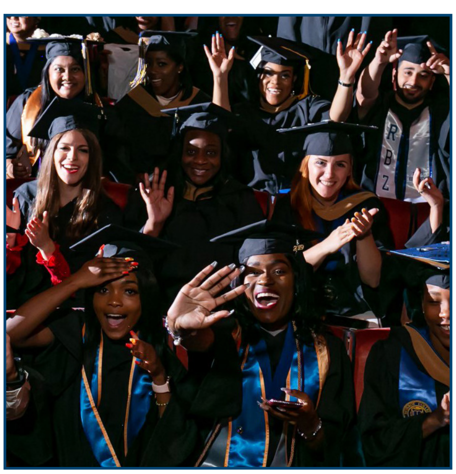
EBI Career College welcomed Jessica Stetts, EBI alumna from the Class of 2005 as this year's commencement guest speaker. Ms. Stetts graduated EBI Career College with a degree in medical assisting and is currently employed at EBI as the college's medical assisting program director.

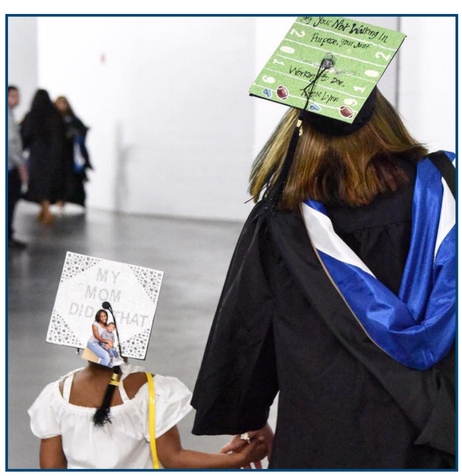
This year marked the college's 161st graduation, and a total of 59 associate degrees were conferred, along with an additional seven certificates in medical coding & billing. During the ceremony, degrees were conferred to graduates in the following areas of study: accounting, business administration, medical assisting, medical coding, and medical office technologies.

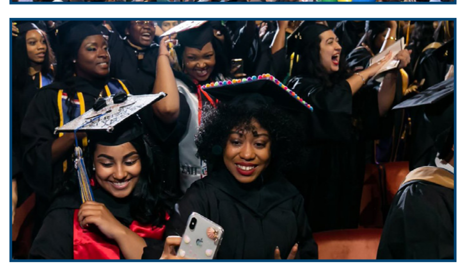
Did You Know?

After graduation, 9 out of 10 APC college students stay in New York to live and work.

Graduates enter the workforce with loan debt that is 28% lower than the state-wide average.







Know the facts about New York's higher education sectors

On-Time Associate Degree Graduation Rates in New York

Proprietary Colleges	Independent	CUNY	SUNY
26.8%	18%	4.8%	13.1%

Source: NYS Education Department, 2016 Data

APC Member Colleges Conferred More Than 7,600 Certificate, Associate, Bachelor, Master and Doctorate Degrees in 2017.

There are more than 26,000 students enrolled in APC member colleges that are located throughout New York State.

APC member colleges have a long history of providing an affordable and quality education. The average APC college has been in existence for more than 90 years.

Additionally, more than 2,000 veterans living in communities across New York receive an education from APC member colleges.

Did you know:

In 2017-2018, APC member colleges provided students more than $95 million in institutional aid.

Number of Degrees Conferred to APC Students

3,209
Associate Degrees

188
Certificates

3,416
Bachelor's Degrees

857
Master's/
Doctoral Degrees

Source: IPEDS, U.S. Department of Education, 2016-2017 Academic Year

We're proud to represent 12 degree granting colleges

Berkeley College - Est. 1931

Bryant & Stratton College - Est. 1854

The College of Westchester - Est. 1915

EBI Career College - Est. 1858

Five Towns College - Est. 1972

Island Drafting & Technical Institute - Est. 1957

Jamestown Business College - Est. 1886

LIM College - Est. 1939

Monroe College - Est. 1933

Plaza College - Est. 1916

School of Visual Arts - Est. 1947

The Swedish Institute - Est. 1916

apc-colleges.org

@APCColleges

APC Colleges

Exhibit B:

Testimony of New York State Education Department Commissioner MaryEllen Elia before the New York State Senate Committee on Higher Education April 10, 2019

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

Commissioner of Education
President of the University of the State of New York
89 Washington Avenue, Room 111
Albany, New York 12234

E-mail: commissioner@nysed.gov
Twitter:@NYSEDNews
Tel: (518) 474-5844
Fax: (518) 473-4909

**Statement of Commissioner MaryEllen Elia,
New York State Education Department**

Good morning Chair Stavisky and members of the Senate Higher Education Committee here today. My name is MaryEllen Elia and I am the Commissioner of Education. I am joined here by John D'Agati, Deputy Commissioner for the Office of Higher Education and Kevin Smith, Deputy Commissioner for the Office of Adult Career and Continuing Education Services. You have my written testimony before you.

I would like to start by providing you with a general overview of our current system of oversight over for-profit colleges and non-degree granting private career schools and certified English as a Second Language (or ESL) schools in New York State. Oversight of these schools are primarily divided between two offices in the Department. Our Office of Higher Education, specifically the Office of College and University Evaluation (or OCUE), oversees all degree granting colleges, including our for-profit colleges and our Bureau of Proprietary School Supervision (or BPSS) oversees all non-degree granting private career schools and certified English as a Second Language (or ESL) schools.

<u>OCUE Degree Granting Institutions</u>

All degree granting institutions in New York State must meet certain program registration standards for each degree program it offers, which include standards relating to resources, faculty and curriculum. For-profit degree granting colleges in New York are evaluated against the same standards as our not-for-profit public or independent colleges. This is not true across the country.

New York State currently has 25 for-profit degree granting institutions – with an overall enrollment of approximately 33,000 students – which is about 3 percent of the total enrollment in all colleges in New York State. The Board of Regents and the Department exercise oversight over for-profit degree conferring institutions in several ways. First, we review and evaluate applications for new degree authority, which must be approved by the Board of Regents. Then, we continue to oversee these institutions to ensure that they maintain the capacity to have degree conferring authority. In addition, we review applications for new registered programs and may conduct site visits and require reports and information from the college, to determine if the institution continues to have the ability to offer quality programs and we have the authority to deregister programs if they fail to meet such standards. We investigate student complaints. Finally, we have the authority to revoke or limit degree conferring authority when there is sufficient cause; including establishing enrollment caps.

OCUE Institutional Review & Oversight Process

In 2017, the Board of Regents enacted a new and more rigorous process for establishing new for-profit, degree-granting colleges in New York State. It is a multi-phased process that first requires a written application with information on a variety of issues. These include: the need for each degree program it seeks to offer in New York; institutional capacity; performance outcomes and evidence that the individuals having ownership or control have a record free from fraudulent and deceptive practices. If the written application is determined to meet these requirements, it moves to the second phase, wherein the Department reviews additional information about the applicant; the financial capacity of the institution; consumer protections; and the academic quality of the programs to be offered. This phase can also include an in-person capacity interview, a site visit, and any additional reports or information the Department may request.

The Department then makes a recommendation to the Regents regarding whether or not to grant provisional degree-authority, which can be for a period of up to five years. During the provisional authorization period the institution must submit information and reports as required by Department. Prior to the end of the provisional authorization period, the Board of Regents may either grant permanent degree authorization, extend provisional authorization or deny permanent authorization and direct the closure of the institution.

OCUE Approval of Degree Granting Programs

Each academic program offered by any college – including for-profit colleges – must be approved and registered by the Department before the college can advertise, recruit or enroll students. As I mentioned earlier, the standards by which the Department registers college programs are in regulation and apply to all NYS colleges, regardless of the sector – SUNY, CUNY, independent, and for-profit. The registration standards require, among other things, a demonstration of: qualified and competent faculty; sufficient resources (facilities, equipment, etc.) to support the program; clearly defined course and program objectives; credit must be granted in compliance with regulatory requirements; students' capacity to undertake the program; and the institution's capacity to provide instruction and other student supports.

The Department will deny registration to any program that does not meet registration standards. The Department also has the ability to de-register programs that do not continuously meet program registration standards.

OCUE Student Complaint Resolution Process

OCUE has a complaint resolution process for all students attending degree-granting institutions, including for-profit colleges. After attempting to resolve their complaint through the institution's grievance and appeal process, which every institution is required to publish and enforce, students can submit complaints related to their educational programs to the Department. The Department reviews the complaint and contacts the institution to request additional information, copies of applicable policies and requests an institution response to the complaint.

Complaints that fall under the jurisdiction of another federal or State department or agency are directed to those offices, for instance: complaints related to student financial aid are directed to the NYS Higher Education Services Corporation (HESC) and to the US Department of Education, as those agencies, not SED, administer the student financial aid programs; and complaints alleging consumer fraud are directed to the NYS Attorney General's office.

<u>State Authorization Reciprocity Agreement (or SARA)</u>

I want to take some time to talk about a separate, but related topic, the State Authorization Reciprocity Agreement, commonly referred to as SARA. This is a multi-state reciprocity agreement for distance education offered by colleges to residents in other states. It establishes a set of standards that each participating state applies when approving its own colleges to participate in the agreement. Those institutions that meet the standards and are approved by their home state, are permitted to enroll residents of other SARA states in distance education programs without the need for each state to approve each institution individually.

Before 2016, when the Legislature passed, and the Governor signed the legislation that permitted New York State to join SARA, any out-of-state institution could enroll New York State residents in any on-line program. We had no information about where New York State residents were enrolled. SARA provided, for the first time, a structure for the oversight of out-of-state distance education in New York State. As a result of SARA, we now have a mechanism, the authority, and the capacity to assist New York State residents with complaints about their out-of-state distance education programs- something we did not have before SARA.

SARA also provides a structure and process for the removal of institutions from the SARA agreement. It also gives the Department, for the first time, data about the number of New York State residents who are enrolled in out-of-state distance education and where those students are enrolled. For example, we know that in 2017-18 there were more than 43,000 New York residents enrolled in out-of-state distance education at 962 SARA institutions. We also know that in the same year, more than 34,000 residents in other states were enrolled in distance education program provided by the 96 New York State colleges that SED has approved to participate in SARA.

A critical point to remember about SARA is that it has absolutely no impact on the ability of the New York State Attorney General to take action against any institution offering distance education in New York State - under her fraud and consumer protection authority. In addition to enacting regulations to implement the SARA agreement in New York State, the Board of Regents also enacted regulations establishing oversight of non-SARA institutions that want to offer distance education in New York State. If an out-of-state institution is not participating in SARA - that institution must apply directly to SED for authorization.

Our standards mirror SARA's standards. In other words, it is not easier to get approved by SED than it is to be approved through SARA. Many student and consumer advocacy groups applauded the Regents when they enacted the non-SARA regulations as they recognized the important consumer protections that they established.

BPSS Non-Degree Granting Schools

Our Bureau of Proprietary School Supervision (or BPSS) licenses and monitors nearly 400 non-degree granting private career schools and certified English as a Second Language (or ESL) schools. These schools provide post-secondary career and technical education in a wide range of skilled programs such as coding, allied health fields, cosmetology, and dog grooming. BPSS licenses proprietary schools and credentials proprietary school teachers to ensure that appropriate standards are met.

As a result of your efforts, current laws regarding non-degree granting proprietary schools in New York State, under the oversight of BPSS, are often upheld as a national model. These laws: ensure consumer protection; promote increasing educational competence, high standards, accountability, and integrity within the non-degree granting proprietary school sector; and require monitoring and oversight by the Department with fairness and equity.

BPSS Program Review & Oversight Process

These schools are issued an initial two-year license and subsequent four-year licenses, contingent upon re-approval at each expiration point. Schools are required to provide BPSS with bank accounts and a projected tuition statement showing financial viability for the first year without tuition income. BPSS assigns a field associate to each school for monitoring throughout the licensure period, wherein there are unscheduled inspections, technical assistance visits, and re-approval of educational documents. Should a school fail to maintain substantial compliance with the education laws and commissioner's regulations, the schools' license is denied, and a forced closure is ordered.

Following their initial license, schools are required to file a financial statement annually. BPSS has a financial evaluator who interfaces with the schools to manage the collection process and BPSS has the authority to impose financial penalties for schools who fail to comply with the deadlines and requirements. The financial evaluator may also make recommendations to require a performance bond for schools whose financial conditions are deemed to threaten their ability to educate students.

Every school curriculum must also be licensed by BPSS. Each curriculum is reviewed and approved (or denied) by a BPSS evaluator, and if needed, consulting evaluators who are experts in the occupational field being reviewed. Curricula are licensed for a two-year or four-year period at which time reapplication is necessary at the expiration. This ensures BPSS is approving curricula that responds to the rapidly changing occupational fields we license.

BPSS Investigations

The BPSS Investigations and Audit Unit investigates every compliant made against a BPSS school, or individual employed by a BPSS school. Schools found to be operating in violation of the law or regulations may have sanctions and discipline imposed, including suspension or revocation of the school's license, financial penalties, or corrective action plans.

