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Jean-Didier Gaina  
U.S. Department of Education  
Office of Postsecondary Education  
400 Maryland Avenue Southwest  
Washington, D.C. 20202-6110

August 12, 2022

Re: NPRM - Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

Docket ID ED-2021-OPE-0077

Dear Mr. Gaina,

The National Student Legal Defense Network (“Student Defense”) submits this comment in response to the proposed 2022 Borrower Defense Rule (“NPRM”), published in the Federal Register on July 13, 2022.<sup>1</sup> This comment (one of five submitted by Student Defense) focuses on the Department’s proposed changes to the closed school discharge regulation. For the reasons set forth below, Student Defense strongly supports these proposals.

At the outset, we believe that the Department must keep two primary concepts in mind while drafting the final rule:

**First**, a closed school discharge is a statutory right for all borrowers who are “unable to complete the program in which [they are] enrolled due to the closure of the institution.” 20 U.S.C. § 1087(c). Over the years, the Department has interpreted that provision in ways that are both permissive and restrictive, such as the “comparable program” requirement or look-back window, both discussed below. But the statutory right is explicit and unchanged: if borrowers cannot complete the program in which they are enrolled due to an institutional closure, they are entitled to relief.

**Second**, there is frequent and widespread misinformation—especially by failing schools themselves—around the closed school discharge entitlement. Failing schools have an incentive to make sure students do not know about closed school discharges, in order to minimize their potential liability. We have learned from our experience representing students affected by school closures how egregious this misconduct can be. For example, when some of the schools owned by the Dream Center closed in 2018, students were not provided accurate or timely information about their closed school discharge rights or even the school’s closure date, making it impossible for them to make well-informed decisions about their future. The Third Annual Report of the Settlement Administrator Under the Consent Judgements with Education Management Corporation (EDMC)

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<sup>1</sup> 87 Fed. Reg. at 41,878 (July 13, 2022). Student Defense is a non-partisan, 501(c)(3) non-profit organization that works, through litigation and advocacy, to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility.

as Succeeded by Dream Center Education Holdings (attached as Exhibit 1) goes into detail about this misconduct at pages 31–35. After describing the Dream Center’s email to students announcing the closure, the settlement administrator explained:

That email, notably, did not provide the dates on which the schools would close or any concrete information regarding future options. When asked to provide any additional information or guidance that the company provided to its school representatives to whom current students would turn to understand what these changes would mean for them, DCEH provided nothing. Current students were told only that their schools were closing, sometime. DCEH advises that it did not provide students with additional information because during this time, the Department of Education instructed DCEH not to announce that the schools were closing. . . . Importantly, the information initially made available to students during this time period did not include sufficiently clear information about a fourth option, available through the Department of Education and required by federal law: the Department of Education’s Closed School Discharge program.

Exhibit 1 at 32–33.<sup>2</sup> It is shocking that the Department was complicit in not providing information to students about their closed school discharge right. Moving forward, it is critical for this rule to protect students against misinformation, ensure that they are aware of, and obtain, the relief that they are entitled to under the law, and minimize the potential for schools to game the system. Each of these points is further emphasized by the new Government Accountability Office (GAO) report finding that student loan borrowers whose schools close need more timely and complete information to know if they are eligible to have their loans discharged.<sup>3</sup>

### **1. Student Defense supports the reduction in time for eligibility under the automatic closed school discharge provision from three years to one year.**

Under the 2016 automatic closed school discharge regulation, borrowers would only qualify for an automatic discharge if they did not re-enroll in an eligible Title IV school within three years of the school’s closure date. Many commenters in 2016 recommended a shorter, one-year window, explaining that the vast majority of closed school borrowers transfer their credits within several weeks to months of closure and that other schools aggressively market and reach out to affected students immediately following the closure, not years later.<sup>4</sup> The commenters also explained that

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<sup>2</sup> See also Letter from Ill. & Colo. Att’ys Gen. to Sec’y of Educ. Betsy DeVos re: Loan Discharge for Illinois Institute of Art and Art Institute of Colorado Students (June 3, 2019), [https://illinoisattorneygeneral.gov/pressroom/2019\\_06/Letter\\_to\\_ED\\_Re\\_Group\\_Discharge\\_for\\_Illinois\\_Institute\\_of\\_Art\\_and\\_Art\\_Institute\\_Coloradostudents.pdf](https://illinoisattorneygeneral.gov/pressroom/2019_06/Letter_to_ED_Re_Group_Discharge_for_Illinois_Institute_of_Art_and_Art_Institute_Coloradostudents.pdf).

<sup>3</sup> See U.S. Gov’t Accountability Off., GAO-22-104403, *College Closures: Education Should Improve Outreach to Borrowers About Loan Discharges* (Aug. 10, 2022), <https://www.gao.gov/products/gao-22-104403>.

<sup>4</sup> See 81 Fed. Reg. at 76,037 (Nov. 1, 2016); see also Nat’l Consumer Law Ctr. et al., Comments from the Legal Aid Community to the Department of Education at 54 (Aug. 1, 2016), [https://www.nclc.org/images/pdf/special\\_projects/sl/comments\\_legal\\_aid\\_docketid-ED-2015-OPE-0103.pdf](https://www.nclc.org/images/pdf/special_projects/sl/comments_legal_aid_docketid-ED-2015-OPE-0103.pdf).

three years was too long because it forced borrowers to make payments during the wait-time, and face burdensome debt collection tactics if they were to default.<sup>5</sup> Student Defense cited these comments in October 2020, when it called on the Department to reduce the reenrollment period under the automatic provision to one year.<sup>6</sup> A September 2021 report by the U.S. General Accountability Office (GAO), cited by the Department in the NPRM, further underscores how the three-year period is too long, explaining that over 70 percent of borrowers who received automatic closed school discharges under the three-year provision were in default.<sup>7</sup>

Our experience representing clients living through school closures leads us to conclude that a one-year period best protects students against default while still providing them time to decide whether they want to continue their studies through an approved teach-out plan. As the Department correctly explains, “[p]roviding an automatic discharge one year after closure should give borrowers enough time to make thoughtful educational decisions but not be so long that there is a risk that those who are struggling would have their loans default.”<sup>8</sup> We therefore believe that this change is critical and will greatly benefit student loan borrowers who have been harmed and are unaware of their statutory right to a discharge.

**2. The Department should implement an automatic one-year grace period between the school closure date and the date borrowers are entitled to the automatic discharge.**

Under the Department’s current proposal, when a school closes, students who do not complete an approved teach out will be eligible for the routine six-month grace period pursuant to 34 C.F.R § 685.207(b)(2), then will enter repayment for six months, then will receive the automatic discharge (assuming they did not already apply). A cleaner, less burdensome, and more just approach would be for the Department to simply extend that grace period for an additional six months, such that borrowers who attend a school that closes will be entitled to a full one-year grace period before their automatic discharge rights are triggered.

This approach would ease the burden on student loan borrowers, who will not have to enter repayment for six months, as well as on the Department, who will not have to collect payments only to refund them six months later. It is also supported by the fact that institutional closures are typically abrupt, highly-disruptive events for students—impacting not only the education itself, but also the basic needs (housing, access to food supply, etc.) that often accompany enrollment.

**3. The Department should clarify that the automatic closed school provision is no longer limited to schools that closed after November 1, 2013, and more thoroughly explain the reason for that determination.**

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<sup>5</sup> *Id.*

<sup>6</sup> See Student Defense, *How to Bring Back and Improve Upon the Automatic Closed School Discharge Rule* (Oct. 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Automatic-Closed-School-Discharge-Rule.pdf>.

<sup>7</sup> 87 Fed. Reg. at 41,921 (July 13, 2022); see also U.S. Gov’t Accountability Off., GAO-21-105373, *College Closures: Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges* (Sept. 30, 2021), <https://www.gao.gov/products/gao-21-105373>.

<sup>8</sup> 87 Fed. Reg. at 41,921 (July 13, 2022).

During the 2016 Borrower Defense rulemaking, the Department “concluded that it would be administratively feasible” to provide the automatic discharge for borrowers who attended schools “that closed on or after November 1, 2013.” 81 Fed. Reg. (Nov. 1, 2016) at 76,039. It did not explain why it could not extend that date back further. In an October 2020 memorandum, Student Defense called on the Department to extend the November 1, 2013 date back in order to open the door to automatic relief to additional borrowers who do not know that they are statutorily entitled to a closed school discharge.<sup>9</sup> Student Defense further explained that, because the discharge is a statutory right, the Department should acknowledge its obligation to assist borrowers who it knows are eligible, no matter when the school closed.

While it appears that the Department proposes to eliminate the November 1, 2013 limitation, the NPRM is not entirely clear on this issue.<sup>10</sup> We agree that borrowers who attended schools that closed prior to 2014 are least likely know about their rights, and should receive this benefit if the Department is aware that they are entitled to it. We further presume that the Department is eliminating the November 1, 2013 limitation because it is also eliminating the comparable program requirement (discussed below), thereby clearing administrative hurdles that justified the limitation at the time of the 2016 rule. We support this position but believe it should be stated more clearly and be reflected in the Regulatory Impact Analysis’s budget projections so that it survives scrutiny. We therefore recommend that the Department clarify that there is no longer a limitation on the automatic closed school provision, and explain the reasons for that determination.

#### **4. Student Defense supports the uniform 180-day window.**

Proposed §§ 674.33(g)(4)(i)(B), 682.402(d)(1)(i), and 685.214(d)(1)(i)(A) would provide that a borrower who withdrew from a school not more than 180 days before the school closed may qualify for discharge, an increase in time from the 120-day period under current regulations for Perkins and FFEL loans. Student Defense supports this provision, which provides needed additional time and builds in consistency across loan types.

#### **5. Student Defense supports elimination of the “comparable program” requirement.**

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<sup>9</sup> Student Defense, *How to Bring Back and Improve Upon the Automatic Closed School Discharge Rule* (Oct. 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Automatic-Closed-School-Discharge-Rule.pdf>. See also Alex Elson, *Justice at Last: Pathways to Promptly Expanding Closed School and Borrower Defense Relief Using Existing Regulations* (Oct. 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Expanding-Debt-Relief.pdf>.

<sup>10</sup> See 87 Fed. Reg. at 41,921 (July 13, 2022) (“Several non-Federal negotiators were concerned about the Department’s initial proposal that would not have extended the possibility of automatic discharges for borrowers who attended schools that closed before 2014. The Department initially proposed this limitation on automatic closed school discharges because the Department’s enrollment information for those years is not sufficient to determine if a borrower re-enrolled in a comparable program. Non-Federal negotiators argued that the borrowers who attended schools that closed before 2014 are the borrowers who are least likely to be aware that they may qualify for closed school discharges.”).

The NPRM also proposes to simplify the closed school discharge process by eliminating the requirement that borrowers who reenroll in a comparable program lose eligibility for a discharge (but keeping the requirement that borrowers are not eligible if they accept and complete an approved teach-out program).

Student Defense supports this proposal. The comparable program requirement is not required by the Higher Education Act and has caused substantial confusion over the years. In our experience, when students want to transfer into related but not identical programs, they have no way to assess whether such programs might be considered “comparable,” as there is no rubric or standard to help borrowers make that determination. *See* 87 Fed. Reg. at 41,924 (July 13, 2022) (“[I]here is no definition of what constitutes a comparable program, creating a risk that a borrower will incorrectly believe a program to be comparable when it is objectively not comparable.”). As counsel to such borrowers, we find the standard too vague to reliably counsel them about where lines can or should be drawn. In addition, because the closed school application must be signed under penalty of perjury, the comparable program requirement may be chilling applications, as borrowers strive to be truthful but have no way to reliably assess whether their program is in fact comparable.

In addition, the comparable program requirement is unwieldy and burdensome to enforce, as the Department must make individualized assessments regarding the similarities between programs at different institutions. The risk of inconsistent results from such a process is also likely significant. To the extent available, any data regarding the Department’s enforcement of this provision (or lack thereof) on students who have transferred after receiving a discharge could further help to strengthen this proposal.

Student Defense therefore agrees with removing this requirement. Not only is the comparable program requirement not in the statute, but the HEA contemplates closed school discharges when the student is unable to “complete the program in which [they are] enrolled” due to the closure. Had Congress intended the discharge to apply when a student is unable to “complete the program in which they are enrolled, or any other comparable program,” Congress certainly could have said so. It did not. Removing the requirement is consistent with statutory authority and will streamline and simplify the closed school process for borrowers, for advocates and attorneys that counsel borrowers, and for the Department itself, which will no longer have to make these determinations.

#### **6. Student Defense supports the change to the definition of the school closure date.**

Under the current regulation (§§ 674.33(g)(1)(ii)(A), 682.402(d)(1)(ii)(A), and 685.214(a)(2)(i)), a school’s closure date is the date the school ceases to provide educational instruction in all of its programs, as determined by the Department. The Department proposes to amend this by specifying that, for purposes of a closed school discharge, a school’s closure date is the earlier of the date that school ceases to provide educational instruction in most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the school ceased to provide educational instruction for most of its students.<sup>11</sup>

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<sup>11</sup> 87 Fed. Reg. at 41,920 (July 13, 2022).

Student Defense supports this change. As we made clear in our August 30, 2018 comments to Secretary DeVos’s revisions to the closed school discharge regulation, the existing approach often leads schools to game the system:

Because current regulations tie student loan borrowers’ eligibility for debt relief to the school’s official closure date, closing schools can game the system, effectively limiting their liability for closed school discharges. Consider what happened at the Charlotte School of Law (“CSL”). On December 19 2016, the Department cut off CSL’s access to Title IV, HEA funds.<sup>12</sup> Because CSL sent “multiple signals” to its students about whether it would reopen for the spring semester in the aftermath of the Department’s decision, a large majority of CSL’s student body took steps to withdraw by early February 2017.<sup>13</sup> CSL did not officially close, however, until August 10, 2017—well beyond 120 days from the end of CSL’s add/drop period on February 3, 2017.<sup>14</sup> Simply by remaining open, then, CSL limited its liability for closed school discharges to only those students who had not yet graduated with their law degree, who had not yet transferred to another law school, or who had not withdrawn from further studies at the school until after finishing the spring semester.<sup>15</sup>

As discussed above, the Dream Center entities also engaged in such gamesmanship with the closure date.<sup>16</sup> These examples and others further justify the Department’s decision to amend the definition of the closure date.

\* \* \*

For the reasons stated above, Student Defense supports the Department’s revisions to the closed school discharge regulation. Student Defense also believes the Department should implement an automatic one-year grace period between the school closure date and the date borrowers are entitled to the automatic discharge. Thank you for your attention to these important issues facing student loan borrowers. For more information, please contact Student Defense Vice President Alex Elson at [alex@defendstudents.org](mailto:alex@defendstudents.org)

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<sup>12</sup> Press Release, U.S. Dep’t of Educ., Charlotte School of Law Denied Continued Access to Federal Student Aid Dollars (Dec. 19, 2016), <https://www.ed.gov/news/press-releases/charlotte-school-law-denied-continued-access-federal-student-aid-dollars>.

<sup>13</sup> Letter from Harriet Worley, Special Deputy Att’y Gen., State of N. C., to Betsy DeVos, Sec’y of Educ., U.S. Dep’t of Educ. at 1–3 (Apr. 12, 2017), [https://www.insidehighered.com/sites/default/server\\_files/files/2017\\_04\\_12\\_Ltr\\_to\\_Betsy\\_DeVos\\_re\\_CSL.PDF](https://www.insidehighered.com/sites/default/server_files/files/2017_04_12_Ltr_to_Betsy_DeVos_re_CSL.PDF).

<sup>14</sup> See *Closed School Search Page*, U.S. Dep’t of Educ., <https://www2.ed.gov/offices/OSFAP/PEPS/docs/closedchoolsearch.xlsx> (last visited Aug. 9, 2022); see also Letter from Harriet Worley to Betsy DeVos, *supra* note 11, at 4.

<sup>15</sup> See Student Defense, Comment Letter on Closed School Discharge, Docket ID ED-2018-OPE-0027 at 9–10 (Aug. 30, 2018), <https://defendstudents.org/comment-letters/document/comment-letter-20180830.pdf>.

<sup>16</sup> See Exhibit 1 at 31–35.

United States Department of Education  
Jean-Didier Gaina  
August 12, 2022  
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Sincerely,

The National Student Legal Defense Network

# **EXHIBIT 1**



THIRD ANNUAL REPORT  
OF THE SETTLEMENT ADMINISTRATOR  
UNDER THE  
CONSENT JUDGMENTS WITH  
EDUCATION MANAGEMENT CORPORATION  
(EDMC) AS SUCCEEDED BY  
DREAM CENTER EDUCATION HOLDINGS

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October 1, 2017 – September 30, 2018

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## EDMC – Third Settlement Administrator Report Outline

### I. INTRODUCTION

#### A. Consent Judgment and Administrator

This is the Third Annual Report prepared by the Settlement Administrator in connection with the 2015 settlements between Education Management Corporation (“EDMC”) and 39 individual states and the District of Columbia (collectively, “the Consent Judgment”) to resolve consumer protection claims arising out of EDMC’s recruitment and enrollment practices. It is also the first report that describes the company’s operations and compliance efforts under entirely new management: In October 2017, EDMC sold substantially all of EDMC’s assets to Dream Center Education Holdings, LLC (“DCEH”), an educational affiliate of the Dream Center Foundation (“Dream Center”),<sup>1</sup> a Los Angeles-based non-profit organization that provides a variety of social and religious services to individuals in difficult situations.

The Consent Judgment imposes a variety of terms that bound EDMC and that now bind DCEH.<sup>2</sup> Some of the terms required action in a compressed period of time, like the Consent Judgment’s requirement that the company forgive the institutional debts of certain students within 90 days of the Consent Judgment’s effective date.<sup>3</sup> Other requirements require the company to provide certain consumer protections for periods of seven years, like maintaining a call monitoring system,<sup>4</sup> or twenty years, like providing a single-page disclosure sheet that provides specified information to prospective students.<sup>5</sup>

The Consent Judgment specifies that the Administrator’s term is to last three years,<sup>6</sup> but the Attorneys General may extend that term for up to two additional years if there is “a failure by [DCEH] to achieve and maintain substantial compliance with the substantive provisions of the Consent Judgment.”<sup>7</sup> This Report is the Administrator’s third and final report of the three-year term, and is based on the monitoring of calls recorded in the admissions process, reviews of marketing material, job data, and other materials, rounds of formal employee interviews in May and August 2018, ongoing discussions with compliance personnel, reviews by third-party consultants, participation in EDMC trainings, observations of team meetings, and mystery shops. At times during the course of this Consent Judgment, the Administrator has also received unsolicited information from individuals involved with the company or its schools, through the Administrator’s website, complaints forwarded by State Attorneys General, and other channels, and the Administrator has investigated issues arising from that information.

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<sup>1</sup> Dream Center Education Holdings, LLC, is the affiliate that acquired the schools in the transaction, which closed October 17, 2017.

<sup>2</sup> See Consent Judgment ¶ 134.

<sup>3</sup> Consent Judgment ¶ 120-21.

<sup>4</sup> Consent Judgment ¶ 95.

<sup>5</sup> Consent Judgment ¶¶ 56, 124.

<sup>6</sup> Consent Judgment ¶ 38.

<sup>7</sup> Consent Judgment ¶ 49.

## **B. Summary of Findings**

### **1. The Transition to DCEH**

As described in prior reports, the first year of the Consent Judgment was characterized by significant investment in compliance infrastructure and efforts at pushing that infrastructure and a revamped culture of compliance into the outer reaches of a large and diffuse organization. In the second year of the Consent Judgment, progress somewhat stagnated: EDMC was clearly struggling financially and preparing to be sold; while the company was largely able to maintain the status quo, it was unable to invest in new initiatives, and senior compliance personnel left in advance of a transition.

This third year has been dominated by a major shift in compliance culture and approach from DCEH and its new management. The Dream Center Foundation has described the new educational endeavor as an expansion of the services that the Foundation provides to individuals in transition, and consistent with that mission, is transitioning the schools from for-profit to non-profit status. That transition is being overseen a management team with a history of for-profit endeavors. DCEH leadership is clearly driven to save what they believe to be a business at serious risk of failure – one they believe to be worse off than they expected or were led to understand at the acquisition – and have found limited capital available to invest in its long-term compliance future.

With respect to the core issues of compliance at the heart of the Consent Judgment, the third year has been characterized by two distinct periods: a very rocky period in the first half of the year, raising new and troubling issues, followed by signs of improvement after a restructuring of the compliance team in August and September 2018. Had that significant change of direction not occurred, the Administrator has no doubt that the conclusions of this report would be dire. Since August, there have been positive signs of improvement, but the critical question is whether DCEH leadership will support continued compliance improvements going forward.

The goal of the Consent Judgment no doubt was to bring about significant compliance reforms at EDMC that would last far beyond the term of the Settlement Administrator. There have been important changes that have eliminated or at least reduced the incidence of consumer protection issues that led the state Attorneys General to begin investigating in the first place. But the company is at an inflection point; there remains real uncertainty about whether the progress it has made will continue into the future or whether the company, under DECH's leadership, will backslide.

### **2. Results**

The change in management has brought several changes in results.

*Call monitoring.* First, there is one area in which the new management has not changed EDMC's prior results, and which is an unqualified success of the Consent Judgment: DCEH has maintained the call monitoring system required by the Consent Judgment, randomly listens to a meaningful number of calls to identify violations and training opportunities, and has, for the most part, eliminated the incidence of high-pressure, abusive, or deceptive sales tactics that characterized EDMC and the industry in the years prior to the Consent Judgment. With

occasional inaccuracies that are best described as isolated, admissions and financial services representatives are providing accurate, comprehensive information to the prospective students whom they are attempting to enroll.<sup>8</sup> The call monitoring system is a critical component of the compliance architecture, and the focus of the state Attorneys General on that system has paid significant dividends.

