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July 31, 2018

VIA ELECTRONIC MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Ave, SW LBJ 2E320
Washington, DC 20202
EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the United States Department of Education (“ED” or “the Department”), 34 C.F.R. Part 5, the National Student Legal Defense Network (“NSLDN”) makes the following request for records relating to the Department’s findings that Hondros College and World Medicine Institute engaged in “substantial misrepresentations” in connection with their administration of Title IV programs.

Background

Under the Title IV of the Higher Education Act of 1965 (as amended), 20 U.S.C. §§ 1070 *et seq.*, (“HEA”) and its implementing regulations, institutions of higher education must agree to administer Title IV programs in accordance with all statutory provisions of the HEA, *see* 34 C.F.R. § 668.16, as well as to act as a fiduciary, subject to the highest standard of care and diligence, *see* 34 C.F.R. § 668.82(a)-(b). Among the requirements that institutions must meet is the prohibition on making “substantial misrepresentations.” 34 C.F.R. § 668.71(b) (“Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.”).

The Department has defined misrepresentation as “[a]ny false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary.” 34 C.F.R. § 668.71(c). A misleading statement includes “any statement that has the likelihood or tendency to deceive under the circumstances. A statement is any communication made in writing, visually, orally, or through other means.” *Id.* Furthermore, a “substantial misrepresentation” is “[a]ny misrepresentation on which the person to whom it was made could

reasonably be expected to rely, or has reasonably relied, to that person's detriment." 34 C.F.R. § 668.71(c).

The Secretary of Education has statutory and regulatory authority to take actions—such as suspension or termination of eligibility to participate in Title IV, HEA programs or the imposition of civil penalties—against institutions of higher education that engage in “substantial misrepresentations” regarding the nature of their educational programs, financial charges, or the employability of their graduates. *See* HEA § 487(c)(3)(A)-(B), 20 U.S.C. § 1094(c)(3)(A)-(B); 34 C.F.R. § 668.71(a). In connection with this authority, the Administrative Actions and Appeals Service Group (“AAASG”), a subcomponent of the Enforcement Unit within Federal Student Aid, is responsible for developing, initiating, and imposing Emergency Action, Termination, Limitation, Suspension, and Fine actions against institutions. *See* Functional Statement for FSA/Enforcement at: https://www2.ed.gov/about/offices/list/om/fs_po/fsa/enforcement.html#ad. The AAASG also has responsibility for participating and consulting “in the development/drafting of school revocations and school recertification denials.” *Id.*

On or about December 4, 2015, the Department issued a Fine action for \$27,500 against Hondros College for engaging in substantial misrepresentations. The Department found that Hondros College had misrepresented the accreditation status of its Associate Degree in Nursing (“ADN”) program at its Independence, Ohio location to current and prospective students.

On or about October 25, 2017, the Department issued a letter denying the application for recertification to participate in Title IV, HEA programs to World Medicine Institute (“WMI”). Among the bases for the Department’s recertification denial was a finding that WMI had engaged in substantial misrepresentations. More specifically, the Department found that WMI had misrepresented the accreditation status of its doctoral level program in Taoist Studies to current and prospective students, as well as the existence of the doctoral level program to the Department.

Request

NSLDN hereby requests that ED produce the following in the time and manner required under the Freedom of Information Act and the Department’s regulations:

1. All documents explicitly mentioned in, or otherwise relied upon to justify, the December 2015 Hondros College Fine action, including, but not limited to:
 - a. A copy of the lawsuit filed by former students against John G. Hondros and National Education Seminars, Inc. alleging that defendants provided false and misleading information in 2011 and 2012 regarding the status of accreditation by the National League for Nursing Accreditation Commission (“NLNAC”) of the AND program at Hondros’ Independence location;
 - b. A copy of Hondros’ 2011-2012 school catalog;
 - c. The thirty-three (33) Hondros’ advertisements published from August 2010 until June 2012;
 - d. NLNAC’s June 8, 2010 letter to Hondros;

