



January 25, 2019

Toby Ann Stavisky
Member of the New York State Senate
Chair, Senate Standing Committee on Higher Education,

Deborah J. Glick
Member of the New York State Assembly
Chair, Assembly Standing Committee on Higher Education,

Re: Joint Legislative Public Hearing on 2019-2020 Executive Budget Proposal:

Dear Chairwoman Stavisky and Chairwoman Glick,

Thank you for inviting Legal Services NYC to testify on the important role New York can play in protecting students from predatory for-profit colleges and trade schools. Legal Services NYC believes the For-Profit Accountability Act, presented in the Governor's budget will improve the quality of for-profit education in New York and elsewhere.

Who We Are

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

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

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

The For-Profit Education Problem

The For-Profit Education problem is like climate change. Powerful lobbyists deny its existence despite daily news of fraud, mismanagement, and life-long harm to students.¹ Their mantra is something like this: We serve an impoverished population neglected by others. We move challenged students from dead-end jobs at Target and McDonalds to skilled professions in hospitals and offices. Our hands on approach, while not cheap, benefits society in the long run. Students choose us because we offer better instruction than crowded community colleges.

Numerous studies and law suits disprove such spin.² One in ten for-profit students in New York has earnings below the poverty line.³ The majority (73%) earn less than a high school graduate (\$25,000).⁴ Tuition at for-profits is high. For example, a medical assistant degree at ASA College in Brooklyn costs \$28,000 as compared to \$2,200 at Kingsborough Community College.⁵ Low earnings and high debt result in a life-time of repayment for for-profit students. And those who ignore their debts pay dearly. Each spring, the U.S. Department of Education

¹ A sample of For-Profits news over the last two months follows: [DeVos Restores Recognition for Troubled For-Profit Accreditor](#), Andrew Kreighbaum, *Inside Higher Ed*, 11.26.18; [ITT Tech students score victory in bankruptcy settlement](#), Danielle Douglas-Gabriel, *Washington Post*, 11.28.18; [Former Seattle student suing feds over student debt from deceptive for-profit school](#), Asia Fields, *Seattle Times*, 11.28.18; [Students At For-Profit Colleges Are More Vulnerable To Student Loan Distress, NYC Report Finds](#), Diana Hembree, *Forbes*, 11.30.18 ; [National for-profit college chain abruptly closes, stunning thousands of students](#) Joel Shannon, *USA Today*, 12.5.18; [I feel like I wasted my good time here': Local for-profit school closes, leaves students scrambling \[VIDEO\]](#), *ABC News Richmond VA*, 12.5.18; [This For-Profit College Chain Is Leaving Students With Lots of Debt and No Degrees](#), Joshua Alvarez, *Washington Monthly*, 12.11.18; [Education Dept. Will Cancel \\$150 Million in Student Debt After Judge's Order](#), Stacy Cowley, *New York Times*, 12.14.18; [For-Profit Chain Cancels \\$494 Million in Student Debt to End State Investigations](#), Stacy Cowley, *New York Times*, 1.3.19; [DeVos' Deregulatory Higher Education Agenda](#), Lauren Camera, *US News*, 1.7.19; [VA Inspector General Cites Poor Oversight of College Programs Approved for GI Benefits](#), Ashley Smith, *Inside Higher Ed*, 1.21.19; [More For-Profit Colleges Closing, Leaving Students With Difficult Choices \[audio & transcript\]](#), Mark Brodie, *KJZZ Arizona Public Radio*, 1.22.19.

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

³ Tom Hilliard, Center for an Urban Future, *Keeping New York's For Profits on Track*, (April, 2018), available at <https://nycfuture.org/research/keeping-new-yorks-for-profit-colleges-on-track>;

⁴ *Id.*

⁵ College catalogues with 2018 tuition schedule available with author.

intercepts more than \$2 billion in tax refunds owed to workers with defaulted student loans.⁶ Such loss of income is not only devastating, it's unfair. Take for example D.M. In 2013, she lost a \$6,000 tax refund earmarked for rent and other bills. When she complained to the student loan debt collector that she had withdrawn from the for-profit beauty school after a week in 1985, she was told her short enrollment didn't matter. The collector's next question was how D.M. intended to pay the \$5,000 balance she still owed. (The \$2,500 loan had quintupled in size due to interest.)⁷

The Trump Administration Does Not Protect Students from Predatory For-Profits, Nor Will Existing Federal Rules

Under President Trump, the U.S. Department of Education disbanded its for-profit fraud unit⁸, which recently shut down a beauty school that defrauded the government of \$50 million.⁹ It also has hired for-profit executives and lobbyists for leadership positions. These hires include the former President of one of the nation's largest For-Profits, DeVry University, who paid \$100 million to settle an FTC fraud suit in 2016.¹⁰ In addition, in 2017 the Trump Administration rescinded rules created under the Obama administration that were designed to police for-profits – the gainful employment rule that cut funding to schools whose students were unable to repay their loans and the borrower defense rule requiring for-profits to pay back the government when it is determined that the government had been defrauded.

