

Final Report & Recommendations

Transitions in Higher Education: Safeguarding the Interests of Students (THESIS)

Working Group of the Massachusetts Board of Higher Education

January 22, 2019

Executive Summary

Shifting fundamentals including on demographics, competition and costs have created significant financial viability risk for some private, non-profit colleges across the country and in Massachusetts and have led to closures so abrupt as to injure students and families and undermine the credibility of higher education. The Massachusetts Board of Higher Education (BHE), consistent with its role as the state regulator of higher education in the Commonwealth, created a Working Group led by the BHE Chair and the state's Commissioner of Higher Education and including other Board members, experts in higher education and civic leaders. The Working Group was charged with assessing the scope and nature of the problem and making recommendation on actions that the BHE should take to aim to prevent future such problems.

This is the final report of that Working Group to the Massachusetts Board of Higher Education.

We found that there is a significant, ongoing and likely growing threat that more Massachusetts non-profit colleges will be forced by their financial conditions to merge or close. We also found that existing regulators (federal, state and accreditors) and existing metrics are insufficient to provide early enough warning or action. Therefore, it is important that the Massachusetts BHE take new and enhanced measures.

We developed a proposed plan for the BHE by which the Massachusetts Department of Higher Education could, we believe, appropriately, proactively and better act to protect the interests of students and other stakeholders and to buttress the integrity and credibility of higher education in our state. ***The proposed plan centers on a clear goal – to ensure that any college that reaches a defined threshold where its financial condition puts current and recently admitted students at meaningful risk of interruption in their educations must prepare necessary contingency plans and must inform the students and other stakeholders when that risk becomes sufficiently imminent.***

To early identify at-risk colleges and begin active, confidential monitoring of their risk of hitting the defined threshold, we propose that DHE annually screen all Massachusetts private colleges using a novel metric developed by EY-Parthenon on a pro bono basis which looks ahead and estimates whether and to what extent the college likely has the resources to meet the commitment to fully teach out its current students. The new metric is applied to existing,

publicly reported data and requires no further information from colleges. The proposed use of the TVM is exclusively for screening purposes; all assessment thereafter will involve multiple considerations customized to the specific IHE's situation. The Working Group has reviewed and endorses the potential use of the TVM but also notes it needs further analysis and potential refinement by DHE and in dialogue with the field before it comes online for use.

We then lay out a proposed program by which DHE could act in sequence. First, DHE would work with the college to confirm whether the screening process has reasonably identified them as at risk. For those where that is the case, we lay out a plan by which DHE would work with them to actively monitor the condition and key parameters and plans of the college.

Under our plan, colleges could remain in active monitoring for any length of time and could exit if their financial condition improves sufficiently. But they would also be assessed each year against a well-defined "18-month threshold" and if the DHE reasonably concludes that there is meaningful risk that the college cannot complete both their current school year and the next one, then DHE would require the college to complete a thorough contingency plan for transfer and teach out as well as notify the students and other stakeholders.

This threshold, and the potential resulting intervention for any IHE that crosses it, is at the heart of our proposal. We aim to help DHE ensure that when risk to students exceeds a reasonable level, DHE has the timely knowledge and regulatory power to act to protect students through ensuring they are informed by the IHE.

Our proposed plan also addresses necessary conditions such as confidentiality during the screening and active monitoring phases as well as desired and needed partners including the regional accreditor, the New England Commission on Higher Education (NECHE), and the Massachusetts Attorney General's Office (AGO). Our proposal requires the creation of an effective new Office of Student Protection at DHE and the appointment of an Advisory & Review Council of trustworthy civic voices to provide support to the Office and ultimately to the Commissioner.

We respectfully submit this analysis and proposal to the Massachusetts BHE and encourage them to act promptly on this important need. We hope they and other stakeholders find the depth of analysis, the breadth of voices on the Working Group and the work done to coordinate with other key players such as NECHE helpful to expedite action.

Background

In May, 2018, the Massachusetts Board of Higher Education (BHE) established a Working Group to expeditiously but thoroughly investigate a topic of considerable contemporary concern to the BHE: the risk of harm to students and other stakeholders from precipitous closures of private, non-profit institutions of higher education in Massachusetts¹. With a fresh

¹ It is important to note that the Working Group recognizes there may be financial risks to institutions beyond the private, non-profit undergraduate colleges we focused upon because they possess common characteristics and

and disturbing case (Mount Ida College) catalyzing a sense of urgency and import, the Chairman of the BHE, Chris Gabrieli, and the Massachusetts Commissioner of Higher Education, Carlos Santiago, created and led a Working Group that would bring back findings and recommendations to the BHE by the beginning of 2019.