Other infrastructure investments required by the Consent Judgment have also been beneficial. Prospective students are in a position to make better-informed decisions as a result of the Single-Page Disclosure Sheets<sup>9</sup> and Electronic Financial Impact Portal<sup>10</sup> that EDMC and DCEH have made available. And early in the Consent Judgment, EDMC successfully implemented the institutional debt forgiveness program that the Consent Judgment required.<sup>11</sup>

Outside these areas, however, the third year of the Consent Judgment has raised new and problematic issues that could not easily be addressed through training, job aids, and modifications to policies and procedures. As discussed further below, the Administrator identified three incidents constituting substantial non-compliance with the Consent Judgment and requiring corrective action plans.

*Woz U.* In March 2018, DCEH’s Art Institutes announced a partnership with a for-profit educational entity – also controlled by DCEH leadership – called Woz U. The partnership contemplated a 12-week, full-time, intensive software coding “boot camp” under the Woz U brand. From a Consent Judgment perspective, DCEH provided or endorsed misleading information to prospective students regarding the nature of the partnership (whether an Ai program or something else), the status that completers of the Woz U boot camp would obtain (whether “graduates” or something else), and the job placement successes that previous completers had enjoyed. Apart from the Consent Judgment, the arrangement raised questions about DCEH leadership’s use of their new company’s *non-profit* status to benefit their separate *for-profit* projects. Ultimately, DCEH agreed that it would not proceed with Woz U. It is now separately developing a different suite of “boot camp” offerings, developed entirely in-house.<sup>12</sup>

*Gainful Employment.* Department of Education regulations require that for-profit schools provide significantly more disclosures than non-profit schools, including clear and conspicuous warnings for degree programs that fail to meet minimum “Gainful Employment” requirements. While DCEH is organized as a non-profit entity for tax purposes, the Department of Education had not approved the transition to non-profit status for Department of Education regulatory purposes. Accordingly, DCEH should have been making all of the Gainful Employment disclosures – including clear warnings for programs that had failed – required of for-profit schools. While aware of its formal regulatory position as a for-profit school, DCEH elected to make the narrower disclosures required of non-profit schools. DCEH explained that it did so because the Department of Education had signaled that it *would* approve the transition to non-profit status, making enforcement against DCEH unlikely for making only the narrower

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<sup>8</sup> More information regarding DCEH’s call monitoring capabilities is available beginning on page 17, below.

<sup>9</sup> More information regarding the Single-Page Disclosure Sheets is available beginning on page 38, below.

<sup>10</sup> More information regarding the Electronic Financial Impact Portal is available beginning on page 58, below.

<sup>11</sup> More information regarding the institutional debt forgiveness program is available beginning on page 56, below.

<sup>12</sup> More information regarding the Woz U issue is available beginning on page 21, below.

disclosures during the transition. DCEH ultimately agreed to post all of the disclosures required of for-profit schools, pending a decision by the Department of Education.<sup>13</sup>

*Accreditation Disclosures.* On January 20, 2018, the Higher Learning Commission (“HLC”) downgraded the status of the Illinois Institute of Art and the Art Institute of Colorado from “accredited” to “candidate” – a move that, in HLC practice, means that the schools were unaccredited. DCEH did not inform students that the schools had lost their accreditation for several months – during which time students registered for additional terms and incurred additional debts, for credits that were significantly less likely to transfer to other schools and towards a degree that was to have limited value. DCEH explained that it disagreed with and was appealing HLC’s decision, and hoped to have the accreditation reinstated retroactive to January 20. Whatever conclusions are reached regarding DCEH’s status under the Consent Judgment on other issues, DCEH should not be said to be in substantial compliance with the Consent Judgment until it completes the corrective actions necessary to resolve this issue.

While not itself a violation of the Consent Judgment, the “tone” that new DCEH management set upon arrival was also distinctly different from the tone set by the new management’s predecessors. DCEH leadership indicated that under EDMC, Risk and Compliance had too much influence on the business. The newly installed officer called a key compliance team, the Business Practices Committee, the “*Business Prevention Committee*” – in a meeting with the committee itself. The CEO accused the compliance team of being “the place where everything goes to die.” Employees who identified compliance questions and risks were not thanked, but accused of being obstructionist. The new tone was one that suggested compliance was a burden, not a critical element of the company’s mission.<sup>14</sup>

Concerns about these issues have been a topic of significant discussion between DCEH leadership and the Administrator. Importantly, there have been signs of improvement in DCEH’s compliance efforts over the final months of this review period. The company hired a new Senior Vice President of Compliance and Regulatory Affairs, reporting to the General Counsel and the Chief Academic Excellence Officer. The company has begun working more proactively to raise compliance issues. Where the company had initially, and implausibly, denied violating relevant requirements, DCEH has begun implementing corrective action plans. And the company’s new Chief Marketing Officer has developed plans to dramatically reduce DCEH’s reliance on some of the industry’s more problematic recruiting tactics.

The change in tone and attention to compliance following the restructuring was necessary. But the unevenness of DCEH’s commitment to compliance over the past year does not provide confidence that DCEH has truly turned the corner for the future. If the compliance team continues to operate as it has in the last few months and is given the freedom, authority, and support necessary to do its job, there is a basis for optimism.

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<sup>13</sup> More information regarding the Gainful Employment issue is available beginning on page 26, below.

<sup>14</sup> Issues regarding tone are addressed throughout the report, including in a focused discussion beginning on page 11, below.

### 3. Concerns Looking Forward

As this third review period comes to a close, it is worth looking ahead. There are a number of areas in which DCEH's recent history suggests that backsliding is at least a possibility.

First, notwithstanding improvements in recent months, DCEH's commitment to a culture of compliance is uncertain. While DCEH hired a senior compliance manager, many of the challenges over the past year have been driven by senior leadership; even the strongest Risk and Compliance department cannot change a company whose employees doubt the leadership's commitment to compliance. Time will tell whether the compliance team receives the institutional support that it needs, whether leadership promotes additional initiatives that are flawed from a compliance perspective, whether the organization resists them, and how leadership responds.

Second, DCEH is still in the process of completing a corrective action plan that the Administrator required for violation of the Consent Judgment. As a result of DCEH's failure to advise students that certain schools had lost their accreditation on January 20, certain students stayed in the unaccredited schools, incurring additional debts to obtain credits that were less likely to transfer or a degree that was worth less than they expected. The Administrator has asked DCEH to prepare a corrective action plan to assist the affected students. While DCEH is appealing the accreditation decision at issue, and a decision is unlikely before the Administrator's term expires on December 31, 2018, DCEH is aware that the Administrator will expect it to provide and complete a corrective action plan if the appeal is unsuccessful.

Third, DCEH announced in July 2018 that for financial reasons, it would be closing thirty of its schools. The closures would affect about half of DCEH's total schools and about a quarter of its total enrollment, and would have significant consequences for students. As DCEH encourages students at these teach-out locations to enroll in other DCEH schools, it must provide accurate and materially complete information to students. In the initial steps of the closures, the Administrator has worked to ensure that DCEH informs students at these schools of the Department of Education's Closed School Discharge program, through which students at closed schools who meet certain criteria can apply to have their federal loans forgiven. DCEH is still working to inform students at some of these schools of the actual date on which their schools will close, which can be a key piece of information for students considering applying for a Closed School Discharge. As the teach-outs proceed, the accurate and complete communication required by the Consent Judgment will be important in helping these students make the choices that are best for them.

Fourth, the issue of DCEH and its non-profit status will continue to require scrutiny. The abandoned Woz U initiative would have involved DCEH, the non-profit, making payments to a for-profit entity controlled by DCEH's own leadership. Perhaps it was a sensible business or educational arrangement, but the rationale for it was by no means clear, and the legal and appearance issues of personal benefit to the management of the non-profit were cause for serious concern. While DCEH decided not to move forward with the Woz U initiative, DCEH also indicated that it would consider other arrangements going forward, some of which might include



contracting with for-profit entities for substantial services. Such efforts in the future would merit close scrutiny by the Dream Center Foundation, the DCEH Board, and the Attorneys General.

Fifth, while one of the DCEH Consent Judgment's successes has been the accuracy of the data and nature of the discussions that DCEH representatives provide prospective students, there are reasons to be vigilant going forward. With respect to the data, there are concerns in the company that DCEH is not adequately investing in its data reporting infrastructure, and over time, the information will become less accurate. With respect to the nature of the discussions that admissions representatives have with students, the Administrator has been encouraged by the Risk and Compliance team's shift towards random call monitoring over this review period, and would want to see call monitoring proceed at present levels or higher.

Sixth, DCEH has laid out a three-year goal of nearly eliminating its use of third-party lead generators. These vendors are difficult to monitor and have caused compliance challenges for DCEH, EDMC, and others in the industry for years. DCEH's new Chief Marketing Officer believes that reducing its reliance on these vendors will give the company better control over how its brand is perceived, and lead to better, more cost-effective marketing. It is also worth noting that at schools that have eliminated the use of third-party lead generators entirely, they have saved substantially on the large compliance infrastructure that that marketing channel requires. Reducing reliance would be beneficial from a compliance perspective – but it is worth noting that at the beginning of the Consent Judgment, EDMC also laid out a three-year plan along similar lines. Reducing such reliance is difficult.

## **II. DCEH**

### **A. Consent Judgment Background**

#### **1. EDMC and the Consent Judgment**

At the time of the November 2015 Consent Judgment with the state Attorneys General, EDMC was one of the largest for-profit providers of post-secondary education in the country. Formerly a public company, EDMC had delisted from the NASDAQ in 2014, eighteen years after its first public offering. At the time of the Consent Judgment, EDMC claimed to manage 109 locations in 32 U.S. states and in Canada and serve over 90,000 students in its four separate brands, or systems: The Art Institutes (Ai), Argosy University, Brown Mackie College, and South University.

EDMC became the subject of several state investigations beginning in 2010. Over a two-and-a-half year period, EDMC received subpoenas from the Attorneys General of Florida, Kentucky, New York, Colorado, and Massachusetts.<sup>15</sup> The subpoenas were followed by requests for information from thirteen states in January 2014, with the Pennsylvania Attorney General's office serving as the states' principal point of contact.<sup>16</sup> Following more than a year of subsequent discussions, EDMC entered into a settlement with 39 states and the District of Columbia to resolve consumer protection claims arising out of its recruiting and enrollment

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<sup>15</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 36.

<sup>16</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 36.

practices. The settlement was resolved through nearly identical consent judgments entered in the various states,<sup>17</sup> referred to in this Report as the Consent Judgment.

The Consent Judgment appointed an independent Settlement Administrator to monitor EDMC's compliance with the Consent Judgment's requirements and issue annual reports. The Consent Judgment imposes requirements on EDMC and, as discussed below, successor companies for varying number of years: seven years of maintaining a call recording system,<sup>18</sup> twenty years of most other requirements.<sup>19</sup>

## 2. The Dream Center Transaction

At the beginning of this review period, EDMC closed a sale of substantially all of its assets to Dream Center Education Holdings, LLC ("DCEH"), an educational affiliate of the Dream Center Foundation ("Dream Center"),<sup>20</sup> a Los Angeles-based non-profit organization that provides a variety of social and religious services to individuals in difficult situations. DCEH announced that it would convert the EDMC schools into "community focused not-for-profit educational institutions" that, among other things, provide educational opportunities for Dream Center volunteers and the recipients of its services.<sup>21</sup> DCEH leadership has also discussed building a stronger connection between its programs and the private employers with whom DCEH hopes to place graduates, through redesigned academic offerings and partnerships with prospective employers.

That sale to DCEH is one part of an even longer period of transition. In the years since the Consent Judgment was entered, EDMC had sold or closed several of its schools, including the entire Brown Mackie system, and had been in the market for a purchaser for some period before the Dream Center announcement. From a compliance perspective, the period during this uncertainty meant that following significant initial investments at the Consent Judgment's beginning, there was little investment in proactive compliance initiatives and an otherwise effective compliance staff. This was the situation that DCEH faced when it acquired EDMC's assets.

### B. DCEH

#### 1. New Management

With the change in ownership came a change in management. DCEH installed a new leadership team. Its new CEO, Brent Richardson, had previously served as chairman and chief executive officer at Grand Canyon University, where he oversaw the school's conversion from non-profit to for-profit status, and ultimately to an initial public offering, and has had roles in

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<sup>17</sup> The various consent judgments all share identical requirements for the core provisions, although certain states also added additional provisions that apply specifically to that state. EDMC is implementing the Consent Judgment provisions in every state in which it operates, regardless of whether that state participated in the Consent Judgment.

<sup>18</sup> Consent Judgment ¶ 95.

<sup>19</sup> Consent Judgment ¶ 124.

<sup>20</sup> Dream Center Education Holdings, LLC, is the affiliate that acquired the schools in the transaction, which closed October 17, 2017.

<sup>21</sup> See Dream Center Foundation Press Release, "Education is the Key" (Mar. 3, 2017), available at <https://dreamcenter.org/about-us/foundation/>.

numerous for-profit education companies. His brother, Chris Richardson, became DCEH's General Counsel; Shelly Murphy, who had roles in other Richardson companies, became DCEH's Chief Officer, Regulatory and Government Affairs. The new leadership brought in other key managers who had worked with Richardson previously or who had other for-profit education experience.

The new management did not appoint a C-suite level officer who was focused on compliance issues, as the Administrator's Second Annual Report had recommended; instead, the company's compliance functions reported up to Murphy.

## 2. Non-Profit Status

A critical part of DCEH's vision for the network of schools was their conversion from for-profit to non-profit status. This change would be consistent with the purposes of the new company's owner, The Dream Center Foundation, and the Foundation's social and religious mission.

The change also has regulatory significance, as the Department of Education treats for-profit and non-profit schools differently. First, non-profit schools are not subject to the Department of Education's "90/10 rule," a mechanism that ensures that for-profit schools are receiving at least some level of market-based support. In short, the 90/10 rule requires for-profit colleges to receive at least 10% of their revenue from sources other than federal financial aid. Non-profit colleges are subject to no such restriction, and are permitted to cover all of their costs through reliance on federal financial aid provided for students. While there are financial trade-offs, the shift to non-profit status thus can be a significant benefit from a revenue perspective – particularly for schools that have had difficulty generating revenue from sources other than the federal government.

Second, the Department of Education has different disclosure requirements, particularly regarding the typical debt and earnings of program graduates, for for-profit and non-profit schools. The disclosures provide important information for prospective students, as programs that are subject to these Gainful Employment rules and that fail to meet minimum requirements must issue clear warnings to students and prospective students about their programs' failure.<sup>22</sup> The Gainful Employment regulations apply more broadly at for-profit schools; programs that would fail the Gainful Employment regulations and require disclosure at a for-profit school may not need to make that disclosure once a school becomes a non-profit.

For purposes of the Consent Judgment and compliance purposes, it is important to distinguish between DCEH's and its schools *tax status* and its *Department of Education regulatory status*. As a matter of tax law, DCEH has been organized as a non-profit entity under Section 501(c)(3) of the tax code since the time of the EDMC-DCEH transition. However, for Department of Education regulatory purposes, DCEH schools remain treated as *for-profit* institutions – notwithstanding DCEH's tax status – until the Department of Education specifically approves the transition to non-profit status. Until that Department of Education recognition, DCEH and its schools must comply with the various state and federal laws

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<sup>22</sup> 34 C.F.R. § 668.410.

governing non-profit management – such as restrictions on using a non-profit to personally benefit the organization’s management in certain prohibited ways – but is treated as a for-profit for purposes of the Department of Education’s 90/10 and Gainful Employment rules. While DCEH believes that the Department has begun treating DCEH as a non-profit in certain important ways, the Department has also advised DCEH that it remains a for-profit institution for regulatory purposes until final approval is obtained.

### 3. Organizational Changes

DCEH has faced ongoing financial pressures since taking over, and its management believes that the company was in a weaker position than they expected when they took the helm. In a year of organizational change, two changes had particular impact.

First, in April, DCEH engaged in a significant round of layoffs. While the layoffs affected other parts of the company more dramatically, employees with compliance responsibilities for the Business Practices Committee, state regulation, and Department of Education issues departed through the layoffs.

Second, in July 2018, DCEH announced the closing of 30 of its ground campuses, affecting all three brands but the Art Institute schools most heavily. The closures would affect about half of DCEH’s total schools and about a quarter of its total enrollment. As discussed further below, the closures had significant consequences for the business, and dramatic consequences for students. The closures also put a focus on DCEH’s ability to provide accurate, complete information to its students at the closing schools – students whom DCEH was also trying to recruit to attend other DCEH schools.

## III. EVALUATING DCEH’S COMPLIANCE EFFORTS

### A. Compliance Culture

While there were signs of improvement towards the end of the review period, most of the early signs from DCEH’s new management were problematic.

#### 1. Initial Structure

##### a. Initial Compliance Leadership

DCEH did not install a C-suite-level chief compliance officer. The Administrator had recommended such a hire in the Second Report, noting the void that had existed when EDMC’s Chief Compliance Officer departed in May 2017:

The company has now operated without its compliance and audit leadership for several months. Regardless of how capable the existing team may be, long-term vacancies in those positions have consequences. They leave the team less able to break through internal logjams and elevate issues for resolution, and more focused on maintaining existing initiatives than on making improvements proactively. Particularly following several months of uncertainty surrounding a potential

transaction and the resulting hesitance to invest in upgrades, vacancies in these positions have stalled the company's compliance efforts.<sup>23</sup>

The Second Report concluded, "Installing strong compliance and audit leadership and investing in those aspects of the organization should be a priority of DCEH's incoming management."<sup>24</sup>

While Risk and Compliance reported up to a "cabinet-level" officer in Shelly Murphy during this time, her portfolio included all regulatory and government affairs, not just compliance, and her position required an extensive focus on obtaining Department of Education approval for the EDMC-DCEH transition. The issues that had once occupied the full-time Chief Compliance Officer could not occupy the full attention of a senior leader whose responsibilities included several other pressing issues.

There was a significant perception in the company during this time that no one in DCEH's senior leadership was well-versed in the Consent Judgment and its requirements. Discussions that emerged from company management sometimes contemplated courses of action that were flatly inconsistent with the Consent Judgment. Often, those discussions were either halted or abandoned, but the mere contemplation of those courses of action contributed to a belief that leadership did not believe that the Consent Judgment, or compliance generally, was important.

While a lack of high-level understanding of compliance perspectives matters from a cultural perspective, it also has operational consequences. Decisions at DCEH are often made within a circle of high-level leaders referred to as the "cabinet." Each member of the cabinet oversees various functions within the company; a cabinet member with operational responsibilities (or the CEO himself) may propose a course of action, the cabinet will discuss it, and leadership may decide to pursue the idea further. In that decision-making process, it is critical that someone in the cabinet have sufficient understanding of the company's compliance obligations to identify potential issues in the proposal, so that leadership can then assign lower-level operational and compliance personnel to work together to resolve them. Leadership would thus be deciding to proceed in partnership with Risk and Compliance to explore the proposal further.

Because no one in DCEH's cabinet during this period was laser-focused on, and well-versed in, compliance, leadership often considered an operational proposal and then elected to proceed – without having the proposal vetted for compliance concerns. While lower-level compliance subject-matter experts would eventually become aware of, work on, and identify potential issues in the proposal, they were identifying issues only after company leadership was perceived to have – and may have understood itself to have – issued a "go" order. Compliance questions raised after that point were perceived as obstructionist foot-dragging, rather than fulfillment of a critical commitment to compliance.

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<sup>23</sup> Second Report at 11.

<sup>24</sup> Second Report at 11.

## b. Staffing

DCEH took over operations with a compliance infrastructure that was already in need of investment. As discussed in the Second Report and briefly above, both the Chief Compliance Officer and Vice President of Internal Audit had left the company prior to the DCEH transition. The two senior compliance analysts most involved in implementing the Consent Judgment departed during the first six months of the DCEH transition and this review period.

With the reductions in force in April, DCEH employees became concerned that any further staffing reductions, whether through attrition or further layoffs, would threaten the company's ability to meet its obligations. Three areas stand out in which staffing shortages may pose a particular compliance risk.

First, in a highly regulated industry, DCEH must track, calculate, and report significant amounts of information regarding dozens of schools, scores of programs, and thousands of students. Staffing shortages can be particularly acute in the quality control process. Looking ahead, these shortages may degrade the accuracy of the information that DCEH is required to provide to accreditors, regulators, and prospective students. This degradation would likely take place over time, and not be noticeable immediately.

Second, as discussed in detail below, DCEH's ability to implement a compliant recruiting process depends in large part on the company's capacity to listen to, identify violations in, and provide appropriate responses regarding the conversations that admissions representatives have with prospective students. The effective call recording and monitoring program is a significant success of the Consent Judgment. But its continued success depends on having adequate staffing to listen to a meaningful proportion of the company's calls.

Third, the lack of an internal audit team has reduced the company's ability to self-identify problems. Particularly in light of concerns regarding the company's ability to maintain accurate reporting over the long term, EDMC's and now DCEH's failure to replace the internal audit function leaves the company weaker from a compliance perspective.

## 2. Initial Compliance Tone

At the outset, the vision that new DCEH management communicated to employees was a step backwards, particularly in an industry and company that had a long history of compliance challenges. While all businesses must make risk-based judgments with respect to their compliance programs, the perception – created by statements made and actions taken by senior DCEH officials – was that, even where the compliance team identified actions that were or would be contrary to the company's legal and accreditation requirements, such determinations were merely advice that could be rejected by business personnel if the business nonetheless wanted to proceed.

