



Massachusetts Department of Higher Education

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Carlos E. Santiago
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)

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

June 18, 2019	Meeting Minutes	
	Motion 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
	Attachment A	Comment Period and Regulatory Compliance Timeline
	Attachment B	Proposed Regulations 610 CMR 13.00
	Presentation	BHE Authorization to Solicit Public Comment: Financial Review and Risk Monitoring Regulations (610 CMR 13)

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

April 8, 2020	Meeting Minutes	(not yet available)
	Motion 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
	Attachment A	Financial Assessment and Risk Monitoring Implementation Procedures for Massachusetts Private Independent Higher Education Institutions Pursuant to 610 CMR 13.00
	Appendix A Presentation	DHE Screening Methodology Financial Assessment and Risk Monitoring - Implementation and NECHE MOU

Compiled: April 27, 2020

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

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

I.	CALL TO ORDER 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.
II.	PUBLIC PARTICIPATION 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 30th 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>
III.	<p>WELCOME</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>
IV.	<p>ACCEPTANCE OF MINUTES</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>

V.	REMARKS AND REPORTS
A	<p>CHAIRMAN'S REMARKS</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.	<p>COMMISSIONER'S REMARKS</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.
C.	<p>SECRETARY OF EDUCATION'S REMARKS</p> <p>Secretary Peyser had no further comments.</p>
D.	<p>REPORTS FROM PRESIDENTS</p> <p>Community College Presidents' Report</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>State University Presidents' Report</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>E.</p>	<p>REPORT FROM STUDENT ADVISORY COUNCIL</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>VI.</p>	<p>MOTIONS</p> <p><i>List of Documents Used:</i></p>

	AAC 18-27	
	A.	<p>Academic Affairs</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>
	AAC 18-27	APPLICATION OF COLLEGE OF SAINT LOUIS UNIVERSITY TO AWARD THE MASTER OF SOCIAL WORK
	MOVED:	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
VII.	PRESENTATIONS	
	<p><u>List of Documents Used</u></p> <ul style="list-style-type: none"> • <i>PowerPoint Presentation: Redesigning Massachusetts State Financial Aid, May 1, 2018</i> • <i>PowerPoint Presentation: Open Educational Resources, Supporting Access & Affordability May 1, 2018</i> • <i>Massachusetts Student Advisory Council Resolution #001</i> <p>A. Redesigning Massachusetts State Financial Aid: Simplifying Process & Maximizing Impact, Part II</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 21st 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.
VIII.	OTHER BUSINESS There was no other business.
IX.	ADJOURNMENT 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

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 50th 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 4th 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 48th.

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

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 1st 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 Massachusetts¹. With a fresh

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

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

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

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

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

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

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

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

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

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

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

Findings

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

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

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

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

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

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

Taken together, these two findings necessitate action.

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

Recommendations

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

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

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

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

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

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

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

Proposed Monitoring and Intervention Plan

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

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

(1) Screening

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

The Teachout Viability Metric (TVM)

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

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

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

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

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

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

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

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

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

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

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

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

(2) Active Monitoring

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

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

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

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

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

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

(3) Contingency Planning and Student Notification

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

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

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

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

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

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

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

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

(4) Sanctioning and Revocation

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

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

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

NPIHE Participation in State Financial Aid for Students

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

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

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

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

Revocation of Degree Granting Authority

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

Referral to the Attorney General’s Office

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

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

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

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

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

Moving Forward with These Recommendations

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

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

Regulatory & Policy Setting

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

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

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

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

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

Institutions Beyond the Scope of the Working Group Report and Plan

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

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

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

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

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

Office of Student Protection & External Advisory and Review Council

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

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

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

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

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

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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In the preparation of this Report, EY US relied on information provided by the Massachusetts BHE, interviews with state departments of higher education and accreditors, and publicly available resources. EY US has not conducted an independent assessment or verification of the completeness, accuracy or validity of the information obtained.

