

# Massachusetts Department of Higher Education

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Noe Ortega  
Commissioner  
Chris Gabrieli  
Board Chairman

## Massachusetts Board of Higher Education (BHE) Meeting Minutes, Motions, and Presentations regarding the *Transitions in Higher Education: Safeguarding the Interests of Students* (THESIS) Working Group; and *Financial Assessment and Risk Monitoring* (FARM)

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<b>May 1, 2018</b>	<a href="#">Meeting Minutes</a>	
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<b>January 22, 2019</b>	<a href="#">Meeting Minutes</a>	
	<a href="#">Motion BHE 19-04</a>	Receipt of Report Issued by THESIS Working Group and Charge to Commissioner to Develop Implementation Recommendations
	<a href="#">Attachment A</a>	THESIS Working Group January 2019 Report
	<a href="#">Attachment B</a>	Implementation Timeline
	<a href="#">Appendix</a>	Transitions in higher education – Safeguarding the interests of students (EY Parthenon, September 2018)
<a href="#">Presentation</a>	Transitions in Higher Education: Safeguarding the Interests of Students (THESIS) Working Group Final Report & Recommendations	

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<b>June 18, 2019</b>	<a href="#">Meeting Minutes</a>	
	<a href="#">Motion BHE 19-06</a>	Authorization for Commissioner to Solicit Public Comment on 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education
	<a href="#">Attachment A</a>	Comment Period and Regulatory Compliance Timeline
	<a href="#">Attachment B</a>	Proposed Regulations 610 CMR 13.00
	<a href="#">Presentation</a>	BHE Authorization to Solicit Public Comment: Financial Review and Risk Monitoring Regulations (610 CMR 13)

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<b>January 10, 2020</b>	<a href="#">Meeting Minutes</a>	
	<a href="#">Motion BHE 20-03</a>	Approval and Adoption of 610 CMR 13:00: Financial Assessment and Risk Monitoring of Institutions of Higher Education
	<a href="#">Attachment A</a>	Revised Regulations 610 CMR 13.00
	<a href="#">Attachment B</a>	Summary of Public Comment Received on 610 CMR 13.00
	<a href="#">Presentation</a>	BHE Approval and Adoption of Financial Assessment and Risk Monitoring Regulations (610 CMR 13)

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<b>April 8, 2020</b>	<a href="#">Meeting Minutes</a>	
	<a href="#">Motion</a> <a href="#">BHE 20-09</a>	Receipt of Implementation Procedures for Financial Assessment and Risk Monitoring of Institutions of Higher Education, Approval of Principles Governing a Memorandum of Understanding with the New England Commission of Higher Education, and Delegation of Authority to Commissioner
	<a href="#">Attachment A</a>	Financial Assessment and Risk Monitoring Implementation Procedures for Massachusetts Private Independent Higher Education Institutions Pursuant to 610 CMR 13.00
	<a href="#">Appendix A</a> <a href="#">Presentation</a>	DHE Screening Methodology Financial Assessment and Risk Monitoring - Implementation and NECHE MOU
<b>June 22, 2021</b>	<a href="#">Meeting Minutes</a>	
	<a href="#">Presentation</a>	Financial Assessment and Risk Management- Year 1 Overview
<b>June 21, 2022</b>	<a href="#">Meeting Minutes</a>	
	<a href="#">Motion</a> <a href="#">BHE 22-63</a>	Authorization for Commissioner to Solicit Public Comment on Proposed Regulatory Amendments to 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education
	<a href="#">Attachment A</a>	610 CMR 13.00 Proposed Amendments
<b>October 18, 2022</b>	<a href="#">Meeting Minutes</a>	(not yet available)
	<a href="#">Motion</a> <a href="#">BHE 23-12</a>	Approval and Adoption of Regulatory Amendments to 610 CMR 13.00: Financial Review and Risk Monitoring of institutions of Higher Education, and Receipt and Endorsement of Implementation Procedures
	<a href="#">Attachment A</a>	610 CMR 13.00 Final Amendments
	<a href="#">Attachment B</a>	Draft DHE Surety Worksheet

**Compiled: November 7, 2022**

Please note this compilation may not be exhaustive. For full access to recent BHE materials, please visit: <https://www.mass.edu/bhe/agendas.asp>.

**BOARD OF HIGHER EDUCATION**

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May 1, 2018  
10:00 a.m.

Middlesex Community College – Bedford Campus  
Campus Center, Café East  
591 Springs Road  
Bedford, MA 01730

**Meeting Minutes**

A meeting of the Board of Higher Education (BHE) was held on Tuesday, May 1, 2018 in the Campus Center, Café East at Middlesex Community College at 519 Springs Road, Bedford, Massachusetts.

**The following Board Members were present:**

Chris Gabrieli, Chair  
Alex Cortez  
Danielle Dupuis, Student Member, Bridgewater State University  
Sheila Harrity, Vice Chair  
J.D. La Rock  
Paul Mattera  
Ashley McHugh, Non-Voting Student Segmental Representative, Mount Wachusett Community College  
James Peyser, Secretary of Education, Ex-Officio  
Fernando Reimers  
Paul Toner

Carlos E. Santiago, Commissioner and Secretary to the Board

**The follow Board members were absent:**

Nancy Hoffman  
Henry Thomas

<b>I.</b>	<b>CALL TO ORDER</b>  Chair Chris Gabrieli called the meeting of the Board of Higher Education (BHE) to order at 10:08 a.m. He began by introducing and welcoming Alex Cortez, a newly appointed BHE member. He then invited the rest of the BHE to make introductions. Board member Cortez thanked the BHE and briefly gave an overview of his background.
<b>II.</b>	<b>PUBLIC PARTICIPATION</b>  Chair Gabrieli stated that he received two requests for public participation, and invited Ms. Marlene Kim to come forward to address the Board.  Ms. Kim thanked the BHE, and introduced herself as a faculty member at University of Massachusetts (UMass) Boston and President of the faculty and staff union. She remarked that UMass Boston staff has been skeptical of the Mount Ida acquisition and its use for internships, and then cited a recent <i>Boston Globe</i> article that reported the new campus will

also host new academic programs in certain fields like nursing and business. She noted that these programs already exist at UMass Boston, and the campus already offers numerous graduate certificates in marketing, health care management, analytics, and computer science. She remarked that what is alarming in this situation is the process; the purchase of Mount Ida by UMass Amherst was done in secrecy in executive session in the trustee meeting behind closed doors with no opportunity for public comment. The information that was provided last week that UMass Amherst has more ambitious plans for the property went to the Legislature in a memo that is not yet public. She noted that former DHE Commissioner Richard Freeland stated last week at the Academic Affairs Committee (AAC) meeting that this purchase will “cannibalize” UMass Boston because UMass Amherst gets far more resources than UMass Boston from the state. She asked the BHE to do their due diligence to examine and evaluate what this property will be used for, and consider if it makes sense to open another UMass property with state funds that will destroy another campus. UMass Boston serves underserved populations including English language learners and first generation students and is a minority-majority campus, and remarked that these students will be the ones who are harmed. She remarked that they already struggle at UMass Boston to serve these students with the limited resources they have.

She continued that she knows the BHE insists that this is not in their purview, but she believes it is, and the Board has broad authority to look at this matter and it is their duty to ensure that students have the opportunities they deserve. She asked that the BHE look into these issues, allow for public comment, allow for transparency, and make any information known on the deal public. She concluded her remarks by stating UMass Boston wants to continue to serve all the students in the Commonwealth and give them the education they deserve.

Chair Gabrieli then invited Ms. Margaret Wong to speak.

Ms. Wong began her remarks by introducing herself as the President-elect of the Massachusetts Community College Council (MCCC) and acknowledged Rosemarie Freeland, Vice President elect of the MCCC. She stated that it is her 30<sup>th</sup> year of teaching and cares about what she is doing. She added that very much like the students she teaches at Quinsigamond Community College (QCC), she is a first generation student and her parents are immigrants from China who did not speak English. She has earned degrees and worked at both public and private schools, but working at QCC is her passion.

Ms. Freeland then introduced herself as Women’s Resource Center Director at Greenfield Community College (GCC), where she is also an alumna. She remarked that she attended the meeting because of her community college education, and has held her position since 1999.

Ms. Wong stated that the MCCC has issued a failing progress report with regard to the bargaining process for a contract for part-time faculty, as progress has stalled. She noted this progress report was a visual aid to help the BHE understand the situation. Adjunct faculty teach the vast majority of classes at community colleges and there needs to be respect for the dignity of this work, and for the passion of what they do. She continued that adjunct faculty open themselves for exploitation very easily because they care about what they do and would give anything for the success of their students. They are asking for fair compensation and fair support because it is what students deserve, what faculty deserve, and what colleges deserve.

	<p>Ms. Freeland remarked that the majority of classes are taught by adjunct faculty, and that it is known that students taught by our full time faculty do better, which is no comment on the quality of instruction. She remarked that we need to recognize that equal pay for equal work is not just a philosophical statement but an economic one as well, noting the funding community colleges receive from the state. She remarked that adjunct faculty are exploited because they have the moral imperative to do this important work, and that each time student fees rise, their ability to access quality education is impeded. She concluded her remarks by stating that they do not want students to receive that same treatment, and thanked the BHE for their time and consideration.</p>
<p><b>III.</b></p>	<p><b>WELCOME</b></p> <p>President Mabry welcomed Chair Gabrieli, Secretary Peyser, the BHE and everyone in attendance to MCC. He remarked that MCC has a spirit of entrepreneurship, and recently received a \$250,000 grant that supports student businesses coming out of the entrepreneurship program, which received support from donors after a national search. He remarked that MCC is looking forward to this partnership. He continued that in December, MCC received the largest gift in the college's history from the Donohue family which will support an academic building. He added that they will be presenting the Board with a proposal to name the building after the Donohue family at a later date. President Mabry stated that MCC continues to work on their private fundraising capacity. He then introduced Ms. Sierra DeWalt, a student trustee who is a dual enrollment student and will be graduating from high school later this month.</p> <p>Ms. DeWalt thanked the BHE, and remarked on her experience at MCC. She said she realized MCC was a special place after an experience in one of her classes when she recognized how diverse the class was in terms of viewpoints, perspectives, and ages; this diversity enriched the conversation and is the main reason the campus is so successful. She commented on the multiple responsibilities her classmates juggle, including parenthood, multiple jobs and this enriches the community and provides respectful place to broaden your perspectives and horizons.</p> <p>Chair Gabrieli thanked President Mabry and Ms. DeWalt for their comments.</p>
<p><b>IV.</b></p>	<p><b>ACCEPTANCE OF MINUTES</b></p> <p>Chair Gabrieli remarked at the last meeting, the BHE did not have a quorum of Board members voting on the minutes, and as a result the Board would be voting on the January minutes again. He noted that on the advice of counsel, a member's absence from the meeting does not prevent the member from participating in their approval or offering corrections.</p> <p>Chairman Gabrieli then brought forth a motion to accept the minutes of the joint BESE/BHE January 24, 2018 BHE meeting. The motion was seconded and the minutes were approved unanimously by all Board members present.</p> <p>Chairman Gabrieli brought forth a motion to accept the minutes of the January 24, 2018 BHE meeting. The motion was seconded and the minutes were approved unanimously by all Board members present attendance.</p> <p>Chairman Gabrieli brought forth a motion to accept the minutes of the March 6, 2018 BHE meeting. The motion was seconded and the minutes were approved unanimously by all Board members present.</p>

<b>V.</b>	<b>REMARKS AND REPORTS</b>
<b>A</b>	<p><b>CHAIRMAN'S REMARKS</b></p> <p>Chairman Gabrieli began his remarks by stating that he is optimistic about opportunities for the future. The Early College Joint Committee approved designations for the first five early college high school programs, and additional applications are close to being approved. He expressed his excitement about this project, as early college programs serve thousands of students from a variety of backgrounds, and this demonstrated an impressive level of collaboration across the state.</p> <p>He then referenced the Commission of Digital Innovation and Lifelong Learning, chaired by BHE member J.D. La Rock, which is charged with identifying ways we can create more opportunities for online education to open opportunities for learners of all ages.</p> <p>Chair Gabrieli continued by stating that there has been a lot of dialogue over the past few weeks around how to help the students at Mount Ida as their campus is in the process of closing. He then turned to Secretary Peyser to offer his thoughts on the Mount Ida closure.</p> <p>Secretary Peyser stated one of the challenges in responding to the Mount Ida situation may be connected to a lack of clarity in the BHE's authority, statutory or otherwise, that would enable the Board to take action. He stated that Commissioner Santiago and he will undertake a joint project over the next thirty days to review the BHE's authority and propose potential policy, regulatory or legislative changes intended to help ensure that the Board has sufficient authority to protect students attending private colleges and universities in the Commonwealth that are at risk of imminent closure or service interruption. He stated they will engage the BHE and other stakeholders throughout the process. Chair Gabrieli added that he wants to ensure the Board and Department staff have a greater capacity to be more proactive, noting the initial importance of identifying the barriers in their authority in that regard.</p> <p>Chair Gabrieli then referenced the previous week's AAC meeting that was extended and repurposed to give those affected by the Mount Ida closure an opportunity for public comment. He noted that while, it was painful and difficult to hear, he, the Commissioner and other Board members were left with a sense of urgency and were moved to take action to support these students and protect other students from imminent, disruptive closures. He acknowledged the uncertainty students and families are facing as they go into the new school year, and that there was a need to respond swiftly either through authority the BHE already has or through legislation. To that end, Chair Gabrieli announced that he and the Commissioner will create a Working Group of stakeholders that will build off of the legislative and policy review conducted by the Secretary and the Commissioner, and will look at potential methods to assess and monitor the fiscal health of institutions of higher education, as well as ways to proactively mitigate the risks associated with institutional closures. The Working Group will be convened within thirty days and is expected to issue some preliminary findings in September, with a final report by the end of the calendar year.</p>
<b>B.</b>	<p><b>COMMISSIONER'S REMARKS</b></p> <p>Commissioner Santiago welcomed everyone and thanked President Mabry, Ms. DeWalt and Middlesex Community College for hosting today's meeting. He began his remarks by acknowledging the Presidents in attendance: President Ellen Kennedy of Berkshire Community College, President Fred Clark of Bridgewater State University, President Ramon Torrecilha of Westfield State University, and President Barry Maloney of Worcester State University. He also acknowledged Vince Pedone and Gretchen Manning of the segmental</p>

Executive Offices and welcomed the new BHE member, Alex Cortez.

He remarked that after today's meeting, we will be one BHE meeting away (in June) from completing the FY18 agenda, and although he will leave the end of year report for the June meeting, this year has been characterized by a continuation of an ambitious agenda with noteworthy, and often unexpected, developments in between. One of those recent developments, of course, is the issue of closures, mergers, and consolidations among Massachusetts institutions of higher education, and the compelling messages we received from students, parents, faculty, and staff, including those from UMass Boston, at the recent AAC meeting cannot be simply put aside. Where we go from here is a theme that Chair Gabrieli has already raised and he applauds the Chair for his commitment to consider a number of different options that might bring about positive and lasting change.

Commissioner Santiago highlighted, the fact that institutional closures have been increasing, both nationally and in Massachusetts, largely in response to declining student enrollment that is driven by demographic change, and given the significant number of higher education institutions in Massachusetts, it is reasonable to anticipate that there will be more closures and mergers than we see on average nationally. He stated that with just a few exceptions, Mount Ida being the most significant, the policies regarding closures, mergers, and acquisitions have worked quite well. Massachusetts has experienced 15 closures or mergers over the past five years, and for the most part, these occurrences have allowed the DHE to work with the institution to accommodate the needs of students as they have transitioned to other institutions. The Department of Higher Education, in each instance, has helped create avenues for students to continue their studies. While there is talk about a failure of policy, he would argue that the policies have worked well, with one major caveat. They work well when the DHE is given the time to engage with the institutions involved; there will always be some loss in these cases but these losses can be mitigated with timely notification. He acknowledged that this is little comfort to the Mount Ida students, particularly those in specialty areas that are not common or are hard to replicate at other institutions, but staff are fully committed to helping those students continue their academic work and we are diligently working to do so.

He remarked that the question has also arisen as to whether closures, mergers, or acquisitions can be predicted, or in other words, can we identify, early on, institutions that are in impending financial difficulty? The answer is yes under a few key conditions: (1) a staff that is sufficiently large, well-versed in financial matters, and authorized to engage directly with the leadership of the nearly 100 private profit and non-profit institutions in the Commonwealth; (2) access to a wide variety of institutional data from early enrollment reports to background information that reflects federal financial ratings, and other pieces of crucial financial data; and (3) the authority to receive this data on a timely basis. He remarked that he believes that the Board Chair and Secretary's proposals this morning position us well to have these conversations and to address these issues.

The Commissioner concluded his remarks with an acknowledgment of some recent praise he has received about the MassTransfer website built in-house on transfer pathways. He remarked that he is proud of the work of the DHE staff, including the "nuts and bolts" work that is done.

Chair Gabrieli remarked that he too is proud of the work of the BHE, and he has been personally impressed by the department staff, particularly those who are assisting and supporting Mount Ida students. He thanked the staff and acknowledged the many ongoing projects, including the financial aid redesign study, the upcoming Open Educational

	Resources OER project, noting that what DHE staff have done is impressive.
<b>C.</b>	<p><b>SECRETARY OF EDUCATION’S REMARKS</b></p> <p>Secretary Peyser had no further comments.</p>
<b>D.</b>	<p><b>REPORTS FROM PRESIDENTS</b></p> <p><b>Community College Presidents’ Report</b></p> <p>President Ellen Kennedy, Berkshire Community College, thanked President Mabry and MCC for hosting the Board meeting. She acknowledged the Mount Ida closure, and reported that community colleges are working to address the needs of Mount Ida students, as many of the programs offered at the fifteen community colleges align with programs offered at Mount Ida. She referenced President Pat Gentile’s plans at North Shore Community College to develop funeral services and veterinary technology programs, as well as Cape Cod Community College’s efforts to offer a mortuary science program. She stated that a number of community college representatives have reached out to assist these students and will continue do so. Further, community colleges are also concerned for the staff at Mount Ida and encourage them to bring their talents and time to our campuses.</p> <p>She continued her report by stating that in early April, over 300 faculty and staff came together to share best practices at the annual Teaching and Learning Conference, hosted by Berkshire Community College. She then commented on the budget, noting community colleges were grateful for the support received from the House, but all campuses were struggling with the one percent increase. For Massachusetts to continue to be competitive in the knowledge economy, public campuses need the support to remain competitive. She then suggested a study on funding support, and referenced the ongoing MCCC contract negotiations. Additionally, community colleges were concerned that PIF grants were not funded in the House budget, because these grants allow public institutions to innovate, and they would like to see the funds restored in the Senate and in Conference budgets.</p> <p>President Kennedy observed how the end of the academic year was a celebratory time and there were many exciting events on the calendar, including 29 Who Shine, and a Phi Beta Kappa event in which 34 students were honored for academic accomplishments. Further, Massachusetts community colleges and its presidents are being recognized for their leadership, both nationally and locally. Bunker Hill Community College President Eddinger was elected to Chair of the Board of Directors for Achieving the Dream, North Shore Community College received the bronze-level seal from the “ALL IN Campus Democracy Challenge,” and Holyoke Community College President Christina Royal is a member on the Governor’s Commission on Lifelong Learning and Digital Innovation. She then noted the upcoming inauguration of Bristol Community College President Laura Douglas, and acknowledged the retirement of Greenfield Community College President Robert Pura. She concluded her remarks by stating that she wishes Bill Hart from the Executive Offices a speedy recovery.</p> <p><b>State University Presidents’ Report</b></p> <p>President Fred Clark, Bridgewater State University (BSU) congratulated BHE student member and BSU student Danielle Dupuis, who is graduating this month and attending Boston College next year to pursue a master’s degree in higher education.</p>

He stated the state universities were in conversations with Mount Ida students who were finding their way to our public campuses every day. He then offered any assistance to the Chair, Secretary, and Commissioner in their 30 day review, and extended a preliminary suggestion noting that the state provides considerable funding to private institutions in the form of scholarships and grants and he suggested connecting access to those funds to the accountability being sought.

President Clark then reported on a recent trip to Rowan University in New Jersey with President Gentile from North Shore Community College. Rowan is a leader in innovation collaboration in New Jersey, and they have taken regional collaboration to the next level. In 2014, they entered into a partnership with Gloucester County College, and students were given discounts on tuition, application fees were waived, and students received counseling and academic support; both campuses remained independent despite their deep collaboration. He remarked that they have seen tremendous increases in enrollment growth despite similar demographics as Massachusetts, and they were deeply impressed by the level of innovation and adaptability. This partnership grew organically, and not through mandate, and they have retained more New Jersey students. Going forward, he believes that partnerships and innovation are going to be key strategies needed to adapt to demographic challenges.

President Clark then remarked on campus closures and consolidations and cited Jay Kaufman's recent *Boston Globe* op-ed suggesting that our public higher education system is too big and we should close certain campuses. He stated that the idea of consolidation is not new, as he has witnessed the conversation over the past several decades. The op-ed was spurred by the closure of a private college, and he thinks it is pretty remarkable and inaccurate to connect those dots to our public higher education system. Massachusetts public colleges and universities have strong connections with regional economies, we know how to stretch a dollar, and our students stay here in Massachusetts. The state needs to think about increasing access to public higher education, not restricting it. Because public campuses are located in every region, consolidating them will make student access more difficult, particularly those underrepresented students, who are the solution to the Massachusetts talent gap. Changes to higher education cannot be made in a vacuum, and we need to focus our energies to creating more opportunity and access to economic mobility, particularly in our gateway cities.

President Clark turned to workforce-related issues, stating that the state universities are dedicated to enhancing our workforce and being responsive to workforce needs. He referenced several industry representatives who are looking to public higher education to solve workforce gaps, adding that the state university internship incentive program is a viable solution that the innovation economy needs.

He concluded his remarks by noting that BSU had a successful year raising money, and they awarded \$1,000,000 last week in scholarships. He referenced the endowment incentive program which incentivizes private philanthropy, noting that private dollars can be incentivized with public funds. He then thanked the BHE for their time. Board member Paul Toner requested that at a future meeting, it would be helpful to have a primer about the various streams of funding, noting his surprise to hear that UMass Amherst receives more funding than UMass Boston. He additionally requested an update on where we were with collective bargaining negotiations. Commissioner

	<p>Santiago responded that there is some basic information that we can provide. Secretary Peyser remarked that there is only one line item for UMass from the state perspective, which is the basic operating line item.</p> <p>Board member Reimers asked Presidents Kennedy and Clark if they could comment on the extent of spirit of collaboration with the University of Massachusetts. President Kennedy responded that our students are enrolling with the intention of transferring, and that UMass Amherst is the closest UMass campus. Community colleges support the Department's Commonwealth Commitment program, which includes transfer pathways; the community colleges want students to complete their associate's degrees so they have that credential before they move on. President Clark responded that we think it could be better, frankly and noted that there is substantial of back and forth; BSU receives a lot of transfer students from UMass Amherst as well sending transfers to UMass campuses. We want there to be more pathways for our students, and he thinks we are at the beginning and there is a long way to go.</p> <p>Board member Mattera asked about identifying academic programs that were comparable to those at Mount Ida, noting that Board members heard a lot last week that about programs at Mount Ida that were unique with limited transfer potential. He asked if Department staff had more notice on the closure, how would that have improved the ability to better serve these students? President Kennedy responded that 30, 60, or 90 days still would not have been enough to develop a new academic program, though we all want that review and approval process to be better. President Clark responded that it would have been better to have more notice, and while we do have an extensive list of course equivalencies, some programs just do not transfer.</p> <p>Chair Gabrieli encouraged Commissioner Santiago and Deputy Commissioner Pat Marshall to come before the BHE if they need any new authorities to manage the Mount Ida situation. Commissioner Santiago stated the deadline for program approval submissions this year has been extended for institutions developing new programs in response to the Mount Ida closure. Most of these programs will be approved using the Commissioner's delegated authority, including summer delegation of authority.</p>
<p><b>E.</b></p>	<p><b>REPORT FROM STUDENT ADVISORY COUNCIL</b></p> <p>Board member Dupuis reported that Student Advisory Council (SAC) members participated in a rally at the state house regarding addressing sexual assault on campuses, including requiring campus climate surveys, and this had a lot of support in the legislature. SAC also approved a logo that will allow for better social media reach and marketing. She continued by noting that SAC also revised their current by laws which will allow members to designate their authority to another member if they are unable to attend. At the last SAC meeting, they interviewed candidates for the next BHE student member and selected a UMass Boston student as the next BHE segmental representative, along with a community college non-voting segmental representative from QCC, and an interim SAC Chair. She commented on the upcoming Open Educational Resources (OER) presentation which is on today's agenda, noting that SAC is proposing its first resolution with today's presentation; the SAC is advocating in support of OER because they lower costs.</p>
<p><b>VI.</b></p>	<p><b>MOTIONS</b></p> <p><i>List of Documents Used:</i></p>

	AAC 18-27	<p><b>A. Academic Affairs</b></p> <p>Chairman Gabrieli turned the meeting over to Vice Chair Sheila Harrity for a report on last week's Academic Affairs Committee (AAC). Vice Chair Harrity explained that AAC Chair Nancy Hoffman was on her way to Arizona for a Pathways Institute meeting. Before proceeding with the motions, she provided a brief summary on the recent AAC meeting, and stated noted that while it was heart wrenching to hear from the students, families and faculty, including UMass Boston faculty, impacted by the Mount Ida closure, it was very helpful and informative for Committee members and it was important to give the community an opportunity to voice their frustration and concerns. The Committee also considered a motion that would allow Saint Louis University to offer the Master of Social Work; under the proposal courses would be offered online and at Elms College, located in Chicopee. There was also a brief presentation on the revised program approval process for public institutions, as well as a presentation on the work of the Commissioner's Ad Hoc Committee on Police Education and Training.</p> <p>Vice Chair Harrity then asked for a motion for approval of AAC 18-27, approval of the application of Saint Louis University to offer the Master of Social Work. On a motion duly made and seconded, AAC 18-27 was unanimously approved by all Board members present, without discussion.</p>
	<b>AAC 18-27</b>	<b>APPLICATION OF COLLEGE OF SAINT LOUIS UNIVERSITY TO AWARD THE MASTER OF SOCIAL WORK</b>
	<b>MOVED:</b>	The Board of Higher Education hereby approves the Certificates of Organization of Saint Louis University to offer the Master of Social Work
	Authority:	Massachusetts General Laws Chapter 69, Section 30 et seq.
	Contact:	Kristen Stone, MPP Assistant Director for Academic and Veterans Affairs
<b>VII.</b>	<p><b>PRESENTATIONS</b></p> <p><b><u>List of Documents Used</u></b></p> <ul style="list-style-type: none"> <li>• <i>PowerPoint Presentation: Redesigning Massachusetts State Financial Aid, May 1, 2018</i></li> <li>• <i>PowerPoint Presentation: Open Educational Resources, Supporting Access &amp; Affordability May 1, 2018</i></li> <li>• <i>Massachusetts Student Advisory Council Resolution #001</i></li> </ul> <p><b>A. Redesigning Massachusetts State Financial Aid: Simplifying Process &amp; Maximizing Impact, Part II</b></p> <p>Chair Gabrieli stated that at the March BHE meeting, Board members heard from Deputy Commissioner Clantha McCurdy, Dr. Bridget Terry Long, and Monnica Chan on work occurring with respect to redesigning financial aid. There will now be an opportunity to hear some specific recommendations and provide feedback. He then turned the meeting over to Commissioner Santiago.</p>	

Commissioner Santiago invited Senior Deputy Commissioner Clantha McCurdy and Deputy Commissioner for Administration and Finance Tom Simard to provide a presentation on recommendations related to redesigning financial aid in Massachusetts. The Commissioner first provided some context from the last meeting during which Dr. Long gave a presentation on the study. He noted that we have many different programs and that funds serve a lot of students at both public and private institutions, but the reality is that we are in the middle of the pack nationally in terms of support to students. He remarked that the Office of Student Financial Assistance (OSFA) is also in the middle of a business process review (BPR) that is examining how the system interacts with students and families, and we are bringing our technology and our process into the 21<sup>st</sup> Century. He then turned the meeting over to Deputy Commissioner McCurdy.

Deputy Commissioner McCurdy thanked Commissioner Santiago and the BHE and stated that she will provide a follow up to the financial aid presentation that was presented to the BHE in March. She noted that the study grew out of a larger initiative, the *Redesigning State Aid in New England* Project, supported by the New England Board of Higher Education and funded by the Lumina Foundation. The study was led by Dr. Long and Monnica Chan from the Harvard Graduate School of Education and it produced a set of recommendations including making college more accessible and affordable for all Massachusetts residents, closing gaps in student opportunity and achievement, and improving college completion rates.

She continued by providing a brief recap of the presentation by Dr. Long and Ms. Chan to the BHE in March that offered an overview of the scope and results of their study, including a summary of the five study recommendations for improving effectiveness and efficiency of the current aid system. She noted that today's presentation will provide action steps for the five overarching recommendations.

She continued by presenting Recommendation 1: address the substantial unmet financial need facing many students and families. Action steps include the recognition of the additional \$7.1million in the Governor's and House budget General Scholarship Line item which is the largest increase in at last 24 years. The DHE has been working with college representatives to target this projected increase to address unmet need for community college students. Further steps include developing a long term financial aid strategy for *all* public college students, establishing an emergency fund for extreme hardship cases, and revising the "state-supported" requirement for all financial aid programs with a timeline of FY2019-2020.

She continued by presenting Recommendation 2: consolidate programs with similar goals. Action steps include working with stakeholders to reform MASSGrant by converting needs-based resources from other programs into a single funding source that serves the same students and maintaining the current level of support to students within public and private sectors to ensure that there is no diminishment of state support based on program consolidation. Deputy Commissioner McCurdy explained the rationale for this decision with a discussion of the overlap in students served in state need-based grant awards for both public and private institutions.

She continued by presenting Recommendation 3: repackage the Massachusetts system of tuition waivers into a simple, well-publicized grant program. The action items include reviewing the current array of tuition waivers to determine the feasibility of consolidating or eliminating waivers that are duplicative, or are no longer required or outdated, and planning and executing an awareness campaign. Deputy Commissioner McCurdy added that the

timeline of FY2020 for this recommendation may be a bit aggressive.

Deputy Commissioner McCurdy continued by presenting Recommendation 4: apply lessons learned and innovations from pilot programs to existing aid programs. Action steps include establishing metrics to comprehensively evaluate financial aid funding and other factors that support “Big Three” objectives; assess and evaluate the No Interest Loan Program (NIL); align scholarship aid with workforce strategies; and explore opportunities for institutional and community partnerships and early college programs with a timeline of FY2020.

Vice Chair Harrity asked a clarifying question on the Adams Scholarship. Deputy Commissioner McCurdy responded that the Adams Scholarship is credited as a tuition waiver on a student’s financial aid package and OSFA is working with the Department of Elementary and Secondary Education (DESE) to identify eligible students.

Board member Toner asked a question about programs that address workforce shortages and Deputy Commissioner McCurdy responded that we currently have the Massachusetts High Demand Scholarship which funds students in designated high demand fields.

Deputy Commissioner McCurdy continued by presenting Recommendation 5: improve communications regarding state financial aid programs for clarity and increased awareness. Action items include revamping OSFA’s website for greater clarity, transparency and navigation; implementing recommendations from the BPR; exploring opportunities for communicating with students through partnerships; and using focus groups to ensure utility and clarity of information.

She continued by identifying programs not recommended for change, which include entitlement programs that serve foster and adopted youth and statutory programs, such as the Public Service Grant and the Herter Memorial Scholarship, as these programs are statutory or legislatively mandated, target high-need students and have a demonstrated history of success. She concluded her presentation with an overview of how these recommendations support the Big Three priorities and what the next steps will be. These recommendations will be shared with the general public and key stakeholders and after collecting feedback, we will revisit with the BHE for review and endorsement at the June 2018 meeting.

After the presentation, the BHE engaged in a discussion. Vice Chair Harrity remarked that she was confused because she thought there was going to be a big push for a comprehensive data system that used the State Assigned Student Identified (SASID) number to track students. Commissioner Santiago responded that when he first arrived in 2014, this was a major point of contention, but we have made tremendous progress in this area. Board member Reimers commended Deputy Commissioner McCurdy’s team for taking an excellent study and developing actionable ideas; he added that he was impressed on how clear and evidence-based this presentation was, and how quickly the recommendations were turned into action. He encouraged the Department to keep up the momentum.

Board member Alex Cortez remarked that he did not yet have a sense of the magnitude of the potential impact, and asked if there are inefficiencies in the system or is money left on the table? He remarked that it would be helpful for those who process things more quantitatively to have a sense of the scale of this. Deputy Commissioner Simard responded that the Business Process Review revealed that there is a lack of clarity for students about financial aid and we need to do a better job explaining it. Additionally, there is a shared urgency about

this, as Governor Baker spoke about financial aid in the State of the State address. Commissioner Santiago remarked that at the end of the academic year, there are funds that are not used and we are trying to act quickly to capture them so they do not revert back into the general fund. Deputy Commissioner Simard responded that we already have some changes in place to capture those funds so we can optimize all of the funds' availability.

Board member La Rock asked a clarifying question about how much is spent on No-Interest Loan programs annually. Deputy Commissioner McCurdy responded that students can receive up to \$4,000 a year and OSFA issues about 5,000 loans for about \$6 million annually. He then asked Deputy Commissioner McCurdy if she had a specific idea about the consolidation. She responded by citing an example of typical student inquiries OSFA receives that consist of a student calling the Department and going down the list of all of our programs one-by-one, and asking about eligibility; if we did not have all of these smaller, different programs available, it would make more sense from a student perspective. She continued that ideally, there would be greater clarity upfront and a student would know that if he or she is attending to a state institution, then this amount is available from the state.

Secretary Peyser thanked Deputy Commissioners McCurdy and Simard and remarked that this is important work. He noted that as a Board and Department, we have a lot of authority to make some important decisions regarding this, and noted that financial aid support is spread around very thinly. He continued that because of the fragmentation and the lack of transparency, it does not give students access to the funds they need. He remarked that he likes the idea of simplification, and this will be more strategic in terms of its impact on completion and the workforce; it is all very encouraging.

Chair Gabrieli remarked that the presentation was very encouraging to hear, and thanked Deputy Commissioners McCurdy and Simard for the presentation.

### **B. Open Educational Resources to Support Access and Affordability for Massachusetts Students**

Chair Gabrieli turned to the next presentation on the agenda, stating that the Board would now hear from Department staff, and campus faculty and students, on Open Educational Resources (OER). He added that he would like to commend the student advisory council for taking on such an important initiative.

He turned the meeting over to Commissioner Santiago. The Commissioner briefly introduced the topic and introduced Deputy Commissioner Pat Marshall, who would be leading the presentation today.

Deputy Commissioner Marshall remarked that she was excited to present today with students and colleagues from Northern Essex Community College (NECC). She introduced her co-presenters, Sue Tashjian, Coordinator of Instructional Technology and Jody Carson, Professor of Early Childhood Education and leaders of the Go Open Project. Deputy Commissioner Marshall remarked that they were finalists for the Bellweather award, and the Go Open Project saved 9,000 students more than \$1.2 million. She continued that she wanted to focus on access and affordability in the presentation, and she was very supportive of these efforts while at Worcester State, as well as last summer at the DHE, as she worked with staff to incorporate OER in PIF grants. She additionally commended the students for their leadership and advocacy in this area.

She began the presentation by providing an overview of OER, commonly defined as teaching, learning and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use and repurposing. OER provide tremendous cost savings to students, and students can access course materials from day one. They are additionally customizable for faculty. She then provided some data on the burden that high text book costs place on students and how this is a barrier to student success and persistence. She then provided information on existing support for OER through FY18 PIF grants at five other public campuses for a total of \$319,958.

Deputy Commissioner Marshall then turned the presentation over to Ms. Tashjian and Ms. Carson to discuss the Go Open project. Ms Carson remarked that OER efforts go all the way back to 2001 and NECC started adopt open resources in 2013, which has resulted in great savings. She noted that faculty participate this voluntarily. Ms. Tashjian remarked that due to its initial success, they knew they had to take the concept of open resources statewide. They pursued and received a \$200,000 TAACT grant that turned into the Massachusetts Go Open Project. She then introduced a short video that explained the project, noting that textbook savings from the project exceed \$1.2 million.

Ms. Carson and Ms.Tashjian provided an overview of the structure of the project, the benefits to the institution, the benefits to the faculty, and the benefits to all students. They also provided an overview of the lessons learned and challenges faced, but reiterated that a small investment has yielded significant savings for students, of over \$1.2 million in the first year.

Board member Reimers remarked that this is terrific, and that in addition to the benefit of cost saving for students, there is an additional benefit of assisting students who learn differently because OER can help faculty experiment with personalized learning.

Vice Chair Harray remarked she was very impressed with this presentation and she would like to propose a motion that supports the students' efforts. However, before getting to the motion, the Board heard from Massachusetts Bay Community College student and Student Government Association President Charles Santamaria, who spoke about student engagement with OER. He remarked that the matter of saving money is of great importance to the SAC, and OER additionally speaks to the matter of access, citing an example of a student who dropped a course because he could not afford the books. Student Board members Dupuis and McHugh additionally provided some examples of how the cost burden is difficult and cited some examples of the challenges that textbooks endure. Mr. Santamaria then provided an overview of the timeline of SAC engagement on this matter this year. He then summarized the SAC's resolution on OER, which was provided in the Board materials.

Deputy Commissioner Marshall thanked the panel. Chair Gabrieli remarked that he appreciates the energy brought to this issue and shares everyone's enthusiasm.

There being no further discussion, the following floor motion was advanced by Vice Chair Harray:

The BHE recognizes and commends the Student Advisory Council's efforts to bring attention to and address the rising costs of learning materials for students; the BHE further recognizes that expanding access to Open Educational Resources is a viable option that can help increase students' access to more affordable learning materials; therefore, the BHE commits to working in conjunction with the Student Advisory Council and with all public higher education institutions to explore and help identify opportunities for implementing Open Educational Resources on a broader scale in the

	Commonwealth.  The motion was duly made, seconded and approved unanimously by all Board members present.
<b>VIII.</b>	<b>OTHER BUSINESS</b>  There was no other business.
<b>IX.</b>	<b>ADJOURNMENT</b>  There being no further business, Chairman Gabrieli adjourned the meeting at 1:00 p.m.

Respectfully submitted,  
Carlos E. Santiago  
Commissioner of the Department and  
Secretary to the Board

## **BOARD OF HIGHER EDUCATION**

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January 22, 2019

9:00 a.m.

Framingham State University  
McCarthy Center, Forum Room  
100 State Street  
Framingham, MA 01701

### **Meeting Minutes**

A meeting of the Board of Higher Education (BHE) was held on Tuesday, January 22, 2019 in McCarthy Center Forum Room at Framingham State University (FSU) at 100 State Street in Framingham, Massachusetts.

#### **The following Board Members were present:**

Chris Gabrieli, Chair

Alex Cortez

Sheila Harrity, Vice Chair

Nancy Hoffman

Tom Hopcroft

Tom Moreau, Secretary of Education's designee

Kush Patel, student member, UMass

Fernando Reimers

Paul Toner

Carlos E. Santiago, Commissioner and Secretary to the Board

Nick Papa, non-voting student advisor, State University segment

Stephanie Texeira, non-voting student advisor, Community College segment

#### **The follow Board members were absent:**

J.D. LaRock

Paul Mattera

Michael O'Brien

## **I. CALL TO ORDER**

Chair Chris Gabrieli called the meeting of the Board of Higher Education (BHE) to order at 9:15.

## **II. PUBLIC PARTICIPATION**

Chair Gabrieli stated that there were two requests from members of the public to address the BHE. The guests would speak in alphabetical order. He first invited Mr. Richard Doherty, President of the Association of Independent Colleges and Universities in Massachusetts (AICUM) to address the Board.

Mr. Doherty began his remarks by thanking Chair Gabrieli, Commissioner Santiago and the BHE for the opportunity to speak. He introduced himself and noted that AICUM represents 54 independent colleges and universities in Massachusetts, which enroll 285,000 students and employ 100,000 faculty and staff. He remarked that independent colleges are deeply committed to student success and safeguarding their students. He stated he is here at the invitation of Chair Gabrieli. He said he recently met with the Chair and seven AICUM college presidents regarding the THESIS work. He is here to express AICUM and its member institutions' commitment to work with the BHE and DHE staff to implement the guiding principles which drove the work of the THESIS group.

Mr. Doherty continued that AICUM understands the challenges faced by Massachusetts institutions and believe the concepts articulated by the referenced "North Star principle" are important points for discussion. The principle will benefit from further refinements based on the significant concerns of issues related to confidentiality of whatever process evolves. He remarked that AICUM will continue to work with DHE staff to communicate the concerns and questions regarding the Teach-Out Viability metric described in the report, as well as the concerns that independent colleges have about ensuring that the screening metric and its results remain absolutely confidential. He continued that he is here to once again offer AICUM's expertise to assist in designing a metric or process that will guard against false positives, remain confidential and provide the due process opportunity to readily explain one-time factors which may lead to incorrect conclusions about an institution's financial health.

Mr. Doherty expressed concern with the ambitious, suggested time-table, but added that AICUM is prepared to offer any and all resources to the DHE that are needed to deliver an outcome that is effective and in the best interest of students and the

Commonwealth. He trusts that the BHE recognizes that the most recent closure/partnership activity has been conducted according to current processes outlined by the DHE, which provide students with ample notice. He remarked that thoughtful and transparent leadership with regard to how we proceed with the topic of today's meeting will protect the future of small and large private institutions and the students they serve. He thanked the BHE and stated that he looks forward to continuing AICUM's work in partnership with the BHE, the DHE and NECHE going forward.

Chair Gabrieli then invited Mr. Robert Hildreth to address the BHE. Mr. Hildreth thanked the BHE for the opportunity to speak. He congratulated the BHE for taking on this urgent task and for the THESIS report and recommendations. He remarked that the report's focus on students in appropriate and compassionate as illustrated by the closure of Mt. Ida. However, the report omits mention of an important stakeholder: taxpayers, who have provided millions of dollars to colleges through the provision of financial aid, which is funding in exchange for their commitment to graduate our students. Closures violate that commitment.

Mr. Hildreth continued that his main recommendation is that the DHE create a formal role for a financial institution to provide expertise regarding complex financial matters in dealing with the finances of failing institutions. He remarked that relying on fixed formulas such as the Teach Out Viability metric or the 18 month threshold will not be adequate and recommended the BHE hire a merger and acquisition expert, or a bankruptcy lawyer of a private law firm to navigate this process. He continued that the 18 month threshold may not be viable, as institutions may close much sooner, citing that a 10 seat enrollment drop could be enough to spell financial doom, and as word leaks out, credit lines could be pulled. He additionally urged the BHE to establish an emergency line of credit for struggling colleges, which could provide time for students to find replacement institutions and time for colleges to make a good merger and avoid a bad one. He noted that lines of credit are common practice in private sector bankruptcies. He suggested that MEFA could administer such a line. He concluded his remarks by stating that the report says nothing about prevention and attributes the difficulties in college finance to demographics and rising costs, and that until we recognize the effects of student loans on college finances, we will be unable to address prevention.

### **III. WELCOME**

Chair Gabrieli invited FSU President Javier Cevallos to offer remarks. President Cevallos welcomed the BHE to Framingham and remarked that FSU has a long tradition of education with the last few years focused on STEM disciplines, citing their connection with NASA, the Christa McAuliffe Center and the Challenger Learning Center. He then invited Dr. Irene Porro to address the BHE and provide an overview of the Moon Landing in Context series, a reflection on the historical and cultural context of one of the most celebrated achievements in human history. She remarked that July 20, 2019 is the 50<sup>th</sup> anniversary of the moon landing and the series in an interdisciplinary effort through the FSU community, referencing the project's affiliation with the Smithsonian. She invited the BHE to join their Moon Landing in Context events. President Cevallos thanked her, and the BHE and welcomed everyone to the college.

#### **IV. ACCEPTANCE OF MINUTES**

Chair Gabrieli brought forth a motion to accept the minutes of the January 22, 2019 BHE meeting. The motion was seconded and the minutes were approved unanimously by all Board members present.

#### **V. REMARKS AND REPORTS**

##### **A. CHAIRMAN'S REMARKS**

In the interest of time, Chair Gabrieli stated that he would forgo remarks today with one exception- noting that the BHE will continue to move forward our equity-focused discussion. He thanked the BHE for their understanding regarding the change in time and location for today's meeting, which was due to a previously scheduled event on youth homelessness with Governor Baker that has since been postponed.

##### **B. COMMISSIONER'S REMARKS**

Commissioner Santiago began his remarks by welcoming everyone in attendance and thanking the Board and Chair Gabrieli. He thanked President Cevallos and FSU for hosting and acknowledged the Presidents in attendance: Ellen Kennedy from Berkshire Community College, James Mabry from Middlesex Community College, Fran McDonald from Massachusetts Maritime Academy, and Barry Maloney from Worcester State University. He additionally acknowledged Vincent Pedone and Gretchen Manning from the segmental Executive Offices.

Commissioner Santiago began a presentation regarding the equity strategic framework. He expressed urgency in moving this agenda forward. He stated that these

discussions will involve the campuses and have campus input, beginning with the community colleges and then the state universities.

He continued, stating that the BHE recently adopted a vision statement for public higher education in Massachusetts to significantly raise the enrollment, attainment and long-term success outcomes among under-represented student populations. He remarked that the DHE is very much supportive of this agenda and rallies around this charge; if we are successful in meeting this objective, *all* students will benefit from the support structures in place.

The Commissioner continued the presentation by stating that there is much to celebrate in Massachusetts. We lead the nation in a number of important indicators and we want to remain at the top; we have the highest high school graduation rate, the highest college enrollment rate, and overall college attainment is highest in the country. He remarked while there is much to be proud of, when we slice and dice the data by race, gender and ethnicity indicators, it tells a much different story. He showed slides that illustrated key education indicators by race/ethnicity and gender, which show white female students at the top of all of the metrics and Latino males at the lower end. He remarked that there are significant differences that require our focus: the white female/male Latino college attainment gap is 43%. Further, over time, while we have seen some improvement in select groups such as African American females, Latino males' college going rates are trending in the wrong direction; it is getting worse rather than improving. Coupled with population projections for Massachusetts, these findings give even more cause for concern. For our K-12 population, the demography indicates that there is even more urgency because the high school population is slowing down significantly, and the populations that are most underserved are the ones that are growing. The data show that by 2032, one in four students will be Latinx.

Commissioner Santiago continued the presentation by referencing the 100 Males to College program that provide additional academic supports for motivated but underprivileged students with an emphasis on males of color. He remarked that he thinks we have moved away from a gatekeeper approach and referenced a recent *Boston Globe* article on 100 Males to College at Framingham. He remarked on the success of 100 Males to College, stating we know that it works, and having role models works, as it worked for many of us in the room. He additionally referenced Early College programs, noting he is very proud of the work the campuses have done in this space.

He concluded by summarizing the process of developing the Strategic Framework, stating that the intent is to have an advisory board. We will reach out to the campuses, as we want staff members, faculty, and presidents to participate. The Executive Committee of the BHE will additionally play a very important role in the development of this framework. He showed slides of next steps that include narrowing the commitments and initiatives the campuses will support as we move into the summer. In the fall of 2019, we will provide feedback to the campuses, identify projects that will be scaled up and will then propose a systemwide strategic framework to BHE in December. Finally, there will be a statewide convening in spring of 2020.

Chair Gabrieli thanked the Commissioner and remarked that he looks forward to continuing this conversation about equity going forward.

### **C. SECRETARY OF EDUCATION'S REMARKS**

In the interest of time, the Secretary of Education's designee Tom Moreau did not offer remarks on behalf of the Secretary.

### **D. REPORTS FROM PRESIDENTS**

#### **Community College Presidents' Report – MassBay Community College President James Mabry**

##### *List of Documents Submitted by President Mabry:*

##### *Remarks*

President Mabry thanked the BHE and stated that he is happy to offer the segmental report on behalf of the community colleges, noting that Roxbury Community College President Valerie Roberson Valerie was unable to attend due to a critical meeting on her campus.

He stated that over the next few days, most of our institutions will be welcoming back students for another semester. He added that he loves the first days of a new semester because of the energy and optimism that marks the beginning of a new academic year. However, he said it is important to remember that many students face food and housing insecurity, and he referenced a report released this January by the U.S. Government Accountability Office that reports nationally, more than 30% of college students are food insecure. This study reinforces work done under the leadership of Commissioner Santiago and the Wisconsin Hope Lab survey. He continued, stating that the findings of these reports and studies have left our Presidents to engage with Congressional leaders to address this important issue. Possibilities include better

connections to federal programs like SNAP, but this is much more than a federal issue; it is a state policy issue because student success is inhibited by hunger. Further, Early College students lose their free and reduced lunch benefit on their campuses. He remarked that at Middlesex, they have an emergency food fund and have partnered with local food banks to establish pick up locations on campus. He and his colleagues are also working with Senator Lovely and Representative Meschino to file a bill to create a new trust fund to scale programs aimed at reducing food insecurities for community college students. As this bill moves through the legislative cycle, he asked the BHE to advocate for solutions to this issue to help our most vulnerable students persist and succeed.

Nancy Hoffman excused herself from the meeting at 10:03 a.m.

President Mabry continued, reporting that through the PACE partnership, the 24 campuses are working to address cyber-attacks and cyber security, noting there is tremendous urgency in this work. He hopes the BHE will advocate for much needed funding to assist in this project. He concluded his remarks by referencing a second, large-scale PACE partnership project on the use of data to improve student outcomes. The 24 campuses are embarking on a project that incorporates the system-wide use of the Tableau platform for system level reporting and data analytics. He reported that MCC is using a federal Title III grant to build an integrated data warehouse that will utilize the Tableau reporting platform to assist with data analytics and predictive analytics. He added that this is a critical tool and key endeavor for moving the lever on student success. He thanked the BHE for their time and for the opportunity to speak.

## **State University Presidents' Report – Massachusetts Maritime**

### **Academy President Fran McDonald**

#### *List of Documents Submitted by President McDonald:*

#### *Remarks*

President McDonald thanked Chair Gabrieli, Secretary Peyser, Commissioner Santiago and the BHE for the opportunity to provide an update on the Massachusetts State University System. He thanked the Commissioner and the BHE for their FY Budget recommendations and remarked that he is hopeful they will be included in the Governor's budget when released later this week.

President McDonald reported that the Council of Presidents has adopted a legislative agenda that they believe will strengthen their institutions, benefit students, and better align the state universities with other public and private institutions. The state

universities, along with their colleagues at UMASS and the community colleges have worked closely on a number of legislative bills and initiatives, and he stated that will provide an overview of six bills they believe are critical to the success of the state universities for his remarks.

- 1) Act to Fund Public Higher Education Labor Contracts seeks to secure funding of public higher education collective bargaining agreements. The bill would require that the Governor recognize all incremental salary increases in bargaining agreements in his annual state spending plan submitted to the legislature. Public higher education is often criticized for raising student fees but the unfunded portion of our contracts, as well as other unfunded liabilities such as employee fringe benefits, account for 80% or more of the student fee increases. He added that the CoP are pleased that the BHE in December endorsed a budget request that recognizes these collective bargaining costs within our base appropriation.
- 2) An Act to Protect Student Data will create an exemption in the Massachusetts public records laws allowing campuses to withhold personal information such as student names, telephone and cellphone numbers, email addresses, area of study and graduation data from marketers. If any of this information is listed in campus directories, institutions are compelled under our state's public records laws to provide that information to the requester, and the state universities contend that being required to produce such records, particularly for commercial or marketing purposes, compromises our students and serves no public interest.
- 3) An Act to Ensure Tuition Equity to Massachusetts Residents would amend the General Laws to allow public higher education institutions to continue to extend the in-state tuition rate to students currently qualifying for Deferred Action for Childhood Arrivals (DACA) status. Passage of this bill will allow qualifying DACA students in Massachusetts to be eligible for the in-state tuition rate, regardless of changes made to DACA by President Trump. Simply put, the bill would allow institutions to continue to afford DACA students in-state tuition benefits.
- 4) Late last year, a bill was passed and signed into law allowing for a \$2 surcharge on car rentals in order to create a revenue source for municipal, Massachusetts Environmental and UMass Police training and professional development grants. Unfortunately, under the law, state university and community college

campus police officers are not permitted to access those training grants. The bill filled will change the general laws permitting our campus police to access to those funds.

- 5) Together with our colleagues from the three segments, the state universities are pursuing bills that will recapitalize the highly successful endowment match program for public higher education foundations, DCAMM construction regulations for campus construction and changes to the MSCBA allowing for more flexibility to fund campus projects.
- 6) On a number of occasions over the past year, the state universities have shared their desire to develop clinical doctorate degree programs on our campuses due to changing licensing requirements in certain professions. Over the past decade many professions began requiring clinical doctorates, rather than Master's Degrees, for both accreditation and employment. Currently, the General Laws prohibit the state universities from offering doctorate level programs, except if "in collaboration" with UMass and authorized by the University of Massachusetts Board of Trustees, however UMass has not been a willing partner. The state universities respect and agree with the statutory distinction of University of Massachusetts as the Commonwealth's PhD granting institution, however, a clinical doctorate degree is fundamentally different from a PhD; State Universities offering certain clinical doctorate programs will not encroach upon the mission or Carnegie designation of UMass; allowing State Universities to offer advanced degree programs aligns with our mission; and furthermore, many of the programs they seek to offer are not offered at the University of Massachusetts. He concluded the legislative update by asking the BHE for support for these bills.

President McDonald continued his remarks by reporting that last week, representatives from the state university campuses were in Washington D.C. to meet with members of the Massachusetts Congressional Delegation to discuss several issues that impact public higher education. The issue of most immediate concern are the proposed Title IX regulatory changes released by the U.S. Dept. of Education in mid-November. Their representatives shared with members of the congressional delegation the serious reservations with many of the proposed changes and the impact these changes would have on campus communities. He remarked that the CoP is submitting written comments to the DOE outlining all of their concerns, and he asked the BHE for their support in making their voices heard. Additionally, their representative discussed issues that impact student affordability such as Pell grants,

expanded work study funds, paid internships, and student debt, as well as issues related to transportation, housing, food insecurity, and equity.

President McDonald concluded his remarks by reporting that the state universities are joining with MassBio, MassBioEd, Mass LifeSciences and Bottom line to increase internship opportunities in the life sciences, and he invited the BHE attend a news conference with MassBio Chairman, David Lucchino, and State and local officials to kick off this partnership. He thanked the BHE for their time and for the opportunity to speak.

## **E. REPORT FROM STUDENT ADVISORY COUNCIL**

Student member Kush Patel reported that the next monthly SAC meeting will be held tomorrow at Quinsigamond Community College, and the SAC will hear an update from Open Educational Resources representatives. He reported that SAC went to the State House and met with members of the Legislature, which will be an avenue of advocacy of which they will continue to move forward. Additionally, SAC wants an OER rep from each campus. He continued that SAC will also get an update from the "Every Voice Coalition," and they are encouraging more students to register for their upcoming Summit in February in Cambridge. Finally, he reported that SAC is also engaged with changes to Title IX.

Commissioner Santiago thanked Mr. Patel for his update and stated that later in the week, the Rennie Center would release its Condition of Education report, and both he and the Secretary will be speaking about student financial aid and OER. He remarked that he will be clearly indicating the importance of OER in his remarks.

## **VI. MOTIONS**

### List of Documents Used:

*BHE 19-04- Receipt of Report Issued by THESIS Working Group and Charge to Commissioner to Develop Implementation Recommendations (along with all attachments)*

*THESIS PowerPoint Presentation, January 22, 2019*

*AAC 19-11*

### **A. Board of Higher Education**

Chair Gabrieli introduced the next motion, BHE 19-04. He observed that the meeting has deviated slightly from the normal agenda for a number of reasons, including

accommodating the event with Governor Baker that has been rescheduled for January 31 due to scheduling conflicts. In addition, before hearing updates and motions from the standing committees, the first motion on the agenda will be a discussion and vote on receiving a report issued by the Transition in Higher Education (THESIS) working group established in May 2018. The motion will begin with a presentation, and then he will ask to move the motion and proceed with a discussion before calling a vote.

Chair Gabrieli began the PowerPoint presentation by acknowledging the many people who participated on the working group and added that they were fortunate to receive *pro bono* support from EY Parthenon. He reported that the working group met four times over the summer, and the initial charge to the group had four questions: 1) what is the nature and extent of the problem; 2) are there current measures and monitoring processes that effectively identify and manage risk; 3) how can we engage college Boards more in risk awareness and mitigation; and 4) what could the DHE do about undermanaged risk?

Chair Gabrieli continued, stating that the summary conclusions are that the risk of financially driven closures is significant and growing and that the DHE should adopt a new process to identify and manage risk, including the adoption of a North Star standard that there be a contingency plan and student notification no later than December 1 of each year if a school is judged financially uncertain to complete the current and subsequent school year.

Chair Gabrieli highlighted the pressures currently experienced by higher education, noting that the problem could be exacerbated with the upcoming dip in enrollment. He referenced the 15 completed institutional closures and mergers in the past five years, and one pending closure, and he noted that a number of remaining private institutions show problematic financial health. He continued, stating that our current oversight and metric, the USDOE score, does not provide adequate accuracy or notice of financial problems.

Chair Gabrieli then reviewed the THESIS Working Group findings, noting that the risks of further challenges to non-profit institutions of higher education (NPIHEs) leading to potential student disruption is significant, ongoing and likely growing, and that current standard financial metrics are insufficient for timely or fully identifying NPIHEs. The challenge, he said, is to acknowledge that many institutions are not at risk and we do not want to trouble them, but we still have to act proactively and not reactively. He continued by summarizing the remaining THESIS Working Group recommendations, and the urgency for acting expeditiously to launch a new process for implementation

in academic year 2019-2010. He opined that the single most important recommendation brought to the BHE today is the adoption of the "North Star" Principle which articulates an 18-month threshold—meaning that if an institution cannot financially sustain its operations for the balance of the current school year and the entire subsequent one, then intervention is warranted as this defines excess risk to students. Such institutions have the option to continue but otherwise, they need a contingency plan.

Chair Gabrieli continued by highlighting the remaining recommendations, including using an appropriate screening metric to focus our resources on relevant colleges and minimize the burden on all colleges. The proposed screening metric, the Teachout Viability Metric (TVM), is a common sense approach that relies on IPEDS data and requires no additional data provided by institutions. The 4<sup>th</sup> Recommendation is to actively monitor where risk is significant, which must be specific to each institution and situation and requires engagement with local Boards of Trustees, Presidents and CEOs. He stressed the importance of confidentiality during this process and remarked that it will require legislative support to maintain confidentiality. Additional recommendations include a public notification requirement, the creation of an Office of Student Protection within the Department and the establishment of an advisory council to assist the Department.

The BHE engaged in a lengthy discussion. Board member Toner remarked that he intends to support and vote for this, and hopes that we can be even more proactive in notifying students and families. He also asked if 18 months is sufficient, because students have the expectation when they enroll that they will be able to finish a four year degree. Chair Gabrieli acknowledged that 18 months may not be sufficient, but that the Working Group felt it was as far as they could go. Board member Toner responded by asking if local board members are being trained and taking their responsibilities seriously, and if a pressure testing measure for our public institutions exists. Commissioner Santiago responded that we have the information for the public institutions and can engage in these conversations much earlier, as the assets of the institutions are the assets of the state.

Board member Reimers remarked that he believes this report is adequate to protect consumers, but asked if we can charge this subcommittee with the concerns of the public interest in public sector; this is a headache and mergers are just taking a Tylenol. He continued that one of the charges of this board is inequity, and the kinds of students served by these institutions who are closing are not being served by the rest of the system. He suggested that the proceeds of land sales could be set up an

endowment with scholarships for these students in perpetuity; the future involves a lot more than an easy way out for these institutions. Further, he asked whether there another option besides mergers and sales such as reinventing these institutions? He noted that these mergers have the potential to make inequality worse because they institutions that are closing serve these underrepresented students and reward the more financially established institutions that do not serve these students.

Board member Harrity stated that she supports the recommendations of the Working Group and wants to avoid another situation like the closing of Mount Ida.