- e. Hondros' September 26, 2011 letter to NLNAC;
 - f. NLNAC's October 4, 2011 letter to Hondros;
 - g. NLNAC's May 29, 2012 letter to Hondros;
 - h. Hondros' June 8, 2012 letter to NLNAC; *and*
 - i. Hondros' June 13, 2014 letter to the Department.
2. All documents explicitly mentioned in, or otherwise relied upon to justify, the October 2017 denial of recertification decision for WMI, including, but not limited to:
- a. The 2014-2015 WMI program catalog for a Ph.D. in Taoist Studies;
 - b. The 2015-2016 WMI doctoral program handbook;
 - c. Emails from WMI faculty and staff referencing doctoral programs, coursework, and accreditation visits, including:
 - i. An email titled "spring semester schedule"—dated January 7, 2015—from Dr. Gayle Todoki, WMI's Registrar, to a group of students, along with the attachment document titled "PhD Registration Spring 2015.doc."
 - ii. An email—dated October 13, 2014—from Dr. Gayle Todoki to a student in the Ph.D. cohort.
 - iii. An email—dated January 14, 2015—sent from a WMI instructor to the "PhDClass@wmi.edu" email address, along with two attached assignments, one of which was titled, "Spring 2015 Ph.D. Nutrition."
 - iv. An email—dated March 2, 2013—sent from Dr. Eric Ono, WMI's Chief Operating Officer and Program Director, to a doctoral student, referencing the Ph.D. program tuition that was due for various semesters.
 - v. An email—dated May 2, 2013—sent from Dr. Gayle Todoki to several students, referencing Ph.D. students' research reports.
 - vi. An email—dated October 18, 2014—from Dr. Gayle Todoki, referring students to a specific staff member for assistance with their "PhD research projects."
 - vii. An email—dated September 30, 2013—from Lillian Chang to E. Kumasaki with the subject line "Pls Notify Doctor/PhD class."
 - viii. An email—dated August 19, 2013—from Hsiaoyu Change, WMI Administrative Officer, to a student, discussing the PhD registration form and including an attachment titled "Blank PhD Registration Form prior to FA13."
 - d. A document titled "Ph.D. in Taoist Culture Fall 2014 Schedule;"
 - e. A document titled "Ph.D. in Taoist Studies Registration and Enrollment Agreement;"
 - f. A document created by Dr. Ed Christenson, an instructor—dated January 16, 2014—titled "WMI PhD Progress Checklist;"
 - g. Notes—dated January 15, 2014—addressed "Dear PhD students" regarding a meeting between Lillian Chang and Dr. Gayle Todoki, two faculty members, and Ph.D. students regarding various aspects of the doctoral program;

- h. Screenshots of WMI's categorization of several students' program credential level as "06 Doctoral Degree" in the Department's Common Origination and Disbursement ("COD") System for the 2014-2015 academic year;
 - i. Screenshots of the June 21, 2017 "Faculty Bios" page of WMI's website, which identified two WMI instructors (Chapple and Greer) as Ph.D. candidates;
 - j. The March 21, 2014 letter from Kenneth S. Robbins to Mr. Mark McKenzie, Executive Director of the Accreditation Commission for Acupuncture & Oriental Medicine ("ACAOM,");
 - k. Mr. McKenzie's April 18, 2014 response to Mr. Robbins;
 - l. Mr. McKenzie's August 30, 2014 email to Mr. Robbins;
 - m. An email—dated May 16, 2013—from Lillian Chang to students in the doctoral program referencing obtaining a "GotoMeeting" account in order to access online lessons;
 - n. Several email exchanges between WMI students and staff, referencing attending WMI courses via "GotoMeeting" online software;
 - o. An email—dated January 17, 2014—to a prospective student who had inquired about the doctoral program;
 - p. The 2012-2013 Doctor of Philosophy in Taoist Studies program catalog;
 - q. An email—dated October 29, 2013—from Anastasia Stewart, a doctoral student who served as a liaison between the WMI administration and the doctoral cohort, to several other students and a group email address, UpperLevel2015@wmi.edu, telling students to plan to attend eight full in-person semesters;
 - r. The false and fraudulent transcript WMI provided to the Department for Student #1;
 - s. An email exchange from Dr. Gayle Todoki to Student #1—dated August 23, 2015—sending a registration form for the upcoming semester, along with the student's response that it was for the master's program and not the doctoral program in which she was enrolled;
 - t. An email exchange—dated January 12, 2016—between Student #1 and Anastasia Stewart, discussing the issues with PhD registration due to the lack of accreditation; *and*
 - u. The false and fraudulent Tuition Record form submitted by WMI to the Department, which included incorrect entries for Student #1 on April 22, 2012 and August 30, 2012.
3. All documents submitted by WMI in response to the October 2017 recertification denial, as well as any notifications sent by the Department in response to WMI indicating whether the recertification denial would be modified, rescinded, or left in place.

NSLDN does not object to the redaction from such records of any names or personally identifiable information of any individual.