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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.”¹ 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.²

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:

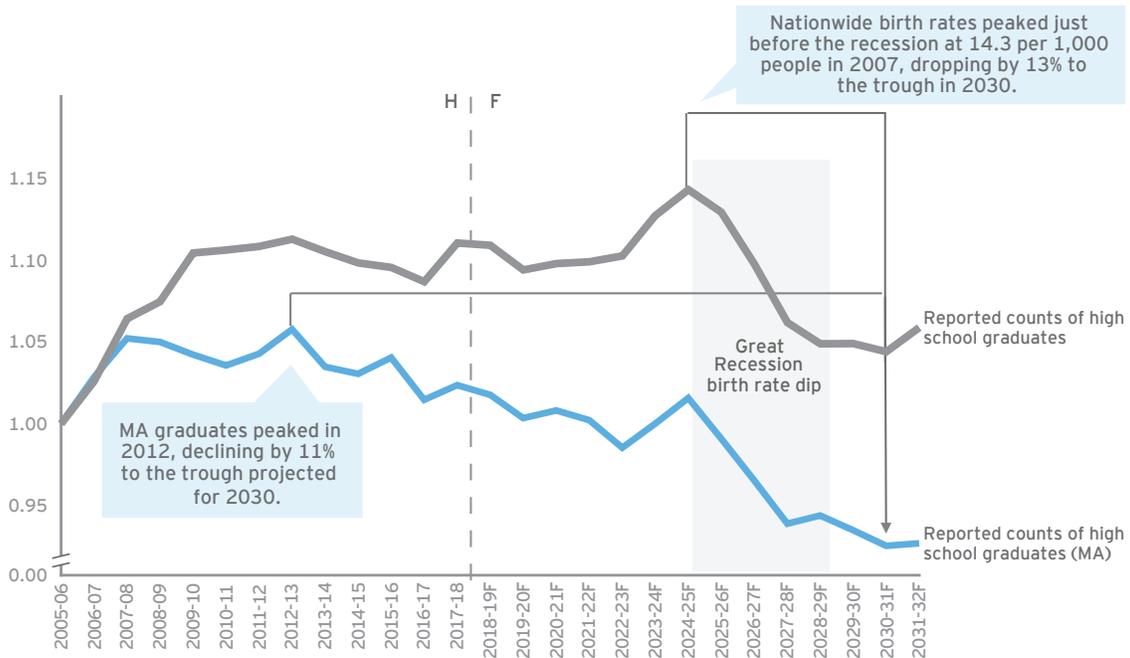
- ▶ 24% saw cumulative decreases in enrollment greater than 10% (up from 8% of NPIHEs over the prior five-year period) in the period of 2011–2016

- ▶ 34% saw expense growth increase by 5 percentage points or more above revenue growth from 2011 to 2016³
- ▶ 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 2014⁴
- ▶ 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 2011⁵

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

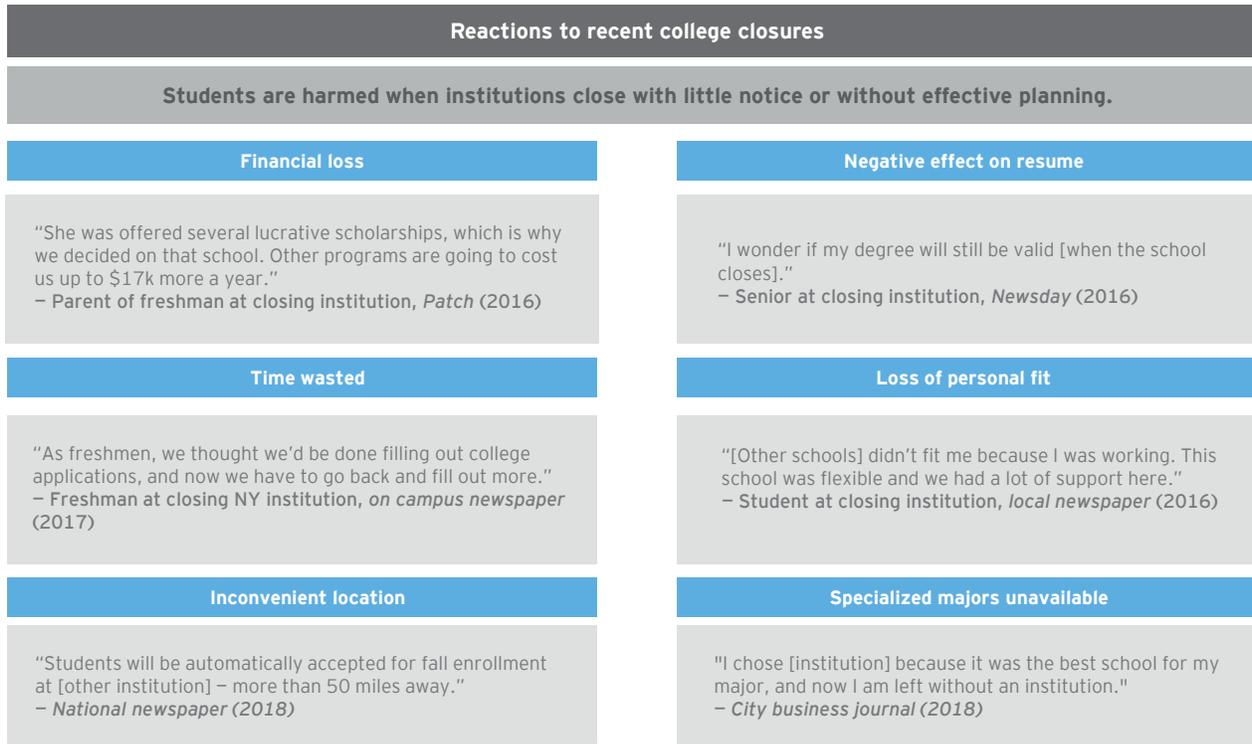
in Massachusetts hail from within the state, this decline could have a significant impact on all Massachusetts schools, but may in fact have a disproportionate effect on small NPIHEs, which generally serve “traditional” students in the 18-24 year age range and typically have a more local “catchment” 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.⁶