BPSS Student Complaint Resolution Process

BPSS related student complaints are resolved through the BPSS Investigations and Audit Unit. Each student complaint is assigned one or more investigators to perform a comprehensive investigation. Student complaints can be resolved informally through an investigator's recommendations and report, or formally through the issuance of a refund of tuition and fees. The law also authorizes BPSS to process claims through an established Tuition Reimbursement Account (TRA) to refund paid tuition to students. The TRA allows BPSS to quickly and efficiently resolve the complaint.

Conclusion

I want to thank you Chair Stavisky and members of the Senate Higher Education Committee for allowing me to testify today and provide you with this important overview of the Department's current oversight over degree granting colleges and non-degree granting private career schools and ESL schools. We believe that the current oversight of our colleges, whether they be not-for-profit or for-profit, or non-degree granting BPSS schools should continually be examined to ensure student protections. We look forward to working with you, the Assembly, and the Executive when potential issues or changes are identified. Thank you, and we would be happy to answer your questions.

Exhibit C:

Examples of New York State Attorney General Enforcement Actions Pursued Against Illegal Schools Operating Without Authorization of New York State Education Department

A.G. Schneiderman Announces $375,000 Settlement With Flatiron Computer Coding School For Operating Without A License And For Its Employment And Salary Claims

A.G. Schneiderman Encourages New Yorkers To Report Deceptive Conduct At For-Profit Schools To His Office

NEW YORK--Attorney General Eric T. Schneiderman today announced a $375,000 settlement with Flatiron School, Inc. (“Flatiron”), a New York city-based coding school that operated without a license from the New York State Education Department (“SED”) and improperly marketed and promoted its job placement rate and the average starting salary of its graduates. Today’s settlement follows a series of groundbreaking actions taken by the Attorney General’s Office hold **for-profit colleges** accountable and to provide **relief to victimized students**.

Under today’s agreement, Flatiron will pay $375,000 in restitution to eligible graduates who file complaints against the coding school with the Attorney General’s Office within three months of the effective date. Affected Flatiron students and consumers who wish to report deceptive conduct at for-profit schools can **file a complaint online at ag.ny.gov** or by calling 1-800-771-7755.

“Coding boot camps have become popular as students seek careers in the tech industry, but for-profit coding schools must comply with state requirements, including obtaining a license before operating,” said **Attorney General Schneiderman**. “Schools must also provide clear explanations of advertised job placement rates and salary claims of their graduates.”

Flatiron, a for-profit career school doing business in New York City, offers web applications and computer coding classes at its Broadway location and online. The school, which has taught approximately 1,000 students, charges students between $12,000 and $15,000 for a 12 to 16 week in-person class and approximately $1,500 a month for online coding classes.

According to the Attorney General’s investigation, Flatiron operated without a license from SED and without authorization to provide online classes between October 2013 and September 2017.

The Attorney General’s investigation also uncovered that Flatiron made inflated claims on its website concerning the percentage of its graduates who obtained employment after completing their courses and the average salaries of their graduates. For example, between January and June 2017, Flatiron claimed that 98.5% of its students received employment less than 180 days after graduation and that Flatiron graduates had an average salary of $74,447. However, Flatiron did not disclose clearly and conspicuously that the 98.5% employment rate included not only full time salaried employees but also apprentices, contract employees and self-employed freelance workers, some who were employed for less than twelve weeks. Similarly, Flatiron failed to clearly and conspicuously disclose that its $74,447 average salary claim included full time employed graduates only, which represent only 58% of classroom graduates and 39% of online graduates.

In order to obtain a SED license, a non-degree granting career school must meet a number of criteria, including using an approved curriculum and employing a licensed director and teachers. The school must also demonstrate financial viability. These requirements help safeguard students who attend licensed schools.

The Attorney General’s settlement provides that Flatiron:

- Not operate any educational institution without obtaining necessary licenses and complying with SED laws, rules and regulations
- Clearly and conspicuously disclose the method and categories by which its employment rate and average salaries were calculated in any advertising or oral or written disclosure to students
- Clearly and conspicuously disclose the population comprising the average salary, as well as the population comprising the employment rate calculation wherever it discloses both its employment rate and average starting salary of its graduates
- Not count nonpermanent graduates as employed unless they (1) receive compensation in return for services provided; (2) are anticipated to be employed for at least three months and (3) the position requires that the individual work at least 20 hours a week

Students can check whether a school is licensed on the SED website at http://eservices.nysed.gov/bpss/bpsspublic/BPSSPublicSearch.do.

The case was handled by Assistant Attorney General Benjamin J. Lee under the supervision of Deputy Bureau Chief Laura J. Levine and Bureau Chief Jane M. Azia in the Consumer Frauds and Protection Bureau. The Consumer Frauds and Protection Bureau is overseen by Executive Deputy Attorney General of Economic Justice Manisha M. Sheth.

Attorney General’s Press Office: (212)

416-8060

nyag.pressoffice@ag.ny.gov

Press Release Archive

- October 2019
- September 2019
- August 2019
- July 2019
- June 2019
- May 2019
- April 2019
- March 2019
- February 2019
- January 2019
- December 2018
- November 2018

VIEW ALL PRESS RELEASE ARCHIVES

Search:

Please enter a search term...

A.G. Schneiderman Announces Takedown Of Fake Nursing School Network

Undercover Investigation Reveals Elaborate Criminal Conspiracy Stretching From NYC & LI To Jamaica

Scheme Collected More Than $6 Million From Hundreds Of Defrauded Students Who Paid For Bogus Degrees

NEW YORK – Attorney General Eric T. Schneiderman today announced the takedown of an elaborate criminal network that set up bogus nursing schools throughout New York City and Long Island. Hundreds of students collectively paid more than $6 million to enroll in the programs that claimed would qualify them for careers in nursing. However, the certifications and transcripts the schools provided were fraudulent.

In a series of early morning raids, eight individuals were arrested in New York for their participation in the nursing school scam, and a total of eleven were charged in the indictment. Each faces multiple counts of Grand Larceny in the 3rd Degree, a class D felony, Scheme to Defraud, a class E felony and other charges.

"These conspirators intentionally targeted people in pursuit of new opportunities, lining their pockets with others' hard-earned money," **Attorney General Schneiderman** said. "This case sends a clear message to anyone looking to profit off of exploitation and fraud: you will be caught. My office has zero tolerance for such criminal conduct and will continue to hold those who commit it accountable."

The Attorney General's Office, in cooperation with the New York State Department of Education, conducted an investigation to reveal how the conspiracy operated. Undercover investigators were assigned to pose as students enrolled in the phony programs, and search warrants were executed. The investigation found a criminal network that spanned from New York to Jamaica, and included hundreds of victims who each paid thousands of dollars for useless courses.

According to the indictment and prosecutors' statements at arraignment, the defendants conspired to create and operate entities that claimed to be nursing schools. The defendants recruited individuals – particularly of lower income – and falsely stated that completing the programs would make them eligible to take the New York State Nursing Board Exam (NCLEX), and become Licensed Practical Nurses (LPNs) or Registered Nurses (RNs) in New York.

Those who enrolled were burdened by significant costs of anywhere between $7,000 and $20,000. They then spent between 10 months and two years completing the program, only to be issued fraudulent transcripts and certifications from various foreign schools – none of which were approved to operate in New York. Contrary to what they were told, the students who paid for and participated in the programs were not eligible to take the Nursing Board Exam or become LPNs or RNs.

The schools include:

- International Language and Professional Network, Inc. (ILPN) located at 833-847 Flatbush Avenue, 2nd Floor, Brooklyn;
- VTEC-NY, Inc. a/k/a Life-VTEC, located at 212-47 Jamaica Avenue, Suite 200, Queens Village;
- Hope-VTEC a/k/a J. Allrich Productions, Inc., Hope Nursing Tutorial Services, and Tutorial Nursing Prep, located at 1057-1059 Hempstead Turnpike, Franklin Square;
- Helping Angels Foundation of America (HAFA) which operated at two locations: Brooklyn at 78 Saratoga Avenue, Brooklyn and 245-06 Jericho Turnpike, Suite LL05, Floral Park, Long Island; and
- Envision Review Center located at 1894 Flabush Avenue, 2nd Floor, Brooklyn.

Four of the schools, ILPN, HAFA, Life-VTEC and Hope-VTEC, collaborated with the National Academy nursing program in Jamaica to provide fraudulent certifications.

The Indictment charges the following individuals:

- Robinson Akenami, 36 of Woodhaven, owner and operator of HAFA;
- Jocelyn Allrich, 52 of Elmont, owner and operator of Hope-VTEC;
- Nadege Auguste, 36 of Brooklyn, owner and operator of Life-VTEC;
- Andre Castage, 54 of Brooklyn, an Administrator and Admissions Director at ILPN who spoke with students and told students that the school was accredited;

- Carline D'Haiti, 55 of Brooklyn, and Salavatrice Gaston, 56 of West Babylon, who operated Envision Review Center;
- Anthony Myers, an Administrator and the Admissions Director at ILPN, who also assured students that they would be eligible to take the NCLEX exam after attending ILPN;
- Rodye Paquiot, 43 of Plainsboro, New Jersey, an executive at ILPN who assured students that they would be eligible to take the NCLEX exam after attending ILPN;
- Carl Lee Sellers, the Administrator of Hope-VTEC who identified himself as the "second in command" and who told students that they would be eligible to sit for the NCLEX after they attended Hope-VTEC;
- Frantz Simeon, 55 of Freeport, owner and Executive Director of ILPN; and
- Jude Valles, who established the VTEC franchise, received payments for the students that attended the schools in New York, and provided false documents to the schools and students.

The case is being prosecuted by Criminal Prosecutions Bureau Assistant Attorneys General Lesley Brovner and Daniel E. Shulak under the supervision of Deputy Bureau Chief Stephanie Swenton, Bureau Chief Gail Heatherly, and Executive Deputy Attorney General for Criminal Justice Nancy Hoppock.

The Attorney General recognized the diligent work of the New York State Department of Education, with whose cooperation the case developed. The investigation was conducted by Senior Investigator Elizabeth Martinez and Supervising Investigator Kathleen Hearn of the New York State Education Department Office of Professional Discipline and Investigators Karon Richardson, Senior Investigator Herbert Antomez, and Senior Investigator Luis Carter under the supervision of Supervising Investigator Jonas Harris and Chief of Investigations Robert Hart of the New York State Office of the Attorney General.

The charges are accusations and the defendants are presumed innocent unless and until proven guilty.

Attorney General's Press Office: (212) 416-8060

nyag.pressoffice@ag.ny.gov

Press Release Archive

Search:

Please enter a search term...

A.G. Schneiderman Reaches Settlement With Queens Beauty School For Falsifying Qualifications Of Hundreds Of Nail Specialists On License Applications

Beauty School Falsely Claimed That Applicants Possessed Required Schooling To Legally Work In New York

Schneiderman: I Have No Tolerance For Vocational Schools Who Take Advantage Of Challenging Economic Times By Misleading People Who Are Trying To Create Opportunities For Themselves

NEW YORK- Attorney General Eric T. Schneiderman today announced that his office has reached a settlement with Tinny Beauty, Inc. (“Tinny”) and two of its officers, Lydia Leung and Alex Cheung, for misleading students seeking to become New York State licensed nail specialists. As part of its settlement with the Attorney General’s office, Tinny has agreed to pay at least $350 in restitution to individuals who surrendered licenses or had licenses revoked, not renewed or denied by the New York Department of State and for whom Tinny signed schooling affirmations. Tinny will also pay $25,000 in costs, penalties, and fees.

“During these challenging economic times, hardworking New Yorkers should have the ability to create economic opportunities for themselves by pursuing the education and professional licenses required to make a living,” said **Attorney General Eric Schneiderman.** “My office has zero tolerance to people who prey on struggling families by deceiving them about license requirements.”

The Tinny settlement, signed by Justice Carol Huff of Supreme Court, New York County, concludes the lawsuit filed by the Attorney General in New York Supreme Court against Tinny, a New York corporation located in Flushing, Queens, and two of its officers. Tinny operates Tinny Beauty International School (“Tinny School”), a non-degree proprietary school that offers classes in cosmetology, esthetics, nails, waxing, and permanent makeup training. Tinny School provided false and misleading advice to hundreds of consumers, many of whom did not speak English, to induce them to pay fees to Tinny to become licensed nail specialists in New York, but failed to provide them the necessary courses and training.

Individuals must be licensed by the New York Department of State (“DOS”) to provide appearance enhancement services in New York State. Tinny targeted non-English speaking consumers through ads placed in Chinese-language newspapers. Many of these consumers were unfamiliar with the licensure process and relied on Tinny School to help them obtain their nail specialty licenses. Instead of properly advising consumers on the correct procedures to legally obtain a nail specialty license, Tinny repeatedly informed individuals that they did not need to take any hours of course instruction at Tinny School. Instead, Tinny School typically charged consumers at least $350 to take a “test preparation” course.