The charge to the Working Group was to focus on four specific objectives:

- (1) Defining the landscape of the trends and circumstances that create this unprecedented era of change and risk for private institutions of higher education (IHEs);
- (2) Reviewing current and potential methods to assess and monitor IHE fiscal health, including current financial reporting and transparency requirements used by federal, state and accrediting organizations;
- (3) Reviewing current and potential means to ensure IHE boards of trustees meet their fundamental oversight and fiduciary responsibility; and
- (4) Reviewing current and potential approaches to proactively mitigate risk in impending circumstances of closure or interruption of services that will maximally support student degree/program completion and the public interest.

The Working Group was quickly assembled and included two members of the BHE, Alex Cortez and Paul Mattera, as well as five civic leaders with considerable relevant experience and perspective. The Working Group civic leader members included:

- Robert Antonucci (past MA Commissioner of Education; past President, Fitchburg State; past interim President of the National Graduate School of Quality Management);
- Katherine Craven (Chief Administrative Officer, Babson College; member MA Board of Elementary & Secondary Education; past Executive Director, MA School Building Authority and UMass Building Authority);
- Matt Hills (private equity investor and management consultant; past Chair, Newton School Committee);
- Ranch Kimball (past partner, BCG; past MA Secretary of Economic Development; past Board Chair, Wheelock College)
- Gaby King Morse (Executive Director, uAspire Massachusetts).

The Working Group was dubbed the THESIS Working Group with THESIS serving as an acronym for *Transitions in Higher Education: Safeguarding the Interests of Students*. The Working Group was led by Chair Gabrieli and Commissioner Santiago and was primarily staffed by DHE Deputy Commissioner for Administration and Finance Tom Simard with support from

pose a significant and relatively new challenge. This would include public higher ed, for-profits and certain specialized schools (e.g. graduate school only). The need to address those risks is addressed in the closing section of this report.

DHE Senior Budget Analyst Joe Wallerstein, DHE Deputy General Counsel Ashley Wisneski and DHE Chief Legal Counsel Dena Papanikolaou.

The Working Group actively collaborated with the MA Attorney General’s Office (AGO) and the regional accreditor, the New England Commission of Higher Education (NECHE). The Working Group also benefited greatly from a pro bono consulting team provided by EY-Parthenon that provided research and analysis to inform the Working Group on our first two objectives.

The Working Group met formally on four occasions – in June, October, and December, 2018 and January, 2019. At these public meetings conducted under Open Meeting Law conditions, members heard from experts and stakeholders and engaged in extensive, constructive dialogue about potential findings and recommendations. Meetings lasted several hours and included substantive discussions around the analyses provided by EY-Parthenon and the work brought forward by Working Group leadership and the DHE. Representatives of key stakeholders including NECHE, the AGO and AICUM attended some or all meetings and were encouraged to share their thoughts as relevant. Working Group leadership and DHE staff met weekly throughout and several Working Group members provided helpful advice and feedback on an ad hoc basis. At the final meeting of the THESIS Working Group, the Working Group members reviewed and unanimously approved the findings and recommendations of this document as our Final Report and Recommendations to be transmitted to the BHE for consideration and potential action at the BHE’s regularly scheduled January 22, 2019 meeting.

Findings

The THESIS Working Group initially focused on the first two elements of our charge. We felt it was important to determine whether there are truly fundamental forces driving an era of significant risk for further closures of non-profit institutions of higher education in Massachusetts. Second, we wanted to review the relevant work of the three elements of what has traditionally been called the “regulatory triad” for higher education – the federal government, the accreditors and the state agency.

Our deliberations were greatly informed by the work of EY-Parthenon summarized in their report to us, delivered for the October 1st Working Group meeting and attached to this report in the Appendix, as well as available online at <http://www.mass.edu/strategic/documents/EY-Parthenon%20Transitions%20in%20Higher%20Ed.pdf>.