Chair Gabrieli Invited Dr. Barbara Brittingham, the President of NECHE to address the BHE. Dr. Brittingham thanked the BHE and stated that she appreciated the opportunity to work on THESIS. She continued that their website has a section called closed and merged institutions and it is the second most popular page on their site and has been for over a year. They have a committee on financially fragile institutions, they also have an annual report process which has been moved up earlier in the cycle. Additionally, a public warning called "Notation" was just approved, and it will be a judgement call to determine when there is enough of a concern to let the public know. She continued that NECHE also committed themselves to a retreat that is happening this week to look at its interaction with governing boards. She stressed the importance of confidentiality throughout this process. A board member asked Ms. Brittingham to elaborate on what data drives the Notation process; she referred him to NECHE's website which details it, but it is ultimately a judgment call. Chair Gabrieli thanked Dr. Brittingham for her remarks.

Rich Doherty, speaking from the audience, asked to be recognized. He referenced a headline on WBUR that was posted online during today's meeting, and states that Massachusetts BHE is looking to identify "failing colleges." He stated that this exemplifies the issue and that context is what causes concern among the private colleges—that the BHE's proposed screening and monitoring tool will create a list synonymous with "failing colleges," and will send even healthy institutions into a death spiral. Chair Gabrieli acknowledged his comments but stated that we cannot control how the media covers this work. Bob Hildreth, speaking from the audience, also asked to be recognized. Mr. Hildreth stated that the report shows concern for students, but is silent on the implications of financial aid. The report does not adequately address the effects of student loans on college financing; nor does it address the significance of the fact that the Commonwealth's commitment to state financial aid is among the lowest in the country- ranked 48<sup>th</sup>.

Chair Gabrieli stated that Board member Paul Mattera was unable to attend the meeting, but that he sent the following in advance of the meeting to be included in the record: “As a member of the working group, I thank the Chair, Commissioner and staff, especially Tom Simard, for the open, deliberative, informative and collaborative way the meetings were conducted. The recommendations we developed were aided and fine-tuned by the participation of every conceivable stakeholder who were either in the room or at the table. I enthusiastically support the recommendations and look forward to the continued process of refinement and ultimate adoption of regulatory and statutory actions in furtherance of this important step to protect students at schools in crisis.”

There being no further discussion, Chair Gabrieli called for a motion on BHE 19-04. On a motion duly made and seconded, the following motion passed unanimously by all board members present:

**BHE 19-04 Receipt of Report Issued by the *Transitions in Higher Education: Safeguarding the Interests of Students (THESIS) Working Group* and Charge to the Commissioner to Develop Implementation Recommendations**

**MOVED:** The Board of Higher Education (BHE) receives the report issued by the THESIS Working Group and expresses its appreciation to the THESIS members for their work. The BHE directs the Commissioner to advance the Working Group recommendations, as outlined in the report and in accordance with the attached implementation timeline, which includes a stakeholder vetting process and target implementation for academic year 2019-2020. The BHE further directs the Commissioner to provide regular updates to the Board on the Department’s progress in this regard.

**Authority:** BHE By-Laws, Article III, Section 2; M.G.L. c. 69, § 30 et seq.; M.G.L. c. 15A, §9 and 16; 610 CMR 2.

**Contact:** Carlos E. Santiago, Commissioner

Thomas J. Simard, Deputy Commissioner for Administration and Finance

**B. Academic Affairs**

Chair Gabrieli turned the meeting over to acting AAC Chair Sheila Harrity. Acting Chair Harrity remarked that Nancy Hoffman had to leave the meeting early to meet with

students, as she is teaching a course this semester at the Harvard Graduate School of Education. The Academic Affairs Committee met last week and considered two motions, one at the associate level and we revisited a program at the master's level. Department staff also presented on the new letter of intent for public institutions and the AAC is excited about advancing this work to the next stage, implementation. Finally, DHE staff presented on new Accuplacer cut scores and their plans for continued collaborations with the campuses to transform developmental education.

Acting Chair Harrity called for a motion on AAC 19-11. On a motion duly made and seconded, AAC 19-11 was approved unanimously by all board members present, without discussion.

**AAC 19-11 CONSENT AGENDA – AAC 19-09 through AAC 19-10**

**MOVED:** The BHE hereby approves the following motions on a consent agenda:

AAC 19-09 Worcester State University  
Master of Public Management

AAC 19-10 North Shore Community College  
Associate in Science in Database Management and Security

**Authority:** Article III, Section 6m By-Laws

**Contact** Winifred M. Hagan, Ed.D., Associate Commissioner for Academic Affairs and Student Success

**VII. OTHER BUSINESS**

There was no other business.

**VIII. ADJOURNMENT**

Chair Gabrieli reported that the Strategic Planning and Fiscal Affairs and Administrative Policy Committees did not convene last week and as such, there are no further items on the agenda. He noted that all three committees are scheduled to meet in March.

There being no further business, Chairman Gabrieli adjourned the meeting at 11:07 a.m.

Respectfully submitted,  
Carlos E. Santiago  
Commissioner of the Department and  
Secretary to the Board

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR BOARD ACTION**

**NO.:** BHE 19-04

**BOARD DATE:** January 22, 2019

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**Receipt of Report Issued by the *Transitions in Higher Education: Safeguarding the Interests of Students (THESIS) Working Group* and Charge to the Commissioner to Develop Implementation Recommendations**

**MOVED:** The Board of Higher Education (BHE) receives the report issued by the THESIS Working Group and expresses its appreciation to the THESIS members for their work. The BHE directs the Commissioner to advance the Working Group recommendations, as outlined in the report and in accordance with the attached implementation timeline, which includes a stakeholder vetting process and target implementation for academic year 2019-2020. The BHE further directs the Commissioner to provide regular updates to Board on the Department's progress in this regard.

**Authority:** BHE By Laws, Article III, Section 2; M.G.L. c. 69, § 30 et seq.; M.G.L. c. 15A, §9 and 16; 610 CMR 2.

**Contact:** Carlos E. Santiago, Commissioner  
Thomas J. Simard, Deputy Commissioner for Administration and Finance

## BACKGROUND

During the May 1, 2018 Board of Higher Education (BHE) meeting, Chair Gabrieli announced that he and Commissioner Santiago would be convening a working group of stakeholders that would look at potential methods to assess and monitor the fiscal health of institutions of higher education, as well as ways to proactively mitigate the risks associated with institutional closures, and provide recommendations to the BHE. *See BHE By Laws, Article III, Section 2.* Referencing the recent closure of Mount Ida College announced precipitously in April 2018, Chair Gabrieli expressed a sense of urgency on behalf of the BHE to take action to support and protect students from imminent, disruptive closures.

The Working Group, which came to be known as the Transitions in Higher Education: Safeguarding the Interest of Students (THESIS), was promptly assembled and co-chaired by the Commissioner and Chair Gabrieli.

THESIS met four times—in June, October, and December 2018, and in January 2019—and transmitted its final report to the BHE on January 17, 2019. The full THESIS report, along with the report's Appendices, is attached to this motion as "Attachment A."

In summary, the THESIS Working Group report includes two findings and several recommendations. The findings are as follows:

- 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, U.S. Department of Education, and state authorities are insufficient to ensure prevention/mitigation of future unacceptable disruption to students and others.*

Based on these findings, the THESIS Working Group recommends that the BHE act expeditiously to adopt a plan whereby the Department of Higher Education (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.*

The specifics of the THESIS Working Group recommendation are outlined in detail in the attached report. Subject to further stakeholder vetting, key elements (design parameters) of the proposal for BHE consideration include, among other things:

- 1) Requiring annual screening of all relevant NPIHEs using a Teachout Viability Metric (TVM) to identify institutions in need of potential monitoring and intervention.
- 2) Establishing a “North Star” of student protection, recommended at 18 months, as part of the annual screening process-- which focuses on the ability of NPIHEs to financially sustain operations for the balance of the current academic year and the entire subsequent year (using December 1<sup>st</sup> as the annual threshold measurement date).
- 3) Actively monitoring those institutions that approach the 18-month threshold and requiring action (*e.g.*, notice to students and contingency planning) from those institutions at risk of crossing cross the 18-month threshold.
- 4) Empowering the DHE, independently through its regulatory authority and its financial aid participation agreements as well as in collaboration with the Attorney General’s Office, to take necessary and appropriate enforcement actions in the event of NPIHE non-compliance.
- 5) Creating and adequately resourcing an Office of Student Protection within the DHE to perform the proposed screening, monitoring and interventions.
- 6) Establishing an external advisory council to support the Commissioner in implementing and executing these new, proposed functions.
- 7) Actively supporting and advancing current DHE/AGO collaborations to fully support, inform, and educate Boards of Trustees of NPIHEs in financial distress on their fiduciary duties.
- 8) Respecting NPIHE autonomy and confidentiality.

Finally, the Working Group identified the following contingencies as steps needed to advance the recommendations:

- 1) that the BHE and DHE establish the necessary regulations and policies (as may be refined through stakeholder vetting and BHE/DHE decision-making);
- 2) that the DHE form and appropriately resource a new Office of Student Protection and that the Commissioner establish an external advisory council; and
- 3) that the DHE work with the Administration and Legislature to identify appropriate resources and to propose and enact any necessary legislation.

A proposed implementation timeline developed by the DHE and intended to advance the working group recommendations is attached as “Attachment B.”

**Attachments:**

ATTACHMENT A – THESIS Working Group January 2019 Report

APPENDIX – “Transitions in higher education – Safeguarding the interests of students” EY-Parthenon September 2018 Report

ATTACHMENT B – Implementation Timeline

# 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 Massachusetts<sup>1</sup>. With a fresh

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<sup>1</sup> 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

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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 1<sup>st</sup> 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 1<sup>st</sup>. 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 1<sup>st</sup> 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 1<sup>st</sup> 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.

## **THESIS IMPLEMENTATION PLAN**

- January 22, 2019** - BHE Meeting (Motion to Receive Report Issued by the *Transitions in Higher Education: Safeguarding the Interests of Students (THESIS)* Working Group and Charge to the Commissioner to Develop Implementation Recommendations)
- February 2019**- Commissioner outlines the vision and identifies contingencies and timeline for establishing the DHE Office of Student Protection; convenes meeting with NECHE; establishes Advisory Council membership
- February - March 2019**- DHE develops draft regulations and policies, revised OSFA Participation Agreement
  - **March 5, 2019 BHE Committee Meetings (March 12, 2019 BHE Meeting)**: DHE staff to provide updates to the Board.
- February - April 2019** - informal stakeholder vetting (AICUM, NECHE, AGO, etc.) and legislative discussions if necessary (will include several public comment sessions)
  - **April 30, 2019 BHE Committee Meetings (May 7, 2019 BHE Meeting)**: DHE staff to provide updates to the Board; target date for approval of formal amendment to OSFA Participation Agreement for OSFA use/institution signature over summer 2019 and implementation for 2019-2020 academic year (if possible)
- May 2019** – Revise draft regulations and policies based on informal stakeholder vetting
- June 4, 2019** - draft regulations, policies, and motion to put regulations out for public comment distributed to BHE in board packet for review, as well as OSFA Participation Agreement if applicable.
- June 11, 2019** – **BHE Committee Vote** to put draft regulations out for public comment; review draft policies/procedures (which will fill in substance where regulations allow for flexibility); review of formal amendment to OSFA Participation Agreement, for OSFA use/institution signature over summer 2019 and implementation for 2019-2020 academic year (if not done in May)
- June 18, 2019** – **Full BHE Vote** to put draft regulations out for public comment; review draft policies/procedures; review of formal amendment to OSFA Participation Agreement, for OSFA use/institution signature over summer 2019 and implementation for 2019-2020 academic year (if not done in May)
- TBD - regulations to be submitted to ANF for review/approval; ANF meets to discuss regulations
- June 28, 2019** - draft regulations, small business impact/fiscal effect statements, and the notice of public hearing will be brought to the Secretary of the Commonwealth's office for publication in

the July 12, 2019 edition of the *Massachusetts Register*; letters will be sent to DHCD/MMA per E.O. 145

- July 5, 2019** - the notices of public hearing will be sent to the *Boston Globe* for publication (publication in the *Globe* is likely to occur 3-4 days after submission)
- July 12, 2019** - publication of draft regulations and notices of public hearing in the *Massachusetts Register*
- July 24, 2019** - Public Hearing date, One Ashburton Place, Room 1401
- July 12 - August 9, 2019** - public comment period
- Mid-August 2019** - DHE revises draft regulations and policies
- By or Before August 22, 2019** - - **Potential Summer Special Meeting of BHE** to approve regulations
- No later than October 2019 BHE Meeting (vote on final regulations)

(Final regulation promulgation deadlines TBD depending upon when final BHE vote is taken)



PARTHENON

# Transitions in higher education

## Safeguarding the interests of students



September 2018  
By EY-Parthenon Education practice  
Ernst & Young LLP

This report (the Report) has been prepared by Ernst & Young LLP (EY US) for the purpose of assisting the Massachusetts Board of Higher Education (BHE). The nature and scope of our services were determined solely by the agreement between EY US, and the Massachusetts Department of Higher Education (the Agreement). Our procedures were limited to those described in the Agreement. Other persons who read this Report, who are not a party to the Agreement, do so at their own risk and are not entitled to rely on it for any purpose. EY US assumes no duty, obligation or responsibility whatsoever to any other parties that may obtain access to the Report.

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## Context and objectives

In the midst of a period of heightened financial risk for institutions of higher education and following the closures and mergers of several schools in the Commonwealth, the Project THESIS (Transitions in Higher Education: Safeguarding the Interests of Students) Working Group was formed by the Massachusetts Board of Higher Education in the summer of 2018. The Working Group, composed of members of the board and outside stakeholders, was charged with four key objectives related to nonprofit private institutions of higher education in Massachusetts\*:

- (1) Defining the landscape of the trends and circumstances that create this unprecedented era of change and risk for private Institutions of Higher Education (IHE);
- (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

\* Charge given to the Working Group by the Chairman of the Massachusetts Board of Higher Education and the Commissioner of Higher Education in Massachusetts.

## Executive summary

EY-Parthenon supported the Project THESIS Working Group in addressing the first two objectives, and is also developing a potential metric intended to identify institutions at higher risk of being unable to meet their obligations to students today. Our findings are synthesized in this report:

- ▶ The report discusses the key findings emerging from the research and analysis aligned to the first two objectives, as well as a potential path forward. The Project THESIS Working Group, as the recipient of this report, will be able to use this fact-base to inform discussion about potential policy recommendations, for consideration by the Massachusetts Board of Higher Education by the end of this calendar year.
- ▶ The report makes three key points
  - ▶ First, publicly available data indicates that many institutions in the Commonwealth are in an increasingly precarious financial situation.
  - ▶ Second, existing metrics and oversight are insufficient to safeguard the interests of students in these changing times.
  - ▶ Finally, a new diagnostic tool may be better able to help identify institutions at risk of being unable to meet their obligations to students, and do so in a more timely manner than existing metrics.



## Part I: The problem

### Many higher education institutions are in an increasingly precarious financial situation, potentially putting students at risk

In 2013, Harvard Business School Professor Clayton Christensen, known for his studies of disruptive innovation, boldly predicted that “50% of the 4,000 colleges and universities in the U.S. will be bankrupt in the next 10 to 15 years.”<sup>1</sup> While reality has so far been less stark than the prediction, there has been mounting evidence of a problem brewing in higher education. In July of 2018, Moody’s Investors Service, a leading Wall Street bond rating company, released a report predicting a tripling of the number of closures of private nonprofit institutions in the coming years compared to the average of the last decade.<sup>2</sup>

In line with this trend, over the past five years, the Commonwealth of Massachusetts has seen an uptick in closure and merger activity: six institutions have completed closures, while another six have completed mergers, with some receiving substantial attention in the popular press. That this much activity has already occurred in Massachusetts is, in some ways, unsurprising: private institutions tend to be at greater risk of closure, and Massachusetts has a disproportionate share of private, nonprofit colleges and universities (hereafter referred to as nonprofit institutions of higher education or NPIHEs): 48% of the state’s institutions are NPIHEs, relative to the national share of 28%. Similarly, the majority of students (this includes both Massachusetts residents and out-of-state students) enrolled in higher education in Massachusetts are in these schools (56% versus 20% nationally, though over 50% of Massachusetts residents do attend public schools).

Analysis of a number of publicly available metrics reveals that anywhere from one-fifth to one-third of NPIHEs in the state show some signs of financial difficulty. Over the past several years, among Massachusetts NPIHEs:

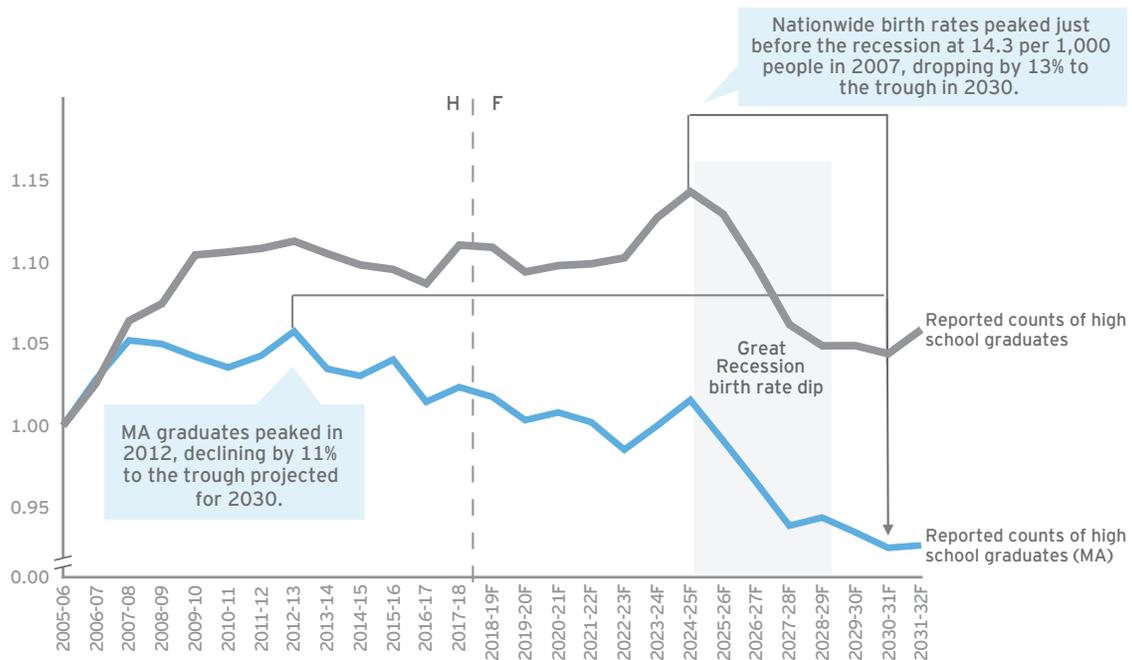
- ▶ 24% saw cumulative decreases in enrollment greater than 10% (up from 8% of NPIHEs over the prior five-year period) in the period of 2011–2016

- ▶ 34% saw expense growth increase by 5 percentage points or more above revenue growth from 2011 to 2016<sup>3</sup>
- ▶ 30% received a C- or below on the “Forbes Financial Health Grades” list in 2017, up from 24% receiving equivalent Grade Point Average (GPA) in 2014<sup>4</sup>
- ▶ 14% received a Department of Education (DOE) Financial Responsibility Score of 1.5 or below in 2016, vs. 9% in 2011
- ▶ 31% saw a decline in average DOE Financial Responsibility Score in the 5-year period ending 2016 versus the 5-year period ending in 2011<sup>5</sup>

*The Department of Education Financial Responsibility Composite score is a composite of three ratios derived from an institution’s audited financial statements. The three ratios are a primary reserve ratio, an equity ratio, and a net income ratio. The composite score reflects the overall financial health of institutions along a scale from -1 to +3. A score of -1.0 to .9 indicates that an institution is financially irresponsible, while a score of 1.0 to 1.4 flags an institution for monitoring. A score of 1.5 to 3.0 is considered financially responsible. A school that is considered “not financially responsible” can continue to participate in Title IV funding programs under provisional certificate, but it is subject to cash monitoring requirements.*

Moreover, the demographic drivers that are contributing to this financial instability show few signs of slowing. One of the most significant factors contributing to financial difficulty among institutions is a decline in enrollment of domestic students of traditional college age. As shown in Figure 1, the number of high school graduates is projected to decline by over 6% nationally by 2030. This problem is especially acute in Massachusetts, where the number of high school graduates is projected to decline by 11% by 2030 from the peak in 2012. Given that 61% of students currently enrolled as first-time undergraduates

Figure 1: Total public and private high school graduates in the United States and Massachusetts, indexed to 2005



Note: Birth rate is calculated as number of births per 1,000 people.

Sources: Western Interstate Commission for Higher Education: Knocking at the College Door: Projections of High School Graduates, December 2016; The World Bank

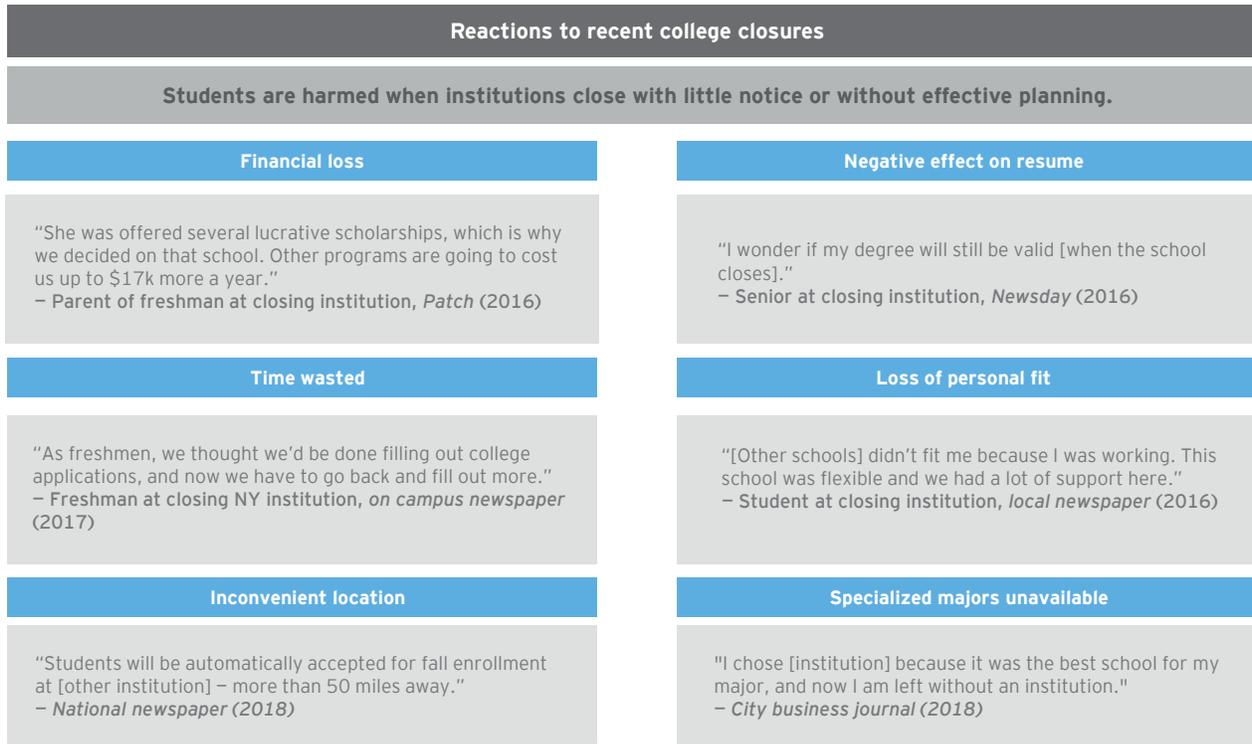
in Massachusetts hail from within the state, this decline could have a significant impact on all Massachusetts schools, but may in fact have a disproportionate effect on small NPIHEs, which generally serve “traditional” students in the 18-24 year age range and typically have a more local “catchment” area than the larger, more research intensive NPIHEs. The 26 NPIHEs in Massachusetts with under 1,000 students have seen an annual decline in enrollment of 3.3% from 2011 to 2017 relative to an annual decline of 1.6% for NPIHEs of this size nationally, and a decline of 2.0% for larger NPIHEs.<sup>6</sup>

On the other hand, the Commonwealth has historically benefited from its steady enrollment of international students—and unlike other areas of the country, Massachusetts (and the New England area more broadly) has been more resilient against the recent downturn in international student enrollment. Still, in the aggregate enrollment growth has been leveling off (except for highly

selective institutions), and the number of international students today is insufficient to compensate for the upcoming decrease in traditional-age Massachusetts high school graduates.

Given these shifting demographics, some level of reduction in the capacity to serve students in the Commonwealth may be inevitable. With that in mind, it would likely be prudent to safeguard the interests of students in attendance at institutions which are no longer sustainable, as these institutions seek pathways to either sustaining their mission through partnerships, alliances or mergers, or closing responsibly and with dignity. When schools close – and particularly when they close suddenly – it can lead to a number of damaging consequences for students, as highlighted in Figure 2. The question, then, becomes how to better protect these students and make sure that they and their families can make informed choices in this ever-shifting landscape.

Figure 2: Reactions to recent college closures



Sources: *Boston Globe*, Fox 42 KPTM, Oregon Public Broadcasting, ABC 10News, *Patch*, *Newsday*, *BSU Daily News*, VT Digger, *Boston Herald*, *Boston Business Journal*



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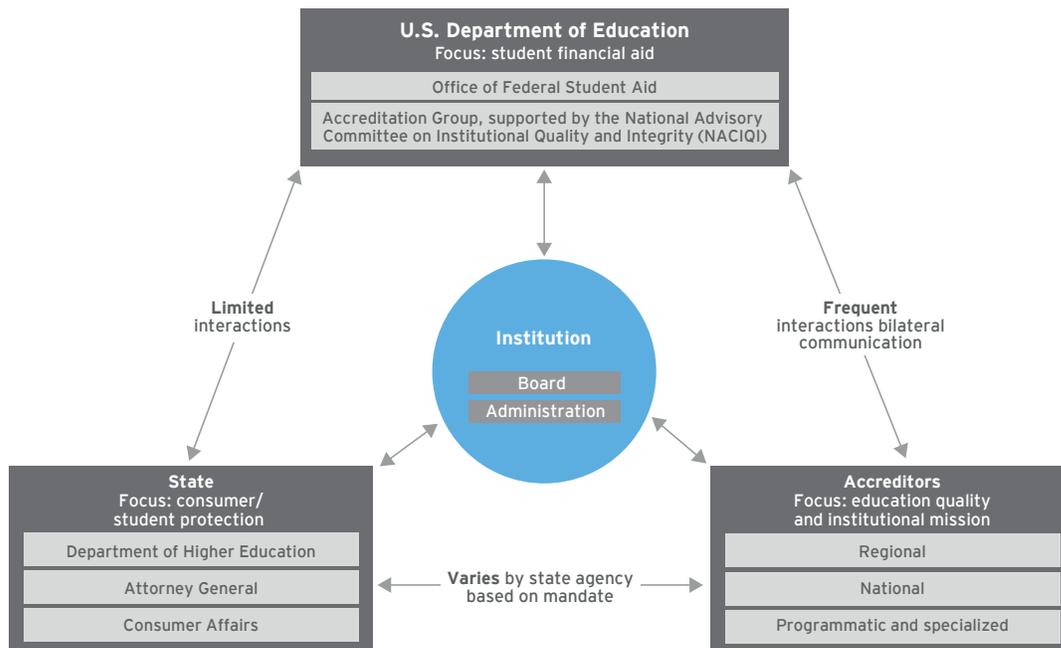
## Part II: Current oversight and practices

### Current oversight and metrics are insufficient to safeguard the interests of students in these changing times

Oversight of NPIHEs involves three main entities, with varying levels of interactions, illustrated in Figure 3. The U.S. Department of Education primarily focuses on federal student financial aid, such as Pell grants. The DOE also produces the Financial Responsibility Composite Score. This score was intended as a way for institutions to demonstrate that they are maintaining the standards of financial responsibility necessary to participate in Title IV federal financial aid funds.<sup>7</sup> Over time, the DOE score has evolved into a metric that is frequently considered by accreditors and states alike to gain a high-level assessment of the financial health of the institutions under their purview.

*The Composite Financial Index (CFI) is comprised of four financial ratios, which have varying weights within the index. It includes an institution's primary reserve ratio (35%), its net income ratio (10%), its return on assets ratio (20%), and its viability ratio (35%).<sup>8</sup>*

Figure 3: Oversight actors



Note: As a general rule, accreditors require institutional teach out plans during closure and withdrawal of status following two years of probation  
 Source: EY-Parthenon interviews and analysis

Accreditors also have fairly frequent interaction both with the DOE and with the institutions themselves. As Figure 4 shows, there are six regional accrediting bodies across the United States in addition to national and specialized program accreditors. Almost all consider the DOE score as part of their financial review of schools, but also focus on a holistic review<sup>9</sup> of financial position (which can involve reviewing a range of financial documents rather than putting stock in a single score) to determine whether institutions have the resources to fulfill their missions. Additionally, some accreditors use the CFI, or a modification of it, to examine institutional financial health and flag schools that might be of concern.

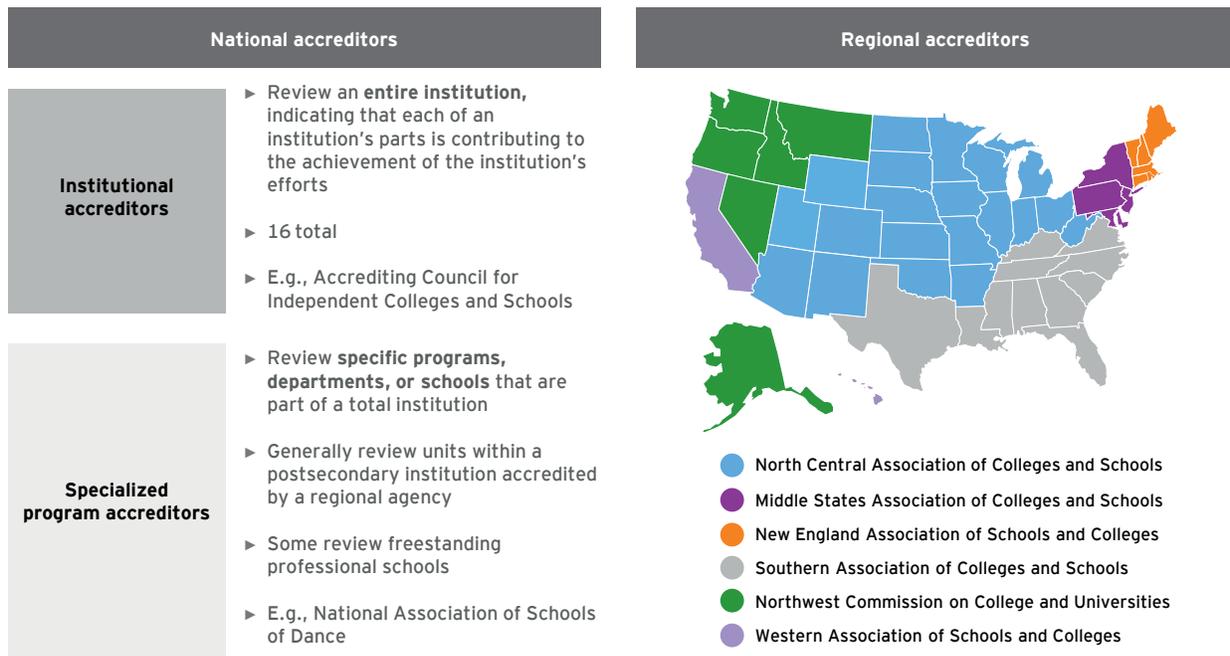
Regional accreditors typically coordinate with NPIHE governing body (trustees) and leadership to understand, among the many different issues to which they pay attention, whether there are any challenges related to enrollment and overall financial health. Accreditors require schools to assemble plans to address these risks if identified (though if the challenges are not proactively

raised by school leadership, they may be identified only through fairly infrequent data submissions). Most accreditors do not rely on any single specific metric—leaving wide discretion and significant variation in how to handle serious financial issues. Accreditors report that they typically do not raise financial issues with other entities (state or federal) until late in the process, when they must withdraw accreditation or a school must close.

Finally, the third relevant set of entities are at the State level and can encompass the Departments of Higher Education and their Boards, as well as the Attorney General's office. These entities are largely focused on student and consumer protection, but levels of oversight over private nonprofit higher education differ by state. To help Massachusetts consider its plans going forward, this report evaluates the practices of several comparable states, as outlined in Figure 5.

These states were selected as comparable given their high concentration of private colleges. Based on this

Figure 4: Accreditor overview



Note: US Department of Education, Database of Accredited Postsecondary Institutions and Programs

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sampling of states, some have broad oversight over private institutions, while others may have a number of exempt institutions from jurisdiction of the State Department of Higher Education based on religious mission, years of good-standing, or characteristics of the charter. States also differ in terms of their relationships to accrediting bodies – while some coordinate fairly closely with accreditors and are aware of their oversight practices, others generally do not coordinate with accreditors unless a school has begun to enter closure proceedings. Finally, states have access to a number of oversight practices, which could include reviewing the annual report of schools, authorizing and re-authorizing institutions or programs, approving new programs, and setting eligibility requirements for state financial aid. Some of these available oversight practices could help states better monitor institutional financial health (e.g., setting eligibility requirements for institutions to access state-funded student financial aid, which could include providing additional financial transparency to the state).

However, states are often statutorily unable or unwilling in practice to use these oversight levers.

Quite simply, many states do not see oversight of private institutions as their role. “We don’t have a systematic way of monitoring private institutions—we don’t see that as our role,” one state higher education representative commented in an interview. Another noted, “Public institutions are our primary focus” and described little appetite for getting involved with private institutions. Most higher education representatives saw the role of monitoring private institutions as falling to accreditors. They also voiced a concern that more public scrutiny of private institutions could inadvertently destabilize schools that are already struggling. States do see a clear role for themselves in instances of outright closure, including preserving student records and verifying teach-out plans – but there is little consensus on what the right role for the state should be prior to closure, and how long before closure the state should intervene.

Figure 5: Overview of state oversight practices

These findings are based on a select sample of states with relatively high concentrations of private institutions, with which EY-Parthenon was able to arrange phone interviews to understand the varying levels of state oversight and enforcement.

		Ohio	New York	Virginia	South Carolina	Massachusetts
Oversight practices	Review annual report	✓		✓	✓	
	Authorize institutions and provide licensure	✓	✓	✓	✓	✓
	Approve programs	✓	✓			✓
	Reauthorize institutions or programs	✓		✓		
	School eligibility requirements for financial aid	✓			✓	

Note: \*Oversight reflects assessment of breadth of private institutions covered by state oversight (e.g., how many are exempt) and level of oversight practices; VA refers to authorization as certification and must be recertified annually; OH reauthorization timed in line with relevant re-accreditation process; SC only authorizes out-of-state entities and refers to it as licensing.

Source: EY-Parthenon analysis and primary research

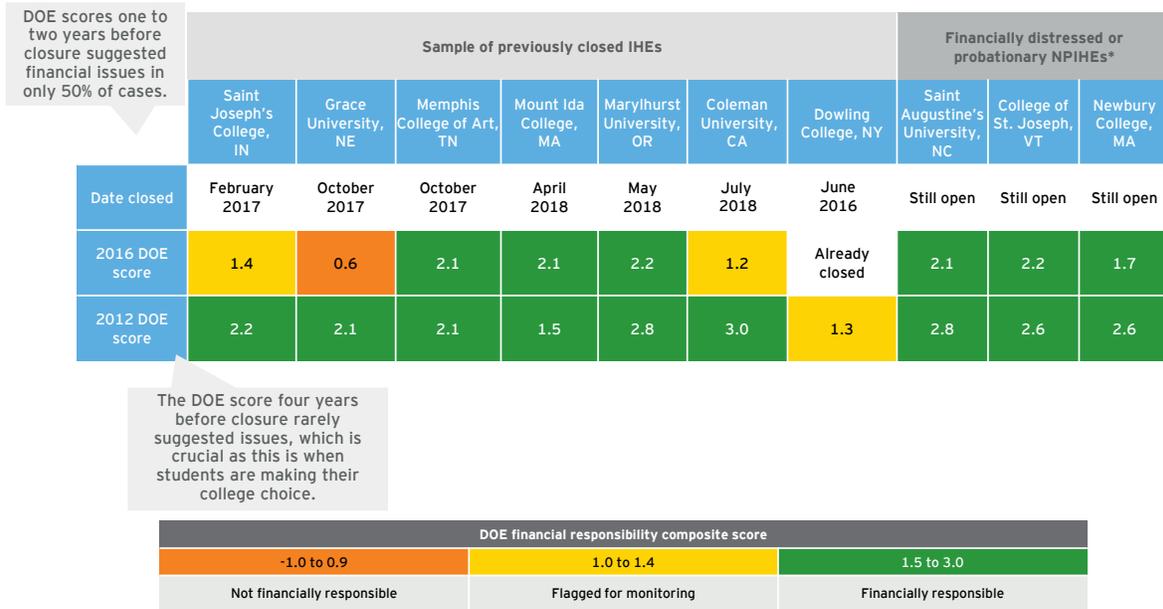
Ultimately, when it comes to safeguarding student interests and notifying them when a school may be in financial difficulty, it is not clear that any of these three entities – federal, regional accreditors, and state – have a clear responsibility to do so. Even if they did, the metrics that are typically used to evaluate financial sustainability today may be insufficient to flag risk in a timely manner, as exhibited in Figure 6. An analysis of a sample of recently closed or financially struggling schools suggests that the DOE score, which is typically considered by states and accreditors, flagged issues of financial difficulty in only 50% of cases—and even then, only one to two years prior to closure. Crucially, four years before the schools closed (when students were applying and making their decisions about which school to attend), almost none of these institutions had a DOE score that would have fallen into the territory of “financially irresponsible” or even “flagged for monitoring.” Instead, according to the analysis, the DOE scores suggested that these schools were financially healthy, even though they were ultimately

unable to fulfill their four-year commitment to most of the students they were admitting at the time. There are many reasons why the DOE score may be unable to adequately flag financial risk in a timely manner:

- ▶ It is a lagging metric
- ▶ It is somewhat vulnerable to manipulation. For example, a sale of institutional real estate during a financial cycle (e.g., fiscal year) or taking out loans to provide liquidity before immediately repaying them are potential ways to avoid falling below problematic DOE thresholds
- ▶ Some accreditors also only “flag” a school that has fallen below the threshold for multiple years in a row, creating unintended incentives for schools to get just over the threshold in the years directly following ones where they have fallen below

The current situation presents a conundrum for those who want to better protect students from the harms of closure discussed earlier. States and accrediting bodies evaluated

Figure 6: DOE scores for previously closed/financially distressed and probationary IHEs



\*Financially distressed or probationary NPIHEs have been flagged by accreditors for probation or monitoring  
 Sources: Integrated Postsecondary Education Data System (IPEDS); Inside Higher Education, “Too Late for a Fix?” August 8, 2018

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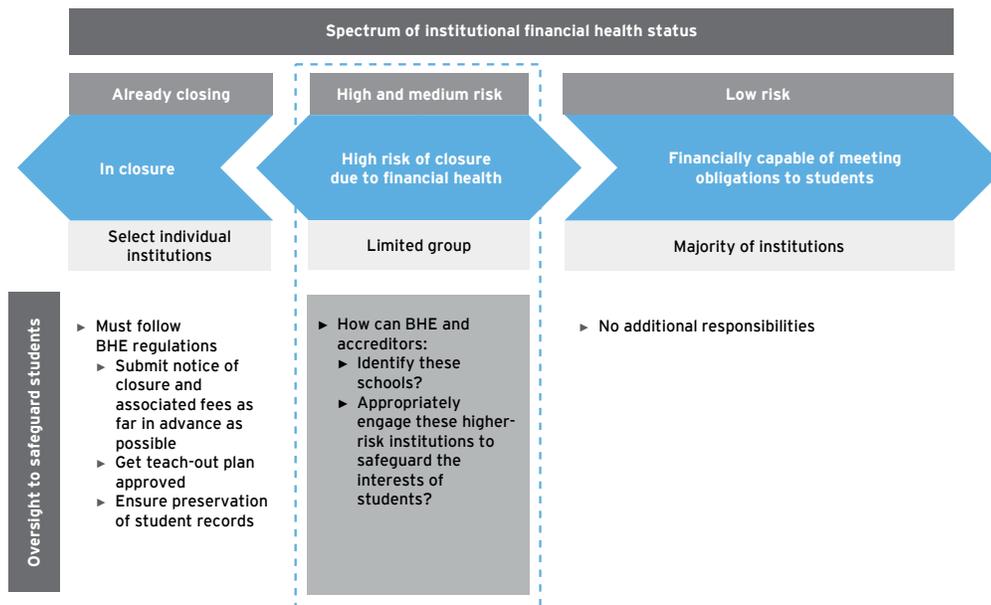
do not currently have regulations that proactively protect student welfare when schools are financially challenged at best, these policies often just result in a probationary period, which may or may not be communicated to students and families. But even if states and accrediting bodies had more proactive policies, the metrics traditionally used to verify that colleges are in good financial health demonstrate a significant lag and do not give nearly enough warning to students and families that they may be attending or planning to attend an institution with a risk of closure.

Massachusetts is also struggling with this challenge. In Figure 7, the role of the state when it comes to outright closures is clear – there are state regulations that lay out what the state’s responsibilities are when a college is closing.<sup>10</sup> And, on the other hand, the state likely does not need or want to add regulatory burden to the schools that are a very low risk of financial difficulty – the majority of private nonprofit schools today. But the group in the

middle – schools that are at higher risk of closure due to financial health – is the one that raises the most questions about the state’s role. For this group of schools, the key questions are:

- ▶ How, and when, can the Massachusetts Board of Higher Education (BHE) and the accrediting agency, New England Association of Schools and Colleges (NEASC) identify these schools?
- ▶ How can they work independently or together to engage these higher risk institutions in discussions or plans to safeguard the interests of students?

Figure 7: Spectrum of institutional financial health status



Source: MA BHE

## Part III: A new metric

**A new diagnostic tool may be better able to identify institutions at risk of being unable to meet their obligations to students, in a more timely manner than existing metrics.**

The metrics currently used, such as the DOE score, to monitor the fiscal health and viability of NPIHEs are not just lagging indicators that are potentially susceptible to manipulation, but they are also focused on institutional characteristics, not the potential impact on students. As state policymakers and accreditors continue to think about their role in a higher education landscape where the risk of school closure is increasing, a metric that puts students at the forefront may be what is truly needed.

This report introduces the concept of a teach-out viability metric, a screening metric that helps assess when an institution's financial challenges reach an extent that could cause the institution in question to not be able to deliver on the "promise" made to students upon matriculation. The teach-out viability metric (hereafter referred to as TVM) assesses a four-year institution's ability to provide the resources required to allow currently admitted and enrolled students to complete their degrees within a reasonable timeframe. It asks a simple question: can the school meet its existing obligation to its students?

The idea of a "teach-out" is a well-accepted one in higher education and is within the current regulatory province of the MA DHE. Federal, state, and accrediting bodies often require schools to develop a teach-out plan when they are faced with closure. A teach-out plan generally requires that schools ensure that students have access to reasonably similar programs, which they can complete in a reasonable timeline.<sup>11</sup> The plan must also include provisions for continuing to provide the necessary academic support services. Many schools, when faced with closure, will create a teach-out agreement with a nearby institution rather than host the teach-out on their own campus. For the purposes of the TVM described here, schools are assumed to teach out their students on their own campuses, which is the only teach-out scenario they could achieve without external action or assistance.



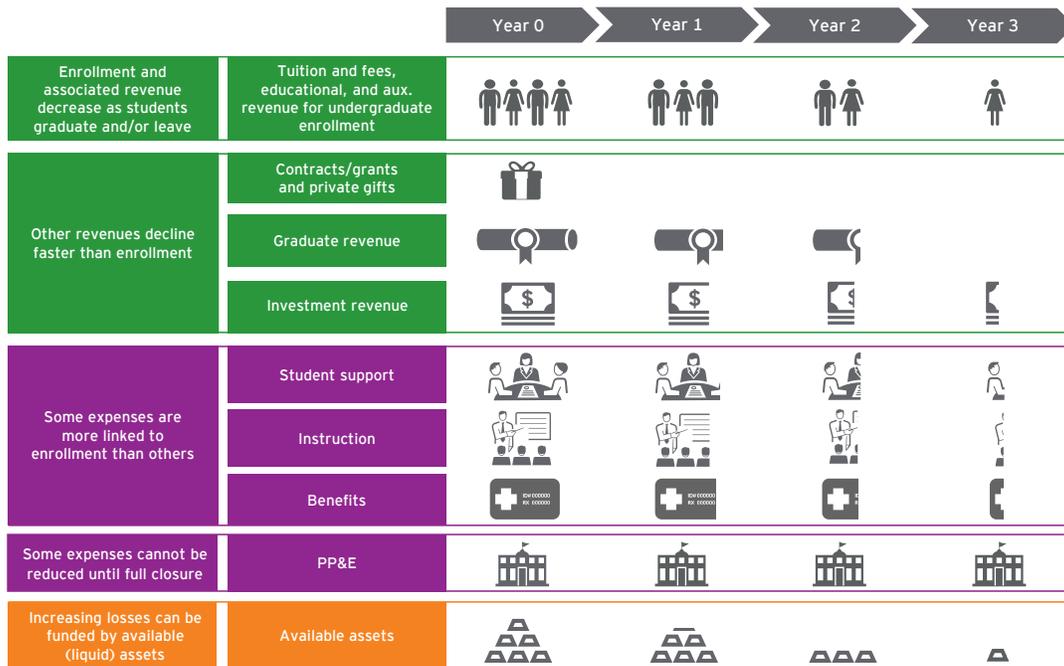
Preliminary analysis and simulations conducted with the TVM indicate that it could have promise as a proactive screening metric for NPIHEs. Moreover, it appears to offer a number of benefits:

- ▶ First, the TVM **could identify potential financial difficulty early**. Based on analysis of the same sample of recently closed institutions and institutions in probationary status, the TVM indicates the majority of these schools as potentially at risk, and does so about 3-4 years earlier than the DOE score would have.
- ▶ Second, the TVM **is intuitively understandable**. The metric indicates that institutions with operating profits and/or significant assets are generally more stable than those with operating deficits, low assets, or high reliance on one-time gifts – a more intuitive way of understanding financial issues than the more complex ratios that make up the DOE score.
- ▶ Third, the TVM also has a very specific purpose: it is intended to be an **assessment** of where institutions are **today** in terms of their ability to support a teach-out. It is meant to answer one specific question (“Can an institution meet its obligation to its current students?”), rather than analyzing all aspects of financial health. The metric is not meant to be a forecast of which institutions might fail in the future. Instead, it could be used by policymakers and accreditors as a **screening tool** to help identify institutions with which they should be holding additional discussions about existing financial challenges and potential plans to remedy the situation. It may be that these institutions have clear and reasonable financial plans. The TVM does not actually assess the likelihood that any institution’s specific plan will work. It is simply intended to serve as a trigger, or early warning indicator, that occurs early enough in the process to make the very creation and execution of potential plans more viable.
- ▶ Fourth, the metric aligns with the responsibility of the MA BHE **to prevent disruption to students**.

The TVM is assessed using a series of assumptions about an institution's changing enrollment, revenue, expenses and assets over the period of a four-year teach-out, as visualized in Figure 8. These assumptions have thus far been vetted with several private nonprofit institution Chief Financial Officers (CFOs) in the Commonwealth, and have been refined based on their insights. The initial reception to the metric has been positive, meriting additional exploration.

At this point in time, the TVM is calculated using publicly available IPEDS data on each institution. As such, it holds all schools to the same standard of having to meet their obligations to all their current students. This is useful in gaining an indication as to whether schools might be at risk of being unable to meet these obligations.

Figure 8: Overview of TVM methodology



Source: EY-Parthenon analysis; TVM

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Initial simulations and analyses of the TVM suggest that schools will likely fall into three main categories based on their ability to fully cover a four-year teach-out:

► **Low risk:**

These institutions can cover well over four years of a teach-out according to the analysis. Given their substantial assets and sustainable operating model, these schools show reduced risk of being unable to meet their obligations to students

► **Medium risk:**

Though analysis indicates these institutions exhibit some risk to meeting their full, multi-year obligation to all students, they are able to cover costs long enough (longer than two years) to establish, meet or revise plans that could either dramatically improve their financial position or proactively protect students (e.g., by having the students complete their degree at a nearby institution in stronger financial standing)

► **High risk:**

These schools are assessed at high risk of being unable to teach out their current students, as analysis indicates they can cover less than two years of a teach-out in their current financial situation.

These conceptual categories help to illustrate how the TVM could be used as a screening tool. This kind of framework can help avoid a “one-size-fits-all” approach that might apply the same level of “intervention” to all schools regardless of the level of risk involved.

- For example, accreditors and states should have little need to further scrutinize the low risk schools, as it is clear that these schools could meet their obligation to students. On the other hand, accreditors and/or states could ask high and perhaps medium risk schools to provide more recent data to assess their TVM since publicly available IPEDS data has an 18-24 month lag. In that amount of time, it is certainly possible for some institutions to have developed and even begun implementing plans to improve financial sustainability and ability to meet obligations to students. It is also possible for the TVM to have worsened over this period of time. Even assuming that the data categories would be the same as what each school is already required

to provide to IPEDS for federal reporting purposes, the value of calculating a more “real-time” TVM for a subset of schools needs to be weighed against the potential additional burden on schools and accreditors/states of collecting and analyzing the data.

- ▶ The schools in the medium risk category present opportunity and need for further attention from the Trustees and leadership of the schools, to address what the financial future of their respective school may look like. It is also the case that many schools may experience dips in their financial measures and be able to institute changes to their business models and finances such that they recover successfully. The TVM does not attempt to adjudicate how successful these changes or plans would be, but merely identifies the potential need for conversation between NPIHEs, Boards, accreditors and the state.

- ▶ Finally, schools in the high risk category likely warrant deeper and more urgent attention from states and accrediting bodies given their potentially much more limited runway.

The point, ultimately, is that the TVM is just one part of a larger solution. It could feed into a broader, more holistic process for states and accrediting bodies to engage more deeply with NPIHEs. A simulation of the TVM, as applied to all NPIHEs in Massachusetts, helps to create a picture of the characteristics of schools that may be at risk. As seen in Figure 9, the schools in the “high risk” segment are generally smaller, considerably less selective, and have a lower endowment per student. Perhaps of greatest concern, “high risk” schools enroll a disproportionate amount of students who receive Pell Grants. By federal rules, these students can access their Pell Grant money for only 12 semesters, which raises the importance of seamless post-secondary pathways for these students.

Figure 9: Characteristics of schools in TVM categories

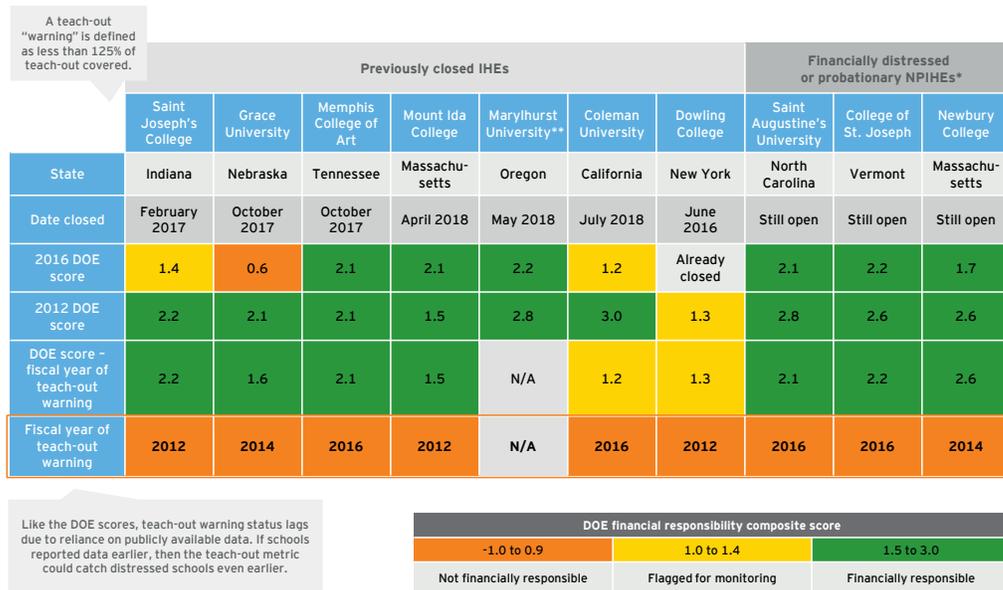
		Teach-out model category (Massachusetts schools)		
		High risk	Medium risk	Low risk
Descriptive characteristics	Average size (middle 50%)	1,000-2,100 students	1,000-4,500 students	1,700-4,900 students
	Average acceptance rate	77%	67%	54%
	Average yearly enrollment growth ('05-'16)	-1.2%	1.4%	1.0%
	Average endowment/FTE student	\$13,000	\$44,700	\$222,100
	First-time students awarded Pell Grants	46%	31%	26%
	Tuition and fees* as a percent of revenue	95%	82%	59%
	Liabilities as a percent of total assets	49%	45%	35%

Notes: 1) Schools without undergraduate students or with no recorded first-time enrollment have been removed from this analysis; excludes two-year institutions; tuition and fees include auxiliary revenue such as dorm and dining, as well as federal student aid; 2) Average size (middle 50%) is determined by 25th and 75th percentiles of NPIHEs in the category; 3) Average endowment/FTE student is determined by mean of endowment per FTE student for NPIHEs in the category; 4) First-time students awarded Pell Grants are determined by median of the percent of first-time students awarded Pell Grants at NPIHEs in the category

Source: IPEDS; TVM

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Figure 10: TVM applied to previously closed or financial distressed or probationary IHEs



\*Financially distressed or probationary NPIHEs have been flagged by accreditors for probation or monitoring

\*\*Marylhurst University generates an operating surplus per student, so the model predicts high levels of teach-out capability.

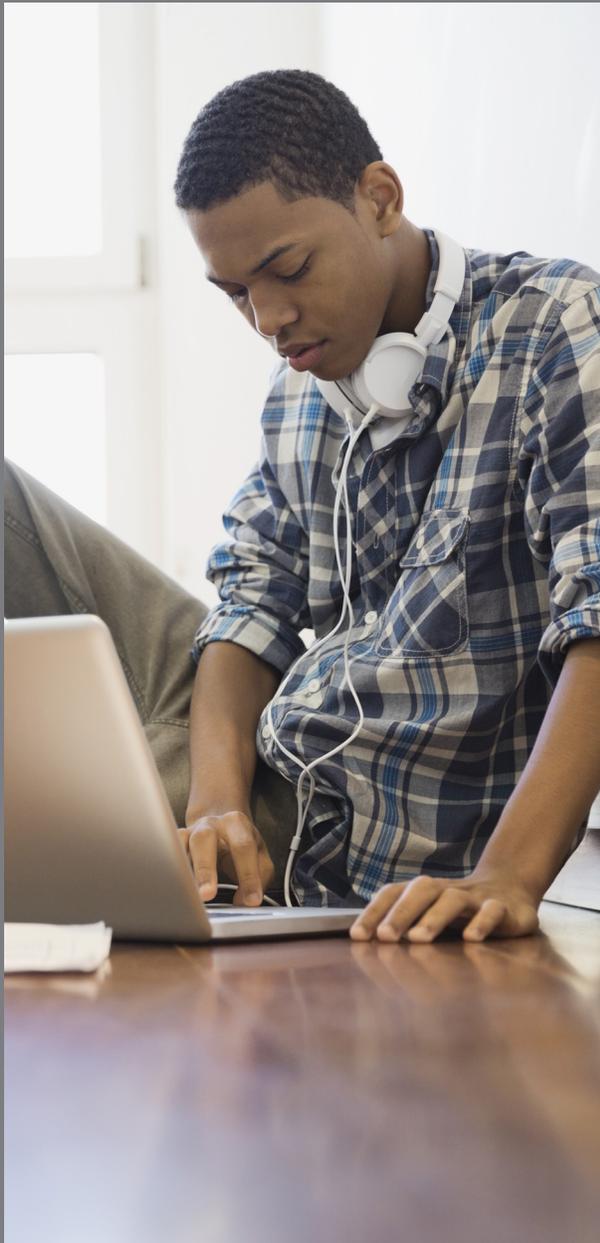
Source: IPEDS; Inside Higher Education, "Too Late for a Fix?" August 8, 2018; TVM

They may also have access to fewer financial resources if their school closes abruptly. This reality highlights the importance of placing students first and protecting their future.

As Massachusetts considers how to safeguard the interests of students in a new age of higher education, the TVM metric can be a potentially more effective screening tool and early warning indicator than current metrics, as illustrated in Figure 10. Utilizing the same sample of recently closed schools, the TVM flagged signs of financial difficulty among this group in almost all instances, and, in most cases, several years before the DOE score. This means that states and accrediting bodies would have had more notice and time to engage with schools to assist in creating plans that could better safeguard the interests of students.

The TVM metric offers a potential new way of approaching the issues discussed in this report, and could be part of a

broader strategy to safeguard the interests of students. It focuses on students first, and is a relatively simple but powerful commentary on an institution's ability to meet its obligation to current students. While there are many other factors that states and accrediting bodies may want to consider about an institution, the TVM could offer a simple way to identify institutions where there is potentially greater risk for students. More time to study and refine the metric is likely warranted before its implementation could be considered; at present, the metric has not been vetted more broadly or approved by the Board of Higher Education and, as such, identifying where schools fall within the risk categories is beyond the scope of this effort. However, given the apparent benefits of the TVM, it is well worth asking the question of whether this student-centered metric is one that could be seriously considered, and one that warrants further study and investigation to fine tune the metric for Massachusetts' needs.



## Conclusion

We hope that through this research and analysis we have informed a strong, robust dialogue among institutions, accreditors and state offices, by shedding more light on the facts and current practices. In assessing the nature of the problem through this effort, it is clear that Massachusetts, and the rest of the country more generally, is entering a new age of higher education. Institutions will be faced with many challenges, and some may ultimately need to merge, restructure or close. As institutions face these challenges, students and their interests will inevitably be at risk, posing the question of who will safeguard students' interests and how this will be accomplished, as current metrics may be inadequate for the task. However, there is no one-size-fits-all solution here, and, as such, the next steps now begin for the Working Group to address complex questions such as:

- ▶ How can the interests of students best be safeguarded, and what can be done to help students and their families make informed choices in an ever-shifting landscape of higher education?
- ▶ How and when will the state and accrediting body work together to identify schools that might be at high risk of closure due to financial health?
- ▶ How will these bodies work together to appropriately engage institutions at a higher level of risk to safeguard the interests of students?
- ▶ How will the process – any process that is recommended – enable confidential conversations to take place between the institutions and accrediting or regulatory entities, to create sufficient space for plan development and evaluation, while also making sure that public interests are protected?

## Methodology

The TVM utilizes data from a publicly available resource, the Integrated Postsecondary Data System (IPEDS). The assessment simulates a four-year teach-out, applying the same assumptions to all schools equally. For each school, the metric analyzes operating revenue and operating expenses, creating either an operating surplus or deficit at the end of each year. Deficits can be funded by liquid assets until these assets are depleted.

The revenue assessment includes tuition, fees and auxiliary revenue from undergraduate and graduate students, private gifts, state grants, “other” revenue, and investment returns. The metric assumes that a school will not admit any new students, but that current students continue to pay net tuition and fees through graduation (with the institution’s average retention rate applied to determine the number of students in each year). After the teach-out is announced in the first year, schools no longer receive private gifts or state grants.

The expense assessment is based on how quickly institutions can ramp down various operations as needed. Some costs at a university are more variable and will be reduced as students graduate, but others are more difficult to ramp down (e.g., instructional expenses, where there is a need to maintain programs). Along these lines, some expenses decrease faster during the teach-out period than others based on assumptions related to the cost structure needed to maintain programs through the last graduating class. Other expenses are assumed to stay constant throughout the teach-out period so that the institution can maintain buildings and other services.