That a company might take "compliance risks" is not necessarily fatal. Not all compliance questions are clear-cut; a sophisticated compliance team will recognize the difference between conduct that clearly violates a legal or accreditation requirements, and conduct that may create the risk of non-compliance, perhaps due to a lack of controls or the novelty of an approach or a lack of clarity about what the company intends. These latter kinds of

questions may properly be described as compliance risks, and the relevant business unit will then have to weigh the nature of the conduct and the risk, and choose the appropriate course. If DCEH's new compliance vision was that the compliance team should provide nuanced judgments where appropriate, that vision could be consistent with a well-functioning organization.

That is not how the new vision was understood, or conveyed. DCEH employees understood that in the new structure, even the most clear-cut compliance issues would be viewed as "risks" for the business team to weigh – and the business team could proceed with the problematic conduct even if it was unquestionably improper, so long as the business justification was strong enough. On some of the issues described further in this Report, Risk and Compliance personnel described expressly informing senior management that a course of conduct was illegal, and were told that the business would proceed regardless.

Some DCEH employees described the shift in focus to "compliance risks" was important, even if imperfectly implemented, because the stricter compliance culture under EDMC had become more likely to cause compliance problems. On this view, EDMC employees had become *afraid* to engage Risk and Compliance on issues, either because the employees feared being punished for non-compliant conduct or because an overly cautious compliance approach would kill compliant, important initiatives due to the smallest, most mis-conceived compliance risk. According to these DCEH employees, the fear of engaging Risk and Compliance meant that EDMC would actually proceed with risky, problematic ideas that could have been corrected had they viewed Risk and Compliance as a more constructive partner.

This concern appears overblown. Legacy EDMC employees, who worked under both EDMC and DCEH, did not report any fear of engaging the Risk and Compliance team under EDMC. Moreover, the Administrator did not observe the kind of riskier conduct that is alleged to have occurred under prior management. If anything, as described throughout this Report, the riskier conduct has arisen during the DCEH era.

The new tone towards compliance also affected the company's relationship with the Administrator. Previous management had appeared to view the Administrator as a partner in the company's efforts to improve its compliance culture: Administrator requests for documents and information were prioritized, and new ideas were vetted with the Administrator team for feedback and improvement. While the new DCEH management at the beginning of this review period did not outright refuse any Administrator requests, there was a distinct shift in tone. Whether as part of an intentional design, competing priorities, or a tighter control on information from DCEH leadership to compliance staff, information requests were filled more slowly and with more difficulty. The company was less proactive in bringing compliance issues to the Administrator's attention, and instead left the Administrator to discover issues through more traditional, resource-consuming investigative practices. When DCEH did bring changes to the Administrator's attention, it was more likely to do so after the change had been implemented, rather than in advance of the change to solicit feedback.

While this shift in tone ultimately did not defeat the Administrator's efforts to obtain information, it was symptomatic of the more problematic change in tone that was directed toward the company's compliance personnel.

The message, from both the CEO and the company's initial officer overseeing compliance was clear to both current and former DCEH employees and was reported to the Administrator.

- Sometimes the tone was dismissive: Employees described being told that if management did not respond to a compliance concern, the employees should understand that the concern had been registered but did not merit a response, and they should proceed with the initiative notwithstanding their concern.
- Sometimes the tone was flippant: At an initial opportunity for the senior officer overseeing compliance to meet with the compliance staff, the officer referred to the Business Practices Committee – a group that had historically provided compliance feedback on a wide range of public-facing materials, among other things – as the “Business Prevention Committee.”
- Sometimes the tone was angry: The CEO, frustrated with concerns raised by the Pittsburgh-based compliance team, told the team words to the effect of, “Pittsburgh is the place where everything goes to die. . . . If someone wants to file a formal complaint, do it, but then get back to work or whatever it is you do in Pittsburgh. This meeting is over.”

While the Consent Judgment did not mandate a particular “tone” towards compliance, a problematic compliance culture inevitably has concrete results.

### 3. Compliance Restructuring and Recent Improvements

Importantly, there were signs in the final months of the review period that the tone would be changing. DCEH installed a new Senior Vice President of Compliance and Regulatory Affairs, Kate Dillon Hogan, who had a background in compliance at for-profit and non-profit schools. While the new Senior Vice President was not a C-suite-level officer, she reports to the General Counsel, and has a dotted-line report to the Chief Academic Excellence Officer, Dr. Stacy Sweeney, who has a background on accreditation issues. It is worth noting that following the compliance restructuring towards the end of this review period, Dr. Sweeney also became more engaged in compliance issues.

The change in compliance management has had meaningful positive benefits. In recent months, the company has become more responsive to Administrator requests, more proactive in bringing issues to the Administrator's attention, and more interested in getting additional compliance perspectives before proceeding. More importantly, whereas DCEH had initially contested certain obvious compliance violations, it has begun working towards remediating those issues. And the lack of more recent compliance problems may suggest that the addition of compliance to the cabinet has helped issue-spot and resolve problems before they gain momentum. These signs are important – though sufficiently late in the game that it is difficult to determine whether they reflect a brief stand-down as the Administrator's presumptive three-year terms approaches its end, or constitute a long-term commitment to providing sufficient institutional support to the compliance team and promoting a compliance culture.



## **B. DCEH's General Structures in Place to Implement Consent Judgment's Requirements**

### **1. Compliance Policies**

DCEH has not initiated major shifts in the policies that have been in place over the prior few years. Most of the policies that governed compliance matters during the Consent Judgment's initial years remain in place. The guidance that Risk and Compliance personnel provide via a listserv through which admissions personnel raise compliance questions has not changed – even if the admissions personnel who once used the listserv several times a week, in the early days of the Consent Judgment, now turn to it only once every few months, and only three times thus far in 2018. Dream Center's 2018 Compliance Guide does not vary in any substantial way from previous guidance issued by EDMC. And the critical "Compliance Grade Key," for example, which determines the "level" of various categories of infractions employees might commit in the admissions process – and thus the type of coaching or discipline that the company might impose – has changed very little, particularly in identifying and describing the most serious "Level 4" offenses.

Yet while there may have been little formal change in the violation and remediation process, employees nonetheless described a distinct change in how policies were enforced when DCEH took over. In their view, infractions that once triggered disciplinary action became viewed more as coaching opportunities. The change was driven, as DCEH management described it, by the new management's view that business and operational employees had become "scared" of the Risk and Compliance organization, and were to so hesitant to violate a policy that they were deterred from doing their jobs. From this perspective, a shift towards treating compliance infractions as teaching opportunities was part of an effort to make Compliance a less threatening, and more integrated, part of their work. Indeed, one employee viewed that change as "a weight lifted off [the employees'] shoulders," because, in that employee's view, some categories of violations that could be viewed as merely "technical" could have disproportionately negative effects on an employee's career with the company.

It is unclear whether the perception of compliance violations as teaching opportunities has continued since the compliance restructuring occurred towards the end of the review period. From a compliance perspective, employees' perception of how their company views compliance is important, and whether employees think the company views violations as teaching opportunities or something different is less critical than how employees think the company views compliance overall. If employees believe that the company values compliance generally, then a perception that certain kinds of compliance infractions are coaching opportunities can contribute to a positive, beneficial cycle. In contrast, where compliance is devalued, even a perceived shift away from a disciplinary framework to a more educational and coaching framework can be viewed as a further weakening of the compliance commitment. That was how compliance was viewed in the company when employees described the shift in attitudes towards compliance violations. If the restructuring of the compliance team towards the end of this review period is successful, then whether employees view violations as teaching opportunities or something different may have less significance.

## 2. Training

Beginning in 2016, EDMC launched a number of online training modules to teach employees about compliance policies related to the Consent Judgment. These interactive trainings were mandatory for all EDMC admissions personnel and covered topics such as how to accurately and comprehensively discuss certification and licensure issues, how to describe features of various programs of study, how to recruit students without making false, deceptive, or misleading statements, and how to discuss information provided to prospective students during the recruiting process.

DCEH has made modest changes to the training process and policies, and has reorganized the on-boarding training process for new admissions representatives. Previously, EDMC conducted training over 10 days, with a mix of classroom and simulated call-time.<sup>25</sup> DCEH's revised training schedule is 15 days, with a greater emphasis on simulated call-time over classroom instruction.<sup>26</sup> The Administrator has reviewed the revised on-boarding schedule and has interviewed DCEH staff responsible for the revisions, and is comfortable that the new schedule covers the same substantive topics from prior iterations and provides adequate training to new representatives.<sup>27</sup> The revised schedule contains a new module entitled "Resolve Engagement Barriers," a title that could raise concerns of pre-Consent Judgment practices returning. However, the new material focuses on resolving barriers to engagement at the beginning of a call – for example, lack of time to talk – rather than overcoming objections to pursuing education. Separate modules on Confirming Educational Interest and Engaging Students the Right Way are still part of the onboarding process, and the Resolving Barriers materials do not contain objectionable or problematic content from a Consent Judgment perspective.

Overall, DCEH's training materials are consistent with the general change that EDMC made from the pre-Consent Judgment training: a move away from a recruiting approach that focused on "overcoming barriers" and toward a framework that confirmed whether the prospective student was actually interested in pursuing an education.<sup>28</sup>

Admissions staff are still required to take and pass an Admissions Compliance Test as part of New Hire Training and semi-annually thereafter. There have been no changes to this policy.<sup>29</sup>

DCEH has, however, made one noteworthy change to the periodic compliance refreshers that EDMC had hosted. In the first year of the Administrator's term, EDMC's Call Monitoring team also hosted a monthly compliance training webchat with mandatory participation by all admissions supervisors. The Administrator's team was invited to observe these sessions, which typically began with a 30-minute presentation on a specific compliance issue, followed by 30

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<sup>25</sup> See EDMC 2017 Training Schedule.

<sup>26</sup> See DCEH 2018 Training Schedule.

<sup>27</sup> Note, however, that while the Administrator team participated in on-boarding in prior years, it has not personally attended sessions under the revised schedule.

<sup>28</sup> *Compare* Argosy University, Training Program: Engagement Barriers (2014) *with* EDMC, Training Program: Confirming Educational Interest (Mar. 16, 2016), at 18.

<sup>29</sup> See Admissions Compliance Guide (July 2018).

minutes of discussion. In the second year of the Administrator’s term, EDMC reduced the frequency of these calls from monthly to quarterly. This change was reasonable, given that fewer new changes related to the Consent Judgment went into effect in the second year, and many EDMC staff had been previously trained on compliance-related topics. There were simply fewer topics to discuss, and rather than continue holding calls that employees found unnecessary and stopped attending, EDMC reduced the calls’ frequency.

DCEH has now ceased the calls entirely. According to Dream Center staff, those calls no longer take place because the volume of new compliance-related materials has fallen. The last webchat was held on January 31, 2018 and concerned the transition to non-profit status.<sup>30</sup> DCEH staff believe more frequent calls would not be useful given that staff are well-versed in the Consent Judgment.

As the Administrator noted in the Second Report, in an organization whose goal is “to help everyone make compliance an integral part of your teams’ culture and conversations,”<sup>31</sup> there is value in having regular, frequent discussions that reinforce the centrality of a compliance mindset. At the same time, calls that are perceived not as improving compliance but as merely talking about compliance, for the sake of talking about it, can build a resentment that is counter-productive. The Administrator has not seen signs that the compliance challenges during this review period were related to the reduction of calls with admissions staff; the compliance challenges generally occurred at other levels of the operation.

### 3. Business Practices Committee

The role that DCEH’s Business Practices Committee (“BPC”) plays in ensuring compliance has been in flux during this review period. The BPC is comprised of a variety of compliance and subject-matter experts who were charged with ensuring the accuracy of materials submitted for their review. Historically, EDMC policies required all marketing and communications materials, including marketing efforts by third-party vendors, to be submitted in advance to the BPC for review.<sup>32</sup> Reviewers include those with expertise in legal, financial aid, state licensure, military, accreditation, and other relevant subject matters. For example, when academic catalogues go through the portal for review, reviewers will include those familiar with requirements by state regulators and accreditors. Reviewers would provide comments on materials submitted; where the review identified compliance deficiencies, the material would be categorized as, “Changes Required, Resubmit.” Those materials could not be used until they were revised<sup>33</sup>:

<b>Changes Required, Resubmit</b>	<b>Materials must be resubmitted for additional review once all edits and comments are incorporated.</b>
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<sup>30</sup> Admissions Call, “Transition to Non-Profit” (Jan. 31, 2018).

<sup>31</sup> See Monthly Admissions/NCC Management Compliance Call (Dec. 8, 2016).

<sup>32</sup> See EDMC, Marketing Compliance Handbook at 5 (updated Jan. 12, 2015); EDMC, Marketing Vendor Compliance Guide at 1 (updated July 19, 2016).

<sup>33</sup> See EDMC, Marketing Compliance Handbook at 7 (updated Jan. 12, 2015).

Under that process, if a BPC reviewer identified an inaccuracy or other compliance deficiency in proposed marketing materials, the material could not be distributed until it had been revised and had obtained BPC approval.

DCEH employees report that the new Dream Center management viewed BPC unfavorably. Indeed, at one early meeting with compliance personnel, a senior leader with compliance responsibilities referred to BPC not as the “Business *Practices* Committee,” but as the “Business *Prevention* Committee” – a remark, perhaps inadvertent, that employees received as a strong signal that compliance was no longer a company priority.

New management also planned operational changes for BPC. Employees report that whereas BPC approval had previously been required before materials could be related publicly, new management thought BPC should provide “recommendations” to the business unit that had proposed the material – but should let the business unit decide whether to accept the recommendations or proceed with the identified “compliance risk.” Some employees described the new role for BPC as one in which the compliance team would be “consulted” but would not have “authorit[y].” Employees also describe the new management as telling them that further down the road, marketing materials would not require compliance staff review at all.

The changes that DCEH management discussed were not implemented, and since the compliance restructuring, there appears to be an effort to make BPC more involved in the decision-making process, not less. This would be beneficial: While there is nothing “magical” about the BPC and its practices to date, a shift towards a decreased role for BPC, coupled with a tone at the top suggesting that the BPC was “prevent[ing]” business, would be concerning. A plan designed to give business units more discretion to weigh compliance risks would mean, if nothing else, that they are more likely to take them.

#### 4. Call Monitoring, Voice Analytics, and Mystery Shops

##### a. Background

As discussed in previous reports, the DCEH compliance infrastructure has historically relied on three primary tools to monitor how its admissions representatives speak with prospective students: targeted call reviews, using the speech analytics software PerformMatch; random recorded call listening; and telephonic and in-person mystery shops in which individuals pose as prospective students and test various compliance scenarios. The speech analytics and random call listening depend on a call monitoring system through which, under the Consent Judgment, DCEH is required to “record all telephone calls and online chats between Admissions Representatives or Student Financial Service Representatives, on the one hand, and Students or Prospective Students, on the other.”<sup>34</sup>

The three tools each play a role and should not be considered redundant.

*Speech analytics.* DCEH’s PerformMatch software analyzes the calls saved on DCEH’s call recording system, using a set of static search terms and rules, flags calls that appear to have

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<sup>34</sup> Consent Judgment ¶ 95.

violated DCEH compliance standards.<sup>35</sup> By looking for certain words or phrases, PerformMatch can detect potentially problematic calls for DCEH’s Call Monitoring team to review.

This speech analytics system enables DCEH to gain compliance insights on thousands of calls per month, and is particularly helpful for identifying problems that can be reduced to particular words or phrases. The Consent Judgment’s requirement that DCEH advise prospective students that discussions with admissions representatives are recorded is a good example: Because the mandatory recorded-line warning involves an established script, PerformMatch can scan tens of thousands of calls each month to determine whether the required words were present. PerformMatch is similarly useful in determining whether *prohibited* words were used, and thus is well-suited, for example, for determining whether admissions representatives used designated offensive terms in their calls. Speech analytics is not perfect for these purposes, because like any voice recognition software it can mis-hear terms that are enunciated differently. But it enables DCEH to search large volumes of calls for specified words and phrases – whether a recorded line disclosure, offensive language, or specified phrases that could signal a misleading recruiting tactic, like “you’ll definitely graduate.” The Administrator has used DCEH’s speech analytics capacity for this purpose, to identify calls in which representatives may be discussing particular issues of interest.

That said, speech analytics software is not a complete solution, as it leaves two important gaps. First, speech analytics software looks for its search terms imperfectly, missing words and phrases that are enunciated in a manner other than the manner the software expects. Second, more fundamentally, speech analytics software looks only for what it looks for: It seeks particular words and phrases from a list of terms compiled by DCEH staff and bolstered with terms added by the Administrator team. And not only is it impossible to anticipate and identify all potential variations of a non-compliant statement, but many behaviors that create the risk of a misrepresentation or an unfair practice are subtle and context-specific. Speech analytics software can apply black-and-white rules to large volumes of calls, but it will miss many instances of deceptive or misleading discussions with prospective students.

The Consent Judgment required EDMC, and now DCEH, to “acquire and implement an automated voice interaction analytics platform ... capable of analyzing *all* of the call recordings” by July 1, 2017.<sup>36</sup> As noted in the Second Report, EDMC had installed its call recording system for the vast majority of its campuses by that deadline, but had delayed installing a call recording system on Argosy University locations in Guam and American Samoa. According to EDMC, installing the system at those locations was prohibitively expensive, and unwarranted given the relatively low volume of calls fielded at those locations. The Administrator has reviewed that claim; because DCEH is now closing the Guam location, the issue focuses on the request that DCEH not be required to install the call monitoring system at the American Samoa location. After discussions with DCEH regarding the costs of installation and a proposal to provide increased mystery shops at that location, the Administrator believes that the purpose of the call recording requirement can be accomplished through much more cost-effective strategies at that

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<sup>35</sup> The Administrator has access to PerformMatch and can have search terms or rules added to the system.

<sup>36</sup> Consent Judgment ¶ 95 & Ex. A.

location. The Administrator has endorsed DCEH's proposal for increased mystery shops at American Samoa in the absence of the call recording system.

*Random call listening.* Random call monitoring is an important complement to monitoring using speech analytics. Whereas speech analytics finds only those problems that have been previously identified and that are articulated in pre-defined ways, random call listening can pick up emerging issues and issues that manifest themselves in unanticipated or subtle ways. And whereas speech analytics software enables listeners to review only that narrow slice of a call in which the software detected an issue, random call listening lends itself to reviews of entire calls – which, again, provides a more complete picture of the nature of DCEH's interactions with prospective students. Random call listening is also labor-intensive; whereas the speech analytics system can pinpoint brief passages of potentially problematic discussions; random call listening requires the call monitoring team to listen to long calls, in their entirety, that in the end are often perfectly compliant.

*Mystery shops.* Finally, unlike the speech analytics and random call monitoring strategies that only work where the call recording system is installed, DCEH can use mystery shops to test admissions and financial aid discussions that focus on particular campuses, programs, and scenarios. Mystery shops are useful for focusing in on particularly difficult issues, the effectiveness of particular training, or particular representatives. DCEH, like EDMC, has relied on a third-party firm, RD Associates, to conduct both telephonic and in-person mystery shops. From a high point of 3,000 telephonic and 80 in-person shops each year, RD Associates conducted 1,950 telephonic and 60 in-person shops during this review period – a drop attributed primarily to the reduction in admissions staff to review, as schools have closed.

#### b. Issues Going Forward

As noted above, the key to effectively monitoring the performance of its admissions representatives does not necessarily lie in any one of the three tools described. Speech analytics, random call listening, and mystery shops all play a role in a strong compliance framework, and address different parts of the problem. An approach that relies exclusively on random call listening would leave vast parts of the company's work unreviewed; similarly, an approach that relies exclusively on speech analytics would miss unquestionable – and unquestionably harmful – violations. Accordingly, the question should be not just *how many* calls DCEH can review, but *how* DCEH reviews those calls. The increased number of recorded calls has certainly enabled DCEH to review more. With speech analytics software that can find preselected problematic phrases and pinpoint the few minutes around those phrases for focused listening, it is possible to assign compliance scores to tens of thousands more calls per month. However, assigning compliance scores is not the same thing as ensuring compliance. Speech analytics, while helpful, should supplement random call listening, not replace it. It is through random call listening that reviewers find the more subtle kinds of infractions, and identify new problems requiring attention.

The new speech analytics software has identified more compliance issues than would have been identified using random call listening alone, and has been particularly valuable for catching violations that necessarily involve the presence or absence of specific key words (such

as failures to disclose that a call is on a recorded line). For that reason, speech analytics has been a valuable compliance tool, and an important requirement of the Consent Judgment.

Ultimately, a successful compliance program will dedicate sufficient resources to support the use of all three of these tools. As the Second Report noted, when EDMC first installed the call recording and speech analytics software across its schools, EDMC struggled to find the proper balance: With the speech analytics software flagging numerous calls as involving potentially problematic phrasing, EDMC dedicated thousands of hours to listening to the flagged calls – a helpful exercise, but ultimately an effort that over-focused on formulaic violations, like the failure to include a recorded line disclosure, and under-focused on other, potentially more pernicious violations that could only be identified through random call listening.

DCEH's call monitoring team was responsive to the Administrator's concern regarding the risk of speech analytics crowding out the company's capacity for random call monitoring. DCEH changed its protocol for flagging calls through its speech analytic software, reducing the volume and focusing on more problematic violations – and thus freed up more capacity for random call monitoring. As a result, DCEH's compliance team was able to listen to approximately 18% more randomly selected calls than in the prior year.

The key now will be continuing to dedicate the resources to speech analytics, random call listening, and mystery shops. There are reasons to be concerned for all three, as call listening is a resource-intensive effort at a time when DCEH has been laying off staff. Employees have raised questions about DCEH management's commitment to the effort, notwithstanding the Consent Judgment's requirement that the call recording program last seven years. Mystery shopping, in particular, may be particularly at risk; while some reduction may be appropriate as the company's call recording system has ramped up and enrollment has dropped, eliminating mystery shopping entirely would sacrifice an important part of the compliance toolbox.

