

# United States Senate

WASHINGTON, DC 20510

August 2, 2021

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, DC 20202

Dear Secretary Cardona:

We write today to urge the U.S. Department of Education (Department) to take immediate action to assist students in light of Center for Excellence in Higher Education’s (CEHE) decision to close all of its locations effective August 1.

On August 21, 2020, a Colorado state court found that CEHE defrauded students and violated Colorado’s consumer protection law. CEHE’s Chairman Emeritus Carl Barney and CEO Eric Juhlin were found individually liable.<sup>1</sup> The court identified that institutions run by CEHE used deceptive trade practices to make “false and misleading representations about the potential wages and types of employment” a student could expect after completing a program at these institutions.<sup>2</sup> Further, the court identified that between 71 percent and 81 percent of students attending CollegeAmerica in Colorado were receiving financial aid through Title IV.<sup>3</sup> Examples of the kinds of fraud identified by the court included: advertising potential wages twice that of CEHE graduates,<sup>4</sup> intentionally withholding data showing CEHE graduates earnings were lower than national averages,<sup>5</sup> and advertised programs such as training for X-Ray Technicians, which would not be acceptable for a state licensing exam, or a sonography program that never existed.<sup>6</sup>

Unfortunately, the Department allowed CEHE schools to continue to access federal Title IV funds for nearly a year following this court judgment—despite clear authority and multiple requests from Congress to cut off federal funds to protect additional students and taxpayer

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<sup>1</sup> *Colorado v Center for Excellence in Higher Education*, 14cv34530, Finding of Fact, Conclusions of Law, and Judgement (hereinafter, “Order”), filed Aug, 21, 20120, available at <https://www.republicreport.org/wp-content/uploads/2020/08/FINDINGS-OF-FACT-CONCLUSIONS-OF-LAW-AND-JUDGMENT.pdf>. [https://www.republicreport.org/wp-content/uploads/2020/10/10.14.20\\_Coalition-CEHE-Ltr-to-DeVos.pdf](https://www.republicreport.org/wp-content/uploads/2020/10/10.14.20_Coalition-CEHE-Ltr-to-DeVos.pdf)

<sup>2</sup> ¶ 585.

<sup>3</sup> ¶ 409.

<sup>4</sup> ¶ 585.

<sup>5</sup> ¶¶ 641-648.

<sup>6</sup> ¶ 607.

dollars from being put at risk.<sup>7</sup> Now, according to reports, nearly 7,000 students are at risk of being harmed by the school's precipitous closure.<sup>8</sup>

### **TEACH-OUT AGREEMENTS/TRANSFERS**

Given CEHE's record of misconduct and closure-announced layoffs of its employees, students must have quality options for completing their education elsewhere. The Department must work with ACCSC, states, and CEHE to immediately execute teach-out agreements that provide options reviewed and vetted by the state for students to continue their studies at high-quality programs at not-for-profit institutions. We are concerned with reports that CEHE and its staff are steering students toward questionable options and misrepresenting students' deadlines for decisions on transfer.<sup>9</sup>

The Department must ensure that teach-out and transfer institutions are in good standing, not on heightened cash monitoring or other restrictions, and not facing state or federal investigations or lawsuits. The Department must also ensure that teach-out and transfer institutions guarantee that students' credits will be accepted, that students will not be charged additional tuition and fees, and that options will include all colleges with similar programs within a reasonable proximity to the closing campuses and not include exclusively online institutions.

### **CLOSED SCHOOL DISCHARGE AND BORROWER DEFENSE**

HCM2 does not require a school to close. But in this case, CEHE's record of misconduct and extreme financial difficulties made its closure just a matter of time—time that the Department should have been using to ensure students were properly informed of their closed school discharge options.

Under federal law, student loan borrowers who are enrolled at the time of a school's closure or who withdraw within 120 days of closure are entitled to have their federal student loan debt discharged.<sup>10</sup> Federal regulation requires the Department to provide, through mail and other means, a closed school discharge application and an explanation of the qualifications and procedures for obtaining and discharge to eligible borrowers when a school closes.<sup>11</sup> The Department should begin fulfilling this responsibility immediately as well as making students aware of their right to apply for borrower defense discharges. The Department should also seek student contact information for the period covered by the Colorado Court's findings in order to provide borrower defense discharges to students without application where possible. The Department should make public all general information being sent directly to students.

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<sup>7</sup> <https://www.durbin.senate.gov/newsroom/press-releases/durbin-senators-call-for-borrower-defense-relief-for-student-borrowers-harmed-by-cehe>; <https://www.durbin.senate.gov/newsroom/press-releases/durbin-brown-urge-departments-of-education-and-veterans-affairs-to-protect-student-borrowers-harmed-by-cehe>

<sup>8</sup> <https://www.republicreport.org/2021/independence-u-lays-off-staff-says-feds-stopped-aid/>

<sup>9</sup> <https://www.republicreport.org/wp-content/uploads/2021/07/IU-message-to-students-07-30-pm.pdf>

<sup>10</sup> 34 C.F.R. § 685.214

<sup>11</sup> 34 C.F.R. § 685.214(f)

We also urge you to use your authority, provided under “exceptional circumstances,”<sup>12</sup> to extend the closed school discharge eligibility period to any student who withdrew, at least, on or after December 1, 2014. This was the date that the Colorado Attorney General filed its suit against CEHE. This public accounting of CEHE’s fraud raised serious questions for policymakers and students at the time about the company’s widespread practices. Therefore, any student who withdrew on or after this date could have reasonably believed their school to be putting them in harm’s way and in danger of collapse. The Department should not penalize these students for taking the reasonable step of abandoning a sinking ship by denying them federal closed school discharge eligibility.

In addition, the Department must hold CEHE and its executives financially liable for the cost of any closed school discharges or borrower defense relief claims, to ensure taxpayers are not left holding the bag for CEHE’s misconduct and mismanagement.

### **DISCLOSURES/WEBINARS**

As it has done in the case of other closures, the Department must immediately create information page for students and immediately announce a series of Department-led webinars to publicly answer student questions—including providing information, through direct outreach to students, about options to continue their education at quality not-for-profit institutions and information related to student aid funds owed to students. The Department should not rely on a predatory and, now, failed school to provide accurate information to students.

The Department must coordinate with other federal and state agencies to ensure students are fully aware of all their options for the restoration of tuition payments or benefits. Students should also be informed if their state has a tuition recovery fund and how to apply.

The Department must also work with the U.S. Department of Veterans Affairs to ensure accurate information is being provided to GI bill beneficiaries regarding students’ remaining benefits, including housing, and their options to have their benefits restored for the current term.

### **TRANSCRIPTS/STUDENT RECORDS**




In cases of precipitous closures or where a school is under heavy financial and administrative distress, students often report difficulty securing their transcripts and student records. The Department must work with states to ensure that all students have access to their transcripts and personal records free of charge and that those materials are secured for future retrieval.

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<sup>12</sup> 34 C.F.R. § 685.214(c)(1)(i)(B)

We appreciate your immediate attention to our concerns and look forward to your prompt reply. Thank you.

Sincerely,

		
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Richard J. Durbin	Sherrod Brown	Elizabeth Warren
United States Senator	United States Senator	United States Senator

cc: The Honorable Denis McDonough, Secretary, U.S. Department of Veterans Affairs