Finally, throughout the teach-out period an operating deficit can be covered by accessing liquid unrestricted net assets or temporarily unrestricted net assets until those assets are fully spent down. The metric also enables schools to liquidate a small portion of physical assets at the end of the third full year of the teach-out, under the assumption that it would take time to liquidate these assets.



These assumptions were discussed with a small group of CFOs of private nonprofit higher education institutions in Massachusetts, and have also been subjected to sensitivity analyses. Ultimately, while some inputs into the metric are more sensitive than others, the output of the metric, the implied level of risk, does not materially change when these inputs are varied.

## Endnotes

- <sup>1</sup> <https://bothsidesofthetable.com/in-15-years-from-now-half-of-us-universities-may-be-in-bankruptcy-my-surprise-discussion-with-979f93bd6874>; <https://www.cnbc.com/2017/11/15/hbs-professor-half-of-us-colleges-will-be-bankrupt-in-10-to-15-years.html>.
- <sup>2</sup> <https://www.insidehighered.com/quicktakes/2018/07/25/moodys-private-college-closures-11-year>.
- <sup>3</sup> Integrated Postsecondary Education Data System (IPEDS), National Center for Education Statistics (NCES).
- <sup>4</sup> <https://www.forbes.com/sites/schifrin/2017/08/02/2017-college-financial-grades-how-fit-is-your-school/#49ff4bdd7d68>.
- <sup>5</sup> <https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>.
- <sup>6</sup> Integrated Postsecondary Education Data System (IPEDS), National Center for Education Statistics (NCES).
- <sup>7</sup> <https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>.
- <sup>8</sup> <http://products.nacubo.org/index.php/leadership/update-to-the-7th-edition-of-strategic-financial-analysis-in-higher-education.html>.
- <sup>9</sup> EY-Parthenon interviews.
- <sup>10</sup> <http://www.mass.edu/foradmin/closures/home.asp>.
- <sup>11</sup> [https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/POLICIES/Pp13a-Teach\\_Out\\_Plans\\_And\\_Agreements\\_Policy.pdf](https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/POLICIES/Pp13a-Teach_Out_Plans_And_Agreements_Policy.pdf).



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ED None

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# **Transitions in Higher Education: Safeguarding the Interests of Students (THEISIS) Working Group**

## **Final Report & Recommendations**

January 22, 2019



## MEMBERS

### BHE Co-Chairs:

#### Chair Gabrieli and DHE Commissioner Santiago

- **Robert Antonucci** – past MA Commissioner for Education; past President of Fitchburg State; past AG-installed President of troubled IHE that successfully merged
- **Alex Cortez** – Member, BHE; partner, NewProfit;
- **Katherine Craven** – CA&FO, Babson; past head of MA School Building Authority and also of UMass Building Authority
- **Matt Hills** – private equity investor and mgmt. consultant; past President, Newton School Committee
- **Ranch Kimball** – past partner BCG; past Secretary of Econ Development; past Chair of Board of Wheelock College through its merger with BU
- **Paul Mattera** – Member, BHE; Board Chair Salem State;
- **Gabby King Morse** – ED, uAspire Massachusetts (leading nonprofit in college affordability)

## PARTNERS

- **EY - Parthenon** – provided pro bono team for summer providing research and analyses on first two questions
- **NEASC/NECHE** – regional accreditor collaborated throughout
- **Attorney General's Office** – in dialogue throughout

## PROCESS

- Core working group at DHE led by Gabrieli/Santiago including legal, financial met weekly since May
- Parthenon phase over summer met weekly
- Select Working Group members in ad hoc dialogues
- Full Working Group met four times

# Initial Charge: Four Questions

What is the nature and extent of the problem?

Are there current measures and monitoring processes that effectively identify and manage risk?

How can we engage college Boards more in risk awareness and mitigation?

What could DHE do about undermanaged risk?

# Summary Conclusions

Risk of further financially driven closures is significant, ongoing and likely growing

Current measures (e.g. Federal Financial Responsibility Composite Score) and monitors (USED, accreditors, DHE) are insufficient

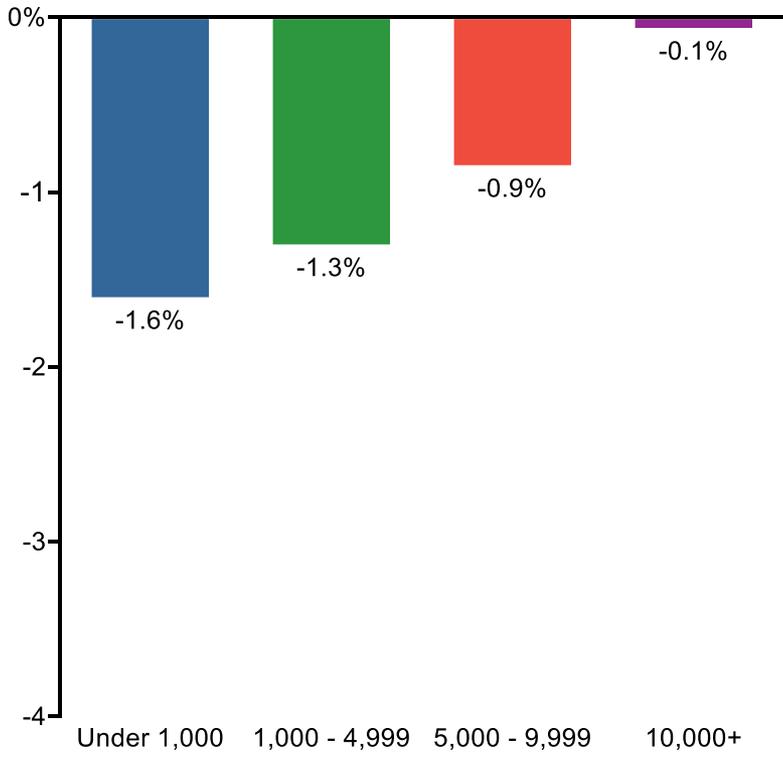
The DHE should adopt a new process to identify and manage risk including

- effective, confidential screening strategy to focus resources and limit burden
- active, confidential monitoring approach for significantly at-risk colleges
- requirement for contingency planning and student notification no later than December 1<sup>st</sup> of each year if a school is judged financially uncertain to complete current **and** subsequent school year

# 1. Pressures on higher education

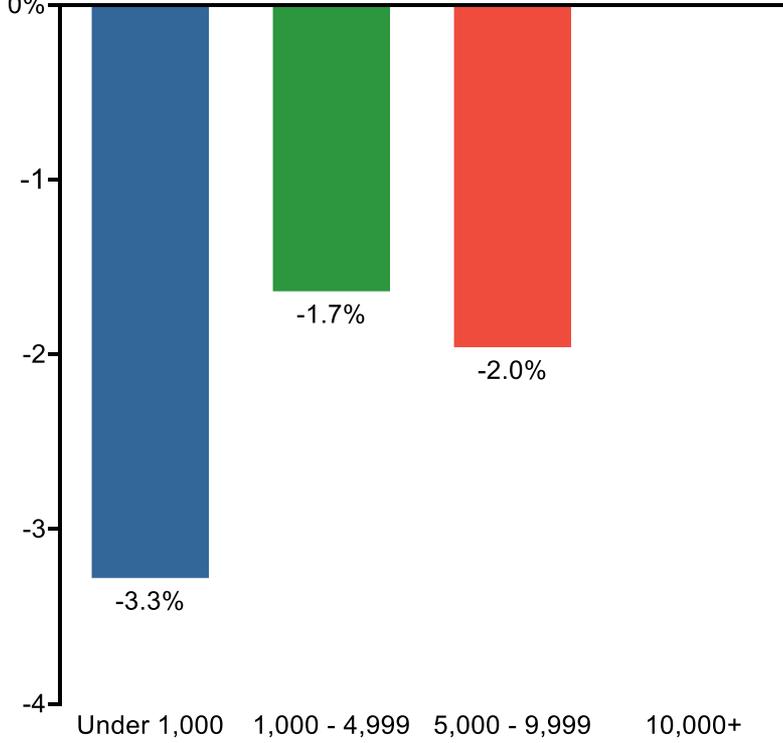
## Enrollment declines are likely to continue to disproportionately affect small schools

**NATIONAL Enrollment\* trends by size for all degree-granting institutions, FY11-FY17**



Count of Institutions: Under 1,000 (1,362), 1,000 - 4,999 (1,496), 5,000 - 9,999 (523), 10,000+ (586)

**MASSACHUSETTS Enrollment\* trends by size for all degree-granting institutions, FY11-FY17**



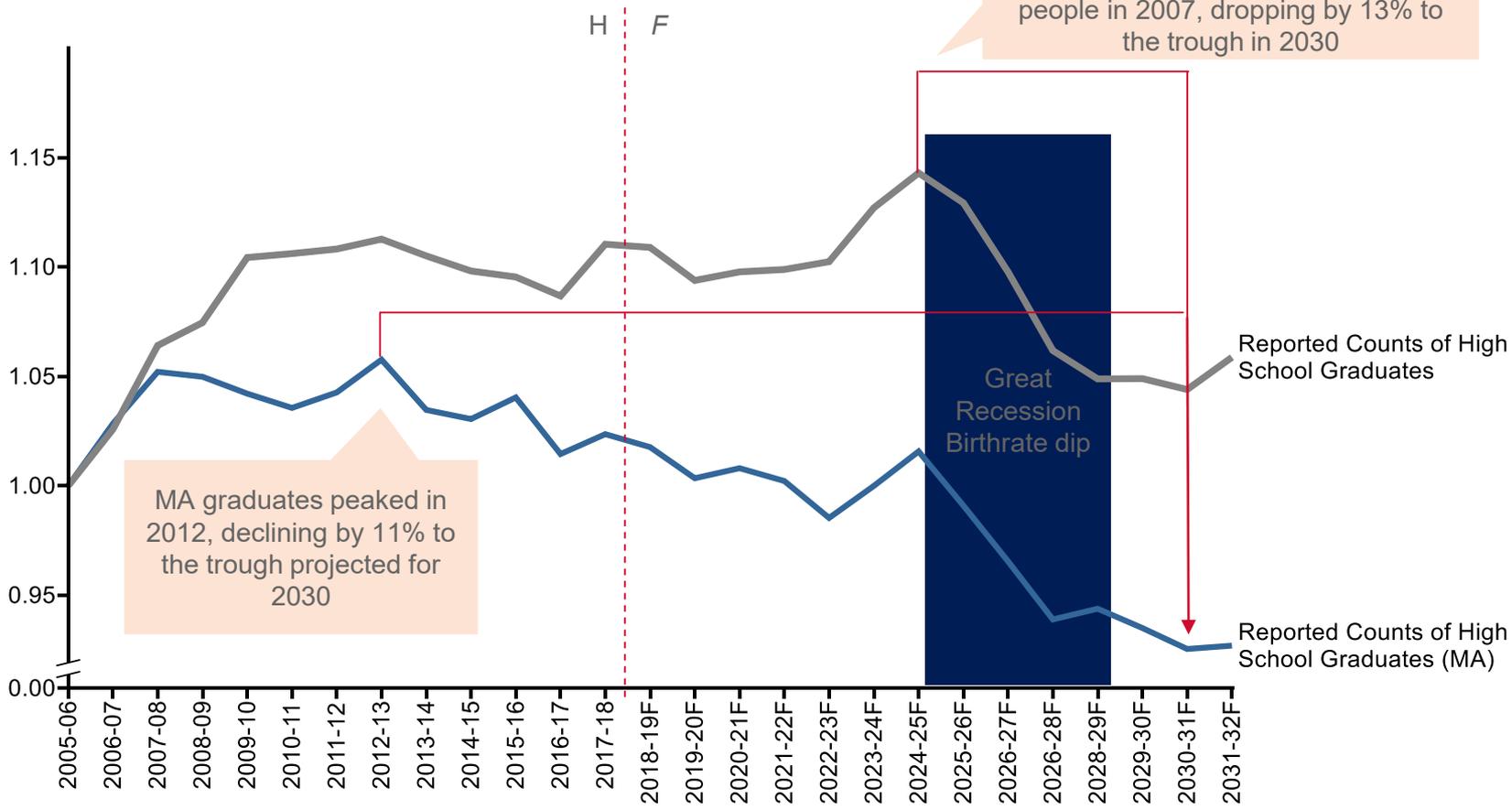
Count of Institutions: Under 1,000 (26), 1,000 - 4,999 (56), 5,000 - 9,999 (21), 10,000+ (11)

\*Enrollment includes both graduate and undergraduate, public and private  
 Note: Buckets are based on 2010 enrollment (not fluid buckets); only institutions with non-zero enrollment in both 2010 and 2016 were considered  
 Source: IPEDS

# 1. Pressures on higher education

The problem could be exacerbated with the upcoming dip in enrollment likely to result from the falling number of high school graduates

Total public and private high school graduates in the United States and Massachusetts, indexed to 2005 2000-2031F



MA graduates peaked in 2012, declining by 11% to the trough projected for 2030

Nationwide birthrates peaked just before the recession at 14.3 per 1,000 people in 2007, dropping by 13% to the trough in 2030

Great Recession Birthrate dip

Reported Counts of High School Graduates

Reported Counts of High School Graduates (MA)

- Note: Birth rate is calculated as number of births per 1,000 people
- Source: Western Interstate Commission for Higher Education: Knocking at the College Door: Projections of High School Graduates, December 2016; The World Bank

## 1. Pressures on higher education

**With 15 closures and mergers in the past 5 years, the Commonwealth is currently seeing the impact of these trends**

### Massachusetts Context: Observed Closure/Merger Activity in Last 5 Years\*

#### 8 completed institutional **closures**

Sanford Brown College; Marian Court College; Le Cordon Bleu; ITT Technical Institutes; New England Institute of Art; Mount Ida College; University of Phoenix and Atlantic Union College

#### 7 completed closures due to **mergers**

School of the Museum of Fine Arts; New England College of Acupuncture; Boston Conservatory; Episcopal Divinity School; National Graduate School of Quality Management; Wheelock College; Andover Newton Theological Seminary

#### 1 pending institutional **closure**

Newbury College

\*List may not be fully comprehensive of all activity  
Source: MA Department of Higher Education

# 1. Pressures on higher education

Of the remaining private institutions in MA, a substantial number show problematic financial health across multiple measures, with growing risk

**Declining enrollment**

**24%**  
of institutions

24% of MA private nonprofit 4-year institutions saw **decreases in enrollment by over 10% between 2011 and 2016**, up from 8% of institutions during the prior 5 year period

**Revenue growth not keeping pace with expense growth**

**34%**  
of institutions

34% of MA private nonprofit 4-year institutions saw **expenses increase by 5pp or more above revenues in 2016** compared to 2011

**Low Forbes financial grades**

**30%**  
of institutions

30% of MA private nonprofit 4-year institutions with Forbes financial health grades received a **1.75 GPA or below in the 2017 report**, up from 24% in 2014, the earliest available scores

**Declining US Dept. of Ed financial responsibility scores**

**31%**  
of institutions

31% of MA private nonprofit 4-year institutions saw a **decline in average DOE score in the 5 year period ending 2016 versus the 5 year period ending 2011**

**Increase in low US Dept. of Ed (USED) financial responsibility scores**

**14%**  
of institutions

14% of MA private nonprofit 4-year institutions received DOE **score of 1.5 or below in 2016 versus 9% in 2011**

■ Note: Forbes financial grades are based on endowment assets per FTE, primary reserve ratio, viability ratio, core operating margin, tuition as a percentage of core revenues, return on assets, admission yield, percent freshman getting institutional grants, and instruction expenses per FTE; MA private nonprofit 4-year institutions' include Baccalaureate Colleges, Master's Colleges and Universities, Research Universities, and Specialty Schools from the Carnegie Classification system; "Revenue" includes temporarily restricted assets, graduate revenue, private gifts, and other revenue as defined by IPEDS

■ Source: Moody's; IPEDS; Forbes; US Department of Education

## 2. Oversight and metrics

**Closures lead to a number of damaging consequences for students. Oversight can play an important role in preventing or managing these**

### Reactions to Recent College Closures

**Students are harmed when institutions close with little notice or without effective planning**

#### Financial Loss

*"She was offered several lucrative scholarships, which is why we decided on that school. Other programs are going to cost us up to \$17k more a year"*

– Parent of freshman at closing institution, *Patch* (2016)

#### Negative Effect on Resume

*"I wonder if my degree will still be valid [when the school closes]"*

– Senior at closing institution, *Newsday* (2016)

#### Time Wasted

*"As freshmen, we thought we'd be done filling out college applications, and now we have to go back and fill out more"*

– Freshman at closing NY institution, *On Campus Newspaper* (2017)

#### Loss of Personal Fit

*"[Other schools] didn't fit me because I was working. This school was flexible and we had a lot of support here"*

– Student at closing institution, *Local Newspaper* (2016)

#### Inconvenient Location

*"Students will be automatically accepted for fall enrollment at [other institution]– more than 50 miles away"*

– *National Newspaper* (2018)

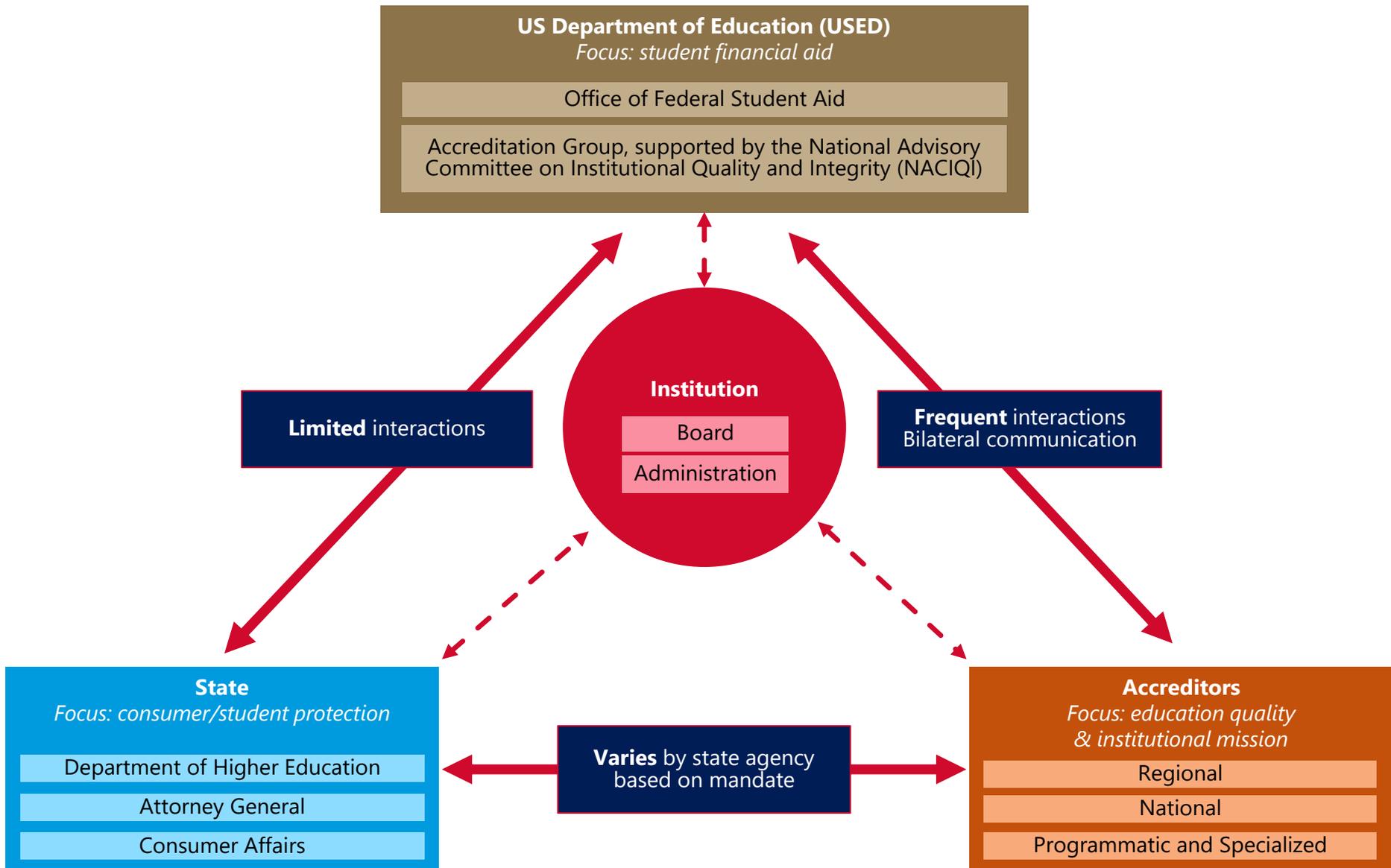
#### Specialized Majors

*"I chose [institution] because it was the best school for my major, and now I am left without an institution"*

– *City Business Journal* (2018)

## 2. Oversight and metrics

When it comes to oversight of institutions of higher education (IHEs), there are three main types of entities involved, with varying levels of interaction



- Note: Federal law requires accreditors to require institutional teach-out plan during closure and withdrawal of status following 2 years of probation

- Source: Source: Interviews with accreditors and state agencies, secondary research

## 2. Oversight and metrics

# Accreditors monitor financial health through a number of data points and a “holistic review”

Regular Review

Monitoring Higher Risk IHEs

Closure & Teach out

### Regional, National, and Programmatic Accreditor Role in Financial Health Assessment of Institutions

- **Focus:** Education quality & institutional ability to meet mission
  - **Primary Power:** Determines accreditation status and sanctions when not meeting standards
  - **Financial Health Metrics Considered:** Varies by accreditor and institution type, typically holistic review of annual report, enrollment, endowment draw changes, etc. and may include CFI or DOE Score
- |   |   |  |
|---|---|--|
| <ul style="list-style-type: none"><li>• <b>Analyze annual IHE data submission</b>, considering relevant financial metrics to meet standards of resource to achieve mission, e.g. DOE score, CFI, enrollment, etc.</li><li>• <b>“Holistic Review” evaluation based on professional judgement</b> of all available facts and context</li><li>• Follow-up with institution to <b>gather additional data or site visits</b> as needed</li></ul> | <ul style="list-style-type: none"><li>• <b>Create report on cause for concern</b>, where accreditation is withdrawn by set date if no evidence of improvement</li><li>• <b>Institution responds</b> with plan to address concerns</li><li>• <b>Follow-up actions include:</b><ul style="list-style-type: none"><li>• Guidance or training</li><li>• Further sanctions or probation</li><li>• Withdraw accreditation if exceeds maximum probation period</li></ul></li></ul> | <ul style="list-style-type: none"><li>• <b>Review and approve teach out plans</b> based on established criteria</li><li>• <b>Continued engagement</b> (i.e., monitoring closing process, intervening if necessary)</li></ul> |
|---|---|--|

## 2. Oversight and metrics

While accreditors play a significant role in all parts of the process, USED and state agencies also play key roles at specific points

Regular Review

Monitoring Higher Risk IHEs

Closure & Teach-out

### US Department of Education (Office of Federal Student Aid, Accreditation Group, and NACIQI) Role in Financial Health Assessment of Institutions

- **Focus:** Student Financial Aid
- **Primary Power:** Can withdraw Title IV eligibility
- **Financial Health Metrics Considered:** DOE composite score
- **Analyze annual financial audits** of private nonprofits to maintain integrity of Title IV eligibility
- Place on **Heightened Cash Monitoring** if DOE score falls below thresholds
- Sets maximum of 2 years on sanctions before ineligible for Title IV funding
- **Oversee federal student aid**
- **Discharge federal loans** if students do not complete comparable educational program following closure

### State Board, Department, or Commission of HE Role in Financial Health Assessment of Institutions

- **Focus:** Consumer/Student Protection
- **Primary Power:** Manage licensure rules and reauthorization
- **Financial Health Metrics Considered:** Varies by state
- **Varies by state;** can include oversight of segment of private nonprofits such as:
  - Periodic general reauthorization of institutional status
  - Follow-up on student concerns
  - Review licensure rule adherence
- **Limited role across many states**
- **Varies by state;** can include:
  - Support with **closure notifications**
  - **Manage student records** if not by another institution
  - Oversee any **state financial aid**
  - **Address student concerns,** including about degree conferrals and credit transfers

## 2. Oversight and metrics

# States have differing levels of oversight by various offices, with Massachusetts having a lower level of oversight of private institutions

These findings are based on a select sample of states with relatively high concentrations of private institutions, with whom EY-Parthenon was able to arrange phone interviews to understand the varying levels of state oversight and enforcement

	Ohio	New York	Virginia	South Carolina	Massachusetts
<b>Statutory Level of Oversight by the State*</b>					
<b>Oversight Practices</b>	Review annual report	✓		✓	
	Authorize institutions and provide licensure	✓	✓	✓	✓
	Approve programs	✓	✓		✓
	Reauthorize institutions or programs	✓		✓	
	School Eligibility Requirements for Financial Aid	✓			✓

- Note: \*Oversight reflects assessment of breadth of private institutions covered by state oversight (e.g., how many are exempt) and level of oversight practices; VA refers to authorization as certification and must be recertified annually; OH reauthorization timed in line with relevant re-accreditation process; SC only authorizes out-of-state entities, and refers to it as licensing
- Source: Interviews with state agencies

## 2. Oversight and metrics

The state and accreditors utilize the DOE score as one metric, which often fails to give stakeholders adequate notice of financial problems

DOE Scores 1-2 years before closure suggested financial issues in only 50% of cases

	Sample of Previously Closed IHEs							Financially Distressed* and Probationary IHEs		
	Saint Joseph's College, IN	Grace University, NE	Memphis College of Art, TE	Mount Ida College, MA	Marylhurst University*, OR	Coleman University, CA	Dowling College, NY	Saint Augustine's University, NC	College of St. Joseph, VT	Newbury College, MA
Date Closed	February 2017	October 2017	October 2017	April 2018	May 2018	July 2018	June 2016	Still open	Still open	Still open
2016 DOE Score	1.4	0.6	2.1	2.1	2.2	1.2	Already closed	2.1	2.2	1.7
2012 DOE Score	2.2	2.1	2.1	1.5	2.8	3.0	1.3	2.8	2.6	2.6

The DOE score four years before closure rarely suggested issues, which is crucial as this is when students are making their college choice

DOE Financial Responsibility Composite Score		
-1.0 to 0.9	1.0 to 1.4	1.5 to 3.0
Not financially responsible	Flagged for monitoring	Financially responsible

- Note: Saint Augustine's University was recently put on probation by accreditors
- Source: IPEDS; Inside Higher Education, "Too Late for a Fix?," August 8, 2018

# THESIS Working Group Findings

## Questions

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### Question 1

Recommendation ratified by THESIS Working Group that *"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."*

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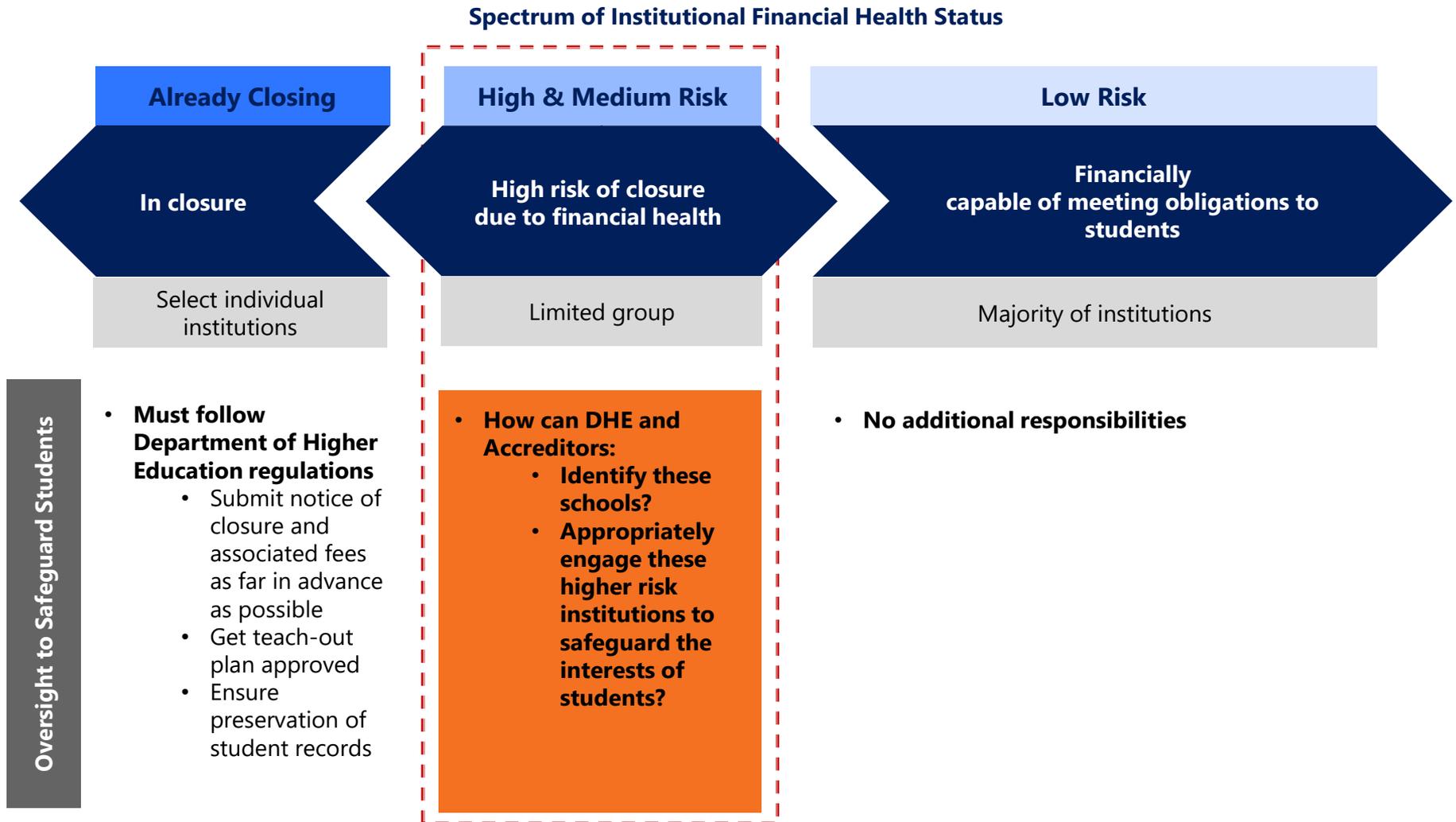
### Question 2

Recommendation ratified by THESIS Working Group that *"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."*

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## 2. Oversight and metrics

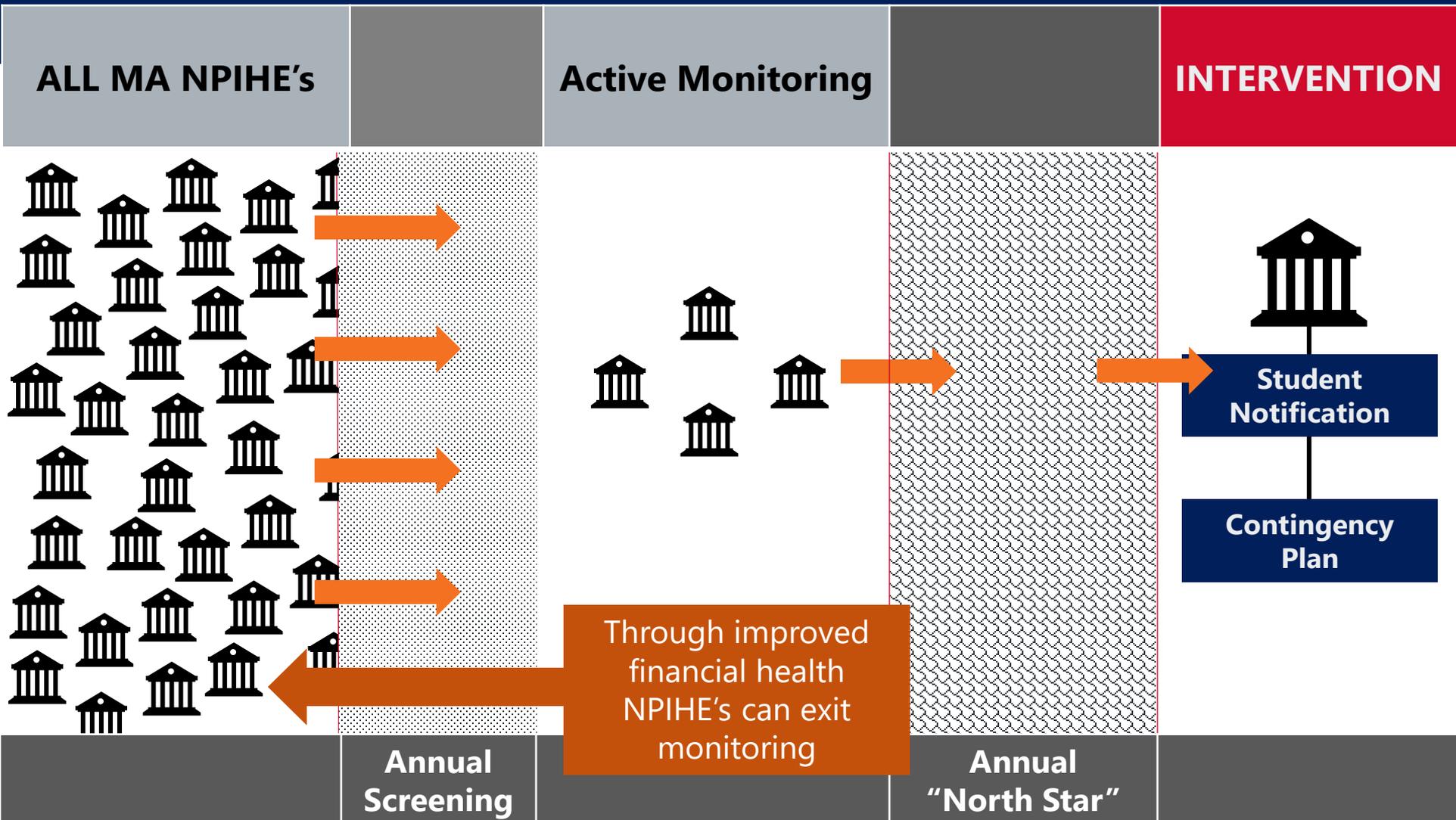
The challenge remains to identify high risk institutions and provide safeguards to students



# THESIS Working Group Recommendations

How DHE can better proactively  
manage risk of student harm on a  
timely basis

# Summary of Proposed Process



# THESIS Working Group Recommendations

1. BHE Should Act
2. North Star Principle
3. Screening
4. Active Monitoring
5. Intervention
6. Partnering
7. Process

# Thesis Working Group Recommendations

## Recommendation 1

### Act Now

Launch new process for SY19-20

# Thesis Working Group Recommendations

## Recommendation 2

### Adopt a “North Star” Principle

- Protects students
- Clear demarcation

# Thesis Working Group Recommendations

## Recommendation 3

### Screen Smartly

- Focus DHE resources on relevant colleges
- Minimize burden on all colleges

Proposed Screening Approach	
TVM	
+	-
<ul style="list-style-type: none"><li>- Shows promise</li><li>- Aligns to policy goal</li><li>- Requires no new data from IHE's</li></ul>	<ul style="list-style-type: none"><li>- Novel</li><li>- Needs testing and refinement</li><li>- Concerns raised</li></ul>

# **Guiding Principle for DHE Proactive Monitoring and Action with At-Risk Non-Profit Institutions of Higher Education**

If by December 1<sup>st</sup> of any school year, the IHE has significant risk, as reasonably determined by DHE, of not having the financial capability to complete the current school year and the subsequent one, a full contingency transfer/teachout plan must be completed and approved by DHE and students must be notified of the IHE's financial condition and risk

**“North Star”**

# Thesis Working Group Recommendations

## Recommendation 4

### Actively Monitor Where Risk is Significant

- Custom approach to fit circumstances
- Engage IHE Board of Trustees
- Sustain Confidentiality

# Thesis Working Group Recommendations

## Recommendation 5

### Intervene When North Star Threshold Crossed

- Notification of students and other stakeholders
- No later than December 1<sup>st</sup>; the earlier the better
- Contingency planning
  - Transfer/teachout
  - Records
- Commissioner decision
  - OSP recommendation
  - Advisory and Review Council input

# Thesis Working Group Recommendations

## Recommendation 6

### Partner Appropriately

- NECHE
  - Aligned obligations
  - Recent significant shift in approach (e.g. Newbury)
  - Able to handle confidentially
  - Has agreed to partner to review TVM
- AGO
  - Critical partner for challenging situation (e.g. Mount Ida)
  - Overlapping responsibilities

# Thesis Working Group Recommendations

## Recommendation 7

### Process

- Regulatory and policy setting
- Financial aid
- Office of Student Protection and Advisory & Review Council (ARC)
- Legislation for confidentiality
- Move forward quickly, openly, humbly and adaptively

# Recent Events

## Newbury College

- Proactive process
- Ad hoc partnership between NECHE, AGO & DHE
- Timely contingency plan preparation and student notification
- Role model

## Hampshire College

- Early action with stated financial resources to support programs for all current students to completion

## **BOARD OF HIGHER EDUCATION**

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June 18, 2019

10:00 a.m.

University of Massachusetts Boston  
Campus Center, 2<sup>nd</sup> Floor  
Alumni Lounge  
100 Morrissey Boulevard  
Boston, MA

### **Meeting Minutes**

A meeting of the Board of Higher Education (BHE) was held on Tuesday, June 18, 2019 in the Alumni Lounge in the Campus Center at UMASS Boston (UMB) in Boston, Massachusetts.

#### **The following Board Members were present:**

Chris Gabrieli, Chair

Sheila Harrity, Vice-Chair

Alex Cortez

Nancy Hoffman

Tom Hopcroft

Paul Mattera

Jim Peyser, Secretary of Education, Ex-Officio

Michael O'Brien

Kush Patel, student member, UMASS segment

Stephanie Teixeira, non-voting student advisor, Community College segment

Paul Toner

Carlos E. Santiago, Commissioner and Secretary to the Board

#### **The follow Board members were absent:**

J.D. La Rock

Nick Papa, non-voting student advisor, State University segment

Fernando Reimers

### **I. CALL TO ORDER**

Chair Gabrieli called the meeting to order at 10:11 a.m. He welcomed those in attendance and thanked Vice Chair Harrity for chairing the May BHE meeting at Mass Maritime Academy.

### **II. PUBLIC PARTICIPATION**

Chair Gabrieli reported that there were no requests for public participation.

### III. WELCOME

#### List of Documents Used

*None*

Chair Gabrieli introduced Interim UMB Chancellor Katherine Newman and invited her to make remarks. Chancellor Newman thanked Chair Gabrieli and welcomed everyone in attendance to UMB. She referenced the BHE's Equity Agenda and highlighted the initiatives and progress that UMB has done in this regard, noting that "if you're interested in equity, you've come to the right place." She referenced a recent USC Race and Equity Center study about how public universities are serving African American students that found UMB earned the nation's second highest score. Further, UMB has made great strides in eliminating gaps in gender equity, racial equity, and racial diversity in the context of student to faculty ratios. She continued that despite these successes, there is still work to be done, citing disparities between Pell and non-Pell recipients, as well as the four (but not the six) year graduation rate, which is a reflection of socioeconomic conditions.

Chancellor Newman continued her remarks by noting that when combining race and gender, there are few gaps at UMB between white women and women of color, and stressed the importance of intersectionality with their analysis and focus. She remarked that UMB has been intentional with their efforts, which included a significant boost in their academic advising services. UMB has hired many additional professional staff and have adopted a case management system of advising that includes campaigns for early alerts and registration, as well as the ability to track success metrics in different courses and sections. She remarked that UMB is very proud of what they have accomplished but there is still work to be done, citing the example of moving beyond the plateau of their 70% graduation rate, and noting that there are few peer institutions to look to see where they can go from here. She noted that UMB is dedicated to continuing their investment in advising, and to continuing to improve financial aid. She then referenced BHE student member Kush Patel and his many accomplishments including serving on the UMB Board of Trustees.

After Chancellor Newman's remarks, the BHE engaged in a brief question and answer session. Chair Gabrieli asked about similar investments at other UMASS campuses. Chancellor Newman responded that the other campuses are all engaged in tracking various metrics because they are all concerned with retention, but UMB is the only campuses with their specific program. Board member Hoffman asked Chancellor Newman to elaborate on opportunities for career advising for her students and asked how the campus is helping faculty and advisors better understand what a good choice is for the labor market. Chancellor Newman responded that they have started a program called Industry Clusters in which they invite industry leaders and ask them to review curriculum, commit to internship opportunities and teach pop-up classes. She also wants to reorganize campus employment to better blend schoolwork and work-work

together to build better pathways. She remarked that she agrees it is their responsibility to integrate what students do in the classroom and in the labor market.

Chair Gabrieli thanked Chancellor Newman and noted that the Commonwealth is fortunate she stepped in with her leadership in such a challenging moment. She thanked the BHE and responded that she is very fortunate for this opportunity with these extraordinary students and faculty.

#### **IV. ACCEPTANCE OF MINUTES**

Chair Gabrieli brought forth a motion to accept the minutes from the May 7, 2019 meeting. The motion was seconded and the minutes were approved unanimously by all Board members present.

#### **V. REMARKS AND REPORTS**

##### **A. CHAIRMAN'S REMARKS**

###### List of Documents Used

*None*

Chair Gabrieli made brief remarks and thanked BHE members for a busy and intense year which included special circumstances that were both proactive, such as the Early College Initiative and the Equity Agenda, and reactive such as the THESIS work on institutional closures.

##### **B. COMMISSIONER'S REMARKS**

Commissioner Santiago stated that he will save the bulk of his remarks for his year-end report. The Commissioner thanked the BHE for their time and efforts this year. He acknowledged the promotions of several DHE staff members and a new hire to the Commissioner's Office, Ms. Tanya Steward. He then acknowledged the presidents in attendance: Ellen Kennedy from Berkshire Community College, Patricia Gentile from Berkshire Community College, David Nelson from Massachusetts College of Art and Design, John Keenan from Salem State University, and Barry Maloney from Worcester State University. He additionally acknowledged Tom Sannicandro and Vincent Pedone from the segmental Executive Offices. He also thanked Ms. Stacy Bougie of the Department of Higher Education for her work in organizing BHE meetings throughout the year.

##### **C. SECRETARY OF EDUCATION'S REMARKS**

Secretary Peyser stated that last week there was an event at Bunker Hill Community College to acknowledge the Early College Designees and in attendance were a number of people representing K-12 and higher education, including representatives from Bunker Hill Community College (BHCC), Northern Essex Community College (NECC), Framingham State University, Massachusetts Bay Community College (MBCC), North Shore Community College

(NSSCC), and Mount Wachusett Community College (MWCC). Of the students served, 80% were students of color and 45% were low income. He remarked that Early College is reaching new students and not just students who were already on their way to college; it gives them opportunities and puts them on a path to matriculation and success in college. He wanted to acknowledge that there are some proposals pending in the Legislature, one of which is for Chapter 70 school finance reform that also includes a proposal for Early College funding. In addition, there are other proposals for reimbursements for tuition costs for colleges providing Early College programs, and there is an opportunity to take this to a larger scale and for Massachusetts to become a national leader. He concluded his remarks by thanking the BHE for their work, and Commissioner Santiago for his leadership.

#### **D. REPORTS FROM PRESIDENTS**

##### **Community College Presidents' Report – North Shore Community College President Patricia Gentile**

###### List of Documents Submitted

*None*

NSCC President Gentile began her remarks by thanking Roxbury Community College President Valerie Roberson for her hard work as chair the Community College Council of Presidents. President Gentile thanked the BHE and stated that as one year ends and another begins, she would like to focus on the many accomplishments in the community college sector. For a number of years, community colleges have been focused on equity; they are located in neighborhoods and gateway cities with low income families and low literacy rates. Community colleges enroll the largest number of first generation students and students of color, and many are designated as Hispanic serving institutions. NSCC reached the 25% Latinx enrollment minimum required to be designated as a Hispanic serving institution.

She continued that the community colleges are doing their best to move the Equity Agenda forward with limited resources, by leveraging community resources and philanthropic efforts, and have done so with three distinct goals. She highlighted four approaches. First, developing partnerships-- this year, many community colleges embraced the hard work of affiliating with K-12 for Early College programs. President Gentile thanked Secretary Peyser for his earlier comments on Early College programs. She continued that a great example is the program between Holyoke Community College and Holyoke High School, which enjoyed great success with a very diverse cohort; they attempted 254 college credits with a 95% pass rate and will be expanding the partnership this year. Holyoke is but one sterling example of how participation in the Early College effort will move the equity affordability needle. Second, innovative strategies that encompass true institutional change, and she cited several examples including the MBCC Young Women of Color program, a Boston Foundation sponsored program at NECC that assists immigrant students in Lawrence, and a program at Bristol Community College to develop off-shore wind industry programs in response to employer demand. She

remarked that the community colleges are often modest about the strategic ways they accomplish this, and their goal is to message this compelling story better to leaders, students and the general public. Third, although community colleges are a bit late to this, better utilizing the philanthropic sector. She cited several recent examples of philanthropic gifts at the community colleges including substantial gifts at Cape Cod Community College, NECC and a \$1 million gift at NSCC to expand health care simulation labs. Community colleges have a persuasive story on student success and are worthy of taxpayer and philanthropic investment; when donors are aware of their story, they give. Finally, community colleges are the workhorse of workforce development; they ensure employers have access to skilled and credentialed workers and although they generally do this regionally, this is an area that needs a statewide approach. President Gentile concluded her remarks by stating that she looks forward to continuing to update the BHE on progress toward these goals.

### **State University Presidents' Report – Vincent Pedone, State University Council of Presidents**

Mr. Pedone remarked that Mass Maritime President Admiral McDonald is unable to offer remarks today due to Commencement on his campus, and he will be speaking on President McDonald's behalf. He thanked the BHE for the opportunity and noted that President Richard Lapidus of Fitchburg State University will be providing the State University Presidents' report next year. A year ago, President McDonald made forging new partnerships his main priority, and all 29 institutions have been able to move a meaningful and forward-thinking collaboration agenda, and have embraced the spirit of trust and collaboration. He thanked President Roberson for her work on these collaborations, which include a public higher education advocacy campaign, the development of MOUs on our campuses for residence halls for community college students at the state universities, a pilot program to address student homelessness, as well as the development of 2+2 and 3+1 programs. He thanked everyone for their unprecedented collaborations throughout the year.

Mr. Pedone continued by providing some state university updates. The presidents met last week for a two day retreat in which they discussed expanding collaborations with community colleges, developing shared services with international recruitment, and a public option for expanding doctoral programs for clinical programs not offered at University of Massachusetts. He thanked Chancellor Newman for her support of this. Additional topics discussed during the retreat included a comprehensive review of the Student Health Insurance Program (SHIP), and continued work with the community colleges to maximize PACE. They also heard from Commissioner Santiago regarding the DHE's Equity Agenda, which they embrace. The state universities know the best and only opportunity for socioeconomic mobility is public higher education. Secretary Peyser attended this retreat and the state universities are committed to working with him on all of these initiatives. He remarked that there is a bill pending in the legislature that the state universities have all rallied behind that would capitalize endowments, and he asked the BHE to support this.

Mr. Pedone concluded his remarks by thanking Commissioner Santiago and the BHE on behalf of the state universities.

## **E. REPORT FROM STUDENT ADVISORY COUNCIL**

### List of Documents Submitted

#### *SAC Year End Presentation*

Student member Patel remarked that he is looking forward to his new role as the student trustee at UMass Boston and is excited to continue working with Chancellor Newman. The Student Advisory Council (SAC) is now in summer session and has named the next new student voting member on the BHE, MWCC student Abby Velozo. Ms. Velozo is a dual enrollment student and is only 16 years old. Anna Grade of Bridgewater State University will serve as the non-voting state university segmental member. He acknowledged the hard work and leadership of current non-voting segmental representative Stephanie Teixeira. He added he was grateful and honored to serve on this Board and appreciated the opportunity learn so much about higher education. He thanked the BHE and DHE staff, and turned the meeting over to segmental representative Teixeira.

Segmental representative Teixeira provided a presentation that highlighted SAC activities this academic year. The presentation included the January 2019 Legislative Advocacy Day regarding Open Educational Resources (OER), the Public Higher Education Advocacy Day, and an OER photo campaign highlighting the money students must spend on textbooks, and a joint DHE and SAC presentation at a regional OER summit in May. SAC's main goal was retention, and they additionally partnered with campuses to advance sexual assault agendas on campuses, and participated in the Every Voice Summit at Harvard. SAC also started Town Hall meetings, and they have received coverage from the *Globe* on their efforts. SAC members have held over 80 meetings with different legislators and public officials and several SAC members attended hearings with Joint Committees in the Legislature.

Chair Gabrieli thanked members Patel and Teixeira and remarked that it was a very strong presentation. He presented them each with a small gift from the Board, a pen, to commemorate their hard work and service to the BHE.

## **VI. MOTIONS**

### List of Documents Used

*AAC 19-24 through 19-30*

*SPC 19-08 through 19-09*

*BHE 19-06 through 19-08*

*Commissioner's Year-End Report, PowerPoint, June 18, 2019*

*BHE Authorization to Solicit Public Comment: FRRM Regulations (610 CMR 13), PowerPoint, June 18, 2019*

## **A. Academic Affairs Committee**

Chair Gabrieli turned the meeting over to AAC Chair Hoffman. Chair Hoffman reported that the AAC met last week and considered motions to approve new academic programs at Mount Wachusett Community College and UMASS Lowell. The Committee also considered motions to renew two Commonwealth Honors programs, one at Berkshire Community College and one at Worcester State University, in addition to establishing a new program at MassBay.

Chair Hoffman asked for a motion of approval for AAC 19-26: Approval of Academic Affairs Committee motions 19-24 through 19-25 on a consent agenda. On a motion duly made and seconded, AAC 19-26 was approved unanimously by all board members present, without discussion.

### **AAC 19-26 CONSENT AGENDA AAC 19-24 THROUGH ACC 19-25**

**MOVED:** The Board of Higher Education approves the following motions on a consent agenda:

AAC 19-24 Mount Wachusett Community College  
Associate in Science in Mathematics

AAC 19-25 University of Massachusetts Lowell  
Bachelor of Science in Engineering in Industrial Engineering  
Master of Science in Engineering in Industrial Engineering  
Doctor of Philosophy in Engineering in Industrial Engineering

**Authority:** Article III, Section 6, By-Laws

**Contact:** Winifred M. Hagan, Ed.D, Associate Commissioner for Academic Affairs and Student Success

Chair Hoffman then asked for a motion for approval on AAC 19-30: Approval of Academic Affairs Committee Motions AAC 19-27 through AAC 19-29 on a consent agenda. On a motion duly made and seconded, AAC 19-30 was approved unanimously by all board members present, without discussion.

### **AAC 19-30 CONSENT AGENDA AAC 19-27 THROUGH ACC 19-29**

**MOVED:** The Board of Higher Education approves the following motions on a consent agenda:

AAC 19-27 Renewal of Berkshire Community College in the  
Commonwealth Honors Program

AAC 19-28 Establishment of Massachusetts Bay Community College  
Membership in the Commonwealth Honors Program

AAC 19-29      Renewal of Worcester State University in the Commonwealth  
Honors Program

**Authority:** Article III, Section 6, By-Laws

**Contact:** Winifred M. Hagan, Ed.D., Associate Commissioner for Academic Affairs and Student Success

**B. Strategic Planning Committee**

Chair Gabrieli turned the meeting over to Board member Toner, who stated that Strategic Planning Committee (SPC) Chair Fernando Reimers was unable to attend last week and today's meeting due to scheduling conflicts. He remarked that at the SPC meeting last week, the committee was joined by colleagues from the Massachusetts College of Art and Design for Touch Point III. The Committee reviewed MassArt's mission statement and campus strategic plan. Acting Chair Toner then asked for a motion for approval on SPC 19-08: Approval of Massachusetts College of Art and Design Mission Statement. On a motion duly made and seconded, SPC 19-08 was approved unanimously by all board members present, without discussion.

**SPC 19-08      APPROVAL OF MASSACHUSETTS COLLEGE OF ART AND DESIGN MISSION STATEMENT**

**MOVED:** The Board of Higher Education hereby approves the Massachusetts College of Art and Design revised mission statement to read as follows:

Massachusetts College of Art and Design is a public, independent institution that prepares artists, designers, and educators from diverse backgrounds to shape communities, economies, and cultures for the common good.

The Board further authorizes the Commissioner to forward the same to the Secretary of Education, pursuant to Massachusetts General Laws Chapter 15A, Section 7.

**Authority:** Massachusetts General Laws Chapter 15A, Sections 7, 9(e), and 22(n)

**Contact:** Winifred M. Hagan, Ed.D, Associate Commissioner for Academic Affairs and Student Success

Acting Chair Toner then asked for a motion for approval on SPC 19-09: Approval of Massachusetts College of Art and Design Strategic Plan. On a motion duly made and seconded, SPC 19-09 was approved unanimously by all board members present, without discussion, with the exception of Secretary Peyser, who abstained.

**SPC 19-09 APPROVAL OF MASSACHUSETTS COLLEGE OF ART AND DESIGN STRATEGIC PLAN**

**MOVED:** The Board of Higher Education hereby approves the Massachusetts College of Art and Design Strategic Plan 2018-2023 and authorizes the Commissioner to forward the same to the Secretary of Education for final approval pursuant to Massachusetts General Laws Chapter 15A, Sections 9(l) and 229(l).

**Authority:** Massachusetts General Laws Chapter 15A, Sections 7, 9(f), 9(l), and 22(l); BHE By-Laws, Article I, Section 3(d) and Article III.

**Contact:** Winifred M. Hagan, Ed.D, Associate Commissioner for Academic Affairs and Student Success

**C. Fiscal Affairs and Administrative Policy Committee**

Chair Gabrieli turned the meeting over to FAAP Committee Chair Hopcroft for a recap of the FAAP meeting last week. Chair Hopcroft remarked that last week, the FAAP committee had a very lively discussion and he thanked members Toner, Mattera and Secretary of Education Designee Moreau for their active participation. The FAAP committee received briefings from DHE staff in three important areas: the Optional Retirement Program, the status of collective bargaining agreements, and the FY20 operating and capital budgets. There were no motions for the Committee to consider.

**D. Board of Higher Education**

Chair Gabrieli remarked that there are a number of motions before the BHE today. He asked for a motion for BHE 19-06: Authorization for Commissioner to Solicit Public Comment on 610 CMR 13.00 Financial Review and Risk Monitoring of Institutions of Higher Education. The motion was seconded and before he turned the meeting over to Commissioner Santiago, he expressed gratitude to the THESIS Working Group, the DHE staff, and everyone who has participated in discussions on this important work. He acknowledged members Mattera and Cortez for serving on the THESIS working group and observed that there are some substantive recommendations in this motion.

Commissioner Santiago stated that with regard to the task of assessing the financial risks of private institutions of higher education (IHEs) he refers to this work as "part art and part science." Today, the presentation will be focused on the science with a review of the proposed Financial Review and Risk Monitoring (FRRM) regulations intended to guide the work, but he does not want to minimize the importance of this as an art form, as there will be many nuances and relevant contextual factors that the Board and the Department will need to take into account. He then introduced General Counsel Papanikolaou for a presentation on the motion.

General Counsel Papanikolaou thanked the Commissioner and set the context for the discussion stating that today, we are asking the BHE to vote to put draft FRRM regulations

(610 CMR 13) out for public comment. She provided an overview of the THESIS working group timeline, and summarized the scope and purpose of FRRM regulations, which is to establish the standards and processes to permit the BHE to: 1) identify through annual screening IHEs experiencing significant financial distress, placing them at risk of imminent closure; 2) monitor identified IHEs while they either improve their financial condition or transition to closure; and 3) allow for contingency closure planning and timely public notification in the event of imminent closure.

General Counsel Papanikolaou continued with an overview of the content of the regulations, noting that the proposed annual review process will move the DHE into a more proactive role. She noted that rather than codifying one screening metric in the regulations, the regulations allow screening to be conducted through multiple measures and sources, and not based on a single metric; this is an approach which allows us to be adaptable and is also responsive to feedback that we received from stakeholders. The regulations also include a defined standard of "at risk of imminent closure," which is based on the 18 month rule (*e.g.*, a showing that the institution has the financial resources to substantially fulfill its obligations to enrolled and admitted students for the balance of the current and subsequent academic year, using December 1<sup>st</sup> as the annual threshold date). All IHEs will be screened, and if an IHE is screened in as at risk, the DHE will enter into a dialogue with the IHE. Through this dialogue, we can screen out the false positives, but if the risk is confirmed, the IHE then moves into the "monitoring" phase. Those IHEs must submit risk mitigation plans to the Commissioner, to help the DHE assess the level of the IHE's risk of imminent closure. If the plans demonstrate a likelihood of mitigating risk of imminent closure monitoring will continue; if the plans do not demonstrate a likelihood of mitigating risk then monitoring will be coupled with contingency planning and public notification.

General Counsel Papanikolaou added that the regulations allow for the Commissioner's use of an advisory committee at critical stages of the review and determination process. She stressed the importance of confidentiality throughout these processes and provided an overview of possible sanctions, which include the termination of state financial aid, revocation of degree granting authority, and/or a referral to the AGO. General Counsel Papanikolaou concluded the presentation with an overview of the timeline and next steps, which include a public comment period and hearings, and a subsequent BHE meeting to approve the final regulations for promulgation.

Chair Gabrieli thanked General Counsel Papanikolaou for the presentation, and for her time and care on this matter. He remarked that the goal is to have a process in place this fall in order to avoid going through a second school year post the abrupt closure of Mt. Ida without a plan in place. He added that he wanted to note two things: first, the use of a mixed set of metrics, which was something there was a lot of feedback on; and second, there is an opportunity to work closely and collaborate with NECHE who shares equal obligation to be on top of this.

The BHE engaged in a discussion on the motion. Board member Toner stated that he recognizes need to avoid a self-fulfilling prophecy regarding struggling institutions with premature public notification, but he is still concerned with providing parents, students and guidance counselors with a pressure test as they go through this process of applying to college. He asked if there is a possibility of the BHE coming up with some guidance or questions for parents and students to ask, particularly in light of the number of stories in the media about the doomsday state of higher educations. The Commissioner responded that there is potential for us to publish a "Q&A" on our website. Secretary Peyser suggested that we could work with MEFA and other organizations that work directly with students and families.

Secretary Peyser noted that during the public comment period, we should also be soliciting public comment on what the process might be, which will be just as important. He referenced the annual screening tool and remarked that the inquiry will be to determine whether the IHE has the capacity to teach enrolled and admitted students for the next 18 months, using December 1<sup>st</sup> as the threshold date. He asked about the timing of that annual screening and when would it occur to meet that threshold date. General Counsel Papanikolaou responded that the screening process needs to begin as early as August, perhaps sooner. Secretary Peyser responded that the process should be started even sooner, so the IHEs have more time to respond. General Counsel Papanikolaou agreed, adding that Year 1 is going to be critical because we have such a short runway, but in subsequent years, there will be more time.

Board member Hoffman asked other than IPEDS, is there a sense of what multiple, publicly available measures will be used? Deputy Commissioner for Administration and Finance Tom Simard responded that DHE staff are continuing to solicit and engage stakeholders on the measures, and trend data, emphasizing that we will not be considering just snapshot data. Additionally, non-financial indicators such as acceptance rates and tuition dependency are being considered.

Board member O'Brien asked if there will be an exemption under public records laws to ensure confidentiality. General Counsel Papanikolaou confirmed that legislation is pending which is anticipated to create an explicit statutory exemption to information made or received by the department in furtherance of this FRRM work; she added that in the interim we currently engage in some of this work under both the deliberative process and investigatory exemptions to the public records law. Board member Mattera asked about the inclusion of non-state employees on the advisory committee and the interplay to maintain confidentiality throughout the process. General Counsel Papanikolaou stated that the proposed legislation is intended to include advisory committee work. Meanwhile, there is precedent for the expectation of confidentiality in task force or working group work that falls under current public records exemptions, noting presidential search committees by way of example.