Overall, the improvement of DCEH's admissions representatives over the past three years shows the value of this compliance infrastructure and the Consent Judgment. DCEH's admissions representatives have generally continued to improve, and had relatively few compliance gaps during this review period. The Administrator attributes this bright spot largely to the call recording and speech analytics infrastructure that the Consent Judgment imposed. The key going forward, as mentioned above, will be to dedicate the necessary resources to this program in the years to come.

### **C. Non-Profit Status**

DCEH's compliance structures faced a new set of issues during this review period as a result of the schools' transition, as part of the Dream Center Foundation purchase, into "community focused not-for-profit educational institutions."<sup>37</sup> That is, the shift in the organization's mission also gives rise to different compliance and regulatory issues.

Some of those issues relate to the purpose of the company's new non-profit structure, and whether, as one lawmaker asked prior to the transaction, the company "may be attempting to

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<sup>37</sup> See Dream Center Foundation Press Release, "Education is the Key" (Mar. 3, 2017), available at <https://dreamcenter.org/about-us/foundation/>.

skirt federal accountability rules and protections for taxpayers by converting its institutions to non-profit status while maintaining key elements of for-profit governance, including ... a financial arrangement that allows institution leaders to personally profit from the institution's operations."<sup>38</sup> These issues arose during this review period in connection with a potential partnership that DCEH explored with Woz U, a for-profit provider of technological education offerings in which DCEH management also had a financial interest.

Other issues arose when the Department of Education did not approve the DCEH schools' transition to non-profit status as quickly as DCEH had hoped or expected. As a matter of corporate form and taxation, DCEH may have organized itself as a non-profit organization relatively quickly. But notwithstanding that non-profit corporate or tax status, DCEH schools would remain subject to the regulations that govern *for-profit* schools until the Department of Education grants them an Eligibility Certification and Approval Report. Though the Department of Education has issued a "Preliminary Determination" that it "does not see any impediment" to that transition to non-profit status, final approval would be contingent on a number of factors. In a letter to EDMC and DCEH before their transaction closed, the Department stated the following:

[T]he Department has preliminarily concluded that, based on the information and documents provided to date, it does not see any impediment to EDMC's request for approval of the [change in ownership, or "CIO",] or its request for approval of nonprofit institution status ("Preliminary Determination") following the CIO. Please note, however, that formal approvals of the CIO and nonprofit institution status are contingent on the [parties'] compliance with the requirements of 34 C.F.R. § 600.20(g) and (h), the Department's review and approval of any submissions required by those regulatory provisions, and any further documentation and information requested by the Department following the CIO or in this Preacquisition Review Response, including all documents related to the Transaction and the Institutions' conversion to nonprofit status.<sup>39</sup>

Until the transition to non-profit status is approved, DCEH's schools remain for-profit for Department of Education purposes, and are thus subject to more robust disclosure requirements than non-profit schools. As discussed further below, for a significant portion of this review period, DCEH was not providing prospective students with the disclosures that consumers could expect under the relevant Department of Education framework.

## 1. Woz U

DCEH's flirtation with a "Woz U" partnership provides some important insights into the company's strategic mindset and the associated compliance risks. Woz U markets itself as "inspired by Steve Wozniak, co-founder of Apple Computer," and that provides unaccredited, technology-focused education through both online and in-person offerings. Some of its offerings

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<sup>38</sup> Letter from Sen. Richard Durbin to Mary Ellen Petrisko, President, WASC Senior College and University Commission (June 22, 2017), *available at* [https://www.durbin.senate.gov/imo/media/doc/2017-6-22\\_Letters\\_to\\_accreditors\\_re\\_EDMC\[1\].pdf](https://www.durbin.senate.gov/imo/media/doc/2017-6-22_Letters_to_accreditors_re_EDMC[1].pdf).

<sup>39</sup> Letter from Michael Frola, Department of Education, to Brent Richardson, Dream Center Education Holdings, LLC at 2 (Sept. 12, 2017).



are branded as “Woz U Academy,” through which the company “partner[s] with schools to create campus-based programs ... to help students along their technology career path.”<sup>40</sup>

Woz U, a for-profit entity, is also closely tied to the non-profit DCEH’s leadership. Brent Richardson, DCEH’s CEO, has a financial interest in Woz U. Shelly Murphy, who oversaw DCEH’s regulatory, compliance, and government affairs operations during much of this review period, serves as a Woz U spokesperson.

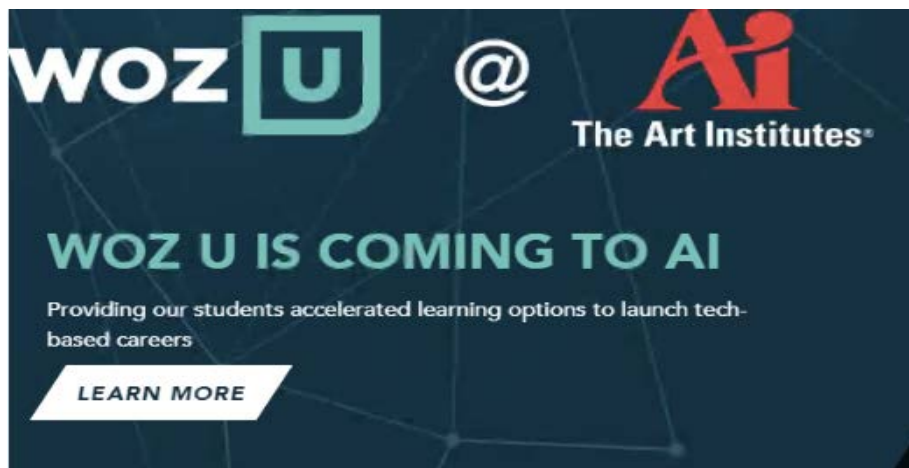
In March 2018, DCEH’s Art Institutes announced a partnership with Woz U to offer a full-time, 12-week software development program. The announcement came amidst significant internal discussion. The partnership appears to have originated at the top, with senior leadership agreeing to roll out a Woz U software coding training “boot camp” at Ai. Lower-level employees charged with implementing the arrangement and ensuring its compliance with Ai’s accreditation and related requirements had a number of questions regarding its precise structure – whether Woz U students would be Ai students, the relationship between the Woz U boot camp and Ai credits, and the need for any regulatory or accreditor approval. The questions, and the pace of resolving them, frustrated DCEH leadership, who ultimately convened a team meeting that began with an admonition directed at DCEH’s Pittsburgh-based compliance team from DCEH CEO Brent Richardson along the following lines: “Pittsburgh is the place where everything goes to die. Understand this. I run DCEH. I run Woz U. You don’t question this. If someone wants to file a formal complaint, do it, but then get back to work or whatever it is you do in Pittsburgh. This meeting is over.” Richardson has acknowledged making remarks along these lines.

It was thus with significant internal uncertainty that DCEH rolled out a Woz U partnership that it described as an Ai offering. For example, the initial March 15, 2018 announcement on the Art Institutes’ blog was headlined, “The Art Institutes to Offer Technology Curriculum in Partnership With Woz U.” The announcement described the offering as “a new partnership” through which “The Art Institutes will provide Woz U’s tech-based curriculum.” A quote from Ai President Claude Brown contrasted Ai’s “traditional[] ... programs” with “The Art Institutes’ Woz U Academy.” The announcement also described Ai’s Woz U courses as “non-credit bearing” and said that they do not transfer into Ai programs. Ai’s announcement on its blog directed interested parties to a Woz U webpage for more information.

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<sup>40</sup> See <https://woz-u.com/about/>.

Other Ai materials conveyed the impression that Woz U was in some meaningful respect an offering of Ai. For example, the lead graphic on the Ai landing page similarly announced that “Woz U is coming to Ai”:<sup>41</sup>



Clicking on the “Learn More” button on this Ai webpage sent users not to another Ai or DCEH webpage, but to Woz U’s website.<sup>42</sup> Sending Ai webpage visitors to a private third-party site for information about “The Art Institutes’ Woz U Academy” – the curriculum that Ai was “offer[ing]” – was apparently a cause of concern within DCEH: Employees who reviewed the Ai website content specifically asked that where the Ai site linked to an external site for more information about the Woz U offering, the company should have the opportunity to review that site – Woz U’s – for accuracy.<sup>43</sup>

These external-facing materials that describe this program as an Ai offering, or similar, are consistent with internal discussions that the Administrator has reviewed. For example, DCEH also considered a standalone website for the relationship with Woz U, with the web address [www.woz-uatai.com](http://www.woz-uatai.com) (i.e., “Woz U at Ai”). While that site appears not to have gone live, it appeared to contemplate a close relationship between Ai and Woz U.<sup>44</sup> In addition, internal personnel reviewing the program understood that the Woz U course would be led by “a Woz U certified Art Institute instructor,” and noted that applicants would be accepted into Ai, not Woz U.<sup>45</sup>

Ultimately, DCEH determined at some point after the public roll-out that the company would not move forward with the Woz U partnership at this time. But the initiative raised two primary sets of questions.

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<sup>41</sup> <https://www.artinstitutes.edu/>.

<sup>42</sup> <https://woz-u.com/AI/>.

<sup>43</sup> BPC Submission Job 36338.

<sup>44</sup> BPC Submission Job 36338.

<sup>45</sup> BPC Submission Job 36413.

a. The Use of DCEH’s Non-Profit Status

One set of issues dealt with whether, given the involvement of DCEH CEO Brent Richardson and others in Woz U, DCEH management was using their non-profit educational institution to provide themselves financial benefits through other vehicles.

In discussions and publicly, DCEH has described Ai and Woz U in a number of different ways: as partners, as separate, and as part of a variety of possible business arrangements. Among other things, DCEH told both its employees and prospective students, at times, that Ai was operating as a landlord, providing space to Woz U.

The contract between DCEH and Woz U suggests that Ai was not just providing space, but had agreed to pay Woz U for operating Woz U on its campus. DCEH was to pay Woz U a \$20,000 start-up fee, \$10,000 for every additional campus on which Woz U opened, “30.00% of the actual amount of money received in payments” for tuition, a \$1500 “Admissions Support” fee, plus additional per-student fees for finance and career services assistance, and a 10% mark-up on certain of Woz U’s lead generation costs.<sup>46</sup> DCEH also agreed to incur the costs of hiring and paying the Woz U instructors.<sup>47</sup>

Had DCEH proceeded with the Woz U initiative, there could have been reasonable questions regarding whether the arrangement constituted ordinary prudent business practices or an impermissible private inurement.<sup>48</sup> For purposes of the Consent Judgment, it is sufficient to note that DCEH’s explanation that it was simply providing space for Woz U was inaccurate.

b. Accuracy of Disclosures to Prospective Students

There were also a number of questions regarding the accuracy of information provided to prospective students regarding the Woz U offering at Ai.

*Relationship to Ai.* Notwithstanding the marketing materials that advertised a close relationship, prospective students who called Ai and sought to move forward in the process were given a different message. They were more consistently told words to the effect of, “[I]t is not an Ai accredited program,” Woz U “has their own representatives,” or “[I]t’s completely separate” – suggesting that the Woz U / Ai partnership was not as close as the advertisements had communicated, and that Woz U was simply using Ai’s space. Given the importance that a program’s reputation plays in its completers’ job prospects, students who enroll in “The Art Institutes’ Woz U Academy” – an unaccredited, non-degree program that was advertised using its connection to the accredited, degree-granting institution – should have been given clear, accurate information regarding the nature of the relationship.

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<sup>46</sup> Exeter Education – Dream Center Education Holdings, LLC Master Services Agreement at Ex. A ¶¶ B.4 & Tbl.1, I (Mar. 7, 2018).

<sup>47</sup> Exeter Education – Dream Center Education Holdings, LLC Master Services Agreement at Ex. A ¶ K.3 (Mar. 7, 2018).

<sup>48</sup> See Internal Revenue Service, Overview of Inurement/Private Benefit Issues in IRC 501(c)(3), at 3 (1990) (providing multi-factor test to determine whether incidental benefits to non-profit managers are appropriate or impermissible).

*Status of completers.* The page through which applicants were invited to apply to the program, bearing the Ai logo and description of the Ai system, referred to “graduates” of the Ai-Woz U offering – when it was unclear that completers of the 12-week offering could accurately be described as “graduates.”<sup>49</sup>

*Job prospects.* Clicking on the “Learn More” page on the Ai landing page took users to a Woz U webpage,<sup>50</sup> bearing the “Woz U @ Ai” logo, with the following claim:

### **TRAINING SKILLED TECHNOLOGY PROFESSIONALS**

The Art Institutes' Woz U Academy prepares students to pursue an **in demand** career as a Software Developer. We will train students to be workforce ready in just 12 weeks! This also includes extensive student services including resume building, interview training, career growth opportunities and portfolio building to showcase their work to future employers. [Learn more about our Software Developer program here.](#)

The description of the 12-week program as “prepar[ing] students to pursue an in demand career as a Software Developer” was questionable. Clicking on the “in demand” link took users to Bureau of Labor Statistics Occupational Outlook Handbook data that contains salary and job outlook information for software developers; that data could support the claim that software developers are, as a general matter, “in demand.” However, that page also indicates that a “typical entry-level education” for the position is a bachelor’s degree – which the Ai-Woz U offering would not have provided, and which would not have been available in Software Development at many of the Ai campuses in question.<sup>51</sup> The government statistics relied on thus did not appear to support the claim that “The Art Institutes’ Woz U Academy prepares students to pursue an in demand career.”

*Outcomes.* That Ai-Woz U “Learn More” description linked to additional information that, while presented in a manner that suggests the additional information relates to the specific Ai-Woz U offering, likely related to other, longer, more involved offerings. At the end of the brief paragraph regarding the 12-week “Art Institutes’ Woz U Academy” was a link for those who want to “[l]earn more about our Software Developer program.” That link took users to another Woz U webpage<sup>52</sup> that provided the following statistics:

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<sup>49</sup> <http://www.cvent.com/events/software-developer-javascript-application/event-summary-d5d6a78c6dde4ddd9ec55fbfb40140a1.aspx> (visited May 23, 2018).

<sup>50</sup> <https://woz-u.com/AI/> (visited May 16, 2018).

<sup>51</sup> <https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm>.

<sup>52</sup> <https://woz-u.com/software-developer/>.



While the webpage refers both to a “coding bootcamp” and to 24-33-week programs, it appeared that these statistics do not relate to the 12-week Ai offering that was described in the paragraph that linked to this page.

c. Resolution and Issues of Concern

Woz U was the rare issue on which DCEH and the Administrator disagreed about the scope of the Consent Judgment. When presented with the Administrator’s concerns regarding the accuracy of information that Ai was providing regarding the Woz U offering, DCEH did not respond by defending the accuracy of the statements. Rather, it argued that because the Woz U offering was not for credit, that offering itself did not constitute a “program of study” as defined by the Consent Judgment, and thus DCEH’s statements regarding Woz U were not subject to review under the Consent Judgment.<sup>53</sup> Indeed, many of the Consent Judgment’s restrictions are tied to “programs of study” as defined in the Consent Judgment. However, Ai’s partnership with Woz U was not marketed to only some niche set of students for enrollment solely in a separate, standalone program; rather, it was marketed generally to encourage students to enroll in Ai. The statements were thus made “[i]n connection with the recruitment of ... Prospective Students” and were subject to the Consent Judgment’s prohibition on false, deceptive, and misleading statements.<sup>54</sup>

Ultimately, following numerous inquiries, DCEH informed the Administrator that it would not be proceeding with the Woz U partnership. While no formal explanation was given, CEO Brent Richardson indicated in discussions that he was concerned that linking the two companies would be bad for Woz U – suggesting that given Ai’s financial troubles, he had decided not to link his Woz U enterprise with the Ai brand. DCEH has not ruled out other

<sup>53</sup> Consent Judgment ¶ 28 (“‘Program of Study’ shall mean a series of courses, seminar, or other educational program offered at an EDMC school in the United States, for which EDMC charges tuition and/or fees, which is designed to lead toward a degree, certificate, diploma, or other indication of completion, and which is (a) eligible for Title IV funding, (b) involves more than 25 contact hours in a credit bearing course, (c) is designed to make a Student eligible to sit for any state or national certification or licensing examination, or (d) is designed to prepare a Student for another series of courses, seminar, or other educational program that is eligible for Title IV funding. Notwithstanding anything in the foregoing sentence to the contrary, non-credit courses or programs offered for personal enrichment, *i.e.*, hobby courses, that are not Title-IV eligible, courses that are not taken for the purpose of ultimately obtaining a degree, certificate, diploma, or other indication of completion, and review courses that are designed to assist with a Student’s preparation for a state or national certification or licensing exam for which the Student is already eligible to sit, shall not be programs of Study.”).

<sup>54</sup> Consent Judgment ¶ 74; *see also* Consent Judgment ¶¶ 76 (prohibitions on “guarantees concerning Student outcomes”), 77 (prohibitions on false or misleading statements regarding financial aid), & 78 (prohibition on false or misleading claims about the “likelihood of obtaining employment as a result of enrolling”).

arrangements with for-profit entities, including entities in which its leadership or their family members have interests – though it is worth noting that in a current initiative to develop “boot camp” style courses, which DCEH is calling “Nano Credentials,” DCEH is developing the courses fully in-house without any separate vendor, whether affiliated or unaffiliated.

While DCEH ultimately decided not to proceed with Woz U, the initiative raised three sets of compliance concerns. The first are those discussed above: the accuracy of representations made in connection with DCEH recruitment efforts. Whether made directly by DCEH, like its statements regarding the nature of the relationship, or endorsed by DCEH through a joint marketing effort, these kinds of statements need to be accurate. DCEH needs to have review mechanisms in place that are sufficiently robust and respected internally to ensure they are not misleading.

Second, while has DCEH indicated that it is not proceeding with Woz U, close attention should be paid to any arrangements that could be perceived as using DCEH’s non-profit status to benefit its leadership. Organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code<sup>55</sup> are prohibited from entering into certain transactions in which a non-profit organization’s activities provide the organization’s insiders, or their family members, with a disproportionate share of a benefit of the activity in question.<sup>56</sup> Relatedly, state laws governing charitable organizations impose fiduciary and other duties on the directors and officers of non-profit organizations, that can be threatened when directors have conflicting interests.<sup>57</sup> Given the importance of these federal and state laws to the mission of non-profit entities like DCEH and the Dream Center Foundation, DCEH should be very careful to ensure the independence of any decisions – like a contract to pay a company in which DCEH’s CEO has a financial interest – that could benefit its insiders.

Third, DCEH’s internal deliberations regarding the Woz U initiative confirm DCEH’s need for stronger compliance mindset. An organization that dismisses compliance concerns, makes decisions without thorough vetting, and relies on lower-level employees to stand up against higher-level decisions that are presented as *faits accomplis* will have difficulty building the compliance culture that it needs. A better decision-making process in this highly regulated space would have involved a Chief Compliance Officer identifying the need for further review before any commitments were made, an openness to that review and the questions it invited, and either an embrace or dialogue regarding any concerns. Here, the perception that the leadership team – including those with compliance responsibilities – had committed to proceed with Woz U, regardless of what concerns or risks it presented, and then dismissed questions and concerns, undermined the company’s ability to promote a culture of compliance.

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<sup>55</sup> 26 U.S.C. § 501(c)(3).

<sup>56</sup> IRS regulations identify a number of factors when determining whether an activity provides an impermissible private inurement: (1) size and scope of the organization’s regular and ongoing activities that further exempt purposes; (2) size and scope of the excess benefit transaction in relation to the size and scope of the organization’s activities; (3) whether the organization has been involved in repeated excess benefit transactions; (4) whether the organization has implemented safeguards that are reasonably calculated to prevent future violations; and (5) whether the excess benefit transaction has been corrected or the organization has made good faith effort to seek correction from the disqualified persons who benefitted. *See* 26 C.F.R. §§ 1.501(c)(3)-1(f)(2)(ii)(A–E).

<sup>57</sup> *See, e.g.,* Ariz. Rev. Stat. § 10-3860 (2018).

## 2. Gainful Employment

Under U.S. Department of Education regulations, in order to remain eligible to receive Title IV federal financial aid, educational programs must either (1) lead to a degree at a public or non-profit institution or (2) lead to gainful employment. When the current DCEH schools were under EDMC's for-profit umbrella, they had to satisfy a set of regulations known as the "Gainful Employment Rule."<sup>58</sup> Under the Gainful Employment Rule, non-degree programs at public and non-profit institutions and all programs at for-profit institutions are required to calculate and disclose certain data regarding the typical debt and earnings of program graduates. The Gainful Employment Rule also establishes thresholds under which programs are considered passing or failing the gainful employment requirement.<sup>59</sup> Failing programs must issue warnings to students and prospective students through several channels, including via Department-provided templates, verbally during discussions with students and prospective students, and in writing via hand-delivery or email.<sup>60</sup>

Once DCEH schools are fully recognized as non-profit entities for Department of Education regulatory purposes, they will not be subject to the same level of disclosure requirements under the Gainful Employment Rule. Whereas both degree programs and non-degree programs are subject to Gainful Employment disclosure requirements at for-profit schools, only non-degree programs are subject to the disclosure requirements at non-profit schools.

Importantly, while DCEH is, unlike its predecessor EDMC, a non-profit, its schools are still subject to the more extensive Gainful Employment requirements of for-profit schools. Whether a school is treated as for-profit, or as non-profit, for Gainful Employment Rule purposes is not determined solely by their corporate tax status. Rather, a school that is transitioning to non-profit status is still subject to for-profit treatment until the Department of Education issues a final Eligibility Certification and Approval Report. While ultimate Department of Education approval may be likely, it has not been received. DCEH is thus still subject to the Gainful Employment Rule's requirements for for-profit schools – as the Department of Education reminded DCEH in its September 2017 preacquisition, Preliminary Determination letter: "Unless and until the conversion to nonprofit institution status is approved by the Department, the [parties] are reminded that the Institutions must continue to report their ... gainful employment data."<sup>61</sup>

Some of the DCEH programs were deemed "failing" under the Gainful Employment Rule during this review period, triggering DCEH's obligation to post Gainful Employment failure warnings for the degree programs in question. DCEH initially indicated an intent to appeal the Department's failure designations, an action that would have delayed its obligation to provide

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<sup>58</sup> 34 C.F.R. § 668.401 *et seq.*

<sup>59</sup> 34 C.F.R. § 668.403.