The Attorney General's investigation revealed that from approximately 2005 until early 2010, Tinny President and founder Leung routinely affirmed on DOS applications that nail specialty license applicants had completed at least 250 hours of training at Tinny School when they had not. This allowed hundreds of individuals to obtain nail specialty licenses despite failing to meet State licensure requirements. As a result of this practice, over 100 Tinny School nail specialists have had their licenses revoked or their license applications denied or not renewed by DOS and more nail specialists are at risk of similar losses. These consumers cannot earn a living by providing nail services, despite their payments to Tinny School.

As part of its settlement with the Attorney General’s office, Tinny has agreed to pay at least $350 in restitution to individuals who, in addition to other criteria, surrendered nail licenses or had nail licenses revoked, not renewed or denied by DOS and for whom Tinny signed schooling affirmations. Tinny will contact these individuals by mail within the next few weeks. In addition, individuals who paid Tinny School for a test preparation seminar and who surrender or have nail licenses revoked, not renewed or denied by DOS within the next two years are also eligible for $350 pursuant to a claims process. These individuals should contact Tinny or the Attorney General’s Office to obtain a claim form. Tinny will also pay $25,000 in costs, penalties, and fees.

Tinny and its principals have also agreed to (a) not make any misrepresentations to individuals about the licensure process, (b) comply with all New York State Education Department regulations and policy guidelines, and (c) not sign the affirmation on DOS appearance enhancement applications representing that individuals took a specific number of hours at Tinny School or any other appearance enhancement school owned or operated by Tinny and its principals if that was not the case.

The matter was handled by Assistant Attorney General Stephanie A. Sheehan, under the supervision of Deputy Bureau Chief of the Bureau of Consumer Frauds & Protection Laura J. Levine, Bureau Chief Jane M. Azia, and Executive Deputy Attorney General for Economic Justice Karla G. Sanchez.

Attorney General's Press Office: (212)
416-8060

nyag.pressoffice@ag.ny.gov

Press Release Archive

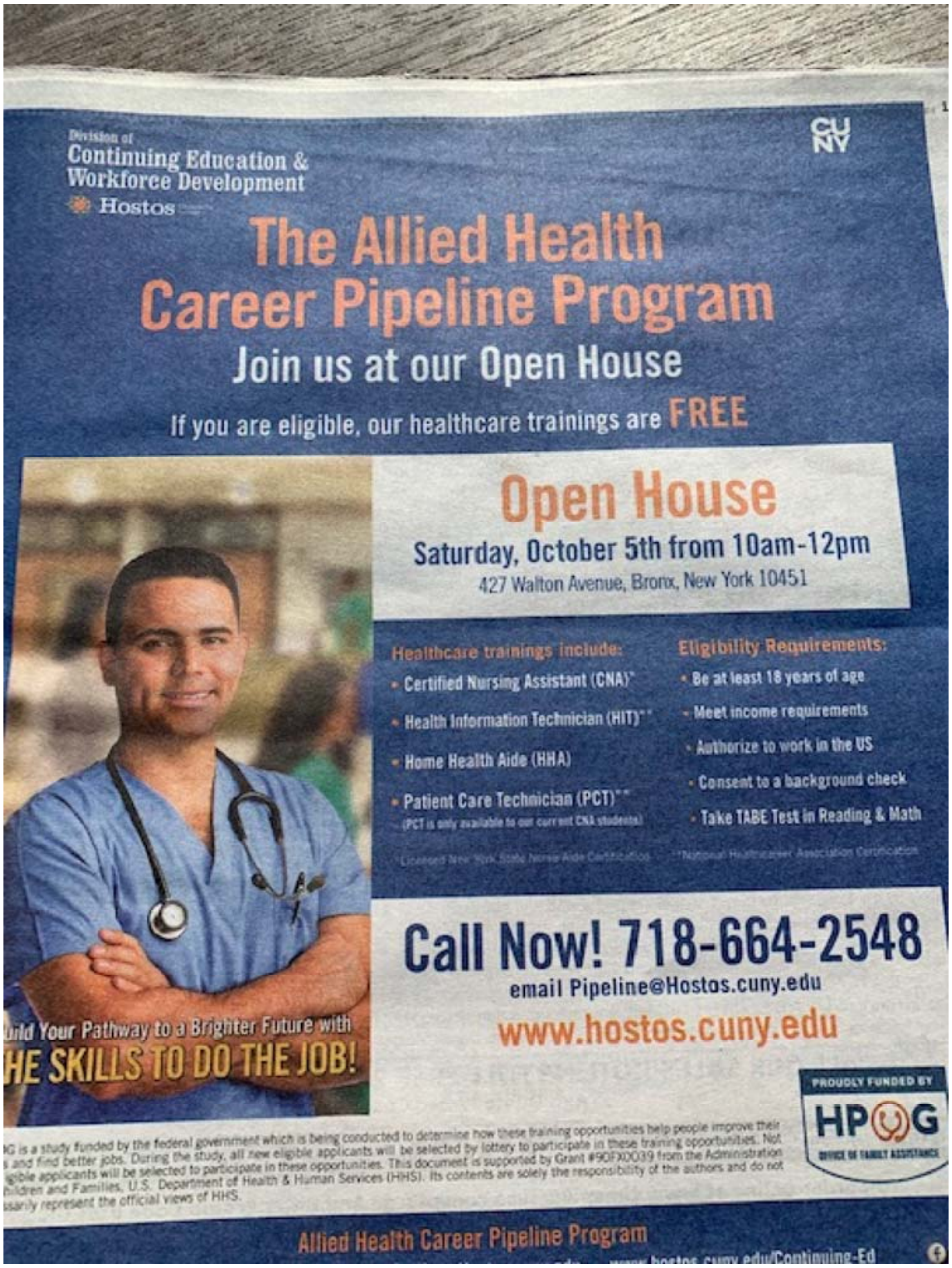
Search:

Please enter a search term...

Search

Exhibit D:

Examples of Aggressive Marketing Tactics and Misleading Statements by Public and Non-Profit Institutions that NYC DCA’s Proposed Regulations Would Not Address



This advertisement recently published by Hostos Community College in a local New York City newspaper, a public CUNY community college in the Bronx, is misleading at face value in that it advertises "healthcare trainings" (non-degree programs) for "free" without fully stating the qualifying conditions. For example, students must not only "take the TABE Test", they must attain a minimum score on the TABE Test. Similarly, students must not just meet income requirements, they must qualify for Temporary Assistance for Needy Families (TANF) or live below the federal poverty line and simultaneously be either unemployed or away from school for at least one year. NYC DCA's proposed rules are flawed in that they would not address misleading statements such as these made by public and non-profit institutions.

MARKETING FOR A MASSIVE ONLINE UNIVERSITY

TV ADS HELPED SOUTHERN NEW HAMPSHIRE UNIVERSITY BECOME A HOUSEHOLD NAME, BUT WITH MOUNTING COMPETITION AND INCREASED SCRUTINY OF SPENDING, GETTING TO THE TOP -- AND STAYING THERE -- ISN'T EASY.

By Lindsay McKenzie
October 8, 2019 – INSIDE HIGHER ED

MANCHESTER, N.H. -- Back when Southern New Hampshire University was still a small regional institution with a modest online presence, Paul LeBlanc, the university's president, called a meeting with his online team.

The group watched as LeBlanc opened the University of Phoenix's website, filled in a request-for-information form and placed his cellphone on the table. A few moments later, the phone rang. It was a Phoenix representative calling, ready to help the president enroll in an online degree program.

LeBlanc wanted to show his team what they were up against. He understood that "speed-to-lead" times would become paramount in online admissions. Calling potential students 10, 15 or 30 minutes after they submit an inquiry wasn't good enough.

"We're not where we need to be," he said.

That was over a decade ago. SNHU representatives now aim to call prospective students so fast that they don't have time to click away from the university website. The university typically returns 98 percent of new lead calls in under three minutes.

Speed and efficiency have helped SNHU to grow its online enrollment from 3,000 students in 2003 to around 132,000 students today.

But there is another magic ingredient that has propelled SNHU -- hundreds of millions of dollars spent on advertising and student recruitment.

As competition for students increases, SNHU faces two options to continue growing: spend even more or innovate.

With a marketing spend of more than $139 million last year, LeBlanc is attempting the latter.

An Ambitious Growth Strategy

During his 16-year presidency, LeBlanc has transformed SNHU from a sleepy regional college to a slick online behemoth.

He is candid about the fact that for-profit institutions such as Phoenix helped pave the way.

“We learned a lot from the early days of Phoenix -- how to be more student-centric, how to be more customer service-oriented, how to improve our processes and use data better,” he says. “All things that higher ed, not surprisingly, [was] never good at.”

At its height in 2010, the University of Phoenix enrolled more than 470,000 students. Inside Higher Ed reported that Phoenix’s enrollment likely dipped below 100,000 last year.

When it started out, Phoenix did good work, says LeBlanc. Things started to shift when the university’s parent company, Apollo Education Group, became publicly traded in 1994. “Suddenly there was all of this pressure to satisfy shareholders’ expectations around growth. If you have to make your numbers and they aren’t looking good, you might start to do things that aren’t great in order to make that number.”

Phoenix continued to grow for many years after Apollo went public, as did many other large for-profit institutions. But the sector's sometimes aggressive recruiting tactics and relatively high student debt levels attracted the attention of policy makers, who began tightening regulations.

While political scrutiny of for-profits, particularly their student recruiting and business practices, has contributed to a long slide in Phoenix’s student numbers, online enrollment at the nonprofit, private SNHU continues to soar.

With more than 130,000 students, SNHU is one of the three biggest universities in the U.S., alongside Arizona State University and Western Governors University.

SNHU has no shareholders to satisfy, and the university's trustees aren't pressuring the president to grow enrollment. He is nonetheless pursuing aggressive expansion, with a goal of enrolling 300,000 students by 2023.

LeBlanc says this target isn’t firm. “We put a number out there because when you do strategic planning, you want to give some sense of scale.”

The desire to grow quickly is driven by the institution’s mission of providing affordable and accessible higher education to everyone. “When somebody asks, ‘How big can you get?’ or ‘How big do you want to get?’ I say, I want to be as large as possible to help as many people as possible without any slippage in the things we value most.”

If student satisfaction or graduation rates went down, LeBlanc says he would have no problem tapping the brakes. “I know with certainty that the board would support that, too.”

An Expanding Workforce

To keep pace with its growing enrollment, SNHU has to constantly hire new staff members. The university is close to becoming one of the 20 biggest employers in the state of New Hampshire and is planning to open a new operations center in Tucson, Ariz., with 350 employees who will support students living on the West Coast.

Here in Manchester, just a few miles south of SNHU’s traditional 350-acre campus, the university’s impact on the city is clear. SNHU-branded buses shuttle employees and students between campus and university buildings downtown. The SNHU Arena, previously the Verizon Wireless Arena, hosts university commencements and sporting events. In the former industrial heart of the city, an area known as the Millyard, SNHU has built a parking lot with 1,700 spaces to accommodate its expanding workforce.

A vast former textile mill nearby serves as the nerve center of SNHU's online operations. Inside, hundreds of inquiry-response representatives, admissions counselors, financial aid counselors and academic advisers work to enroll new students and keep existing students on track. Though these employees don headsets, the “mill” doesn’t feel much like a corporate call center. There is a hum of activity rather than a roar. Desks are liberally decorated with photos and twinkle lights. Staff, many young locals, talk animatedly with students and colleagues.

Working alongside the student support staff are IT employees and a large marketing team consisting of social media managers, digital marketing specialists, data analysts and creative staff. The teams are deliberately located close together so that they can collaborate, says Alana Burns, chief marketing officer at SNHU.

Burns doesn’t think about marketing as one moment in time, but a continuum. Every aspect of the student experience matters.

There is a principle in marketing known as the four moments of truth -- four points in time when users form an impression of a brand, product or service. Before someone decides to attend SNHU, they have to decide they want to attend college. This is the zero moment of truth. The first moment of truth occurs when someone sees an SNHU ad on TV or clicks a link online and decides whether or not to enroll. The second moment of truth is their experience at the university. The third and ultimate moment of truth is whether they recommend SNHU to friends and family.

“You have to get marketing right all the way across,” says Burns.

Recommendations are a powerful tool, and they don’t happen if students have a bad experience. This year, 20 percent of new students heard about SNHU through word of mouth. Burns wants that number to keep growing.

“The most important investment that SNHU makes is in the student experience, in the advising, the academic design, the streamlining of the admissions process,” says Burns. “We don’t have Division I athletics, or a 200-year history or a huge endowment. But we do have a huge alumni base, and if they didn’t talk positively about their experience, it wouldn’t matter how much money we spent -- we wouldn’t keep growing.”

Building a National Brand

SNHU didn’t become a national institution overnight. It wasn’t until around 2011 that the university made a concerted effort to raise its profile across the U.S.