While these rescissions were largely ineffective, the Obama-era rules remain shelved. This leaves only moribund rules from the 1990's that fail to protect borrowers.¹¹ For this reason,

⁶ GAO- 17-45, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permanent Relief*, p.18 (December 2016), available at <https://www.gao.gov/assets/690/681722.pdf>.

⁷ LSNYC eventually helped DM obtain a discharge of her student loans, and her tax refund was returned. .

⁸ Danielle Ivory, Erica L. Green and Steve Eder *Education Department Unwinds Unit Investigating Fraud at For-Profits*, New York Times (May 13, 2018) available at <https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html>.

⁹ M.L. Nestel, The Daily Beast, (Aug. 26, 2018), *Beauty School's Ugly Scam Made \$50 Million Off Taxpayers*, available at <https://www.thedailybeast.com/beauty-schools-ugly-scam-made-dollar50-million-off-taxpayers?ref=scroll>.

¹⁰ Danielle Ivory, Erica L. Green and Steve Eder *Education Department Unwinds Unit Investigating Fraud at For-Profits*, New York Times (May 13, 2018) available at <https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html>.

¹¹ The Cohort Default Rate test, which cuts off funding if too many students default on their loans, is no longer effective. Only 10 schools out of over 4,000 failed the test in 2017, as opposed to over 1,000 schools in 1994. General Accounting Office, GAO 18-163, *Federal Student Loans, Actions Needed to Improve Oversight of Schools' Default Rates*, at 29, 30 (April 2018) available at <https://www.gao.gov/assets/700/691520.pdf> The CDR is ineffectiveness today because almost all for-profits hound their students to apply for a forbearance (a pause on repayment) which keeps the loan current during the CDR review period. Such pestering has included sending a \$25 gift card to students who cooperated. *Id.* at 17. The second test, the 90-10 rule is equally ineffective. It prevents a school from deriving more than 90 percent of its tuition income from federal sources. Any for profit that crosses the 90-10 line loses its eligibility for student loans. While many schools tiptoe up to the 90-10 line, almost none cross it. Between 2003 and 2008, only 18 out of 1,955 for profit schools ran afoul of the 90 –10 rule. . General Accounting Office, GAO 11-4, *For-Profit Schools: Large Schools and Schools that Specialize in Healthcare Are More Likely to Rely Heavily on Federal Student Aid* at 18, (Oct. 2010) available at <https://www.gao.gov/assets/320/310897.pdf>.

the Budget Proposal's use of two metrics, the 80-20 rule, and the 50% instruction rule, is especially valuable.

The Proposed 80-20 Rule in the Governor's Budget Identifies Failing For-Profits

The Governor's budget proposal prevents schools from enrolling new students if it fails an "80 -20" test. The "80-20" test measures the school's reliance on public money for its tuition. Consumers are careful with their own money. Schools that cannot attract students willing to pay outright for their educations are often of questionable value. Hence, the proposal requires for-profits to attract at least 20% of their revenue from students themselves, rather than public loans and grants. Schools that fail will be prohibited from enrolling more students until they pass the metric.

Currently, 20 of New York's 89 for-profits would fail the 80-20 test if it became law today. Among the 20 is the largest for-profit in New York, Bryant and Stratton College. It enrolls about 7,000 students. The earning power of its students after leaving the school is less than the average high school graduate, according to federal data available on College Scorecard.¹² Worse, the tuition is so high and the salaries so low that only 27% of this for-profit's students can pay down a single dollar of principal seven (7) years *after* leaving Bryant.¹³ The other 73% are making payments under income driven plans that are so low (due to low wages) that they do not even cover the interest that accumulates each month. In other words, the vast majority of Bryant students leave school with debt they will never repay. This is not the case with students that attend private non-profits or public schools. 60% of them are reducing their debt each month through repayment.¹⁴

The Governor's Proposal that 50% of For-Profit Tuition go to Student Instruction will Improve Student Outcomes

The Governor's budget proposal prevents a for-profit from enrolling more students if less than 50% of its revenue goes towards instruction. Currently, only 29% of for-profits spend more than half of their tuition dollars on instruction, as compared to 79% of not-for-profits.¹⁵ If this metric becomes law, almost three quarters of all for-profits must either close their doors to new students, or shift their allocation of tuition dollars to instruction.

Why should New York be so heavy handed? After all, millions are spent by many public and private schools on non-essential things such as basketball coaches, climbing walls, and even decent food. The obvious answer is that for-profits students are getting short changed. Indeed, only \$0.41 of every \$1.00 of tuition paid to New York's for-profits goes to instruction, as opposed to \$0.86 at non-profits.¹⁶ This translates into lower teacher salaries, and hence less attention to students and worse outcomes. Indeed for-profit students often complain that their

¹² See, e.g. <https://collegescorecard.ed.gov/school/?189583-bryant-stratton-college-buffalo>.