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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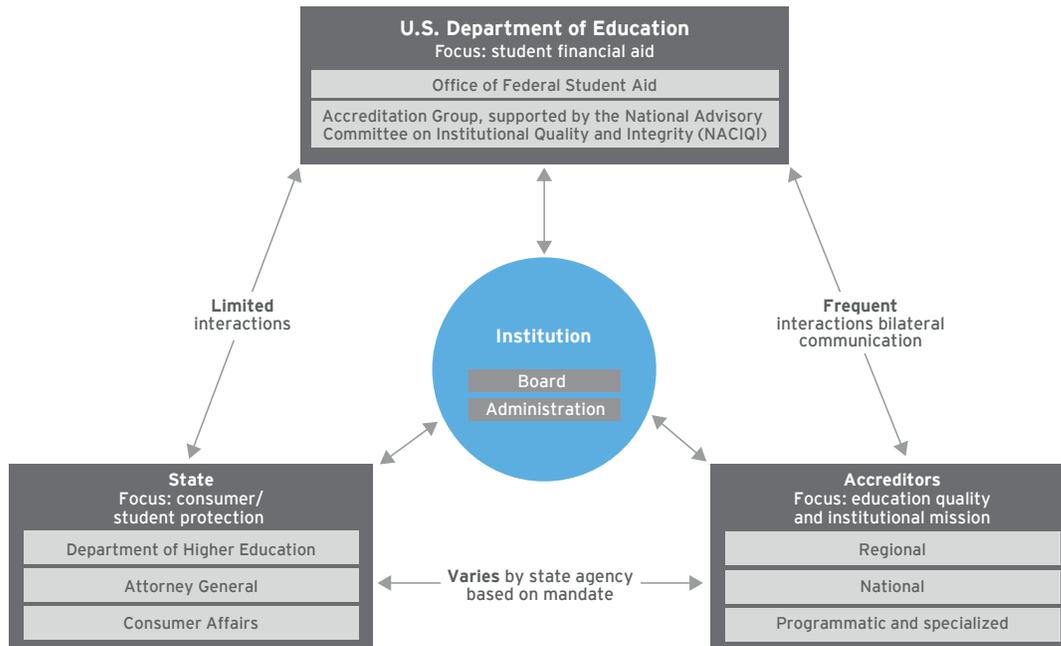
Part II: Current oversight and practices

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.⁷ 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%).⁸

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 review⁹ 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.