Online enrollment stood at around 12,000 students in 2011, an increase of around 9,000 students since LeBlanc joined in 2003. Over time, the university added new programs and refreshed old ones. But online students were still concentrated in New England. To keep growing, SNHU would need to cast a wider net.

Although online education allows students to be located anywhere, many people choose to study at institutions close to where they live. A recent survey by Learning House found that two-thirds of online students pick colleges with locations within 50 miles of their home. Students like to attend institutions with connections to their community and local employers -- somewhere they feel they know.

To attract students from outside New England, SNHU had to find a way for people thousands of miles away to connect with the institution. Cable TV ads played a pivotal role in raising the profile of the institution. Early ads emphasized that SNHU offered a “traditional” education that could be completed alongside a full-time job. The ads also stressed that SNHU is nonprofit.

“Earn a degree you can be proud of, at a price you can afford,” says one ad from 2011.

There is some internal debate about whether ads need to stress that SNHU is nonprofit. Audience testing suggests students don’t care much about the tax status of an institution, but the message is important to the people who work at SNHU, Burns says. TV ads help to attract not only students, but also new talent.

Students who overcome adversity to achieve their educational goals have become a prominent theme in SNHU’s marketing campaigns. “We want you to see yourself in our ads,” says Burns.

One of the university’s most successful TV ads showed footage of a real commencement ceremony where LeBlanc asked students to stand up if they are the first in their family to attend college, if they are mothers, veterans or active-duty military service members. A huge portion of the audience stands. The ad has aired nationally more than 54,000 times, according to media measurement company iSpot.

Another memorable ad shows an SNHU-branded bus touring the country and delivering diplomas to students who couldn’t attend graduation in person.

The bus has become a popular motif in SNHU ads, and a fixture at university events. University officials say enthusiasm for this symbol is palpable. “I think if people could hug and kiss that bus, they would,” says Phaedra Schmidt, associate vice president of marketing and creative strategy at SNHU.

The SNHU marketing team dipped its toes into the world of TV advertising with care -- performing small tests and evaluating the results. Before targeting cable networks, they picked a handful of cities and showed ads for 10 weeks on regional TV stations. “We wanted to see if people would come take a look at us, and the answer was an immediate yes,” says LeBlanc.

SNHU soon shifted to cable TV channels such as MTV. “It was an efficient way to get our name in front of everybody,” he says. “National media buys became our cornerstone.”

Television advertising is expensive and only works if it’s sustained. “If you do one burst of advertising and say, ‘How did we do?’ it’s not going to look very good, and it’s going to feel very expensive. If you keep showing ads month after month, year after year, you start to build brand traction. That’s when that person in California says, ‘Oh yeah, I’ve heard of that place,’” LeBlanc says.

There wasn’t a specific point at which SNHU shifted from a regional to a national university, says LeBlanc. “When we saw enrollment climb at the furthest reaches of the market, when we started to move from hundreds to thousands of students in places like Texas, Florida and California, that’s when we realized we didn’t have primary and secondary markets anymore.”

A Changing Media Strategy

Over time SNHU’s brand has evolved significantly. “Eight or nine years ago, we would introduce new programs and there were no students yet. We didn’t have those student stories,” says Schmidt.

In the past SNHU would use actors and stock photography to represent its students, but that didn’t feel authentic, says Schmidt. Now the university has an abundance of real stories to choose from. One of Schmidt’s favorites is Amy Craton, a 94-year-old woman in Hawaii who completed her degree after 54 years, with a 4.0 GPA.

“We rely a lot on brand ambassadors and like to share stories that are simple and human and inclusive. What you see is so real. We want you to have that emotional connection with our students and feel proud of them,” says Schmidt.

While SNHU continues to produce more TV ads than many (if not all) other universities, the marketing team knows viewing habits among young adults are changing fast.

“We’re thinking more and more about YouTube,” says Schmidt. “In a six-second ad, you only have time to send one message. Figuring out how to do that is a lot of fun for us.”

Work on ad campaigns begins months before they are ever seen by the public, says Schmidt. “We might develop 30 ideas and only one will go to market. We’re still learning what the most impactful and relevant messages are all the time.”

In a push for greater efficiency, Burns moved all media buying in-house in July. The university previously used an agency to plan and purchase ad placements on different mediums and measure their efficacy. “It gives us more control, and we get to see everything so that we can make more informed decisions,” she says. Video production is one of the few areas the university still outsources. “It’s just not something that we need every day.”

In terms of spending, digital marketing has overtaken traditional marketing. The “supermajority” of the digital marketing budget is spent boosting SNHU’s visibility on search engines, says John Lucey, the university’s vice president of digital performance marketing and marketing technology. The rest of the budget is dedicated to social media advertising -- something the university didn’t do five years ago. Most of these online ads are text based and don't involve video.

SNHU’s social media marketing is focused on Facebook, Instagram and LinkedIn, with Twitter, Snapchat and Pinterest playing a less prominent role. “We’re everywhere that students are,” Lucey says.

Everything the marketing team does, whether in digital or traditional mediums, is informed by data. Many staff come from an e-commerce background, says Lori Szydlik, vice president of web for the university.

“We have to make a convincing case for more investment, and that means lots of testing to get the data that proves what you’re doing works,” she says.

“Right now there’s a hyperadoption of new technology, a landscape of new digital experiences,” says Szydlik. “We’re not just competing with other universities, but competing with what [students are] expecting from a web experience.”

In the past year and a half, SNHU has made considerable upgrades to its website. “Users expect an app-like experience when they visit your webpage,” says Szydlik, “and that means everything has to be superfast. Page load time is really important.”

The SNHU website has historically taken between 4.5 and 3.7 seconds to load. Now it’s sub-three seconds. Everything the online team does is mobile first, says Szydlik. And each layout, font and color is carefully optimized with A/B testing.

A 2020 website refresh won’t present radical changes. “It’s more future-proofing,” says Szydlik. But bigger changes are on the horizon. “One of the most difficult things we’re working on is how to personalize the web experience, but not in a creepy way.”

With technology changing fast, and nationwide 5G on the way, the team is constantly trying to stay ahead of the curve. “It’s exciting work, but you have to have a good ability to adapt to change. You have to get used to not being the expert,” she says.

Reining In Marketing Spend

For many years, for-profit colleges spent more on marketing than nonprofits, but two years ago, that changed.

“Twenty sixteen was the first time in history that private nonprofit expenditures exceeded those of for-profits,” says Bob Brock, president of the Educational Marketing Group, a brand agency that works with colleges and tracks industry spending.

According to EMG and Kantar Media data, the for-profits spent $607.7 million on marketing in 2016, while private nonprofits spent $611 million. The scales tipped because for-profits lost market share, says Brock. And fewer of them existed after waves of closures. Meanwhile, nonprofits have experienced huge growth online in an increasingly competitive arena.

Between 2014 and 2016, Brock estimates that for-profits lost around 25 percent of their online students. Over the same time period, online education at public, nonprofit institutions grew by roughly 15 percent. Growth at private nonprofits was around 35 percent, largely driven by SNHU, WGU and Liberty University, he says.

Phoenix still spends much more than any other institution on marketing, says Brock. But SNHU comes in second. And SNHU is “in a league of its own” when compared with other private nonprofits, he says.

In the fiscal year ending June 2018, SNHU reported a total revenue of $807 million with a net surplus of $133 million after expenses. The same year, SNHU spent $139 million on advertising and promotion, according to its latest federal tax form. The document lists advertising payments of almost $47 million to Google and just over $85 million to Mediassociates Inc., a media buying and planning agency.

A SNHU representative said that the university’s marketing budget, which she reported as $133 million in fiscal year 2017, includes market research, website operations, communication with current students, social media, student experience, signage on campus, employee communications and video and creative teams.

It’s not easy to track exactly how much institutions spend on marketing, says Brock. Different institutions include different things in their marketing budgets, making it difficult to pin down precisely what is spent where. Comparing marketing budgets across different institutions is also difficult for that reason, but he estimates that the average private nonprofit spends under 5 percent of its annual revenue on marketing. SNHU is spending over 17 percent.

Brock says SNHU’s approach to marketing is highly effective. “They are likely seeing a very good return on investment,” he says. “They produce A-plus-quality materials, which is important, because audiences today are sophisticated consumers. We’ve all seen millions of ads and can judge really quickly if someone put in the effort or tried to do something cheap.”

Stephanie Hall, a fellow at the Century Foundation, would like to see more questions asked about what an appropriate level of spending is for higher education marketing.

In a report the foundation published earlier this year, Hall examined how much institutions spend on student instruction, with disappointing results for the universities with the largest online enrollments. “Why is instructional spending low at online colleges?” asked Hall in her report. “The most charitable explanation, which is likely at least partly true, is that while online education has the potential to create efficiencies in instruction, it also requires more spending on information systems and other forms of student support.” A less charitable explanation is that “low-spending, high-tuition online education is a cash cow” with large chunks of tuition subsidizing intensive marketing, generating high levels of profit for investors or funding other university projects, wrote Hall.

If an institution spends more on marketing than instruction, this should raise a red flag, Hall says. But she acknowledges that tracking institutional spending on marketing and instruction can be challenging as institutions include different things in these budgets. SNHU, for example, includes student support services in its marketing budget. Stricter reporting requirements would help increase transparency, she says.

While politicians have for many years attempted to curb what for-profit institutions may spend on marketing, nonprofits historically have escaped the same scrutiny. This may be changing.

At a meeting of the Education Writers Association in 2019, Diane Auer Jones, U.S. deputy under secretary of education, described aggressive marketing techniques as “the biggest consumer protection issue” in higher ed.

Two bills introduced in the U.S. Congress last year aimed to limit how much federal funding institutions may spend on marketing. This year the PROTECT Students Act, included a provision that would prevent any federal student aid from being spent on recruiting or marketing activities.

LeBlanc believes this legislation, if passed, would impact smaller colleges more than large ones like SNHU that have diverse revenue streams. He recognizes, however, that marketing is an area that could become an increasing focus of policy makers.

For the past three years, SNHU has kept its marketing budget flat to curb its student acquisition cost, a ratio which the institution calculates by dividing its total marketing budget by the number of students enrolled.

Student acquisition cost is an important metric for online programs. Many institutions have seen this figure increase sharply as marketing costs have gone up and competition for students has intensified. “When we get that number to go down, as it is for us right now, that feels really good,” says LeBlanc.

The acquisition cost per enrolled student at SNHU was $1,134 in 2018, down from $1,240 the previous year, the university reported.

It isn’t clear how long SNHU will be able to do this and keep growing. “We’re going to hold the line for as long as we can and see how it plays out,” says LeBlanc.

Word-of-mouth recommendations, increased use of social media and workforce partnerships are helping SNHU grow without increasing traditional marketing costs. SNHU’s partnership with Walmart through Guild Education, for example, is expected to enroll hundreds of new students in its first semester. “We have over 100 of these types of partnerships, and we continue to see the number of students enrolled with us grow,” he says.

Critics of big marketing budgets don't see the big picture, says LeBlanc.

“I think marketing is seen in higher ed as this crass thing, and the more you spend on it, the poorer quality you must be. That feels like such a failure to recognize the reality of how we compete and how we get in front of people,” says LeBlanc. “If you want to build a national footprint and serve as many people as possible, tell me how else to get our name in front of everyone?”

Marketing is aligned with SNHU’s mission, LeBlanc says, because it helps the university reach large numbers of potential students.

“None of us became educators to spend time thinking about marketing. It doesn’t feel commensurate to what we do,” he says. “But when we connect with a student that might not have found their way to us otherwise, who may have struggled and failed elsewhere, that feels like a good investment.”

Dwarfing Competition

It’s difficult to get a sense of how many institutions are losing students to SNHU. But Abu Noaman, CEO of Elliance, a digital marketing agency, says many small nonprofit colleges are struggling to grow their enrollment.

“That’s the No. 1 challenge that everyone has,” he says. “They know they should be growing at a certain pace, but they’re seeing competitors grow at a much faster rate.”

Many colleges underestimate how much they should spend on marketing, says Noaman. “You can’t spend less than 5 percent of your revenue on marketing and expect to compete with the nonprofit giants -- they’re eating these smaller colleges for breakfast, lunch and dinner.”

He says colleges also tend to spend their marketing dollars in the wrong places. SNHU may have boosted its brand with television ads, but TV spots are expensive, take a long time to see returns and don’t reach young audiences.

Instead, digital marketing is where most institutions should be focused, he says. Every institution is different, but most would benefit from increased search engine visibility. “Most people never go beyond the first page of Google search results,” he says. “You want to be near the top.”

Colleges with limited budgets have some options to compete. For example, Noaman says they could easily revamp “anemic-looking” academic program pages to paint a fuller picture of what studying to earn that degree at that college really looks like. They could also start telling compelling student stories through social media.

“Young people are smart,” he says. “They don’t really want to be spammed or marketed to. They want you to win their hearts and minds.”

Many colleges approach marketing with an institutional mind-set, and that's a mistake, says Noaman.

"Colleges often think they are the hero of the journey, when really they are just enablers. It's the students, alumni and faculty who are the heroes," he says. For many institutions, changing that mind-set requires a big cultural shift.