There being no further discussion, Chair Gabrieli called for a vote on BHE 19-06. On a motion duly made and seconded, BHE 19-06 was unanimously approved by all members in attendance.

**BHE 19-06 AUTHORIZATION FOR COMMISSIONER TO SOLICIT PUBLIC COMMENT ON 610 CMR 13.00: FINANCIAL REVIEW AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION**

**MOVED:** The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, and solicit public comment on the proposed regulation 610 CMN 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education.

**Authority:** M.G.L. c. 69, §§ 16, 30A, 31A  
M.G.L. c. 30A, § 3; 950 CMR 20.00

**Contact:** Carlos E. Santiago, Commissioner  
Constantia T. Papanikolaou, Chief Legal Counsel  
Thomas J. Simard, Deputy Commissioner for Administration & Finance

Chair Gabrieli then asked for a motion for BHE 19-07 Board of Higher Education Fiscal Year 2020 Meeting Schedule. He remarked that BHE members may not miss more than three meetings each cycle, and requested that members add these meetings to their calendars. DHE staff will send Outlook invitations later this week. Chair Gabrieli stated that these meetings are important and thanked the BHE for their time and work over the past year. On a motion duly made and seconded, BHE 19-07 was approved by all members in attendance without discussion.

**BHE 19-07 BOARD OF HIGHER EDUCATION FISCAL YEAR 2020 MEETING SCHEDULE**

**MOVED** That the Board of Higher Education approve the schedule of regular board meetings for Fiscal Year 2020, as presented by the Commissioner.

**Authority:** G.L. c. 15A, § 4(f); *By-Laws of the Massachusetts Board of Higher Education*, Articles II and III.

**Contact:** Constantia T. Papanikolaou, General Counsel

Chair Gabrieli then asked for a motion for BHE 19-08 Summer Delegation of Authority. On a motion duly made and seconded, BHE 19-08 was approved by all members in attendance without discussion.

**BHE 19-08 DELEGATION OF SUMMER AUTHORITY TO THE COMMISSIONER**

**MOVED** The Board of Higher Education delegates to the Commissioner until the next regularly scheduled meeting of the Board its authority to take such action, in

consultation with the advice of the Chair or Vice Chair of the Board, as is deemed necessary or desirable.

**Authority:** Massachusetts General Laws Chapter 15A, Section 6

**Contact:** Constantia T. Papanikolaou, General Counsel

## VII. Presentations

### List of Documents Need

#### *Commissioner's Year-End Report*

Chair Gabrieli turned the meeting over to Commissioner Santiago for his end of the year report. The Commissioner began the presentation by thanking his staff who stepped in when he was unable attend meetings or events this year due to personal matters, and thanked the presidents who were accommodating of this. He remarked that it was a challenging, but productive year.

In his FY18 evaluation, the BHE acknowledged the system of public higher education was at a "critical juncture" so in an effort to seize the day, they together identified equity as the top priority. He remarked that other states are looking to Massachusetts to see where we go on our Equity Agenda. He continued by providing an overview of the Vision Statement on equity.

He continued by highlighting the Performance Measurement Reporting System, noting that it will provide the foundation for measuring success at achieving equity. He remarked that this will be intentional as we work towards our goal of equity, and that the institutions have agreed on the metrics and are supportive in sharing their data. He continued by proving an update on the working paper on the Equity Strategic Framework, noting that the time to do this is now.

Board member Hoffman excused herself from the meeting at 12:13 p.m., due to a prior commitment

Commissioner Santiago continued that the Equity Agenda is not just about addressing gaps, but also about another element that is much more complex. We need to change the culture on our campuses so that students of color can choose our campuses for success, not just in school, but in life. He remarked that it is not just success, but creating a welcoming environment and eliminating microaggressions based on race and gender. He noted that this is hard work, and changing culture will start on the Board level.

He continued by highlighting several DHE initiatives that have the potential to align with the equity framework, as well as the BHE goals and a summary of the major DHE and campus based initiatives.

Chair Gabrieli thanked Commissioner Santiago for his leadership. He remarked that our equity policy's success largely will be the sum of the work of our campuses and our work as a Board. It is incumbent to ask ourselves about our policies, because we can hardly ask campuses to be bolder if we have not done so ourselves.

**VIII. OTHER BUSINESS**

There was no other business.

**IX. ADJOURNMENT**

There being no further business, Chair Gabrieli adjourned the meeting at 12:30 p.m.

Respectfully submitted,  
Carlos E. Santiago  
Commissioner of the Department and  
Secretary to the Board

**BOARD OF HIGHER EDUCATION**  
**REQUEST FOR COMMITTEE AND BOARD ACTION**

**NO.:** BHE 19-06

**BOARD DATE:** June 18, 2019

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**AUTHORIZATION FOR COMMISSIONER TO SOLICIT PUBLIC COMMENT ON 610  
CMR 13.00: FINANCIAL REVIEW AND RISK MONITORING OF INSTITUTIONS OF  
HIGHER EDUCATION**

**MOVED:** The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, and solicit public comment on the proposed regulation 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education.

**VOTED:** Motion adopted by the BHE 06/18/2019

**Authority:** M.G.L. c. 69, §§ 16, 30A, 31A  
M.G.L. c. 30A, § 3; 950 CMR 20.00

**Contact:** Carlos E. Santiago, Commissioner  
Constantia T. Papanikolaou, Chief Legal Counsel  
Thomas J. Simard, Deputy Commissioner for Administration & Finance

## Massachusetts Board of Higher Education

### Proposed New Regulations for the Financial Review and Risk Monitoring of Private Higher Education Institutions

#### Background

At its January 22, 2019 meeting, the Board of Higher Education (Board) voted (BHE 19-04) to receive the report of the Transitions in Higher Education: Safeguarding the Interests of Students (THESIS) Working Group, and directed the Commissioner to advance the recommendations as outlined in the report, with target implementation for academic year 2019-2020. The Board further directed the Commissioner to return to the Board, after engaging in informal stakeholder vetting, with implementation recommendations.

Consistent with the Board's request, the Commissioner and members of his staff have engaged in several informal discussions with interested stakeholders to discuss the purpose and intent of the THESIS recommendations, and the anticipated content of regulations and policies that would advance those recommendations. The Commissioner's and Department staff's outreach has included conversations with Presidents and Chief Financial Officers of private higher education institutions, members of the legislature, representatives from the New England Commission of Higher Education (NECHE), staff affiliated with other state agencies (e.g., Executive Office of Education, Attorney General's Office), and representatives from the Association of Independent Colleges and Universities of Massachusetts (AICUM).

Having reviewed the THESIS recommendations and having concluded the informal stakeholder vetting process, the Commissioner recommends the promulgation of regulations that will govern the Department's screening, monitoring, and review of Massachusetts private higher education institutions for financial stability and risk of imminent closure. (*See Attachment A, 610 CMR 13.00*). The proposed regulations apply to all Massachusetts-based, private higher education institutions that are authorized by the Board to grant degrees in the Commonwealth and/or are authorized to participate in the state's financial aid program.

The proposed regulations establish standards and processes to permit the Board (acting by and through the Commissioner and Department staff) to:

- identify, through a screening process, private higher education institutions experiencing significant financial distress, placing them at risk of imminent closure;
- monitor said institutions while they either improve their financial condition or transition to closure; and
- allow for contingency closure planning and timely public notification in the event of imminent closure.

Through this new screening, monitoring, and contingency-planning regulatory process, it is anticipated that the Board and the Department will be able to more accurately identify and timely respond to imminent institutional closures than is possible under the current regulatory structure. Allowing the Department the ability to conduct these screenings and inquiries will help ensure that institutions identified as “at risk of imminent closure” are fully aware of and focused on this risk and, if improvement is not possible, will help apprise the public of an institution’s risk of imminent closure so that prospective and current students and employees can make informed decisions in furtherance of their best educational and financial interests. The proposed regulations also provide the Commissioner with the option of sanctioning an institution that does not cooperate in the screening or monitoring process, or otherwise does not prepare a mitigation plan that is likely to minimize the risks of the institution’s imminent closure, by terminating that institution’s eligibility for state aid.

As set forth in the Timeline below, after approval by the Board, the regulations will be submitted to the Secretary of the Commonwealth’s Office by June 28, 2019, in time for publication in the next available Massachusetts Register. Although a minimum of one public hearing is typically mandated, the Department anticipates holding two to three public hearings on the proposed regulations, and will offer a 4 week public comment period.

Upon the conclusion of the public comment period, the Department will make any necessary changes to the regulations and will bring the final regulations to the Board for approval and promulgation; at that time, the Department will also present the Board with associated policies that may be necessary for implementation. A special meeting of the Board in mid-to-late August (August 19<sup>th</sup>) is recommended, so as to assure that the regulations are effective for implementation in September. (See Timeline, below).

#### Staff Recommendation

Staff recommend that the Board approve 610 CMR 13.00 as attached to be submitted to the Secretary of the Commonwealth’s Office for publication in the Massachusetts Register, which will initiate the presentment of the proposed regulations to the public for comment in accordance with the attached Timeline.

## Comment Period and Regulatory Compliance Timeline

DATE	TASK/OCCURENCE
June 28, 2019	<ul style="list-style-type: none"> <li>• Draft regulations, small business impact/fiscal effect statements, and notice of public hearing will be brought to the Secretary of the Commonwealth’s Office for publication in next edition of the Massachusetts Register (July 12, 2019)</li> <li>• Letters will be sent to DHCD/MMA per E.O. 145</li> </ul>
July 8, 2019	<ul style="list-style-type: none"> <li>• Notices of public hearing will be sent to the Boston Globe for publication (publication in the Globe is likely to occur 2-3 days after submission)</li> </ul>
July 12, 2019	<ul style="list-style-type: none"> <li>• Publication of draft regulations and notices of public hearing in the Massachusetts Register</li> </ul>
July 12, 2019 – August 9, 2019	<ul style="list-style-type: none"> <li>• Public comment period</li> <li>• At least two public hearings will be held at different locations across the Commonwealth</li> </ul>
Week of August 12, 2019	<ul style="list-style-type: none"> <li>• Final regulations distributed to BHE for review</li> </ul>
<b>August 19, 2019</b>	<ul style="list-style-type: none"> <li>• <b>Special BHE meeting</b> (final regulations presented for approval, along with associated policies)</li> </ul>
August 22, 2019	<ul style="list-style-type: none"> <li>• Submit final small business impact statement to Secretary of the Commonwealth’s Office.</li> </ul>
August 23, 2019	<ul style="list-style-type: none"> <li>• Submit final regulations to Secretary of the Commonwealth’s Office for publication in the next edition of the Massachusetts Register (September 6, 2019)</li> </ul>
September 6, 2019	<ul style="list-style-type: none"> <li>• Publication of the final Regulations in the Massachusetts Register</li> <li>• Regulations will be final</li> </ul>

# 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education

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## 13.01: Scope and Purpose

610 CMR 13.00 governs the Board of Higher Education's annual review of independent institutions of higher education to assess and monitor the financial stability and viability of said institutions. This section does not affect the existing jurisdictional exceptions from 610 CMR 2.00 for in-state, independent institutions chartered prior to 1943 that are authorized by the legislature or state constitution to offer degree programs and confer post-secondary degrees in the Commonwealth, except that such institutions which seek access to state financial aid administered by the Board shall be subject to 610 CMR 13.03 for the limited purpose of state financial aid participation. This regulation does not apply to out-of-state institutions with the power to grant degrees to Massachusetts students by virtue of participation in the State Authorization Reciprocity Agreement (SARA).

## 13.02: Definitions

As used in 610 CMR 13.00:

**Accreditor.** A regional or national entity that grants formal recognition or acceptance of an institution or of programs or portions of the institution and is recognized by the U.S. Department of Education as a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs it accredits.

**Board of Higher Education (Board).** The agency established pursuant to the provisions of M.G.L. c. 15A, § 4.

**Commissioner of Higher Education (Commissioner).** The chief executive and administrative officer of the Department and the Board, pursuant to M.G.L. c. 15A, § 6.

**Department of Higher Education (Department).** The agency established pursuant to M.G.L. c. 15A, § 6.

**Independent Higher Education Institution (Institution).** An independent institution of higher education authorized by the Board pursuant to 610 CMR 2.00 to grant degrees and/or authorized to participate in the Commonwealth's state financial aid program through a valid and current state financial aid participation agreement.

**Risk of Imminent Closure.** A determination made by the Department, based on an assessment of an Institution's financial resources, that the Institution is at risk of being unable to continue operations or substantially fulfill its obligations to enrolled and admitted students for the

balance of the current and subsequent academic year, using December 1<sup>st</sup> as the annual threshold measurement date.

## 13.03: Annual Review

The Department shall undertake mandatory annual reviews of Institutions in accordance with the following procedures.

### (1) Screening and Inquiry

- (a) Annual Screening. All Institutions shall be screened annually for the purpose of assessing each Institution's past, present, and future financial stability, 610 CMR 2.07(3)(f), to identify any Institution at Risk of Imminent Closure.
- (b) Screening Tools. The Board shall establish the procedures, including the analytical methodology, to be used in the screening process through policy, after consultation with representatives of Institutions, and shall periodically review and refine such procedures as needed. Said procedures may include, but are not limited to:
  - 1. The use of financial and non-financial indicators from publicly available data sources to conduct a preliminary assessment of whether the Institution has sufficient resources to financially sustain operations in order to substantially fulfill its obligations to enrolled or admitted students.
  - 2. Credit ratings assigned to Institutions by credit rating agencies or services.
  - 3. Any information obtained from other regulatory, oversight, or law enforcement entities, including but not limited to accreditors, the U.S. Department of Education, or the Massachusetts Office of the Attorney General, that could allow the Department to evaluate the sufficiency of the Institution's financial resources.
- (c) Inquiry. The Commissioner shall open an inquiry into each Institution identified as at Risk of Imminent Closure under this section. The inquiry shall include Department staff outreach to the administration of the Institution to provide an opportunity to review the results of the screening process and to submit additional information relevant to the inquiry.

### (2) Monitoring and Risk Mitigation Review

- (a) Submission of Risk Mitigation Plans. If the initial inquiry does not result in satisfactory resolution of the concern(s) identified during the screening process, the Commissioner shall require the Institution to submit its risk mitigation plans, which shall outline the Institution's plans, initiatives, and goals to sustain operations and substantially fulfill its obligations to enrolled and admitted students.

1. The Commissioner's request for risk mitigation plans shall be addressed to the chief executive officer of the Institution and shall direct the Institution to work with Department staff. At a minimum, copies of the Commissioner's request shall be sent to the chair and vice chair of the Institution's governing board.
  2. The information submitted by the Institution in its risk mitigation plans shall, at a minimum, substantiate the Institution's current and prospective resources and financial capacity to fulfill its obligations to enrolled and admitted students for the balance of the current academic year and the entire subsequent year, using December 1<sup>st</sup> as the annual threshold measurement date.
- (b) Review of Risk Mitigation Plans. Department staff shall review the Institution's risk mitigation plans. The Commissioner shall, after Department staff review, make one of the following determinations:
1. if the risk mitigation plans are deemed satisfactory, such that the Institution is not at Risk of Imminent Closure the Department shall monitor the implementation of the plans as set forth in 610 CMR 13.03(c); or
  2. if the Institution does not submit the requested risk mitigation plans, or if the submitted plans do not demonstrate a likelihood that Risk of Imminent Closure will be mitigated during the current and subsequent academic year, the Commissioner shall require contingency planning for closure and, after notice to the Institution and an opportunity to cure, may require notification to the public, as set forth in 610 CMR 13.03(d) and/or may impose sanctions as outlined in 610 CMR 13.06.
- (c) Monitoring. Department staff shall monitor the Institution's progress in implementing its risk mitigation plans and initiatives and meeting its goals. Monitoring shall continue until the Department determines that: (i) the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure; or (ii) the Institution's plans to address the Department's concerns, as originally presented or subsequently amended, have not resulted and are unlikely to result in a satisfactory resolution.
1. Department staff may require periodic and other reports as part of the monitoring process.
- (d) Contingency Planning for Closure and Notification to the Public. If the Commissioner determines, after Department staff review, that an Institution is at Risk of Imminent Closure or that the Institution's plans to address the Department's concerns identified through the screening, inquiry, and monitoring

processes have not resulted and are unlikely to result in a satisfactory resolution of those concerns, the Commissioner may require the following:

1. The Institution shall promptly prepare and submit to Department staff a contingency closing plan in a format prescribed by the Department.
2. The Institution shall inform enrolled students, accepted students, pending applicants, faculty, staff, and other relevant stakeholders that the Department has determined the Institution's financial stability is sufficiently uncertain such that the Department cannot confirm that the Institution will be able to sustain operations or substantially fulfill its obligations to enrolled and admitted students for both the current and subsequent academic years. The communications shall be made in a manner, format, and timing acceptable to the Department. Should the Institution decline to inform stakeholders that it is at risk, the Commissioner may issue a public notification to that same effect.
3. The Department shall maintain a public list of Institutions required to issue notifications pursuant to this section.

### 13.04: Advisory Committee

The Commissioner may convene an ad hoc or standing advisory committee to participate in the review of an Institution during any stage of the process. The Commissioner shall charge the advisory committee with the scope and purpose of its review, and the advisory committee shall submit an evaluation with its findings and recommendations to the Commissioner.

An Institution may request that an advisory committee be convened, if one has not already been convened by the Commissioner, in the event that the Institution has been required to submit a Contingency Plan for Closure and a Notification to the Public. The Commissioner's assent to such a request will not be unreasonably withheld.

### 13.05: Confidentiality

Unless otherwise specified above, the Department shall protect from disclosure and shall maintain as confidential all information made or received by the Department during the screening, inquiry, and monitoring processes to the maximum extent permissible under state law, including but not limited to the investigatory and deliberative process exemptions to the Public Records Law.

### 13.06: Sanctions

If an Institution fails to cooperate with the Department in the screening, inquiry, monitoring, and/or contingency planning and notification processes, or otherwise fails to submit risk mitigation plans that demonstrate a likelihood that the Risk of Imminent Closure will be

mitigated during the current or subsequent academic year, the Commissioner may issue one or more of the following sanctions:

- (1) Termination of eligibility for state aid.
- (2) Suspension or revocation of degree-granting authority, in whole or in part, after notice and opportunity to cure through the development of a corrective course of action, as set forth in 610 CMR 2.10(2).
- (3) Referral by Department staff to the Office of the Attorney General.

#### REGULATORY AUTHORITY

610 CMR 13.00: M.G.L. c. 15A, § 16; M.G.L. c. 69, § 30A; and M.G.L. c 69, § 31A.

# **BHE Authorization to Solicit Public Comment: Financial Review and Risk Monitoring Regulations (610 CMR 13)**

# THESIS Timeline Overview

- April 2018:** Mount Ida College announces abrupt closure
- ✓ **June 2018:** BHE forms THESIS working group
- ✓ **Summer and Fall 2018:** THESIS group meets, conducts research and analysis, develops recommendations
- ✓ **January 22, 2019:** BHE accepts THESIS Working Group report and charges Commissioner to develop implementation recommendations (BHE 19-04)
- ✓ **January–June 2019:** Informal stakeholder vetting; regulation drafting
- ❑ **June 18, 2019:** BHE votes to put draft regulations out for formal public comment (BHE 19-06)
- ❑ **June–August 2019:** Public Comment period; DHE staff revise regulations as needed; finalize policies
- ❑ **August 19, 2019 BHE Meeting:** BHE Vote on final regulations
- ❑ **Fall 2019:** Implementation



# 610 CMR 13: Scope and Purpose

- **Scope:** All MA-based, private higher education institutions (IHEs) that are:
  - authorized by BHE to grant degrees in MA; and/or
  - authorized to participate in state's financial aid program
- **Purpose of Regulations:** Establish standard and processes to permit BHE (acting through Commissioner/ Department) to:
  - identify, through annual screening process, IHEs experiencing significant financial distress, placing them at risk of imminent closure;
  - monitor identified IHEs while they either improve their financial condition or transition to closure; and
  - allow for contingency closure planning and timely public notification in the event of imminent closure.

# 610 CMR 13: Content

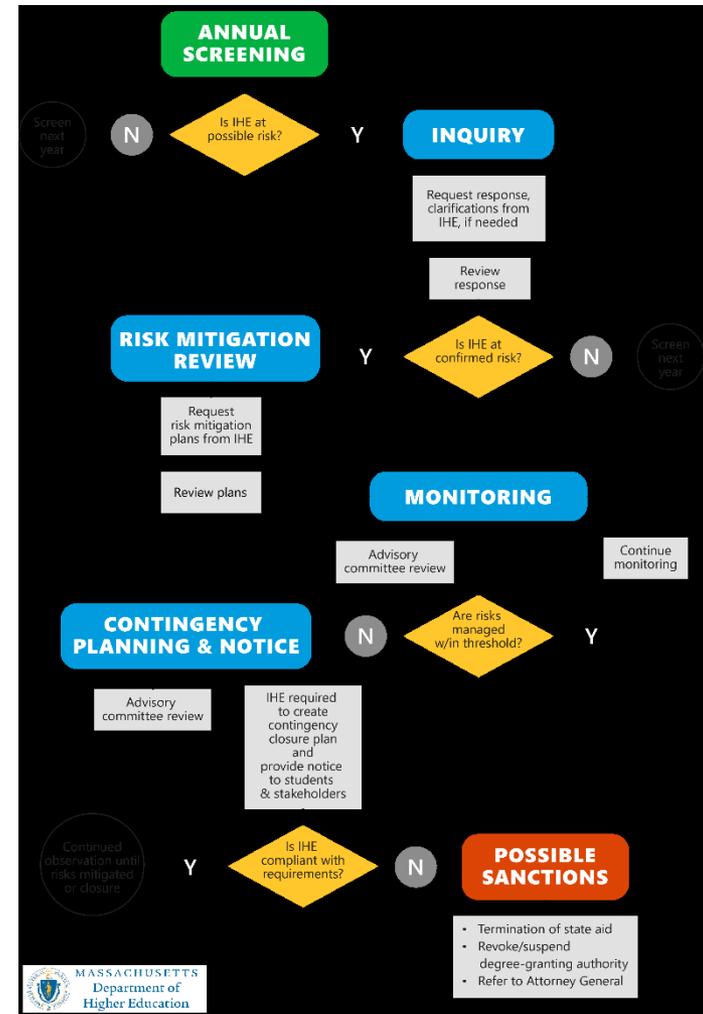
## I. Annual Review Process

- Screening & Inquiry
- Risk Mitigation Review & Monitoring
- Contingency Closure Planning & Notice

## II. Advisory Committee

## III. Confidentiality

## IV. Sanctions



# 610 CMR 13: Content

## I. Annual Review Process

- **ANNUAL SCREENING** of all IHEs
  - BHE Mandate: DHE annual function
  - Multiple measures and sources\*
  - Defined Standard: “at risk of imminent closure”
    - Approaching the 18-month rule\*
- **INQUIRY** opened for those ID'd as “at risk”
  - Opportunity to review results and respond
  - False positives: Screened out
  - Risk confirmed: IHE moves to next phase

\* *To be refined through policy*

# 610 CMR 13: Content

## RISK MITIGATION REVIEW

- IHEs screened as “at risk” must submit Risk Mitigation Plans to Commissioner
  - Content: Must substantiate capacity to substantially fulfill obligations to students for next 18 months
  - Notice to IHE governing board by DHE
- Commissioner reviews and determines\* whether Plans demonstrate likelihood of mitigating “risk of imminent closure”
  - If yes, **MONITORING**
  - If no, **MONITORING** plus **CONTINGENCY PLANNING & NOTICE** \*

\* Use of Advisory Committee Review and Recommendations at these critical stages

# 610 CMR 13: Content

## II. **Advisory Committee**

- May be used by Commissioner at any stage of process and may be requested by IHE
- Policy will delineate specifics
- Year 1+ contemplates mandatory use at critical stages

## III. **Confidentiality**

- To maximum extent permissible under state law

## IV. **Possible Sanctions**

- Termination of state aid (OSFA agreement)
- Revocation/ suspension
- AG referral

# 610 CMR 13: Timeline & Next Steps

- **June 28:** Regulations submitted to Secretary of Commonwealth for publication in Massachusetts Register
- **July 12–August 9:** DHE solicits public comment on proposed regulations (4-week public comment period/ 3 hearings)
- **Week of August 12:** Finalize regulations, with any necessary changes resulting from public comment; distribute to BHE
- **August 19: BHE Special Meeting** for BHE approval of:
  - Final Regulations
  - Associated implementation policies
- **Fall 2019:** Implementation / periodic updates to BHE

# Discussion

# **BHE Motion 19-06**

## **The Board of Higher Education hereby:**

- authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, and
- solicit public comment on the proposed regulation 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education.

## BOARD OF HIGHER EDUCATION

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January 10, 2020  
10:00 a.m.

Massachusetts Department of Higher Education  
One Ashburton Place  
21<sup>st</sup> Floor, Conference Rooms 1 and 2  
Boston, Massachusetts

### Meeting Minutes

A meeting of the Board of Higher Education (BHE) was held on Friday, January 10, 2020 in the 21<sup>st</sup> Floor Conference Room at the Massachusetts Department of Higher Education at One Ashburton Place in Boston, Massachusetts.

#### **The following Board Members were present:**

Chris Gabrieli, Chair  
Sheila Harrity, Vice-Chair  
Ann Christensen  
Veronica Conforme  
Patty Eppinger  
Paul Mattera  
J.D. La Rock  
Jim Peyser, Secretary of Education, Ex-Officio  
Michael O'Brien  
Judy Pagliuca  
Paul Toner  
Abby Velozo

Kush Patel, non-voting student advisor, UMASS segment  
Carlos E. Santiago, Commissioner and Secretary to the Board

#### **The follow Board members were absent:**

Alex Cortez  
Anna Grady, non-voting student advisor, State University segment

### **I. CALL TO ORDER**

Chair Gabrieli called the meeting to order at 10:06 a.m. He stated that this is a rescheduled meeting from the December 17 meeting at Mt. Wachusett Community College that was postponed due to poor weather.

## **II. PUBLIC PARTICIPATION**

Chair Gabrieli reported that there were no requests for public participation.

## **III. WELCOME**

### List of documents used:

*Massachusetts Community College Council of Presidents remarks: Patricia Gentile, North Shore Community College*

*Massachusetts State University Council of Presidents remarks: Richard Lapidus, Fitchburg State*

Chair Gabrieli explained that today's meeting is abbreviated and there will be no formal remarks. The Council of Presidents have submitted written remarks which were included in the meeting materials.

## **IV. ACCEPTANCE OF MINUTES**

Chair Gabrieli brought forth a motion to accept the minutes from the October 22, 2019 meeting. General Counsel Papanikolaou offered a correction to the minutes: Fitchburg State President Lapidus delivered the Council of Presidents remarks. The motion was seconded and the minutes were approved, subject to the correction, by all Board members present.

Board members O'Brien and Christensen arrived at 10:09 a.m.

## **V. MOTIONS**

### List of documents used:

*AAC 20-08 through 20-09*

*FAAP 20-09 through 20-10*

*BHE 20-02*

*PowerPoint Presentation on FY21 Budget Recommendation*

*PowerPoint Presentation on BHE Approval and Adoption of FARM Regulations*

### **A. Academic Affairs Committee**

Chair Gabrieli stated that the BHE is in transition with committee membership and structure and as such, he chaired the committee meetings in December. At the AAC meeting, DHE staff provided an overview of key initiatives, including the Equity Agenda, New Program Review Process, Common Assessment, the Police Career Incentive Pay Program, and Open Educational Resources. There were also two motions, including the first approval of a letter of intent under the new program review process and a motion related to the State Authorization and Reciprocity Agreement (SARA) regulations.

Chair Gabrieli then asked for a motion for approval of AAC 20-08: Approval of Letter of Intent and Authorization for Fast Track Review of Bachelor of Science in Veterinary Technology at the University of Massachusetts Amherst. The BHE engaged in a brief discussion. Board member

LaRock remarked that he would be interested in an analysis of public higher education veterinary and veterinary tech programs to make a more informed assessment of the Tufts University Veterinary subsidy by the Legislature. He said that it was his understanding that the historical reason for that subsidy was that a public option was not available, but with this expansion, is it worth a reconsideration to have a complete picture. Secretary Peyser remarked that the Tufts subsidy is for a veterinary school and not for training veterinary techs, which is an important distinction. Board member Pagliuca remarked that the motion had a lot of narrative content without a lot of numbers on the ROI. The Commissioner clarified that the AAC has recently adopted a new academic program approval process that focuses more on strategic decisions rather than the minutia of the numbers. Board member Pagliuca asked if there will be a review process on how effective the new approval process is. The Commissioner responded that yes, there will be and Deputy Commissioner Marshall is charged with this task. Vice Chair Harrity remarked that vocational schools and community colleges offer veterinary tech programs and this program allows students to continue on this track, which is in high demand.

There being no further discussion, Chair Gabrieli called for a vote on AAC 20-08, which was approved unanimously by all board members present.

**AAC 20-08      APPROVAL OF LETTER OF INTENT OF THE UNIVERSITY OF MASSACHUSETTS AMHERST TO AWARD THE BACHELOR OF SCIENCE IN VETERINARY TECHNOLOGY AND AUTHORIZATION FOR FAST TRACK REVIEW**

**VOTED**            The Board of Higher Education (BHE) has evaluated the Letter of Intent of the **University of Massachusetts Amherst** to award the **Bachelor of Science in Veterinary Technology** and has determined that the proposal aligns with BHE criteria. Accordingly, the BHE authorizes the Commissioner to review the program and to make a final determination on degree granting authority pursuant to the Fast Track review protocol.

**Authority**        Massachusetts General Laws Chapter 15A, Section 9(b); AAC 18-40

**Contact**         Winifred M. Hagan, Ed.D., Senior Associate Commissioner for Strategic Planning and Public Program Approval

Chair Gabrieli then asked for a motion for approval on AAC 20-09: Approval of Amendments to 610 CMR 12.00: Operation of Massachusetts Degree-Granting Institutions Under the State Authorization Reciprocity Agreement (SARA). He remarked that SARA includes 49 states and that California is the only holdout. AAC 20-09 has minor amendments that are necessary because the SARA amendments change over time. On a motion duly made and seconded, AAC 20-09 was approved unanimously by all board members present, without discussion.

**AAC 20-09      APPROVAL OF AMENDMENTS TO 610 CMR 12.00: OPERATION OF MASSACHUSETTS DEGREE-GRANTING INSTITUTIONS UNDER THE STATE AUTHORIZATION RECIPROCITY AGREEMENT (SARA)**

**VOTED**            The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3 and solicit public comment on the proposed amendments to existing regulation 610 CMR 12.00: Operation of Massachusetts Degree-Granting Institutions Under the State Authorization Reciprocity Agreement (SARA).

**Authority**        M.G.L. c. 15A, § 9, as amended by 2017 Mass. Acts ch. 47, § 10; M.G.L. c. 69, § 31A, as amended by 2017 Mass. Acts ch. 47, § 36; M.G.L. c. 15A, § 41; M.G.L. c. 30A; 950 CMR 20.00

**Contact**         Constantia T. Papanikolaou, Chief Legal Counsel  
Ashley Wisneski, Deputy General Counsel

**B.    Fiscal Affairs and Administrative Policy**

Chair Gabrieli remarked that there was a lively FAAP meeting in December, mostly related to the budget. The FAAP Committee also heard a proposal to create an Investment Committee, to be comprised of DHE staff members and others as designated by the Commissioner, to select and monitor the investment offerings in the Plan. The creation of the Investment Committee, and its adherence to an updated Investment Policy Statement, will enable the Department to execute the responsibilities associated with the maintenance of a bona fide retirement plan in a more prudent manner, in keeping with its and the BHE's fiduciary duty. He then called a motion for approval of FAAP 20-09: Establishment of an Investment Committee for the Optional Retirement Program (ORP). The BHE engaged in a brief discussion. Board member Toner remarked that he hopes that participants actually in the ORP will be on the Committee. Board member Pagliuca asked if it makes sense to explicitly state that all things being equal, should there be a nod to institutions based in Massachusetts since we have so many money management institutions in the state already, and it is good for the economy. Secretary Peyser responded that it would be necessary to consult with legal staff on regulations for that within the context of procurement and other requirements. Deputy Commissioner Simard responded that the Massachusetts General Laws require us to have no fewer than two institutions. We currently have TIAA, which is prevalent among institutions of higher education and Fidelity, which is local. There are statutory requirements with which we must comply.

Board member Conforme joined the meeting at 10:24.

There being no further discussion, Chair Gabrieli called for a vote on FAAP 20-09, Establishment of an Investment Committee for the Optional Retirement Program, which was approved unanimously by all members present.

**FAAP 20-09 ESTABLISHMENT OF AN INVESTMENT COMMITTEE FOR THE OPTIONAL RETIREMENT PROGRAM**

**VOTED** The Board of Higher Education hereby approves the Committee Charter establishing an investment committee for the Optional Retirement Program. The Board of Higher Education also hereby approves the Investment Policy Statement for said Committee.

**Authority** M.G.L. c. 15A, Sections 6 and 40; 610 CMR 11

**Contact** Thomas J. Simard, Deputy Commissioner for Administration and Finance

Chair Gabrieli recognized Board member Conforme, who had recently joined the meeting and invited all BHE members to introduce themselves. He stated that the next motion involves the BHE's FY2021 Budget proposal, and noted that Secretary Peyser will abstain on this vote, because pursuant to the BHE's enabling legislation, the budget request will be sent to him. In addition to the actual monetary recommendations, this budget proposal includes some strategic views within the narrative, as it does seem prudent for the BHE to express a multi-year strategic perspective for public higher education. He remarked that the presence of that language is extraordinary and represents a significant and constructive departure from our past practice. He then turned the meeting over to Commissioner Santiago.

Commissioner Santiago stated that he has asked Deputy Commissioner Simard to join him in this presentation to review the details, while he will provide a broader context. Commissioner Santiago referenced the larger goal of the Equity Agenda, noting that Massachusetts is not the first state to do this. There are four states that have designated equity is the highest goal of their state, designated as Talent Innovation and Equity ("TIE") states by the Lumina Foundation, and Massachusetts seeks to be the 5<sup>th</sup> state with the TIE designation. He noted that we are currently in conversation with Lumina on this. In reference to the budget, he wants to highlight Virginia, the most recent TIE state and just this week, their Governor put forth a budget designating \$145 million in support of their own Equity Agenda. Many of their budget elements are not all that different from ours. Virginia addresses affordability in a way that is more expansive than we do, covering family income up to \$100,000 so they get into the middle class. They also address more than just the cost of instruction, but the cost of attendance which includes things like childcare, housing, and transportation. Additionally, students that qualify receive \$1000 per semester, so students can work fewer part time jobs. Another program that funds support services will award institutions \$400 per student that must be invested in students if their students meet certain benchmarks. This is a recognition that other costs of attendance have to be addressed. The Commissioner continued stating, as a reminder, that Massachusetts is the education state, but we also have the largest gaps. He concluded by stating that we should keep in mind that other states are moving in this

direction and this budget proposal is our attempt to reflect the goals that this BHE has set in terms of equity.

The Commissioner continued the presentation by highlighting the key structures of the Equity Agenda. Affordability is a key element which is addressed through the MASSGrant Plus programs. Other elements include policy innovations, funded by the new innovation fund, which includes things such as Open Educational Resources (OER), student supports, culturally relevant pedagogy, and campus climate. All six of these areas have to be addressed for us to achieve our goals.

The Commissioner turned the presentation over to Deputy Commissioner Simard. Deputy Commissioner Simard remarked that it is important to recognize that the budget reflects the BHE's statutory responsibility, and that the narrative addresses both quantitative and qualitative aspects. He stated that we have arrived at a point that our historical-based budgets have left us as at a disadvantage due to a number of factors including the Great Recession. He noted that he was glad the Commissioner referenced the MASSGrant Plus program, and encouraged the BHE to read the preparatory statement in the budget, which calls on us collectively to work on a sustainable and strategic budget strategy moving forward.

Deputy Commissioner Simard continued with an overview of the affordability element, highlighting the \$10 million increase in the state scholarship line item to cover an expansion of the MASSGrant Plus program to Pell-eligible state university students. He noted that MASSGrant Plus is currently limited to community college students and costs approximately \$7 million.

He continued the presentation with an overview of the policy innovations element, which includes an increase of \$2.25 million for the creation and expansion of Early College programs. He noted there has been a significant increase in Early College participation and some of the costs of instruction are subsidized in part by the dual enrollment line item.

He continued with an overview of student supports, noting that there was not a dedicated line item specifically for student supports, so our conversation led us to rethink how we calculate the funding formulas that are both foundation and performance based. Campuses should have access to fixed and flexible supports, and this \$8.23 million the proposed increase would support academic advising, career services, transfer advising, internships, resources to address basic needs and early warning indicators.

Chair Gabrieli remarked that as we move more towards a strategic review, several campuses have pilot programs in this area, so we have an opportunity for randomized controls for evidence here. He referenced the City University of New York Accelerated Study in Associate Programs (CUNY ASAP) program, which is currently being replicated in Ohio. Deputy Commissioner Simard remarked that DHE staff have reviewed what elements of ASAP could work here in Massachusetts, and we are interested in seeing to what extent that model has been replicated and been successful. Board member Pagliuca asked for some more

information on ASAP. Assistant Commissioner Quiroz-Livanis responded that ASAP is a comprehensive program intended to provide wrap-around support services and remove financial barriers to attending college. The main elements include a developmental education redesign, subway passes, last-dollar financial aid, and personalized advising. She noted the research suggests the program is most effective for students who intend to earn associate degrees, but not necessarily baccalaureate degrees..

Deputy Commissioner Simard continued the presentation with an overview of campus climate and culturally responsive pedagogy. The key investment for these elements is the performance management set aside, which funds a number of programs such as credit for prior learning, and competency based learning. Department staff agreed that increased funding in this line item would be the most optimal way to make the appropriate course corrections, and the proposal is to increase funding by \$2.45 million. To add some context to this requested increase, this fund was once at \$7.5 million, and within the total amount of funds for public higher education, and that the entire DHE is less than 10% of all higher education funds, this fund is the only way the Commissioner and the Department team can influence change. He concluded the presentation by noting that the other elements of the budget request include core commitments at maintenance funding levels.

At the conclusion of the presentation, the BHE engaged in a spirited discussion. Board member Pagliuca remarked that she is representing a private institution on this Board and one in particular that serves the target population of the equity agenda, Benjamin Franklin Institute of Technology. She stated that they have many students who apply but do not enroll because of economic need and they would not have access to these funds. She asked if there is any way for there to be funding available for those at risk students to enroll in private institutions, especially for those who enroll in curricula that are not offered in the public sector. The Commissioner responded that the state scholarship line item has been approximately \$100 million for many years, and 38% of that goes to students in private institutions. The \$7 million increase from the Governor was to support the neediest students in the public sector, and was limited to students in our community colleges, which is where we felt the neediest students are concentrated. Board member La Rock added that students enrolled in the private sector are also able to receive Gilbert Grand funds. Board member Pagliuca responded that she is advocating for funds for institutions that are doing great work; not necessarily BFIT but any institution offering programs not in the public sector. Chair Gabrieli asked her to clarify is this an amendment, or just a general strategic discussion. She responded that it was a general strategic discussion and was not requesting an amendment.

Board member Pagliuca asked if Early College programs are serving students who would have already gone to college anyway. Chair Gabrieli responded by referencing data from North Carolina, and clarified that the intent is to benefit all students, and not just the ones going on to college anyway, and that this is one of the first K-12/Higher Ed initiatives that has evaluative data supporting it. Board member Pagliuca responded that if our goal is equity, we do not

necessarily want to just increase our numbers overall. Chair Gabrieli responded that our partner high schools are in Gateway Cities and not in the suburbs.

Board member O'Brien asked if there are funds in this budget to support BHE 20-02, the motion on financial assessment and risk monitoring of institutions. Deputy Commissioner Simard confirmed that there are requested funds in the administration line item to support BHE 20-02 for staff and non-staff costs. Board member O'Brien responded that he thinks expectations are going to be high, and he suggested not being shy about asking for funds for this matter. He additionally remarked that he does not see the next steps, or data and analytics for 5 and 10 years out regarding demographic changes and what that will look like. He suggested that the BHE start to look forward on the upcoming changes and have some early analytic work in this budget. Commissioner Santiago responded that the Department is addressing this through the Performance Management System, but that he shared these concerns about demographic changes.

Board member La Rock thanked Deputy Commissioner Simard for the presentation. He stated that he supports the addition to the state scholarship accounts and to direct operating aid for institutions. He remarked that as a local trustee chair having done the NSCC budget for the last year, even with these additions, we will find ourselves at the college needing to increase tuition and fees because of the decline of tuition revenue due to declining enrollment. He continued, stating that he is considering how the BHE should be thinking of this forthcoming demographic shift and enrollment decline as we build the budget. At NSCC, we do that as sunsetting programs and not filling positions. In terms of enrollment decline, there should be some state standard, and an exploration of what might that be.

Board member Mattera remarked that this this is a very useful discussion, similar to the FAAP discussion at the December meeting. The discussion longer term enrollments is important, as we also focus on short term, unmet need. He stated that at the FAAP meeting he made a motion, which he subsequently withdrew, to fully fund unmet need in this budget request. He stated that he is not interested in redoing that, but rather, he is interested in creating the narrative around the need; the BHE needs to aspire to meet students' financial need through increases in financial aid or else we will lose more students who cannot afford to attend. He encouraged Department and BHE leadership to continue advocating to the Legislature to fully fund that critical need.

Board member Conforme remarked that she commends the increase in dual enrollment funds and asked for an example of an initiative funded through the performance innovative fund. Commissioner Santiago identified the MassTransfer program as an example. Chair Gabrieli stressed the importance of supporting the ability of students to transfer credits earned in Early College programs; that is a critical component of the program because the majority of students do not go on to enroll in the institution of the Early College partner, so they have to be able to transfer those credits earned.

Board member Toner remarked that he is fully in support of the motion and that we are budgeting for the system we have in front of us. He hopes there will be an opportunity to have a two day long retreat on this. It is necessary to have a conversation about where we see higher education going. He believes that we are currently just tweaking around the edges to get a few more kids through, but there is a huge segment of students in the middle that we are missing. We are doing well at either end, but there is a swath of students and families in the middle that are really questioning the value of higher education and we really ought to think about our path forward.

Secretary Peyser stated that we have high aspirations and are currently in the “fix it first” mode, doing things such as repairing buildings that are falling down. He reinforced what other BHE members have stated-- that we are already in a different era with rapid changes. We are struggling with incremental change. To return to the unmet need conversation-- and thinking about getting from “point a and point b”-- affordability and financial aid is one piece of getting students to the finish line, but not the only available tool and we ought to be thinking about this more comprehensively.

There being no further discussion, Chair Gabrieli called for a vote on FAAP 20-10, Approval of the BHE Fiscal Year 2021 Budget. All board members present voted in favor, which the exception of Secretary Peyser, who abstained.

**FAAP 20-10 APPROVAL OF THE BOARD OF HIGHER EDUCATION FISCAL YEAR 2021 BUDGET**

**VOTED** The Board of Higher Education hereby adopts the attached Board of Higher Education operating budget recommendation for Fiscal Year 2021 and further authorizes the Commissioner to submit the Board’s budget recommendation to the Secretary of Education

**Authority:** Massachusetts General Laws Chapter 15A, Section 6, 9 and 15B

**Contact:** Thomas J. Simard, Deputy Commissioner for Administration and Finance

**C. Board of Higher Education**

Chair Gabrieli stated that the next presentation is on the approval and adoption of 610 CMR 610: Financial Assessment and Risk Monitoring of Institutions of Higher Education. He provided a brief summary of the history of the work, dating back to the abrupt closure of Mt. Ida College in April 2018, and the work over the past year. He invited Chief Legal Counsel Papanikolaou to provide a presentation on the motion.

Chief Legal Counsel Papanikolaou began by setting the context for the discussion, stating that today the BHE will be asked to consider proposed revisions to the set of regulations that will govern the BHE and the Department’s annual financial screening and assessments of private institutions of higher education (IHE). At its June 18<sup>th</sup> meeting, the BHE voted to authorize the

Department to solicit public comment on this set of regulations. Since that time, the Department did engage in an extensive public comment period, and the Governor also signed (in November 2019) a very important piece of legislation that established minimum statutory requirements for the BHE's conduct of these financial assessments of private IHEs. The final regulations before the BHE today for approval and adoption include enhancements and clarifications suggested through the public comment process, and also revisions intended to align the regulations with the new law.

Chief Legal Counsel Papanikolaou then summarized the scope and purpose of 610 CMR 13, noting that right now, there are 95 private institutions in Massachusetts, including the 21 IHEs chartered pre-1943 by the legislature before the creation of the BHE. All 95 private IHEs would be subject to the regulations. In its broadest sense, the purpose of the regulations is to establish standards and processes to permit the BHE, acting by and through the Commissioner and the Department, to identify, through an annual screening process, IHEs at risk of imminent closure, to assess and monitor these institutions and to require contingency planning and timely public notification.

She continued with an overview of the regulations, which include annual screening and determination of financial status stages. The annual screening will include measures to eliminate false positives, and processes to notify institutions of the screening results and methodology. The regulations then require institutions identified as "may be at risk" to submit risk mitigation plans, which must include information on an institution's known liabilities and risks, along with contingency closing plans. At this stage, the Commissioner makes a determination of whether an IHE is indeed at risk of imminent closure, and whether the institution will therefore be subject to a public notification requirement, in addition to monitoring and contingency closure planning. Consistent with the new law, this section of the regulations allows the DHE to accept screenings conducted by the accreditor.

Chief Legal Counsel Papanikolaou continued by highlighting the differences between the final regulations and what was presented to the BHE in June, including a new, stand-alone section on contingency closure planning/ public notification which includes more specificity on what must be included in a contingency closure plan to help students complete their programs of study. The confidentiality section of the regulations has also been tweaked to align with the new law which makes it very clear that all information made or received by the BHE or the Department in furtherance of this work is exempt from public records law and will be maintained as confidential. The section on sanctions has remained essentially the same, however, we will be coming back to the Board at a later date with a proposal on how to add fines to the list of permissible sanctions.

Chief Legal Counsel Papanikolaou continued summarizing the public comments received and the resulting changes. She noted that the Department received many requests to add host communities to the stakeholder notification requirements, and also received many comments asking for greater collaboration and information sharing with the accreditor. Comments

received from the Attorney General's Office included a request to expand upon the minimum, mandatory requirements in a closing plan (for example, by adding closed school discharge notifications), and to enhance the public notification requirements by including prospective students to the stakeholders who must receive notification if an institution is deemed "at risk," (e.g., through clear marketing materials).

Regarding the new law which enacted in November 2019, Chief Legal Counsel Papanikolaou stated that the new law aligned closely with the spirit and the intent of the draft regulations. As a result, no major, substantive changes to the draft regulations were required. However, to ensure that the processes in statute and regulation could not be read to conflict in any way, a number of technical, organizational and other edits are recommended.

Regarding next steps, DHE staff will continue to work with NECHE on the MOU, and will prepare any necessary attendant policies for consideration, hopefully for review at the next BHE meeting, if all goes according to plan. After final BHE approval of the regulations, we will file with the Secretary of State's office so the regulations can be in place immediately after BHE approval of the policies and MOU. Meanwhile, Deputy Commissioner Simard and other Department staff will continue to test the metrics on financial screening and institutions will be monitored under our current regulations, 610 CMR 2. Assuming the MOU with NECHE is approved and signed in February, we will receive the first data set in March, and going forward, we will provide the BHE with periodic updates.

Commissioner Santiago responded that he wished to address the MOU with NECHE. Two weeks from today, the U.S. Department of Education (USDOE) has called a meeting with "the triad," which includes the accreditors and regulators. A select number of states has been invited to have a conversation on this issue, and there are many eyes on what Massachusetts is doing because there are so many private institutions here. We have submitted a draft MOU to our regional accreditor and we will come back to the BHE when we are close to an agreement. We have not had a history of working closely with the accreditor, and in many respects, they would prefer we stay out of their business. However, we need work together and better align our work, and we want more transparency. The law allows the regional accreditor to do the initial screening. However, if the screenings are not accurate, it is ultimately our responsibility. Our focus is on students, and ensuring that students are notified in a timely way of IHE financial difficulties so they can continue their academic careers elsewhere. He concluded his comments by stating that he hopes this opens up a new perspective on how regional accreditors can work with state agencies.

After the presentation, the BHE engaged in a discussion. Board member O'Brien remarked that this is a great body of work, and he applauds the Commissioner and the staff. He advised caution that an advisory committee could leak information, and asked if they could be exempt from open meeting law. He additionally stated that expectations for these regulations are high and the public may already believe this has been underway. He remarked that he is concerned that another closure could happen between now and when this gets going and that people

should recognize that this is ongoing effort. Board member Pagliuca asked if there is a portal through which someone at an institution could communicate with the DHE, noting that people at an institution will know there is a potential crisis long before NECHE knows. The Commissioner responded that we have some examples of how the process worked well; Newbury College was an institution that was open and we knew early that they would be closing. Board member O'Brien remarked that he has mentioned this before but he suggested there be a confidential channel of communication to bring concerns forward.

Board member Mattera asked if there is a provision on the underlying statute on trustee training. Chief Legal Counsel Papanikolaou responded that there are two separate provisions in the new law on training- one for trustees of public institutions and one for trustees of private IHEs. For private IHE's, the statute requires trustees to be trained every four years, and the DHE is working with AICUM on this provision which will probably result in an annual IHE certification requirement. For public higher education trustees, the training requirements are more specific and the BHE is required to develop and deliver the training, in consultation with state partners such as the Inspector General's Office (IGO) and the Attorney General's Office. In addition, the BHE must track the trustee training, which must be completed once every four years. We are working closely with the IGO and our other state partners to develop and deliver this trustee training, with the goal of offering the first comprehensive training this summer.

Secretary Peyser remarked that he wanted to pause and note this watershed moment in regard to the authority of the BHE in offering protections to our students who are both residents and visiting. It is a major change. He additionally acknowledged the leadership and hard work the Department and Department staff in getting this done, the collaboration with AICUM and the AGO, and the work with the legislature. He remarked that the regulations have struck the right balance with fairness to the students and to the institutions. This is a big deal and success has many fathers and mothers, and he is very grateful for all of the work.

Chair Gabrieli thanked the Secretary and noted that he has been instrumental in this too. He additionally thanked Board members Mattera and Cortez for their early work on the THESIS working group, as well.

There being no further discussion, Chair Gabrieli called for a vote on BHE 20-02, Approval and Adoption of 610 CMR 13.00: Financial Assessment and Risk Monitoring of Institutions of Higher Education. All members present voted in favor unanimously.

**BHE 20-02<sup>1</sup> APPROVAL AND ADOPTION OF 610 CMR 13.00: FINANCIAL ASSESSMENT AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION**

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<sup>1</sup> While the motion number of the document considered by the Board for this agenda item during January 10, 2020 meeting was BHE 20-02, the actual motion document number has since been updated to BHE 20-03 to correct a

**VOTED** The Board of Higher Education (BHE), having solicited and reviewed public comment in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, hereby adopts the following regulations: Financial Assessment and Risk Monitoring of Institutions of Higher Education, to be codified at 610 CMR 13.00.

The BHE directs the Commissioner to develop an implementation plan and policy, including a proposed Memorandum of Understanding (MOU) with the New England Commission of Higher Education (NECHE) consistent with statutory and regulatory requirements, for BHE consideration and at its next regularly scheduled board meeting.

**Authority** M.G.L. c. 69, § 31B; M.G.L. c. 15A, § 9; M.G.L. c. 30A, § 3; and 950 CMR 20.00

**Contact** Carlos E. Santiago, Commissioner  
Constantia T. Papanikolaou, Chief Legal Counsel  
Thomas J. Simard, Deputy Commissioner for Administration & Finance

## **VI. OTHER BUSINESS**

Student member Velozo invited the BHE to a luncheon after the next meeting with members of the Student Advisory Council. She also stated that students from Cape Cod Community College were interested in discussing requirements for serving as a student trustee, including the statutory requirement to be a full-time student.

## **VII. ADJOURNMENT**

There being no further business, Chair Gabrieli adjourned the meeting at 12:09 p.m.

Respectfully submitted,  
Carlos E. Santiago  
Commissioner of the Department and  
Secretary to the Board

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motion sequencing error. All future references hereto will be BHE 20-03, to prevent confusion with the BHE 20-02 floor motion adopted on October 22, 2019.

**BOARD OF HIGHER EDUCATION**  
**REQUEST FOR COMMITTEE AND BOARD ACTION**

**NO.:** BHE 20-03

**BOARD DATE:** January 10, 2020

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**APPROVAL AND ADOPTION OF 610 CMR 13.00: FINANCIAL ASSESSMENT AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION**

**MOVED:** The Board of Higher Education (BHE), having solicited and reviewed public comment in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, hereby adopts the following regulations: Financial Assessment and Risk Monitoring of Institutions of Higher Education, to be codified at 610 CMR 13.00.

The BHE directs the Commissioner to develop an implementation plan and policy, including a proposed Memorandum of Understanding (MOU) with the New England Commission of Higher Education (NECHE) consistent with statutory and regulatory requirements, for BHE consideration and at its next regularly scheduled board meeting (February 4, 2020).

**VOTED:** Motion adopted by BHE 1/10/2020.

**Authority:** M.G.L. c. 69, § 31B; M.G.L. c. 15A, § 9; M.G.L. c. 30A, § 3; and 950 CMR 20.00

**Contact:** Carlos E. Santiago, Commissioner  
Constantia T. Papanikolaou, Chief Legal Counsel  
Thomas J. Simard, Deputy Commissioner for Administration & Finance

## **Massachusetts Board of Higher Education**

### **Approval of Final Regulations for the Financial Assessment and Risk Monitoring of Private Higher Education Institutions**

#### Background

At its June 18, 2019 meeting, the Board of Higher Education (BHE or Board) voted (BHE 19-06) to authorize the Commissioner to solicit public comment on proposed regulations that will govern the Department's screening, monitoring, and review of Massachusetts private higher education institutions for financial stability and risk of imminent closure.

On June 28, 2019, the regulations were submitted to the Secretary of the Commonwealth's office to be put out for public comment. The Department elected to hold three public hearings – in Worcester, Springfield, and Boston – and maintained the originally anticipated 4-week public comment period.

On July 12, 2019, notice of the three public hearings on the proposed regulations was published in the *Massachusetts Register* (the Secretary of the Commonwealth's official regulatory publication) and in the *Boston Globe*, the *Worcester Telegram & Gazette*, and the *Springfield Republican*. The public comment period also commenced the same day. The public hearings were held in Worcester and Springfield on August 5, 2019 and in Boston on August 8, 2019. The Commissioner also, at the request of two legislators from the region, held a town meeting in Amherst on July 26, 2019; though this meeting did not constitute an official public hearing pursuant to M.G.L. c. 30A, many comments were received and were taken under consideration.

During the public comment period, the Department received thirteen written comments. At the Springfield public hearing, the Department received four comments. At the Boston public hearing, the Department received three comments. Two written comments were also submitted after close of the public comment period.

After the close of the public comment period, and while the Department was evaluating the comments and considering amendments to the regulations, the Legislature moved forward with a revised statute, based in part on a bill proposed by Governor Baker in March 2019, that established minimum statutory requirements for the BHE's conduct of financial assessments of private higher education institutions. The bill was enacted on November 6, 2019 and Governor Baker signed it into law on November 14, 2019. The new law aligns closely in spirit with the draft regulations as initially approved by the BHE; however, in order to ensure that the language of and processes envisioned by the statute and the regulations cannot be read to conflict in any way, the Department made additional changes to the regulations.

## Changes to Regulations

As a result of the public comment received as well as the enactment of the new law, the Department has made several changes to the regulations since the Board first approved the regulations to be put out for public comment in June. These changes are contained in a redline version of the regulations (**Attachment A**).

### 1. Changes Resulting from Public Comment

The public comments received had several overarching themes and broad recommendations, which the Department addresses as follows:

#### A. Community Involvement

- *An institution's host community should be kept informed of and receive notice regarding the possible closure of said institution.*

The Department agrees that it is important for the local community to receive notice, along with other relevant stakeholders, when an institution is determined to be at risk of imminent closure.

#### B. The Role of the Accreditor

- *The Department should collaborate with NECHE/let NECHE conduct the screening/defer to NECHE and its new early-warning dashboard process as developed by the Boston Consortium.*

The Department agrees that a collaboration with the regional accrediting agency would be beneficial and continues to explore ways to work in partnership with NECHE to advance and implement some of the requirements of these regulations, while balancing the need to enforce the BHE's consumer protection role.

- *These regulations are redundant now that NECHE has adopted its own evaluation system.*

The Department disagrees that state oversight of the financial stability of private institutions of higher education is unnecessary because NECHE announced that it will also be conducting an enhanced review of the financial stability of institutions that it accredits. The "triad" concept of higher education regulatory oversight, which involves a balanced relationship of regulatory responsibility between and among the state authorizing agencies (the Board), accreditors (NECHE), and the federal government (USDOE), is well established. The Board, working by and through the Department, has a different responsibility and focus than NECHE, as

the Board has a consumer protection obligation that is not uniformly shared by NECHE, and the Board, as a state entity, is accountable to the public in a way that NECHE is not.

In addition, there are 95 private higher education institutions in the Commonwealth, and not all are accredited by NECHE; because NECHE will not be able to use its new evaluation system on institutions accredited by different accrediting agencies, the Department will need to conduct its own evaluations on a subset of those 95 institutions. However, as stated above, the Department is interested in collaborating with NECHE to help advance and implement some of requirements of these regulations and continues to pursue a partnership.

C. Confidentiality is Essential

- *The regulations could actually close institutions that may not have needed to close because the preliminary disclosure of which institutions are struggling could result in a student/applicant exodus and therefore closure would be a self-fulfilling prophecy.*

The Department agrees that it is important to avoid a scenario wherein an institution's financial difficulties become public knowledge too early. The Department shares the commenters' concerns about confidentiality and reiterates its position, as set forth in 13.06, that all records received or created through this process will be kept confidential to the maximum extent permitted by law. It is important to note that the new law guarantees confidentiality for "any information submitted to or developed by the board in furtherance of" the statute, so the concerns raised about confidentiality during the public comment process should be largely assuaged.

D. Data/Metric/Process Questions

- *The metric is unknown so it can't be evaluated/the Department should not rely on a single metric/the TVM is flawed.*

Although the THESIS report discussed a single metric, the Department has since moved away from that approach and is exploring the use of multiple metrics, as well as a collaboration with the regional accrediting agency for purposes of the screening process. Institutions that are screened in under the BHE regulations will have the opportunity to review and respond to the BHE's analytical methodology.

E. Application to Public Institutions

- *The regulations should also apply to public institutions, since the demographic and financial difficulties facing private higher education are shared by the public sector.*

The Department recognizes that public higher education institutions can also face financial challenges, and the possible closure of programs. However, Massachusetts law has established a different set of requirements and regulations for the Department's oversight of public higher education. Public institutions have extensive statutory reporting requirements, are required to submit performance measurement reports, financial data and statements to the Department on an annual basis, and most, if not all, of their data is publicly available. In addition, the Board also has the existing statutory authority to recommend to the legislature the closure or consolidation of public institutions in whole or in part. Because the Department already exercises considerable authority with respect to public institutions of higher education and has mechanisms in place to assess and respond appropriately to their financial health, amending the regulations to include public institutions is not necessary and would not be appropriate.

#### F. Mandatory Notification

- *If an institution is deemed to be at risk of imminent closure such that contingency planning for closure is triggered, the institution should be required to notify the public; the notification should not be optional.*

The Department agrees that it is important for students, families, employees, and the local community to be aware of the status of an institution and to be able to plan and adjust accordingly if an institution's financial stability is such that it is at risk of closing within the ensuing 18 months. However, the Department is also aware, through its extensive experience in dealing with institutional closures of all kinds, sizes, and timelines, that each closing institution has differing circumstances and nuances that may impact the timing of when public notification is required. The amended regulations take into account all of these considerations and strike an appropriate balance. Under the amended regulations, public notification is mandatory, consistent with the new law, but the Commissioner retains discretion on when and how to notify the public, so as to permit a non-disruptive transition. The Commissioner, after providing the institution with notice of his/her decision and an opportunity to cure, will exercise that discretion based on his or her assessment of the best interests of all involved, including and especially students, faculty, staff, and community stakeholders.