After review of the EY-Parthenon report and careful deliberation amongst the members of the THESIS Working Group, we unanimously came to these two findings with regard to the first two elements of our charge:

- (1) ***The risk of further challenges to viability at non-profit institutions of higher education (NPIHEs) leading to potential student disruption is significant, ongoing and likely growing; and***

- (2) ***Current standard financial metrics are insufficient for timely or fully identifying at-risk NPIHEs and current processes among the triad of accreditors, USED and state authorities are insufficient to ensure prevention/mitigation of future unacceptable disruption to students and others.***

It is important to note the consequentiality of these two findings. We believe that the risk of more NPIHEs needing to merge or close due to lack of financial viability is significant and continuing. Underlying demographic trends and cost inflation pressures accelerate the problem. And we do not believe that current metrics, such as the US Department of Education's Financial Responsibility Composite Score, are sufficiently predictive of NPIHEs at imminent risk. Past examples of precipitous and disruptive school closures show that often none of the metrics have signaled sufficient alarm or warranted any of the three members of the triad (accreditors, and federal and state regulators) to have sufficiently acted in advance to avert harm to students, staff and other stakeholders.

Taken together, these two findings necessitate action.

To that end, the Working Group devoted the second phase of our work to formulating a set of recommendations to the MA Board of Higher Education that would, in our view, allow the BHE to considerably reduce the risk that any future financial instability at a Massachusetts NPIHE would lead to unavoidable, unacceptable disruption to its students. It is important to note that these recommendations are aimed at minimizing student harm; NPIHE financial viability and strategic choices are presumed to continue to be the province of the NPIHE's Board of Trustees subject to the oversight of the AGO on any plans that involve sales of the assets, changes in control or the like.

Recommendations

The THESIS Working Group recommends that the Massachusetts Board of Higher Education adopt a plan whereby the DHE could: (i) proactively identify NPIHEs at heightened risk of financial non-viability that could affect students; (ii) actively monitor those NPIHEs that appear to be at the highest and most imminent risk; and, (iii) if/when a defined threshold of risk is exceeded, intervene to ensure those NPIHEs complete thorough contingency plans for teach out and transfer and inform students and other stakeholders on a timely basis.

Before delving into the specifics of the proposed plan, we would identify the following as some of the key design parameters that informed our thinking and approach.

A North Star of student protection – the 18-month threshold: The motivation for pursuing this work is the threat of damaging interruptions to students’ courses of study due to inadequate notice and inadequate transition planning if an NPIHE waits too long to act. We chose for our North Star two facets of a threshold beyond which DHE should ensure action to mitigate risk to students. First, we chose to focus on the ability of NPIHE’s to financially sustain their operations for the balance of the current school year and the entire subsequent one. In our view, inability to do that defines excess risk to students. Second, we selected as a threshold measurement date December 1st, which is the date by which students and other stakeholders need to be notified if the NPIHE which they attend (or to which they have been admitted) is at significant risk of not being able to meet its obligations in the current and following school year. Notice by December 1st helps ensure that nearly all current students and recently admitted ones have reasonable time to pursue transfers or apply for admittance to other colleges. December 1st is the latest day that the DHE would require such notification, and earlier notification should be required when the DHE determines that the goal of a two-year teach out is at sufficient risk. We also recommend DHE require completion of thorough contingency plans covering transfer and teach out options for students in advance of their notification.

Respecting NPIHE Autonomy & Confidentiality: Short of violating the North Star principle of an 18-month sustainability threshold, the existing governance autonomy of NPIHEs should be respected. Under the recommendations below, NPIHEs would retain the right to pursue any strategies and tactics they see fit (of course, within the current standard requirements of oversight by USED, accreditors, the DHE and the AG) until and unless they cross the 18-month threshold on or before any December 1st. The active monitoring proposed in our recommendations would apply only to schools approaching the 18-month threshold and would remain confidential until/unless the 18-month threshold is crossed. Further, the screening tool proposed to be used would rely exclusively on data already submitted publicly to the USED annually, requiring no added data burden and no confidential data from any NPIHE that is not being actively monitored.

Timely Approach: The recommendations are intended to significantly improve on the timeliness of awareness of growing risk at specific NPIHEs. By conducting an annual screen of all NPIHEs with a tool that is prospective in approach, by actively monitoring those at risk of crossing the 18-month threshold in the near future and by triggering mandatory contingency planning and student notification when the 18-month threshold is crossed, these recommendations all aim to ensure timely awareness and action.