"It's easy to burn through a lot of money very quickly if you don't know what you're doing," says Kenneth Hartman, interim vice president of Rowan Global Learning and Partnerships, the online arm of Rowan University -- a public university located in New Jersey.

Hartman was previously president of Drexel University Online. His goal for Rowan is to grow online enrollment. But Hartman recognizes he can't take the same approach that SNHU did -- the space is much too crowded now. "I can't just throw a big net out and catch lots of fish. There has to be a lot of science, a lot of strategy," he says.

Rather than developing new online degrees, Hartman's focus will be on developing online certificates and short courses that focus on career advancement. "People want to take smaller bites out of the apple," he says. "They might not know if they're ready for an M.B.A., or they might already be saddled with debt."

Too many colleges have developed offerings that are not distinctive, says Hartman. "The reality now is that online courses, particularly in general education, have become a commodity. Why would you spend thousands of dollars developing an online course in psychology when a student can go to StraighterLine and take it for $99 a month?"

Joshua Pierce is CEO and co-founder of the College Consortium, a tech company that offers institutions an online course-sharing platform and services such as academic credit transfer.

Like Hartman, Pierce thinks the online education space is crowded with similar offerings. If more colleges pooled their general education resources online, they could free up resources to develop more distinctive offerings. "You don't have to do online the way everyone has done online," he says.

SNHU, ASU and others have been so successful online because they had leadership that took a "very long view," says Pierce. They built a lot of capacity in-house over many years, and now have lots of capital to play with. It would be difficult for any small college to catch up.

But Pierce says smaller colleges can be successful online. "They just have to work with what they've got."

Limited Room at the Top

Several institutions have tried and failed to go national with online programs, says LeBlanc. The University of Illinois Online, Colorado State University Online, the University of Florida Online and others have struggled to realize their goals, despite having strong, nationally known brands.

More players with a national footprint are likely to emerge. The University of Massachusetts, for example, is planning to launch a national online college to compete with SNHU and others.

But LeBlanc thinks new competitors will struggle to reach his institution's scale. Overall enrollment for adults in higher education isn't growing very much.

Colleges that can go national quickly are the ones that already have a national brand, says LeBlanc. The reason that some don’t succeed has to do with governance, politics, status, what they charge and many other reasons, he says.

“If you’re a school looking at us today and saying, ‘We’re certainly as good as, maybe a little bit better known than SNHU was 10 years ago -- we should do what they did,’ I’m not sure that’s the right playbook.”

If he were to start over in today’s environment, LeBlanc says he would again try to keep costs down as much as possible.

“We haven’t had a tuition increase online in years,” he says. “If you are going into this space thinking that you’ll be able to charge as much or more online than on-ground, you’re probably misguided. You have to start thinking aggressively about supply and demand and the continued downward pricing pressure on programs.”

One big thing he would do differently would be to build a more robust catalog of microcredentials and nondegree offerings tied to high-demand jobs.

Rather than asking how to take what SNHU does on-campus online, LeBlanc says he would ask, “What’s the highest-demand area that local regional employers have and how can I solve their problems as quickly as possible?”

Helping employers is a win for learners, as they want to secure new jobs quickly. “One of the things that is daunting for any online learner pursuing a degree is that there’s quite a deferred payoff.”

Continuing to Evolve

SNHU’s campus has transformed during LeBlanc’s presidency. He inherited a “pretty tired” infrastructure, but now the campus is filled with striking modern buildings.

People often assume the campus improvements took place only after SNHU hit it big online. But that isn’t the case. SNHU commissioned a campus revitalization plan in 2004 and began construction using bond dollars. “That plan and those investments began well before online took off,” he says. “Online just added rocket fuel to the process.”

Unlike WGU and several for-profits before it, SNHU so far has avoided opening satellite campuses close to where its students live.

But the university's acquisition last year of nonprofit LRNG may change that. The Chicago-based organization has been helping young people find job opportunities by encouraging them to acquire digital badges. A test site in Birmingham, Ala., has been particularly successful and could become SNHU's first "mini-site," says LeBlanc.

"Cost is still keeping a lot of people out of higher education," he says. "There's not only poverty of finance, but poverty of aspiration -- we've got to help people see themselves in higher ed, and maybe it has to look different to work for them. We've been learning a lot from LRNG in that respect."

While SNHU's campus is a major draw to prospective students who want to feel they are studying somewhere "real" even when pursuing an online degree, few students mix studying online with studying on campus.

"We're just not built for that," LeBlanc says.

In the future, LeBlanc would like to see the two modalities become more fluid.

"Students could choose to live on campus but take all their courses online. Someone could be taking courses online but do a residency on campus," he says. "We don't make that easy now. We're still in a campus-versus-online binary, and maybe it's the wrong binary."

SNHU is preparing to change, but in at least one respect, the university is already exactly where it needs to be: speed-to-lead times. It took one minute and 37 seconds for a University of Phoenix admissions representative to call us. SNHU took 35 seconds.

Lindsay McKenzie, *Marketing for a Massive Online University*, INSIDE HIGHER ED, Oct. 8, 2019, https://www.insidehighered.com/news/2019/10/08/how-marketing-helped-southern-new-hampshire-university-make-it-big-online.

EDUCATIONAL Marketing GROUP

(https://emgonline.com/)

Brand Bounce

(https://emgonline.com/blog)

The world of education marketing is changing daily. We will inspire you with what’s new on the horizon.

Topics

EMG News (https://emgonline.com/category/emg-news/)

Tactics (https://emgonline.com/category/marketing-comms-tactics/)

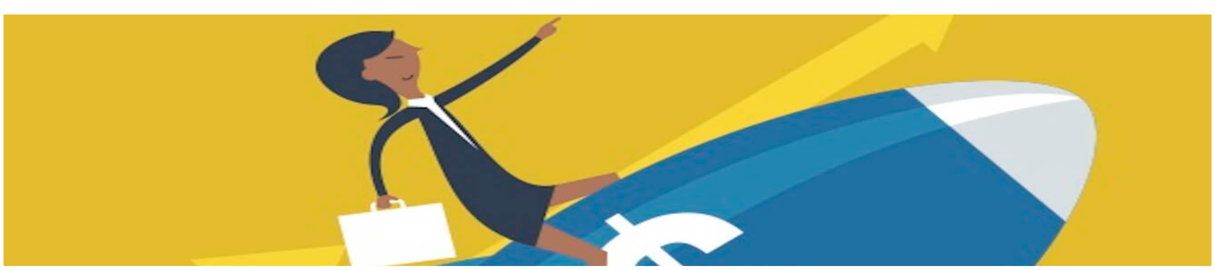
Strategy (https://emgonline.com/category/strategy/)

Digital (https://emgonline.com/category/digital/)

Creative (https://emgonline.com/category/creative/)

Advertising (https://emgonline.com/category/advertising/

Research (https://emgonline.com/category/research/)



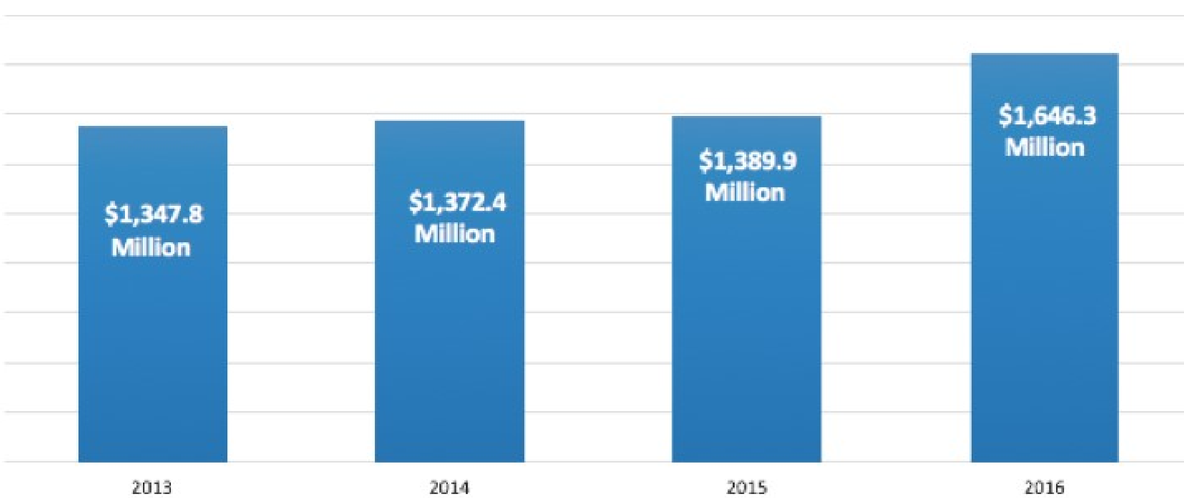
OCTOBER 5, 2017

College Advertising at All-Time High

Bob Brock (https://emgonline.com/author/bob-brock/)
PRESIDENT

Paid advertising by U.S. colleges and universities reached an all-time high of a $1.65 billion in 2016[1]. This represents a surge of 18.5% over 2015 expenditures and an increase of 22% since 2013, despite declines in advertising by the troubled for-profit educational sector.

Higher Ed Ad Expenditures, 2013-16

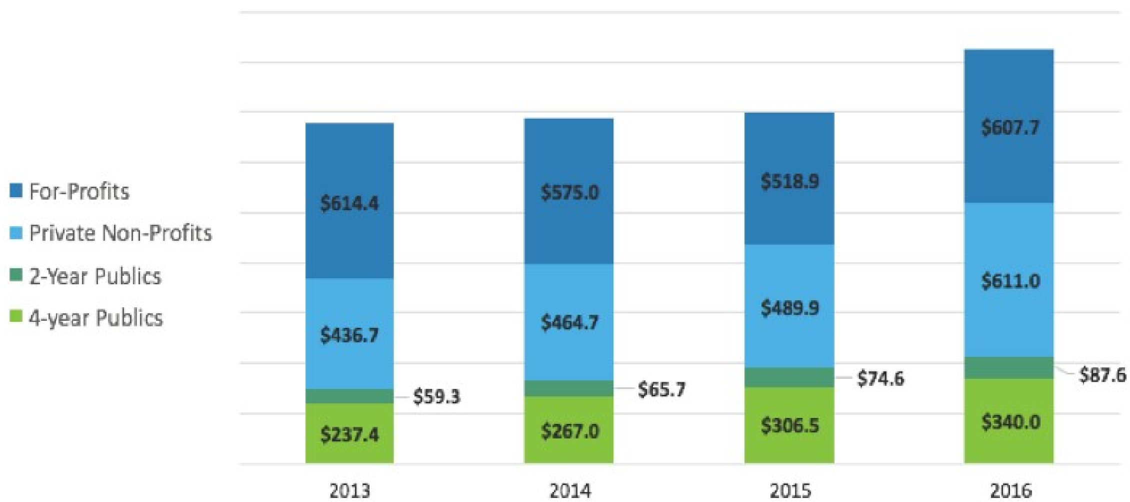


Ad spending by non-profit institutions – both public and private – accounted for almost two-thirds of all expenditures (63%) on behalf of higher education.

All categories of non-profit institutions have increased ad spending in recent years. For example, spending by 2-year public colleges nearly doubled (+48%) between 2013 and 2016.

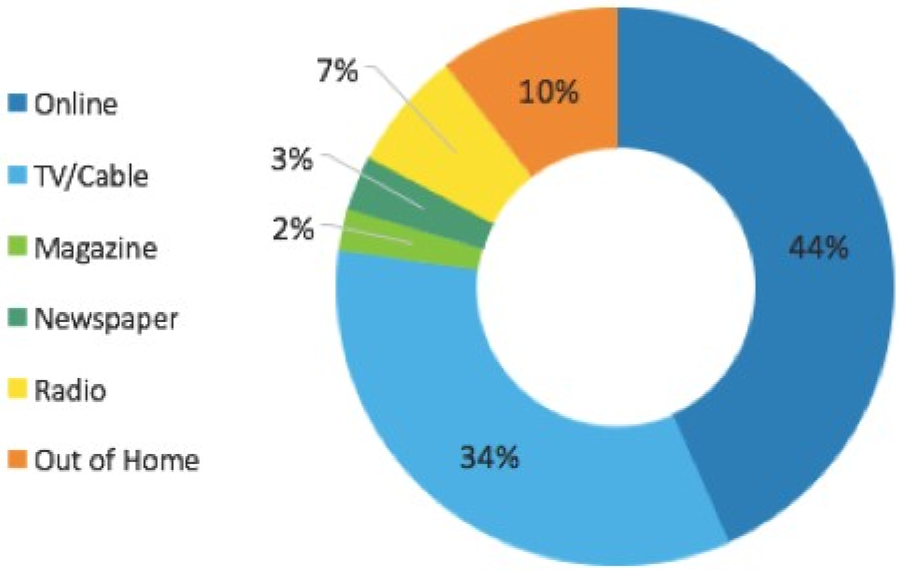
Similarly, advertising by 4-year publics grew by 43% during that same period. Private non-profit institutions expanded their ad buys by almost 40% between 2013 and 2016, while for-profit institutions decreased ad spending by 1.1% during the same period.