<sup>60</sup> 34 C.F.R. § 668.410.

<sup>61</sup> Letter from Michael Frola, Department of Education, to Brent Richardson, Dream Center Education Holdings, LLC at 16 (Sept. 12, 2017).

warnings to students and prospective students.<sup>62</sup> In late 2017, however, DCEH abandoned its appeals,<sup>63</sup> triggering its obligation to issue Gainful Employment failure warnings.<sup>64</sup>

DCEH did not put up its Gainful Employment failure warnings for degree programs as required for for-profit institutions when it withdrew its appeal to the failure determinations. Internally, DCEH compliance personnel who realized that the appeal had been withdrawn discussed the issue, agreed that the disclosure obligation had been triggered given DCEH's for-profit status, and sought to activate the failure warnings on the schools' websites. According to the personnel involved, they were overruled by DCEH management, who acknowledged the disclosure requirement but told the compliance personnel expressly that they could not activate the failure warnings because the warnings would deter new students from enrolling.

While the Administrator was not present for that conversation, the allegation is a serious one: A DCEH manager expressly instructed employees not to comply with federal regulations because doing so would hurt enrollment.

After those discussions with their employees, DCEH's outside counsel informed personnel at the Department of Education that in light of their "transition," DCEH schools were "now remov[ing] their 2017 GE disclosure templates from the program webpages of their degree programs."<sup>65</sup> DCEH has explained that in light of its transition to non-profit status, and its reasonable expectation that the Department of Education would not enforce the Gainful Employment disclosure requirements for for-profit programs against DCEH during this transition period, its decision not to post the Gainful Employment failure warnings is justified.

However, until DCEH receives a final Eligibility Certification and Approval Report, it is subject to the Gainful Employment disclosure requirements for for-profit programs. More specifically in this context, Paragraph 74 of the Consent Judgment prohibits DCEH from making false or misleading statements about its programs, omitting material facts about its programs, and "making any representation inconsistent with required Disclosures of the U.S. Department of Education found in Title 34 of the Code of Federal Regulations Chapter 668."<sup>66</sup> As long as federal regulations require DCEH to disclose its Gainful Employment failures, consumers have a right to expect that the information will be provided – regardless of whether the Department of Education intends to enforce the regulations under those circumstances or not.

Ultimately, the Administrator formally requested that DCEH provide a Corrective Action Plan pursuant to Paragraph 116(a) of the Consent Judgment. Under its Corrective Action Plan, DCEH agreed to take a number of steps. First, DCEH reinstalled its Gainful Employment webpages for degree programs:

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<sup>62</sup> 34 C.F.R. § 668.406.

<sup>63</sup> See [https://studentaid.ed.gov/sa/about/data-center/school/ge\\_](https://studentaid.ed.gov/sa/about/data-center/school/ge_)

<sup>64</sup> GE Electronic Announcement #108, available at

<https://ifap.ed.gov/eannouncements/081817GEEA108AnnouncementofAppealsDeadlines.html>.

<sup>65</sup> Email from Ronald Holt to Michael Frola, *Re: DCF/DCEH Institutions – Nonprofit Status: Gainful Employment* (Feb. 6, 2017).

<sup>66</sup> Consent Judgment ¶ 74; see also Consent Judgment ¶ 75(a) (prohibiting "false, misleading, or deceptive statement about any governmental (federal, state, or other) approval related to a Program of Study").



**Illinois Institute of Art (The)  
Bachelor's degree in Ai Chicago - Digital  
Filmmaking & Video Production - 230  
Program Length: 45 months**

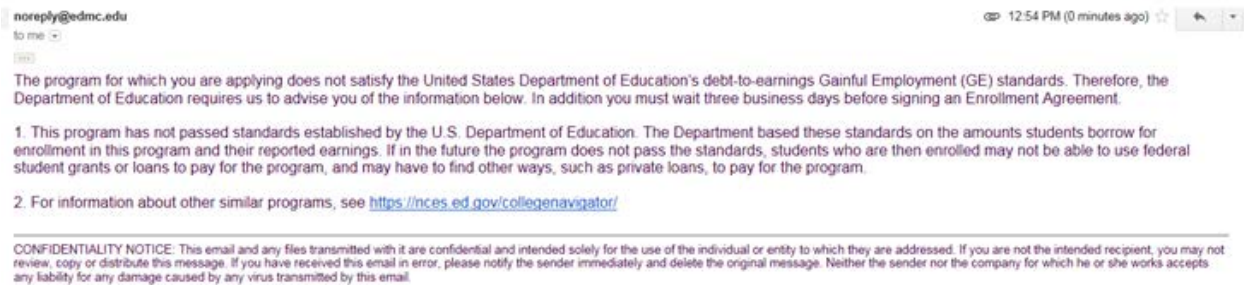
[Print](#)



**This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.**

This warning, along with program completion rates, job placement rates, and related information were linked to directly to from the relevant program overview webpages.<sup>67</sup>

Second, DCEH inserted a similar disclosure into its digital application process, so that prospective students must sign an acknowledgment of having seen it. DCEH also sends students seeking to enroll in affected programs the following email:



Third, DCEH updated its academic catalogs, brochures, and admissions training and related materials to include Gainful Employment disclosures. The catalogs and brochures were typically updated via “supplements” that were posted immediately alongside each catalog on the relevant webpage, or via updates to the materials that were linked to in the brochures. Admissions training and related materials were updated to provide for DCEH representatives to point prospective students to Gainful Employment information, with respect to all programs that are covered by the Gainful Employment Rule for for-profit schools. Admissions representatives generally did an adequate job implementing this new requirement. Mystery shops commissioned by the Administrator revealed that admissions representatives consistently pointed prospective students to the relevant program’s gainful employment page, including when the program was in failure.

<sup>67</sup> E.g., <http://ge.artinstitutes.edu/programoffering/230>.

#### **D. Ground Campus Closures and Potential for Loan Discharge**

In July 2018, DCEH announced the closure of 30 of its ground campuses in its Art Institutes, Argosy, and South brands. The closures would affect about half of DCEH's total schools and about a quarter of its total enrollment. DCEH advised that the closures were necessary to put the company and its remaining schools on a more viable financial footing.

As significant as the closures are from a business perspective, they are in many ways more significant from the perspective of individual students' educational futures. No student makes the decision to invest significant time and resources in a particular school with the expectation that the school will close before the student can finish his or her program. School closures are, at a minimum, disruptive.

DCEH initially announced the closures with the following email:

**From:** \_DCEH Comm  
**Sent:** Monday, July 02, 2018 5:03 AM  
**To:** \_DCEH Comm <dcehcomm@dcedh.org>  
**Subject:** Important Organizational Update

At Dream Center Education Holdings (DCEH), we are committed to providing students with an accessible, affordable, relevant, and purposeful education.

Over the last several months, we have taken a strategic and comprehensive look at each of our three education systems and their respective campuses, evaluating them to be sure that they are meeting the needs of today's learners and providing the best student and graduate outcomes.

What has become clear is that we have a critical need and responsibility to become a much more agile organization, responsive to the needs of our students and the changing demands of higher education.

As a result of that examination, we have made the decision to cease new enrollments for the following schools within The Art Institutes, Argosy University, and South University systems:

- The Art Institutes Arlington, VA; Charleston, SC; Charlotte, NC; Chicago, IL; Denver, CO; Fort Lauderdale, FL; Indianapolis, IN; Nashville, TN; Novi, MI; Philadelphia, PA; Phoenix, AZ; Raleigh-Durham, NC; Portland, OR; San Bernardino, CA; San Francisco, CA; Santa Ana, CA; Sacramento, CA; and Schaumburg, IL
- Argosy University Alameda, CA; Dallas, TX; Denver, CO; Nashville, TN; Ontario, CA; Salt Lake City, UT; San Diego, CA; Sarasota, FL; and Schaumburg, IL
- South University Novi, MI; High Point, NC; and Cleveland, OH

We will cease new enrollments at these locations, providing prospective students with access to online offerings or programs at one of our other campuses.

This decision was made for a number of reasons, including significantly declining enrollment and an increase in the demand for online programs in higher education.

It is important to note that current, active students should continue to attend class as scheduled. However, we are continuing to assess the viability of our current offerings at these locations.

This is a necessary step in ensuring that we best support our students, both present and future, in response to the changing landscape of higher education.

Sincerely,



That email, notably, did not provide the dates on which the schools would close or any concrete information regarding future options. When asked to provide any additional information or guidance that the company provided to its school representatives to whom current students would turn to understand what these changes would mean for them, DCEH provided nothing. Current students were told only that their schools were closing, sometime. DCEH advises that it did not provide students with additional information because during this time, the Department of Education instructed DCEH not to announce that the schools were closing.

DCEH later distributed guidance to its campus presidents, laying out three options DCEH was making available for students:

- Finish their studies before the school’s closing date, at a 50% tuition discount.
- Transfer to another DCEH program, whether ground or online, and continue studies at a 50% tuition discount.
- Students whose programs are not available through the school’s online systems could transfer to an institution that accepted the DCEH school’s transfer credits, with a \$5000 voucher from DCEH. DCEH Staff are being laid off at these campuses, and media reports indicate the campuses will close all operations by the end of 2018.<sup>68</sup>

That information about student options was not distributed widely to students until later in the month, when it was included on a “Student Acknowledgment Form” that DCEH asked students to sign, acknowledging that it had been provided.

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<sup>68</sup> See Ai, “FAQ’s Regarding Transition – For Verbal Use Only – Not For Distribution.”

Importantly, the information initially made available to students during this time period did not include sufficiently clear information about a fourth option, available through the Department of Education and required by federal law: the Department of Education's Closed School Discharge program.<sup>69</sup> Federal regulations authorize the discharge of federal loans for students who were enrolled in a school at the time of closing or within 120 days of the closure, a critical form of relief for students whose educations would be cut short by DCEH's closure of thirty schools. Without the discharge program, students who are unable to complete a comparable educational program at another school may be left with crippling debt and no degree. The Closed School Discharge program provides a path, for students who are eligible, to regain their footing after attending a school that closed. It is thus imperative that DCEH, in advising students of their options – and while recruiting students to remain enrolled or transfer to another DCEH school – inform them of this option.

It was also important that information about the Closed School Discharge be provided *timely*, because under the regulations as written, students' eligibility for the program requires them to be enrolled within 120 days of the school's closure. The timing of student decisions thus is important. If a school were scheduled to close at the end of December 2018 – as many DCEH schools now are – students would have to remain enrolled until late August in order to be eligible for the discharge. Absent information about the benefits of remaining in school for the Closed School Discharge program, though, students who were told on July 2, 2018 that their school was closing before they could complete their program could have made the very reasonable choice to withdraw at that time. Withdrawing in July, and avoiding incurring further debts, might have seemed like the sound financial choice, when information about the Closed School Discharge could have shown that staying in school longer would have been a far better choice.

DCEH did not provide students with any information about the Closed School Discharge until late July, when it provided Ai students the "Student Acknowledgment Form."<sup>70</sup> That form, however, did not actually refer to the discharge possibility, but simply added a link to a Department of Education website at the bottom of the page, with no context to suggest that the website described the possibility of discharging the student's federal student loan debts:

Should a student elect not to continue his/her educational program, the U.S. Department of Education provides the following website to assist students: <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/closed-school>

The Administrator informed DCEH that its communications were inadequate, and that the schools needed to inform students more clearly of two things: the availability of the Closed School Discharge option, and their school's closing date – key information for students who may be interested in pursuing the discharge program. The Administrator offered to review DCEH's proposed communications, to ensure that the information was communicated clearly.

DCEH's subsequent communications regarding the teach-outs did not go smoothly. In mid-August, six weeks after DCEH announced the closings, DCEH emailed students to inform them of the first key piece of information: a clear disclosure of the Closed School Discharge option. However, that August communication did not include the second key piece of

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<sup>69</sup> See 34 CFR 674.33, 34 CFR 682.402(d), 34 CFR 685.214.

<sup>70</sup> DCEH advises that it provided this information as soon as the Department of Education approved it.

information: a sufficiently clear statement of the schools' closing dates, so that students would know to stay in school if they ultimately wanted to take advantage of the discharge. To be sure, as discussed further below, the closing dates were not known for some of the schools, because closing dates for some schools would not be set until students' transition plans were known; however, that lack of clarity for some schools was not the reason that closing dates were not included in the August communication. Indeed, the closing date for the majority of schools was known to be December 28, 2018. The reason that this information was not highlighted in the August communication is that DCEH did not provide the Administrator with a meaningful opportunity to review that communication, as the Administrator had requested. According to DCEH, the Department of Education pressed DCEH to send the communications out immediately, without an opportunity for DCEH input.

Following the August communication, DCEH expressed a willingness to provide a clearer statement of school closing dates, where known. But the process took another month: While the Administrator approved a communication that sufficiently disclosed closing dates, DCEH inadvertently sent out the wrong, unapproved communication. It was not until September 20, 2018 – two-and-a-half months after the closing announcement – that DCEH issued the clear, direct communication to its students regarding the Closed School Discharge and the relevant date.

It is important to note, too, that DCEH has provided clarity now only to students at schools for which it has established a definitive closing date; there are a number of schools at which DCEH has yet to set a closing date. At schools with programs that lead to licensure, DCEH is refraining from setting a closing date until the school has worked out transition plans with the students pursuing those degrees. Because students who are particularly far along in licensure programs can have a difficult time transferring to other schools, DCEH has advised that it is aiming to keep schools open where its current students have the need.

That decision to keep schools with licensure-related programs open pending further information about individual students' plans is likely in the long-run interest of certain students, but it also puts other students in a difficult position vis-à-vis the Closed School Discharge. There may be students at those schools, for example, who learned on July 2, 2018, that their school was closing, will not be able to finish their degree, do not wish to incur further debts under those circumstances, and desire to apply for the Closed School Discharge, but have no ability to determine how long they must continue to incur debts at the closing school in order to remain eligible for it.

Perhaps even more difficult is the situation of students whose *programs* at these schools will end this year, leaving those students with no ability to finish *their* program, while the *school* remains open to accommodate those students in the relevant licensure programs.

One state party to the Consent Judgment has proposed a resolution that would provide many of these affected students a path to potential relief under the Closed School Discharge program. A request is pending with the Department of Education to declare the "closing date"

for purposes of the Closed School Discharge to be July 2, 2018, so that students who reacted to the closing announcement by immediately withdrawing would be eligible for the discharge.<sup>71</sup>

The Consent Judgment does not govern DCEH's decision to close its schools, nor does it govern the manner in which the Department of Education exercises its discretion in applying the Closed School Discharge. However, the Consent Judgment does prohibit DCEH, particularly in the course of encourage students to transfer to other DCEH schools, from omitting any material fact.<sup>72</sup> The initial disclosures of the Closed School Discharge were inadequate, and DCEH has worked to provide additional information – information that may be too late for some students, who may have withdrawn immediately without knowing, whether from DCEH or other sources, that remaining in the closing school could make the student eligible for significant financial relief. As the teach-outs proceed, there will be further need to convey important information, and DCEH should be careful to ensure that it is providing accurate, complete information in a timely manner.

## **E. Admissions and Financial Services**

### **1. Misrepresentations, Omissions, Unfair Practices, Abusive Recruiting Methods**

A core element of the Consent Judgment is its provisions that bar DCEH from making deceptive statements, engaging in abusive recruitment methods, or violating state Unfair and Deceptive Acts and Practices laws. Some of the Consent Judgment's prohibitions on these issues are stated broadly: Among other things, DCEH may not omit material facts, or make false, deceptive, or misleading statements.<sup>73</sup> It also may not make representations inconsistent with facts required to be disclosed by the U.S. Department of Education in connection with its communication regarding recruitment, financial aid or financial costs, the student's ability to obtain a license or certification following graduation, the schools' academic standing, or other communications with students or prospective students.<sup>74</sup> Other provisions bar certain specific kinds of representations, prohibiting misrepresentations regarding how many of a student's credits will transfer into or out of the school;<sup>75</sup> statements implying that financial aid or military funding will cover the entire costs of the education, if not true;<sup>76</sup> and statements implying that statistics regarding EDMC generally are true of specific programs of study.<sup>77</sup> Importantly, a number of the prohibitions on these kinds of misleading statements focus on statements regarding the future success of DCEH students: their completion rates,<sup>78</sup> students' ability to sit

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<sup>71</sup> See Letter from Matt Liles, North Carolina Department of Justice, to Acting Assistant Secretary Diane Jones, U.S. Department of Education Office of Postsecondary Education, "Dream Center – Request to Extend Closed School Discharge Eligibility Due To Exceptional Circumstances" (Oct. 9, 2018). At the request of States party to the Consent Judgment, the Administrator asked DCEH whether it would support that request. DCEH declined to support the request, and the Administrator informed the attorneys general of that response.

<sup>72</sup> Consent Judgment ¶ 74.

<sup>73</sup> Consent Judgment ¶¶ 74-75.

<sup>74</sup> Consent Judgment ¶¶ 74-75, 76, 80-82.

<sup>75</sup> Consent Judgment ¶ 76(c).

<sup>76</sup> Consent Judgment ¶ 77(c).

<sup>77</sup> Consent Judgment ¶ 79.

<sup>78</sup> Consent Judgment ¶ 79.

for (or pass) licensure exams in relevant fields upon graduation,<sup>79</sup> job placement rates,<sup>80</sup> and salaries.<sup>81</sup>

The Consent Judgment also provides that the company “shall not continue a telephone call after a Prospective Student has expressed a desire to conclude the call or has clearly stated that he/she does not want to apply to or enroll at [a DCEH] school.”<sup>82</sup>

In order to protect the youngest prospective students from these and other misrepresentations and tactics, the Consent Judgment also requires DCEH to invite prospective students who are under 18 to bring an adult with them to any interview or meeting on campus prior to enrollment.<sup>83</sup>

The sections below discuss DCEH’s ability to handle, in a compliant manner, a number of specific situations that arise in its dealings with prospective students. With some exceptions, the company has continued to handle most issues generally well. The exceptions generally do not involve abusive or high-pressure tactics, but misstatements of more technical issues – although it is worth noting that some of these issues have been repeated challenges over the Consent Judgment’s three years.

## 2. Parent to Campus

The Consent Judgment requires DCEH to invite prospective students who are under 18 to bring an adult with them to any interview or meeting on campus prior to enrollment.<sup>84</sup> It also bars DCEH from preventing prospective students “from consulting with or obtaining advice from a parent, adult friend, or relative with respect to any issue relevant to enrollment.”<sup>85</sup> These provisions are designed to ensure that prospective students who are under 18 are able to make informed decisions about their futures. DCEH has not exhibited any problems complying with the latter prohibition on preventing prospective students from seeking and obtaining consultation or advice from others. DCEH has shown marginal improvement on the proactive requirement that prospective students who are under the age of 18 be “invite[d] . . . to bring an adult with them to any interview/meeting on campus prior to enrollment,”<sup>86</sup> but has not fixed an issue that should be fixable.

Implementing this requirement can be difficult. When a prospective student explicitly states that the student is 17 or younger, admissions representatives do a good job inviting the student to bring an adult. When a prospective student is less explicit – perhaps mentioning that the student is still in high school – DCEH can have somewhat greater difficulty. In the First Report, the Administrator found that, while EDMC had trained its admissions personnel on the requirement, 20% of the admissions representatives who the Administrator tested through mystery shops failed to invite a prospective student who was under 18 to bring an adult to

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<sup>79</sup> Consent Judgment ¶ 80.

<sup>80</sup> Consent Judgment ¶ 79.

<sup>81</sup> Consent Judgment ¶ 79.

<sup>82</sup> Consent Judgment ¶ 100.

<sup>83</sup> Consent Judgment ¶¶ 100-01.

<sup>84</sup> Consent Judgment ¶¶ 102.

<sup>85</sup> Consent Judgment ¶ 101.

<sup>86</sup> Consent Judgment ¶ 102.

campus. During the second review period, 15% of the admissions representatives who the Administrator tested through telephonic mystery shops failed to invite a prospective student who was under 18 to bring parents or guardians to campus.

The Administrator conducted 13 additional mystery shops on this topic during this third review period. In these calls, the prospective student disclosed that he or she was still in high school and/or under the age of 18, and was invited to visit the campus. DCEH representatives invited the prospective student to bring a parent, guardian, or family member in 9 of 13 of the calls. In two additional calls, the representative generically invited the prospective student to bring “anyone” or “friends” on a visit, but did not specifically encourage the minor to bring a, adult, parent, or guardian.<sup>87</sup> In the remaining two calls, the admissions representative did not invite the prospective students to bring anyone to the campus visit.<sup>88</sup> DCEH has provided revised instructions to its representatives, to reiterate – consistent with the Consent Judgment’s terms and the purpose of encouraging adult guidance for minors – that the invitation should specifically include an adult, parent, or guardian.

### 3. Downplaying or Misstating Financial Aid Obligations

As noted above, the Consent Judgment also bars DCEH from making deceptive statements or misrepresentations regarding financial aid or the financial costs associated with attending a DCEH program. Because the potential resulting financial consequences for a student pursuing higher education can be enormous, it is exceedingly important that institutions provide accurate information about financial aid obligations to prospective students. Inaccurate statements and attempts to minimize significant financial consequences can lead to life-altering levels of debt. Prospective students are often understandably concerned about the debt load that further education may impose, and need to fully understand and appreciate the consequences of a decision to enroll.