DHE Role: The recommendations aim to provide others with the opportunity to take appropriate action before any intervention by the DHE would be required. Firstly, by providing a thoughtful, prospective, transparent screening tool, we aim to support NPIHE management and Boards of Trustees with the opportunity to consider the risk profile of their school. We would encourage NPIHE Boards of Trustees, in particular, to proactively avail themselves of the information in the screening tool as part of their obligation to properly exercise their fiduciary duties to fulfill the educational mission of their institutions. Further, we recommend that the DHE continue to work closely with the self-policing accreditation entity of Massachusetts NPIHEs, the New

England Commission of Higher Education (NECHE), to ensure as much alignment with their efforts as possible and appropriate.

Proposed Monitoring and Intervention Plan

The plan proposed by the THESIS Working Group to the Massachusetts Board of Higher Education includes four main components: (1) Screening; (2) Active Monitoring; (3) Contingency Planning and Student Notification; and (4) Sanctioning and Revocation.

The proposed plan would require at least three enabling steps: (1) adoption as regulation/policy by the BHE/DHE; (2) creation and resourcing of a new Office of Student Protection at DHE and selection of an external Advisory & Review Council; and (3) passage of legislation to, at minimum, provide the proposed level of assured confidentiality.

(1) Screening

The first step in the proposed plan is the annual screening of all relevant NPIHEs via a newly developed metric described below. The goal of the screening process is to identify the small number of NPIHEs where risk of student disruption due to financial challenges appears to be unacceptably high and imminent. The screening process would rely entirely on already public data mandatorily submitted by the NPIHEs to the US Department of Education.

The Teachout Viability Metric (TVM)

As part of their work informing the THESIS Working Group, EY-Parthenon explored ideas for a metric that could be used to better and sooner prospectively identify NPIHEs at heightened risk of a damaging, financial inability to honor their commitments to students. The resulting Teachout Viability Metric (TVM), developed by EY-Parthenon (using methodology, parameters and assumptions reviewed with the Working Group), focuses on an NPIHE's ability to meet its teaching obligations to currently enrolled undergraduate students through to their expected graduation dates. The TVM aligns with the policy imperative of the THESIS Working Group by focusing on the institution's current and anticipated financial resources compared to the costs of education for their current students at that institution. The TVM is calculated based on numbers required to be submitted annually by all NPIHEs (that receive federal funds) to the US Department of Education's Integrated Postsecondary Education Data System (IPEDS). This use of publicly available, widely used data means that adopting the TVM does not require any further data provision by institutions.

The TVM applies a set of rational and transparent assumptions to the IPEDS data for each institution to assess that institution's "teach out viability" which is to say the institution's ability to teach out the current students through to graduation were the institution to need or elect to wind down. The TVM does not predict whether they will or should wind down but simply assesses whether or not the institution could have the resources to meet its obligations. The TVM assumptions include reasonable estimates about the rate with which an NPIHE could reduce its

costs were it winding down as well as the level of tuition it would earn from remaining students and existing balance sheet assets it could employ.

The TVM produces a score for each NPIHE that is expressed in percentage terms where 100% means that the NPIHE could hypothetically wind down and meet its obligations to all current undergraduate students. Most NPIHEs score well above 100% indicating that they have ample resources to meet all current obligations. A score less than 100% suggests that an institution likely cannot meet its commitments to all of its current students with a TVM score of 75% indicating approximately three years of “teach out” covered, 50% two years and so on. EY-Parthenon provided an analysis (Figure 9, page 16) of the characteristics of NPIHEs at various levels of risk as calculated by an early version of the TVM.

It is notable that the NPIHEs at highest risk are also the smallest, the least selective, have experienced reductions in enrollment in recent years, have the lowest endowment per student, have the worst ratio of liabilities to assets and are the most dependent on tuition and fees. It is also notable that they are the most likely to serve low-income (Pell-eligible) students, our most vulnerable population.

The TVM is intended as a screening tool, not a predictor nor a sole source for a definitive diagnosis. By definition, a good screening tool allows the identification of nearly all at-risk members of a population (i.e. low false-negative rate) while not identifying too many members that are not actually at risk (i.e. low false-positive rate). Also, to be a good screening tool, the TVM would need to identify at-risk NPIHEs early enough to allow constructive engagement, monitoring and/or intervention before the risk to students grows too large and close in time (i.e. before our North Star principle is violated). We were especially impressed by a simulation (figure 10, page 17) that showed that the TVM would have flashed a usefully early warning on six recent national NPIHEs that went on to close and three more that have recently been identified as at risk by accreditors (including one in Massachusetts that subsequently has announced its need to close by the end of this school year).