Advertising by Sector, 2013-16 (in millions)



Online channels continued to grow as the preferred platform for college and university media advertising, garnering 44% of the overall ad investments in 2016, up from 42% a year earlier. TV and Cable platforms remained the second highest-revenue media choice for academic advertising, receiving 34% of total ad spends.

Advertising Allocations by Platform, 2016



The increasing advertising investments coincide with steady declines in overall higher education enrollment over the past six years. Since 2011, U.S. fall enrollment in colleges and universities has decreased by 7.9%, according to the National Student Clearinghouse Research Center (https://nscresearchcenter.org/).

Contributing factors include flat and declining high school graduate populations in many regions of the country, continuing increases in the rate of employment (with many prospects choosing a job instead of college), rising costs of a college education, and signs that there has been an erosion of public confidence in the value of traditional college credentials.

Another factor spurring the growth of ad budgets has been the increasing interest in online courses and degree programs. As online enrollments have continued to be the strongest growth area in higher education, an expanding number of public and private institutions have jumped headlong into the online marketplace to offset market weakness in traditional bricks-and-mortar audiences. The fiercely competitive online marketplace has further increased overall ad spending levels.

In upcoming blogs, we'll delve in greater depth into the marketplace forces that are driving advertising and marketing growth and the startling dollars that some institutions are investing.

[1] Based on ad tracking data from Kantar Media and EMG estimates for online advertising. Data reflects estimated spends in traditional advertising based on placements tracked in 230 DMA's across the U.S. in cable/TV, radio, print, and out-of-home platforms and in online paid ads on the top 7,000 public websites, as compiled by Kantar Media. Paid ads in Search, social media, Pandora, mobile apps, and display ads on networks outside the top 7,000 U.S. sites have been estimated by EMG. Ad investments are estimated should be considered approximate and directional only.

Interested in more?

Check out our other posts on digital marketing (https://emgonline.com/category/digital/).

- Advertising (https://emgonline.com/category/advertising/), Research (https://emgonline.com/category/research/)
- # Advertising (https://emgonline.com/tag/advertising/), advertising data (https://emgonline.com/tag/advertising-data/), higher ed marketing (https://emgonline.com/tag/higher-ed-marketing/), paid advertising (https://emgonline.com/tag/paid-advertising/)

(https://emgonline.com/)

October 14, 2019

Submitted via NYC Rules Website

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Comments on Proposed Amendments to Part 5 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York

Dear Mr. Ortiz:

Strayer University and Capella University (the "Universities") submit the following comments in response to New York City Department of Consumer Affairs' ("DCA") invitation to comment on proposed amendments to Part 5 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York, entitled "New Rules to Prohibit Deceptive Advertising by Certain For-Profit Schools" (the "Proposed Rules"). As was the case with our comments dated April 4, 2019, we are grateful for the opportunity to comment and stand ready to be a resource to you on these and other matters.

Background

Capella University

Capella University, established in 1993, has built its reputation on delivering high quality, online graduate-focused programs to working adults. Approximately 70% of Capella's students are currently enrolled in master's- or doctoral-level degree programs in business, counseling, education, health care, information technology, nursing, psychology, public administration, public health, public safety, and social work, among others. Capella also offers bachelor's-level programs in areas such as business, information technology, nursing, psychology, and public safety.

Innovation has always been at the core of Capella's history and contribution to higher education. Expertise in competency-based education enabled Capella in 2013 to become the first institution approved by the United States Department of Education to award Title IV aid to eligible bachelor's- and master's-level degrees based on the direct assessment of learning, rather than the traditional model built around the time-based credit hour. Capella's FlexPath direct assessment programs offer the potential to significantly reduce the cost of a degree and accelerate the time required for degree completion.

Capella University currently offers 53 undergraduate and graduate degree programs with 129 specializations and more than 2,050 courses. Capella enrolls approximately 38,000 students, representing all 50 states and 54 other countries and territories. Capella is accredited by the Higher Learning Commission and is based in Minneapolis, Minnesota.

Strayer University

Since its founding in 1892, Strayer University has prepared working adults with the skills they need to succeed in a modern economy. Today, Strayer serves approximately 52,000 students, both online and at more than 75 campuses in 15 states and Washington, D.C. Students are offered rigorous and relevant undergraduate and graduate degree programs in business administration, accounting, information systems, information technology, human resource management, education, health services administration, management, and criminal justice.

Strayer serves the rapidly growing population of so-called "nontraditional" students who comprise the majority of postsecondary students today. The average age of Strayer students is 34, approximately 70% are female and approximately 75% are people of color. About three-quarters are pursuing business degrees and over 90% taking classes entirely online.

Strayer University is also taking steps to improve college affordability, student engagement, and workforce readiness through innovative initiatives such as the Graduation Fund (which offers bachelor's students one no-cost course for every three courses they successfully complete), SEI Studios (an in-house documentary film team that translates classroom lessons into engaging videos), and Degrees@Work (a partnership with employers to offer employees a no- cost degree).

Strayer is accredited by the Middle States Commission on Higher Education and based in Washington, D.C.

Oversight and Regulation of the Universities

The Universities are subject to the direct oversight and regulation of numerous federal and state agencies, as well as regional and specialized accreditors. Both Universities are federally regulated by the United States Department of Education and subject to various other federal compliance measures including the consumer protection regulations of the Federal Trade Commission. The Universities are each regulated not only by their respective home state authorities (Strayer University through the District of Columbia Office of the State Superintendent of Education and Capella University through the Minnesota Office of Higher Education), but also by the multiple state regulators where the universities operate physical campuses. Through their registration with their home-state authorities, the Universities are permitted to provide distance education to students in the 49 U.S. states that participate in the legislatively-approved state authorization reciprocity agreement administered through the National Council for State Authorization Reciprocity Agreements ("NC-SARA"). The State of New York is an NC-SARA member, hence both Universities are authorized to operate in New York. *See* N.Y. Comp. Codes R. & Regs. Tit. 8, § 49-2.1 (2016).

Both Universities are accredited by and subject to oversight from regional accreditors authorized by the United States Department of Education. A variety of programs at the Universities are also subject to review and approval by specialized accreditors, which operate to ensure that students receive an education that is consistent with standards for entry into practice or advanced practice in their field of study.

Comments on the Proposed Rules

Section (b) of the Proposed Rules

Omission of Material Facts

Section (b)(18) of the Proposed Rules prohibits a school's failure "to disclose . . . any fact . . . which is material to *the student's* decision to enroll in, or continue to attend, the school." (emphasis added.) While the Universities agree that all schools should fully disclose material facts about their programs and offerings, the Proposed Rule places an undue burden on schools to know every fact material to each and every student. Given the wide diversity of priorities, interests, and goals that every student brings to his or her higher education, *we recommend that the DCA modify Section (b)(18) to reflect the commonly applied standard for determining material omissions in advertising, which assesses whether the omission is likely to mislead a "reasonable consumer."*

Section (c) of the Proposed Rules

Adoption of Rigorous Admissions Policies

Section (c)(4) of the Proposed Rules prohibits schools from admitting students that it "knows, or should know" are unlikely to graduate or become employed in their field of study. The Universities believe in admitting students who have met objective admissions requirements aligned to the academic requirements of their programs. However, even with thorough academic support, some students cannot or choose not to finish their studies. Section (c)(4) is ambiguous in mandating that schools "should know" which applicant is likely to succeed in his or her studies and in obtaining employment. Of specific note and among other items, the rule asks schools to weigh the student's disability as a factor when making an admissions decision, and to predict whether a prospective student's disability will prevent him or her from being hired if given a reasonable accommodation. This analysis of the student's disability and employment prospects is one many schools are ill-equipped to perform, and which risks running afoul of state and federal protections for persons with disabilities. *We recommend that the DCA delete Section (c)(4) and replace it with a requirement that schools adopt legally compliant, consistently applied admissions policies requiring all students to have met minimum academic requirements before enrolling.*

Persistent Telephone Messaging

Section (c)(6) of the Proposed Rules limits certain types of telephone communications to no more than two messages in a seven-day period unless the messages are a direct response to a prospective student's inquiry. The Universities recognize and appreciate the modification from the previous proposed rules, which allows for direct responses to prospective students. The Universities also noted in our previous letter that adherence to the rule is complicated by the widespread distribution of New York City area codes associated with mobile devices and the widespread use of non-New York City mobile devices by residents of the city. *The Universities continue to recommend that Section (c)(3) be clarified to be applicable only to phone numbers associated with prospective students who have told the school that they live in New York City.*

Use of the Terms "Advisors" and "Counselors"

Section (c)(7) of the Proposed Rules prohibits the terms "advisors" and "counselors" being applied to individuals whose "primary role . . . is to . . . enroll students in the school." While the Universities agree that school staff should have titles that accurately reflect the roles they play with respect to students, it is important to note that schools are responsible for providing critical enrollment-related advising and counseling services to prospective students. Schools acting responsibly retain personnel who provide trustworthy guidance about whether the school's academic offerings are appropriate for students' needs. *The Universities suggest that the DCA revise Section (c)(7) to require schools disclose which functions that an individual with a title "advisor" or "counselor" supports. Personnel providing academic guidance should be called "academic counselor," enrollment guidance "enrollment counselor," career guidance "career counselor," and so on.*

<u>Section (d) of the Proposed Rules</u>

Confining Disclosure Data Sets to Residents of New York City

Section (d) of the Proposed Rules requires disclosure of data on its website pertaining to the total program cost, the graduation rates, graduate placement rates, total placement rates, median times to program completion, and median cumulative debt of *all* students in the program. *We believe that, as drafted, Section (d) is duplicative of federal disclosures already made by the Universities and could create significant confusion due to differing data collection sample size and methodology requirements. We believe that Section (d) could be strengthened by utilizing federal methodologies to provide data that is more relevant to consumers in New York City.*

As Title IV institutions, the Universities are subject to a variety of federal authorities requiring aggregate disclosures about their programs and student bodies. *See generally* 20 U.S.C. § 1092(a), 34 C.F.R. §§ 668.41, 668.43. In addition, the Universities comply with the reporting requirements of the Integrated Postsecondary Education Data Systems ("IPEDS"), a research and reporting arm of the United States Department of Education. *See* 20 U.S.C. § 1094 (a)(17), 34 C.F.R. §§

668.14(b)(19). Through these statutes and regulations, we make available to each incoming and currently enrolled student aggregated information about total program cost, completion rates, retention rates, graduation rates, placement rates, program length, debt loads experienced by our students and alumni, as well as additional information well beyond the scope of the disclosures in the Proposed Rules. This information is provided on the Universities' websites, is published by IPEDS on its website, and is used to power the College Scorecard and College Navigator websites published by the United States Department of Education. The College Scorecard was expanded in May 2019 and now includes robust new data sets, including graduation rates for non-first-time and non-full-time students, student loan debt by field of study, salary, average annual program cost, graduation rates, and student demographics. Meanwhile, the College Navigator recently introduced changes that allows data about schools to be disaggregated so that enrollment patterns can be monitored.

All New York City residents can access these information sources. However, because we prepare and provide the data published on those websites in the aggregate, they reflect our wide geographical footprint and do not address the particularities of the New York City market. We believe that the data most relevant to residents and consumers of New York City, and most helpful to their decision to enroll, is data that reflects the performance of other students and alumni who pursued higher education while living in New York City. The city's cost of living and job demand are likely to affect students' decisions to take on educational debt and influence the results of their job search after graduation. We believe that the disclosures in Section (d) of the Proposed Rules should reflect the considerations unique to living in New York City, and should be based on data that reflects the experiences of New York City residents.

The Universities suggest that the DCA modify the scope of the disclosure requirements of Section (d) to be based only on the performance of those students who are residents of New York City at the time of their enrollment. We further suggest that the disclosures be delivered directly to New York City students instead of published on the schools' websites. Publishing New York City-specific statistics on websites that are targeted at a national audience can lead to confusion among those readers who do not understand the localized nature of the data.

Once again, we are grateful for this opportunity to comment on the Proposed Rules, and we hope the DCA will consider these recommendations. We look forward to the opportunity to be a resource on these and other topics.

Respectfully submitted,

Richard Senese, PhD
President
Capella University

Brian Jones, J.D.
President
Strayer University

LIM COLLEGE

12 East 53rd Street
New York, New York 10022

T: 212.752.1530
F: 212.832.6708

www.limcollege.edu

October 17, 2019

Carlos Ortiz
Director of Legislative Affairs
New York City, Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Comments on NYC DCA Proposed Rules Regarding Deceptive Trade Practices of For-Profit Educational Institutions

Dear Mr. Ortiz,

As the President of LIM College and a member institution of the Association of Proprietary Colleges (APC), I am writing to express my concerns with the rules proposed by the New York City Department of Consumer Affairs ("NYC DCA") to regulate the speech and practices of certain for-profit educational institutions.