In its First and Second Reports, the Administrator identified a significant issue relating to representatives’ descriptions of Federal Pell Grants. The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain graduate students, as eligible, to promote access to postsecondary education. The amount granted depends on a student’s financial need, costs to attend school, status as a full-time or part-time student, and plans to attend school for a full academic year or less. Pell Grants are distinct from student loans in that they *may* not need to be paid back, but Pell Grants do often require repayment when students drop out in the middle of a semester or quarter.<sup>89</sup> Admissions representatives too often missed this nuance during the first two review periods, leaving prospective student with the materially incorrect impression that significant portion of their financial aid would need not be repaid even if they withdraw. To be sure, EDMC admissions representatives were not the only people who sometimes missed this nuance; some of the statements made by company representatives were

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<sup>87</sup> See 7/25/18 Mystery Shop 532/0362; 72518 Mystery Shop 537/1498.

<sup>88</sup> See 7/20/18 Mystery Shop 483/8023; 7/24/18 Mystery Shop 530/4872. DCEH issued a compliance violation for both calls.

<sup>89</sup> There are other instances in which a student may need to repay part or all of a Pell Grant. For example, a student’s eligibility for the grant could change if the student’s enrollment status changes from full time to part time. A student’s eligibility may also be affected if the student receives outside scholarships or grants that reduce the student’s need for federal student aid. Other conditions may also apply.



similar or identical to those in published materials by others, including those that could reasonably have been viewed as authoritative. But the statements were inaccurate nonetheless.

Pell Grant disclosures improved significantly during this review period. Representatives consistently advised prospective students that a Pell Grant may have to be repaid if the student withdraws or does not complete an enrollment period. Indeed, in only one of 15 mystery shops did the representative fail to accurately describe the Pell Grant.<sup>90</sup> In that instance, the representative accurately indicated that the student may have to repay the Pell Grant in certain circumstances, but also suggested that repayment may be dependent on being honest, or doing something “fraudulent,” in the application process. The representative did not state that withdrawing prior to completion of an enrollment period may trigger a requirement to repay the Pell Grant.

#### 4. Licensure and Enrollment

The Consent Judgment also imposes particular protections for students who express an interest in pursuing certain careers for which the DCEH programs in question will not qualify them. In addition to a general prohibition on advertising that a program that lacks a relevant accreditation will qualify students to pursue an occupation that requires the accreditation in question,<sup>91</sup> the Consent Judgment also imposes more specific requirements in certain circumstances.<sup>92</sup>

For example, the Consent Judgment bars DCEH, with certain exceptions, from enrolling students in programs that are designed to prepare students for employment in a field that requires a state license or other authorization but the program does not qualify the student to sit for the relevant exam.<sup>93</sup> This arises most commonly in circumstances in which a state’s licensing regulations require that professionals have attended schools that possess certain accreditations that a particular DCEH program may have lacked. The Consent Judgment also imposes a specific obligation when “DCEH knows that a criminal record may disqualify a Student from employment in the field or a related field for which the Program of Study is a prerequisite.”<sup>94</sup>

Problems were not identified with DCEH’s compliance with these requirements during this review period.

##### a. Criminal History

Mystery shops were conducted to test DCEH’s compliance with the provision that bars it from enrolling students in programs when DCEH knows that the student’s criminal history

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<sup>90</sup> See 7/17/2017 Mystery Shop 475/6332. DCEH has issued a compliance violation for this call.

<sup>91</sup> Consent Judgment ¶ 85.

<sup>92</sup> Some of the Consent Judgment’s requirements on these issues, particularly regarding licensure and accreditation, have become less relevant as the Brown Mackie schools are either in teach-out or have been sold. See, e.g., Consent Judgment ¶ 84(a)-(d). Many of the specific requirements addressed disclosures to students interested in pursuing particular programs that led to careers more typically subject to state licensing requirements and that were more common at the Brown Mackie schools.

<sup>93</sup> Consent Judgment ¶ 86; see also Consent Judgment ¶ 89 (barring EDMC from enrolling students in programs that not possess accreditation “typically required by employers in the Student’s locality”).

<sup>94</sup> Consent Judgment ¶ 90.

would disqualify the student from employment in the field for which the program is a prerequisite.<sup>95</sup> The shops were tested using prospective students who expressed an interest in Criminal Justice programs, indicated that they wanted to become police officers, and disclosed that they had previously been convicted of felonies. The test was designed to determine whether the DCEH admissions representatives barred the student from enrolling, or provided disclosures required by the Consent Judgment to permit enrollment, in a Criminal Justice program when the student's felony conviction would likely prevent the student from obtaining employment as a police officer.

In 2018, the Administrator conducted additional mystery shops to assess DCEH's compliance with this requirement. Admissions representative generally made clear to the prospective students that a criminal record may be disqualifying for employment as a police officer and urged the student to research it further.<sup>96</sup>

#### b. Licensure

The Consent Judgment's restrictions on enrolling students in online programs that would not qualify the student for licensure in the state in which the student resides have become less prominent since EDMC closed or taught out the Brown Mackie schools.<sup>97</sup> Certain remaining schools do have licensure-related programs, however, and the Consent Judgment's restrictions remain relevant. The Administrator did not identify problems in DCEH's enforcement of the Consent Judgment's restriction during this review period.

### 5. Single Page Disclosures and Statistics

The Consent Judgment also requires that DCEH provide all prospective students with a "Single-Page Disclosure Sheet" (SPDS) prior to enrollment. The SPDS must contain a range of specified information regarding the program's anticipated total cost, median debt loads, completion and default rates, the transferability of credits, median earnings, and job placement statistics.<sup>98</sup> The SPDS must be *disclosed* to a prospective student twice: once during the application process, prior to the student's submission of a completed application, and once during the financial planning process, when a school representative reviews or discusses with the prospective student the completed FAFSA and/or financial plan.<sup>99</sup> In addition, the SPDS must be *discussed* with the student at the second point of disclosure, during this financial planning process.<sup>100</sup> Combined with other Consent Judgment requirements regarding the accuracy of such

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<sup>95</sup> Consent Judgment ¶ 90.

<sup>96</sup> Only one call on this issue was problematic: when a prospective student interested in police work asked if a criminal record may pose a problem, the admissions representative responded the record may be an issue for some employers, and it would be dependent on the employers' policies. The representative neither encouraged the student to conduct independent research, nor disclosed that, beyond employer hiring preferences, employment by law enforcement agencies of people with criminal records is often governed by state laws. This response was inadequate. *See* 7/24/2018 Mystery Shop 531/2852.

<sup>97</sup> Consent Judgment ¶ 86(c).

<sup>98</sup> Consent Judgment ¶ 56(a)-(g).

<sup>99</sup> Consent Judgment ¶ 57.

<sup>100</sup> Consent Judgment ¶ 57.

information, the SPDS – or “Facts You Should Know” (FYSK), as DCEH calls its document – can provide important information to a student at a critical time in the admissions process.

Several DCEH employees or managers involved in the admissions process noted to the Administrator that they believe the FYSK required by the Consent Judgment is beneficial. They note that financial aid and financial planning can be complicated, and the FYSK generally strikes the right balance of information to be of assistance in the student’s decision-making process.

The SPDS disclosure requirement was implemented electronically, through the schools’ online application process, so that prospective students automatically see the SPDS at the relevant time. Students must acknowledge having received the SPDS before they can submit their application. As long as the online application process is working properly, the first required disclosure of SPDS should occur. The electronic application process also emails students a copy of the SPDS.

Prior to the DCEH transition, EDMC had created a “*Facts You Should Know – FAQs*” guide providing more context to the SPDS’s specific statistics and categories of information. The FAQs provided answers to questions like “Will it really take me the time disclosed to graduate?” and “What does ‘job placement rate’ mean for me?” This document indicated that the information was being provided in connection with the Consent Judgment, and that EDMC did not believe any comparable information is available from other schools or programs a student might be considering. The FAQs are also sent to prospective students via email, as an attachment to the email that contains the FYSK.

In general, EDMC successfully provided the disclosure or discussion of the FYSK as required, and DCEH has continued to properly disclose the SPDS data. With the FYSK being disclosed reliably through the automated electronic application process, the greatest risks are that the information is described in ways that downplay or cast doubt on the accuracy of unfavorable statistics, that the data is discussed in ways that are not “clear or conspicuous,” or that the information is inaccurate.

With respect to the first and second issues, regarding the way in which representatives discuss the FYSK, the Administrator has not observed any recurring or systematic problems in the manner of disclosure of the FYSKs. There have been individual instances of admissions representatives neglecting to provide the FYSK at the appropriate time,<sup>101</sup> or discussing the information quickly,<sup>102</sup> but nothing to suggest a broader pattern of non-compliant behavior. Representatives have generally presented FYSK information clearly, without downplaying its significance or “speed reading” the data to the prospective student, and have been providing an opportunity to ask questions once the disclosures are read. The Administrator’s mystery

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<sup>101</sup> See Call Copy Record ID 44927114 (agent discussing financial aid introduction and plan and completing memorandum of understanding with student without discussing FYSK).

<sup>102</sup> In the most egregious incident, the representative provided a copy of the FYSK but declined to discuss the document. The representative in that instance refused to answer direct questions about median earnings and other information contained in the FYSK, while simultaneously seeking a verbal commitment from the mystery shopper to sign the application. See RJD Associates, Mystery Shop (July 16, 2018). DCEH recorded several infractions against the representative and provided remedial coaching.

shopping has likewise uncovered no evidence of systematic failures to disclose the FYSKs in a compliant, clear and conspicuous manner.

It is worth noting that while DCEH representatives have presented the FYSK clearly, prospective students rarely ask any questions about these disclosures. Perhaps this is because the student previously read the FYSK when first presented during the application process. Alternatively, this may be an indication that the oral presentation of this detailed data, at a time when student is in the process of completing a variety of paperwork, does not result in the prospective students' full absorption of the information. That is, listening to the representative read this form and then checking a box confirming receipt becomes just another of several administrative steps to complete enrollment.

On the third issue, regarding the accuracy of FYSK information, a sampling of data contained in FYSKs during this review period suggests that they are accurate reflections of the relevant underlying data sources. Some of the data in the FYSK can be verified using publicly available sources: The length and cost of attendance figures that can be checked against academic catalogs and enrollment agreements; median earnings data can be checked against the Department of Education's gainful employment figures. The remaining data in the FYSK is drawn from DCEH's own internal databases, and in some cases is calculated with the help of a third-party vendor who disaggregates and re-aggregates data supplied by the Department at the institutional level. Reviews of information produced from DCEH databases found no variances in the FYSK from the underlying source information, but did note that the FYSK inaccurately described the median earnings of program graduates as "starting salaries" when in fact, those figures represent all earnings, not starting salaries. DCEH's compliance team recognized the inaccuracy, and amended the FYSKs, reverting to the original median earnings language without the additional "starting salary" qualifier.

Yet while the information appears accurate today, there is reason to be concerned regarding the FYSK and related disclosures in the future. At this point, the Compliance Reporting Team is relatively thinly staffed. This team, responsible for collecting, aggregating, and reporting much of the company's data for internal and external purposes, has shrunk over the past year. The Administrator is concerned that the company's ability to maintain current, reliable information in the database it uses for federal reporting purposes, and the database it uses for communications with regulators and accreditors, will degrade. These databases feed much of the information that populates the FYSK documents. As time passes, and as DCEH implements additional changes, those databases may become outdated; the data used in the FYSK – and data provided to regulators and accreditors – may become inaccurate.

## 6. Disclosure of Accreditation Status

Few attributes of an institution of higher education are more consequential for its students than whether the school is accredited. Accreditation by a Department of Education-approved accrediting body is a prerequisite for federal student aid funding. The accreditation status of an institution is also often a factor in whether a student is able to transfer credits from that institution when enrolling in another school. Given the importance of a school's accreditation status, the Consent Judgment prevents DCEH from making "express or implied false, deceptive, or misleading claims to Prospective Students with regard to the academic standing of its

programs and faculty including, but not limited to misrepresenting ... the accreditation” status of its schools and programs.<sup>103</sup> This obligation was particularly important this year, as the accreditation status of some DCEH schools changed. Some of the changes were, while potentially significant, relatively incremental; other changes involved outright losses of accreditation.

a. Changes in Accreditation Status

When accreditation statuses change, the schools retained their accreditation but were placed on some level of disfavored or probationary status. The most important of these changes came in July, when the Middle States Commission on Higher Education (“Middle States”) required DCEH’s Art Institute of Pittsburgh, which encompasses the Art Institute network’s online offerings, and its Art Institute of Philadelphia “to show cause ... as to why its accreditation should not be withdrawn.”<sup>104</sup> That directive put the schools on an official status of “Accredited on Show Cause”<sup>105</sup> and required them to demonstrate why they should remain accredited and prepare for Middle States to withdraw their accreditation. In less significant moves in this category, accreditors may have simply asked for additional information about an issue, placed a school on probation, or moved a school off of probation after gaining assurance that the school continued to meet the accreditor’s requirements following its transition from EDMC to Dream Center.

Accreditors generally provide detailed guidance regarding how schools’ written materials should describe the schools’ accreditation status when subject to these various levels of action. Typically, the accreditor directs that the school or program may continue to call itself “accredited,” but must also include specific language disclosing its status in its catalogs and related materials.

Oral discussions with prospective students regarding these situations can be difficult, and receives relatively less guidance from accreditors than written materials. While it may remain true that a school remains accredited, it is also true that the school’s accreditation may be in a precarious position. The nuances of the various statuses, as reflected in the 574-word paragraph from Middle States describing the showing that it expects from Ai-Pittsburgh, are complex, often outside the interest of the average prospective student, and may often be immaterial. The Administrator has thus instructed DCEH to ensure that its oral disclosures regarding accreditation status track the guidance provided for written disclosures by the accreditors themselves: In most cases, this will mean that when providing a broad overview, it is accurate to describe a school as accredited; when a more detailed or focused discussion is called for, DCEH must provide the nuanced caveat that the accreditor provides – whether directly, by pointing to

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<sup>103</sup> Consent Judgment ¶ 81(b).

<sup>104</sup> Letter from Gary L. Wirt, Chair, Middle States Commission on Higher Education, to Dr. Elden Monday, Interim President, The Art Institute of Pittsburgh at 1 (July 19, 2018), *available at* <https://www.msche.org/non-compliance-disclosure-statements/the-art-institute-of-pittsburgh/>; Letter from Gary L. Wirt, Chair, Middle States Commission on Higher Education, to Robert A. Kane, President, The Art Institute of Philadelphia at 1 (July 19, 2018), *available at* <https://www.msche.org/non-compliance-disclosure-statements/the-art-institute-of-philadelphia/>.

<sup>105</sup> See <https://www.msche.org/institution/0840/> (visited Sept. 1, 2018).

the more detailed website disclosure, or by arranging a discussion with staff who has more expertise on the accreditation issue.

b. Losses of Accreditation Status

The more significant development from an accreditation perspective came in January, when the Higher Learning Commission (“HLC”) downgraded the status of the Illinois Institute of Art and the Art Institute of Colorado from “accredited” to “candidate” – a move that HLC describes as an “adverse action” it can take when it determines that the institution, among other things, “no longer meets all of the Criteria for Accreditation.”<sup>106</sup> It is the only other status that HLC recognizes: either a school is accredited, or it is a candidate seeking to become accredited. In short, HLC stopped viewing the schools as “accredited” and started viewing them as unaccredited. The change in status occurred in connection with the transition from EDMC to DCEH.

That change on January 20 carried significant consequences for the students of those institutions – including consequences for their federal financial aid and their ability to transfer any credits they earned after January 20 to other schools. These consequences became more dramatic once DCEH announced in July that those schools would close – and thus that many of the students would *need* those credits to transfer to other schools.

The loss of accreditation – and the risk of losing accreditation – put students in a difficult position. When the Middle States Commission on Higher Learning issued its “Show Cause” notice, requiring Ai Pittsburgh to demonstrate that it still satisfied accreditation standards, the school eventually stopped accepting transfer students because it did not want to put students in an “unstable environment.”<sup>107</sup> Yet current students who sought to pause their education, lest they accrue and pay for credits that would be of little value, had to finish their terms or face withdrawal penalties.<sup>108</sup> The accreditation problems put these students between a rock and a hard place, financially: Either stay in the course, and potentially waste that tuition if the accreditation is withdrawn, or withdraw from class, and pay the financial penalties associated with withdrawal.

Given these consequences that loss of accreditation status can have, HLC requires institutions that are moved from accredited to candidate status to

notify ... students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the institution must also disclose this new status whenever it refers to its Commission affiliation.<sup>109</sup>

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<sup>106</sup> HLC, Accredited to Candidate Status, Policy No. INST.E.50.010, available at [http://download.hlcommission.org/policy/HLCPolicyBook\\_POL.pdf](http://download.hlcommission.org/policy/HLCPolicyBook_POL.pdf).

<sup>107</sup> Call Recording 48347923 (Sept. 24, 2018).

<sup>108</sup> Call Recording 48243262 (Sept. 11, 2018).

<sup>109</sup> HLC, Accredited to Candidate Status, Policy No. INST.E.50.010, available at [http://download.hlcommission.org/policy/HLCPolicyBook\\_POL.pdf](http://download.hlcommission.org/policy/HLCPolicyBook_POL.pdf).

Simply put, when these schools lost their accreditation status, they were obligated to inform their students and prospective students within 14 days.

DCEH did not inform Illinois Institute of Art or Art Institute of Colorado students or prospective students that it had lost its accreditation. Instead, DCEH revised the accreditation statement on its website to expressly claim that the schools “remain accredited as a candidate school”<sup>110</sup>:

- **Institutional Accreditation**

The Art Institute of Colorado is in transition during a change of ownership. We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. Higher Learning Commission (230 S. LaSalle Street, Suite 7-500, Chicago, IL 60604-1413, 1.800.621.7440, [www.hlcommission.org/](http://www.hlcommission.org/)).

That revised accreditation statement was inaccurate and misleading, and obfuscated HLC’s distinction between accredited institutions and candidates. DCEH argued that it disagreed with HLC’s view that the schools’ “candidate for accreditation” status meant they were unaccredited, but there is no ambiguity in HLC’s view of what that status means.

Following discussions with the Administrator, DCEH removed the “remain accredited” language from the accreditation websites of the two schools<sup>111</sup>:

- **Institutional Accreditation**

The Illinois Institute of Art is in transition during a change of ownership. We are a candidate school seeking accreditation under new ownership and our new non-profit status. Our students remain eligible for Title IV. Higher Learning Commission (230 S. LaSalle Street, Suite 7-500, Chicago, IL 60604-1413, 1.800.621.7440, [www.hlcommission.org/](http://www.hlcommission.org/)).

That change occurred prior to June 29, 2018.

While the corrected language was necessary, it did not resolve the consequences that had arisen for students who either enrolled or decided to remain enrolled during the period of the misleading disclosure. Among other consequences, those students may have used limited financial resources to acquire credits that could not be transferred to other schools – a problem that was exacerbated dramatically when DCEH announced in July that it would be closing those schools, leaving many of those students dependent on the transferability of their credits to further their education.

The Administrator has requested a corrective action plan from DCEH to provide appropriate relief to students affected by the failure to disclose the HLC accreditation action. DCEH has begun identifying affected students. The completion of an appropriate corrective action plan on this issue is clearly a necessary prerequisite to being in substantial compliance with the Consent Judgment.

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<sup>110</sup> See <https://www.artinstitutes.edu/accreditation-and-licensing> (visited May 1, 2018).

<sup>111</sup> See <https://www.artinstitutes.edu/chicago/about/accreditation> (visited June 29, 2018).

## 7. VA Comparison Tool

The Administrator also evaluated whether DCEH was providing accurate information to students who inquired about information that the U.S. Department of Veterans Affairs provide about the schools. The Department of Veterans Affairs (VA) provides a GI Bill Comparison Tool to assist veterans in comparing various educational options, allows a user to search for and compare information on education programs by school. The tool places a yellow caution flag next to the names of certain schools, a mark that the VA website says means, “This school has cautionary warnings.” A category, or basis, for the warning is also indicated. The VA describes these as “indicators VA has determined potential students should pay attention to and consider before enrolling in a program of education. A caution flag means VA or other federal agencies like the Department of Education or Department of Defense have applied increased regulatory or legal scrutiny to a program of education.”<sup>112</sup> Examples of the categories of cautionary warnings shown on the Comparison Tool include, *inter alia*, “Settlement with U.S. Government,” “Heightened Cash Monitoring (Financial Responsibility)” and “Accreditation.”

When asked by prospective students who had expressed an interest in using military funding about the meaning of the yellow caution flag on the VA’s GI Bill Comparison Tool, representatives consistently indicated that they did not know its significance, and offered to ask a financial aid representative at the campus who works with military students. One call was more problematic; the admissions representative affirmatively downplayed any significance to the caution flag, called it “odd,” and told the student that the representative personally would not worry about the issue – adding there are many students currently using military benefits. DCEH properly responded to that isolated improper response.

## 8. Job Placement Data

One important metric on the Single-Page Disclosure Sheets is the Job Placement Rate, showing the percentage of graduates and completers who are placed in a position in their chosen field of study. While DCEH’s transition to a non-profit status for Department of Education purposes will obviate certain *federal regulatory* obligations to calculate and publish this data, the Consent Judgment imposes an independent obligation to calculate the job placement rate according to an exacting formula.<sup>113</sup> The Consent Judgment’s requirements regarding the publication of Job Placement Rates are in effect until January 1, 2036;<sup>114</sup> for programs for which DCEH does not calculate and publish a job placement rate, DCEH is prohibited from making any claims or representations to prospective students about their likelihood of completing the program.<sup>115</sup>

During the first review period, the Administrator determined that EDMC was not collecting the data that would be necessary to make one of the Job Placement Rate’s most critical determinations. As discussed further below, to determine whether a placement is “in field” or not, the Consent Judgment requires the school to determine, in many instances, whether a student “use[s], during a majority of the time while at work, the Core Skills” taught in the program of

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<sup>112</sup> See [https://www.benefits.va.gov/gibill/comparison\\_tool/about\\_this\\_tool.asp#caution](https://www.benefits.va.gov/gibill/comparison_tool/about_this_tool.asp#caution).