The TVM has been vetted with a number of financial officers from various size NPIHEs as well as with people with financial expertise on higher education. The encouraging feedback has been that the approach has policy merit due to its simplicity, clarity and alignment with the chief policy goal. EY-Parthenon continues to support exploration of the specific assumptions by responsible representatives of the higher education community and the THESIS Working Group and DHE have endeavored to solicit input from various members of the field including through collaboration with the New England Commission of Higher Education (NECHE).

Based on the critical need for a useful and timely screening tool and the merit and promise of the TVM, we recommend:

The MA DHE should adopt the Teachout Viability Metric (TVM) as a screening tool to identify NPIHEs in need of further scrutiny and potential monitoring and intervention to avert unacceptable disruption to students due to institutional financial challenge.

The TVM will need to be subject to continuing public comment and to ongoing refinement but we believe that the deployment of an appropriate screening tool is vital to the DHE to efficiently meet its obligation to help identify NPIHEs at heightened financial risk.

We also believe that others, including NPIHE Boards of Trustees, should find the TVM to be a helpful tool to track institutional strength. The greater the convergence among stakeholders on a common metric, the more likely the system is to behave in a healthy and aligned fashion with management and governance of the NPIHEs having initial and primary fiduciary responsibility for their institutions.

Given our role as a Working Group making recommendations to the BHE and for subsequent DHE implementation, we assume that critical specifics that fit within our recommendations will be filled in by the BHE and DHE should they choose to accept these recommendations. For example, we do not have a recommendation on how to best conduct the annual screening (e.g. inhouse or through a specialized consultant), how to complete the appropriate vetting of the TVM nor what “cut score” to adopt for the screening except to suggest that the BHE and DHE should select a cut score that includes schools with any material risk of violating the North Star principle within the next 12 months. The use of the TVM for screening is not meant in any way preclude or limit consideration of other financial indicators during monitoring or in determining whether an IHE requires intervention as described below.

(2) Active Monitoring

Once a set of schools are identified via the screening process, we recommend that the DHE Office of Student Protection (OSP) confidentially contact the President and Chief Financial Officer of all NPIHEs that fall below the pre-selected cut score. The goal in such contact would be to initiate a confidential dialogue with the NPIHE to determine whether the NPIHE does in fact require monitoring.

The initial dialogue may reveal that the NPIHE is not in fact at such current risk. Publicly available IPEDS data have a significant time lag and the institution’s current data may reveal a more positive situation when run through the TVM. Or there may be other circumstances that, in the best judgment of the DHE OSP, suggest that active monitoring is not necessary. The initial dialogue should allow for sufficient discussion that the NPIHE can respond to the TVM analysis and provide any context or mitigation they feel should be considered. The DHE OSP may choose to seek the opinion of the Advisory & Review Council in such circumstances.

For all NPIHEs that are not excluded by the initial dialogue, the DHE OSP should develop and implement an active monitoring protocol. That protocol should fit the specific circumstances of the NPIHE and the estimated timeline to the 18-month threshold. For example, some NPIHEs may have in place a strategic response plan approved by their Board of Trustees. That plan may involve changes to the operating model and parameters of the institution or transactions such as land sales and/or mergers. The monitoring protocol should assure that the

DHE OSP can accurately and timely assess the changing condition of the NPIHE, particularly with regard to the 18-month threshold.

The protocol should be shared in draft form with the NPIHE for any feedback or suggested amendments to be considered before issuing the final monitoring protocol. The decision to implement the active monitoring and the final protocol should be shared with both the NPIHE President and CFO and the NPIHE Chair of the Board and Chair(s) of the relevant Board Committee(s) such as Audit, Finance and/or Strategic Planning.

Active monitoring should continue until either the NPIHE is no longer at risk of violating the North Star principle or will violate it imminently. All information about the existence of the monitoring and the contents of communication and data shared by the NPIHE in accord with the protocol should be held to strict confidentiality guidelines.

(3) Contingency Planning and Student Notification

The THESIS Working Group recommends that the active monitoring process focus centrally on assessing the NPIHE's financial condition in the context of the 18-month threshold. That is to say that the trigger for moving beyond active monitoring to action is the determination by no later (but possibly quite a bit earlier) than each December 1st whether an NPIHE, in the reasonable judgment of the DHE, has the financial resources to complete the current and subsequent school years. If they do have such confidence, the NPIHE should remain in active monitoring; but if they do not, December 1st should be the latest date (earlier would be better) by which the DHE OSP should ensure the NPIHE takes two critical actions: contingency planning and student notification.