#### G. Changes to Existing Law

- *Host communities should be offered a "right of first refusal" if tax-exempt land is offered for sale.*
- *Chapter 93A should apply to non-profit institutions of higher education.*
- *Struggling institutions should be allowed to access restricted funds in their endowments if needed to teach-out students before closure.*

The Department appreciates the suggestions about amendments or improvements to existing laws that might enhance legal protections for students and communities. However, the Department is not able to make changes to existing statutory law through the regulatory process and cannot incorporate into its regulations requirements that fall beyond the scope of its statutory authority.

Based on the comments received, Department staff recommends the following adjustments to the proposed final regulations, as reflected in the attached redline document (Attachment B):

- 13.03: The revised language clarifies that the Department can delegate the conduct of the annual screening process and requires consultation with stakeholders, which can include institutional accreditors, before the screening tools are established.
- 13.04(1)(a): The revised language expands upon the requirements for contingency closing plans.
- 13.04(1)(b): The revised language requires that notification of a determination that an institution is at risk of imminent closure also be sent to local community leaders and other state government agencies. Another revision requires the institution to disclose that such a determination has been made in any promotional materials.
- 13.06: The revised language clarifies that information received or created by the Advisory Committee is also subject to confidentiality restrictions.

For a summary of all public comments received, see **Attachment B**.

## 2. Changes Resulting from the Enactment of 2019 Mass. Acts c. 113

The new law (**Attachment C**) necessitated some changes to the terminology and organizational format of the regulations, though the essence of the regulations remains the same. Based upon the language in the new law, Department staff recommends the following adjustments to the proposed final regulations, as reflected in the attached redline document (Attachment B):

- The term "financial review" has been replaced throughout with "financial assessment" to better align with the terminology in the statute which requires the Board to "annually assess each institution's financial information..."

- The statute grants the Board jurisdiction over institutions chartered prior to 1943 for purposes of the financial assessment and enforcement of any risk mitigation planning. Any references in the earlier draft of the regulations that tended to create a differentiation between those institutions and post-1943 institutions have been eliminated, since for purposes of 610 CMR 13.00, all private institutions of higher education will be subject to the same Board authority.
- The “Inquiry” phase of the earlier draft of the regulations has been renamed “Notification and Consideration of Other Information Relevant to the Screening,” and the language therein has been slightly amended, both in order to align with the language and process required by the new law.
- The “Monitoring and Risk Mitigation Review” section has been renamed “Determination of Financial Risk” to align with the terminology in the statute. The language in that section has also been slightly amended to reflect the requirements in the new law.
- Under “Review and Evaluation of Risk Mitigation Plans” the language has been revised to align with the statute’s public notification requirements.
- The statute requires that the contingency closure process begin upon a determination that an institution may be at Risk of Imminent closure; accordingly, language was added to require an initial contingency closure plan at the same time that an institution submits its risk mitigation plan.

### Recommendation

Staff recommends that the Board approve and adopt 610 CMR 13.00 as attached to be submitted to the Secretary of the Commonwealth’s office for final promulgation in accordance with M.G.L. c. 30A.

# 610 CMR 13.00: Financial ~~Review~~Assessment and Risk Monitoring of Institutions of Higher Education

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## 13.01: Scope and Purpose

610 CMR 13.00 governs the Board of Higher Education's annual ~~review~~assessment of independent institutions of higher education to ~~assess~~review and monitor the financial stability and viability of said institutions, as authorized pursuant to M.G.L. c. 69, § 31B. This section does not affect the existing jurisdictional exceptions from the requirements set forth in 610 CMR 2.00 for certain in-state, independent institutions chartered prior to 1943 that are authorized by the legislature or state constitution to offer degree programs and confer post-secondary degrees in the Commonwealth, ~~except that such institutions which seek access to state financial aid administered by the Board shall be subject to 610 CMR 13.03 for the limited purpose of state financial aid participation~~. This regulation does not apply to out-of-state institutions with the power to grant degrees to Massachusetts students by virtue of participation in the State Authorization Reciprocity Agreement (SARA).

## 13.02: Definitions

As used in 610 CMR 13.00:

**Accrediting Agency**~~tor~~. A regional or national entity that grants formal recognition or acceptance of an institution or of programs or portions of the institution and is recognized by the U.S. Department of Education as a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs it accredits.

**Board of Higher Education (Board)**. The agency established pursuant to the provisions of M.G.L. c. 15A, § 4.

**Commissioner of Higher Education (Commissioner)**. The chief executive and administrative officer of the Department and the Board, pursuant to M.G.L. c. 15A, § 6.

**Department of Higher Education (Department)**. The agency established pursuant to M.G.L. c. 15A, § 6.

**Independent Higher Education Institution (Institution)**. An independent institution of higher education located in the Commonwealth and authorized to grant degrees pursuant to any general or special law. An independent institution of higher education authorized by the Board pursuant to 610 CMR 2.00 to grant degrees and/or authorized to participate in the Commonwealth's state financial aid program through a valid and current state financial aid participation agreement.

**Risk of Imminent Closure**. A determination made by the ~~Department~~Commissioner, based on an assessment of an Institution's financial resources, that the Institution is at risk of being

unable to continue operations or substantially fulfill its obligations to enrolled and admitted students for the balance of the current and subsequent academic year, using December 1<sup>st</sup> as the annual threshold measurement date.

### 13.03: Annual ~~Review~~Financial Assessment

The Department shall ~~undertake~~ensure that mandatory annual ~~reviews~~financial assessments of Institutions are conducted in accordance with the following procedures.

#### (1) ~~Screening and Inquiry~~

- (a) Annual Screening. All Institutions shall be screened annually for the purpose of assessing each Institution's past, present, and future financial stability, ~~610-CMR 2.07(3)(f)~~, to identify any Institution potentially at Risk of Imminent Closure.
- (b) Screening Tools. The Board shall establish the procedures, ~~including the analytical methodology~~, to be used in the screening process ~~through policy~~, after consultation with representatives of Institutions and other stakeholders, and shall periodically review and refine such procedures as needed. Said procedures may include, but are not limited to:
  1. The use of financial and non-financial indicators from publicly available data sources to conduct a preliminary assessment of whether the Institution ~~has sufficient resources to financially sustain operations in order to substantially fulfill its obligations to enrolled or admitted students~~may be at Risk of Imminent Closure.
  2. Credit ratings assigned to Institutions by credit rating agencies or services.
  3. Any information obtained from other regulatory, oversight, or law enforcement entities, including ~~but not limited to Accreditors~~crediting Agencies, the U.S. Department of Education, ~~or and~~ the Massachusetts Office of the Attorney General, that could allow the Department to evaluate the sufficiency of the Institution's financial resources.
- (c) Inquiry Notification and Consideration of Other Information Relevant to the Screening. The Commissioner shall ~~open an inquiry into~~notify each Institution identified through the screening process as potentially at Risk of Imminent Closure under this section. The ~~inquiry notification~~ shall include Department staff outreach to the administration of the Institution to provide an opportunity to review the results of the screening process, including the analytical methodology, and to submit additional information that they or the Commissioner deem relevant to the screening results, including updated data not taken into account as part of the methodology used in inquiry.

#### (2) ~~Monitoring and Risk Mitigation Review~~Determination of Financial Status

If the screening results, including any information provided to the Department in 610 CMR 13.03(1)(c), indicate an Institution may be at Risk of Imminent Closure, the Commissioner shall provide the Institution with a summary of the basis for his or her determination and require the Institution to submit information, in the form of a risk mitigation plan, to accurately and fairly determine the institution's financial status and likelihood of imminent closure and to monitor its condition, and prepare a contingency closure plan.

- (a) Submission of Risk Mitigation Plans. ~~If the initial inquiry does not result in satisfactory resolution of the concern(s) identified during the screening process, the Commissioner shall require the Institution to submit its risk mitigation plans, which~~The Institution's risk mitigation plans shall, at a minimum, inform the Board of any known liabilities, risks, or financial issues and outline the Institution's plans, initiatives, and goals to sustain operations and to substantiate its current and prospective resources and financial capacity to address the Risk of Imminent Closure. substantially fulfill its obligations to enrolled and admitted students.

The Commissioner's request for risk mitigation plans shall be addressed to the chief executive officer of the Institution and shall direct the Institution to work with Department staff. ~~At a minimum, e~~Copies of the Commissioner's request shall be sent to the chair and vice chair(s) of the Institution's governing board.

~~—The information submitted by the Institution in its risk mitigation plans shall, at a minimum, substantiate the Institution's current and prospective resources and financial capacity to fulfill its obligations to enrolled and admitted students for the balance of the current academic year and the entire subsequent year, using December 1<sup>st</sup> as the annual threshold measurement date.~~

- (b) Review and Evaluation of Risk Mitigation Plans. Department staff shall review the Institution's risk mitigation plans and evaluate the Institution's Risk of Imminent Closure. The Commissioner shall, after Department staff review, make one the following determinations:
1. if the risk mitigation plans are deemed satisfactory, such that the Institution is deemed no longer not at Risk of Imminent Closure, the Department shall monitor the implementation of the plans as set forth in 610 CMR 13.03(3)(e); or
  2. if the Institution does not submit the requested risk mitigation plans, or if the submitted plans do not demonstrate a likelihood that Risk of Imminent Closure will be mitigated during the current and subsequent academic year, the Commissioner shall require continued contingency planning for closure and, after notice to the Institution and an opportunity to cure, ~~may require~~

notification to the public, as set forth in 610 CMR 13.043(d) and/or may impose sanctions as outlined in 610 CMR 13.067.

**(3) Monitoring.**

Department staff shall monitor the Institution's progress in implementing its risk mitigation plans and initiatives and meeting its goals. Monitoring shall continue until the Department determines that: (i) the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure; or (ii) the Institution's plans to address the Department's concerns, as originally presented or subsequently amended, have not resulted and are unlikely to result in a satisfactory resolution.

Department staff may require periodic and other reports as part of the monitoring process.

## 13.04: Contingency Planning for Closure and Notification to the Public

~~Contingency Planning for Closure and Notification to the Public. If the Commissioner determines, after Department staff review, that an Institution is at Risk of Imminent Closure or that the Institution's plans to address the Department's concerns identified through the screening, inquiry, and monitoring processes have not resulted and are unlikely to result in a satisfactory resolution of those concerns, the Commissioner may require the following:~~

~~(2)(1) Contingency Planning for Closure. All contingency closure plans required by the Commissioner from an institution shall be submitted by the institution to Department staff. The Institution shall promptly prepare and submit to Department staff a contingency closing plan in a format prescribed by the Department. While the development of contingency closure plans is typically an iterative process, all complete contingency closure plans must, in addition to any elements required by M.G.L. Chapter 69, Section 31B, include the development of transfer and articulation agreements for students, provide a comprehensive budget which shows the existence and commitment of sufficient resources to sustain the institution's educational offerings through closure, and consider the broader impacts of closure on the institution's key constituencies, including faculty, staff, and the host community.~~

~~(2) Notification. An institution required to post public notification based on a determination made by the Commissioner under section 13.03(2)(b)(2) The Institution shall inform enrolled students, accepted students, pending applicants, faculty, staff, and other relevant stakeholders, including the chief executive officer of the host community, the elected state representative and senator in the legislative district where the Institution is located, the Secretary of Housing and Economic Development, and the Secretary of Labor and Workforce Development, that the Department has determined the Institution's financial stability is sufficiently uncertain such that the Department cannot confirm that the Institution will be able to sustain operations or substantially fulfill its obligations to~~

enrolled and admitted students for both the current and the subsequent academic years. The communications shall be made in a manner, format, and timing acceptable to the Department. The Institution shall also include clear and conspicuous notice in any promotional materials aimed at recruiting or retaining students. Should the Institution decline to inform stakeholders that it is at risk, the Commissioner may issue a public notification to that same effect.

- (3) The Department shall maintain a public list of Institutions currently required to issue notifications pursuant to this section.
- (4) Institutions required to submit contingency closure plans to the Department continue to be subject to the requirements set forth in 610 CMR 13.03(2) and (3), either until a determination is made by the Department that the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure or until the Institution is closed.

### 13.054: Advisory Committee

The Commissioner may convene an ad hoc or standing advisory committee to participate in the review of an Institution during any stage of the process. The Commissioner shall charge the advisory committee with the scope and purpose of its review, and the advisory committee shall submit an evaluation with its findings and recommendations to the Commissioner.

An Institution may request that an advisory committee be convened, if one has not already been convened by the Commissioner, in the event that the Commissioner has determined that the Institution has been will be required to submit a Contingency Plan for Closure and a Notification to the Public. The Commissioner's assent to such a request will shall not be unreasonably withheld.

### 13.065: Confidentiality

Unless otherwise specified above, the Board and the Department shall protect from disclosure and shall maintain as confidential all information made-submitted to or developed or received by the Board, acting by or through the Commissioner, the Department, or the Advisory Committee, pursuant to and in furtherance of this regulation, during the screening, inquiry, and monitoring processes to the maximum extent permissible under state law, including but not limited to the investigatory and deliberative process exemptions to the Public Records Law.

### 13.076: Sanctions

If an Institution fails to cooperate with the Department in the screening, inquiry, monitoring, and/or contingency planning and notification processes, or otherwise fails to submit risk mitigation plans that demonstrate a likelihood that the Risk of Imminent Closure will be mitigated during the current or subsequent academic year, the Commissioner may issue one or more of the following sanctions:

(1) Termination of eligibility for state aid.

(2) Suspension or revocation of degree-granting authority, in whole or in part, after notice and opportunity to cure through the development of a corrective course of action, as set forth in 610 CMR 2.10(2).

(3) Referral by Department staff to the Office of the Attorney General.

#### REGULATORY AUTHORITY

610 CMR 13.00: M.G.L. c. 15A, § 16; M.G.L. c. 69, § 30A; and M.G.L. c 69, § 31A [and 31B, as amended by 2019 Mass. Acts c. 113.](#)

## Attachment B (BHE 20-03)

### Summary of Public Comment Received on 610 CMR 13.00

DATE	NAME/TITLE/INSTITUTION	COMMENT
7/26/19 (oral and written)	Kenneth Rosenthal, Interim President, Hampshire College	<ul style="list-style-type: none"> <li>• A college's alumni contributions and positive impacts on society should also be considered when evaluating the strength of an institution's financial stability.</li> <li>• Hampshire College is partially responsible for the revitalization of Northampton's downtown area, and its institutions (e.g., International Yiddish Book Center, Eric Carle Museum) are of significance to Hampshire County.</li> <li>• The TVM or other metrics utilized by DHE should be calibrated to not over-emphasize financial risks.</li> </ul>
7/26/19 (oral)	Ed Bourgeois, Amherst resident	<ul style="list-style-type: none"> <li>• The state should consider community and environmental impacts when closing farm operations housed at a land grant university like UMass Amherst.</li> </ul>
7/26/19 (oral and written)	Kevin McCaffrey, Director of Government and Community Relations, Mount Holyoke College	<ul style="list-style-type: none"> <li>• Collaborating with NECHE will ensure effectiveness, efficiency, and fairness in preventing school closures and maintaining stability in communities that rely on the higher education sector.</li> </ul>
7/26/19	Laura Wenk, Faculty, Hampshire College	<ul style="list-style-type: none"> <li>• Diversity of Massachusetts' colleges and universities is important to social justice, to ensure that there is a college for everyone regardless of background.</li> <li>• The proposed regulations make sense.</li> <li>• The state should consider what can be done to decrease future cost increases at all institutions, such as providing free healthcare to all so that institutions do not have to bear costs of healthcare for faculty and staff.</li> </ul>
7/26/19 (oral)	Lynn Griesemer, President, Amherst Town Council, Town of Amherst	<ul style="list-style-type: none"> <li>• The potential closure of Hampshire College required Amherst to consider unprecedented issues such as impacts resulting from layoffs, loss of health insurance, and less town services support (e.g. loss of Hampshire police force) because many Hampshire College personnel live in Amherst.</li> <li>• DHE should work with other state agencies in other sectors to consider community impacts that may result if a college closes.</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
7/26/19 (oral)		<ul style="list-style-type: none"> <li>• DHE should ensure that institutions identified during the screening process each year are kept confidential to prevent a potential “death list” of institutions from being published, which could result in self-fulfilling closure prophecies at those institutions.</li> <li>• The state should consider its role in helping institutions thrive in addition to protecting students in the event of institutional closure.</li> <li>• DHE should consider how regulations could provide opportunity to assess community impacts of an institution’s closure.</li> <li>• If Hampshire College were to close, there would be significant, detrimental, and long-lasting impacts on the Town of Amherst.</li> <li>• The Town of Amherst would like more power and regulation of any potential developments on Hampshire College’s acreage in Amherst, such as a right of first refusal for the town to be able to purchase the land before a developer could.</li> </ul>
8/8/19 (written)	Paul Bockelman, Town Manager, Town of Amherst	<ul style="list-style-type: none"> <li>• Host communities need to be notified as soon as possible if an institution is under threat of closure</li> <li>• 13.03(1)(c): include “The Department shall notify the chief executive officers of the host communities” at the end of the section</li> <li>• 13.03(2)(a): include “The risk mitigation plans shall also identify broader impacts on the host community and all stakeholders including neighboring institutions, businesses, employees, and contractors”</li> <li>• 13.03(2)(d)(1): risk mitigation plans should also be submitted to host communities and should include explicit impacts on the communities</li> <li>• 13.03(2)(d)(2): “the chief elected officials of the host communities and all neighboring communities” should also be notified</li> <li>• Host communities need to be part of the advisory committee to monitor the condition of institutions</li> <li>• 13.04: include “The ad hoc or standing advisory committee shall include the chief executive officers of the host communities, or the chief executive’s designee.”</li> <li>• Host communities should be offered a “right of</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<p>first refusal" if tax-exempt land is offered for sale</p> <ul style="list-style-type: none"> <li>• Closures impact employees, retail destinations, and towns in many ways, and so communities need to be a part of this process</li> </ul>
7/26/19 (oral)	Heather Ornek, Amherst resident	<ul style="list-style-type: none"> <li>• Does the Board of Higher Education have authority to promulgate 610 CMR 13.00, and are there distinctions between for-profit and non-profit institutions?</li> </ul>
7/26/19 (oral)	Leo Hwang, Dean of Humanities, Greenfield Community College	<ul style="list-style-type: none"> <li>• How can the Board of Higher Education work with the K-12 sector to use as an early predictor of demographic changes, and as a collaborator with K-12 schools facing similar constraints?</li> </ul>
7/26/19 (oral)	Christina Royal, President, Holyoke Community College	<ul style="list-style-type: none"> <li>• We should think about the issue of institutional closures as a western Massachusetts issue, and one opportunity to improve it is regional discourse to ensure the health of the higher education economy in western Massachusetts.</li> </ul>
7/26/19 (oral)	Stacy McCullough, Amherst resident	<ul style="list-style-type: none"> <li>• The proposed regulations appear to adequately ensure that students are taken care of, but do not address how community needs are taken care of in the surrounding communities.</li> </ul>
7/26/19 (oral)		<ul style="list-style-type: none"> <li>• The proposed regulations are vague, and it is unclear how the process of institutional screening will be carried out.</li> <li>• It is unclear whether DHE metrics are sufficient for predicting institutional closure.</li> <li>• DHE should work with economics or education departments to evaluate DHE's metrics.</li> </ul>
7/29/19 (written)	Suzanne Perkins, Alumna, Hampshire College	<ul style="list-style-type: none"> <li>• Opposed to the adoption of the regulations.</li> <li>• The regulations should exclude EY-Parthenon from having any role in mergers or closures if the DHE uses the screening tool created by EY-Parthenon.</li> <li>• The screening tool cannot be analyzed, and the methodology should be spelled out.</li> <li>• Using high Pell Grant admissions as a factor for determining whether an institution is at high risk contradicts the efforts to increase diversity in Mass. higher education</li> <li>• The EY-Parthenon metric has already been shown to "spook" administrators (citing Hampshire College) which would have major ramifications for many small colleges</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
7/26/19 (oral)	Andrew Steinberg, Amherst Town Council, Town of Amherst	<ul style="list-style-type: none"> <li>• What sources of data will DHE use in carrying out the proposed regulations? Metrics only work if current data are available.</li> </ul>
7/30/19 (written)	Judith Mann, Professor Emerita, Hampshire College	<ul style="list-style-type: none"> <li>• Hampshire College’s crisis was deliberately manufactured by the former administration; it did not have large operating debt and it had not maximized its fundraising capabilities.</li> <li>• The BHE should also investigate boards that make decisions to close or announce instability to ensure that any financial distress is longstanding and irremediable.</li> <li>• Small institutions are vulnerable and need better protection and advocacy.</li> </ul>
8/2/19 (written)	AICUM (by and through Richard Doherty (written) and Rob McCarron (oral))	<ul style="list-style-type: none"> <li>• The abrupt nature of Mount Ida’s closure was wrong, but those actions should not define the entire community nor subject other institutions to overly burdensome requirements</li> <li>• The vast majority of institutions that have faced fiscal difficulties have been able to reinvent themselves and are doing well</li> <li>• A creative and sensible solution is needed, one that leverages NECHE’s expertise and processes, uses multiple financial and performance metrics, and ensures confidentiality</li> <li>• The Boston Consortium for Higher Education has developed recommendations on board governance and financial monitoring, and the BHE regulations must ensure that those recommendations can be fully implemented</li> <li>• 13.01: insert “reviewing the institution’s eligibility for” after “for the limited purpose of”</li> <li>• 13.03: replace “undertake” with “ensure” to reflect the possibility of NECHE conducting the annual screening</li> <li>• 13.03(1)(a): refine term “past” so that it refers to the institution’s two immediately preceding fiscal years</li> <li>• 13.03(1)(b): amend to allow for an MOU between DHE and NECHE with regard to the annual screening; include “Accreditor” as an entity with which the BHE should consult</li> <li>• 13.03(1)(c): amend to make clear that documents or information shared as part of the inquiry shall</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<p>be confidential</p> <ul style="list-style-type: none"> <li>• 13.03(2): clarify that “initial inquiry” refers to the inquiry authorized in 13.03(1)(c); it is sufficient to require the CEO of the institution to share a request with the chair and vice chair of the board</li> <li>• 13.03(2)(b)(1): a determination that an institution is not at risk of imminent closure should close the institution’s engagement with the DHE under these regulations; add language to make it clear that there is no public notification if the institution’s risk mitigation plans are satisfactory</li> <li>• 13.05: confidentiality should explicitly include documents and information provided to or created by an advisory committee</li> </ul>
8/8/19 (oral)		<ul style="list-style-type: none"> <li>• The regrettable actions of one institution should not define the entire private higher education community</li> <li>• Institutions operate in a challenging environment, but the vast majority of institutions that have faced difficulty have reinvented themselves through innovation and strategic efforts</li> <li>• A solution to the issue of higher education financial stability will leverage NECHE’s experience and use multiple metrics</li> <li>• The Boston Consortium’s recommendations have been accepted by NECHE and will result in annual financial screening, new training for trustees, and posting audited financial statements</li> <li>• The regulations and legislation should align with the TBC/NECHE process</li> </ul>
8/5/19 (oral)	Michael Bergman, Faculty, Simon’s Rock College of Bard	<ul style="list-style-type: none"> <li>• Diversity of institutions that students have to go to is important; many small institutions are having issues but offer unique attributes and can change lives</li> <li>• The regulations seem like a blunt instrument, don’t take into account all the things that colleges are trying to do</li> <li>• Accreditors already look at an institution’s financial situation, so it is not necessary for the state to step in.</li> <li>• While requiring an exit plan is reasonable, it should not become such a public thing that it become a self-fulfilling prophecy.</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<ul style="list-style-type: none"> <li>• Closure would have a tremendous impact on an institution's community financially and culturally</li> <li>• The BHE should proceed with caution.</li> </ul>
8/5/19	Harry Dumay, President, Elms College	<ul style="list-style-type: none"> <li>• While the principle behind the regulations is agreeable- no student should find out about closure abruptly and to provide DHE the ability to work with colleges and be aware of what's going on at colleges- NECHE has experience with reviewing institutional financial health, and institutions should not go through dual processes which would increase costs for students</li> <li>• The diversity of institutions cannot be monitored with a cookie cutter approach; it is moving in the right direction to use multiple metrics and approaches to evaluate institutions</li> <li>• The role of small institutions- those that are "healthy but not wealthy"- is important, and 1<sup>st</sup> generation students may not find a home if those institutions close.</li> <li>• The regulations may make closure of these institutions a self-fulfilling prophecy.</li> </ul>
8/5/19 (oral)	Gabe Pofcher, Student, Hampshire College	<ul style="list-style-type: none"> <li>• The involvement of EY-Parthenon in the development of this metric- which hasn't been seen- is deeply concerning, as it has a vested financial interest in institutional mergers. So who does that metric serve?</li> <li>• The process doesn't serve students or the workers who make the schools run, who would be left without jobs; it only serves the people at the top who don't feel the consequences of the closure</li> <li>• The metric also penalizes schools for receiving Pell grants and having 1<sup>st</sup> generation students; it is unethical and will perpetuate class disparities.</li> <li>• The regulations will create self-fulfilling prophecies and are a weapon in the arsenal to close schools that serve non-traditional, 1<sup>st</sup> generation, underserved students.</li> <li>• The intent of the regulations is to protect students but it may in fact do the opposite, and it won't protect faculty and staff that students rely on</li> </ul>
8/5/19	Barbara Moffat, Associate Vice-	<ul style="list-style-type: none"> <li>• The regulations should also apply to public</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
(oral)	President for Media and Community Relations, Western New England University	<p>institutions.</p> <ul style="list-style-type: none"> <li>The regulations appear to be a duplication of effort, and it is unnecessary for the BHE to do screenings when NECHE will be doing them.</li> </ul>
8/6/19 (written)	Bob Hildreth, Inversant and Hildreth Institute	<ul style="list-style-type: none"> <li>Enormous damage is done to students when colleges close, and students must be granted sound protections to defend themselves during financial difficulties at their institutions.</li> <li>More attention must be paid to <i>why</i> colleges are closing and the unsustainable nature of their business models. Under the proposed regulations, colleges will still close and students will still be harmed. The focus should be on restructuring those failing business models.</li> <li>The regulations do not address the financial “hemorrhaging” during the teach-out period and the inevitability that programs will be shut down earlier than anticipated to save costs, impacting students. The regulations should provide additional support for students affected by closures.</li> <li>Chapter 93A, Massachusetts’ consumer protection law, should be extended to apply to non-profit higher education institutions to allow students and families to seek recourse in the courts against institutions.</li> </ul>
8/8/19 (oral)		<ul style="list-style-type: none"> <li>Closures will result in “student refugees”: students who have been displaced and derailed from their higher education paths</li> <li>Some will incur more expenses and have to spend more time to earn their degrees; others will be forced to start over</li> <li>Lack of accountability in private non-profit higher education sector</li> <li>If Chapter 93A protections are stripped from colleges, regulations will not be needed</li> </ul>
8/8/19 (written)	Massachusetts Attorney General’s Office	<ul style="list-style-type: none"> <li>It is important to ensure that the thousands of students who enroll in Massachusetts institutions each year have confidence that their investments are secure</li> <li>AGO supports the DHE/BHE’s efforts to protect students from substantial harm caused by school closure without appropriate planning and transfer</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<p>opportunities and to put in place a robust regulatory scheme to prevent catastrophic closure in the future</p> <ul style="list-style-type: none"> <li>• Contingency planning must be timely and robust; planning for the transfer of educational opportunities must begin well before a school announces its closure and must be thorough, and institutions facing a significant risk of closure should be developing contingency plans at the same time as they explore alternatives to closure</li> <li>• The regulations should include a list of minimum requirements to be included in a contingency plan, e.g. “well-plotted transfer and articulation agreements to provide for the maximal transfer of student credits at minimal additional cost to students”</li> <li>• Contingency plans should also provide for permanent maintenance of student transcripts and essential records</li> <li>• Institutions should always be required to provide notice to their communities when determined to be at risk of imminent closure; it should not be optional</li> <li>• Notice should also be included in any promotional materials aimed at recruiting or retaining students and should be clear and conspicuous</li> </ul>
8/8/19 (written)	Senator Jo Comerford and Representative Mindy Domb	<ul style="list-style-type: none"> <li>• Sudden college closures have interrupted the lives of students and faculty and disrupted host communities, which depend on the economic benefits brought by higher education institutions</li> <li>• Communities should have advance warning of closures to begin to assess the threat of closure on the local economy</li> <li>• 13.02: include a new definition for “stakeholder” that includes local governmental officials, state elected officials, Secretary of Housing and Economic Development, and Secretary of Labor and Workforce Development</li> <li>• 13.03(1)(a) or 13.03(2)(a): institution must provide contact information for stakeholders to DHE</li> <li>• 13.03(2)(d)(2): identify the “other relevant stakeholders” as set forth in the proposed definition; DHE should be required to notify</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<p>stakeholders should the institution fail to do so (change “may” to “shall”); define “acceptable timing” for notification as no longer than 48 hours</p> <ul style="list-style-type: none"> <li>• This will ensure that all groups impacted by, and in need of advance information about, potential closure will be alerted to the situation and begin preparing accordingly</li> </ul>
8/8/19 (oral)	Deanna Colella, former student, Newbury College	<ul style="list-style-type: none"> <li>• Newbury College “student refugee”</li> <li>• She is faced with a difficult decision: transfer her credits and incur more debt to get her degree, or walk away still having to pay her loans and with no degree to show for it</li> <li>• She is disappointed that the school and government owe students nothing when a school closes</li> <li>• BHE should require that all private colleges ensure that all students can complete their degrees without incurring more debt if their institution closes</li> </ul>
8/9/19 (written)	Carol Leary, President, Bay Path University	<ul style="list-style-type: none"> <li>• The regulations should not be promulgated. Financial oversight can and should be executed through NECHE, and the regulations are redundant now that NEHCE is employing its early warning dashboard.</li> <li>• The implementation of the regulations would consume excessive and duplicate resources at the expense of taxpayers and would also involve a burdensome reallocation of institutional resources away from mission-based activities, especially for those institutions required to submit risk mitigation plans.</li> <li>• Public disclosure is tantamount to a self-fulfilling death sentence.</li> <li>• The regulation is vague as to how the DHE will maintain its public list, and such a list will likely lead to misunderstandings, which will require mission-driven resources to be redirected toward PR purposes.</li> <li>• The time constraints set forth in 610 CMR 13.02(a)(2) take a short-term view of recovery, while a long-term view is more appropriate. 25 years ago, Bay Path was “in an extremely vulnerable position” and would have been closed</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<p>under these regulations; instead, it has gone on to survive and thrive.</p> <ul style="list-style-type: none"> <li>• Smaller private institutions who would likely be penalized under the regulations serve the neediest of students and often graduate them at a higher rate than the public institutions.</li> </ul>
8/9/19 (written)	Basil Stewart, higher education finance professional	<ul style="list-style-type: none"> <li>• Institutions will pass along the costs of compliance with new regulations to students, which will not help to control rising higher education costs.</li> <li>• The recommended screening tools are reasonable as long as diverse financial and non-financial indicators are evaluated on their own merits and on an institutional basis, since not all institutions are the same.</li> <li>• Key factors to consider are: governance and management; engagement with higher education professional associations and consortiums; and activity within the higher education community.</li> </ul>
8/9/19 (written)	Jonathon Podolsky, Alumnus, Hampshire College	<ul style="list-style-type: none"> <li>• It is difficult to predict the future, and metrics that may have applied to previous college closures will not necessarily be accurate for others, given the variety of institutions and intangible factors that vary widely</li> <li>• Before implementing the requirements of these regulations, prudent measures should be adopted that will be least likely to have unintended consequences</li> <li>• Institutions should be provided with additional help to offset the negative consequences of regulation</li> <li>• It may be inappropriate to analyze smaller/younger/alternative colleges the same way as older/larger institutions (e.g., Amherst vs Hampshire)</li> <li>• The state can help institutions that are struggling by passing a law giving colleges the authority to access restricted funds in their endowments if needed to teach-out students before closure</li> <li>• BHE should encourage UMass to guarantee acceptance to, and fully honor the credits of, students who attend non-profit, accredited institutions that close; this would increase the confidence of prospective students</li> </ul>

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<ul style="list-style-type: none"> <li>Any analysis of an institution must take into account unique strengths that can't be measured by standard metrics, including leadership and planning changes, land resources, and donative will (including possible future bequests)</li> </ul>
8/9/19 (written)	Nicole Cestero, Chief of Staff, American International College	<ul style="list-style-type: none"> <li>The regulations are flawed and require significant revision to avoid imposing unreasonable burdens on institutions</li> <li>The regulations should not apply to pre-1943 institutions because the BHE does not have the statutory authority to extend its authority over them; the reference in 13.01 to the regulations applying to institutions "which seek access to state financial aid" should be deleted</li> <li>The consequences of a failure to comply with the regulations should be clarified in 13.06. The language makes it sound like a non-complying institution could be subject to all of the sanctions, which contradicts the language in 13.01 that pre-1943 institutions are only subject to the regulations for state financial aid purposes</li> <li>The BHE should defer to NECHE's standards and accreditation processes already in place; adding the regulations is unduly burdensome to institutions without adding any significant protections to stakeholders and will increase the financial stress on institutions</li> <li>If the BHE won't delegate to NECHE, the regulations should be revised to clarify that institutions are not required to provide information to the BHE for the screening process; 13.03(1)(b) does not limit the information used by the BHE in screening to only publicly available information</li> <li>It is "likely fatal" to impose an obligation to notify the public under 13.03(2)(d); that requirement should be removed</li> </ul>

\*These comments do not contain specific recommendations or feedback on the proposed regulations or were received after the close of the public comment period.

DATE	NAME/TITLE/INSTITUTION	COMMENT
7/26/19 (oral)	Yves Salomon-Fernandez, President, Greenfield Community College	<ul style="list-style-type: none"> <li>Greenfield Community College is happy to collaborate and partner with Hampshire College.</li> </ul>
7/26/19 (oral)	Joanna Brown, Former Employee and Alumna, Hampshire College	<ul style="list-style-type: none"> <li>Hampshire College could invest more effort into alumni relations and land development as opportunities to stabilize.</li> </ul>
7/26/19	Steve Girard, Faculty, UMass Amherst	<ul style="list-style-type: none"> <li>Thank you for funding the bridges program.</li> </ul>
8/15/19	Laura Wenk, Faculty, Hampshire College	<ul style="list-style-type: none"> <li>The regulations are focused on protecting students, but there is much missing in preventing colleges from closing and in safeguarding local communities</li> <li>BHE should work across governmental agencies to explore cost-saving measures for colleges, including single-payer health care and increasing state financial aid</li> <li>A teach-out plan is important in the face of financial vulnerability, but the regulations should also impose fewer punitive measures to allow an institution to get back on its feet</li> </ul>
8/19/19	John Cox, President, Cape Cod Community College	<ul style="list-style-type: none"> <li>It is challenging to develop regulations monitoring the financial sustainability of institutions, but necessary given the state of higher education</li> <li>It may be difficult to screen institutions relying solely on publicly available data sources, since IRS Form 990s are delayed and annual audited financial statements are not always available</li> <li>NACUBO's Composite Financial Index (CFI) measures the financial component of an institution's wellbeing; since the data points measured by the CFI have been used extensively across higher education, use of the CFI in screening may help garner support for the regulations</li> </ul>

# **BHE Approval and Adoption of Financial Assessment and Risk Monitoring Regulations (610 CMR 13)**

# Timeline Overview

- ✓ **April 2018:** Mount Ida College announces abrupt closure
- ✓ **June 2018-January 2019:** THESIS recommendations; BHE accepts report
- ✓ **January-June 2019:** Informal stakeholder vetting; regulation drafting
- ✓ **June 18, 2019:** BHE votes to put draft regulations out for formal public comment (BHE 19-06)
- ✓ **June-August 2019:** Public Comment period; DHE staff revise regulations as needed
- ✓ **November 14, 2019:** Legislation enacted and signed
- ✓ **November- December 2019:** DHE staff revise regulations
- **December 17, 2019 BHE Meeting:** BHE Vote on final regulations
- February 4, 2020:** BHE Vote on implementation policies and procedures
- Fall 2020:** periodic updates to BHE

# 610 CMR 13: Scope and Purpose

- **Scope:** All MA-based, private higher education institutions (IHEs) located in MA and authorized to grant degrees
- **Purpose of Regulations:** Establish standards and processes to permit BHE (acting through Commissioner/ Department) to:
  - identify, through annual screening process, IHEs experiencing significant financial distress, placing them at risk of imminent closure;
  - assess and monitor identified IHEs while they either improve their financial condition or transition to closure; and
  - require contingency closure planning and timely public notification in the event of imminent closure.

# 610 CMR 13: Content

## I. Annual Financial Assessment Process

- Screening
- Determination of Financial Status

## II. Contingency Closure/ Notification

- *New stand-alone section*

## III. Advisory Committee

## IV. Confidentiality

- To maximum extent permissible under state law (*new law\**)

## V. Sanctions

# 610 CMR 13: Content

- I. **Annual Financial Assessment Process**
  1. Screening (*eliminate false positives*)
  2. Determination of Financial Status
    - a) Submission of Risk Mitigation Plans, including
      - Known liabilities/ risks/ financial issues
      - Contingency Closure Plans
    - b) Review and Evaluation of Risk Mitigation Plans
      - Determination of whether “at risk of imminent closure”
        - Not at risk= monitoring risk mitigation plans
        - At risk= Monitoring + Continued Contingency Closure + Public Notice

# 610 CMR 13: Content

## II. Contingency Closure/ Notification

- *New stand-alone section*
- More detail

## III. Advisory Committee

- May be used at any stage of process

## IV. Confidentiality

- To maximum extent permissible under state law (*new law\**)

## V. Possible Sanctions

- Termination of state aid (OSFA agreement)
- Revocation/ suspension
- AG referral
- Fines\*

# 610 CMR 13: Proposed Revisions

## ➤ **Changes Resulting from Public Comment**

- Host Community/ stakeholder notification
- Role of Accreditor- collaborate and share
- Ensure Confidentiality of information made/ received by Advisory Committee
- Expand on minimum requirements in closing plan
- Public notification
  - e.g., Notify applicants/ recruitment, marketing materials

# 610 CMR 13: Proposed Revisions

## ➤ **Changes resulting from new law:**

- Terminology (examples)
  - Financial review= assessment
  - Risk mitigation review= determination of financial risk
- Clarified jurisdiction over all IHEs
- IHEs that “may be” at risk must inform BHE of any “known liabilities, risks or financial issues”
- Clearer public notification requirements
- Earlier contingency closure planning

# **610 CMR 13: Timeline & Next Steps**

➤ **December- January 31, 2020:**

- Finalize terms of potential MOU with NECHE for screening process
- Prepare any necessary attendant polices (*e.g.*, advisory committee)
- File regulations with Secretary of State for publishing
- Continue to assess IHEs under current regulatory structure

➤ **February 4, 2020 (BHE meeting):** Final BHE approvals

➤ **February- March 2020:**

- Implementation immediately after BHE meeting
- Roll-out activities with field
- Assuming NECHE MOU agreement approved, first substantive data sharing exchange, including NECHE's FY20 screening results, expected

➤ **Fall 2020:** Periodic updates to BHE

# Discussion

# BHE Motion 20-02

## **The Board of Higher Education hereby:**

- Approves and adopts 610 CMR 13.00; and
- Directs the Commissioner to develop an implementation plan and policy, including a proposed MOU with NECHE consistent with statutory and regulatory requirements, for consideration at the BHE's next regularly scheduled meeting (February 4<sup>th</sup>).



# NECHE MOU- Basic Elements

A two-way partnership between BHE/ NECHE to improve and support each other's respective roles within the higher ed regulatory triad, which:

- ❑ clearly defines the screening methodology used by NECHE;
  - DHE must be comfortable with the screening results;
- ❑ includes clear information-sharing requirements, including timeframes, between DHE and NECHE;
- ❑ delineates respective roles and responsibilities between DHE and NECHE in screening institutions for risk,
  - including commitment to discuss & collaborate on issues that arise outside of the annual review cycle; and
  - assurances that the collaboration will keep BHE/ DHE in compliance with its statutory mandate;
- ❑ information is regularly and timely shared by NECHE with the DHE consistent with the terms of the agreement
  - evaluation of process, termination criteria.

## BOARD OF HIGHER EDUCATION

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April 8, 2020  
9:00 a.m.

### Meeting Minutes

A meeting of the Board of Higher Education (BHE) was held virtually on Wednesday, April 8, 2020 on the web conference platform Zoom.

#### **The following Board Members were present:**

Chris Gabrieli, Chair  
Sheila Harrity, Vice-Chair  
Ann Christensen  
Alex Cortez  
Patty Eppinger  
Paul Mattera  
J.D. La Rock  
Jim Peyser, Secretary of Education, Ex-Officio  
Michael O'Brien  
Judy Pagliuca  
Paul Toner  
Abby Velozo, Student Member, Community College segment

Anna Grady, non-voting Student Advisor, State University segment  
Kush Patel, non-voting Student Advisor, UMASS segment

Carlos E. Santiago, Commissioner and Secretary to the Board

#### **The following Board Members were absent:**

Veronica Conforme

### **I. CALL TO ORDER**

Chair Chris Gabrieli called the meeting to order at 9:03 a.m. and announced that this meeting is being held remotely, and in accordance with Governor Baker's recent Executive Order which suspended certain provisions of the Open Meeting Law for the purpose of authorizing public bodies to allow remote participation by all members while the state of emergency is in effect. Chair Gabrieli announced that Board members and select Department of Higher Education (DHE) staff would be participating remotely, via Zoom; that the meeting is being livestreamed and recorded; and that members of the public who signed up for public comment would be allowed to join the Zoom meeting to provide comment. DHE Chief of Staff, Elena Quiroz-

Livanis then took roll call attendance (see above for attendance roster).

Before turning to the agenda items, Chair Gabrieli called for the following procedural motion which, according to legal counsel, was needed before the meeting could proceed remotely:

**MOVED:** to allow for BHE remote participation for today's meeting and for all subsequent BHE meetings and meetings of a BHE Committee while the state of emergency is in effect, consistent with Open Meeting Law requirements and all Executive Orders.

The motion was moved, seconded and votes were recorded by roll call as follows:

- Chris Gabrieli, Chair - Yes
- Sheila Harrity, Vice-Chair - Yes
- Ann Christensen - Yes
- Alex Cortez - Yes
- Patty Eppinger - Yes
- Paul Mattera - Yes
- J.D. La Rock – Yes
- Jim Peyser, Secretary of Education- Ex-Officio - Yes
- Judy Pagliuca - Yes
- Paul Toner – Yes
- Abby Veloza- Yes

The motion passed unanimously, as moved.

## **II. PUBLIC PARTICIPATION**

Chair Gabrieli reported that no requests for live public comment were received. However, written comment was submitted by the Association of Independent Colleges and Universities ("AICUM") regarding the final vote to implement 610 CMR 13.00; and copies of that letter had been distributed to BHE members.

## **III. ACCEPTANCE OF MINUTES**

Chair Gabrieli asked for a motion to accept the minutes of the last BHE meeting, which was held on February 4, 2020. Board Member O'Brien joined the meeting at this point in time.

The motion was duly moved and seconded, with no discussion, and then proceeded to a roll call vote:

- Chris Gabrieli, Chair - Yes
- Sheila Harrity, Vice-Chair - Yes
- Ann Christensen - Yes
- Alex Cortez - Yes

- Patty Eppinger - Yes
- Paul Mattera - Yes
- J.D. La Rock – Yes
- Michael O’Brien - no vote; technical difficulties<sup>1</sup>
- Jim Peyser, Secretary of Education, Ex-Officio - Yes
- Judy Pagliuca - Yes
- Paul Toner – Yes
- Abby Velozo - Yes

#### **IV. REMARKS & REPORTS**

##### **A. Chairman's Remarks**

Chair Gabrieli opened his remarks by acknowledging the challenging circumstances around holding this meeting remotely in the midst of the COVID-19 state of emergency, and thanked Commissioner Carlos Santiago and his staff for their continued remote work, their support of the BHE and their COVID-19 response efforts which we will hear more about later in the agenda. Chair Gabrieli also thanked Secretary Peyser and Governor Baker for their continued support during the state of emergency. Chair Gabrieli noted that the decision to schedule this meeting as a “re-do” of the March meeting that had to be cancelled in light of COVID-19 is an important step forward on the path back towards normalcy for the BHE. He also remarked that today’s meeting will focus on the impact of COVID-19, with three necessary motions to continue operations, and some very important presentations. In closing, Chair Gabrieli also acknowledged the limited options at this juncture to help students directly, but that the BHE would hopefully be in a position to explore this more at its May meeting.

##### **B. Commissioner's Remarks**

Commissioner Santiago welcomed members to the meeting and thanked DHE staff for facilitating the meeting. He provided a brief update on how working remotely is impacting the Department, calling it a “new experiment” for DHE. He expressed his appreciation to DHE staff who, in short order, acquired, coordinated and implemented the necessary technologies together to continue the important work of the Department during the public health crisis.

In addition, Commissioner Santiago acknowledged the campus presidents present for the remote meeting, which included: President Cevallos of Framingham State University, President Cox of Cape Cod Community College, President Gentile of North Shore Community College, President Glen of Northern Essex Community College, President Keenan of Salem State

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<sup>1</sup> Due to technical difficulties, Member O’Brien was not able to cast a vote on the motion to accept the February 4 BHE meeting minutes. Member O’Brien resolved the technical issues and was able to rejoin the meeting shortly after the vote.

University, President Kennedy of Berkshire Community College, President Lapidus of Fitchburg State University, President MacDonald of Massachusetts Maritime Academy, President Pedraja of Quinsigamond Community College, President Royal of Holyoke Community College, and President Salomon-Fernandez of Greenfield Community College; as well as segmental representatives Tom Sannicandro and Vincent Pedone. Commissioner Santiago closed his brief remarks by stating that he would provide additional, more substantive updates during the COVID-19 presentation.

### **C. Secretary of Education's Remarks**

Secretary Peyser opened his remarks by thanking the many partners in higher education for keeping students and staff safe during this health crisis, acknowledging how the higher education community has stepped up to be a full partner in helping to end the crisis, despite being under immense fiscal pressure. Secretary Peyser also noted the importance of keeping in mind both managing the current state of affairs, and also looking ahead to keeping the work of the BHE going.

### **D. Reports from Presidents**

#### **o Community College Segmental Report**

President Gentile offered remarks on behalf of the Community College segment and provided updates on the impacts of COVID-19 on Community College students and institutions' responses thus far. President Gentile offered detailed information regarding the systemwide transition to remote learning, and number of nursing and health science students engaged in helping to address the COVID-19 pandemic. On COVID-19 response work, she stressed the loss of a personalized sense of belonging and inclusion in the academy is one of the major losses for marginalized students never included in higher education previously, noting that impacts to traditional personalized supports are posing particular challenges to Community College students.

In addition, President Gentile noted that the campuses are grappling with the ongoing transition to remote learning in providing faculty training for remote learning as well as the necessary technology to support it, as they continue to work on COVID-19 prevention and response, and highlighted the rapid transitions faculty and staff have made to providing online learning and supports, as well as the thousands of Chromebooks the community colleges have distributed to students and the increased security and sanitization work underway at the physical campuses. She asked the BHE to consider the fiscal health and stability of the community colleges as essential ingredients in guaranteeing a strong future for the Commonwealth's economy, and urged that now is not the time to abandon its commitment to educational equity for the future workforce of the Commonwealth.

For a copy of President Gentile's full remarks, please see:

<https://www.mass.edu/bhe/lib/documents/2020-04-08%20Report%20from%20CC%20Presidents.pdf>.

- State University Segmental Report

President Lapidus offered remarks which included updates on the impacts of COVID-19 on State University students and institutions' responses thus far. President Lapidus provided detailed information regarding the systemwide transition to remote learning, the completion of vacating nearly all residential students from State University residence halls, and the efforts made to provide refunds to students and families for room and board. On COVID-19 response work, he stressed that major successes in transitioning all of the campuses to remote learning and working from home have helped to stabilize the remainder of the spring semester to ensure that students originally on track to graduate will still graduate. However, in doing so, the total cost of reimbursements to date is estimated at \$46.8 Million dollars.

In addition, he noted that recruitment and enrollment efforts for the Fall 2020 semester continue to be underway, and that campuses have transitioned to using virtual platforms for accepted student events and campus tours. He acknowledged that BHE Member Mattera will be offering a motion that will urge budget writers to appropriate necessary funds to the campuses in order to support the student refunds that have been made to ease the financial burden of COVID-19 on students and their families, and he asked the BHE to support the motion. He closed his remarks by acknowledging National Public Health week and the Worcester City Manager's decision to recognize Alissa Errede, a public health employee and graduate of Worcester State University and Massachusetts Maritime Academy, who is leading a health and medical coordinating coalition that serves 74 boards of health and 11 central Massachusetts hospitals.

For a copy of President Lapidus' full remarks, please see:  
<https://www.mass.edu/bhe/lib/documents/2020-04-08%20Report%20from%20SU%20Presidents.pdf>.

#### **E. Report from Student Advisory Council**

BHE Member Abby Velozo thanked Presidents Gentile and Lapidus for their remarks, and briefly acknowledged the many challenges currently being experienced by students across the Commonwealth as a result of COVID-19. UMass Segmental Advisor Kush Patel then provided a report from UMass student perspectives. Mr. Patel highlighted the challenges both students and faculty are working through in the transition to remote learning; and ongoing issues regarding access to food and shelter for students experiencing housing instability. Segmental Advisor Anna Grady also provided an update from the perspective of State University students, noting the limited access to resources usually available for students with disabilities; and she also indicated that despite many challenges, the overall transition to remote learning has been successful for many students. BHE Member Velozo closed the Student Advisory Council's remarks by further highlighting how mental health resources and supports have been impacted,

and their importance to many students throughout the public higher education system.

## **V. PRESENTATION**

The presentation for the meeting can be viewed here:

[Combined Presentations \(view/download ppt\)](#).

### **A. COVID-19 Higher Education Update**

Commissioner Santiago presented on the work DHE has done in response to the COVID 19 outbreak. The slides of this presentation have been made available at [https://www.mass.edu/bhe/lib/documents/2020-04-08%20COVID-19%20Update\\_FINAL.pptx](https://www.mass.edu/bhe/lib/documents/2020-04-08%20COVID-19%20Update_FINAL.pptx). In his presentation, the Commissioner provided an overview of how institutions have responded to the pandemic; the measures DHE has taken to support remote work; the inequitable impact the pandemic is having on students of color; and the many needs of students that are unmet as a result of lost income, such as the lack of available childcare. In addition, he stressed the importance of institutions' flexibility in providing options for students who are struggling to complete coursework as a result of the pandemic, and he noted the DHE continues to anticipate and monitor the availability of additional federal resources in the pipeline to help stabilize disadvantaged students.

Chair Gabrieli then invited BHE Members to provide individual comments and pose questions.

- BHE Member LaRock – underscored the points made by President Gentile, and acknowledged the important role community colleges have to play in helping the economy bounce back after the pandemic subsides, and the challenges that would ensue as community colleges face both budgetary cuts and the imperative to provide critical services.
- BHE Member Mattera – appreciated the remarks shared by the Secretary and the Commissioner, thanked the Presidents for their respective remarks as well, and proposed a floor motion in the form of a resolution for the BHE to formally acknowledge the extraordinary work being done by campuses to help end the pandemic despite; and to memorialize a commitment to work with campuses to find a way to offset the extraordinary costs campuses have faced as a result.
- BHE Member O'Brien – echoed the comments shared by his colleagues, acknowledged the pitfalls that likely will still exist even after federal aid becomes available, and urged the importance of maintaining fiscal balance despite COVID-19.
- BHE Member Christensen – presented the following questions: what opportunities exist for lightening financial burdens on institutions, e.g. credits for future semesters instead of refunds to limit the amount of funds leaving institutional coffers? For programs experiencing low enrollment, would a delayed return back to classes or delayed start to classes help students work and save up money before re-enrolling? And, despite needing to transition to remote learning under less than ideal

circumstances, is there an opportunity to expand more flexible, online options for students that will need to return to work?

- BHE Member Cortez – opened his comments by sharing a quote, urging the BHE to be realistic in its approach to tackling these issues, and to consider that disruptive models like bootcamps and credentialing programs may likely be more ideal if they help adults get back to work more quickly than a traditional program. He also asked BHE members to consider how the BHE can start planning for this, and pivot sooner to create new opportunities.
- BHE Member Eppinger – urged the need to balance the needs of students with institutional needs; that it is important for the BHE to consider being open to other strategies and structures in instructional delivery; and that this new reality will play out over a few years, rather than in the near future.
- Vice Chair Sheila Harrity – also agreed with the many prior comments, and added that we can learn from this experience of having assembled an airplane midflight; that we've created pieces of this plane moving forward such as remote learning plans, and can continue to strengthen online learning.
- BHE Member Pagliuca – shared her opinion regarding the state of federal aid in healthcare, which is integral to schools reopening, and she shared her hopes that the Secretary and the Commissioner continue to disseminate best practices with an emphasis on retention throughout the system. She also stressed the importance of using the summer to plan strategically for early next year, and working with the healthcare community to help re-open schools as soon as it is safe to do so.
- BHE Member Toner – shared his appreciation for the comments shared by BHE Members Christensen and Cortez in particular, and shared his concern that the most important next steps will be for the Administration and the Commissioner to make calls about the fall semester as soon as possible; and regarding longer term challenges, he asked what will re-entry plans look like for campus communities to ensure that any lost opportunities due to remote learning are covered when students return.
- Chair Gabrieli – added one additional question to the Presidents, how during this spring period transition would we know how effectively online learning is working for students; to which President Gentile and President Lapidus confirmed that the campuses are reaching out to students, but that the effects will not fully be quantifiable until after the semester is over, and institutional research teams have been able to assess student outcomes.
- Commissioner Santiago – provided answers to many of the questions posed by the BHE Members, and stressed that financial bailouts are only a start; the more important imperative being the need for the higher education community to build a sustainable model with at least five pillars of success: streamlining academic portfolios; improving academic efficiency; linking the labor force to what we teach and who's interested in it; streamlining administrative functions; and ensuring there is a clear connection between resources and strategy. He further mentioned that discussions of the higher education business model will also need to continue, as many will likely soon agree the business model of last month will likely no longer be

sustainable moving forward; finally, he asked Deputy Commissioner for Administration and Finance Tom Simard to provide additional updates regarding federal supports.

- Deputy Commissioner Simard – clarified there were no additional updates at the time, and that there is a legal question surrounding how and whether institutions could provide future credits instead of refunds for institutions to troubleshoot, and we are seeking clarity on that.
- President Lapidus – confirmed the brief update provided by Deputy Commissioner Simard, and shared the sentiment on behalf of the state university segment that the institutions felt compelled to offer refunds as soon as possible consistent with anecdotal guidance from the Attorney General’s Office, in particular to support students in financial distress, for the purpose of reimbursing students for services the institutions can no longer provide (e.g., room and board); the hope and intention is that this would help students to stabilize their lives in the short-term and increase their likelihood of being able to complete their courses of study in the long-term.
- Secretary Peyser – added that he felt this was a helpful discussion, and echoed Vice Chair Harranty’s comments, urging the need to continue and deepen our focus and understanding of financial planning in the short, medium, and long terms, and to be creative in finding ways to work together around sharing services and operational activities that can lower costs and improve outcomes. He also stressed the need for a coherent, statewide approach to how online education is delivered, as well as the transferability of online credits.

BHE Member Mattera then revisited his proposed floor motion, and read the resolution aloud, as follows:

***MOVED:*** *To facilitate a uniform response across all public colleges and universities, and in recognition of the significant financial impact on students, students’ families, and the campuses, the Board of Higher Education supports the decision of public institutions of higher education in the Commonwealth to make prorated refunds of housing, dining, and parking payments to students and urges the Administration and Legislature to work with the campuses to help offset the cost of rebates with appropriate funding.*

The motion was moved and seconded, and Chair Gabrieli facilitated a discussion.

BHE Members voiced general support for the motion. BHE Member LaRock suggested adding language to the motion stating the BHE will work to ensure the system will work collaboratively to offset expenses of the coronavirus pandemic. (“Moved further, that the Board of Higher Education and state administration should work collaboratively to ensure that all segments of public higher education benefit equitably from any effort to help offset business changes as a result of the COVID-19 crisis.”). BHE member Mattera recognized Member LaRock’s suggested language as a friendly amendment and agreed to restate his motion including that language.

Chair Gabrieli initially took issue with the phrase that all segments “benefit” equitably, suggesting that perhaps broader language may be more appropriate, but noting that this was a “spirit of the moment” vote, and that any further edits would be inconsequential, Chair Gabrieli indicated that he too was comfortable with the friendly amendment. Accordingly, Chair Gabrieli called for a vote on BHE Member Mattera’s floor motion, as amended by BHE Member LaRock’s friendly amendment, Hearing no further discussion, Chair Gabrieli proceeded to the roll call vote:

- Chris Gabrieli, Chair - Yes
- Sheila Harrity, Vice-Chair - Yes
- Ann Christensen - Yes
- Alex Cortez - Yes
- Patty Eppinger - Yes
- Paul Mattera - Yes
- J.D. La Rock - Yes
- Jim Peyser, Secretary of Education, Ex-Officio - Abstain
- Michael O’Brien - Yes
- Judy Pagliuca - Yes
- Paul Toner – Yes
- Abby Velozo – Yes

The floor motion passed with one abstention (Secretary Peyser) as follows:

**VOTED:** To facilitate a uniform response across all public colleges and universities, and in recognition of the significant financial impact on students, students’ families, and the campuses, the Board of Higher Education supports the decision of public institutions of higher education in the Commonwealth to make prorated refunds of housing, dining, and parking payments to students and urges the Administration and Legislature to work with the campuses to help offset the cost of rebates with appropriate funding.

Moved further, that the Board of Higher Education and state administration should work collaboratively to ensure that all segments of public higher education benefit equitably from any effort to help offset business changes as a result of the COVID-19 crisis.

## **VI. MOTIONS**

Chair Gabrieli turned to the motions. He stated that in the interest of time he would take the motions out of turn, asking the BHE to consider BHE 20-08 and BHE 20-10 before taking up BHE 20-09, to allow enough time at the end for the meeting for a fuller discussion of BHE 20-09.

### **A. BHE 20-08 Approval of Massachusetts State College Building Authority (MSCBA) Refunding Revenue Bonds**

Chair Gabrieli introduced the motion, stating that the motion before the BHE is to authorize the MSCBA to issue bonds to refund certain of its outstanding debt, with the expectation of realizing savings and reducing annual debt service. The motion was moved and seconded. There being no discussion, a roll call vote followed:

- Chris Gabrieli, Chair - Yes
- Sheila Harrity, Vice-Chair - Yes
- Ann Christensen - Yes
- Veronica Conforme
- Alex Cortez - Yes
- Patty Eppinger - Yes
- Paul Mattera - Yes
- J.D. La Rock - Yes
- Jim Peyser, Secretary of Education, Ex-Officio - Yes
- Michael O'Brien - Yes
- Judy Pagliuca - Yes
- Paul Toner – Yes
- Abby Velozo – Yes

The motion passed unanimously, as follows:

#### **BHE 20-08 APPROVAL OF MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY REFUNDING REVENUE BONDS**

**VOTED:** The Massachusetts State College Building Authority is hereby authorized to issue refunding bonds to refund certain of its outstanding bonds, provided the aggregate net present value savings achieved from the refunding is no less than four percent (4%) of the par amount of refunded bonds, and the Commissioner is hereby authorized and directed, in the name and on behalf of the Board of Higher Education, to approve in writing the issuance by said Authority of bonds for such refunding purpose.

*Authority: Massachusetts General Laws Chapter 15A, Section 6*

*Contact: Thomas Simard, Deputy Commissioner of Administration & Finance*

Chair Gabrieli then stated the BHE would next consider Motion 20-10.