<sup>113</sup> Consent Judgment ¶ 62.

<sup>114</sup> Consent Judgment ¶ 124.

<sup>115</sup> Consent Judgment ¶ 64.



study.<sup>116</sup> The First Report noted that EDMC’s post-graduation career services contacts were not likely collecting information necessary for that determination.

During the second review period, the Administrator worked with EDMC to revise the data it collected. As reported in the Second Report, the Administrator ultimately approved a revised approach that would result in usable data for making the Consent Judgment’s Core Skills determinations. The Administrator subsequently worked with DCEH on a back-up methodology for making appropriate Core Skills determinations in those instances when obtaining the data is difficult.

Three years into the Consent Judgment, while DCEH has begun collected data using the forms that the Administrator approved, neither EDMC nor DCEH has published job placement data that complies with the Consent Judgment’s requirements. That is, given the time it took to propose a compliant data collection process, the additional time involved in DCEH’s further request for a back-up approach when collecting that data proved difficult, and the time lag involved in implementing a job placement methodology over a July 1 to June 30 cohort period, DCEH did not fully implement its compliant processes until the end of this cohort period. The job placement rates published during this review period still use the collection process that was in place at the beginning of the Consent Judgment.

These issues are explained in greater detail below.

a. The Role of Core Skills Determinations and Methodology to Date

The Consent Judgment’s formula for determining job placement rates is complicated, but a key component of the calculation is the manner in which a former student is counted as employed in “the field of study or a related field of study” for which the student was enrolled in the school’s program. That is, prospective students should be able to know not only whether those who complete the program they are considering can find *a job*, but also whether the job they find is *related to that course of study*. For a student who studies psychology in order to become a psychologist, knowing whether graduates tend to get jobs in psychology or, for example, retail is relevant information.

The Consent Judgment thus lays out criteria for determining whether a particular student’s employment should qualify as being in the field of study or a related field of study. The first question involves a bright-line determination: If the recent student’s job title is one that the school publishes as associated with the particular program of study *and* is a job that the Departments of Education and Labor have recognized as associated with that course of study, then the job placement can be counted as in the field of study.<sup>117</sup> However, if that bright-line,

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<sup>116</sup> See Consent Judgment ¶ 69(a)(1)(ii).

<sup>117</sup> Consent Judgment ¶ 69(a)(1)(i) (looking to whether the job title is included in the crosswalk established by the Department of Education’s National Center for Education Statistics and the Department of Labor’s Bureau of Labor Statistics for relating the Classification of Instructional Programs and the Standard Occupational Classification, or the “CIP to SOC crosswalk”); *id.* (allowing placement as “in field” if the job title is listed as a “lay title” on the O\*Net Code Connector for one of the related SOC titles).

job title determination is not satisfied, the Consent Judgment calls for a more qualitative determination. That determination looks to whether, among other things:

- (ii) the position requires the Graduate/Completer to use, during a majority of the time while at work, the Core Skills listed in the school's published program and course descriptions expected to have been taught in the Student's program.<sup>118</sup>

That question, regarding whether a recent student "use[s], during a majority of the time while at work, the Core Skills" taught in the program of study, is a difficult determination.

Until recently, DCEH and, before it, EDMC have sought to make the Core Skills determination by determining the percentage of the graduate's courses that the graduate uses in his or her new job. Drawing links between each job responsibility, whether drawn from the company's position description or information provided by the graduate, and the graduate's coursework, DCEH uses a grid to determine whether the graduate was using at least 51% of the program's core courses in his or her new position. For example, if the graduate's program involved 11 "core courses," DCEH would count the graduate as placed in field if the career services representative concluded that the graduate was using 6 of those courses in the new job.<sup>119</sup>

DCEH's methodology has two key problems. First, the employees making the connections between coursework and job duties too often make dubious judgments. Importantly from a compliance perspective, several of the judgments seen in this year's job placement data are judgments that the Administrator's Second Report specifically identified as questionable in last year's review:

- A stylist at a bridal shop whose job responsibility of "helping each bride find the dress of her dreams" was linked to her course in Early History of Fashion – a course covering fashion from the ancient Egyptians through the French Revolution.<sup>120</sup>
- A hotel banquet prep cook whose work "[p]repar[ing] foods as directed by Chefs" was linked to courses on Latin Cuisine, Asian Cuisine, and World Cuisine – without any evidence that the prep work involved any of those cuisines.<sup>121</sup>
- A supermarket deli clerk whose five job duties were linked not in a tailored manner, but by linking the five job duties, en masse, to a set of seven courses.<sup>122</sup>

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<sup>118</sup> Consent Judgment ¶ 69(a)(1)(ii).

<sup>119</sup> The grid method used by EDMC and then DCEH is discussed in greater detail in the Second Report. *See* Second Report at 32-37.

<sup>120</sup> *Compare* Placement No. 301628, *with* Second Report at 35 (expressing concern regarding linking of Fit Specialist, "work[ing] with guys that are trying on their suits," to Early History of Fashion course).

<sup>121</sup> *Compare* Placement No. 299940, *with* Second Report at 34 (expressing concern regarding linking of fryer station work to various cuisines "without any evidence that the fryer station work involved any of those cuisines").

<sup>122</sup> *Compare* Placement No. 301588, *with* Second Report at 35 (expressing concern that when job responsibilities are linked "not in a tailored manner, but ... en masse, to a set of" courses, "the Grid looks less like a systematic way for evaluating the use of particular skills, and more like an assertion, *ipso facto*, that a job is counted as a placement in field").

- A school system’s Food Service Assistant whose responsibility to “[f]ollow[] money-handling procedures and assure[] accurate cash intake when cashiering” was linked to her course on Food & Beverage Operations Management, a course “designed to provide students ... a managerial perspective of providing exceptional service to increasingly sophisticated and demanding guests.”<sup>123</sup>

While the Administrator continues to believe that judgment and discretion can be part of the Core Skills analysis in a company with a proper compliance culture, repetition of the same mistakes here confirms that it is time for this approach to be phased out.

The second, more fundamental problem with this approach is that it asks the wrong question. That is, DCEH’s grid does not ask *what percentage of the student’s time is spent using Core Skills?*, but *what percentage of the student’s courses are used?* These questions are different, and the grid’s focus on the percentage of the student’s courses that are used could produce data that has little to do with the Consent Judgment’s goals. That a graduate uses *all* of the skills she learned in her program is irrelevant under the Consent Judgment, if the student spends 95% of her time doing other things, unrelated to her program. The question that the Consent Judgment asks focuses on what percentage of her time is she using those skills. If she is using her Core Skills more than 50% of the time, she can be counted as place in her field. Because the grid methodology does not answer that question, the Administrator’s First Report made clear that the methodology would have to change.

b. The Revised Methodology

By the time that the Second Report was published, a new methodology for collecting core skills information had been approved. In the new Core Skills Form, graduates are presented with a summary of their program’s Core Skills and asked to fill in some version of the following statement:

After reviewing the core skills listed above, on average, what percentage of the time do you use the core skills in your current employment?  
 In my current employment, I spend \_\_\_\_% (0-100) of my time using the Core Skills of my program.

To be sure, asking graduates to describe how they spend their time in this way will be imprecise and subjective. But asking the relevant question, as defined by the Consent Judgment, directly is a better proxy than the Grid. Further, a graduate’s subjective view of whether his or her new job is in the field for which she was studying may be the most relevant information available, as prospective students looking at Job Placement Data are surely just as interested in whether recent graduates have found jobs that *they consider* appropriate for the education they pursued as they are in certain more objective measures. The new Core Skills Form, as described here, is an improvement over the initial methodology, and will collect data that can be used for a compliant Consent Judgment Job Placement Rate.

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<sup>123</sup> Compare Placement No. 301542, with Second Report at 35 (expressing concern regarding linking of “math skills as well as the ability to estimate” with Introduction to Accounting Principles and Foodservice Financial Management).

Before implementing the new Core Skills Form, EDMC raised a concern regarding its ability to capture *enough* data using this Form. The concern was that data collection through the attestation will miss some segment of graduates who were properly placed in field but who do not respond to and submit the attestation form. When relying on the Grid, EDMC was often able to obtain data that it would use – a published job description – even when students did not themselves respond to EDMC’s outreach. With the new attestation requiring an affirmative response, EDMC was concerned that students who do not respond may go uncounted, even if placed in field.

The concern was legitimate, as many students fall out of contact with the school following graduation. The Consent Judgment’s goal was not to impose a survey response requirement, but to provide accurate information regarding the employment outcomes for graduates of the programs in question. Accordingly, the Administrator considered additional proposals from EDMC, and then DCEH, for a “backup” methodology that would enable the company to discern, for graduates who do not respond with the approved attestation, whether the graduate was placed in field.

While the concern was legitimate, there was not an easy or perfect solution. This is because an important part of the Consent Judgment's Core Skills determination was its focus on how the graduate spends her time at work – a question that is very difficult to answer in the absence of information from the graduate. Any backup methodology intended to capture additional information regarding graduates who fall out of contact would have to rely on some proxy. The goal was to find a backup methodology that would reasonably assess whether the graduate’s job requires her to use, during a majority of the time while at work, the Core Skills of her program.

After considering several alternatives, the Administrator approved a proposal that relied on the formal position description for the job in question to develop a reasonable understanding of how the graduate spends her time on the job. The proposal looks at the various job duties listed, removes those that focus on non-job-specific “soft” skills like cooperation and trustworthiness, and then assumes that the employee’s time is divided equally among the various duties described in the posting. That assumption is, of course, imperfect: The fact that a formal position description or job posting lists four duties does not mean an employee will spend 25% of her time on each duty. That said, the approach will distinguish between jobs that barely use the graduate’s Core Skills and jobs that use those skills extensively; it provides a way to distinguish, for example, between the “Server/Manager” who functions primarily as a server, not using the skills learned in her Culinary Manager program, and one who functions primarily as a manager. Moreover, to the extent this assumption is imperfect, it is not consistently biased either for or against finding a placement to be in field; it may overcount in some cases and undercount in others, but test cases reviewed before the methodology was approved showed that it provided Core Skills determinations that were generally reliable.

This approach provided a reasonable backup to the primary method of asking graduates directly how they spend their time, but it is important that it remain a backup. The backup approach was intended only for use when graduates fall out of contact with their schools and do not respond. Were DCEH to give up too easily on reaching its graduates and asking them the Core Skills question directly, the benefits of the primary approach, using the form that requests

the graduate's or employer's own estimate of the time spent using core skills, would be diluted. Accordingly, DCEH policy allows its admissions representatives to utilize the backup approach only after they have made three separate attempts to get a response using the primary, approved form and provided a reasonable time for response.

c. The Current Status

Job placement data using the new methodology that complies with the Consent Judgment will not be calculated and published until the Summer of 2019. While the issue has been apparent since the First Report, the solution has taken time to develop. Because DCEH did not start collecting data using the compliant methodology until the backup approach was approved in March 2018, the job placement data that was published in the summer of 2018 was collected entirely using the previous, non-compliant methodology. DCEH advises that in practice, the company has not relied on the new "backup" form, and its more discretionary judgments, at all for public reporting purposes: While that backup form had been constructed for use when recent graduates failed to respond to requests for additional information, DCEH has not yet used the form for determining whether to count a placement as in-field under the Consent Judgment in those circumstances. While DCEH has not ruled out the possibility of using the backup form in certain circumstances, the relevant circumstances arise infrequently, and DCEH has not used it yet. Given the annual cycle on which these numbers are completed and published, and the length of time it took to institute the new methodologies, the Administrator has not had an opportunity to review and confirm the reliability of information prepared under the new methodologies.

**F. Marketing and Third-Party Vendors**

1. Context

a. Industry Background

While marketing and recruiting are essential to the growth in enrollment and revenue in for-profit colleges, they have also posed significant compliance and legal challenges for the industry. In-house admissions representatives responsible for recruiting new students at some schools over the years have been responsible for tactics that are perceived as abusive and deceptive. Many schools have largely out-sourced the initial phases of recruiting new students to third-party vendors often referred to as "lead generators." These organizations and their affiliates use a variety of techniques, ranging from online advertisements and websites to email and call center campaigns. Typically, lead generators use a web of affiliates and sub-affiliates to operate multiple locations across the web, where they gather contact information for potential students, and then sell that information to one or more schools who will contact the prospective student.

Lead generation has been big business in other industries, and the same is true for education. Many lead generators use websites on which, for example, they create rankings of schools, purporting to list the "top" or "best" degree programs for a field of study or for schools for military personnel and veterans. They cast themselves as helping prospective students match their interests and needs based on location and academic preferences. But many feature or "rank" only schools that have paid to be there – largely for-profits schools. Legislators and

critics fear that the prospective students who find these sites expect to be shown appropriate options out of the entire range available; instead, they are steered to the for-profit schools that pay to be promoted, and which are typically more expensive than community colleges or state universities.

Similarly, some lead generation efforts target the unemployed and underemployed seeking employment. Some websites that purport to offer available job opportunities are actually designed to collect the contact information for consumers who consent to be contacted about various job and educational opportunities. It is by no means clear what role some of these “job sites” play in assisting people with job opportunities – or whether the individuals who provide information to these sites have ever gotten jobs through them.

Moreover, the lead generation industry has historically lacked transparency. Neither regulators nor even the for-profit colleges themselves have a good sense of who runs these operations or all of the tactics lead generators use to pursue students. Stories of employees signing up residents in homeless shelters and enticing contact information by promising jobs are just a few examples of the tactics that have been exposed. To date, the lead generation industry also has been largely unregulated. Effective regulation and policing of lead generator tactics is made more difficult by the somewhat transient quality of the industry; websites appear and disappear (or, at least, cease to be updated) frequently.

While for-profit schools can at times get some insight into the vendors with whom they directly contract, and who actually send them the leads, the “sub-vendors” on whom those vendors rely has been more challenging. The vendor who sells the lead to a school may not actually have had any contact with the prospective student, but often will have simply bought that lead from a third party. That third party – often referred to as a sub-vendor, but in reality often acting as a “sub-sub-vendor” or entity even further down the chain – placed an ad and collected information about the prospective student, but then sold the lead to others who ultimately sold it to the school. The school will know the identity of the vendor who sold it the lead, but it will not be in a position to identify the sub-vendor, let alone a sub-sub-vendor, unless the vendor provides that information – if the vendor even knows. The result is that if the content that produced the lead was problematic, the school may have little ability to enforce its compliance standards against the creator of the content. Indeed, the problematic sub-vendor may be selling non-compliant leads to the school through multiple channels.

The relationship between for-profit schools and lead generators is complicated. Many for-profit schools are heavily dependent on lead generators, and lead generators earn substantial sums from their clients. But they are also, in some sense, competitors, because for-profit schools can do their own marketing, using the same kinds of tools that lead generators use (such as targeted internet advertising). This potential competition appears to be one of the reasons why for-profit schools often have limited visibility into the steps lead generators take to identify prospects. In some sense, that has worked for both industries: For-profit schools have not wanted to be responsible for lead generators, and lead generators have not wanted for-profit schools to learn the tools of the trade and then ply that trade themselves.

Finally, lead generators often work for multiple for-profit schools that are competitors with each other and even sell the exact same leads at the same time to several schools. This

dynamic can create a frenzy of communication – shortly after a consumer provides information to the lead generator, the consumer is likely to be contacted by several schools within a few minutes (each school seeking to be the first to get the person on the phone), or repeatedly contacted over several days.

b. EDMC’s Efforts

Prior to the change in ownership, EDMC had taken a number of steps to improve the nature of the third-party leads it was receiving. Three of EDMC’s efforts at the early phases of the Consent Judgment merit mention here. First, EDMC began an effort to reduce its reliance on the pay-per-lead channel overall. This effort was most pronounced with respect to the Ai schools, but the Argosy and South brands also made reductions in their pay-per-lead spending.

Second, EDMC worked, at the beginning of the Consent Judgment, to revise the “pathing” used to generate leads for EDMC from job sites to include more conspicuous and direct questions, and to require consent to be contacted about educational opportunities. As a result, vendors were thus required to – among other things, and as described in more detail in the First Report – specifically ask whether a consumer is interested in furthering his or her education. EDMC also required its vendors to include an unequivocal negative response as an option for that question: “No,” or “No, I am not interested.” While vendors could still pass along leads to EDMC for consumers who give equivocal responses, like “Maybe” or “Maybe Later,” EDMC would not pay for leads for consumers who chose the negative response.

Third, given the importance – despite difficulty – of imposing consequences on vendors who provide non-compliant leads, EDMC relied on a number of compliance-related vendors to assist it in identifying violations and in tracking the leads that EDMC received back to the non-compliant material and vendor that generated them:

- One vendor looked at EDMC’s vendors’ web materials (though not vendors’ affiliates’ materials) to assess whether consumers provide adequate permission to be contacted.
- A second vendor “mystery shopped” the internet and tracked the representations that were made to consumers whose information was eventually sold to EDMC, ultimately identifying the original sub-vendor and content that produced the lead sold to EDMC.
- A third vendor crawled the internet in search of uses of EDMC brands, and flagged instances in which the brands are used in connection with certain keywords. EDMC then reviewed those pages to assess whether its vendors were portraying the schools in a manner consistent with its policies.

As discussed in previous reports, while EDMC’s efforts could not be expected to change the industry, they did constitute steps forward and were undoubtedly an improvement.

## 2. DCEH's Efforts

### a. Structural Changes

While DCEH has largely left EDMC's policies and the contours of its third-party vendor compliance infrastructure in place, it has made a handful of changes of significance.

First, it has replaced the online mystery shopper that identified representations being made to prospective students whose information was sold to DCEH and the sub-vendor who created the content. While the Administrator has not observed a significant change in the coverage or capacities of the new vendor, IntegriShield, there was an initial period of "calibration" in which IntegriShield worked to align the content that it was searching for and providing with the content that DCEH wanted captured – and, generally speaking, that the Consent Judgment prohibited. While some content may have been missed during that period, the challenges during that brief period were consistent with an ordinary transition between vendors.

More significant were changes in the structure of DCEH's marketing partnerships themselves. DCEH began the review period using three primary vendors, which it referred to as "agencies," for purchasing leads. These three agencies, in turn, purchased leads from the networks of sub-vendors (or as discussed above, sub-sub-vendors) that created content or bought and sold leads from others. DCEH changed that structure during this review period, consolidating its purchases down to a single agency, Quinstreet, from which it would purchase all leads and on which it relied to manage all of the sub-vendor relationships. The Quinstreet platform had benefits from a compliance perspective, as Quinstreet was able to provide sub-vendor information that DCEH did not have access to from its other agencies; with Quinstreet, DCEH had a greater capacity to "pause" – or ban – purchases from sub-vendors, or sub-sub-vendors, who had previously passed non-compliant leads on through to DCEH. DCEH used this power, occasionally pausing purchases from certain sub-vendors who had previously sent non-compliant material. These pauses of sub-vendors in certain circumstances were not required by the Consent Judgment, and reflected a proactive effort by DCEH.

### b. DCEH's Performance

While DCEH has maintained positive elements of the EDMC third-party vendor compliance infrastructure and has taken additional steps in some respects, continued progress will be important. Indeed, as for other for-profit schools, achieving a compliant marketing program that relies on third-party lead generators will *always* remain a work in progress.

Overall, the *number* of compliance violations that DCEH's monitoring infrastructure identified during this review period fell 10% over the previous period – though it is difficult to discern the extent to which that drop is due to improved vendor compliance, a modest drop-off in violation identifications during the transition from the previous online "shopper" to IntegriShield,<sup>124</sup> or some other gap. At a minimum, though, it is worth noting that DCEH cannot

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<sup>124</sup> The Administrator's team compared materials "flagged" by IntegriShield and its predecessor before and after the transition to evaluate the effect on compliance monitoring. In the period immediately following the transition, IntegriShield flagged new digital properties and flagged potential violations at a number of third-party sites that had not regularly appeared in its predecessor's reviews. However, the IntegriShield reviews also systematically missed



itself change the industry: As long as it relies on third-party lead generators, and other for-profit schools do as well, there will be a need for a strong compliance infrastructure designed to penalize vendors who provide non-compliant leads. As long as the vendors believe there are only incentives, not costs, for deceiving customers, it appears that they will continue to do so.

Along these lines, it is worth noting that there are ways in which DCEH has become *more* reliant, at least temporarily, on the job sites that are particularly problematic. In FY 2017, EDMC purchased 266,274 leads from job sites; in FY 2018, DCEH purchased 376,399 – and expects to purchase 315,764 in FY 2019. As a percentage of the total volume of leads that the company purchased, job site leads constituted 28.9% of the total volume in FY 2017 and will constitute 40.3% in FY 2019. While the job sites from which the company buys leads today are required provide better consumer disclosures than they did before the Consent Judgment, job site leads cannot be described as aimed at students whose goal is to pursue their education.

All of DCEH’s performance in the third-party vendor space should be evaluated in the context of its future plans, discussed further below.

### 3. Future Plans

There are two significant uncertainties regarding DCEH’s future capacity to promote a compliant marketing program.