¹³ This data was derived from October 30, 2018 data available at <https://collegescorecard.ed.gov/data/>.

¹⁴ *Id.*

¹⁵ Yan Cao, The Century Foundation, *Grading New York's Colleges*, at 3 (March 23, 2018) available at <https://tcf.org/content/report/grading-new-yorks-colleges/>

¹⁶ *Id.*

teachers are overworked, underpaid, and hence unavailable to provide individual attention needed to ensure success.

There is another reason that the 50 percent instruction metric is key: recruitment. For-profits, like any school, need to fill seats to balance the budget. And while St. Francis, LIU, and Union do this through glossy brochures and admission office visits to high schools, for-profits are far more aggressive. Last month, I was looking at the webpage of a Brooklyn for-profit, ASA college. A pop up asked me for more information about myself. Not able to close the pop up and proceed onto their webpage, I impulsively gave my cell phone number and checked off several boxes, including one stating I was only interested in on-line education. Within 20 minutes, I received a phone call, not from ASA but from a for-profit in Waterbury Connecticut called Post University (which specializes in on-line teaching.) Thereafter, Post called daily, five days a week for three weeks. Only when I answered and told them I wasn't interested, did the daily calls stop. Impressed by the for-profit's doggedness, I repeated the same exercise on line with the Borough of Manhattan Community College. Although I gave BMCC my cell phone and email, I only received one email stating "thanks for your inquiry, will get to you shortly." Thereafter, I heard nothing from BMCC. Apparently, BMCC, a public school, uses its tuition dollars on instruction and other essential services unrelated to recruitment.

Which leads to the third reason this 50% instruction test is so important. Taxpayers lose their investment (the student loan and TAP grant) when a for-profit student is unable to repay his or her loans. Yet taxpayers did not get the full benefit of that student loan and TAP investment if the school diverts more than half of it to other activities, including recruitment. Currently, about 15,000 for-profit school students are in default in New York State.¹⁷

The Governor's Proposals regarding Executive Pay, Accreditation, and Arbitration

The Governor's proposal also requires for-profits to disclose the salaries of employees and profits sent to shareholders. This adds further transparency for taxpayers, who, as discussed above, are responsible for defaulted loans when a for-profit fails to meaningfully educate its students. Such a disclosure rule might have inhibited the Lincoln Tech executive (which operates in Queens) from drawing a \$2.1 million salary (two and one-half times more than that paid to Harvard's president.)¹⁸ Similarly, the CEO and Chair of the Technical Career Institute (Manhattan) might have been inhibited by such a disclosure rule when they raised \$10 million through stock sales and then, one month later, sold 85% of their stock and netted \$6 million.¹⁹

The Governor's proposal also prohibits the leaders of for-profits from sitting on accreditation boards. Such as rule is needed in light of the Corinthian debacle. Corinthian was

¹⁷ Dvorkin, Bowles, Shaviro, , Center for an Urban Future, *Deeper in Debt: For-Profit Schools Driving Student Loan Defaults in New York State Keeping New York's For Profits on Track*, at 4 (Dec., 2018), available at https://nycfuture.org/pdf/CUF_Deep_in_Debt_Student_Loan_Default_Data_Brief.pdf

¹⁸ U.S. Senate Committees on Health, Education, Labor, and Pensions, *For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, at 590 (2012), available at https://www.help.senate.gov/imo/media/for_profit_report/PartII/Lincoln.pdf

¹⁹ These facts are set forth in a class action complaint brought against the parent company of TCI. *Glausser v. EVC Career Colleges Holding Corp.*, 05 CV 10240 (SDNY Dec. 6, 2005).

subject of state and federal and media investigations for years before it eventually closed in 2014. Its accrediting agency, the Accrediting Council for Independent Colleges and Schools, was awash with for-profit executives. ACICS ignored the suits and investigations involving Corinthian and even placed a Corinthian campus on its “honor roll” just months before the Education Department forced the school to shut down. Late in 2018, the Trump administration resurrected ACICS so that for-profits unable to be approved by more reputable accreditation agencies could resume business.

The Governor’s final proposal bars for-profit schools from including arbitration clauses in their contracts. Such a provision does protect students. Arbitration is secret. It also inhibits redress since class action arbitration is not allowed and individual fraud claims are expensive.

Conclusion

Fossil fuel executives at Exxon studied global warming in the 1970’s and 1980’s. Around that time, Glacier National Park had scores of glaciers. Exxon then suppressed its studies and became climate change deniers. Today, Glacier National Park has only 25 glaciers.

For profit school executives are at a crossroad. They can continue denying the ill effects of their deregulated industry and hope the current administration in Washington will save them. Or they can support reasonable metrics that promote better student outcomes while decreasing profits. The For-profit College Accountability Act that the Governor has proposed will shield vulnerable New Yorkers, including many of LSNYC’s clients, from predatory schools and serve as an example for other states. It also could save an industry struggling with weekly stories of fraud, greed, and mismanagement.

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