Given the importance and impact of this decision, we recommend that the DHE OSP secure the affirming recommendation of the Commissioner when the OSP determines an NPIHE to have crossed the 18-month threshold test. Further, we recommend that the Commissioner and OSP review all such decisions with the external Advisory & Review Council to secure their independent confirmation of the decision. The Commissioner will convene the Advisory & Review Council as necessary. The final determination should be made by the Commissioner. Clearly, this process will require sufficient time before December 1st to allow maturation and action by this critical date.

Subsequent to determination by the Commissioner, with the review and advice of the external Advisory Council, that an NPIHE will imminently cross the 18-month threshold, the DHE must inform the NPIHE and require two actions.

First, the NPIHE should promptly prepare and submit a thorough transfer and teach out contingency plan pursuant to existing DHE regulations and policies about such plans. These plans are intended to identify for each area of study and type of student at least two alternative programs at geographically accessible alternative colleges that would accept the NPIHEs students as transfers including providing full transfer credit for their progress to date. The contingency plan should address other key issues as well such as how and where historical

student records will be maintained. The DHE will provide prompt feedback on each draft until an acceptable plan is fully developed and available if needed. Given the time needed to prepare and refine such a plan, this will need to be initiated before the final step of student notification is invoked in order to ensure the plan is available to those students once they are informed.

Second, the NPIHE must inform all of its students and any admitted but not yet matriculated students as well as any pending applicants that there is meaningful risk of financial distress sufficient to prevent the NPIHE from being able to complete the degree teach out for those students. The language of such notification may be drafted by the NPIHE but must be approved by the DHE OSP. The goal of the notification is also to ensure that other stakeholders such as the faculty and staff and the host community are apprised.

By notifying students on a sufficiently timely basis – with enough lead time to consider and act on alternatives before annual deadlines at alternative institutions – and by developing a thorough contingency plan, these actions should prove sufficient to greatly reduce the risk of harm to students. Any need for an NPIHE to wind down in part or in whole before all current and admitted students complete their degree programs will entail some difficulties for students and, in some cases, even significant hardship. The goal of the overall proposed plan here is to balance between an NPIHE's opportunity to pursue its plans as an independent, non-profit entity and the DHE's obligations to protect students and the integrity of the Massachusetts higher education system.

The specifics of the processes around this crucial step in the proposed plan will need to be developed by the DHE and its new OSP as well as refined through experience. We also believe that the external Advisory & Review Council should provide a valuable sounding board and independent voice on key aspects.

(4) Sanctioning and Revocation

The intent of the proposed plan is to empower the DHE, through the OSP, with the support of the external Council, to enter into a constructive dialogue and process with relevant NPIHEs. We hope and assume that all NPIHEs will engage constructively with the proposed process throughout. Recent experience with one NPIHE that has announced its decision to close at the end of this school year provided a useful and encouraging case study.

Nonetheless, there is risk that some NPIHEs will resist the proposed process including refusing to share needed information for monitoring or to abide by decisions such as arise from crossing the 18-month threshold.

We have identified at least two sanctions and one enforcement agency available to the DHE to address problems of non-compliance. One also represents an important opportunity to fairly and appropriately bind NPIHEs to the proposed process contractually.

NPIHE Participation in State Financial Aid for Students

Massachusetts financial aid, funded by annual appropriations of the Massachusetts legislature, supports students in both public colleges and universities and in NPIHEs. The DHE currently enters into “participation agreements” with NPIHEs setting out the terms under which each NPIHE’s students are eligible to receive such aid. The DHE financial aid and legal staff have reviewed the documents and believe they have the authority to modify the agreements on a going forward basis to incorporate the new policies and plan proposed herein.

Therefore, we recommend that the DHE modify its participation agreement with NPIHEs in the future to reflect two key additions. First, we recommend that the new participation agreement include reference to the “active monitoring” element of this plan and require NPIHEs to agree to provide all necessary information on a timely, confidential basis consistent with the active monitoring protocol should they be deemed subject to that element of this plan. Second, we recommend that the new participation agreement make clear that by agreeing to accept state financial aid for students enrolled in their schools, they are also agreeing to comply with all aspects of this plan, including both sharing information as required for monitoring and providing timely student notification and a thorough contingency plan, if required by DHE. Failure to comply with those commitments should be clearly grounds for immediate termination of any further eligibility for state financial aid to the institution.