#### **B. BHE 20-10 Delegation of Authority to the Commissioner to Act in Between Regularly Scheduled Board Meetings**

Chair Gabrieli introduced the motion, noting that the motion delegates the BHE's authority to the Commissioner to act in between regularly scheduled meetings, to allow the Commissioner to swiftly respond and adapt to evolving state and federal requirements and guidance during the state of emergency. The motion was moved and seconded. There being no discussion, a roll call vote followed:

- Chris Gabrieli, Chair - Yes
- Sheila Harrity, Vice-Chair - Yes
- Ann Christensen - Yes
- Veronica Conforme
- Alex Cortez - Yes
- Patty Eppinger - Yes
- Paul Mattera - Yes
- J.D. La Rock - Yes
- Jim Peyser, Secretary of Education, Ex-Officio - Yes
- Michael O'Brien - Yes
- Judy Pagliuca - Yes
- Paul Toner – Yes
- Abby Velozo – Yes

The motion passed unanimously, as follows:

**BHE 20-10 DELEGATION OF AUTHORITY TO THE COMMISSIONER TO ACT IN BETWEEN REGULARLY SCHEDULED BOARD MEETINGS**

**VOTED:** On March 10, 2020, the Governor declared a public health state of emergency for the Commonwealth of Massachusetts to prepare for, respond to, and mitigate the spread of COVID-19. While the Governor’s state of emergency is in effect, the Board of Higher Education hereby delegates to the Commissioner authority to take such action in between regularly scheduled Board meetings as is deemed necessary or desirable, provided:

- Such action is for good cause, is related to or arises out of the state of emergency, and is authorized or does not conflict with state or federal law; and
- The Commissioner takes such action in consultation with and upon the advice of the Chair or Vice Chair of the Board.

The Commissioner is directed to report back to the Board on whether and how the Commissioner exercised such delegated authority.

*Authority: Massachusetts General Laws Chapter 15A, Section 6*

*Contact: Constantia T. Papanikolaou, Chief Legal Counsel*

Chair Gabrieli then stated that the BHE would next consider Motion 20-09.

**C. BHE 20-09: Receipt of Implementation Procedures for Financial Assessment and Risk Monitoring of Institutions of Higher Education, Approval of Principles Governing a Memorandum of Understanding (MOU) with the**

## **New England Commission of Higher Education (NECHE), and Delegation of Authority to Commissioner**

Commissioner Santiago introduced the motion and recounted the history of this work noting that it began in the aftermath of the precipitous closure of Mount Ida College in 2018. He then passed the presentation to Chief Legal Counsel Papanikolaou.

Chief Legal Counsel Papanikolaou stated that, in its broadest sense, what the BHE has before it for consideration today is an implementation plan for the BHE's Financial Assessment and Risk Monitoring (FARM) regulations, which govern the BHE's annual financial screening and assessments of Massachusetts private institutions of higher education (IHEs). The plan before the BHE includes 1) a set of implementation procedures, which are provided for informational and commentary purposes, not for a vote; and 2) a proposal to move forward with an MOU with NECHE, as allowed by statute, pursuant to a set of guiding principles or essential terms.

Chief Legal Counsel Papanikolaou continued by briefly summarizing the scope and purpose of the regulations, noting that 610 CMR 13.00 will apply to all Massachusetts IHEs located in Massachusetts with the authority to grant degrees, which includes 94 institutions, 21 of which having been chartered prior to 1943 and are not subject to the BHE's program review authority. Of the 94 institutions, she indicated that 74 are NECHE members; this is relevant to the NECHE MOU discussion as NECHE will be conducting the initial screenings on those institutions, and the DHE would be conducting screenings on the other non-NECHE accredited institutions.

Chief Legal Counsel Papanikolaou then briefly described the content of the proposed Implementation Procedures (Attachment A to board motion), noting that the procedures are intended to clarify or expound upon the BHE regulations, for example, describing the composition and responsibilities of the advisory committee, but the procedures are not intended to impose new obligations not otherwise required by statute or regulations.

Next, Chief Legal Counsel Papanikolaou provided background and context for the proposed NECHE MOU, reported that the Commissioner has reached agreement on essential terms with NECHE on the MOU, and reviewed the essential terms. Regarding the essential terms, she noted that the MOU includes several positions which require both parties to share information and consult throughout the year on IHEs identified outside of the annual financial screening process as financially fragile or at risk. She added that these provisions are critical to the success of our partnership with NECHE, particularly in these challenging times as IHEs, especially those that were financially fragile before COVID-19 hit, seek to absorb and respond to the financial impact caused by the pandemic. Chief Legal Counsel Papanikolaou concluded the presentation by providing an overview of next steps, which included promptly finalizing and executing the MOU, forming an advisory committee, actively engaging with IHEs, and providing regular updates to the BHE throughout academic year 2020-2021.

Chair Gabrieli referenced the recent joint statement issued by NECHE, the Department and Pine Manor College and asked the Commissioner to provide an update on Pine Manor College. The

Commissioner stated that the financial circumstances of the institution have been under review by the Department for some time under existing regulations (610 CMR 2.00). In recent conversations, the institution has been open and forthcoming regarding the fiscal impact of COVID-19 on the institution, and the Commissioner discussed how he coordinated with the institution and its accreditor to ensure that students would be apprised of developments at the institution on a long-term basis. He added that this was a unique partnership having been formed between DHE and NECHE in doing so, and that this is not always common both here and elsewhere in the country.

A motion to accept the procedures and authorize the Commissioner to move forward with the NECHE MOU, in accordance with the Chief Legal Counsel's presentation, was moved and seconded. Chair Gabrieli facilitated the discussion, which included the following comments:

- BHE Member LaRock questioned whether what was presented in the slides, taking into account the impacts of COVID-19, square with concerns in the letter submitted by AICUM. He added that his personal opinion regarding the joint statement between Pine Manor College, NECHE, and DHE seemed vague and unclear about what's going on at the institution because Pine Manor College continues to accept applications for the fall. BHE Member LaRock shared that he wanted to encourage the BHE and the DHE to keep in mind the balance of wanting to collaborate with each other, and not push the envelope in ways that are harmful to institutions, and to be more candid during these times.
- The Commissioner stated that he disagreed with BHE Member LaRock's comments and stated that the DHE has multi-party interests in these issues, stressing that the priority is to ensure that students are informed on a timely basis. He continued, that while the notice may seem vague to some, it served an important, intended purpose, but the institution still must assess its financial situation and have periodic, continuing discussions with the DHE. The Commissioner indicated that it is important for institutions to continue to come forward and be forthright with both the Department and with students in a timely manner. The Commissioner confirmed he was satisfied that he used the authority appropriately, that he has not been heavy-handed, that he will always look after the best interests of the students, and he will continue to monitor the institution.
- Chair Gabrieli acknowledged BHE Member LaRock's comments, and seconded the response provided by the Commissioner, noting the innovative approach to fundamentally staying on top of the situation during abnormal times.

Chair Gabrieli then asked for a motion to accept the implementation procedures and delegate authority to the Commissioner to execute the MOU on behalf of the BHE, as outlined in BHE 20-09. The motion was made and duly seconded. A roll call vote was taken as follows:

- Chris Gabrieli, Chair - Yes
- Sheila Harrity, Vice-Chair - Yes
- Ann Christensen - Yes

- Veronica Conforme
- Alex Cortez - Yes
- Patty Eppinger - Yes
- Paul Mattera - Yes
- J.D. La Rock - Abstain
- Jim Peyser, Secretary of Education, Ex-Officio - Yes
- Michael O'Brien - Yes
- Judy Pagliuca - Yes
- Paul Toner – Yes
- Abby Velozo – Yes

The motion passed, with one abstention (Member La Rock), as follows:

**BHE 20-09 RECEIPT OF IMPLEMENTATION PROCEDURES FOR FINANCIAL ASSESSMENT AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION, APPROVAL OF PRINCIPLES GOVERNING A MEMORANDUM OF UNDERSTANDING WITH THE NEW ENGLAND COMMISSION OF HIGHER EDUCATION, AND DELEGATION OF AUTHORITY TO COMMISSIONER**

**VOTED:** The Board of Higher Education (BHE) hereby receives the attached procedures implementing the provisions of 610 CMR 13.00 and M.G.L. c. 69 § 31B regarding Financial Assessment and Risk Monitoring of Institutions of Higher Education, and authorizes the Commissioner to move forward as outlined in the document.

The BHE also hereby: 1) approves the guiding principles that shall govern a Memorandum of Understanding (MOU) with the New England Commission of Higher Education (NECHE) to conduct financial screenings of private institutions of higher education pursuant to 610 CMR 13.00 and M.G.L. c. 69 § 31B; and 2) delegates to the Commissioner the authority to finalize and execute an MOU with NECHE, consistent with said principles, in consultation with the BHE Chair and the Secretary of Education.

The Commissioner is directed to report back to the BHE during its next regularly scheduled meeting; and to provide the BHE with regular status updates on implementation.

*Authority: M.G.L. c. 69, § 31B (as amended by Chapter 113 of the Acts of 2019); M.G.L. c. 15A, § 6 and 9; and 610 CMR 13*

*Contact: Constantia T. Papanikolaou, Chief Legal Counsel; Thomas J. Simard, Deputy Commissioner for Administration and Finance; Patricia A. Marshall, Deputy Commissioner for Academic Affairs and Student Success*

**VII. OTHER BUSINESS**

**VIII. ADJOURNMENT**

There being no other business, the meeting was adjourned at 12:08 p.m.

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR BOARD ACTION**

**NO.:** BHE 20-09

**BOARD DATE:** April 08, 2020

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**RECEIPT OF IMPLEMENTATION PROCEDURES FOR FINANCIAL ASSESSMENT AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION, APPROVAL OF PRINCIPLES GOVERNING A MEMORANDUM OF UNDERSTANDING WITH THE NEW ENGLAND COMMISSION OF HIGHER EDUCATION, AND DELEGATION OF AUTHORITY TO COMMISSIONER**

**MOVED:** The Board of Higher Education (BHE) hereby receives the attached procedures implementing the provisions of 610 CMR 13.00 and M.G.L. c. 69 § 31B regarding Financial Assessment and Risk Monitoring of Institutions of Higher Education, and authorizes the Commissioner to move forward as outlined in the document.

The BHE also hereby: 1) approves the guiding principles that shall govern a Memorandum of Understanding (MOU) with the New England Commission of Higher Education (NECHE) to conduct financial screenings of private institutions of higher education pursuant to 610 CMR 13.00 and M.G.L. c. 69 § 31B; and 2) delegates to the Commissioner the authority to finalize and execute an MOU with NECHE, consistent with said principles, in consultation with the BHE Chair and the Secretary of Education.

The Commissioner is directed to report back to the BHE during its next regularly scheduled meeting; and to provide the BHE with regular status updates on implementation.

**VOTED:** Motion adopted by BHE 4/8/2020.

**Authority:** M.G.L. c. 69, § 31B (as amended by Chapter 113 of the Acts of 2019); M.G.L. c. 15A, § 6 and 9; and 610 CMR 13

**Contact:** Constantia T. Papanikolaou, Chief Legal Counsel  
Thomas J. Simard, Deputy Commissioner for Administration and Finance  
Patricia A. Marshall, Deputy Commissioner for Academic Affairs and Student Success

## BACKGROUND

Recently enacted state law<sup>1</sup> requires the Board of Higher Education (BHE) to establish a process to annually assess the financial information of each Massachusetts independent institution of higher education (IHE) to determine whether an institution is at risk of imminent closure. M.G.L. c. 69, § 31B(b)(2). At its January 10, 2020 meeting, the BHE approved for final promulgation regulations entitled *Financial Assessment and Risk Monitoring (FARM) of Institutions of Higher Education* (610 CMR 13.00), which establish the statutorily required annual financial assessment process for IHEs. In addition, the BHE directed the Commissioner to develop an implementation plan, including a proposed Memorandum of Understanding (MOU) with the New England Commission of Higher Education (NECHE) consistent with statutory and regulatory requirements, for BHE consideration. BHE 20-03.

In furtherance of the BHE's directive, the Commissioner and Department of Higher Education (DHE) staff have developed and are presenting to the BHE for comment and informational purposes proposed FARM implementation procedures (Attachment A). In addition, the Commissioner is presenting to the BHE for approval a set of guiding principles, which will help the Commissioner finalize and execute a pending, draft MOU with NECHE.

### The Procedures

The proposed FARM implementation procedures (Attachment A) set forth processes to be used by the DHE in implementing the regulations, and clarify or expound upon the BHE regulations to, among other things:

- describe in general terms the methodology used in the financial screenings conducted by the DHE;
- recognize and incorporate into the financial assessment process, as authorized by state law, financial screenings conducted by NECHE pursuant to a valid, current MOU;
- provide procedural guidance to IHEs in the development of both risk mitigation plans, public notices and contingency plans for closure and describe the elements that should be included in such plans; and
- describe the composition and responsibilities of an advisory committee, which the Commissioner may use in carrying out his authority under the regulations.

This procedures do not impose upon IHEs new obligations not otherwise required by statute or regulation, but rather are intended to provide clarity to IHEs and the public regarding how the DHE will fulfill its obligations under the law in this area.

### The NECHE Memorandum of Understanding: Guiding Principles

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<sup>1</sup> *An Act to Support Improved Financial Stability in Higher Education*, [St. 2019 c. 113](#).

The recently enacted legislation referenced above, allows the BHE to enter into an MOU with an accrediting agency to conduct the statutorily required, annual financial screenings of IHEs. M.G.L. c. 69, §31B(b)(2). Over the past several months, the Commissioner, along with key members of his staff, has engaged in substantial negotiations with representatives of NECHE, the regional accreditor for Massachusetts, to enter into an MOU, pursuant to which NECHE would share and the BHE would accept for the purposes of M.G.L. c. 69, § 31(b)(2) and 610 CMR 13.03(1), NECHE's annual financial screening results on IHEs accredited by NECHE<sup>2</sup>.

An MOU with NECHE would essentially delegate to NECHE the initial financial screening of NECHE accredited institutions. Consistent with the established statute and BHE regulations, the Commissioner and DHE staff would then engage with IHEs screened-in by NECHE to further assess each IHE's financial status and would request risk mitigation plans, along with contingency closure plans, and, where appropriate, public notification.

The Commissioner and NECHE have reached agreement on essential terms of the MOU, and documentation of those terms are in the final technical review stages. The finalization of the document is anticipated before the BHE's next regularly scheduled meeting. To expedite the execution of an NECHE MOU and its immediate implementation once executed, the Commissioner is seeking delegated authority to enter into an MOU with NECHE, in consultation with the BHE chair and the Secretary of Education, provided that the final document is grounded in, and does not deviate from, the following guiding principles:

- NECHE shall use a robust screening methodology with multiple metrics to ensure that its screening results are based upon a range of financial and non-financial indicators of an IHE's financial capacity.
- NECHE shall share that screening methodology with the DHE so the DHE can validate the NECHE screening process, methodology and outcomes.
- For each IHE that screens in under NECHE's methodology, NECHE shall share, no later than March of each year, the name of each IHE screened in and the screening methodology and results for each IHE.
- Both parties agree to share information and consult with one another throughout the year on IHEs identified outside of the annual financial screening process as financially fragile or at risk.
- NECHE shall annually certify by or before December of each year that NECHE has identified to the DHE all IHEs which, based on NECHE's screening methodology, may be "at risk of imminent closure."
- NECHE and the DHE shall consult periodically to review NECHE's screening methodology and to assess the effectiveness of the cooperative arrangement to review financially fragile IHEs, with the goals of protecting enrolled and prospective students from sudden, institutional closures; and ensuring a process that allows IHEs reasonable prospects of returning to reasonable financial stability.

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<sup>2</sup> There are 94 IHEs with physical locations in the Commonwealth and authorized to grant degrees that are subject to the FARM process. Of these, 74 IHEs are accredited by NECHE.

### Recommended BHE Action

The Commissioner is presenting the proposed FARM implementation procedures (Attachment A) to the BHE for information and comment. The FARM Implementation Procedures will guide the DHE's implementation of M.G.L. c. 31B and 610 CMR 13, and will be periodically reviewed and updated as needed by the Commissioner to ensure consistency with statutory and regulatory intent and requirements.

The DHE recommends that the BHE delegate to the Commissioner the authority to finalize and execute, in consultation with the BHE Chair and the Secretary of Education, an MOU with NECHE that is consistent with statutory and regulatory requirements and adheres to the guiding principles identified above. The Commissioner will report back to the BHE on his progress in this regard during the BHE's next regularly scheduled meeting, and will provide the BHE with regular updates on implementation.



# Massachusetts Board of Higher Education

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## ***Financial Assessment and Risk Monitoring Implementation Procedures for Massachusetts Private Independent Higher Education Institutions Pursuant to 610 CMR 13.00***

***April 08, 2020***

Pursuant to M.G.L. c. 69, § 31B(b)(2), the Board of Higher Education (BHE) is required to establish a process to annually assess each Massachusetts independent institution of higher education's financial information to determine whether an institution is at risk of imminent closure. At its January 10, 2020 meeting, the BHE approved for final promulgation regulations which established the statutorily required annual financial assessment process for independent institutions of higher education ("IHE"). 610 CMR 13.00. This procedures document is intended to supplement those regulations.

### **I. Annual Financial Screenings**

Independent IHEs are subject to an annual financial screening, defined as "a review and evaluation of an institution's financial information, conducted by the board or by an accrediting agency on behalf of the board, designed to assess whether an institution's financial status indicates that it may be at risk of imminent closure." The statute defines imminent closure as "a determination based on the financial screening that an institution is at risk of being unable to continue operations within a period of time established by the board." M.G.L. c. 69, § 31B(a). The Board has established that time period as the remainder of the current academic year and the following academic year, using December 1<sup>st</sup> as the annual threshold measurement date ("Risk of Imminent Closure"). 610 CMR 13.02. An IHE whose screening indicates that it may be at Risk of Imminent Closure will be referred to as having been "screened in."

#### **1) Screenings conducted by NECHE**

M.G.L. c. 69, § 31B(b)(2) specifies that "financial screenings may be conducted by: (i) an accrediting agency, pursuant to a memorandum of understanding approved by the board; or (ii) the department of higher education." The BHE's regulations further allow the Department to use, as its screening tool, information obtained from accrediting agencies to evaluate the sufficiency of an IHE's financial resources. 610 CMR 13.03(1)(b)(3). Accordingly, independent IHEs located in the Commonwealth, authorized to grant degrees, and accredited by the New England Commission of Higher Education ("NECHE") shall have their annual financial screenings conducted by NECHE, pursuant to a current memorandum of understanding. NECHE shall share the results of its financial screenings with the Department, and the Department will accept and use those screening results in accordance with 610 CMR 13.03(1) and the terms as set forth in the memorandum of understanding.

## **2) Screenings conducted by the Department**

In the absence of a valid, current memorandum of understanding with NECHE, the Department shall conduct the annual financial screenings of all independent IHEs located in the Commonwealth, authorized to grant degrees, and accredited by NECHE to identify IHEs deemed potentially at Risk of Imminent Closure. In addition, separate and apart from the existence of an MOU with NECHE, the Department is required to and shall conduct such annual financial screenings of all independent IHEs located in the Commonwealth, authorized to grant degrees, and not accredited by NECHE.

The Department will screen IHEs using multiple methods, measures and data sources, including the analytical framework adopted by NECHE, the Comprehensive Financial Index (CFI), the Student Educational Resources metric, and other financial ratios, non-financial indicators and external ratings and reports. (See Appendix A)

The use of multiple measures and sources of data will help ensure that the risk assessment process is informed by a comprehensive set of generally accepted indicators of financial viability.

## **3) Notification and Consideration of Additional Information Relevant to the Screening**

An independent IHE identified as potentially at Risk of Imminent Closure, will be notified of the Commissioner's findings and will be provided with an opportunity to review the results of the screening process and submit additional information consistent with 610 CMR 13.03(1)(c). This phase of the screening process is intended to provide an opportunity for the Department to validate the screening findings with the IHE and to otherwise help screen out false positives by providing the IHE with an opportunity to review the analytical methodology used and to submit additional information that that IHE or the Commissioner deems relevant to the screening results, including any evaluative information or determinations shared by NECHE. The IHE will have the opportunity to provide the Department with information or updated data to which the Department does not have access that may screen out false positives or to otherwise help the Department in analyzing or validating the screening results. For example, an IHE may provide the Department with more recent financial data that could lead to a different screening result, or it may have resolved a financial deficit through the sale of property or the receipt of a large gift not yet reported through the data systems referenced.

## **II. Determination of Financial Status**

When it is determined that an independent IHE may be at Risk of Imminent Closure, the Commissioner shall provide the IHE with a summary of the basis for the determination and require the IHE to submit information, in the form of a risk mitigation plan, to accurately and fairly determine the IHE's financial status and likelihood of imminent closure and to monitor its condition. The Commissioner's request for a risk mitigation plan will be sent to the chief executive officer of the IHE and the chair and vice chair(s) of the IHE's governing board.

At a minimum, the institution's risk mitigation plan must:

- inform the Board of any known liabilities, risks, or financial issues;
- outline the institution's plans, initiatives, and goals to resolve its financial challenges and sustain operations that meet basic quality standards and reasonable student expectations; and
- substantiate the institution's current and prospective resources and financial capacity to address the risk of imminent closure.

610 CMR 13.03(2)(a). As part of its risk mitigation submission, an IHE may include materials that have already been prepared by the institution in response to the requests of other oversight entities, such as comprehensive risk mitigation reports submitted to the institution's board of trustees, or reports, such as an Annual Report on Finance and Enrollment (ARFE), submitted to an accreditor.

The purpose of the risk mitigation plan is for the IHE to show that it has an achievable plan for financial stability. All submissions should be as specific, detailed, and concrete as possible. The risk mitigation plan should avoid speculative proposals and unreasonable projections. The risk mitigation plan should also be comprehensive, and Department staff may request amendments, revisions and/or additional information from the IHE in order to obtain as much information as possible about the institution's financial stability and potential risk of imminent closure.

At this stage of the process, the independent IHE will also be requested to begin preparing a contingency closure plan.

### **III. Contingency Planning for Closure and Notification to the Public**

If an IHE does not submit any requested risk mitigation plans or, if after a review of the institution's risk mitigation plan, the Commissioner determines that an IHE is at Risk of Imminent Closure, or that the IHE's risk mitigation plans do not demonstrate a likelihood that Risk of Imminent Closure will be reasonably mitigated, the Commissioner shall require continued contingency planning for closure and public notification.

#### **1) Contingency Closing Plan Requirements**

The Department shall provide a template for a contingency closing plan, which shall be made available on its website and upon request. The contingency closing plan must, at a minimum, include the following:

- a) arrangements for students to complete their programs of study, which must include the development of transfer and articulation agreements for current and incoming students. The institution should make efforts to ensure that its students receive as much credit for prior coursework as possible and that the costs to its students for continuing their degree programs at successor institutions will be reasonable;

- b) a plan for the transfer and long-term maintenance of student records, including but not limited to student transcripts, should the institution cease to exist, and where and how such records will be transferred. The institution should make every effort to place its student transcripts with another institution which will be able to provide registrar services which conform to generally accepted industry practices to former students and alumni on behalf of the potentially closing institution;
- c) information about the rights and responsibilities of student loan borrowers;
- d) information about the institution's financial condition, accreditation status with any and all accreditors, and any outstanding compliance issues regarding federal and state financial aid programs;
- e) a plan that assures the refund of deposits made by students in anticipation of enrolling or continuing their enrollment at the institution, and for the cost of protecting and maintaining student records;
- f) a comprehensive budget which shows the existence and commitment of sufficient resources to sustain the institution's educational offerings through closure; and
- g) consideration of the broader impacts of closure on the institution's key constituencies, including faculty, staff, and the host community or communities.

M.G.L. c. 69, s. 31B(b)(3); 610 CMR 13.04.

The Board reserves the right to request any additional financial or other records as necessary to evaluate the IHE's financial status, its likelihood of imminent closure, and the feasibility and completeness of its contingency closing plan. Pursuant to M.G.L. c. 69, § 31B(b)(3), an independent IHE required to submit a contingency plan for closure is required to provide the Board with access to all financial and other records upon request.

## **2) Notification to the Public**

Pursuant to 610 CMR 13.03(2)(b)(2), if an institution does not submit the requested risk mitigation plans, or if the submitted plans do not demonstrate the likelihood that Risk of Imminent Closure will be timely mitigated, the Commissioner shall, after providing an IHE with notice and a reasonable opportunity to cure, require an institution to provide notification to the public. The Board recognizes that the timing, manner, and format of notification to the public may vary depending on the size and type of IHE. Accordingly, in addition to the minimum notification requirements set forth in 610 CMR 13.04(2), the details surrounding the timing, manner, and format of an IHE's required notification to its constituencies will be determined in the sole discretion of the Commissioner after consultation between the IHE and Department staff and may be informed by the content of the IHE's risk mitigation plans. In situations where an IHE's financial condition is dire or deteriorating rapidly, such that protracted procedural considerations described above may jeopardize the best interests of enrolled or prospective

students, the Commissioner may abbreviate campus response times to submit missing or amend existing risk mitigation plans and/or, in exigent circumstances, may require expedited public notification, the timing and content of which shall be appropriate to the circumstances.

The Department shall maintain a public list on its website of those independent IHEs which have been required by the Department to issue such notifications. The list will be updated within 15 business days of the transmission of the notification to the IHE described above.

#### **IV. Advisory Committee**

The Commissioner may convene an ad hoc or standing advisory committee to participate in the review of an IHE during any stage of the process at his own discretion.<sup>1</sup> An IHE under review may request the convening and participation of an advisory committee, if one has not already been convened by the Commissioner, in the event the Commissioner has determined that the IHE will be required to both submit a Contingency Plan for Closure and provide notification to the public; the Commissioner will not unreasonably withhold assent to such requests for the formation of an advisory committee from any IHE under review.

The Commissioner shall charge the advisory committee with the scope, purpose, and timeline of its review, and the advisory committee shall submit an evaluation with its findings and recommendations to the Commissioner consistent with timelines established by the Commissioner.

##### **1) Membership**

The advisory committee shall be composed of 3 to 5 individuals, at least one of whom shall be a representative of a consumer protection or student advocacy organization.

Members of the advisory committee shall be selected by the Commissioner from among professionals with appropriate credentials and demonstrated professional experience in higher education administration, finance, development, accreditation, and/or other relevant activities within higher education. Professionals and practitioners from appropriate fields, particularly accounting and real estate, may also be included. The composition of the advisory committee shall be responsive to the requirements of pertinent federal and state affirmative action/equal opportunity guidelines.

In the event that it is deemed necessary, given the circumstances of a specific institution, the Commissioner may expand the membership of the advisory committee from its standing members to include an additional member or members with relevant expertise and knowledge.

##### **2) Conflicts of Interest**

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<sup>1</sup> It is anticipated that for the first few years of implementing 610 CMR 13.00, the advisory committee will be a standing committee, and that the standing committee will be available to serve in an advisory or consulting capacity to both the Commissioner and the BHE to help assess implementation and advise on any necessary policy development.

Advisory committee members shall have a disinterested professional commitment to the financial review of institutions of higher education as charged by the Commissioner (in general) and to the task of rendering objective findings and recommendations based upon empirical evidence and informed judgments (in the case of particular institutions). No person shall serve on the advisory committee who has had any official or unofficial connection with the institution under review or who the Commissioner has reason to believe has an independent or pecuniary interest in the outcome of the review. No person shall serve on the advisory committee who is employed by a public or independent institution determined by the Commissioner to be in direct competition with the institution under review.

### **3) Responsibilities**

The advisory committee shall study all materials submitted by the institution to the Board; may meet with its representatives to gather additional information; and shall deliver findings and recommendations, based upon the established charge, scope and purpose of the review, to the Commissioner.

## Appendix A- DHE Screening Methodology

The Department will screen IHEs using multiple methods, measures and data sources. - Screenings conducted by the Department shall be done by first using a methodology that offers a preliminary assessment of an institution's ability to "teach out" its enrolled and admitted students, also known as the Student Educational Resources ("SER") metric. Assuming a hypothetical closure and wind down scenario, the SER calculates how long an independent IHE can teach its enrolled and admitted students, accounting only for known or reasonably predictable revenues and assets to cover its obligations. This metric assumes no new student admissions and no additional resources or expenses other than those required for fixed administrative costs, existing programs of study, debt obligations, and the availability of tuition and fee revenue, auxiliary revenue, and expendable net assets. Data reported annually to the federal Integrated Postsecondary Data System ("IPEDS") are used for this analysis. As a state higher education executive office, the Department has access to the most recently reported IPEDS data, and such data reflect the most recently approved financial statements from the prior fiscal year.

In addition to the SER metric, the Department intends to use the analytical framework adopted by NECHE, the Comprehensive Financial Index (CFI), and other financial ratios, non-financial indicators and external ratings and reports to assess the financial health of each IHE.

Other indicators that the Department may consider in its screening include:

- tuition discounting rates;
- tuition dependency;
- trends in student enrollment, retention, and completion;
- credit ratings assigned to institutions by credit rating agencies or services; and
- US Department of Education Heightened Cash Monitoring ("HCM") or Letter of Credit ("LOC") status.

# Financial Assessment and Risk Monitoring - Implementation and NECHE MOU



# Financial Assistance and Risk Monitoring (FARM) Implementation

## Timeline Overview

- ✓ **April 2018:** Mount Ida College announces abrupt closure
- ✓ **June 2018-January 2019:** THESIS recommendations; BHE accepts report (BHE 19-04)
- ✓ **January-June 2019:** Informal stakeholder vetting; regulation drafting
- ✓ **June 18, 2019:** BHE votes to put draft regulations out for formal public comment (BHE 19-06)
- ✓ **June-August 2019:** Public comment period; DHE staff revise regulations
- ✓ **November 14, 2019:** Legislation enacted and signed
- ✓ **November- December 2019:** DHE staff revise regulations
- ✓ **January 10, 2020 BHE Meeting:** BHE Vote on final regulations (BHE 20-03); ongoing NECHE MOU negotiations
- ❑ **April 8, 2020:** BHE Vote related to implementation (MOU); immediate implementation
- ❑ **Summer-Fall 2020:** implementation and periodic updates to BHE



# BHE 20-09: Implementation Plan

- **Implementation Procedures**
  - For information and comment
  
- **Proposal to move forward with NECHE MOU (Vote)**
  - Set of guiding principles (essential terms)
  - Delegated authority to Commissioner

# FARM Regs: Scope and Purpose

- **Scope:** All MA-based, private higher education institutions (IHEs) located in MA and authorized to grant degrees
- **Purpose of Regulations:** Establish standards and processes to permit BHE (acting through Commissioner/ DHE) to:
  - identify, through annual screening, IHEs experiencing significant financial distress, placing them “at risk of imminent closure;”
  - assess and monitor identified IHEs while they either improve their financial condition or transition to closure; and
  - require risk mitigation plans, contingency closure planning and timely public notification in the event of imminent closure.

# FARM Implementation Procedures

- Describes methodology used in DHE financial screenings
- NECHE MOU\*- Incorporates into annual financial assessment process screenings conducted by NECHE, *pursuant to valid, current MOU*
- Provides procedural guidance to IHEs in development of:
  - risk mitigation plans,
  - public notices and
  - contingency plans for closure
- Advisory committee- describes composition and responsibilities (Standing Committee)

# NECHE MOU- Context

- New law\* requires BHE to establish process to annually assess each IHE's financial information for "at risk of imminent closure" determination:
  - such assessments may be based on financial screenings conducted by an accrediting agency (NECHE), pursuant to an MOU.
- Mutual value in aligning BHE and NECHE financial assessment processes:
  - Increasing efficiencies
  - Reducing administrative burdens on IHEs
  - Eliminating inconsistent findings
  - Sharing information/expertise
- Commissioner has reached agreement on essential NECHE MOU terms:
  - NECHE would conduct the initial annual screenings;
  - NECHE would share with DHE staff all IHEs that screened-in under the NECHE methodology; and
  - DHE would engage with IHEs screened-in to further assess each IHE's financial status and identify IHEs that may be "at risk of imminent closure."

\* *An Act to Support Financial Stability in Higher Education*, St. 2019 c.113,

# NECHE MOU- Essential Terms

Essential terms (guiding principles) of the MOU:

- NECHE shall use a robust screening methodology with multiple metrics to ensure that its screening results are based upon range of financial and non-financial indicators of an IHE's financial capacity.
  - NECHE shall share that screening methodology with DHE so DHE can validate NECHE screening process, methodology and outcomes.
  - Content of data share: For each IHE that screens in, NECHE shall share, no later than March of each year, the name of each IHE, along with the screening methodology and results for each IHE.
  - Compliance assurances: NECHE shall annually certify by or before December of each year that NECHE has identified to DHE all IHEs which, based on NECHE's screening methodology, may be "at risk of imminent closure."
- Emphasis on importance of mutuality of information sharing & periodic review (*next slide*)

# NECHE MOU- Essential Terms

- Both parties agree to share information and consult with one another throughout the year on IHEs identified outside of annual financial screening process as financially fragile or at risk, and:
  - *"In anticipation of the potential impact of the COVID-19 pandemic on institutional enrollment and resources, both parties understand the importance of construing this [information-sharing] provision liberally and engaging in frequent, on-going and timely information-sharing throughout the year regarding any facts or circumstances which come to the attention of either party and which call into question the financial health or stability of an institution."*
- NECHE and the DHE shall consult periodically to review NECHE's screening methodology and to generally assess the effectiveness of the cooperative arrangement.

# FARM- Next Steps

### ➤ **April 8, 2020**

- Finalize and execute MOU with NECHE for screening process
- Form Standing Advisory Committee
- Conduct initial screenings
  - Receive information from NECHE re: NECHE accredited IHEs that have screened-in
  - Conduct DHE screenings on non-NECHE accredited institutions
- Assess IHEs based on screening information
- Conduct outreach to identified IHE's as outlined in Implementation Procedures, consistent with statute and regulations

### ➤ **May 2020 (BHE meeting)-** Commissioner Update

### ➤ **Summer- Fall 2020**

- Active engagement with identified IHEs
- Active information-sharing to and from NECHE

### ➤ **Academic Year 2020-2021-** Periodic updates to BHE

# Discussion

# BHE Motion 20-09

## **The Board of Higher Education hereby:**

- Receives the FARM Implementation Procedures and authorizes Commissioner to move forward as outlined
- Approves the guiding principles that shall govern an MOU with NECHE to conduct financial screenings of private IHEs, consistent with the FARM regs & statute.
- Delegates to Commissioner authority to finalize and execute an MOU with NECHE, in consultation with Chair and Secretary, consistent with said principles.
- Directs Commissioner to report back to BHE next month and periodically thereafter.

## BOARD OF HIGHER EDUCATION

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June 22, 2021

10:00 a.m.

Livestreamed, via Zoom

### Meeting Minutes

A meeting of the Board of Higher Education (“BHE” or “the Board”) was held virtually on Tuesday, June 22, 2021 on the web-conference platform Zoom.

#### **The following Board Members were present:**

Chris Gabrieli, Chair

Ann Christensen<sup>1</sup>

Veronica Conforme

Alex Cortez

Patty Eppinger

Paul Mattera

Tom Moreau, Secretary of Education Designee

Mike O’Brien

Judy Pagliuca<sup>2</sup>

Paul Toner<sup>3</sup>

Bill Walczak

Jorgo Gushi, non-voting Student Advisor, Community College segment

Kush Patel, non-voting Student Advisor, UMass segment

Carlos E. Santiago, Commissioner and Secretary to the Board

#### **The following Board Members were absent:**

Sheila Harrity, Vice Chair

Charles Bianchi, Voting Student Member, State University segment

### **I. CALL TO ORDER**

Chair Chris Gabrieli called the meeting to order at 10:05 a.m. and announced that this meeting is being held remotely and in accordance with relevant amendments to the Open Meeting Law. Chair Gabrieli announced that the meeting is being livestreamed via Zoom and recorded, and members of the public who signed up for public comment would be allowed to join the Zoom meeting to provide comment. Department of Higher Education (DHE or Department) Chief of Staff Elena Quiroz-Livanis, then took roll call attendance (see above for attendance roster).

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<sup>1</sup> Member Christensen arrived at 10:08 a.m.

<sup>2</sup> Member Pagliuca arrived at 10:20 a.m.

<sup>3</sup> Member Toner arrived at 10:14 a.m.

## **II. PUBLIC PARTICIPATION**

Chair Gabrieli reported that the Board did not receive requests for public comment.

## **III. WELCOME**

Chair Gabrieli welcomed everyone to the final, full Board meeting of the fiscal year. He remarked that the Board would acknowledge two outgoing presidents later in the agenda. He thanked the three interim presidents who served this year-- Dr. Nate Bryant at North Shore Community College; Dr. Brenda Molife at Massasoit Community College; and Dr. Roy Saigo at Westfield State University-- for their work during a challenging year.

## **IV. ACCEPTANCE OF MINUTES**

Chair Gabrieli asked for a motion to accept the minutes of the last Board meeting, which was held on May 04, 2021. The motion was duly moved and seconded. With no further discussion the motion proceeded to a roll call vote and passed unanimously by all members present, as follows:

- Veronica Conforme – Yes
- Alex Cortez – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Paul Mattera – Yes
- Tom Moreau – Yes
- Mike O'Brien – Yes
- Bill Walczak – Yes

## **V. REMARKS & REPORTS**

### **A. Chairman's Remarks**

Chair Gabrieli opened with commentary on the Executive Committee's FY20 Performance Evaluation of Commissioner Santiago. He acknowledged the review was behind schedule but expressed gratitude for the work done by the Commissioner, the Department, and the public higher education system on behalf of students.

Chair Gabrieli provided a brief update on proposed changes to the BHE By-Laws, and the proposed new advisory committee structure, adding that the Board would consider a related motion on this later. He applauded the Academic Affairs and Student Success team's efforts to advance the Equity Agenda, highlighting the work presented at the last Academic Affairs Committee meeting. Chair Gabrieli also announced the BHE Board Retreat will be scheduled for a date in September. Finally, he highlighted the results of Massachusetts's first wall-to-wall Early College charter school, New Heights

Charter School, where their 2021 graduating class became the first to simultaneously receive high school diplomas and associate degrees in the history of Massachusetts.

**B. Commissioner's Remarks**

Commissioner Santiago stated he would reserve his remarks until the Commissioner's FY21 Year-End Report.

**C. Secretary of the Executive Office of Education's (EOE) Remarks**

Assistant Secretary Tom Moreau indicated that Secretary Peyser was not able to attend the meeting due to a conflict with the Board of Elementary and Secondary Education Board meeting; he did not offer further remarks.

**D. Report from Presidents**

State University Segmental Report

*For a copy of President Birge's full remarks, please see:*

<https://www.mass.edu/bhe/lib/documents/2021-05-04%20Report%20from%20SU%20Presidents.pdf>

Massachusetts College of Liberal Arts College President James Birge spoke on behalf of the State University segment. He remarked that the State Universities intend to repopulate their campus housing to levels that balance the demand for housing with the health of our campus populations. He reiterated a comment made at the previous Board meeting, reporting that the State Universities will require all students to be vaccinated against COVID-19 before they attend in-person classes in the fall. The institutions will also continue to ensure that critical supports remain in place as we navigate out of this pandemic and make sure that we are serving our most vulnerable students.

President Birge shared an update on contract negotiations with the four employee bargaining units. He remarked that State Universities and the DHE have been meeting with union negotiators since March 30<sup>th</sup> on talks over successor agreements to the 2020-2021 collective bargaining agreements. He continued that the Council requested that President Birge include in this report an update on bargaining to bring an issue about the financial parameters given by the Administration to the Board's attention. He recognized that it is unusual for the State Universities' Council of Presidents to discuss salary parameters with the Board but wanted to go on record with how they feel the parameters disadvantage their workforce. President Birge commented that other public sector units that did not reach agreement are now being offered a bonus for the current year and two subsequent years at 2%. Despite having to pivot to remote teaching and work; despite having to learn how to use new technology; despite committing additional hours to learning how to use new equipment and software; and despite adding lessons for their students on the new equipment and software, the state's faculty and staff succeeded at continuing to offer high quality learning for our students. He shared stories of what the last 17 months of the pandemic have been like for his colleagues, citing

COVID-19 deaths, struggles with remote learning, job uncertainty and declines in mental health. He remarked that despite all these competing interests, faculty and staff continued to carry out their responsibilities to make sure that our students received a high quality, public higher education.

President Birge implored the Board to exercise their role as advocates and to press the Administration to increase the economic parameters for employees in the State Universities. He added that the State Universities' workforce were the only public sector bargaining units to agree to a one-year contract with a zero-percent increase in their salary. Further, he stated that now is a rare opportunity for everyone to be on the same side of the table and to advocate for a reasonable, fair, and meaningful set of economic parameters indicative of the Board's gratitude for the work of their colleagues and employees.

President Birge concluded with a note of thanks to the Department, Secretary Peyser, and Secretary of Health and Human Services Marylou Sudders. 500 Massachusetts Maritime Cadets were able to fulfill their Sea Term requirement and are on track to graduate in June. The cadets were scheduled to return to Buzzard's Bay tomorrow morning having completed their mandatory graduation requirement for on-ship training.

#### Community College Segmental Report

*For a copy of President Mabry's full remarks, please see:*

<https://www.mass.edu/bhe/lib/documents/2021-05-04%20Report%20from%20CC%20Presidents.pdf>

Middlesex Community College President James Mabry shared updates from the Massachusetts Community College segment. He remarked that the presidents were excited about a recent report by the Boston Foundation, which confirmed what Community College leaders have always known: a community college education pays off. In this report, the data are very clear: a community college education means greater earnings and a greater likelihood of employment. The lead author of the study also mentioned an important finding related to the role of community colleges for low-income and underrepresented minority students. Dr. Alicia Modestino stated that "if they can attend a community college, they can get a much higher return than a higher-income individual who has already had better academic opportunities." President Mabry shared additional findings before stating that the research demonstrates a strong case for investing in community colleges and their value for underserved communities.

President Mabry remarked that as we look at what the pandemic has done to many Black and Latino students, especially many male Black and Latino students, the report's recommendations align with our advocacy to state legislative leaders at many levels. Areas such as the SUCCESS Fund, Early College, the Performance Based Funding Formula, and MASSGrant Plus, among many other programs, are integral to supporting our students and fulfilling the BHE's Equity Agenda.

President Mabry concluded by stating he knows the Board will be in capable hands with his successor as chair of the Community College Council of Presidents, Dr. David Podell, President of MassBay Community College. President Mabry remarked that he is proud of the work the Community Colleges continued to do during this extraordinary period, and the resiliency of their students continually

inspires him. He stated that he hopes the bold and proactive partnership continues to face future challenges. Together, we can strive toward the goals of the Equity Agenda and help build the post-COVID economy the Commonwealth needs.

Chair Gabrieli thanked President Mabry and asked if there were questions or comments from the Board. Member Paul Mattera commended the remarks made by President Birge regarding the state university vaccination requirements and salary parameters. He wanted to be on record in support of the comments and the specific request related to salary parameters.

Before turning to the students, Chair Gabrieli recognized the work done by former Massasoit Community College President, Gena Glickman, and Middlesex Community College President James Mabry. Both were presented with resolutions. Dr. Gena Glickman's reads as follows:

Whereas the Massachusetts Board of Higher Education recognizes the significant accomplishments of Dr. Gena Glickman at the conclusion of her tenure as president of Massasoit Community College, and after a forty-year career of service to the higher education profession; and

Whereas Dr. Glickman was the sixth and first female president to serve at Massasoit Community College; and

Whereas prior to coming to Massasoit Community College in July 2018, Dr. Glickman served as president at Manchester Community College in Connecticut for ten years, and served in numerous roles to include Vice President for Academic and Student Affairs at Elgin Community College in Illinois, Associate and Assistant Provost at the University of Baltimore, Dean of the College at Maryland College of Art and Design, Executive Director for Curriculum Development and Evaluation at Hartford Community College, and held faculty positions at five major institutions; and

Whereas Dr. Glickman holds a Bachelor of Fine Arts degree from the Maryland Institute College of Art, a Master of Science in Counseling and Education from the Johns Hopkins University School of Education, and a Ph.D. in Education, Policy and Planning, from the University of Maryland, College Park; and

Whereas Dr. Glickman has overseen several facility upgrades on Massasoit Community College campuses, including the establishment of a centralized enrollment center and the overhaul of the dining commons on the Brockton campus, in addition to several Americans With Disabilities Act (ADA) compliance upgrades; and

Whereas Dr. Glickman, with a focus on student success and the elimination of student debt, revitalized the College Office of Advancement, raising significant funds for student financial support, and secured over five million dollars in grant funds; and

Whereas Dr. Glickman inspired the Massasoit Community College Foundation, Inc. to expand, adding new members to strengthen the Board and extend its geographical representation, to ensure the future success and sustainability of the college and its students; and

Whereas Dr. Glickman launched Massasoit Community College 's first baccalaureate collaborative, a program allowing nurses with an Associate degree to earn a Bachelor of Science in Nursing from Curry College, while attending classes at Massasoit Community College; and

Whereas, Dr. Glickman has served public higher education locally, regionally and nationally, with a current appointment on the Executive Committee of the Board for the Commission on Higher Education Accreditation (CHEA) and soon to assume position of Board Chair, and previous service with the American Association of Colleges and Universities (AAC&U), College Board Community College President's Advisory Council, Commission of the American Associate of Community Colleges (AACC), and the Commission for the Advancement of Race and Ethnicity for the American Council on Education (ACE); and

Whereas Dr. Glickman received the Distinguished Alumna Award from the John Hopkins School of Education; the Faculty Mentor Award from University of Maryland College Park; recognized as the Outstanding Administrator by the Maryland Association of Higher Education; and received a service award from the Black Law Student's Association at the University of Baltimore, in addition to receiving the Businesswoman of the Year award from the Hartford Business Journal; and

Whereas, throughout her career, Dr. Glickman has demonstrated a commitment to the community college mission to change lives, strengthen families and communities, and has been an advocate for public higher education in Massachusetts, the New England region, and the nation;

Now, therefore, be it resolved that on behalf of the members of the Board of Higher Education, the Department staff, and the students and institutions of the Commonwealth of Massachusetts, the Massachusetts Board of Higher Education honors and commends Dr. Gena Glickman on the occasion of her retirement from the presidency at Massasoit Community College.

Dr. Glickman thanked Chair Gabrieli and the DHE and expressed gratitude for the City of Brockton and the various business partnerships to help students.

Chair Gabrieli read the resolution prepared for President James Mabry as follows:

Whereas the Massachusetts Board of Higher Education recognizes the significant accomplishments of Dr. James Mabry at the conclusion of his tenure as president of Middlesex Community College, after nearly forty years of service to the education profession; and

Whereas Dr. Mabry was the fourth president to serve at Middlesex Community College; and  
Whereas, prior to coming to Middlesex Community College in February 2015, Dr. Mabry served as Vice President at Mesa Community College for five years, and served in numerous roles to include Dean of Academic Affairs at Palm Beach State College, Associate Dean of

Academic Affairs at Dutchess Community College, and held faculty positions at four institutions after beginning his career as a high school social studies teacher in the New York City public school system; and

Whereas Dr. Mabry holds an associate degree from the University of Maryland Overseas Division, a Bachelor's degree in Political Science from Columbia University's School of General Studies, a Master of Science in Economic History from The London School of Economics and Political Science, and a Ph.D. in United States History from Columbia University; and

Whereas Dr. Mabry has overseen several facility upgrades on Middlesex Community College campuses, including securing funding for the Biotech Learn and Earn program housed in the new Biotech Lab, modernizing more than 50 classrooms, and renovating the Multicultural Center; and

Whereas Dr. Mabry, a proponent of racial equity and supporter of the Equity Agenda, opened the Asian Student Center after Middlesex Community College earned an Asian American Native American Pacific Islander - Serving Institutions grant; and

Whereas Dr. Mabry chaired the Community College Council of Presidents during the COVID-19 pandemic and served as a thought partner to state education leaders; and

Whereas Dr. Mabry has worked tirelessly throughout his tenure and has demonstrated profound commitment to what is best for students of the Commonwealth and its system of public higher education;

Now, therefore, be it resolved that, on behalf of the members of the Board of Higher Education, the Department staff, and the students and institutions of the Commonwealth of Massachusetts, the Massachusetts Board of Higher Education honors and commends Dr. James Mabry on the occasion of her retirement from the presidency at Middlesex Community College.

Dr. Mabry thanked the DHE and commented on the honor it was to serve as a community college president in Massachusetts. Commissioner Santiago shared his appreciation for President Glickman and President Mabry's work and congratulated them on their retirement.

Chair Gabrieli wished students members Charles Bianchi and Kush Patel success as they graduate before introducing Segmental Advisor Jorgo Gushi for the next part of the agenda.

#### **E. Report from Student Advisory Council**

Community College Segmental Representative Jorgo Gushi opened by thanking Chair Gabrieli, Commissioner Santiago, and the Board for their support. He also expressed gratitude for the DHE's Stacy Bougie and her work with the Student Advisory Council (SAC). Mr. Gushi provided a year-end report divided into three parts: 1) the SAC's goals for 2020-2021; 2) the SAC's major accomplishments; and 3) the SAC's new leadership team.

Mr. Gushi outlined SAC's goals to change the Massachusetts General Law's full-time student trustee requirement to part-time, which successfully passed in December 2020. The amendment now allows part-time students to serve as trustees. Mr. Gushi also addressed SAC's goals to expand Open Education Resources (OER) through student advocacy and state funding. They met their goal resulting in three ambassador training sessions where students were trained to be campus-level advocates, twenty new student ambassadors, and five OER panel sessions. The group continues to submit letters of support for additional OER funding. Mr. Gushi shared the SAC's goal to implement a Community Building Day. They will reach out to Community Colleges and State Universities for their support and plan to organize the event in October 2021. SAC also created a student trustee handbook as a tool to familiarize newly elected trustees with their roles.

Mr. Gushi commented on the SAC's successful year. The highlights included:

- the creation of social media accounts to continue student outreach;
- increased attendance in SAC meetings operating remotely; and
- ongoing advocacy for students.

He concluded by acknowledging his leadership team for their support, with special thanks to outgoing SAC members Kush Patel and Charles Bianchi. Mr. Gushi also welcomed Cameron Costa as the 2021-2022 BHE Voting Member and Cindy Mack as the State University Segment Advisor.

UMass Segmental Student Advisor Kush Patel shared his gratitude for SAC Chair Jorgo Gushi and his leadership. He stated that Mr. Gushi takes the initiative on issues most would not have thought about bringing to governmental constituents for resolution, and he is steering SAC and our leadership team to new heights. Mr. Patel also thanked the Board, Chair Gabrieli, Commissioner Santiago, and the Department of Higher Education for the opportunity to serve. He commented that serving as a Student Advisor for the past three years has been an honor and a privilege. Mr. Patel thanked Commissioner Santiago for allowing him to shadow him for a day, which allowed Mr. Patel to observe and learn the inner workings of higher education. He expressed gratitude for the opportunity to serve on the Board and support Department's overall work to help students succeed, as his aspiration is to work in education after graduating from college this Summer.

Before turning to the motions, Chair Gabrieli and other Board members thanked the student advisors for their leadership and participation and congratulated them on their accomplishments.

## **VI. MOTIONS**

### *List of Documents Used*

AAC Motions 21-14 through 21-15

BHE Motion 21-48 through 21-52

Links to Materials:

- [AAC 21-11](#)
- [AAC 21-12](#)
- [AAC 21-13](#)

- [AAC 21-14 Presentation Video](#)
- [AAC 21-15 Presentation Video](#)
- [BHE 21-48](#)
- [BHE 21-49](#)
- [BHE 21-50](#)
- [BHE 21-52](#)

**A. Academic Affairs Committee**

Co-Chair Patty Eppinger reported that the Academic Affairs Committee met the previous week and considered three Commonwealth Honors Program reapprovals: Bristol Community College, UMass Boston, and UMass Dartmouth. She also reported that the committee is advancing a motion to receive both the OER Course Marking implementation Guidelines and the Open Education Resources (OER) Key Performance indicators. Co-Chair Eppinger reminded the Board of the New Undergraduate Experience (NUE) and Basic Needs Security (BNS) materials and the opportunity for further engagement at the September Board retreat.

Co-Chair Eppinger asked for a motion of approval of AAC 21-14, which seeks to approve AAC-21-11 through AAC-21-13 on a consent agenda. On a motion duly made and seconded, AAC 21-14 was approved unanimously by all Board members present, without discussion, as follows:

- Ann Christensen – Yes
- Veronica Conforme – Yes
- Alex Cortez – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Paul Mattera – Yes
- Tom Moreau, Secretary of Education Designee – Yes
- Mike O'Brien – Yes
- Judy Pagliuca – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**AAC 21-14**

**CONSENT AGENDA**

**VOTED:**

- AAC 21-11 Reapproval of Bristol Community College Membership in the Commonwealth Honors Program
- AAC 21-12 Reapproval of the University of Massachusetts Boston Membership in the Commonwealth Honors Program
- AAC 21-13 Reapproval of the University of Massachusetts Dartmouth Membership in the Commonwealth Honors Program

Authority: Article III, Section 6, By-Laws

Contact: Winifred M. Hagan, Ed.D., Senior Associate Commissioner for Strategic Planning and Public Program Approval

Co-chair Patty Eppinger next asked for a motion of approval for AAC 21-15. On a motion duly made and seconded, AAC 21-15 was approved unanimously by all Board members present without discussion, as follows:

- Ann Christensen – Yes
- Veronica Conforme – Yes
- Alex Cortez – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Paul Mattera – Yes
- Tom Moreau, Secretary of Education Designee – Yes
- Mike O'Brien – Yes
- Judy Pagliuca – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**AAC 21-15      RECEIPT OF THE OPEN EDUCATIONAL RESOURCES (OER) ADVISORY COUNCIL IMPLEMENTATION GUIDELINES ON COURSE MARKING & OER KEY PERFORMANCE INDICATORS**

**VOTED:** The Board of Higher Education receives both the OER *Course Marking Implementation Guidelines* in furtherance of the Board's short-term recommendations, outlined in AAC 20-03 and adopted on October 22, 2019; and the OER *Key Performance Indicators* recommendations from the OER Advisory Council.

The Board thanks the members of the OER Advisory Council and specifically the OER Course Flagging Committee and DHE lead staff Robert Awkward, Ph.D. for their work.

The Board directs the Commissioner to work with the OER Advisory Council and the institutions of public higher education to implement the attached *Course Marking Implementation Guidelines* and *OER Key Performance Indicators* and report back on implementation progress next year. In addition, the Board further directs the Commissioner or his/her designee to periodically report to the Board on the Department's progress in this regard.

Authority: M.G.L. c. 15A, §9 (c) and (u); AAC 20-03.

Contact: Patricia A. Marshall, Ph.D., Deputy Commissioner for Academic Affairs & Student Success  
Robert J. Awkward, Ph.D., Assistant Commissioner for Academic Effectiveness

Chair Gabrieli thanked Co-Chair Patty Eppinger and turned the Board's attention to the next set of

motions. Before proceeding, Chair Gabrieli stated that there is one update to the agenda. In last week's supplemental Board package, Department staff put the Board on notice of a potential agenda item. In furtherance of implementing the new campus sexual assault law, Department staff anticipated being in a position to move forward with a motion which would finalize the promulgation of regulations related to public and private higher education institutions' responsibility to enter into MOUs with local law enforcement agencies (*BHE 21-52: Approval and Adoption of 610 CMR 14.00: Coordination with Local Law Enforcement to Prevent and Respond to Sexual Misconduct*). At the time the supplemental package was sent, the Department had not received any public comment on the proposed regulations. However, since that time comments were received and Department staff will need time to review these comments internally, with stakeholders, and with our state agency partners. Accordingly, we will be tabling that agenda item. DHE Staff will provide additional information regarding how and when the regulations will be finalized in the coming weeks. Chief Counsel Papanikolaou thanked the Board for permitting extra time for such a review.

## **B. Board of Higher Education**

Chair Gabrieli introduced the Commissioner's FY20 Performance Evaluation. He stated that the Executive Committee developed the evaluation after meeting twice in the Spring. Chair Gabrieli noted that the Commissioner's efforts in keeping the Department and campuses up and running under extraordinary circumstances during the height of the pandemic, while also advancing the Equity Agenda and the ongoing work of the Department, were all considerations taken during the review.

Chair Gabrieli proceeded to ask for a motion for approval of BHE 21-48: Commissioner's FY20 Performance Evaluation. On a motion duly made and seconded, BHE 21-48 was approved as follows, without further discussion:

- Ann Christensen – Yes
- Veronica Conforme – Yes
- Alex Cortez – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Paul Mattera – Yes
- Tom Moreau, Secretary of Education Designee – Yes
- Mike O'Brien – Yes
- Judy Pagliuca – Yes
- Paul Toner – Yes
- Bill Walczak – Abstain

### **BHE 21-48**

### **COMMISSIONER'S FY20 PERFORMANCE EVALUATION**

#### **VOTED:**

The Board of Higher Education hereby approves the attached Commissioner's FY 2020 Performance Evaluation, as prepared by members of the Executive Committee.

#### **Authority:**

Massachusetts General Laws Chapter 15A, Section 6

Contact: Constantia T. Papanikolaou, Chief Legal Counsel

Chair Gabrieli once again thanked Commissioner Santiago for his service and introduced the next item on the agenda. He shared that one of his priorities as the Board Chair was to improve the functioning of the Board and Committees. After feedback received from a listening tour conducted last fall, followed by discussions held at subsequent BHE and Executive Committee meetings, Chair Gabrieli asked the Board to consider approving changes to the BHE's By-Laws. In partnership with Chief Legal Counsel Dena Papanikolaou, new By-Laws were drafted and sent to the Board on June 7 in accordance with requirements that BHE members must receive proposed By-Law amendments at least (15) days prior to the date of the meeting where proposed revisions are to be taken up.

Chair Gabrieli highlighted the major change in the By-Laws which is the ability to create Advisory Councils, which are not traditionally appointed groups as they may include non-BHE members. The councils would operate under Open Meeting Law and would be required to have a BHE Board member as chair, or co-chair. The By-Laws further provide for an annual meeting which will allow for the BHE to conduct governance reviews and address the Advisory Council membership selection process.

Chief Counsel Papanikolaou summarized the governance changes in the By-Laws, reiterating that the revised By-Laws require the full Board to review and approve the membership and charges of the Advisory Councils, and to annually review their structure and function. The intention of the revisions is to provide the full Board ownership on governance, while allowing for greater flexibility on how the Board does its work. She pointed out that the newly added annual meeting would provide the venue for the Board's annual review of governance.

Member Paul Mattera shared his support of the Advisory Councils, stating that he was very open to the notion of bringing in new perspectives, but he expressed two issues. First, he expressed hesitancy to the notion of having a co-chair that is a non-BHE member (a non-director). He believed this would create a disequilibrium with the duties and responsibilities of co-chair BHE members, (directors) who have fiduciary and statutory responsibilities. Board Member Mattera also asked whether the Advisory Councils would vote on board actions. Chief Counsel Papanikolaou responded by saying no, the Advisory Councils would weigh in on policy and strategic matters and would not vote on BHE motions; a quorum of Board retains the authority to approve all motions.

Board Member Mattera added that as a segmental representative he has always felt that his voice, through the current committee structure, has been heard. He expressed concern that the Advisory Councils would become so large that the segmental views may get drowned out. He suggested adding a requirement that the BHE membership on each council shall always be greater than non-BHE membership on each council. Chair Gabrieli thanked Board Member Mattera for the suggestion but noted that there are annual governance review protections in the By-Laws, as well as protections that the gubernatorial and segmental appointees will be making the decisions, and he suggested that the Board give this a try and make course corrections as needed.

Member Bill Walczak asked if an Advisory Council co-chair is eligible to serve on the Executive Committee if the co-chair is also a Board member. Chair Gabrieli confirmed, yes.