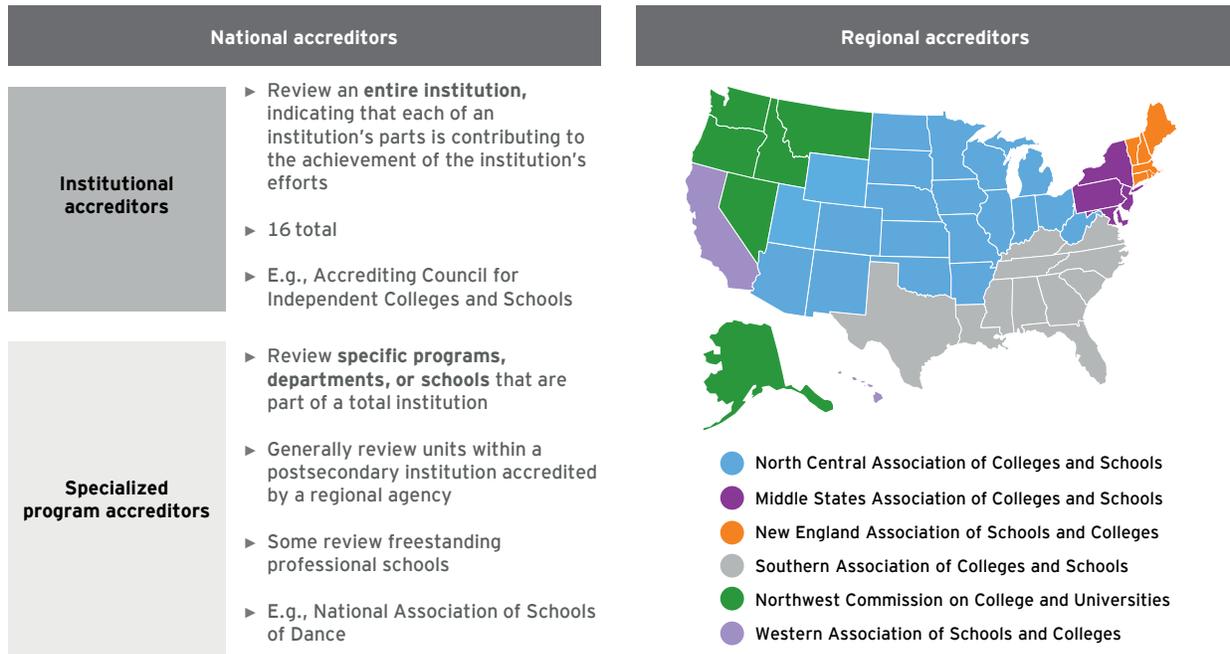
Regional accreditors typically coordinate with NPIHE governing body (trustees) and leadership to understand, among the many different issues to which they pay attention, whether there are any challenges related to enrollment and overall financial health. Accreditors require schools to assemble plans 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

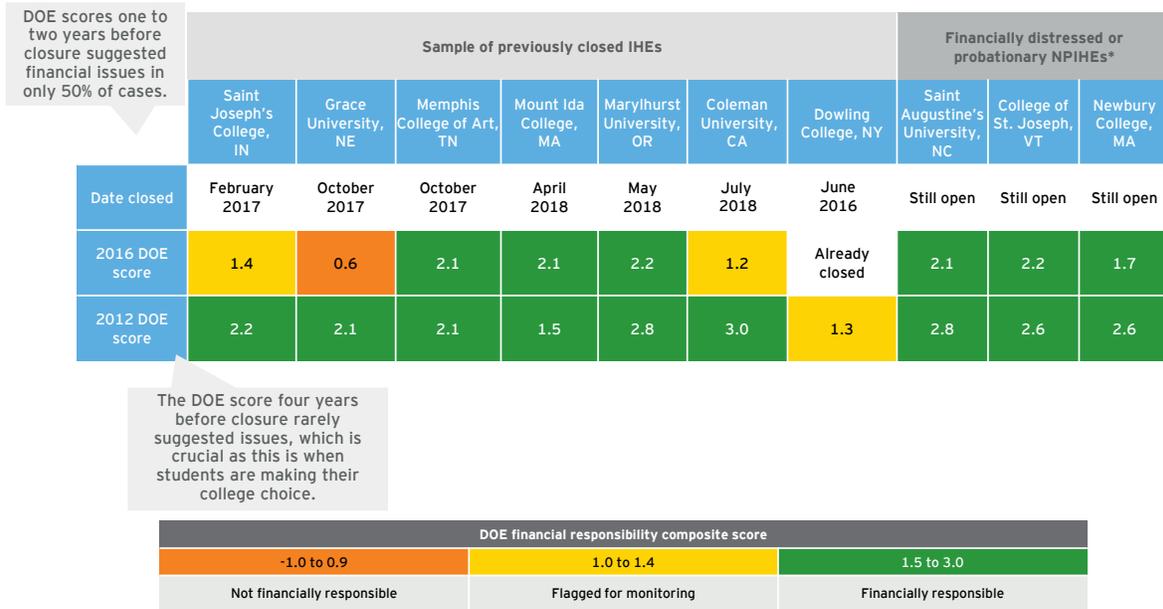
Ultimately, when it comes to safeguarding student interests and notifying them when a school may be in financial difficulty, it is not clear that any of these three entities – federal, regional accreditors, and state – have a clear responsibility to do so. Even if they did, the metrics that are typically 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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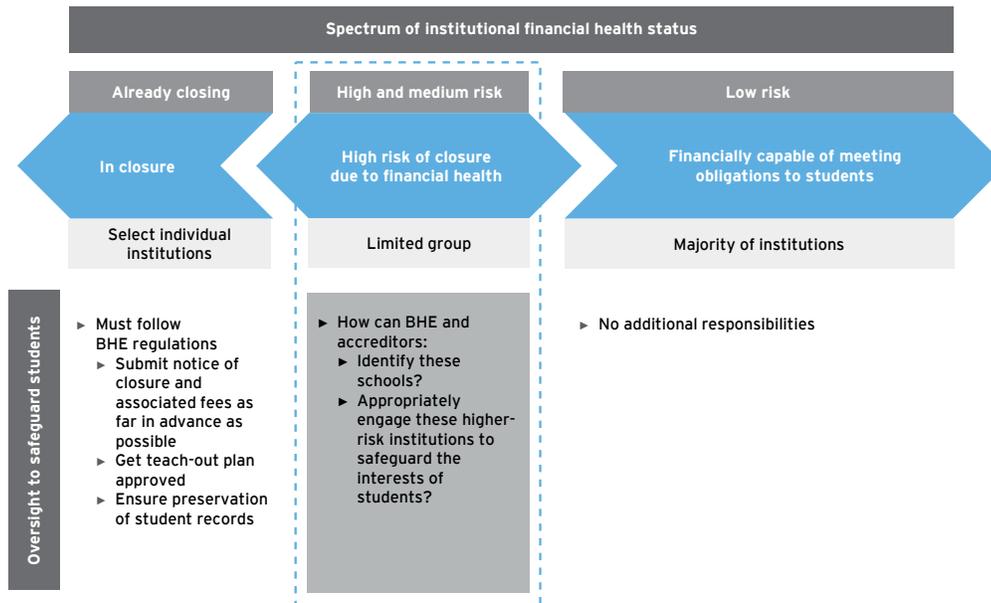
do not currently have regulations that proactively protect student welfare when schools are financially challenged at best, these policies often just result in a probationary period, which may or may not be communicated to students and families. But even if states and accrediting bodies had more proactive 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.¹⁰ 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.¹¹ 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.