It is fair and appropriate for Massachusetts to place such strings upon publicly financed aid provided to schools. It will provide an immediate contractual relationship between the NPIHE and DHE with regard to the new plan which will both ensure mutual understanding of the plan as well as lend meaningful enforceability of the provisions.

We advise the BHE and DHE to move expeditiously to implement this recommendation.

Revocation of Degree Granting Authority

Massachusetts law empowers the BHE through its staff at the DHE to authorize independent higher education institutions to operate in the Commonwealth and confer degrees. The BHE also has the authority to suspend or revoke such degree granting authority. This is obviously a draconian action requiring a careful and defined process that would have immediate impact on the very students we aim to protect even as it also targets the institution losing that authority. We do not recommend that this sanction be exercised in any but the most extreme cases, but we do think it is important for the BHE and DHE to make clear their right and willingness to take this action if warranted by circumstances of intolerable behavior by an NPIHE.

Referral to the Attorney General’s Office

While the BHE and DHE have clear statutory authority over NPIHEs and a clear responsibility to protect students and the integrity of higher education in our state, the Attorney

General (AGO) also has some relevant authorities. In particular, the AGO's role in enforcing consumer protection laws and in the oversight of charitable institutions both relate to NPIHEs. In fact, in recent cases involving several NPIHE, the AGO has been an active and valued partner to BHE/DHE and to the common goal of protecting students and institutional integrity.

Through the course of the THESIS Working Group's efforts, we held a handful of informal discussions with representatives of the AGO both to keep them apprised and seek their input on proper circumstances under which the BHE/DHE should, under the proposed new plan, forward an NPIHE's case to the AGO for their review and potential action.

The THESIS Working Group believes that the AGO will be a vital partner for the work proposed here, particularly in the most challenging circumstances, as they have been in the past. Their involvement with monitoring and intervention under the plan will depend on the particular circumstances. Additionally, with respect to the fiduciary duties of the Boards of Trustees of NPIHEs, particularly for those in potential or actual financial distress, the DHE and AGO should collaborate to more fully educate, inform and support NPIHE Board of Trustees.

We recommend that the new DHE OSPO continue to work informally with the AGO as appropriate and also seek to develop a more formal protocol for information sharing and referral to the AGO to address the most concerning cases.

Moving Forward with These Recommendations

We intend to transmit this written report to the Massachusetts Board of Higher Education in sufficient time for the staff and Commissioner of DHE to prepare analyses and recommendations for review and action by the Board at their regularly scheduled meeting on January 22, 2019.

We respectfully suggest that the following three steps are necessary to carry forward our recommendations: (1) that the BHE and DHE take the necessary regulatory and policy setting steps to implement our recommendations (as amended and refined by their decision making); (2) that the DHE form and appropriately resource a new Office of Student Protection and that the Commissioner and Executive Committee of the BHE select membership and a Chair for the external Advisory & Review Council; and (3) that the DHE work with the Administration and Legislature to propose and pass any necessary enabling legislation and appropriation.

Regulatory & Policy Setting

We understand and believe that many of the elements of this proposed plan could be adopted and implemented by policy setting authority already available to the BHE and DHE. We do assume that some elements may require more formal regulation proposal and adoption processes. We encourage the DHE legal staff to clarify those considerations for the BHE by the time of the January 22, 2019 BHE meeting in order to allow expeditious action on the proposed plan.

We also recommend that the DHE continue to work as collaboratively as possible with the New England Commission for Higher Education (NECHE), the relevant accreditor. NECHE has clear overlapping responsibility for self-policing the field and has demonstrated a willingness and openness to new ways of addressing this growing challenge. While the duties of the BHE and DHE are somewhat different than those of NECHE, the goals should often be well aligned and where possible, concordance and alignment will serve everyone well.

We also recommend that the DHE consider how to best make the plan and its reasons and process for development and adoption as widely known as possible both to stakeholders and the general public. We believe that responsible stakeholders, including NPIHEs themselves, embrace the need for reliability on commitments made to students, their families, their staffs and their communities. We also believe that their input should always be heard and where possible honored and integrated.