My colleagues and I submitted comments regarding the Department's first version of this proposal earlier this year and, while it seems the Department has taken under consideration a few of the concerns raised at that time, the Department has failed to address <u>any</u> of the larger factual and jurisdictional issues pointed out by the majority of commenters and testifying witnesses.

As with the first version of this proposal, the revised rules prescribe definitions, metrics, and practices for proprietary colleges that do nothing to benefit students and would, in fact, harm students by requiring colleges to publish conflicting and meaningless data in direct contravention of federal and State standards. Further, NYC DCA's stated basis for these proposed rules is that proprietary colleges are unregulated and, therefore, are likely engaging in deceitful behavior to the detriment of their students.

Yet, NYC DCA itself is making a misleading statement by its very suggestion that proprietary colleges "are neither licensed by the New York State Education Department nor accredited by the New York State Board of Regents". In making this statement, NYC DCA neglects to mention that licensure by NYSED is not the mechanism by which degree-granting colleges in New York State are even authorized to operate. In reality, colleges and universities are regulated by the State under a comprehensive and multi-faceted framework involving the grant of a charter and/or degree-granting powers by the New York State Board of Regents, a rigorous program registration process in which all aspects of each and every academic program offered by an institution are evaluated against stringent State standards (delineated in Part 52 of the New York State Commissioner of Education's regulations), and an institutional master planning approval process through which the State ensures institutions are serving their academic missions and their students well, among other things. The NYC DCA also neglects to mention that accreditation by the New York State Board of Regents is neither a State or federal requirement – in fact, the Regents serve as the federally-recognized accreditor for only 12 of out of 255 New York State degree-granting institutions, most of which are specialized institutions with limited academic programming, such as museums and hospitals. Further, <u>all</u> federally-recognized accrediting bodies (regional, national, and the New York State Board of Regents alike) are required to ensure that their accredited member institutions comply with an extensive array of federal regulations established by the U.S. Department of Education (USDOE) and overseen by the National Advisory Committee on Institutional Quality and Integrity (NACIQI), as well as their own internal standards for institutional quality and integrity. **This triad of state, federal and accrediting body oversight subjects all degree-granting colleges to extensive oversight and accountability measures, which inherently include prohibitions on engaging in deceptive and misleading practices – as does existing New York State law.**

It is evident from these facts that NYC DCA either is fundamentally misinformed or intentionally misconstruing the nature of higher education oversight in New York State. Given that these same points were raised with NYC DCA earlier this year, I can only conclude that NYC DCA's proposal is in bad faith – NYC DCA clearly has no intention of protecting students from bad behavior (and, indeed, does not even seem to care that its proposal will actually cause harm to students), but rather seems to propose these rules out of its own animus towards proprietary educators. NYC DCA not only lacks the legal authority to regulate New York State higher education, it is quite obvious that the Department also lacks the expertise to do so. New York State is home to many excellent colleges and universities, and the State's proprietary colleges are no exception. In an effort to help NYC DCA become better acquainted with LIM College, I am providing the below background information on the history and mission of LIM College, along with some examples of how NYC DCA's proposed rules would impact our students.

LIM College History & Mission

LIM College is a proprietary college located in Midtown Manhattan. It was founded under the name Laboratory Institute of Merchandising in 1939 by my grandfather, Maxwell F. Marcuse, and two colleagues from the fashion industry. A retailing executive, Maxwell Marcuse had an interest in education, and his concern about proper training led him to work on the establishment of New York University's School of Retailing. In addition, as a member of the Board of Higher Education of the City of New York, Marcuse was actively involved in the establishment of Queens College and the development of Brooklyn College on its present campus. Respecting Marcuse's experience in both retail and education, a group of retail executives from Saks Fifth Avenue, Macy's, Bloomingdale's, Gimbels, and B. Altman approached him with the idea that he should organize a program that would train women for a career in retail management. Marcuse founded the Laboratory Institute of Merchandising and incorporated in it what were then the unique concepts of cooperative education and instruction by adjunct faculty from the industry. In the 1940s, '50s, and '60s, LIM offered certificates to women interested in fashion merchandising with the goal of preparing them for retail positions, primarily in the management-training programs of major retail companies such as Macy's, Bloomingdale's, and Saks Fifth Avenue.

Maxwell's son, Adrian G. Marcuse, joined LIM College's leadership in 1962 and, from 1972 to 2002, he served as the College's president and CEO. Through the decades, the College continued to evolve to meet the needs of both students and industry. The New York State Board of Regents granted LIM College degree-granting powers in early 1972. Soon after, in 1977, LIM became the first proprietary college to receive accreditation from the Middle States Commission on Higher Education. LIM College has maintained its MSCHE accreditation for over 40 years, and the College's accreditation status was most recently reaffirmed in 2017 with commendation. Adrian Marcuse oversaw major strides in academic development at LIM College, with the College earning State approval to to grant a Bachelor of Professional Studies degree (B.P.S.) in 1983, a Bachelor of Business Administration degree (B.B.A.) in the field of Fashion Merchandising in 1996, followed by Bachelor of Business Administration (B.B.A.) degrees in Marketing (1998), Visual Merchandising (2003), and Management (2005).

In 2002, my father Adrian retired from LIM College and I took the helm as President. I am the third generation of the Marcuse family to lead LIM College, and our dedication to our students remains unwavering 80 years later. Before joining the College's leadership, I spent nearly two decades building a successful career in fashion retailing and apparel manufacturing, including as the former Director of Retail Planning for Donna Karan International, experience which embodies the College's focus on practice-based learning. Under my guidance, Laboratory Institute of Merchandising became LIM College in 2009, and the College has continued to experience a period of incredible strategic growth in enrollment, physical presence, and academic mission, as well as diversification of our student body both ethnically and geographically. Most notably, I have overseen LIM's ascension to become a master's degree-granting institution, leading to the development of unique Master of Professional Studies (M.P.S.) programs in Fashion Marketing, Fashion Merchandising & Retail Management, Global Fashion Supply Chain Management, and the Business of Fashion. I have also overseen the development of LIM College's first Bachelor of Science (B.S.) degree programs, which are in the fields of International Business and Fashion Media, as well as the launch of several of our programs in a fully online format.

In short, LIM College and the Marcuse family have played a long-standing and significant role in the development of fashion business education, experiential education, and the wider higher education community here in New York City and throughout the State. While LIM College has grown in size and evolved educationally, our original mission —to educate students through a practical hands-on curriculum and consistent exposure to the fashion industry — has remained unaltered since our founding in 1939. LIM College is proud of this mission and believes it is an essential part of our academic programming. Further, the interest, support, and cooperation of the fashion industry, business industry, and related industries have been essential to the success of LIM College's academic programs and students. Industry professionals have assisted in the development of cooperative curricula, served on the College's advisory board, served as professors and guest speakers, and – most importantly – helped our students launch successful careers in industries that are vital to both the New York City and global economy.

For additional information regarding LIM College's experiential learning focus, affordable tuition, and institutional accolades, please refer to <u>Exhibit A</u> of these comments.

Issues with NYC DCA's Revised Proposed Rules

LIM College is a well-respected degree-granting institution that draws prospective students from across the country and around the world. Despite our repeated reminders that both the State and federal governments comprehensively regulate institutions of higher education, NYC DCA's proposal unjustly paints LIM College as an illegitimate institution that cannot be trusted to publish truthful graduation rates, placement rates, program costs, and other key information of interest to students. The irony is that NYC DCA's own proposal would require LIM College to publish data on these points that would inarguably be misleading and inaccurate.

For example, NYC DCA's proposal prescribes a definition for graduation rate that would only take into consideration the number of full-time students who complete their programs within 100% of the normal time to completion (e.g., the number of students who complete a program in 4 years when a program has been designed to be completed within 4 years under normal circumstances). One major flaw with this prescribed definition is that it directly and materially conflicts with the longstanding graduation rate metric prescribed by federal and State regulators. Under federal and State standards, colleges are required to publish several graduation rates which are more nuanced in the figures represented and reflect the progress of students with varying enrollment statuses and higher education experience levels. For instance, federal regulators calculate an institution's graduation rate using a formula that takes into consideration the number of students who complete within 100%, 150%, and 200% of the normal time to completion, as well as the rates applicable to only full-time students vs. part-time students vs. transfer students. Another flaw is that DCA's cohort definition doesn't control for students who change their program of study, as graduates who complete their degree in an academic program that is different from the one they began their enrollment in are apparently excluded even if they completed within 100% of normal time. **Thus using NYC DCA's metric, LIM College would be forced to publish a graduation rate that differs from its federally-mandated graduation rate.**

Similarly, NYC DCA's proposal prescribes a definition for placement rate that only contemplates obtaining full-time and non-temporary work in the field of study, and only does so for the students who complete their program perfectly on-time. This metric is inherently flawed because, as noted above, a graduation rate that reflects only the 100% benchmark is not an accurate reflection of actual student progress, and using this flawed metric to further calculate placement rate will inevitably skew the results. Further, NYC DCA's prescribed definition of placement rate completely ignores and invalidates the work performed by graduates who pursue part-time work, freelance contracts, volunteer opportunities, and post-graduate education. **The DCA's metric is so narrowly constructed and qualified that it would force LIM College to advertise a placement rate that is less than a third of its actual employment rate.** Make no mistake, LIM College is incredibly proud of its graduate placement rates: Among the undergraduate class of 2018, 93% of graduates seeking employment secured positions throughout the fashion and related industries, with 94% of these alumni employed within 6 months of graduation. However, LIM College cannot accept NYC DCA's proposed placement rate formula – **as the federal government has explicitly held that an institution's accreditor is the only entity empowered and qualified to determine whether placement rate calculations are appropriate and, if so, how to calculate the metric**.

By demanding that LIM College publish a different graduation rate and placement rate using its own prescribed definitions, NYC DCA asks LIM College to ignore the mandate of the federal government and the best judgment of its accrediting agency. Most importantly, NYC DCA would be forcing LIM College to present students with contradictory information that only causes confusion. LIM College is committed to supporting students and, as an institution that prides itself on its integrity, cannot in good faith publish such misleading metrics that do nothing to benefit students. NYC DCA's proposal would only prevent students from having access to consistent and easily comparable information that is critical to their decision making process.

In Conclusion

I thank the New York City Department of Consumer Affairs for the opportunity to express my concerns with these proposed rules. Like its predecessor, this revised proposal is so misguided and flawed that it completely misses its mark – while it claims to protect students from misleading and deceptive statements, this proposal would actually increase the prevalence of misleading statements by requiring institutions to publish faulty data. NYC DCA simply lacks both the authority and the understanding needed to regulate colleges and universities in New York State. Accordingly, I urge NYC DCA to retract this proposal and, instead, explore ways to better serve students through partnerships with the New York State Education Department.

Sincerely,

Elizabeth S Marcuse

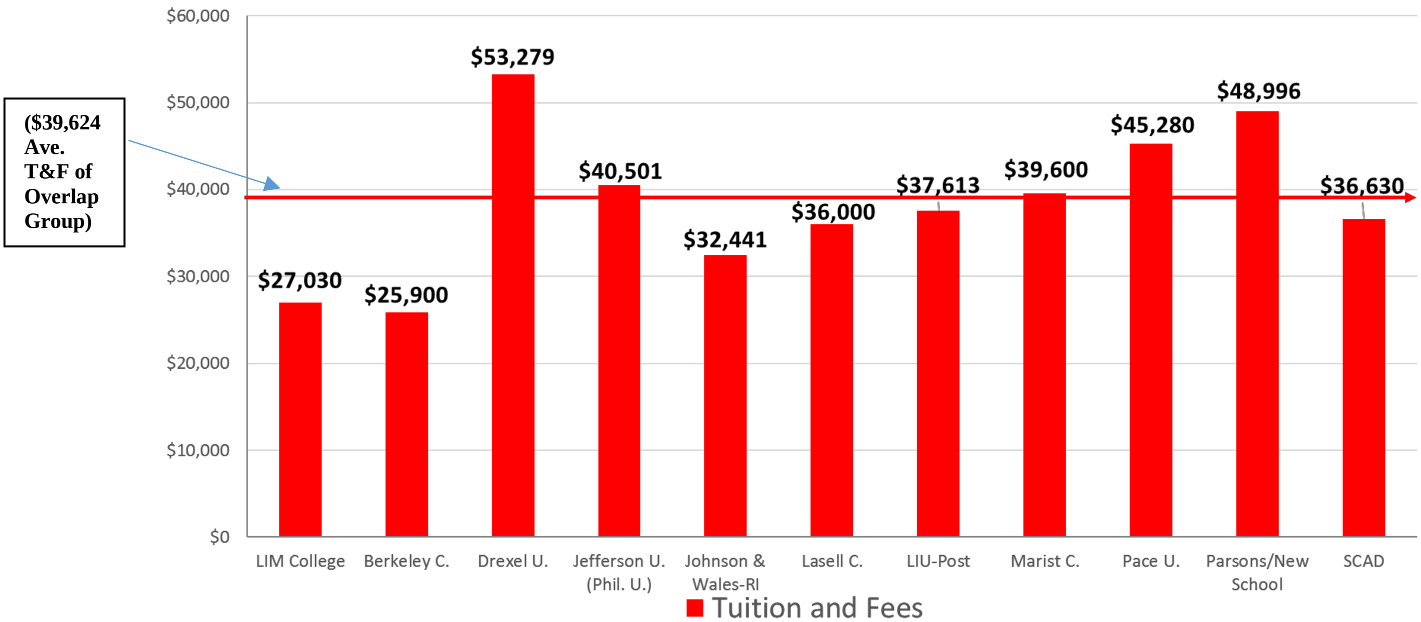
Elizabeth S. Marcuse
President
LIM College

Exhibit A
Additional LIM College Institutional Information

An Affordable Private Education

Today LIM College educates approximately 1,800 students annually in eight undergraduate degree programs and four graduate programs of study. The College has become a recognized leader nationally and internationally in the business of fashion, drawing students from 43 states and 37 different countries. LIM is a private college and we provide a private college experience with a student-to-faculty ratio of 9:1 and an average class size of 17 students. We do so at a competitive tuition rate that is well below the average tuition and fees of the top ten private colleges that our prospective students typically also apply to:

2018-19 Tuition & Fees Cost Comparison with Overlap Private Colleges



The College has worked tirelessly to keep tuition increases to a minimum at the same time we have reinvested our tuition revenue into continued improvement of our facilities and all academic, career, and other support services for students. The college has done so without the direct financial support of any New York state or federally provided funds – the type of tax-payer based funding that highly subsidizes public colleges and universities. Our students are eligible to receive NYS grant funds as well as federal grant and loan funds to assist with their cost of attendance, but those funds make up just less than 55% of our tuition and fees revenue.