The first is that after recently reducing its “agency” model to rely on a single agency, Quinstreet, and Quinstreet’s ability to provide identifying information about the sub-vendors whose leads are being sold to DCEH, DCEH is now in the process of eliminating the “agency” model entirely. Under its new vision, DCEH will purchase leads directly from the entities that had previously operated as sub-vendors; that is, instead of those entities selling their leads (ultimately) to Quinstreet, which was the only entity with whom DCEH dealt directly, DCEH will now purchase leads from a number of different sub-vendors – now vendors -- itself. DCEH will, in essence, act as its own agency, cutting out the “middle-man” and managing the various relationships itself.

From a business perspective, DCEH believes that this approach will enable it to obtain better leads at a lower cost. From a compliance perspective, there are questions, as DCEH will be losing Quinstreet’s sub-vendor identification capabilities. DCEH advises that it can mitigate against this risk in two ways. First, DCEH intends to maintain direct relationships only with the sub-vendors who have historically provided compliant leads. Second, DCEH also believes that it will be able to replicate the compliance benefits of the Quinstreet platform because DCEH has more sophisticated capacities than it did before working with Quinstreet and because the sub-vendors, which viewed Quinstreet partially as a competitor, will be more comfortable providing information directly to DCEH regarding the sub-sub-vendors or others from whom they are

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other third-party sites—particularly those that did not contain express references to DCEH brands but that ultimately led consumers to lead generation sites—that had been caught by the predecessor firm. DCEH’s compliance team instructed IntegriShield to be more aggressive in flagging potential violations and to “seed” more materials by filling out interest forms or submitting contact information to various sites. This effort appeared to be effective, and IntegriShield began flagging as much and potentially more relevant third-party marketing material than the predecessor had flagged.

purchasing leads. Whether DCEH will actually be able to replicate that compliance capacity is unknown at this time.

The second question is how heavily DCEH will rely on third-party lead generators going forward. To its credit, the new marketing team aims to be virtually off the third-party lead generator channel in three years. This ambition merits close review, as DCEH's predecessor, EDMC, had also expressed an intention to significantly reduce its reliance on the channel over the course of the Consent Judgment. At some point, repeated three-year plans will be received skeptically.

That said, whereas EDMC had largely expressed a compliance rationale for scaling back its third-party vendor spend, DCEH's new Chief Marketing Officer describes a business rationale for the move. The strategy anticipates that the business will be in a stronger position when its schools have more clearly defined brands to drive enrollment – and it is difficult to develop and promote a brand identity when the company's marketing efforts rely on third-party vendors who are advertising for and selling leads to multiple schools at the same time. DCEH will be better able to sell its services, the thinking goes, when its marketing budget is spent to advertise DCEH's product.

DCEH has thus put forward a plan under which each of its schools would significantly decrease its reliance on third-party lead generators by 2022. Specifically, DCEH plans that by 2022 it will purchase just 43% of the volume that it had purchased for Ai in 2018 (or, given Ai's previous significant third-party spend reduction, 24% of Ai's lead purchases in 2017), 14% of its 2017 purchases for Argosy, and 15% of its total 2018 purchases for South. While DCEH does not expect to eliminate third-party lead purchases entirely, they plan to purchase a fraction of what the company had purchased when the Consent Judgment began.

DCEH believes that this three-year timeline is realistic, based on the new Chief Marketing Officer's experience bringing two other for-profit schools through a similar transition. The timeline it proposes here contemplates *more* time than was required at the other schools, given DCEH's belief that Argosy and South, in particular, will need more time to build a brand that is sufficiently strong to generate enrollment in the absence of a robust third-party vendor spend. In other words, DCEH believes it needs three years to reach the point of a virtuous circle: It will take three years to improve the strength of its brands sufficiently, while still using third-party leads, so that their brands are strong enough to drive enrollment without using third-party leads.

Time will tell whether DCEH actually reduces its reliance on third-party lead generators. If it does not, its new in-house approach to vendor management will be put to the test.

As DCEH's experience trying to reduce its reliance on third-party lead generators shows, this industry's ties to third-party lead generators are difficult to untangle. While DCEH has taken steps to improve the quality of leads that *it* receives, the third-party vendors are continuing to generate problematic leads for other customers – they simply filter out (or are supposed to filter out) certain problematic leads from the batches that they send on to DCEH. In some ways, marketing practices in the for-profit schools industry are getting worse. DCEH's new Chief Marketing Officer notes that as traditional public, non-profit institutions are developing and

marketing programs for adult learners, the lead generators that serve for-profit schools are facing greater competition for prospective students; lead generators that were once thought to be improving are facing economic pressures to collect lower-quality leads using less compliant methods.

Some for-profit schools, following the marketing model that DCEH has laid out for the next three years, may elect to reduce their reliance on third-party lead generators for their own business reasons. These marketing strategies will vary from company to company, though, and companies that lack strong brands – like those who are perceived, often properly, as shady – will often rely on third-party lead generators to bring them potential students. As long as for-profit schools perceive that their own reputations will not attract the students and revenue they need, and as long as lead generators feel little risk of penalty for the least compliant tactics, the practices will not change. Thus, the DCEH Consent Judgment has made an appreciable difference in DCEH’s marketing practices; changing the marketing practices of the industry will require an industry-wide approach.

### **G. Withdrawal Policies**

The Consent Judgment also requires DCEH to comply with certain refund practices for newly enrolled students who withdraw shortly after they enroll. The refund policy covers students who are newly enrolled in a DCEH undergraduate program and who have fewer than 24 credits of post-secondary education – essentially non-transfer, first-term enrollees.<sup>125</sup> Students at ground schools who meet those criteria and withdraw within seven days of the start of their first term – or 21 days for students in online programs – are entitled to a full refund of their tuition and fees.<sup>126</sup> Further, while DCEH may retain the full amount of tuition and fees for students who attend 60% or more of an academic term, students are entitled to a proportionate refund for students who withdraw at an earlier point in a term.<sup>127</sup> DCEH must publish its refund policies in its schools’ enrollment agreements,<sup>128</sup> and may not change those policies to the students’ detriment without Administrator approval.<sup>129</sup>

During the second review period, EDMC’s compliance with these provisions was reviewed extensively. With respect to the refund *policies*, students were adequately advised that refunds are available if they withdraw within seven days at a ground campus or 21 days at an online school. The relevant policies regarding the availability of these refunds in each school’s enrollment agreement, as the Consent Judgment requires.<sup>130</sup>

The Administrator also reviewed EDMC’s actual provision of refunds during the second review period, reviewing both individual student accounts to ensure that withdrawing students received the refunds owed them based on the date they were recorded as having withdrawn, and reviewing EDMC practices and overarching data to assess whether students were properly withdrawn on the “correct” date of their withdrawal or were in any way slow-walked in order to

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<sup>125</sup> Consent Judgment ¶ 104.

<sup>126</sup> Consent Judgment ¶ 104.

<sup>127</sup> Consent Judgment ¶ 105.

<sup>128</sup> Consent Judgment ¶ 104.

<sup>129</sup> Consent Judgment ¶ 105.

<sup>130</sup> Consent Judgment ¶ 104.

minimize the number of refunds required. That review examined individual student ledgers to confirm that students who withdrew before classes began or within seven days of the start of ground schools or 21 days of the start of online schools received full refunds; it did not identify any students who were entitled to full refunds who did not receive them. The review also examined patterns in withdrawal dates, to assess whether students were disproportionately recorded as having withdrawn shortly after the seven- or 21-day cut-off dates – which could suggest that withdrawals were being slow-walked. Neither the data nor interviews of employees involved in the process indicated that withdrawals were not being processed effectively.

The Administrator re-visited this review during this third review period, to assess whether there were indications that the processes had changed or bore indicia of problematic issues. Once again, interviews of past and current employees did not indicate any pattern or frequency of problematic withdrawals. Data regarding withdrawal dates similarly revealed no unusually high distribution of withdrawals following the seven- and 21-day cut-offs.

## **H. Student Finance**

### **1. Institutional Debt Forgiveness**

One of the Consent Judgment’s most consequential financial components is its requirement that then-EDMC forgive all amounts that certain qualifying students owed the company. The forgiveness requirement did not encompass loans owed to other entities, such as federal financial aid, which was outside of EDMC’s power to forgive. But its effect on former students’ lives would be significant: As of the time of the settlement, EDMC estimated that the program would result in the forgiveness of approximately \$102.8 million.

Unlike the many provisions that were focused on improving EDMC’s recruiting of *future* students, the institutional debt forgiveness requirement was designed to provide relief to students who may have been harmed by the company’s *past* recruiting practices. Indeed, the population of eligible students was defined to assist former students who were most likely to have been “lured” into a program that was not a good fit: students who had little previous undergraduate experience, left the program soon after starting, and attended an EDMC school during a period in which the company’s problematic practices were more prevalent. Specifically, students were eligible for debt forgiveness so long as they were

Enrolled in a Program of Study with fewer than twenty-four (24) hours of transfer credit, (b) withdrew from the Program of Study within forty-five (45) days of the first day of their first term, and (c) whose final day of attendance at an EDMC school was between January 1, 2006, and December 31, 2014.<sup>131</sup>

The Consent Judgment also required EDMC to make reasonable best efforts to refuse any payment on the forgiven amounts, ask the credit reporting agencies to delete any associated trade line information, and send a notice to affected students within 90 days of the Consent Judgment’s effective date.<sup>132</sup>

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<sup>131</sup> Consent Judgment ¶ 120.

<sup>132</sup> Consent Judgment ¶¶ 120-21.

Most of the company's forgiveness-related work was completed in December 2015 and January 2016, well within the Consent Judgment's 90-day timeline and long before the Dream Center transaction. EDMC ultimately concluded that 78,417 students were entitled to a total of approximately \$104.6 million in forgiveness.

To assist in its review of EDMC's implementation of the debt forgiveness program, the Administrator retained Bates White, LLC, an economic consulting firm that performs compliance and data verification services.<sup>133</sup> The goal was to ensure as rigorously as reasonably possible that all of the students entitled to forgiveness of their EDMC debts actually received the forgiveness. Accordingly, the Administrator team had access to certain narrowly defined, anonymized enrollment information regarding all of the approximately 800,000 students who enrolled in EDMC schools between 2006 and 2014. The Administrator team then conducted its own review of the data to identify the students within that population who met the Consent Judgment's transfer credit, 45-day withdrawal window, and last date of attendance requirements. That analysis identified a population of students who met the criteria to have their institutional debt forgiven.

Some of the students who met the Consent Judgment's eligibility requirements did not actually appear on EDMC's records of students who actually received forgiveness under this program. This is not surprising, because many students who were eligible for forgiveness did not actually have any outstanding debt by the time of the Consent Judgment; they may have already paid off all outstanding debt, or in some cases may have graduated without debt. Those students, while eligible for forgiveness, had no institutional debt to forgive.

Having determined the initial universe of students who met the eligibility criteria, the Administrator team then assessed whether there were students in that population who had debt to forgive but did not actually receive forgiveness. This analysis focused on those students who met the eligibility requirement but were not sent notifications of forgiveness. Given the volume, and taking into account the various systems of record from which the data had been collected, Bates White developed a sampling strategy that would ensure a careful review of those students who met the eligibility criteria but did not actually receive debt forgiveness.<sup>134</sup>

Reviewing the financial ledgers of all of the students in the sample population, the Settlement Administrator team found no instances in which any of those students had any debt to forgive. That is, of the population of students for whom there was most likely to have been an error – students who met the eligibility criteria but did not receive a forgiveness notice – this review found no instance in which a student was denied forgiveness in error.

The review found only two small issues of note. First, EDMC's Internal Audit team reported that of the 78,000+ forgiveness notices that were sent, as many as 25% of the notices were returned as undeliverable. EDMC was not required to undertake additional efforts to locate

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<sup>133</sup> Shortly after EDMC initially concluded its forgiveness program in December 2015, during the time period in which the company still had a Vice President of Internal Audit, EDMC conducted its own internal review of its debt forgiveness plan. The Settlement Administrator reviewed all work papers from the audit and discussed the review with EDMC's auditor in charge. The Settlement Administrator determined that in addition to those steps, it would retain Bates White to conduct its own review of the company's compliance with the debt forgiveness requirement.

<sup>134</sup> The sample was constructed using a 95% confidence interval and a 1% error rate.

those former students, as the company had satisfied the Consent Judgment’s requirement that the notices be sent to the students’ last known mailing address. Nor was the returned notice particularly consequential for the recipients of forgiveness, because the company had successfully forgiven the debt, notified the credit reporting agencies, and was required to further return or refund any attempts to make further payments. While those students may not know it, they have received the benefits provided by the Consent Judgment. Second, there were a handful of students in the broad forgiveness population whose ledgers reflected forgiveness-related activity in May 2016, a few months after the Consent Judgment’s deadline and after the December 2015 or January 2016 period in which EDMC had indicated the bulk of activity occurred. Further investigation showed that for 24 students with a particular type of loan being serviced by one particular third-party vendor, an earlier bookkeeping error in the students’ favor had suggested that they had no debt to forgive during the initial round of forgiveness; when the error was discovered, the debt was “applied” and then immediately forgiven. In the meantime, those students had been subject to the hold on collections, and – particularly since the delay in forgiveness was the result of an erroneous belief that the students had no debt – there was no apparent harm from the delay.

The Administrator also reviewed documentation reflecting EDMC’s requests to the three major credit ratings agencies seeking the deletion of the relevant trade lines, as well as talking points and job aides distributed to employees who were likely to receive questions regarding the forgiveness program. No problems were identified in these materials.

Working with the third-party auditing firm Bates White, the Settlement Administrator thus concluded that EDMC complied with the Consent Judgment’s institutional debt forgiveness requirements.

## 2. Implementation of Electronic Financial Impact Portal (EFIP)

The Consent Judgment requires DCEH to provide, to all prospective students who are eligible for financial aid and who are borrowing funds to finance their education, an Electronic Financial Impact Platform (“EFIP”) prior to enrolling in a program of study.<sup>135</sup> The EFIP is an interactive, internet-based program that produces a personalized disclosure of the financial impact to a particular student of pursuing a given program and incurring a specific amount of debt.<sup>136</sup>

Under the Consent Judgment, EDMC could choose whether to implement an EFIP that was developed by the Consumer Financial Protection Bureau (“CFPB”) or develop its own, in-house. The Consent Judgment required that EDMC “undertake reasonable efforts” to provide feedback to the CFPB with regard to any preliminary versions of the EFIP platform that CFPB presented to EDMC.<sup>137</sup> Once CFPB’s final version of the EFIP was ready to implement, EDMC

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<sup>135</sup> Consent Judgment ¶ 71.

<sup>136</sup> Consent Judgment ¶ 17. The Consent Judgment’s requirement that a prospective student generate a personalized disclosure using the EFIP applies only in the pre-enrollment period. The Consent Judgment notes that “in the event that a Student chooses to revisit the [EFIP] after enrolling in a Program of Study, EDMC shall not have any additional obligations to that student under this paragraph.” *Id.* ¶ 71.

<sup>137</sup> Consent Judgment ¶ 72.

had sixty days from receipt of the EFIP to determine whether it would use the CFPB's tool.<sup>138</sup> EDMC chose to use the EFIP developed by the CFPB.<sup>139</sup> The EFIP provides a user experience in three phases, allowing students to (1) review the student's first-year financial aid offer, (2) evaluate the financial impact of accepting that financial aid offer, and (3) learn about options for reducing the anticipated student debt load.<sup>140</sup>

As indicated in the Second Report, EDMC began using the EFIP on April 9, 2017, and it generally proceeded without major problems.<sup>141</sup>

From a student perspective, the EFIP receives generally positive reviews. Indeed, anonymized feedback collected by the CFPB showed that of more than 5,000 comments received since the EFIP was implemented, the vast majority were positive and described the tool as helpful. Some DCEH employees have noted that students do not ask extensive questions about the EFIP, but employees did not have insights into whether that is because the information speaks for itself, because the students are unengaged, or because the students are also receiving similar information through another Consent Judgment requirement, the FYSK.

It is worth noting that the EFIP has some supporters among DCEH employees and managers involved in admissions. While some frontline staff who engage directly with students during the admissions process appear to view the EFIP as clunky, higher-level managers indicated that they believe the EFIP provides useful information – and that there is value in providing that information through multiple channels in the admissions process. These individuals indicated that the EFIP is uniquely helpful in terms of showing students what repayment will entail, an important element of enrolling students who are prepared for the experience. Some employees expressed a hope that the EFIP will survive beyond the time that the Consent Judgment requires.

### 3. Debt Collection

In connection with its student loan offerings, DCEH also necessarily finds itself in a position to collect on outstanding student debt and is subject to state and federal laws that prohibit unfair and deceptive practices.<sup>142</sup> In certain circumstances, DCEH's debt collection practices are also governed by the Consent Judgment's prohibition on engaging in unfair practices: When DCEH is attempting to collect on a debt owed by a former student whom DCEH is also attempting to re-enroll – and who is thus both a “student” and a “prospective

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<sup>138</sup> Consent Judgment ¶ 72.

<sup>139</sup> Had EDMC determined not to use the EFIP developed by the CFPB, the Consent Judgment established a process through which EDMC would have worked, with the Administrator and in consultation with the Attorneys General, to develop its own EFIP. Consent Judgment ¶ 73.

<sup>140</sup> Before delving into the EFIP process, a prospective student selects the estimated years it will take to complete the program, which may be shorter or longer than the program's designed completion time. The student's anticipated completion timeframe impacts later calculations, including the student's total anticipated debt after graduation.

<sup>141</sup> This Report focuses on the use of and reactions to the EFIP. For a full description of the CFPB's EFIP process, please refer to Part III.F of the Administrator's Second Report.

<sup>142</sup> See, e.g., 12 U.S.C. § 5531(a) (authorizing the CFPB to take action against any covered person or service provider for “committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service).

student” under the Consent Judgment – DCEH’s debt collection practices are also subject to the Consent Judgment’s prohibition on unfair practices.<sup>143</sup>

The scenario in which this can occur is not far-fetched. In one instance that ultimately proved to involve an idiosyncratic problem due to a unique set of circumstances not commonly repeated, a former Argosy University student had finished her coursework but, because she owed the school money, had not graduated. Apparently subject to multiple mailing lists, she received messages that seemed to acknowledge her debts, and, separately messages that encouraged her to contact the school regarding re-enrollment – despite her coursework being done, and the only barrier to graduation being the unpaid debt.

From a Consent Judgment perspective, the concern was that a former student would be invited to contact the school under the guise of discussing re-enrollment opportunities, but then, now that contact with the former student had been re-established, the school would press the former student to re-pay the debts. While DCEH is certainly entitled to engage in appropriate debt collection efforts, using false pretenses to entice former students to re-establish contact, for the purpose of “ambushing” them with debt collection attempts, would raise questions under unfair practices laws and the Consent Judgment.

Upon further investigation, while the particular combination of messages to this student was confusing, there appeared not to have been any improper debt collection practice behind it – and no pattern or practice of confusing or misleading emails that would have a similar problematic effect. The confusing combination of messages that this student received was the result of a human error relating to that student’s somewhat unusual particular circumstances: while the student had in fact completed all her coursework, she received messages intended for students who had left before completion, because a grade change had not been recorded properly in the relevant system of records. This was not a recurring problem that would have resulted in other students receiving similar messages, but arose because of the unusual circumstance of an unusual grade change that was not recorded properly.

Given the unique combination of circumstances here, and the potential relationship to debt collection practices, DCEH forgave the student’s outstanding debt. There was no pattern or practice of noncompliant or unfair practices in this instance.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

Since the Consent Judgment became effective in 2015, it has caused significant upgrades in the compliance infrastructure for schools now managed by DCEH. A system-wide call recording and monitoring system, clearly presented and digestible information reflected on single-page disclosure sheets, and the Electronic Financial Information Portal have contributed to an admissions process that provides generally accurate information without the high-pressure, abusive or deceptive practices that have been alleged against this industry and this company’s predecessor. Employees involved in the compliance process continue to make sound judgments as they seek to comply with the Consent Judgment’s, regulators’, and accreditors’ requirements.

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<sup>143</sup> Consent Judgment ¶ 74.



Results have improved in the brief time since the compliance restructuring towards the end of this review period.

That said, there are several areas that will require continued compliance attention as DCEH moves forward.

First, DCEH leadership must work hard to promote and encourage a culture that values compliance as a critical contributor to the company's success. That tone must be crystal clear, come from the top, and be reinforced by appropriate messages of support for compliance personnel.

Second, DCEH must also fully remedy the harms caused by DCEH's failure to advise students that certain HLC-accredited schools had lost their accreditation status on January 20, 2018.

Third, school closings create a host of issues for regulators, accreditors, and most of all, students. From the perspective of the Consent Judgment, the representations DCEH makes to students at the teach-out locations, whom DCEH is also recruiting to complete their educations at other DCEH schools, need to be accurate, complete, and timely. This can be difficult when decisions are being made under complicated circumstances, but the consequences that the closings have on students make this paramount.

Fourth, and related to the need to develop a compliance culture, DCEH should invest again in compliance infrastructure. Filling some of the key compliance positions left unfilled through attrition, rebuilding the company's audit function, and shoring up the company's ability to maintain accurate data would all be beneficial – both as a practical matter and from the perspective of signaling a commitment to compliance. Yet while investment is important, it will not be sufficient if employees believe that compliance is viewed as an obstacle to senior leadership's goals. The tone at the top is critical.

Fifth, attention should also be paid to the extent to which DCEH's non-profit status is used to promote the charitable mission of The Dream Center Foundation, and the extent to which it is used to benefit the *for-profit* missions of other companies – particularly those affiliated with DCEH managers. Absent an outright prohibition on partnerships with DCEH managers' other companies, any such arrangements should be reviewed for the degree to which they further the non-profit mission and the degree to which they open the company to questions about private inurement or private benefits.

Finally, as with other industry players, DCEH's reliance on third-party lead generators should be continually reviewed. The company has indicated an intent to dramatically reduce reliance over a three-year period. DCEH's success in this regard will be important both for the company and its prospective students, and instructive for the industry.