We also call on the Boards of Trustees and management of all Massachusetts NPIHEs to review the financial strength and sustainability of their institutions and their current strategic plans. We want the NPIHEs and especially their Boards of Trustees to see this plan as appropriate and favorable for responsible leaders.

We all see that the recent closures of institutions have captured considerable interest and concern from the public at a time when postsecondary education has never been more important for life and career success and yet also at a time when public confidence in higher education is waning. We hope clarifying the situation and the plan will help alleviate those concerns.

Institutions Beyond the Scope of the Working Group Report and Plan

We chose to focus on a group of NPIHEs with common characteristics that posed the central risk we were asked to address. These are private, non-profit universities granting four-year undergraduate degrees. Some of the schools in that pool also have considerable graduate and professional programs though those generally appear to be at lesser risk than small, primarily or exclusively undergraduate degree granting colleges.

Nonetheless, we wish to flag the need for the proposed OSP, the DHE, the Advisory & Review Council and the BHE to work together to ensure that risks beyond the core focus of our plan are at least assessed and considered. Specifically, the largest group of remaining schools are public higher education institutions. They too face challenges, especially tied to changing Massachusetts demographics over the next twenty years which they DHE has been highlighting to them. But they are already subject to much more regulatory oversight as well as having the fundamental backing and oversight of the Commonwealth. Nonetheless, they too will need to adapt to future trends and needs and avoid any disruption to students.

Private for-profits have been the focus of greater scrutiny in recent years by the U.S. Department of Education (USED), the Attorney General and the DHE. They are under pressure and have fiduciary duties that often extend beyond Massachusetts and include shareholders and creditors. They also sometimes have balance sheet resources and other campuses on which they

can partially rely beyond their Massachusetts campus(es). Nonetheless, given their potential risk, the OSP and DHE should evaluate and if necessary, develop an approach to ensure vigilance to protect their Massachusetts students.

Finally, there are a small number of private, non-profit schools that fall outside of the scope of this plan and the current TVM screening tool. This includes two-year colleges and graduate-only universities. We recommend that the OSP and DHE assess how to best address risk in this small cohort.

Office of Student Protection & External Advisory and Review Council

We recommend that the Commissioner move promptly to form a new Office of Student Protection (OSP) within the DHE. This OSP would have primary responsibility for carrying out all elements of this plan. We believe the OSP must have strong employees with at least representation and expertise on each of the financial, legal and academic aspects of NPIHEs and this work. The work of the OSP is likely to be seasonal and cyclical with peaks and troughs therefore it may be the case that OSP employees may be able to assist in other areas of work of the DHE. But their top priority must be the OSP and its work, especially during the initiation of this plan and whenever one or more institutions are at significant risk.

The THESIS Working Group was charged with focusing on how to mitigate risk of future abrupt closure and we have focused here on the work of a new OSP to identify, monitor and intervene where necessary. But when schools close, even with timely notice and strong contingency plans, there is much work to be done to ensure students and other stakeholders are supported throughout the process and have a place to ask questions and raise concerns. DHE has done this on an ad hoc basis in cases such as Mount Ida College. We propose that the newly formed OSP also prepare plans and ensure resources to help students and collaborating IHEs manage any necessary transitions in the future. Student protection involves far more than just prompt notification and sufficient planning.

We recommend that the Commissioner report regularly on the OSP's progress and work to the Executive Committee of the BHE, given both the sensitivity and importance of this work as well as its cross-cutting nature.

We have recommended that as part of this plan, the BHE/DHE recruit and support a small (perhaps three to five member) external Advisory & Review Council (ARC). We believe the members of the ARC should be respected civic leaders with considerable expertise on the complex financial, legal, and regulatory matters that will be dealt with by the OSP. We see the ARC's duties as including the periodic review and evaluation of the policies and processes pursued to implement this plan and the making of recommendations to the OSP, the Commissioner, and, where appropriate, the Executive Committee of the BHE on refinements necessary to the plan. We also see the ARC's duties as the advisory review of critical decisions on NPIHEs by the OSP, especially the decision to identify an NPIHE as having crossed the 18-month threshold and therefore to be required to disclose its financial challenges to its students

and prepare its transfer and teach out contingency plan. Because such a decision will always involve some judgment as to whether the institution has risk of not being able to complete the current and subsequent years and because the action taken involves public disclosure of the situation, we believe that the DHE and the NPIHEs should welcome an independent advisory validation of that decision.