Member Judy Pagliuca suggested that including a semi-annual review of the Advisory Councils may prove useful as a best practice for the Board. Chief Counsel Papanikolaou stated that the Member Pagliuca's suggestion could be easily incorporated into the motion, by stating that the motion is approved "subject to" the Board committing to conducting at least a mid-year review of implementation of the By-Laws in year one. Chair Gabrieli acknowledged Board members' general consensus on that approach, and agreed to add the language

Chair Gabrieli asked for a motion of approval for BHE 21-49, subject to the Board committing to conducting at least a mid-year review of By-Law implementation in year one. On a motion duly made and seconded, the motion was approved unanimously by all Board members present, as follows:

- Ann Christensen – Yes
- Veronica Conforme – Yes
- Alex Cortez – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Paul Mattera – Yes
- Tom Moreau, Secretary of Education Designee – Yes
- Mike O'Brien – Yes
- Judy Pagliuca – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 21-49                    AMENDMENTS TO BOARD OF HIGHER EDUCATION BY-LAWS**

**VOTED:**                    The Board of Higher Education hereby approves amendments to its By-Laws, as set forth in Attachment A, and subject to the Board of Higher Education committing to conducting at least a mid-year review of By-Law implementation in year one.

**Authority:**                Massachusetts General Laws Chapter 15A, Section 4; BHE By Laws Article IV, Section 1 (Amendment or Revision).

**Contact:**                    Constantia T. Papanikolaou, Chief Legal Counsel

**VII. PRESENTATIONS**

**A. Financial Assessment and Risk Management – Year 1 Overview**

*List of Documents Used*

*Financial Assessment and Risk Monitoring (FARM) of Independent Institutions: Year 1 Review, PowerPoint Presentation, June 22, 2021*

Chair Gabrieli moved to the final agenda items, stating that two presentations would be given by

Commissioner Santiago. The first one will provide an overview of the Department's efforts to implement the legislatively approved approach to proactively screening and assessing the financial condition of private (independent) higher education institution. The final presentation will be the *Commissioner's Year-End Report*. Chair Gabrieli thanked Commissioner Santiago, Deputy Commissioner Marshall, Chief Counsel Papanikolaou, and Deputy Commissioner Simard for their contributions, and then turned it over to the Commissioner.

Commissioner Santiago opened by setting the context for the first presentation on the Department's institutional screening and assessment process, which is called "FARM" and stands for Financial Assessment and Risk Management (FARM). He noted that this is the Department's first year of implementing this important work, and that it was important to provide a Year 1 summary to the Board, along with recommendations for Year 2 implementation. He commented that the federal and state stimulus allocations made available to institutions during the pandemic positively impacted their financial sustainability. However, the problem is ongoing, with demographics showing a decline in birth rates, which will, in turn, produce a dramatic reduction in the number of college students years from now and adversely impact institutions. The Commissioner also noted that 2023 would be a challenging year due to declining enrollment, and the exhaustion of stimulus funding.

Commissioner Santiago shared that the law requires the Department to annually screen private higher education institutions, both nonprofit and for-profit institutions. As a regulatory agency, he emphasized the importance of acknowledging the regulatory term at "risk of imminent closure," which is the Department's primary focus when reviewing an institution. The Commissioner reviewed the 18-month rule which forms the basis for the risk analysis. He added that those institutions that screen in as "at-risk" bear the responsibility of then submitting plans, data, and other information to the Department to help the Department assess the severity of the risk. All institutions, irrespective of their screening status are required to proactively notify the Department of known financial liabilities and risks, post their audited financial statements, and ensure their trustees receive the necessary training to understand the financial risks of their institution.

FARM implementation encompasses participation from three DHE divisions, and the Board will hear from each division: Legal, led by Chief Legal Counsel Dena Papanikolaou; Finance, led by Deputy Commissioner for Administration and Finance, Tom Simard; and Academic Affairs, led by Deputy Commissioner for Academic Affairs & Student Success, Pat Marshall. He turned to Chief Counsel Papanikolaou to share her insights on the FARM work and suggested changes.

Chief Counsel Papanikolaou opened by summarizing and commenting on operationalizing the FARM process. Ms. Papanikolaou stated that a cross-functional regulatory team manages the process, each with lead assignments and weekly meetings as a group. The legal division, which included Ashley Wisneski and Alex Nally, is primarily responsible for drafting correspondence, providing internal team coordination and project management, and providing institutions with technical assistance. The finance division, which in addition to Tom included Joe Wallerstein, is responsible for the initial screenings and assessments, while all members of the team provide input on risk mitigation review and monitoring for Commissioner review. And, the academic affairs division, which in addition to Pat included Cindy Brown, is responsible for contingency closure planning with identified institutions. In

Year 1, the FARM team developed the infrastructure for the work, while simultaneously implementing the new law. The team established external and internal communication protocols, templates, and data trackers, as well as a password-protected, confidential reporting portal for institutions. The team also adapted financial screening workbooks to make risk assessment summaries readily available through a partnership with the New England Commission of Higher Education (NECHE). Chief Counsel Papanikolaou closed by stating the Commissioner's FARM Advisory Committee convened quarterly to provide consultation and advice to the Commissioner. She next turned to Tom Simard for an overview of the year one screening and assessment process.

Deputy Commissioner Tom Simard focused on screening and assessments, and risk mitigation review and monitoring. He highlighted the timeline of key regulatory checkpoints during Year 1 implementation-- April 2020 through May 2021. Deputy Commissioner Simard identified the four critical financial health elements reviewed by the DHE and NECHE: enrollment, the sufficiency of cash flow, cash liquidity, and wealth reserves. The FARM process consists of seven phases, where phase four determines how and whether an institution advances through the next phases of the process, with a determination that either risk mitigation plans are required, or no further action is warranted. Deputy Commissioner Simard closed by identifying challenges and recommendations related to Year 1 implementation. Among many, one significant challenge was a process delay the Department experienced in waiting to receive detail and underlying data relevant to NECHE's financial screenings. The Department is addressing this in Year 2 by requiring all screened-in institutions to sign and submit a release form, which will authorize NECHE to release any and all requested information to the Department without delay. In addition, in Year 1 the Department identified a few unique institutions that did not fit well in the screening methodology. Future screenings will adapt to the institution's distinction to properly screen their unique position. An institution's president and the chair of the institution's board of trustees will also sign a certification attesting that the institution has both the means and the shared commitment to fulfill its risk mitigation plans and to continue operations through the end of the next academic year. Deputy Commissioner Simard then asked Deputy Commissioner Marshall to continue the next section of the presentation.

Deputy Commissioner Marshall provided an overview of FARM's process improvement plan in the area of contingency closure planning. As part of risk mitigation and monitoring last October, communications to the presidents of those institutions advanced to the risk mitigation phase of the process also requested that they begin Phase I of contingency closure planning. Deputy Commissioner Marshall described the various phases of contingency closure planning and stated that Phase I includes the submission of a table with a list of all academic programs offered by the institution, along with CIP codes and enrollment information. The full contingency closure plan consists of Phases I and II, with the Final Phase representing closure. She emphasized the importance of an institution needing to understand why information such as enrollment numbers, students receiving VA benefits, and a list of academic programs is necessary to assist students should operations cease.

In reviewing Year 1, Deputy Commissioner Marshall noted that contingency closure planning began in October with a light touch (Phase I) followed by increased requirements and requested revisions/additions (Phase II). In Year 2, the team will shift and expedite the timelines, and newly screened-in

institutions will be required to complete *both* Phase I and Phase II contingency closure planning before January 1, simultaneously with risk mitigation plan submissions.

Next, Chief Counsel Dena Papanikolaou provided an overview of three additional regulatory and legal requirements of the Commonwealth's new statutory and regulatory FARM process. She noted that in addition to the law's affirmative obligation on the Department to conduct the annual financial screenings and assessments (either directly or through NECHE), the law creates three specific, affirmative obligations on all private higher education institutions (IHEs) located in the Commonwealth and authorized to grant degrees as follows:

- IHEs must proactively notify the Board of any "known financial liabilities and risks;"
- IHEs must annually post audited financial statements; and
- IHEs must ensure their trustees receive instruction and training on fiduciary duty and financial metrics at least once every four years.

All 85 institutions that fall under the jurisdiction of the law received a notice from the Commissioner detailing these expectations and how to meet the obligations, which includes submitting reports through the Department's confidential online portal. On the first bulleted item, Chief Counsel Papanikolaou noted that, with one exception, in Year 1 the Department did not receive any proactive notifications from IHEs of "known liabilities or risks." To address this, in Year 2 the Department will add a "nothing to report" checkbox/ confirmation in the IHE's annual reporting portal. On the requirement to post audited financial, ninety-four percent of these institutions are in compliance. The Department will continue to monitor compliance with this requirement but does not have Year 2 recommendations on this item. Similarly, the roll out of the trustee training requirement is ongoing. The Department worked with The Boston Consortium and the Attorney General's office on a comprehensive training, where over 300 hundred board members participated and over 60 leaders. The Department will review and analyze compliance data after the November 1, 2021 deadline. Chief Counsel Papanikolaou turned to the Commissioner to offer closing remarks.

Commissioner Santiago thanked the team for their report and their work. He offered his observations on the inherent challenges in identifying an institution's risk of imminent closure based on prior year's data and emphasized the importance of implementing enhancements to the process to avoid lost time, a crucial factor once an institution has been identified. One notable recommendation for FY22 which is already underway is the development of the NECHE "release form" signed by IHEs, which would permit the accreditor to release information to the DHE directly and quickly. Commissioner Santiago highlighted three additional recommendations which the Department intends to implement:

- accelerate the timeline from December to October for "at risk" and public notice determinations;
- require all Presidents and Board Chairs of IHEs assessed as "at risk" to submit certifications attesting that they have both the means (18 months) and the intention (commitment) to stay open through the end of the next academic year; and
- increase DHE capacity and resources to conduct assessments, risk monitoring and contingency closure planning.

He shared his belief that the recommended changes would facilitate the process of identifying institutions at risk and making the work more efficient and effective. Commissioner Santiago closed by sharing his overall assessment that the Department's work in Year 1 was successful and opened the floor for questions.

Chair Gabrieli expressed support for the Commissioner's recommendations and their focus on protecting students. Member Judy Pagliuca asked if the Department had information on the number of institutions identified, and their timeliness in getting data. She also asked about student complaints once an institution closes, digitization, and if aggregating and sharing information would help others understand the health of private schools in the higher education economy. Commissioner Santiago noted that the Department has a complaint process in place to assist students. Chief Counsel Papanikolaou added that under the statute, the Department is under strict confidentiality regarding the FARM work and therefore cannot publicly disclose data, though the Department can share data or other information with the Board through an appropriate non-public process such as an executive session, if desired. Deputy Commissioner Simard added that through Sales Force, the Department receives digitized information in various ways as institutions go through the regulatory process. Still, the screening tools will continue to be monitored to ensure they remain valid for the screening process. Chair Gabrieli thanked the Department for their work then turned to Commissioner Santiago for the final presentation.

## **B. Commissioner's Year End Report**

*List of Documents Used*

*Commissioner's FY21 Year-End Report*

Commissioner Santiago opened by stating the experience this academic year is one he has not seen in 40 years in the field of higher education. In the interest of time, he stated that he will be reviewing only the highlights of FY2021 (academic year 2020-2021) with the option for questions at the end. He stated that his presentation will focus on three items in particular: Covid-19 Response, the Equity Agenda, and Financial Assessment and Risk Management (FARM).

Commissioner Santiago discussed the transition to remote work for the Department and remote teaching and learning for the institutions in March 2020. He presented slides illustrating the Department's move to remote work and the changes implemented ensure staff were safe, as well as able to work effectively and efficiently from their homes. Commissioner Santiago also commented on the Department's work with the Department of Elementary Education (DESE) to improve FAFSA completion, stating that while we are not exactly where we were in FAFSA completion before COVID-19, that gap is closing.

Commissioner Santiago transitioned to the Equity Agenda and provided updates on several initiatives advancing this important work. He stated that Basic Needs Security (BNS) rose to the top as an area of focus and there is more work to be done. The BNS initiative represents a cross-agency initiative that tackled issues with food insecurity, housing insecurity, lack of access to transportation, and, more

recently, mental health issues among our students. He continued by sharing the success of Early College. There are now 31 programs serving approximately 5,000 students, with more than 50% of students identifying as students of color.

Commissioner Santiago commented that financial aid reform was another major component of the Equity Agenda. The MASSGrant Plus program in Community Colleges has made a considerable dent in reducing the unmet needs of students and now there is a need to determine whether that difference carries over to outcomes, retention, graduation, and transfer. The New Undergraduate Experience (NUE) will also be foundational to the Equity Agenda and a major conversation topic. STEM Starter Academy has served over 31,000 community college students with positive outcomes for 64% of the participants.

Commissioner Santiago opted to not repeat comments related to the FARM work given the previous presentation earlier in the meeting but paused to emphasize the significance of rolling out this work in FY21. The Commissioner continued by noting that in addition to this new statutory responsibility, in FY21 the Department was also required to take on and begin implementing other important regulatory requirements-- the new campus sexual assault law, as well as public and private higher education trustee training requirements included in the FARM law. The Commissioner also referenced the use of the Governor's Emergency Education Grant Funds and summarized ongoing campus-based initiatives.

Commissioner Santiago provided a recap of the five presidential searches completed in FY21 and highlighted that two state university searches increased gender diversity in these important leadership roles, as we now have two female state university presidents. He concluded by extending his appreciation to the Board for their support during the past year and stated that this summer would be very important for the equity work as we begin to map out a strategic plan for racial equity. Finally, the Commissioner commended and thanked the Department staff for their work over the course of the past year.

Chair Gabrieli thanked the Commissioner for his presentation and suggested a special Board meeting in August to discuss some of the items presented at the Academic Affairs Committee the previous week. He then asked for comments or questions from the Board. Member Pagliuca thanked the Commissioner for his overview and commented that she was proud to be a member of the Board. She also wondered if there was a way to acknowledge the work of higher education institutions for the adaptations made during the COVID-19 pandemic. Commissioner Santiago agreed and said he had never seen higher education's mission change so quickly. Chair Gabrieli remarked that it seemed appropriate to acknowledge all their hard work to help educate students during this time.

Chair Gabrieli shared that Department staff would reach out to Board members to schedule a three-hour meeting in August to continue important conversations on the NUE and BNS presentations brought before the Academic Affairs Committee. He thanked Commissioner Santiago, his team, and the Board before asking for a motion to adjourn.

**VIII. OTHER BUSINESS**

None.

**IX. ADJOURNMENT**

The meeting was adjourned at 1:00 p.m.

*Respectfully Submitted,  
Carlos E. Santiago  
Commissioner and Secretary to the Board*

# Financial Assessment and Risk Monitoring (FARM) of Independent Institutions: Year 1 Review



# Overview: MA FARM Law

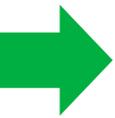
All MA-based, private IHEs located in MA and authorized to grant degrees must be annually screened and assessed to determine whether they are “at risk of imminent closure.”

- BHE must establish process to conduct these annual financial screenings and assessments for “at risk of imminent closure” determinations
  - Financial screenings may be conducted by accrediting agency (NECHE), pursuant to an MOU
- IHEs must:
  - proactively notify BHE of any “known financial liabilities or risks” .
  - annually post audited financial statements
  - ensure their trustees receive instruction and training, at least once every four years, on fiduciary duty and financial metrics

# Financial Assistance and Risk Monitoring (FARM) Implementation

## Timeline Overview

- ✓ **June 2018-January 2019:** THESIS recommendations; BHE accepts report (BHE 19-04)
- ✓ **June 18, 2019:** BHE Vote to put draft regulations out for formal public comment (BHE 19-06)
- ✓ **November 14, 2019:** Legislation enacted and signed
- ✓ **November- December 2019:** DHE staff revise regulations
- ✓ **January 10, 2020:** BHE Vote on final regulations (BHE 20-03); ongoing NECHE MOU negotiations
- ✓ **April 8, 2020:** BHE Vote related to implementation (NECHE MOU and Implementation Procedures); immediate implementation
- ✓ **April 2020- June 2021:** Year 1 Implementation
  - **(see next slides):** Operationalizing policies and procedures, screenings and assessments, review of risk mitigation plans, contingency closure planning, trustee training, etc.
- ❑ **June 22, 2021 BHE Meeting-**Year 1 Review or “After Action Report”



# Agenda

- Year 1 Implementation
  - Operationalized Business Processes- *Dena*
  - Screening and Assessments- *Tom*
  - Risk Mitigation Review and Monitoring- *Tom*
  - Contingency Closure Planning- *Pat*
  - Other requirements, IHE Reporting Portal –*Dena*
- Recommendations, Next Steps

# Operationalizing FARM: Internal Business Processes

- ✓ Process Managed by Cross-functional Regulatory Ream
  - Legal- notice drafting; project management; external communications/tech assistance
  - ANF- financial screenings and assessments; risk mitigation review/ monitoring
  - Academic Affairs- contingency closure planning; risk mitigation review/ monitoring
  - ALL- team members met weekly, participated in all phases of processes/ deliberations
  
- ✓ Established external & internal communication protocols; templates; data trackers; IHE reporting portal; website
  
- ✓ Adapted financial screening workbooks; created risk mitigation assessment summaries for Commissioner approval
  
- ✓ Established and Convened Commissioner's Advisory Committee
  - Quarterly and as needed touchpoints

# Year 1 Timeline Overview

## April 26/27, 2020

- DHE received FY19 screening results for NECHE institutions (610 CMR 13.03(1)(a))

## July – September 2020

- DHE discussed financial screening results with NECHE institutions

## October 2020

- DHE sent “further action needed” letters notifying institutions they “may be at risk of imminent closure”- **Risk Mitigation Plans requested and Phase 1 Contingency Closure** (610 CMR 13.03(2))



## May 2020

Advisory Committee Touchpoint-Orientation

## June 12, 2020

- DHE sent “you have screened in” letters to NECHE institutions (610 CMR 13.03(1)(c))

## August 2020

- DHE screened non-NECHE institutions (610 CMR 13.03(1)(a); 610 CMR 13.03(1)(c))

## September 2020

Advisory Committee Touchpoint- screening results

# Year 1 Timeline Overview

## November 2020

- DHE sent “no further action needed” letters to remaining screened-in institutions (610 CMR 13.03(2))

## March – June 2021

- Ongoing review of institutional risk monitoring quarterly reports (610 CMR 13.03(3))

## December 23, 2020

- DHE sent “moving to monitoring” letters to screened-in institutions (610 CMR 13.03(2)(b)(1))

## Spring 2021 Advisory Committee Touchpoint

## May 2021

- NECHE transmission of FY20 screening results to DHE (610 CMR 13.03(1)(a))

## November 2020 Advisory Committee Touchpoint

# FARM Process- Summary Slide

## ➤ **Screenings and Assessments,**

- Phase 1- received screening results from NECHE (April 27); DHE conducted non-NECHE IHE screenings
- Phase 2- Protracted discussions with NECHE on screening results (April- June)
- Phase 3- DHE initiated screening result review with IHEs that screened-in (June)
- Phase 4- DHE either advanced IHES to Risk-Mitigation and Contingency Closure Planning, or notified IHEs that “no further action is warranted” (Early October)

## ➤ **Review of Risk Mitigation Plans,**

- Phase 5- DHE receives, reviews Risk Mitigation plans from identified IHEs (Late October)
- Phase 6- Determinations made on sufficiency of risk mitigation plans based on information received and the 18-month rule; all IHEs advanced to quarterly reporting and continued contingency closure planning (December 2020).

## ➤ **Risk Mitigation Monitoring**

- Phase 7- Quarterly report reviews, ongoing monitoring & contingency planning

## ➤ **Contingency Closure Planning**

- Initiated at Phase 4, continues as IHE advance through process

# Financial Screenings

- All 85 Independent Institutions of Higher Education (IHEs) located in MA and authorized to grant degrees were screened
  - 70 IHEs screened by NECHE, pursuant to MOU
  - 15 IHEs screened by the DHE
- Same screening methodology used by NECHE and DHE, with four key financial health elements:
  - Enrollment / Market Revenue – 4 metrics
  - Cash Flow Sufficiency – 3 metrics
  - Liquidity – 2 metrics
  - Wealth – 3 metrics
- ARFE report required by NECHE when 4 or more metrics fall below set thresholds (“red flag”), with at least one red flag in the market or cash flow category.
- At least one “red flag” in enrollment/market revenue or cash flow sufficiency weights these factors more heavily than wealth or liquidity.

# Financial Screenings

## Market Revenue / Enrollment

Market Revenue / Durability	Red Flag
Market Index (100 - Selectivity + Matriculation)	30
3Y Change in FTE Enrollment	-10%
3Y Change in Operating Revenue	-15%
3Y Change in Net Tuition Revenue	-15%

## Cash Flow Sufficiency

Cash Flow Sufficiency	Red Flag
3Y Average Free Cash Flow Margin	-5%
3Y Av Operating Cash Flow Margin Excluding Gifts	-5%
3Y Av Debt Service Coverage	1.25

# Financial Screenings

## Liquidity

Liquidity	Red Flag
3Y Change in Cash & Investments	-5%
Cash + Unrestricted Endowment / Daily Operations	90

## Wealth

Wealth	Red Flag
Cash & Investments to Debt	0.80
Cash & Investments per Student (\$000s)	30
Total Resources to Operations	0.85

# Financial Screenings- Observations

- NECHE invited Commissioner & Tom to March NECHE meeting and submitted summary results in April.
- Process delays between April-June seeking detail and underlying data from NECHE's financial screenings, then pivoting to recreating workbooks and accessing data from IHEs
  - **FY 22 Response**- IHEs now sign a NECHE "Release Form"
- Few unique IHEs (e.g., out of state IHEs with MA satellite campus) do not fit well in screening methodology
  - **FY22 Response**- Ongoing analysis; will build upon lessons learned in FY21 to assess the materiality of these distinctions and adapt.

# Financial Assessments and Risk Monitoring- Observations

- Institutions were responsive, submitted timely risk mitigation plans, through narratives of “plans.”
- DHE completed risk assessments in November-December.
  - **FY22 Response-** With the new, DHE-drafted "NECHE release forms;" business processes operationalized; and COVID impacts on enrollment more certain; DHE can complete risk assessments earlier (October).
- Risk mitigation plans varied in terms of substance and tone; no prescribed format.
  - **FY22 Response-** IHE Presidents and Trustee chairs will sign Certification attesting IHE has both the means, and willingness (intention) to continue operations through end of next academic year.
- Inconsistent back-up documentation submitted with initial Risk Mitigation plans; follow up required by DHE.
  - **FY22 Response-** With new NECHE Release DHE will have the ARFE reports sooner in the process and will be able to ask for specific documentation at earlier stage of Risk Mitigation plan process

# Contingency Closure Planning

Phase I (Fall) Contingency	Phase 2 (Spring) Contingency	Final Phase: Closure
<p>Contingency Closure Template</p> <p>Section B.3: Attachment C" (Program Inventory with CIP Codes)</p>	<p>Contingency Closure Template</p> <p>Update Section B.3 with Spring Enrollment Numbers</p> <p>Section C.4: Attachment E (Students receiving VA educational benefits)</p> <p>Section E: "Communications and Records"(Assessment) G2: Community Impact</p> <p>Table list of academic programs, CIP codes, 2-3 potential partners for each program, expected enrollments end of spring semester.</p> <p>Number of students by class year and accumulated credit bands as of the end of Spring semester (0-15, 16-30, etc.)</p> <p>A list of collaborative agreements with other institutions and the corresponding controlling agreements (dual degrees, transfer programs, etc.)</p>	<p>Notice of Closure Template</p> <p>Complete all sections and attachments: Institutional Statement of Closure, Teach-Out Plan and Academic Integrity, Transfer Agreements, Student Data and Student Services, Administration, Communication and Records, Fiscal.</p> <p>Requires extensive back and forth with DHE staff until NOC is deemed sufficient.</p>

# Contingency Closure Planning- Observations

- In Year 1 initial Contingency Closure Planning began in October with light touch (Phase 1), with Increased requirements and requested revisions/ additions (Phase 2) followed DHE receipt and review of Risk Mitigation Plans.
- **FY22 Response:**
  - *For IHEs currently in Continued Risk Monitoring:* Phase 1 and 2 completed.
  - *For IHEs newly screened-in:* Phase 1 and Phase 2 Contingency Closure Planning are both required before Jan 1, simultaneously with Risk Mitigation Plan submissions.

# Overview: MA Law on Annual Financial Assessments- DENA

- ✓ BHE must establish process to annually assess IHE financial information for “at risk of imminent closure” determination:
  - Assessment must include annual screenings;
  - Financial screenings may be conducted by accrediting agency (NECHE), pursuant to an MOU.
- IHEs must proactively notify BHE of any “known financial liabilities or risks.”
- IHEs must annually post audited financial statements.
- IHEs must ensure their trustees receive instruction and training, at least once every four years, on fiduciary duty and financial metrics

# The Other Legal Requirements-

IHEs must proactively notify BHE of any “known financial liabilities or risks.”

- All 85 IHEs received [June 29, 2020 Notice](#) from Commissioner with expectations on what/ how to report (confidentially):
  - Anticipated problems relating to liquidity or cash deficiencies
  - Any significant negative financial event
  - Any decision to close any instructional locations
  - New or continuing merger/ teach out discussions.
  - Any major changes in academic programs
  - Any other fiscal or “adverse events” reported to another oversight entity (e.g., accreditor)
- FY22 Recommendation- Consider requiring annual “nothing to report” IHE checkbox/confirmation.

# The Other Legal Requirements

- IHEs must annually post audited financial statements.
  - ALL 85 IHEs notified\* of requirement and portal reporting process.
  - 94% of IHEs in full compliance
  - No FY22 recommendations at this time.
  
- IHEs must ensure their trustees receive instruction and training, at least once every four years, on fiduciary duty and financial metrics
  - All 85 IHEs notified\* of requirement and portal reporting process
  - DHE worked with TBC/ AGO on comprehensive training offered live (Jan 26<sup>th</sup>) and now asynchronously (recorded)
  - Nov 1, 2021- reporting deadline for trustees in key leadership roles
  - No FY22 recommendations at this time.

\*DHE Legal Notices- June 29th, December 10th, January 11th (on trustee training).

# **FY22 Responses, Recommendations and Next Steps**

# Year 1 Issues ⇒ Year 2 Approaches

## Issues

- **Internal Management**
  - Need for accelerated deployment/implementation
  - COVID-considerations
- **NECHE**
  - Lost time in April-June on NECHE discussion for additional screening info.
  - DHE recreated methodology through time-intensive, manual process.
- **Contingency closure planning**
  - Prior contingency closure plan template development process too binary.
  - Phase 1 Contingency closure info limited to program inventory.

## Solutions

- **Internal Management**
  - Operationalized business; developed template communications, financial screening workbooks, etc.
- **NECHE**
  - IHE "Release Form" developed and implemented for Year 2 to streamline NECHE data transfer
  - Data from Salesforce will be in a better format for immediate DHE analysis
- **Contingency closure planning**
  - Plan to accelerate contingency closure planning information sought before Jan 1 to include Phase 2 information.

# Additional Recommendations

- **Accelerate the timeline** from December to October for “at risk” and public notice determinations
  - By October fall enrollment should be known.
  - Year 1 provides a baseline “starting point” for analysis
  - Communications and workbook templates from Year 1 ready to go
- Require all private IHEs Presidents and Board Chairs that are assessed as “at risk” to submit **Certifications**
  - Attesting that they have both the means (18 months) and intention (commitment) to stay open through end of next academic year.
- **Increase DHE capacity and resources** to conduct assessments, risk monitoring and contingency closure planning.
  - FARM manager/ analyst position is funded and posted
  - Explore procuring, as needed, DHE consultant support for on-site fiscal review, analysis and guidance in contingency closure phase to support an orderly closure.

# Next Steps and Key Issues for FY22

- **FY22 Screenings in progress-** DHE Received Year 2 (FY20) NECHE results; conducting assessments.
  - **Key issue:** continue to carefully assess COVID impact, including the impact of short-term stimulus funding on IHE financial stability
- **June 22 BHE meeting-** Discuss recommendations.
- **Summer 2021-** Socialize recommendations with stakeholders; draft amended implementation procedures and regulations, as necessary.
- **Summer 2021-** Hire and onboard new FARM manager/analyst position.
- **October 2021 BHE meeting-** DHE Report on FY22 work, including screenings/ assessments, and recommendation implementation.

# Discussion

# External Communications & Guidance

- Mass mailings (legal notices from Commissioner):
  - June 29, 2020 – Legal Notice of Annual Financial Screenings and Evaluations; Immediate Notification of Known Financial Liabilities and Risks; Posting of Audited Financial Statements; and Required IHE Trustee Training
  - December 10, 2020 – Notification of Reporting Portal for Audited Financial Statements; and Require IHE Trustee Training
  - January 11, 2021 – Private Higher Education Trustee Training Information
- DHE website: <https://www.mass.edu/strategic/farm.asp>
  - Statute, regulations, implementation procedures, notices
- DHE Reporting Portal- Trustee training certifications; annual financials.
- FARM External Contact for Technical Assistance-
  - Alex Nally, Assistant General Counsel

## BOARD OF HIGHER EDUCATION

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June 21, 2022

10:00 a.m.

Livestreamed, via Zoom

### Meeting Minutes

A meeting of the Board of Higher Education (“BHE” or “the Board”) was held virtually on Tuesday, June 21, 2022 on the web-conference platform Zoom.

#### **The following Board Members were present:**

Chris Gabrieli, Chair

Mary Burns

Ann Christensen

Veronica Conforme<sup>1</sup>

Cameron Costa

Patty Eppinger

Sheila Harrity, Vice Chair<sup>2</sup>

Paul Mattera

Judy Pagliuca<sup>3</sup>

Jim Peyser, Secretary of Education

Paul Toner

Bill Walczak

Jorgo Gushi, non-voting Student Advisor, Community College segment

Cindy Mack, non-voting Student Advisor, State University segment

Carlos E. Santiago, Commissioner and Secretary to the Board

#### **The following Board Members were absent:**

Alex Cortez

### **I. CALL TO ORDER**

Chair Chris Gabrieli called the meeting to order at 11:04 a.m.<sup>4</sup> and announced that this meeting is being held remotely and in accordance with relevant amendments to the Open Meeting Law. Chair Gabrieli announced that the meeting is being livestreamed via Zoom and recorded, and

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<sup>1</sup> Arrived at 11:10 a.m. after attendance roll call due to technical difficulties

<sup>2</sup> Present but stepped away during roll call

<sup>3</sup> Arrived at 11:04 a.m. after attendance roll call due technical difficulties

<sup>4</sup> Although the meeting was scheduled to begin at 10 a.m., the Zoom platform experienced widespread technical difficulties the morning of June 21, 2022 and was not accessible until approximately 11:00. The meeting commenced when access to Zoom was restored.

members of the public who signed up for public comment would be allowed to join the Zoom meeting to provide comment. Department of Higher Education (DHE or Department) Chief of Staff Elena Quiroz-Livanis, then took roll call attendance (see above for attendance roster).

## **II. PUBLIC PARTICIPATION**

Chair Gabrieli reported that the Board did not receive any requests for public comment.

## **III. WELCOME**

Chair Gabrieli welcomed everyone to the last, regularly scheduled Board meeting for the academic year. He acknowledged that a decision was made to reverse the agenda items to ensure that all items requiring a vote would be addressed earlier during the meeting and, if needed, the meeting time may extend past 1:00 p.m. Chair Gabrieli thanked Vice-Chair Sheila Harrity and Segmental Advisor Jorgo Gushi for their service before turning to Commissioner Carlos Santiago to introduce the first agenda item.

## **IV. MOTION- Greenfield Community College Presidential Appointment**

### List of Documents Used [BHE 22-65](#)

Commissioner Carlos Santiago provided an overview of the Board of Higher Education's (BHE) role in the Greenfield Community College (GCC) presidential selection process. He noted that his responsibility included a review of the semi-finalist list to ensure a quality and diverse pool of candidates. Dr. Mario Delci served as the DHE's appointed, voting member on the search committee and representative in the search process. Commissioner Santiago stated that the process concluded with finalist interviews that he conducted with Secretary Peyser to help identify the strengths and weaknesses of each candidate. They then conveyed their comments to GCC Board Chair Hector Toledo. Commissioner Santiago then turned the meeting over to GCC Board Chair Toledo to discuss his experience in the search process.

Chair Toledo provided an overview of the timeline for the Greenfield Community College search. He stated that the process began on October 21, 2021. The GCC board selected the firm Academic Search on December 16, 2021, and a 13-member presidential search committee was convened on February 2, 2022. Chair Toledo noted that after conducting a community pre-search study, Academic Search created a presidential profile to begin advertising for GCC's next president. On April 8, 2022, the search committee identified 11 semi-finalist candidates, of which five were recommended as finalists. One candidate withdrew her candidacy on May 4, 2022, leaving four candidates remaining. Chair Toledo stated that of the four finalists interviewed, the GCC board unanimously voted for Dr. Michelle Schutt as their next president. He thanked the Board in advance for their consideration before turning the meeting back over to Commissioner Santiago.

Commissioner Santiago asked Dr. Michelle Schutt to discuss her interest in the position. Dr. Schutt provided a brief background of her current role as the College of Southern Idaho's Vice President and stated that her interest in Greenfield Community College stems from the alignment she feels to their core values of inclusion, transparency, creativity, integrity, innovation and sustainability. Dr. Schutt turned the meeting back over to Commissioner Santiago to open the floor for questions. Chair Gabrieli and Member Mary Burns welcomed Dr. Schutt to Massachusetts without further comments from the BHE.

Chair Gabrieli asked for a motion of approval for BHE 22-65 Greenfield Community College Presidential Appointment. On a motion duly made and seconded, the motion was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-65                      GREENFIELD COMMUNITY COLLEGE PRESIDENTIAL APPOINTMENT**

**VOTED**                      The Board of Higher Education hereby approves the May 26, 2022 recommendation of the Greenfield Community College Board of Trustees recommending Dr. Michelle K. Schutt as President of Greenfield Community College. Such appointment is effective on or about July 18, 2022, is subject to the successful and satisfactory completion of a State Police background check, and is subject to and in accordance with the attached Terms of Appointment.

Authority:                      Massachusetts General Laws Chapter 15A, Sections 9(q) and 21

Contact:                      Constantia T. Papanikolaou, General Counsel

Chair Gabrieli acknowledged outgoing presidents, Dr. Javier Cevallos and Dr. Valerie Roberson and the BHEs appreciation for their service to the Commonwealth. Due to time, he noted the need to hold off on more an extensive thank you until a later date.

## **V. ACCEPTANCE OF MINUTES**

Chair Gabrieli then asked for a motion to accept two sets of Board meeting minutes. One from the last Board meeting held on May 5, 2022 and another from the Board meeting held on March 22, 2022. He proposed combining the two sets of minutes for approval. The motion to approve both set of minutes was duly moved and seconded. With no further discussion, the motion proceeded to a roll call vote and passed unanimously by all members present, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

## **VI. EXECUTIVE COMMITTEE REPORTS & MOTIONS**

### List of Documents Used

[BHE 22-53](#)

[BHE 22-54](#)

[BHE 22-55](#)

[BHE 22-56](#)

[BHE 22-57](#)

[BHE 22-58](#)

[BHE 22-59](#)

[BHE 22-60](#)

[BHE 22-61](#)

[BHE 22-62](#)

[BHE 22-63](#)

[BHE 22-64](#)

[BHE 22-65](#)

Chair Gabrieli provided a brief overview of the Executive Committee reports before the Board. He reminded them that BHE Motion 22-56 is a consent agenda and contains BHE Motions 22-53 through 22-55 as a bundle. Chair Gabrieli asked Chief of Staff Elena Quiroz Livanis to describe the motions, which she noted as four letters of intent (LOI) from Framingham State University, Fitchburg State University, Massasoit Community College and Westfield State University, respectively.

Chair Gabrieli asked for a motion of approval for BHE 22-56, Approval of Board of Higher Education Motions 22-53 through 22-55 on a Consent Agenda. On a motion duly made and seconded, the motion was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-56            CONSENT AGENDA**

**VOTED:**            The Board of Higher Education approves the following motions on a consent agenda:

BHE 22-53 Approval of Letter of Intent of Framingham State University to Award the Bachelor of Science in Fashion Merchandising and Authorization for Fast Track Review

BHE 22-54 Approval of Letter of Intent of Massasoit Community College to Award the Associate of Arts in Black Studies and Authorization for Fast Track Review

BHE 22-55 Approval of Letter of Intent of Westfield State University to Award the Bachelor of Science in Data Science and Authorization for Fast Track Review

Authority            Commonwealth Honors Program Approval Process Guidelines as Revised by the Board of Higher Education in March 2022; G.L. c. 15A, § 9.

Contact:            Winifred M. Hagan, Ed.D., Senior Associate Commissioner for Strategic Planning and Public Program Approval

Chair Gabrieli next asked for a motion for approval of BHE 22-60, Approval of Board of Higher Education Motions 22-57 through 22-59 on a Consent Agenda. BHE 22-60 bundles the Commonwealth Honors Program approvals for Cape Cod Community College, Holyoke Community College, and Mount Wachusett Community College. On a motion duly made and seconded, the motion was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-60            CONSENT AGENDA**

**VOTED:**            The Board of Higher Education approves the following motions on a consent agenda:

BHE 22-58 Renewal of Cape Cod Community College in the Commonwealth Honors Program

BHE 22-59 Renewal of Holyoke Community College in the Commonwealth Honors Program

BHE 22-60 Renewal of Mount Wachusett Community College in the Commonwealth Honors Program

Authority            Commonwealth Honors Program Approval Process Guidelines as Revised by the Board of Higher Education in March 2022; G.L. c. 15A, § 9

Contact:            Winifred M. Hagan, Ed.D., Associate Commissioner for Academic Affairs & Student Success  
Keith Connors, Program Director for Academic Affairs and Student Success

Chair Gabrieli next asked for a motion for approval of BHE 22-62, Approval of Middlesex Community College’s Strategic Plan. He noted that the Strategic Planning Advisory Council would soon make recommended changes to the guidelines, and that the Middlesex Community College Strategic Plan was completed under the existing guidelines. On a motion duly made and seconded, BHE 22-62 was approved, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes

- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Abstain
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-62                    APPROVAL OF MIDDLESEX COMMUNITY COLLEGE STRATEGIC PLAN**

**VOTED:**                    The Board of Higher Education hereby approves With Equity at its Core: Middlesex Community College 2022-2027 Strategic Plan, and authorizes the Commissioner to forward the same to the Secretary of Education for final approval pursuant to Massachusetts General Laws Chapter 15A, Sections 9(l) and 22(l).

Authority                    Massachusetts General Laws Chapter 15A, Sections 7, 9(f), 9(l) and 22(l); BHE By-Laws, Article I, Section 3(d) and Article III.

Contact:                    Winifred M. Hagan, Ed.D., Senior Associate Commissioner for Strategic Planning and Public Program Approval

Chair Gabrieli provided an overview of BHE motion 22-63, Authorization for Commissioner to Solicit Public Comment on Proposed Regulatory Amendments to 610 CMR 13.00; Financial Review and Risk Monitoring of Institution of Higher Education. He noted the importance of the motion’s alignment with recent legislative changes and added measures to aid in the monitoring process. Chair Gabrieli then asked for a motion of approval for BHE 22-63.

On a motion duly made and seconded, the motion was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-63                    AUTHORIZATION FOR COMMISSIONER TO SOLICIT PUBLIC COMMENT ON PROPOSED REGULATORY AMENDMENTS TO 610 CMR 13.00: FINANCIAL REVIEW AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION**

**VOTED:**                    The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, and solicit public comment on the proposed amendments to regulation 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education, subject to the completion of the Executive Office of Administrative and Finance internal review process.

Authority                    M.G.L. c. 69, §§ 16, 30A, and 31A; 610 CMR 13; M.G.L. c. 30A, § 3; 950 CMR 20.00

Contact:                    Constantia T. Papanikolaou, Chief Legal Counsel

Chair Gabrieli summarized BHE 22-64, Approval of Revised Campus Strategic Planning Guidelines. He acknowledged the efforts of Strategic Planning Advisory Council Co-Chairs Francesca Purcell and Bill Walczak to engage with campuses and to develop the recommended changes to the existing Strategic Advisory Council process. Chair Gabrieli then asked for a motion for approval of BHE 22-64. He noted that the recommendations seek to create a more comprehensive, integrated view of public higher education in Massachusetts, which would include the University of Massachusetts in the campus strategic planning review process. Member Walczak added that the UMass system, along with the Community College and State University segments, would provide a better understanding of how to move forward as a Commonwealth. He also thanked staff team members, co-chair Francesca Purcell, Associate Commissioner Winnie Hagan, and Board member Paul Mattera for their work. On a motion duly made and seconded, BHE motion 22-64 was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-64                    APPROVAL OF STRATEGIC PLANNING ADVISORY COUNCIL  
RECOMMENDATIONS**

**VOTED:**                    The Board of Higher Education (Board) accepts and approves the Strategic Planning Advisory Council’s (the Advisory Council) June 6, 2022 recommendations, and authorizes the Commissioner to incorporate the Advisory Council’s recommended revisions I, II, and IV through VII into the Board’s Campus Strategic Planning Handbook for implementation during Academic Year 2022-2023. Provided that Recommendation III shall be taken up by the Board for consideration no later than the Board’s next Annual Meeting.

The Board further commits to conducting the reviews recommended by the Advisory Council in Recommendations VIII and IX during AY2022-2023, which shall include a preliminary discussion on logistics during the Board’s next Annual Meeting.

Authority                    Massachusetts General Laws Chapter 15A, Sections 7, 9(f), 9(l) and 22(l); BHE By-Laws, Article I, Section 3(d) and Article III.

Contact:                    Winifred M. Hagan, Ed.D., Senior Associate Commissioner for Strategic Planning and Public Program Approval

**VII. BOARD OF HIGHER EDUCATION**

List of Documents Used

- [BHE 22-66](#)
- [BHE 22-67](#)
- [BHE 22-68](#)
- [BHE 22-69](#)

Chair Gabrieli next asked for a motion of approval for BHE 22-66, Summer Delegation of Authority to the Commissioner. The motion authorizes the Commissioner to take action as deemed necessary and appropriate on BHE matters over the summer, and until the BHE’s next regularly scheduled meeting. On a motion duly made and seconded, the motion was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes

- Paul Mattera – Yes
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE-22-66                    DELEGATION OF SUMMER AUTHORITY TO THE COMMISSIONER**

The Board of Higher Education delegates to the Commissioner, ex officio, until the next regularly scheduled meeting of the Board its authority to take such action, in consultation with and upon the advice of the Chair or Vice Chair of the Board, as is deemed necessary or desirable.

Authority                    Massachusetts General Laws Chapter 15A, Section 6

Contact:                    Constantia T. Papanikolaou, Chief Legal Counsel

Chair Gabrieli turned to two motions that were accompanied by staff presentations, BHE 22-67, Acceptance of Support Services for Student Success and BHE 22-68, Acceptance of Statewide Strategic Plan for Racial Equity. He noted that with both initiatives, more work would be necessary to implement specific policies over time. Chair Gabrieli turned to Commissioner Santiago to provide more insight.

Commissioner Santiago began the presentation stating that the DHE's primary focus is on a framework for student success and a comprehensive plan for racial equity. The documents are grassroots, he pointed out, with some work already underway on college campuses. He recognized the BHE's work and deferred to Member Eppinger's role as Co-chair of the New Undergraduate Experience, in addition to serving on the Steering Committee with Member Bill Walczak. Commissioner Santiago emphasized that affordability is necessary but insufficient to ensure student success by providing an outline of the presentation; this is not because he doesn't think affordability is essential, but just the opposite. Commissioner Santiago said that the current administration has invested significant state dollars in financial aid and has attempted to address affordability. However, he does not think institutions will succeed solely because of affordability without the complementing work that engages in student support. Commissioner Santiago turned to Senior Deputy Commissioner Clantha McCurdy for the presentation.

Senior Deputy Commissioner McCurdy provided an overview of the Student Success Framework. She stated that the steps toward development included a current state analysis of student support structures and practices, which led to the creation of key components of the Framework, implementation options, recommendations, and communication materials for sharing the project's outcomes. The current state analysis was comprehensive and included an engagement of over 300 stakeholders via interviews and focus groups, an environmental scan, and over 200 campus files.

Dr. McCurdy explained that the development of key Framework components was guided by the

findings from the current state analysis and included three group sessions for feedback and insight on the proposed Framework, guiding principles, recommendations, and key metrics. With the implementation options, recommendations, and communication materials, the group convened nine sessions to socialize the proposed strategic plan, confirm and finalize Framework, and develop communication materials to share project outcomes in the future. She concluded by adding that the Framework was also informed by a five-peer state comparison that included Washington, New York, Colorado, Maryland, and New Jersey and an analysis of their student success efforts. Dr. McCurdy turned to Deloitte's Higher Education Specialist, Dr. Bob Caron, to continue the presentation.

Dr. Caron provided an overview of principles used for the Framework. The principles are an opportunity to connect the recommendations and also to think about some of the binding ties across segments within the higher education system. Even with the complexity of attempting to create a framework for both Community Colleges and State Universities, he noted that more commonalities between those segments were found than differences. The guiding principles would serve as guideposts for future changes to the Framework and as evaluation criteria for further investment. The guiding principles were noted as being: 1) racially equitable, 2) collaborative, 3) data informed, 4) flexible, 5) scalable, 6) sustainable, 7) student aligned, and 8) community integrated. Dr. Caron concluded by stating that the Framework itself is a conceptual model meant to get campuses to think more holistically and systematically about support services. He noted that from that model emerged 15 specific recommendations to ensure actionability of the Framework. The recommendations were then packaged thematically into five implementation pathways so that campuses could digest them and start to prioritize around the themes that are important to their campus.

Dr. Caron turned the presentation back to Dr. McCurdy who shared the action steps. She stated that critical work begins after this meeting and that campuses will initially need to engage in a prioritization and readiness assessment. The DHE would be responsible for oversight of implementation and deploying a system-level change for management strategy, while also advocating for support of services identified within this framework. Senior Deputy Commissioner McCurdy also noted that the motion requires that the Commissioner make specific system-wide policy recommendations to the BHE, recommend statewide or system-wide sector specific goals and targets, and provide periodic updates to the Board. The meeting was then opened for discussion.

Secretary James Peyser commented that we need to think about how financial aid and support services fit together. He stated that we should look at students we are trying to support through MASSGrant and MASSGrant Plus and proactively reach out to them to ensure they can access the services needed. We should also ensure that we are doing everything we can to make sure they can afford to attend a public postsecondary institution and support them so that attendance leads to successful completion.

Member Judy Pagliuca asked whether we would incorporate the Framework into the campus strategic planning process and Senior Deputy Commissioner McCurdy responded that it is essential to integrate this Framework with other DHE initiatives. Member Pagliuca asked if it is possible to rate each institution on how well they fit within the strategic planning guidelines. Commissioner Santiago responded that campuses are at different levels of preparedness and asked Dr. Caron to provide

more insight. Dr. Caron agreed that campuses are at different maturity levels and displayed an internal maturity scale to buttress his point – one for each implementation pathway. The rankings provide several elements of maturity along that implementation pathway and a descriptor to determine where a campus might be at various intervals. As a final question, member Pagliuca asked if there is contemplation that the annual budget will allocate more funds to institutions that need more help. Commissioner Santiago responded that budgetary support has been discussed and that \$15 million has been invested in Community College support services.

Hearing no further questions, Chair Gabrieli asked for vote. On a motion duly made and seconded, BHE 22-67, Acceptance of Support Services for Student Success was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Not present<sup>5</sup>
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-67                      RECEIPT OF THE STRATEGIC FRAMEWORK FOR SUPPORT SERVICES FOR STUDENT SUCCESS**

**VOTED:**                      The Board of Higher Education (BHE) receives the Strategic Framework for Support Services for Student Success (the “Framework”) from the Student Success Committee, comprised of a group of nine members including representatives primarily from the Department of Higher Education (DHE), the Executive Office of Education (EOE), and the State Universities and Community Colleges.

The Board thanks the members of the Student Success Committee, the Deloitte Consulting Group, the public community college and state university presidents and their appointed leadership teams, faculty and students, and all community stakeholders who have contributed to developing this Framework since November of 2021.

The Board endorses the goals and objectives of this Framework and directs the Commissioner to: support the institutions of public higher education in developing

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<sup>5</sup> Paul Mattera left the meeting at 11:45am.

their own plans and priorities for implementation; make specific systemwide policy recommendations to the BHE; and provide periodic updates to the Board on the status of this work, including an initial update no later than June 2023. Further, the Board directs the Commissioner to recommend systemwide or sector-specific goals and targets to the BHE, in partnership with the institutions of public higher education by June 2023.

Authority M.G.L. c. 15A, §§6 and 9 (b), (c), (f) and (u); BHE 19-03.

Contact: Clantha McCurdy, Ph.D., Senior Deputy Commissioner, Access and Student Financial Assistance

Chair Gabrieli moved to the next item on the agenda, BHE 22-68, Acceptance of Statewide Strategic Plan for Racial Equity. Commissioner Santiago asked Deloitte's Andrea Mazzocco to provide a brief summary of the project, which she stated began last year with its first survey with stakeholders, interviews, and focus groups across the system. The New Undergraduate Experience (NUE) report served as a basis and vision for the Strategic Plan, along with stakeholder input via strategy labs and 15 different review sessions with administrators and faculty, staff members, students, and the steering committee. She also noted the feedback leveraged from leading practices for racial equity in higher education from various research areas.

Ms. Mazzocco turned to Commissioner Santiago to summarize how the Strategic Plan for Racial Equity began in addition to how the project has impacted him and how he views the world and the Department's work. He stated that it started with a challenge to Massachusetts from the Lumina Foundation's President Jamie Merisotis to close the racial, ethnic, and income disparity gaps in higher education. Commissioner Santiago noted that data showed gaps between students of color and other students remained large at Massachusetts public institutions over the past ten years. Mr. Merisotis stated that if Massachusetts was serious about closing the gaps, Lumina Foundation will invest to launch a strategic effort to help conceptualize ways to help close them. The DHE accepted the challenge and was designated the fifth Talent, Innovation, and Equity (TIE) state.

The Commissioner stated that while looking at the data, he wrote a working paper that he circulated to the Board for a retreat in 2018. The report gave rise to the Board motion in the fall of 2018. Commissioner Santiago stated that when he initially wrote that working paper, he focused on economic arguments because, since 2013, the demography has been changing in Massachusetts. Enrollment was starting to decline from its high in 2010, and 2020 showed that population growth fell in absolute terms. It was a new reality for our institutions and the BHE. However, we realized there were pockets of growth, and the pockets of growth were among students of color. They were mainly in our gateway cities, and we needed to serve these students better if we were to confront the reality that a knowledge-based economy, such as Massachusetts, needs a knowledge-based labor force.

Commissioner Santiago noted that his perspectives over time have changed due to the campus work. As he talked about what became known as the Equity Agenda, he spoke to local campus boards, public forums, and students; he realized that students were listening to what we were saying.

The Commissioner stated that his thinking evolved from the standard economic argument to the argument that this is an issue of social justice. It is an issue of bringing these students to the point where we can provide them with the support they need and the resources they need to succeed. The Commissioner continued that his thinking has continued to evolve over the last two years as Massachusetts is now the one state that is pushing a focus on racial equity at a time when many states are pulling back. The economic argument, while important, has given way to a social justice argument. From a national context, it's also about our democracy and our ability to ensure that our democratic traditions continue to evolve positively. He noted that racial reconciliation is a critically important topic, even if it results in difficult conversations.

Commissioner Santiago said that to traverse the enrollment declines successfully we're going to see for the next decade, we need to move away from college-ready students to student-ready colleges and universities. He then turned to Associate Commissioner Mario Delci to discuss the goals and strategies timeline. Associate Commissioner Delci stated that we will be measuring progress on goals between now and 2033, with a 10-year vision for equity. He noted that the report's Appendix shows where we are now, the baseline data on enrollment transfer rates, persistence, time to completion, on-time credit accumulation, and degree/certification completion. Associate Commissioner Delci closed out by stating that work is ground level with campus representatives and the DHE data council - IR directors as registrars and people who add, handle, submit and measure data on the campuses. There'll also be a vetting process across the system with all the presidents, segment representatives, and the Board.

Commissioner Santiago continued with five strategies the Plan establishes to eliminate racial disparities in public higher education: 1) Establish the infrastructure to drive racial equity; 2) Transform institutional cultures to be equity-minded; 3) Increase access to higher education for students of color; 4) Build a culturally relevant and civically engaged education experience for students of color; and 5) Prepare students of color to thrive beyond college into the labor force. He then presented PowerPoint slides highlighting a series of priorities for FY23. Commissioner Santiago noted statewide financing, providing access through initiatives such as SAT Optional and Early College, affordability through the MASSGrant and MASSGrant Plus programs, developmental education, and preparing students to thrive beyond their time in higher education as the top priorities. He closed by stating that this is a crucial start. With greater investment in public higher education, greater emphasis on students, student culture, and student outcomes, and bringing together a lot of the work already happening on our campuses, we will be able to achieve the lofty goals the strategic plan embodies. He then turned to Chair Gabrieli for questions.

Chair Gabrieli invited the segmental chairs of the Commissioner's Council of Presidents to comment on the proposed motion. President Podell stated that the Community Colleges strongly support the goals and priorities of the Strategic Plan for Racial Equity. He added that the Community Colleges-- of all the three segments in public higher education-- have the greatest proportion of students of color. Yet to be developed are the specific, individual metrics that will be needed to be achieved. Having ground level stakeholders at the table and developing the specific targets, including significant numbers of faculty and college level administrators, is essential to the ultimate success of the work. President Podell closed by stating we look forward to helping develop these specific metrics in

collaboration with BHE and DHE over the course of the year.

President Keenan added that he and his colleagues at the State Universities strongly support and fully embrace the bold and forward-thinking initiative focused on eliminating racial disparities in public higher education. He noted that the strategic plan for racial equity speaks directly to our system's mission to provide high-quality, affordable, and accessible pathways to a meaningful degree for all. We know that the best opportunity for social and economic mobility, which Horace Mann called "the great equalizer" is through higher education. The State Universities agree that to ensure that the Commonwealth remains the most educated state in the nation, we must address the systemic racial inequities in our system and eliminate any opportunity gaps that stand in the way of our students' success. President Keenan stated that we all recognize that any organizational strategic plan needs to be reflected in strategic financial planning. As the Board's Fiscal Affairs and Administrative Policy Advisory Council prepares for its meeting next week, we encourage the Advisory Council to now consider the best way to support this initiative by prioritizing racial equity in your budget and strategic financing plan. He concluded by stating that the State Universities fully support this plan in the hope that the Board will endorse it.

After comments of support from the Presidents, Member Mary Burns commended everyone who worked on the Strategic Plan for Racial Equity and spoke about the importance of this work for communities like Lowell. Secretary James Peyser also expressed his gratitude to everyone for their leadership in moving the project forward and getting us to a point where we can take practical, concrete steps. He noted the challenge is always around implementation but credited the Commissioner's foresight in helping to coordinate initiatives that we have already undertaken to help further the Equity Agenda. Secretary Peyser stated that the challenge is also maintaining momentum, accelerating that path, and getting to a point where we're moving the needle.

Member Conforme commended Commissioner Santiago's leadership and said she is eager to hear more about campus implementation. Member Conforme asked how we should expect to see the changes we want by implementing these ideas. Commissioner Santiago responded that alignment with the institutions is critical. Chief of Staff Elena Quiroz- Livanis added that they had been communicating with Chair Gabrieli and Associate Commissioner Delci on bringing regular updates to the Board through the Evidence-Based Policy Making Advisory Council or the Strategic Planning Advisory Council. She suggested that it might be a good retreat item for Board members to engage in during the fall during the Annual Meeting.

Member Judy Pagliuca asked if the Board and Department would contemplate any public-private partnerships in the philanthropic community to fund some aspects of the agenda. She then asked if we could present pieces of the plan to certain people in philanthropy who are interested in this issue rather than relying on public dollars alone. Commissioner Santiago agreed with the need to think in that way about opportunities to seek philanthropic support and added that there are elements of this Strategic Plan that have direct links to many of the nonprofits in Massachusetts with similar objectives to the Department. The need now is to ensure that people understand the breadth of the work and find their place in how it benefits their organization. President Keenan added that Salem State University received the most significant cash gift to a State University this past year in grants and \$6

million from Kim Gassett-Schiller and her husband, Philip Schiller. He noted that these methods are something that organizations are willing to endorse, both private and public.

There being no further questions, Chair Gabrieli asked for vote. On a motion duly made and seconded, BHE 22-68, Acceptance of Statewide Strategic Plan for Racial Equity was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Not present<sup>6</sup>
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-68**

**RECEIPT OF THE STATEWIDE STRATEGIC PLAN FOR RACIAL EQUITY**

**VOTED:**

The Board of Higher Education (BHE) receives the Statewide Strategic Plan for Racial Equity from the Strategic Plan for Racial Equity Steering Committee, which was comprised of a group of more than 25 diverse higher education practitioners, BHE members, and civic, community, and industry leaders from across Massachusetts and the United States.

The Board thanks the members of the Steering Committee, public higher education stakeholders, and Department of Higher Education (DHE) staff who worked collaboratively and intentionally to develop Strategic Plan for Racial Equity.

The Board endorses the goals and objectives of the Strategic Plan for Racial Equity and directs the Commissioner to: support the institutions of public higher education in developing their own plans and priorities for implementation; make specific systemwide policy recommendations to the BHE; and provide periodic updates to the BHE, with an initial update no later than June 2023. Further, the Board directs the Commissioner to recommend systemwide or sector-specific goals and targets to the BHE, in partnership with the institutions of public higher education, by June 2023.

Authority

M.G.L. c. 15A, §§6 and 9 (c), and (u); BHE 19-03.

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<sup>6</sup> Paul Mattera left the meeting at 11:45am.

Contact: Carlos E. Santiago, Ph.D., Commissioner Elena Quiroz-Livanis, Chief of Staff and Assistant Commissioner for Academic Policy & Student Success

Acknowledging the current time as 1:00 p.m., Chair Gabrieli highlighted the need to still vote on BHE 22-69, the FY2023 Meeting Schedule. He then reminded Board members of two upcoming meetings outside of the regular schedule, interviews with Commissioner finalists on August 25 and a meeting to vote on the selection of the next Commissioner on August 30. Chair Gabrieli stated that members should try to attend on both meetings, but stated that the August 25<sup>th</sup> interviews would be recorded. Chief of Staff Elena Quiroz-Livanis reminded the Board that two thirds of the members needed to be present for a vote on August 30. Chief Legal Counsel Papanikolaou clarified that BHE 22-69 only pertained to setting the schedule for the BHE's statutorily-required six regular meetings for the academic year.

Chair Gabrieli next asked for a motion of approval for BHE 22-69, FY2023 Meeting Schedule. On a motion duly made and seconded, the motion was approved unanimously by all Board members present, through roll call vote, as follows:

- Mary Burns – Yes
- Ann Christensen – Yes
- Veronica Conforme – Yes
- Cameron Costa – Yes
- Patty Eppinger – Yes
- Chair Chris Gabrieli – Yes
- Vice Chair Sheila Harrity – Yes
- Paul Mattera – Not present<sup>7</sup>
- Judy Pagliuca – Yes
- Jim Peyser, Secretary of Education – Yes
- Paul Toner – Yes
- Bill Walczak – Yes

**BHE 22-69 BOARD OF HIGHER EDUCATION FISCAL YEAR 2023 MEETING SCHEDULE**

**VOTED:** That the Board of Higher Education approve the schedule of regular board meetings for Fiscal Year 2023, as presented by the Commissioner. Specifically, for state fiscal year 2023 (academic year 2022-2023), the following BHE regular board meeting schedule is proposed:

- **Tuesday, October 18**
- **Tuesday, December 13**
- **Tuesday, February 14**
- **Tuesday, March 28**
- **Tuesday, May 9**

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<sup>7</sup> Paul Mattera left the meeting at 11:45am.

- **Tuesday, June 20**

Authority            G.L. c. 15A, § 4(f); By-Laws of the Massachusetts Board of Higher Education, Articles II and III.  
Contact:            Constantia T. Papanikolaou, Chief Legal Counsel

Chair Gabrieli recommended that for the sake of time, anyone that needed to leave the meeting could do so, but the meeting would not adjourn as long as a quorum remains present. He stated that the next 27 minutes would be used to go through as many reports as possible. Chair Gabrieli also encouraged those unable to stay to review the recordings. Secretary James Peyser departed the meeting and noted he would not be sharing remarks. Vice Chair Sheila Harrity expressed her gratitude to the Board and wished everyone the best.