Experiential Education and Industry Connections

Located in the heart of New York City —the nation's fashion and business capital —LIM College provides students with innumerable opportunities for firsthand experience and professional development. The College is widely recognized as a pioneer in experiential education known for fostering a unique connection between real-world experience and academic study in business principles. We require undergraduate students to complete 12 credits of experiential education in the form of focused career building seminars and 3 mandatory internships. During their first few years students intern in a retail and corporate setting for a total of at least 260 hours. During their final semester, students spend a minimum of 28 hours a week in an internship related to their specific career goals. Visits to fashion-related companies and guest lectures form industry professionals also expose students to a multitude of career options.

The College has exceptionally strong ties to the fashion industry and works closely with our Fashion Industry Advisory Board members to continually fine tune and adapt our academic programs to meet the needs of employers and to deliver sought-after talent – making LIM College a strong economic driver and workforce pipeline for one of New York's most important industries. Comprised of successful senior executives from a broad range of areas in fashion and related industries, the Fashion Industry Advisory Board assists and advises the College in areas that include curriculum, long-range planning, and industry outreach. Board members also mentor students, host trips to industry sites, speak in class, hire LIM students and alumni, and help the College to identify emerging areas of study.

LIM College alumni number over 10,000, and many have gone on to excel at top companies, including, but not limited to: Barney's, Bloomingdale's, Calvin Klein, Coach, *Harper's Bazaar*, Kenneth Cole Productions, Lord & Taylor, Macy's, Michael Kors, Neiman Marcus, Nordstrom, Ralph Lauren, and Tommy Hilfiger. And despite the tumultuous economic conditions of the last 10 years and tremendous changes transforming the fashion industry, the employment rate of LIM College graduates has remained consistently high**. For example, for the Class of 2018, 93% of undergraduates seeking employment secured positions throughout the fashion and related industries, with 94% of these alumni employed within 6 months of graduation. Among master's degree graduates seeking employment and who were eligible to work in the U.S., 90% secured positions in the fashion and related industries, with 90% of these alumni finding employment within 6 months of graduation.**

LIM College is widely recognized in the fashion industry as being a leader in fashion business education for 8 decades – providing top talent and supporting the economic development of one of New York State's most important industries – with more than 900 fashion company corporate headquarters located in the NY Metro Area.

Accolades

LIM College is committed to ensuring that our students receive a highly valuable education that will serve as a strong foundation for professional success, within the most supportive environment possible. This focus and dedication has resulted in many external accolades:

- In 2019 the *The Business of Fashion* (BoF) began awarding "Badges of Excellence" – and LIM was particularly noted for the "Long-Term Value" of all of our undergraduate as well as master's degrees – and the BoF recognized the College as one of **"The Best Fashion Schools in the World"**. The BoF is a leading digital authority on the global fashion industry.
- LIM College's online graduate degree programs were included in U.S. News & World Report's 2019 rankings of the Best Online Graduate Business Programs.
- In 2017 BoF's Global Fashion School Rankings placed LIM College among the Top 10 institutions in the world for graduate business education in fashion.
- The Princeton Review named LIM College to their "Best in the Northeast" list of colleges for 2019 -- the 15th consecutive year we have been recognized in this manner.
- For the past four years, Phi Theta Kappa, the oldest, largest and most prestigious honor society recognizing students pursuing two-year degrees, named LIM College to its "Transfer Honor Roll" as one of the 40 top colleges nationwide creating dynamic pathways to support students transferring from community colleges.
- LIM was ranked in the top 10% of value-added four-year colleges in the U.S. in a 2015 study by the Brookings Institution.

These distinctions are the types of recognition that any college would be proud of and affirm that we are a respected college in the full sense and weight of that word and not an "unlicensed school" that is somehow exempt from direct oversight or regulation. These third-party validators all attest to the quality and established reputation of our academic programs. And several of these accolades are based largely on the feedback of current and former LIM College students.

MANHATTAN CHAMBER OF COMMERCE

CHAIRMAN
MICHAEL KEMPNER

PRESIDENT & CEO
JESSICA WALKER

October 3, 2019

Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Dear Mr. Ortiz,

I write to you on behalf of the members of the Manhattan Chamber of Commerce, an organization that drives broad economic prosperity by helping businesses of all sizes to succeed in New York. On behalf of our members, I urge the New York City Department of Consumer Affairs (DCA) to reconsider and reject the proposed Rules on "Deceptive Advertising by For-Profit Educational Institutions."

There is no question that Americans are more burdened by student loan debt than ever. But this crisis affects students from all types of colleges and universities. A solution cannot be achieved by singling out for-profit institutions and trying to run them out of town, particularly when they serve a critical purpose in the city's vast educational landscape.

Berkeley College, with a campus in Manhattan, has been an extremely civic partner, not just with the Manhattan Chamber, but with organizations throughout New York City. They are part of the institutional fabric of our City, similar to the prestigious nonprofit universities that also call Manhattan home. Unlike their nonprofit counterparts in higher education, however, Berkeley also pays property taxes to the City of New York. But that is the extent of how they are dissimilar. Berkeley College is accredited by the Middle States Commission on Higher Education, the same accreditation awarded to NYU, Columbia University and even my alma mater, Princeton University. As explained on its website:

The Middle States Commission on Higher Education (MSCHE), through accreditation, mandates that its member institutions meet rigorous and comprehensive standards, which are addressed in the context of the mission of each institution and within the culture of ethical practices and institutional integrity expected of accredited institutions. In meeting the quality standards of MSCHE accreditation, institutions earn accredited status, and this permits them to state with confidence: "Our students are well-served; society is well-served."

I take issue with the premise and intent of these proposed Rules because Berkeley is an institution for higher learning. Their admissions staff are not salespeople.

The DCA's authority is limited to a variety of merchants of consumer goods and services, like cigarette dealers, ticket sellers, locksmiths, and other businesses dealing with goods or services for personal or household use. The DCA should not have jurisdiction over college education because education has never been considered a consumer good or service under State or Federal law.

Berkeley College has been an engine of upward mobility for students for more than 80 years in New York City. They are proud to be among the top colleges in the nation – ranking 9th of 158 colleges in New York State – for helping graduates move up the income scale. I have witnessed first-hand how seriously Berkeley College takes graduation and career placement and assistance. That is one of the reasons why they work with our Chamber and similar business groups throughout the City, to build relationships and place their hardworking students in internships and job opportunities.

The rules proposed by the New York City DCA are detrimental to the more than 2,500 undergraduate students of Berkeley College's New York City campuses and the alumni, implying that the degrees they worked so hard to attain are somehow not worth anything. Why is the DCA singling out a handful of institutions, but does not propose the same rules be applied to all colleges and universities? This is a terrible message to send.

It would be an unfair usurpation of regulatory authority, and frankly, misleading to the public, for DCA to govern colleges like businesses when no other New York State or federal regulators do so. In fact, DCA acknowledges in its report that its recommendations would require action in conjunction with New York State or the federal government. That is because NYC DCA cannot take these actions on its own as it is not empowered to regulate higher education, and it should remain that way.

On behalf of the members of the Manhattan Chamber of Commerce, I urge the New York City Department of Consumer Affairs to reconsider and reject these proposed rules. Thank you for your consideration.

Sincerely,

Jessica Walker
President & CEO
Manhattan Chamber of Commerce

THE COUNCIL OF
THE CITY OF NEW YORK

October 17th, 2019

Mr. Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Dear Mr. Ortiz:

I am writing to express our opposition to the proposed NYC DCA regulations regarding for-profit colleges. While I understand that your goal is to protect students from fraud and misleading information, the reality is that the proposed rule will harm colleges that have excellent outcomes, such as Monroe College in the Bronx, and will result in misleading and confusing information being presented to students.

The proposal assumes that degree-granting for-profit colleges in New York are unregulated. This is patently false. These colleges are regulated by the Board of Regents of the State of NY, the New York State Education Department, the US Department of Education, and accreditors such as Middle States Commission on Higher Education.

The proposal also falsely assumes that graduation rates are low at for-profit degree-granting institutions. Monroe College has an on-time associate degree graduation rate that is 10 times higher than the local public institutions.

The proposed regulation would have the effect of confusing and misleading New Yorkers since similar information should be available for similar programs at all colleges. For example, the proposed rule would result in one graduation rate being used by for- profit colleges and a separate rate being used by all other institutions. This will lead to massive confusion and is contrary to the mission of consumer protection.

The proposed rule limits communication to a prospective student to two communications in a seven-day period. This will harm students seeking assistance, especially first-generation students who often need outreach.

Lastly, the proposed rule takes a horrible step backward by requiring for-profit institutions to call their admissions advisors “salespeople” and makes it “a deceptive trade practice” to refer to the staff who help students enroll as “advisors” or “counselors.”

Unfortunately, there is a national movement that has now come to New York and New York City that is trying to eliminate the for-profit sector of education. The movement is philosophically opposed to the idea of for-profit education. It is not focused on student outcomes nor does acknowledge the impact these institutions have on our communities.

For these reasons, we ask that the Department of Consumer Affairs not rush to promulgate these ill-conceived rules and rather seek input from a wide range of constituents.

Sincerely,

Council Member Ritchie Torres

Council Member Rafael Salamanca Jr.

CITY HALL OFFICE
250 Broadway, Suite 1773
New York, New York 10007
(212) 788-6956

DISTRICT OFFICE
78-40 164th Street, Suite BB
Hillcrest, New York 11366
(718) 217-4969
rlancman@council.nyc.gov

THE COUNCIL
OF
THE CITY OF NEW YORK

RORY I. LANCMAN
COUNCIL MEMBER
TWENTY-FOURTH DISTRICT, QUEENS

CHAIR
COMMITTEE ON
THE JUSTICE SYSTEM

COMMITTEES
FINANCE
LAND USE
RULES
PUBLIC SAFETY
CRIMINAL JUSTICE
OVERSIGHT AND INVESTIGATIONS

SUBCOMMITTEE
ZONING AND FRANCHISES

October 22, 2019

Commissioner Lorelei Salas
New York City Department of Consumer Affairs
42 Broadway
New York, New York 10004

Re: Proposed Regulation of For-Profit Education Institutions

Dear Commissioner:

I write regarding the proposed rules propounded by the New York City Department of Consumer Affairs (the Department) with regard to for-profit education institutions. Two things concern me.

First, the proposed rules are poorly conceived. Specifically, they do not apply at all to non-degree-granting for-profit institutions operating in the City. Meanwhile, they include a list of prohibited practices that also do not apply to degree-granting colleges. Moreover, they include a prohibition on initiating communication with prospective students more than twice per week which, while perhaps well-intentioned, would unduly interfere with the process of finalizing admission and financial aid.

More importantly, these rules would represent a likely overreach by the Department, raising serious questions of preemption, as degree-granting for-profit institutions are already subject to regulation by the New York State Education Department and United States Department of Education.

Insofar as there may be any need for further consumer protections, it is my view that the City Council, and not the Department, has the authority and the deliberative process best suited to debating and enacting them. In short, I would urge the Department to seek partners in the City Council to develop legislation to address any gaps that may exist in existing federal and state regulations.

Thank you for your consideration.

Very truly yours,

Rory I. Lancman