FOIA presumes disclosure. Indeed, "[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a 'strong presumption in favor of disclosure.'" *AP v. FBI*, 256 F. Supp. 3d

82, 2017 U.S. Dist. LEXIS 161516 at *10 (D.D.C. Sept. 30, 2017) (quoting *Dep't of State v. Ray*, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, *i.e.*, if disclosure would “harm an interest protected by an exemption” or is otherwise “prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). If ED takes the position that any portion of any requested record is exempt from disclosure, NSLDN requests that you “demonstrate the validity of [each] exemption that [ED] asserts.” *People for the American Way v. U.S. Dep't of Educ.*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide NSLDN with a Vaughn Index “which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption’s relevance.” *Id.* (citing *Johnson v. Exec. Office for U.S. Att'ys*, 310 F.3d 771, 774 (D.C. Cir. 2002)). *See also Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification specifically identifying the reasons why the exemption is relevant. *See generally King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In addition to the records requested above, NSLDN also requests records describing the processing of this request, including records sufficient to identify search terms used (if any), the locations and custodians searched, and any tracking sheets used in the processing of this Request. This includes any questionnaires, tracking sheets, emails, or certifications completed by, or sent to, ED or OIG personnel with respect to the processing of this request. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

NSLDN seeks all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, ED has a duty to construe a FOIA request liberally.

In conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available. Recent technology advances may render ED’s prior FOIA practices unreasonable. Moreover, not only does this request require the agency to conduct a search, but individual custodians must conduct their own searches in order to make sure that documents are appropriately collected.

To ensure that this request is properly construed and does not create any unnecessary burden on ED, NSLDN welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material via email to robyn@nslan.org. We welcome any materials that can be provided on a

rolling basis. Nevertheless, NSLDN fully intends to hold ED to the timeframe required by statute for a response to this request.

Request for Waiver of Fees

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33(a), NSLDN requests a waiver of fees associated with the processing of this request because: (1) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; *and* (2) disclosure of the information is not primarily in the commercial interest of the requester.

Disclosure of Information is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government

1. The FOIA request specifically relates to the operations or activities of the government. This request seeks documents relating to the evidence that the Department relied upon in order to make a finding of “substantial misrepresentation” at two institutions that participated in Title IV, HEA Programs. The review of this evidence is conducted exclusively by the Department of Education in connection with its Fine actions and denials of recertification under the HEA and, therefore, relates specifically to the operations or activities of the government.

2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This Request seeks documents that will contribute to the understanding of the circumstances under which the Department makes findings of “substantial misrepresentation.”

3. The disclosure will contribute to a greater understanding on the part of the public at large. NSLDN seeks this information to aid the public discourse surrounding issues of misrepresentations made to students and prospective students in the market for higher education. Following the collapse of the Corinthian Colleges, Inc., and ITT Technical Institute, this topic has been the subject of much public debate as well as numerous press releases regarding enforcement actions taken by the Department. NSLDN has the capacity to analyze any documents provided and disseminate its analysis to the public through its website and other sources.

4. Disclosure will “significantly” contribute to the public’s understanding of government activities. As noted above, the subject of this request is a matter of great public interest. This request seeks information that will allow NSLDN to more completely understand the instances in which the Department makes findings regarding “substantial misrepresentations,” beyond that information already made available to the public. Moreover, NSLDN’s analysis of this information will inform further public discourse and comment on these issues, thereby significantly enhancing the public’s understanding of the Department’s use of its enforcement authority under the HEA.

Disclosure of Information is Not in the Commercial Interest of NSLDN

This request is fundamentally non-commercial. NSLDN is a non-profit, non-partisan 501(c)(3) organization. NSLDN's mission is to work, through a variety of means, to advance students' rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. We also believe that transparency is critical to fully understanding the government's role in student protections and promoting opportunity. As noted above, NSLDN has the capacity to make the information it receives available to the public through reports, social media, press releases, litigation filings, and regulatory comments to government agencies. For these reasons, NSLDN qualifies for a fee waiver.

* * *

NSLDN looks forward to working with you on this request. If you have any questions or concerns, or anticipate any problems in complying with this request, please contact me at robyn@nsldn.org. If NSLDN's request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact me immediately.

Sincerely,

/s/ Robyn K. Bitner

Robyn K. Bitner*
Counsel
National Student Legal Defense Network

*Member of New York Bar only; practicing in the District of Columbia under supervision of members of the D.C. Bar while D.C. Bar application is pending.