### **VIII. REMARKS & REPORTS**

#### **A. Chair's Remarks**

Chair Gabrieli opened his remarks by stating that the Board is responsible for ensuring continuity as the DHE transitions to a new Commissioner. He also noted that materials would be well documented to aid the process. Chair Gabrieli turned to Commissioner Santiago.

#### **B. Commissioner's Remarks**

Commissioner Santiago opened his remarks by recognizing Vice Chair Harrity's service. He also noted the importance of having student members visible and active on the Board and thanked Cindy Mack, Cameron Costa, and Jorgo Gushi for their service. He turned to Chair Gabrieli. There being no remarks from Secretary Peyser, Chair Gabrieli turned to Salem State University (SSU) President John Keenan for his report.

#### **C. Secretary of the Executive Office of Education's (EOE) Remarks**

No remarks.<sup>8</sup>

#### **D. Report from Presidents**

##### State University Segmental Report

President John Keenan opened his remarks on behalf of the State Universities Council of Presidents. He acknowledged Framingham State Universities Javier Cevallos' retirement after serving eight years as president. He added that collaboration with President Cevallos would be missed. President Keenan

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<sup>8</sup> Secretary James Peyser had to leave the meeting at 1:00 p.m.

then welcomed President Cevallos' successor, Dr. Nancy Niemi, former Provost and Vice President of Academic Affairs at the University of Maryland Eastern Shore.

He highlighted an initiative that the State University campuses have with their faculty called The Equity Committee, a commission on racial equity established as part of their collective bargaining agreement. They developed the joint labor-management committee to advance the philosophy of racial equity and acknowledge that a more diverse faculty will better serve our students and communities. It evaluates all aspects of faculty and librarian employment, recruitment, retention, and promotion concerning race and gender. The committee would also examine systemic issues and biases that may impede the success of faculty and librarians from historically underrepresented communities and make recommendations for resource allocation, professional development, and recruitment and retention strategies.

President Keenan turned his remarks to recognizing Commissioner Santiago's service at the Department and stated there was no one more deserving than him for his nationally recognized leadership during his 40-year tenure in higher education. He noted that the State Universities are committed to seeing the Equity Agenda work through to fruition and thanked him for his vision, advocacy on behalf of higher education, and compassionate leadership. Undoubtedly, his countless contributions will impact all our campuses, and today's vote on equity will be his legacy.

President Keenan provided an overview of the FY23 budget recommendations supported by the State University Council of Presidents in conjunction with the BHE and the DHE. He noted the \$5 million for the State Universities' Commonwealth Public Higher Education Endowment Incentive program; \$1 million in the State Universities' Intern Incentive program; \$2 million for student behavioral and mental health efforts at the State Universities; and the increase in funding for the State Universities' funding formula and the MassGrant Plus program.

President Keenan closed his remarks by acknowledging this year's in-person ceremonies across the Commonwealth and stated that our campuses are in tune with the current and future workforce needs of the regions we serve.

#### Community College Segmental Report

*For a copy of President Podell's full remarks, please see:*

[https://www.mass.edu/bhe/documents/BHE\\_Community%20College%20Report\\_6.21.22.pdf](https://www.mass.edu/bhe/documents/BHE_Community%20College%20Report_6.21.22.pdf)

President Podell started his remarks by acknowledging Dr. Michelle Schutt as the new GCC President. He also thanked Dr. Rick Hopper for serving as GCC's interim president since August 2021. President Podell highlighted the FY23 budget and the Community College's legislative advocacy to change Chapter 15A for the purpose of exempting the Community Colleges from Section 26, which prohibits using state dollars for evening or weekend courses. He continued that Section 26 creates logistical and financial challenges for the Community Colleges. He stated that the proposed change seeks to ensure that all students have the same educational opportunities, regardless of whether they attend classes during the day or in the evenings. He also stated that relieving the Community Colleges of this restriction will permit more efficient operations and ensure equitable access for all students to full-

time faculty. President Podell stated that in collaboration with the Massachusetts Teachers Association and Massachusetts Community College Council, the Community College Council of Presidents proposed the new agreed-upon language to the legislative conference committee. The language clarifies that the change will not impact the standing of the collective bargaining units or their bargaining representatives to continue representing the unit members.

President Podell then provided an overview of their conference committee priorities and the funding. He acknowledged Commissioner Santiago's leadership during his tenure at DHE and stated that he had moved the higher education system to a pivotal point in its work on equity. He continued that Commissioner Santiago changed our paradigm and his steadfast support has helped us collectively focus on how we approach equity at our institutions. President Podell noted that the Community Colleges would soon launch their Education Training Fund programming, which has \$15 million in state funding allocated to support short-term training in programs less than one year in length.

President Podell closed his remarks by stating that the Community Colleges are thankful that they will have input in finding a new Commissioner, and expressed confidence in finding the right leader who can continue the momentum in our system and help raise the profile of higher education.

#### **E. Report from Student Advisory Council**

Student Advisory Council (SAC) Chair Jorgo Gushi opened his remarks by providing an overview of this past academic year's initiatives. SAC Chair Gushi noted that he worked for three years as the Student Advisory Council's Board Chair and two years as an Advisory Member of the BHE. He stated that he hoped to have been able to effectively advocate on behalf of his student constituents and make his views known on many issues. SAC Chair Gushi highlighted one of the first initiatives that the SAC brought to the Board was a change in the membership of the BHE. The idea was initiated through the ranks of the SAC in October 2021 and since then the group has been working with multiple stakeholder groups in an effort to amend the statute.

SAC Chair Gushi highlighted Quinsigamond Community College's (QCC) Community Building Day. They organized it on April 6th, 2022, collaborating with the Executive Offices of the Community Colleges and State Universities. Seventeen campuses participated and planned individual events. Member Gushi stated that SAC had one panel with public higher education system stakeholders, including Commissioner Santiago, QCC President Luis Pedraja, and three student panelists. He noted that 40 class panel attendees and 30 SAC members helped advance the mission of community building. Chair Gushi highlighted other goals the SAC worked on, including advancing the Equity Agenda and organizing virtual community check-ins with individual campuses, as well as continuous advocacy on behalf of Open Educational Resources (OER) and collecting demographic data on student government presidents and trustees.

SAC Chair Gushi also explained changes to the group's By-Laws to merge the BHE student member position with the SAC Chair to ensure strong collaboration between the Board and the SAC. He stated that equal access to decision-making is a must in an educational system of the students, by the students, and for the students. This comment goes back to the proposed change in the composition

of the BHE to include more students, an issue that the Board and Legislature should reconsider. He continued, stating that we need to make the Strategic Plan for Racial Equity a reality and enforce it, not only on generic aspects of the system that make us look good on metrics but bring it down to the students we serve and focus on the experience. He asked the BHE to strive to identify and advocate on a state and national level long-term solutions for affordable education, including tuition-free Community Colleges, meeting basic needs security, and reforming to the student loan system.

SAC Chair Gushi closed by stating that he looks forward to serving as an Advisory Council member for the Commissioner search and working on identifying a Commissioner that will put students first, just like Commissioner Santiago. He thanked Commissioner Santiago for his exceptional service and for being a role model to all of us.

Chair Gabrieli commented on SAC Chair Gush's progression throughout his three-year tenure as chair and stated how much of a great example he set for others.

#### **IX. OTHER BUSINESS**

None.

#### **X. ADJOURNMENT**

Chair Gabrieli adjourned the meeting at 1:29 p.m.

*Respectfully Submitted,  
Carlos E. Santiago  
Commissioner and Secretary to the Board*

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR BOARD ACTION**

**NO.:** BHE 22-63

**BOARD DATE:** June 21, 2022

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**AUTHORIZATION FOR COMMISSIONER TO SOLICIT PUBLIC COMMENT ON PROPOSED REGULATORY AMENDMENTS TO 610 CMR 13.00: FINANCIAL REVIEW AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION**

**MOVED:** The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, and solicit public comment on the proposed amendments to regulation 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education, subject to the completion of the Executive Office of Administrative and Finance internal review process.

**VOTED:** Motion approved and advanced to the full BHE by the Executive Committee on 6/13/2022; and adopted by the BHE on 6/21/2022.

**Authority:** M.G.L. c. 69, §§ 16, 30A, and 31A; 610 CMR 13;  
M.G.L. c. 30A, § 3; 950 CMR 20.00

**Contact:** Constantia T. Papanikolaou, Chief Legal Counsel

## Massachusetts Board of Higher Education

### Proposed Regulatory Amendments to 610 CMR 13.00: Financial Review and Risk Monitoring of Private Higher Education Institutions

#### Background

At its January 10, 2020 meeting, the Board of Higher Education (Board) voted (BHE 20-02) to promulgate new consumer protection regulations related to the annual financial screening and assessment of private, independent higher education institutions located in the Commonwealth and authorized to grant degrees. The regulations, (610 CMR 13) establish standards and processes to permit the Board, acting through its staff at the Department of Higher Education, to: identify, through a screening and assessment process, institutions experiencing significant financial distress, placing them at risk of imminent closure; monitor said institutions while they either improve their financial condition or transition to closure; and allow for contingency closure planning and timely, public notification in the event of closure. During its subsequent February 4, 2020 meeting, the Board further received, reviewed and voted (BHE 20-09) to authorize the Commissioner to move forward with implementation procedures which set forth the processes to be used by the Department in implementing the regulations [FARM Procedures for MA Private Independent Higher Education Institutions \(2020\)](#).

As set forth below, proposed amendments to 610 CMR 13.00 are needed to establish criteria that will allow the Department to implement and enforce certain statutory provisions which authorize the Department to require institutions identified as at risk of imminent closure to furnish surety bonds or letters of credit (allowed under M.G.L. c. 69 § 31B(b)(3)), and to issue fines for institutional non-compliance with legal requirements (allowed under M.G.L. c. 69 § 31B(c)). In addition, the proposed amendments seek to codify existing procedures, including procedures pursuant to which institutions: currently certify their financial condition, as well as their ability and intention to remain open with an attestation document; certify their financial condition with the posting of annual financial reports and summaries; and certify the completion of fiduciary training of their institutional governing board members. See M.G.L. c. 69 § 31B(b)(3), and (e)-(g).

By way of background, the Board's original 610 CMR 13.00 regulations were first published for public comment in the Massachusetts Register on July 12, 2019. After the Department finalized the proposed regulations in response to comments received during the public comment period, the legislature enacted a new law which was being drafted in tandem with the Department's regulatory work. The new law codified minimum statutory requirements reflected in the Department's draft regulations for the contemplated financial screening, assessment, and risk monitoring process, but also included additional provisions, such as the requirement that certain institutions post a bond with surety or letter of credit, and a grant of authority to the Department to levy fines. [Chapter 113 of the Acts of 2019](#). The new law was signed on November 14, 2019 and codified at M.G.L. c. 69, § 31B.

Before proceeding with promulgation of the regulations in January 2020, the Department and the Board reviewed and made minor revisions to the pending regulations to accurately reflect non-substantive language in the new law not otherwise captured in the draft regulations. Mindful of the closure of the public comment period and the need to implement the regulations in time for the FY2020 screening cycle, substantive changes to the regulations were deferred with the intention of revisiting regulation revisions after the completion of at least one screening cycle. The Board of Higher Education approved the regulations for promulgation on January 10, 2020, and the regulations went into effect when they were published in the Massachusetts Register on February 21, 2020, in time for the FY2020 screening cycle.

Since then, the Department has effectively implemented the 2020 regulations through two screening cycles thus far. Through this new screening, monitoring and contingency closure planning process, the BHE and the DHE have been able to more accurately identify and timely respond to imminent risks of institutional closure than previously possible under the prior regulatory structure, while also identifying areas for regulatory clarification or enhancement.

As referenced above, the proposed amendments seek to establish the criteria for implementing the following two unique, substantive sections of the new law: an institution's obligation to furnish a bond with surety or a letter of credit sufficient to meet the costs of refunding deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and for the cost of protecting and maintaining student records (M.G.L. c. 69 § 31B(b)(3)); and the Department's ability to levy fines on institutions for legal non-compliances, including the institutions' attendant appeal rights (M.G.L. c. 69 § 31B(c)).

In addition, for the purpose of increasing clarity, the proposed amendments also seek to codify into regulation the following existing practices and procedures implemented by the Department:

- the Department's reporting procedures pursuant to which institutions confirm compliance with the statutory requirement that each member of an institution's governing board receiving training in higher education financial metrics, legal and fiduciary responsibilities, and applicable standards for accreditation at least once every 4 years (M.G.L. c. 69 § 31B(e));
- the Department's reporting procedures pursuant to which each institution posts on its website a copy of its annual financial report or audited financial statement and a summary of the report in terms understandable by the general public (M.G.L. c. 69 § 31B(f));
- an attestation procedure, through which institutions identified as at risk of imminent closure certify, as part of their risk mitigation plans to the Department, the completeness and accuracy of the materials submitted to the Department for the Commissioner's review, along with their ability and intention to continue operations and substantially fulfill its obligations to enrolled and admitted students, as identified in their risk mitigation plans.

Finally, the proposed amendments also include technical edits and improvements to clarify language and help institutions understand processes and definitional terms, such as the definition of student records required to be maintained through a contingency closure plan.

The proposed amendments are attached, with new language identified in red-line edits. (See Attachment A, 610 CMR 13.00).

As set forth in the Timeline below, after approval by the Board, the regulations will be submitted to the Secretary of the Commonwealth's Office by June 24, 2022, in time for publication in the next available Massachusetts Register (July 8, 2022). The Department will hold at least one public hearing, as required, and will offer a four-week public comment period.

Upon the conclusion of the public comment period, the Department will make any necessary changes to the proposed regulatory amendments and will bring the final regulations to the Board for approval and promulgation. At that time, the Department may also present the Board with any associated policies or procedures that may be necessary for implementation. Approving the proposed amendments during the Board's anticipated summer/ early fall Annual Meeting is recommended, to assure that the regulatory amendments are effective for implementation during the Department's FY2023 screening and assessment cycle, and in time for determinations that will be made in the Fall of 2022. (*See Timeline, below*).

#### Staff Recommendation

Subject to the completion of the Executive Office of Administrative and Finance internal review process, staff recommend that the Board approve the attached 610 CMR 13.00 amendments to be submitted to the Secretary of the Commonwealth's Office for publication in the Massachusetts Register, which will initiate the presentment of the proposed, amended regulations to the public for comment in accordance with the attached Timeline.

### Comment Period and Regulatory Compliance Timeline

DATE	TASK/OCCURENCE
June 24, 2022	<ul style="list-style-type: none"> <li>• Draft regulations, small business impact/fiscal effect statements, and notice of public hearing will be brought to the Secretary of the Commonwealth’s Office for publication in next edition of the Massachusetts Register (July 8, 2019)</li> <li>• Letters will be sent to DHCD/MMA per E.O. 145</li> </ul>
July 06, 2022	<ul style="list-style-type: none"> <li>• Notices of public hearing will be sent to the Boston Globe for publication (publication in the Globe is likely to occur 2-3 days after submission)</li> </ul>
July 08, 2022	<ul style="list-style-type: none"> <li>• Publication of draft regulations and notices of public hearing in the Massachusetts Register</li> </ul>
July 08, 2022 – August 05, 2022	<ul style="list-style-type: none"> <li>• Public comment period</li> <li>• At least one public hearing will be held. Public hearing must be at least 21 days after Newspaper advertisement (July 29, 2022).</li> </ul>
Week of August 15, 2022	<ul style="list-style-type: none"> <li>• Final regulations will be ready for distribution to BHE for review and for approval either during the BHE’s summer/ early fall Annual Retreat, or during the BHE’s next regularly scheduled meeting in October.</li> </ul>
<b>August/ September 2022</b>	<ul style="list-style-type: none"> <li>• <b>BHE meeting-</b> final regulations presented for approval either during a BHE anticipated summer meeting (August/ September), or at the BHE’s first regular meeting of the academic year, typically October.</li> <li>• Submit final small business impact statement to Secretary of the Commonwealth’s Office.</li> <li>• Thereafter, the regulations will be submitted to the Secretary of the Commonwealth for publication in the next edition of the Massachusetts Register. Note- the Secretary accepts and publishes regulations every 2 weeks (e.g., submitting with the Secretary final regulations by September 2, will result in promulgation date of September 16).</li> </ul>

## 610 CMR 13.00: Financial Assessment and Risk Monitoring of Institutions of Higher Education

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### 13.01: Scope and Purpose

610 CMR 13.00 governs the Board of Higher Education's annual assessment of independent institutions of higher education to review and monitor the financial stability and viability of said institutions, as authorized pursuant to M.G.L. c. 69, § 31B. This section also directs the Board of Higher Education's implementation of certain additional elements of M.G.L. c. 69, § 31B, including the requirement that members of the governing board of private institutions of higher education receive training and the requirement that private institutions of higher education post their annual audited financial statements on their websites.

This section does not affect the existing jurisdictional exceptions from the requirements set forth in 610 CMR 2.00 for certain in-state, independent institutions chartered prior to 1943 that are authorized by the legislature or state constitution to offer degree programs and confer post-secondary degrees in the Commonwealth. This regulation does not apply to out-of-state institutions with the power to grant degrees to Massachusetts students by virtue of participation in the State Authorization Reciprocity Agreement (SARA).

### 13.02: Definitions

As used in 610 CMR 13.00:

**Accrediting Agency.** A regional or national entity that grants formal recognition or acceptance of an institution or of programs or portions of the institution and is recognized by the U.S. Department of Education as a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs it accredits.

**Board of Higher Education (Board).** The agency established pursuant to the provisions of M.G.L. c. 15A, § 4.

**Commissioner of Higher Education (Commissioner).** The chief executive and administrative officer of the Department and the Board, pursuant to M.G.L. c. 15A, § 6.

**Department of Higher Education (Department).** The agency established pursuant to M.G.L. c. 15A, § 6.

**Independent Higher Education Institution (Institution).** An independent institution of higher education located in the Commonwealth and authorized to grant degrees pursuant to any general or special law.

**Risk of Imminent Closure.** A determination made by the Commissioner, based on an assessment of an Institution's financial resources, that the Institution is at risk of being unable to continue operations or substantially fulfill its obligations to enrolled and admitted students for the balance of the current and subsequent academic year, using December 1<sup>st</sup> as the annual threshold measurement date.

**Student Records.** Information and documents relating to a student's academic career and the institution's academic offerings, including, but not limited to, transcripts for students who are currently attending the institution or have attended the institution; graduation lists or other comparable academic documentation for students who have graduated from the institution; and college catalogs.

**Trustee.** A voting member of the governing body of a college or university.

### **13.03: Annual Financial Assessment**

The Department shall ensure that mandatory annual financial assessments of Institutions are conducted in accordance with the following procedures.

#### **(1) Screening**

- (a) Annual Screening. All Institutions shall be screened annually for the purpose of assessing each Institution's past, present, and future financial stability to identify any Institution potentially at Risk of Imminent Closure.
- (b) Screening Tools. The Board shall establish the procedures to be used in the screening process, after consultation with representatives of Institutions and other stakeholders, and shall periodically review and refine such procedures as needed. Said procedures may include, but are not limited to:
  - 1. The use of financial and non-financial indicators from publicly available data sources to conduct a preliminary assessment of whether the Institution may be at Risk of Imminent Closure.
  - 2. Credit ratings assigned to Institutions by credit rating agencies or services.
  - 3. Any information obtained from other regulatory, oversight, or law enforcement entities, including Accrediting Agencies, the U.S. Department of Education, and the Massachusetts Office of the Attorney General, that could allow the Department to evaluate the sufficiency of the Institution's financial resources.
- (c) Notification and Consideration of Other Information Relevant to the Screening. The Commissioner shall notify each Institution identified through the screening process as potentially at Risk of Imminent Closure under this section. The notification shall include Department staff outreach to the administration of the

Institution to provide an opportunity to review the results of the screening process, including the analytical methodology, and to submit additional information that they or the Commissioner deem relevant to the screening results, including updated data not taken into account as part of the methodology used.

**(2) Determination of Financial Status**

If the screening results, including any information provided to the Department in 610 CMR 13.03(1)(c), indicate an Institution may be at Risk of Imminent Closure, the Commissioner shall provide the Institution with a summary of the basis for his or her determination and require the Institution to submit information, in the form of a risk mitigation plan, to accurately and fairly determine the institution's financial status and likelihood of imminent closure and to monitor its condition, and prepare a contingency closure plan.

- (a) Submission of Risk Mitigation Plans. The Institution's risk mitigation plans shall, at a minimum, inform the Board of any known liabilities, risks, or financial issues and outline the Institution's plans, initiatives, and goals to sustain operations and to substantiate its current and prospective resources and financial capacity to address the Risk of Imminent Closure.

The Commissioner's request for risk mitigation plans shall be addressed to the chief executive officer of the Institution and shall direct the Institution to work with Department staff. Copies of the Commissioner's request shall be sent to the chair and vice chair(s) of the Institution's governing board.

As part of the Institution's risk mitigation plans, the Institution's chief executive officer and the chair of the Institution's governing board shall provide written assurances and certifications which, at a minimum, shall certify the accuracy and completeness of the Institution's risk mitigation submission, and certify the Institution's intention and ability to continue operations and substantially fulfill its obligations to enrolled and admitted students. Additional content and the format of the required assurances and certifications shall be determined by the Commissioner.

- (b) Review and Evaluation of Risk Mitigation Plans. Department staff shall review the Institution's risk mitigation plans and evaluate the Institution's Risk of Imminent Closure. The Commissioner shall, after Department staff review, make one the following determinations:
1. if the risk mitigation plans are deemed satisfactory, such that the Institution is deemed no longer at Risk of Imminent Closure, the Department shall monitor the implementation of the plans as set forth in 610 CMR 13.03(3); or

2. if the Institution does not submit the requested risk mitigation plans, or if the submitted plans do not demonstrate a likelihood that Risk of Imminent Closure will be mitigated during the current and subsequent academic year, the Commissioner shall require continued contingency planning for closure and, after notice to the Institution and an opportunity to cure, notification to the public, as set forth in 610 CMR 13.04 and/or may impose sanctions as outlined in 610 CMR 13.07.

### **(3) Monitoring**

Department staff shall monitor the Institution's progress in implementing its risk mitigation plans and initiatives and meeting its goals. Monitoring shall continue until the Department determines that: (i) the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure; or (ii) the Institution's plans to address the Department's concerns, as originally presented or subsequently amended, have not resulted and are unlikely to result in a satisfactory resolution.

Department staff may require periodic and other reports as part of the monitoring process.

## **13.04: Contingency Planning for Closure and Notification to the Public**

- (1) **Contingency Planning for Closure.** All contingency closure plans required by the Commissioner from an Institution shall be submitted by the Institution to Department staff in a format prescribed by the Department. While the development of contingency closure plans is typically an iterative process, all complete contingency closure plans must, in addition to any elements required by M.G.L. Chapter 69, Section 31B, include the development of transfer and articulation agreements for students, provide a comprehensive budget which shows the existence and commitment of sufficient resources to sustain the Institution's educational offerings through closure, and consider the broader impacts of closure on the Institution's key constituencies, including faculty, staff, and the host community.

- (a) An Institution required to submit a contingency closure plan to the Department must also, as part of its risk mitigation plan submission, include the following:

1. A Student Deposit Refund Plan that assures the refund of any deposits made by students in anticipation of enrolling or continuing their enrollment at the Institution, in the event that the Institution closes before students have received the entirety of the educational services for which their deposits were to be applied; and
2. A Student Records Maintenance Plan to cover the cost of protecting and maintaining all Student Records from at least the past 60 years, including ensuring that Student Records are in a digitized,

accessible, indexed, searchable, and readily convertible, portable format. The plan must encompass all Student Records held by the Institution, including those from other, closed Institutions for which the Institution serves as custodian.

(b) **Bond Requirements.** An Institution that does not demonstrate sufficient, documented resources in its Student Deposit Refund Plan and Student Records Maintenance Plan to meet the costs of making the required refunds and maintaining the Student Records must, as required by M.G.L. c. 69, s. 31B(3), include the furnishing of a bond with surety or a letter of credit sufficient to meet the costs of so refunding and maintaining. The bond or letter of credit must be maintained for a period of no less than 18 months, issued by a bank as defined in M.G.L. c 167, s. 1 or an insurance company as defined in M.G.L. c. 175, s. 1, payable to the Board, in which the Commonwealth is designated as the beneficiary where required. The bond or letter of credit shall be procured only from entities legally authorized to conduct business in the Commonwealth.

1. The amount of the bond or letter of credit shall be calculated by the Institution using a formula determined by the Department and based on criteria that may include: average net revenue from student tuition and fee charges; average net revenue from room and board charges to students; current and projected enrollment; enrollment trends, including the average number of currently enrolled and anticipated new students and the required admissions deposit for new students; and the estimated cost of formatting, scanning, and placing Student Records held by the institution with a Department-approved repository. The Department must approve the Institution's calculation.
2. The surety on any bond or letter of credit may cancel the bond upon giving no less than 60 days' notice in writing to the Department and thereafter shall be relieved of the liability for any breach of condition occurring after the effective date of the cancellation. If the surety is cancelled, the Institution shall procure new surety no less than 30 days prior to the effective cancellation date.
3. Any funds received from a collection on a bond or letter of credit shall be held in trust by the Department for the benefit of enrolled or deposited students of an Institution and the preservation and maintenance of an Institution's Student Records.

(2) **Notification.** An Institution required to post public notification based on a determination made by the Commissioner under section 13.03(2)(b)(2) shall inform enrolled students, accepted students, pending applicants, faculty, staff, and other relevant stakeholders, including the chief executive officer of the host community, the elected state representative and senator in the legislative district where the Institution is located, the

Secretary of Housing and Economic Development, and the Secretary of Labor and Workforce Development, that the Department has determined the Institution's financial stability is sufficiently uncertain such that the Department cannot confirm that the Institution will be able to sustain operations or substantially fulfill its obligations to enrolled and admitted students for both the current and the subsequent academic year. The communications shall be made in a manner, format, and timing acceptable to the Department. The Institution shall also include clear and conspicuous notice in any promotional materials aimed at recruiting or retaining students. Should the Institution decline to inform stakeholders that it is at risk, the Commissioner may issue a public notification to that same effect.

- (3) The Department shall maintain a public list of Institutions currently required to issue notifications pursuant to this section.
- (4) Institutions required to submit contingency closure plans to the Department continue to be subject to the requirements set forth in 610 CMR 13.03(2) and (3), either until a determination is made by the Department that the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure or until the Institution is closed.

### **13.05: Advisory Committee**

The Commissioner may convene an ad hoc or standing advisory committee to participate in the review of an Institution during any stage of the process. The Commissioner shall charge the advisory committee with the scope and purpose of its review, and the advisory committee shall, upon the Commissioner's request, submit an evaluation with its findings and recommendations to the Commissioner.

An Institution may request that an advisory committee be convened, if one has not already been convened by the Commissioner, in the event that the Commissioner has determined that the Institution will be required to submit a Contingency Plan for Closure and a Notification to the Public. An Institution's request for advisory committee review shall be in writing and shall be submitted to the Commissioner within 3 business days of the Commissioner's determination. The Commissioner's assent to such a request shall not be unreasonably withheld.

### **13.06: Confidentiality**

Unless otherwise specified above, the Board and the Department shall protect from disclosure and shall maintain as confidential all information submitted to or developed by the Board, acting by or through the Commissioner, the Department, or the Advisory Committee, pursuant to and in furtherance of this regulation, to the maximum extent permissible under state law.

### **13.07: Trustee Training**

Each Trustee of an Institution shall receive instruction and training in higher education financial metrics, legal and fiduciary responsibilities, and applicable standards for accreditation at least once every 4 years, as required pursuant to M.G.L. c. 69, §31B(e).

- (1) Each newly appointed Trustee of an Institution must be trained within 12 months of appointment.
- (2) Each Institution must arrange for instruction and trainings for that Institution's trustees.
- (3) As part of the annual reporting required by Section 13.09 below, an Institution must submit to the Department, at a minimum, the agenda and/or curriculum for instruction and training attended by its Trustees for the purpose of allowing the Department to evaluate its sufficiency and compliance with statutory requirements.

### **13.08: Audited Financial Statements**

An Institution must post on its website a copy of the Institution's annual financial report or audited financial statement and a summary of the report, however termed, that is written in terms that are understandable by the general public.

- (1) An Institution must post its audited financial statements no later than 6 months after the end of its fiscal year.
- (2) An Institution must, at a minimum, maintain on its website its 3 most recent years of audited financial statements.
- (3) An Institution must have a permanent webpage for the posting of the audited financial statements that is accessible to the public and able to be located using either the website's internal search function or an external internet search engine.
- (4) An Institution must also post to its permanent webpage an accompanying summary of each year's audited financial statement in a format understandable by the general public.

### **13.09: Reporting**

An Institution must report annually to the Department on its compliance with the requirements in these regulations and in M.G.L. c. 69, s. 31B. The timeline and format for posting and updating the Institution's annual report shall be determined by the Department through policy.

### **13:10: Sanctions**

If an Institution fails to comply with the requirements of this regulation, or otherwise fails to cooperate with the Department in the screening, inquiry, monitoring, and/or contingency planning and notification processes, including failure to obtain the required bond with surety or

letter of credit, or otherwise fails to submit risk mitigation plans that demonstrate a likelihood that the Risk of Imminent Closure will be mitigated during the current or subsequent academic year, the Commissioner may issue one or more of the following sanctions:

- (1) Termination of eligibility for state aid.
- (2) Suspension or revocation of degree-granting authority, in whole or in part, after notice and opportunity to cure through the development of a corrective course of action, through the process described in 610 CMR 2.10(2).
- (3) Referral by Department staff to the Office of the Attorney General.
- (4) A fine not to exceed \$1,000 per day, in an amount to be determined by the Commissioner in their sole discretion.

### **13.11: Appeals**

- (1) A decision by the Board, upon the recommendation of the Commissioner, to suspend or revoke the Institution's degree-granting authority is appealable pursuant to M.G.L. c. 30A, as set forth in M.G.L. c. 69, s. 30A and 610 CMR 2.10(2).
- (2) A decision by the Commissioner to issue a fine as set forth in 610 CMR 13.10(4) can be appealed within 10 business days by submitting a written appeal to the Executive Committee of the Board. Within 10 business days of its receipt of the written appeal, the Executive Committee will hold a session to receive information and hear testimony from the Institution, the Commissioner, and Department staff. The Executive Committee will seek to issue a final decision on the Institution's appeal within 10 business days of its session.
- (3) The Executive Committee of the Board's final decision on the issuance of a fine, as set forth in 610 CMR 13.11(2), is appealable pursuant to M.G.L. c. 249, s. 4.

#### **REGULATORY AUTHORITY**

610 CMR 13.00: M.G.L. c. 15A, § 16; M.G.L. c. 69, § 30A; and M.G.L. c 69, § 31A and 31B, as amended by 2019 Mass. Acts c. 113.

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR BOARD ACTION**

**NO.:** BHE 23-12

**BOARD DATE:** October 18, 2022

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**APPROVAL AND ADOPTION OF REGULATORY AMENDMENTS TO 610 CMR 13.00:  
FINANCIAL REVIEW AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION,  
AND RECEIPT AND ENDORSEMENT OF IMPLEMENTATION PROCEDURES**

**MOVED:** The Board of Higher Education (BHE), having solicited and reviewed public comment in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, hereby adopts the attached amended regulations 610 CMR 13.00: Financial Assessment and Risk Monitoring of Institutions of Higher Education (Attachment A).

Further, the Board of Higher Education (BHE) hereby receives the attached procedures (Attachment B) implementing the surety requirements of 610 CMR 13.04(1)(b), endorses the proposed approach, and authorizes the Commissioner to move forward as outlined in the document.

**VOTED:** Motion approved and advanced to the full BHE by the Executive Committee on 10/11/2022; and adopted by the BHE on 10/18/2022.

**Authority:** M.G.L. c. 69, §§ 16, 30A, and 31A; 610 CMR 13;  
M.G.L. c. 30A, § 3; 950 CMR 20.00

**Contact:** Constantia T. Papanikolaou, Chief Legal Counsel  
Alexander A. Nally, Assistant General Counsel

## Massachusetts Board of Higher Education

### Proposed Regulatory Amendments to 610 CMR 13.00: Financial Review and Risk Monitoring of Private Higher Education Institutions

#### Background

##### I. Proposed Regulatory Amendments

At its June 21, 2022 meeting, the Board of Higher Education (BHE or Board) voted (BHE 22-63) to authorize the Commissioner to solicit public comment on proposed amendments to existing regulations that govern the Department of Higher Education's (DHE or Department) screening, monitoring, and review of Massachusetts private higher education institutions for financial stability and risk of imminent closure.

The proposed amendments, when fully promulgated, will complete the Board's implementation of [Chapter 113 of the Acts of 2019](#). Although the Board's original regulations promulgated in 2020 implemented the vast majority of the new law, implementation of some sections was deferred in order to prioritize immediate implementation of the screening cycle. Since then, the Department has effectively implemented the 2020 regulations through two screening cycles thus far. Through this new screening, monitoring and contingency closure planning process, the BHE and the DHE have been able to more accurately identify and timely respond to imminent risks of institutional closure than previously possible under the prior regulatory structure, while also identifying areas for regulatory clarification or enhancement. These final regulations implement the two remaining sections of the law related to an institution's obligation to post surety bonds and the Department's ability to levy fines for legal non-compliance.

As referenced above, the proposed amendments seek to establish the criteria for implementing the following two unique, substantive sections of the new law: an institution's obligation to furnish a bond with surety or a letter of credit sufficient to meet the costs of refunding deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and for the cost of protecting and maintaining student records (M.G.L. c. 69 § 31B(b)(3)); and the Department's ability to levy fines on institutions for legal non-compliances, including the institutions' attendant appeal rights (M.G.L. c. 69 § 31B(c)).

In addition, for the purpose of increasing clarity, the proposed amendments also seek to codify into regulation the following existing practices and procedures implemented by the Department:

- the Department's reporting procedures pursuant to which institutions confirm compliance with the statutory requirement that each member of an institution's governing board receiving training in higher education financial metrics, legal and fiduciary responsibilities, and applicable standards for accreditation at least once every 4 years (M.G.L. c. 69 § 31B(e));

- the Department’s reporting procedures pursuant to which each institution posts on its website a copy of its annual financial report or audited financial statement and a summary of the report in terms understandable by the general public (M.G.L. c. 69 § 31B(f));
- an attestation procedure, through which institutions identified as at risk of imminent closure certify, as part of their risk mitigation plans to the Department, the completeness and accuracy of the materials submitted to the Department for the Commissioner’s review, along with their ability and intention to continue operations and substantially fulfill its obligations to enrolled and admitted students, as identified in their risk mitigation plans.

Finally, the proposed amendments also include technical edits and improvements to clarify language and help institutions understand processes and definitional terms, such as the definition of student records required to be maintained through a contingency closure plan.

The proposed amended regulations are attached, substantially unchanged from the version approved by the Board at its June 21, 2022 meeting. The attached includes minor stylistic amendments made by the Regulations Division within Secretary of the Commonwealth’s Office, and Staff amendments made in response to clarify meaning. (See Attachment A, 610 CMR 13.00).

#### A. Summary of Public Comments Received

On July 8, 2022, the proposed amended regulations were submitted to the Secretary of the Commonwealth’s office to be put out for public comment. The Department elected to hold one virtual public hearing at the close of the public comment period.

On July 22, 2022, notice of the public comment period and virtual public hearing on the proposed amended regulations was published in the *Massachusetts Register* (the Secretary of the Commonwealth’s official regulatory publication) and in the *Boston Globe*. The public comment period also commenced the same day. The virtual public hearing was held via Zoom on August 12, 2022, the last day of the public comment period.

During the public comment period, the Department received two written comments. At the virtual public hearing, the Department received zero comments. No additional written comments were submitted to the Department after the close of the public comment period.

Of the two written comments received, one expressed general support and appreciation for the Board’s proposed amended regulations. The other comment requested clarification regarding the Department’s approach in determining whether to assess possible sanctions pursuant to 610 CMR 13.10 where an institution has demonstrated good-faith efforts to comply with 610 CMR 13.07 (trustee completion of training requirements) and 610 CMR 13.08 (posting of audited financial statements).

Since it is not the intention of the Board or Department to, pursuant to 610 CMR 13.10, sanction an institution capable of demonstrating good-faith efforts to comply with 610 CMR 13.00 *et seq.*,

no changes to the proposed amended regulations are necessary at this time. The Department can specify its intention to take into account an institution's good-faith efforts to comply in its implementation procedures.

**B. Changes to Regulations**

As a result of the public comment received, the Department has not changed the proposed amended regulations since the Board first approved the regulations at its June 21, 2022 meeting. The unchanged regulations to be promulgated are attached (**Attachment A**).

**C. Timeline**

As set forth in the Timeline on the next page, after approval by the Board, the regulations will be submitted to the Secretary of the Commonwealth's Office by October 28, 2022, in time for publication in the next available *Massachusetts Register* (November 11, 2022). Once published in the *Massachusetts Register* on November 11, 2022, the amended regulations will go into effect.

**II. Implementation Procedures- Surety Worksheet**

State law requires that an institution of higher education that may be at risk of imminent closure, as determined by the Board pursuant to M.G.L. c. 69, § 31B and 610 CMR 13.00, must prepare a contingency plan for closure that assures the refund of deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and for the cost of protecting and maintaining student records. M.G.L. c. 69, § 31B(b)(3)(v). As part of that contingency closure plan, the institution shall furnish a bond with surety or a letter of credit sufficient to meet the costs of so refunding or maintaining in accordance with criteria established by the Board. Id. The amended regulations approved by the Board on June 21, 2022 set forth minimum criteria at 610 CMR 13.04(1)(b)(1) and delegate to the Commissioner (the Department) the authority to develop a formula to calculate the required amount necessary for such bonds or letters of credit to meet the costs of refunding students and maintaining student records.

Department staff have finalized the formula's methodology and developed detailed instructions for institutions' use when calculating the required surety amount. The formula's methodology, calculation instructions, and implementation procedures are provided in the attached Surety Worksheet (Attachment B). In developing the Surety Worksheet, Department Staff informally vetted the worksheet with stakeholders and incorporated their feedback to ensure the calculated amount is sufficient to meet the requirements under M.G.L. c. 69, § 31B(b)(3)(v).

The Commissioner is presenting the proposed Surety Worksheet (Attachment B) to the BHE for information and comment. The procedures outlined in the Surety Worksheet will guide the

Department's implementation of 610 CMR 13.4(1)(b)(1) and will be periodically reviewed and updated as needed by the Commissioner to ensure consistency with statutory and regulatory intent and requirements.

**Staff Recommendations**

Having completed the required Chapter 30A process, and there being no revisions made to the Board's proposed amended regulations approved at its June 21, 2022 meeting, staff recommend the Board approve the amended regulations (**Attachment A**) for submission to the Secretary of the Commonwealth's Office and final promulgation in accordance with M.G.L. c. 30A.

Staff further request the BHE's review, comment on and endorsement of the proposed implementation procedures.

### Comment Period and Regulatory Compliance Timeline

DATE	TASK/OCCURENCE
October 18, 2022*	<ul style="list-style-type: none"><li>• <b>BHE meeting</b> (final regulations presented for approval)</li></ul>
October 27, 2022	<ul style="list-style-type: none"><li>• Last day to submit final small business impact statement to Secretary of the Commonwealth's Office.</li></ul>
October 28, 2022	<ul style="list-style-type: none"><li>• Last day to submit final regulations to Secretary of the Commonwealth's Office for publication in the next edition of the <i>Massachusetts Register</i> (November 11, 2022)</li></ul>
November 11, 2022	<ul style="list-style-type: none"><li>• Publication of the final Regulations in the <i>Massachusetts Register</i></li><li>• Regulations will be final</li></ul>

# 610 CMR 13.00: Financial Assessment and Risk Monitoring of Institutions of Higher Education

## 13.01: Scope and Purpose

610 CMR 13.00 governs the Board of Higher Education's annual assessment of independent institutions of higher education to review and monitor the financial stability and viability of said institutions, as authorized pursuant to M.G.L. c. 69, § 31B. ~~This section 610 CMR 13.00~~ also directs the Board of Higher Education's implementation of certain additional elements of M.G.L. c. 69, § 31B, including the requirement that members of the governing board of private institutions of higher education receive training and the requirement that private institutions of higher education post their annual audited financial statements on their websites.

~~This section 610 CMR 13.00~~ does not affect the existing jurisdictional exceptions from the requirements set forth in 610 CMR 2.00 for certain in-state, independent institutions chartered prior to 1943 that are authorized by the legislature or state constitution to offer degree programs and confer post-secondary degrees in the Commonwealth. ~~This regulation 610 CMR 13.00~~ does not apply to out-of-state institutions with the power to grant degrees to Massachusetts students by virtue of participation in the State Authorization Reciprocity Agreement (SARA).

## 13.02: Definitions

As used in 610 CMR 13.00:

**Accrediting Agency.** A regional or national entity that grants formal recognition or acceptance of an institution or of programs or portions of the institution and is recognized by the U.S. Department of Education as a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs it accredits.

**Board of Higher Education (Board).** The agency established pursuant to the provisions of M.G.L. c. 15A, § 4.

**Commissioner of Higher Education (Commissioner).** The chief executive and administrative officer of the Department and the Board, pursuant to M.G.L. c. 15A, § 6.

**Department of Higher Education (Department).** The agency established pursuant to M.G.L. c. 15A, § 6.

**Independent Higher Education Institution (Institution).** An independent institution of higher education located in the Commonwealth and authorized to grant degrees pursuant to any general or special law.

**Risk of Imminent Closure.** A determination made by the Commissioner, based on an assessment of an Institution's financial resources, that the Institution is at risk of being unable to continue operations or substantially fulfill its obligations to enrolled and admitted students for the balance of the current and subsequent academic year, using December 1<sup>st</sup> as the annual threshold measurement date.

**Student Records.** Information and documents relating to a student's academic career and the institution's academic offerings; including, but not limited to, transcripts for students who are currently attending the institution or have attended the institution; graduation lists or other comparable academic documentation for students who have graduated from the institution; and college catalogs.

**Trustee.** A voting member of the governing body of a college or university.

### 13.03: Annual Financial Assessment

The Department shall ensure that mandatory annual financial assessments of Institutions are conducted in accordance with the following procedures.

#### (1) Screening

- (a) **Annual Screening.** All Institutions shall be screened annually for the purpose of assessing each Institution's past, present, and future financial stability to identify any Institution potentially at Risk of Imminent Closure.
- (b) **Screening Tools.** The Board shall establish the procedures to be used in the screening process, after consultation with representatives of Institutions and other stakeholders, and shall periodically review and refine such procedures as needed. Said procedures may include, but are not limited to:
  1. The use of financial and non-financial indicators from publicly available data sources to conduct a preliminary assessment of whether the Institution may be at Risk of Imminent Closure.
  2. Credit ratings assigned to Institutions by credit rating agencies or services.
  3. Any information obtained from other regulatory, oversight, or law enforcement entities, including Accrediting Agencies, the U.S. Department of Education, and the Massachusetts Office of the Attorney General, that could allow the Department to evaluate the sufficiency of the Institution's financial resources.
- (c) **Notification and Consideration of Other Information Relevant to the Screening.** The Commissioner shall notify each Institution identified through the screening process as potentially at Risk of Imminent Closure under this section. The notification shall include Department staff outreach to the administration of the

Institution to provide an opportunity to review the results of the screening process, including the analytical methodology, and to submit additional information that they or the Commissioner deem relevant to the screening results, including updated data not taken into account as part of the methodology used.

## (2) Determination of Financial Status

If the screening results, including any information provided to the Department in 610 CMR 13.03(1)(c), indicate an Institution may be at Risk of Imminent Closure, the Commissioner shall provide the Institution with a summary of the basis for his or her determination and require the Institution to submit information, in the form of a risk mitigation plan, to accurately and fairly determine the institution's financial status and likelihood of imminent closure and to monitor its condition, and prepare a contingency closure plan.

~~(a)~~ Submission of Risk Mitigation Plans. The Institution's risk mitigation plans shall, at a minimum, inform the Board of any known liabilities, risks, or financial issues and outline the Institution's plans, initiatives, and goals to sustain operations and to substantiate its current and prospective resources and financial capacity to address the Risk of Imminent Closure.

~~(b)~~ — The Commissioner's request for risk mitigation plans shall be addressed to the chief executive officer of the Institution and shall direct the Institution to work with Department staff. Copies of the Commissioner's request shall be sent to the chair and vice chair(s) of the Institution's governing board.

As part of the Institution's risk mitigation plans, the Institution's chief executive officer and the chair of the Institution's governing board shall provide written assurances and certifications which, at a minimum, shall certify the accuracy and completeness of the Institution's risk mitigation submission, and certify the Institution's intention and ability to continue operations and substantially fulfill its obligations to enrolled and admitted students. Additional content and the format of the required assurances and certifications shall be determined by the Commissioner.

(b) Review and Evaluation of Risk Mitigation Plans. Department staff shall review the Institution's risk mitigation plans and evaluate the Institution's Risk of Imminent Closure. The Commissioner shall, after Department staff review, make one the following determinations:

1. if the risk mitigation plans are deemed satisfactory, such that the Institution is deemed no longer at Risk of Imminent Closure, the Department shall monitor the implementation of the plans as set forth in 610 CMR 13.03(3); or

2. if the Institution does not submit the requested risk mitigation plans, or if the submitted plans do not demonstrate a likelihood that Risk of Imminent Closure will be mitigated during the current and subsequent academic year, the Commissioner shall require continued contingency planning for closure and, after notice to the Institution and an opportunity to cure, notification to the public, as set forth in 610 CMR 13.04 and/or may impose sanctions as outlined in 610 CMR 13.07.

### (3) Monitoring

Department staff shall monitor the Institution's progress in implementing its risk mitigation plans and initiatives and meeting its goals. Monitoring shall continue until the Department determines that: (i) the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure; or (ii) the Institution's plans to address the Department's concerns, as originally presented or subsequently amended, have not resulted and are unlikely to result in a satisfactory resolution.

Department staff may require periodic and other reports as part of the monitoring process.

## 13.04: Contingency Planning for Closure and Notification to the Public

**(1) Contingency Planning for Closure.** All contingency closure plans required by the Commissioner from an Institution shall be submitted by the Institution to Department staff in a format prescribed by the Department. While the development of contingency closure plans is typically an iterative process, all complete contingency closure plans must, in addition to any elements required by M.G.L. Chapter 69, Section 31B, include the development of transfer and articulation agreements for students, provide a comprehensive budget which shows the existence and commitment of sufficient resources to sustain the Institution's educational offerings through closure, and consider the broader impacts of closure on the Institution's key constituencies, including faculty, staff, and the host community.

(a) An Institution required to submit a contingency closure plan to the Department must also, as part of its risk mitigation plan submission, include the following:

1. A Student Deposit Refund Plan that assures the refund of any deposits made by students in anticipation of enrolling or continuing their enrollment at the Institution, in the event that the Institution closes before students have received the entirety of the educational services for which their deposits were to be applied; and
2. A Student Records Maintenance Plan to cover the cost of protecting and maintaining all Student Records from at least the past 60 years, including ensuring that Student Records are in a digitized,

accessible, indexed, searchable, and readily convertible, portable format. The plan must encompass all Student Records held by the Institution, including those from other, closed Institutions for which the Institution serves as custodian.

(b) Bond Requirements.- An Institution that does not demonstrate sufficient, documented resources in its Student Deposit Refund Plan and Student Records Maintenance Plan -to meet the costs of making the required refunds and maintaining the Student Records must, as required by M.G.L. c. 69, § 31B(3), include the furnishing of a bond with surety or a letter of credit sufficient to meet the costs of so refunding -and maintaining-. The bond or letter of credit must be maintained for a period of no less than 18 months, issued by a bank as defined in M.G.L. c 167, § 1 or an insurance company as defined in M.G.L. c. 175, § 1, payable to the Board, in which the Commonwealth is designated as the beneficiary where required. The bond or letter of credit shall be procured only from entities legally authorized to conduct business in the Commonwealth.

1. The amount of the bond or letter of credit shall be calculated by the Institution using a formula determined by the Department and based on -criteria that may include: average net revenue from student tuition and fee charges; average net revenue from room and board charges to students; current and projected enrollment; -enrollment trends, including -the average number of currently enrolled and anticipated new students and the required admissions deposit for new students; and- the estimated cost of formatting, scanning, and placing Student Records held by the institution with a Department-approved repository. The Department must approve the Institution's calculation.
2. The surety on any bond or letter of credit may cancel the bond upon giving no less than 60 days' notice in writing to the Department and thereafter shall be relieved of the liability for any breach of condition occurring after the effective date of the cancellation. If the surety is cancelled, the Institution shall procure new surety no less than 30 days prior to the effective cancellation date.
- ~~1.3.~~ Any funds received from a collection on a bond or letter of credit shall be held in trust by the Department for the benefit of enrolled or deposited students of an Institution and the preservation and maintenance of an Institution's Student Records.

(2) **Notification.** An Institution required to post public notification based on a determination made by the Commissioner under section 13.03(2)(b)(2) shall inform enrolled students, accepted students, pending applicants, faculty, staff, and other relevant stakeholders, including the chief executive officer of the host community, the elected state representative and senator in the legislative district where the Institution is located, the

Secretary of Housing and Economic Development, and the Secretary of Labor and Workforce Development, that the Department has determined the Institution's financial stability is sufficiently uncertain such that the Department cannot confirm that the Institution will be able to sustain operations or substantially fulfill its obligations to enrolled and admitted students for both the current and the subsequent academic year. The communications shall be made in a manner, format, and timing acceptable to the Department. The Institution shall also include clear and conspicuous notice in any promotional materials aimed at recruiting or retaining students. Should the Institution decline to inform stakeholders that it is at risk, the Commissioner may issue a public notification to that same effect.

- (3) The Department shall maintain a public list of Institutions currently required to issue notifications pursuant to this section.
- (4) Institutions required to submit contingency closure plans to the Department continue to be subject to the requirements set forth in 610 CMR 13.03(2) and (3), either until a determination is made by the Department that the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure or until the Institution is closed.

### 13.05: Advisory Committee

The Commissioner may convene an ad hoc or standing advisory committee to participate in the review of an Institution during any stage of the process. The Commissioner shall charge the advisory committee with the scope and purpose of its review, and the advisory committee shall, [upon the Commissioner's request](#), submit an evaluation with its findings and recommendations to the Commissioner.

An Institution may request that an advisory committee be convened, if one has not already been convened by the Commissioner, in the event that the Commissioner has determined that the Institution will be required to submit a Contingency Plan for Closure and a Notification to the Public. [An Institution's request for advisory committee review shall be in writing and shall be submitted to the Commissioner within 3three business days of the Commissioner's determination.](#) The Commissioner's assent to such a request shall not be unreasonably withheld.

### 13.06: Confidentiality

Unless otherwise specified above, the Board and the Department shall protect from disclosure and shall maintain as confidential all information submitted to or developed by the Board, acting by or through the Commissioner, the Department, or the Advisory Committee, pursuant to and in furtherance of this regulation, to the maximum extent permissible under state law.

### 13.07: [Trustee Training](#)

Each Trustee of an Institution shall receive instruction and training in higher education financial metrics, legal and fiduciary responsibilities, and applicable standards for accreditation at least once every 4 years, as required pursuant to M.G.L. c. 69, § 31B(e).

- (1) Each newly appointed Trustee of an Institution must be trained within -12 months of appointment.
- (2) Each Institution must arrange for instruction and trainings for that Institution's trustees.
- (3) As part of the annual reporting required by ~~Section 610~~ **610** CMR 13.09 ~~below~~, an Institution must submit to the Department, at a minimum, the agenda and/or curriculum for instruction and training attended by its Trustees for the purpose of allowing the Department to ~~evaluate~~ its sufficiency and compliance with statutory requirements.

### 13.08: Audited Financial Statements

An Institution must post on its website a copy of the Institution's annual financial report or audited financial statement and a summary of the report, however termed, that is written in terms that are understandable by the general public.

- (1) An Institution must post its audited financial statements no later than ~~6~~ **6** months after the end of its fiscal year.
- (2) An Institution must, at a minimum, maintain on its website its ~~3~~ **3** most recent years of audited financial statements.
- ~~(3)~~ (3) An Institution must have a permanent webpage for the posting of the audited financial statements that is accessible to the public and able to be located using either the website's internal search function or an external internet search engine.
- (4) An Institution must also post to its permanent webpage an accompanying summary of each year's audited financial statement in a format understandable by the general public.

### 13.09: Reporting

An Institution must report annually to the Department on its compliance with the requirements in these regulations and in M.G.L. c. 69, ~~§s-~~ **§s-** 31B. The timeline and format for posting and updating the Institution's annual report shall be determined by the Department through policy.

### 13:10: Sanctions

If an Institution fails to comply with the requirements of ~~this regulation~~ **610** CMR 13.00, or otherwise fails to cooperate with the Department in the screening, inquiry, monitoring, and/or

contingency planning and notification processes, including failure to obtain the required bond with surety or letter of credit, or otherwise fails to submit risk mitigation plans that demonstrate a likelihood that the Risk of Imminent Closure will be mitigated during the current or subsequent academic year, the Commissioner may issue one or more of the following sanctions:

- (1) Termination of eligibility for state aid.
- (2) Suspension or revocation of degree-granting authority, in whole or in part, after notice and opportunity to cure through the development of a corrective course of action, through the process described in 610 CMR 2.10(2): *Procedures to Revoke or Suspend Degree-Granting Authority*.
- (3) Referral by Department staff to the Office of the Attorney General.
- (4) A fine not to exceed \$1,000 per day, in an amount to be determined by the Commissioner in their sole discretion.

### 13.11: Appeals

- (1) A decision by the Board, upon the recommendation of the Commissioner, to suspend or revoke the Institution's degree-granting authority is appealable pursuant to M.G.L. c. 30A, as set forth in M.G.L. c. 69, ~~§~~ 30A and 610 CMR 2.10(2): *Procedures to Revoke or Suspend Degree-Granting Authority*.
- (2) A decision by the Commissioner to issue a fine as set forth in 610 CMR 13.10(4) can be appealed within ~~10~~ten business days by submitting a written appeal to the Executive Committee of the Board. Within ~~10~~ten business days of its receipt of the written appeal, the Executive Committee will hold a session to receive information and hear testimony from the Institution, the Commissioner, and Department staff. The Executive Committee will seek to issue a final decision on the Institution's appeal within ~~10~~ten business days of its session.
- (3) The Executive Committee of the Board's final decision~~s~~ on the issuance of a fine, as set forth in 610 CMR 13.11(2), is -appealable pursuant to M.G.L. c. 249, ~~s-~~§ 4.

#### REGULATORY AUTHORITY

610 CMR 13.00: M.G.L. c. 15A, § 16; M.G.L. c. 69, § 30A; and M.G.L. c 69, § 31A and 31B, as amended by 2019 Mass. Acts c. 113.



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Board Chairman

SURETY AMOUNT CALCULATION WORKSHEET

State law requires that an institution of higher education that may be at risk of imminent closure, as determined by the Massachusetts Board of Higher Education (Board) pursuant to M.G.L. c. 69, § 31B and 610 CMR 13.00, must prepare a contingency plan for closure that assures the refund of deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and for the cost of protecting and maintaining student records. M.G.L. c. 69 § 31B(b)(3)(v). The Board may require that the institution, as part of a contingency closure plan, furnish a bond with surety or a letter of credit sufficient to meet the costs of so refunding or maintaining. Id.

This worksheet shall be used by an institution to determine the amount of surety an institution is required to obtain and furnish as part of its contingency plan for closure, when required to do so by the Board.

The surety amount is based on the following:

- The institution's average enrollment over the prior 3 years
The institution's average net student tuition and fee revenue over the prior 3 years, for one semester
The institution's average net revenue from room and board charged to students over the prior 3 years, for one semester
The average number of new students over the prior 3 years
The required admissions deposit for a new student
The number of transcripts held by the institution from the past 60 years
The number of institutions for which the institution holds student records

The institution's calculation is subject to review by the Department of Higher Education (Department) and must be approved prior to the institution obtaining the surety. The Department may request, and the institution must provide, documentation to support its calculation.

Table with 2 columns: Description of calculation item and Amount. Row 1: '1. The average net revenue from tuition and fees charged to students over the prior 3 years, plus the average net revenue from room and' followed by '\$'.

board charged to students over the prior 3 years, divided by 2.	
2. The average number of new students over the prior 3 years multiplied by the required deposit for a new student	\$
3. The number of transcripts from the past 60 years multiplied by \$0.60	\$
4. \$3000 multiplied by the number of institutions for which the institution holds student records	\$
<b>Required Surety Amount (1 + 2 + 3 + 4)</b>	<b>\$</b>



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## EXPLANATIONS

**Line 1:** [M.G.L. c. 69, s. 31B\(b\)\(3\)](#) requires that an institution identified as at risk of imminent closure must establish a plan that assures the refund of deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and that the institution furnish a bond with surety or a letter of credit sufficient to meet the costs of so refunding.

The Department has interpreted the statutory requirement of refunding deposits made by students in anticipation of continuing their enrollment as requiring the refund of any moneys paid out of pocket by or on the behalf of enrolled students for which the value in exchange has not been received. For example, where an institution closes midway through a semester, such that enrolled students are not able to complete their coursework and obtain final, potentially transferable credits, any amounts that students paid for that semester's education should be refunded because the students did not receive what they had paid for (i.e., the credits toward credential or degree). This calculation will ensure that all currently enrolled students will be able to receive a refund should they pay in advance for credits that they do not ultimately receive.

The Department has removed grants or scholarship funds from this calculation because those amounts are not paid out of pocket by the students or on their behalf.

Using data captured on the institution's audited financial statements, this calculation takes the average net student tuition and fee revenue for the prior 3 years, plus the average net revenue the institution receives from student room and board charges for the prior 3 years, and divides this total by 2 to arrive at a "per semester" average net revenue figure. This calculation assumes the institution's primary enrollment and education activities occur during a fall and spring semester. This calculation represents the expected amount which may need to be refunded to students in the event of institutional closure during the upcoming semester.

With regard to room and board, the Department has included the full amount of room and board (based on a 3-year average and enrollment) in the surety calculation. However, the Department recognizes that if room and board refunds become necessary, then refunds can be prorated, because, unlike with tuition, students do receive something in exchange for the majority of their room and board in real time. For example, if a student pays in advance for room and board, and the institution closes midway through a semester, the student has still received partial value for their room and board deposit (i.e., they have been able to live in institution-provided housing and access institution-provided meals for the time that the institution was open). The overinclusive surety calculation, however, will ensure that all currently enrolled students will be able to receive a prorated refund for room and board that they have paid in advance but for which they did not receive value in return, irrespective of the date the institution closes.

**Line 2:** This calculation is to cover the refund of admissions deposits for new student enrollment as required by the statute. The Department is using a 3-year window to create an average of new students on which this amount will be based, in an effort to take into account and capture enrollment trends. The intended purpose is for the obtained surety to cover the refunds of new student enrollment deposits if the institution closes.

**Line 3:** [M.G.L. c. 69, s. 31B\(b\)\(3\)](#) requires that the institution's plan to protect and maintain student records be supported by a bond with surety or a letter of credit sufficient to meet the costs of maintaining those records.

This calculation is based off of the cost quoted by a credentialing provider—e.g., Parchment, LLC (as of March 2022)-- for its scan and index process for student transcripts. While not every institution would need to utilize a service such as Parchment's for its transcripts if it should close, the \$.60 per transcript fee provides a baseline of the approximate cost for digitizing and indexing the transcripts with a credentialing service.

Please note that, in generating this calculation, you should include *all* transcripts that your institution holds, including transcripts that are not from your institution but for which your institution has become the custodian.

**Line 4:** This calculation is also to cover a cost typically charged by credentialing providers for opening a "storefront" for transcript requests. By way of example, as of March 2022 Parchment LLC charges \$2500.00 for a storefront set up and configuration for each institution and \$500.00 per storefront/institution to load the transcript records into their Credential Library for processing. Again, while every institution might not need to use the services of a credentialing provider such as Parchment's, this amount is a baseline representation, and including this calculation ensures that, should one do so, the full cost would be accounted for in the amount of the surety.