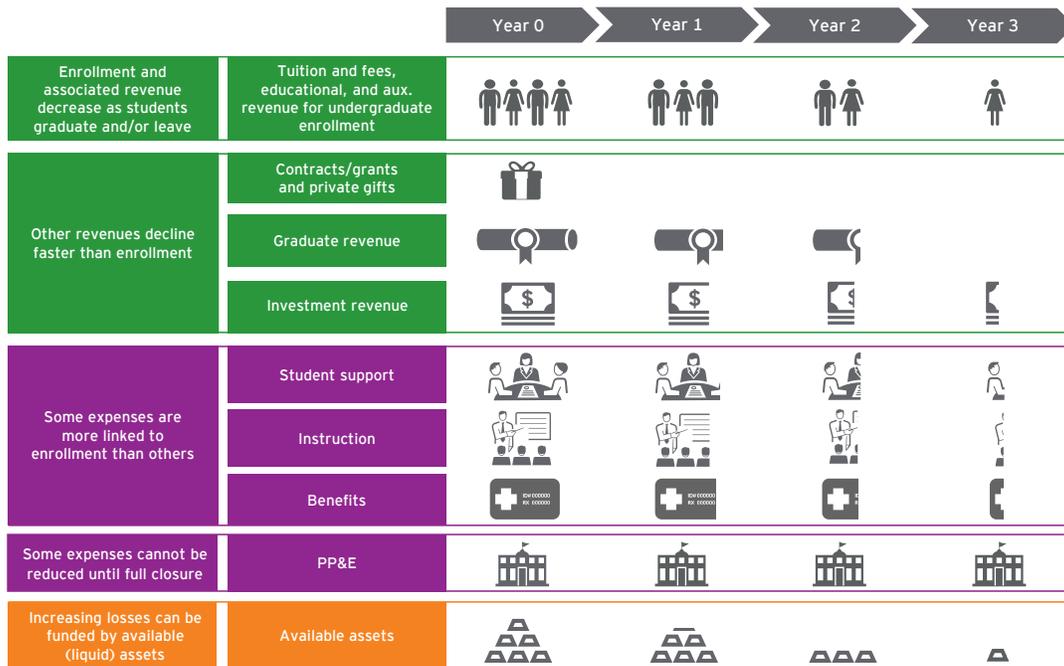
Preliminary analysis and simulations conducted with the TVM indicate that it could have promise as a proactive screening metric for NPIHEs. Moreover, it appears to offer a number of benefits:

- ▶ 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

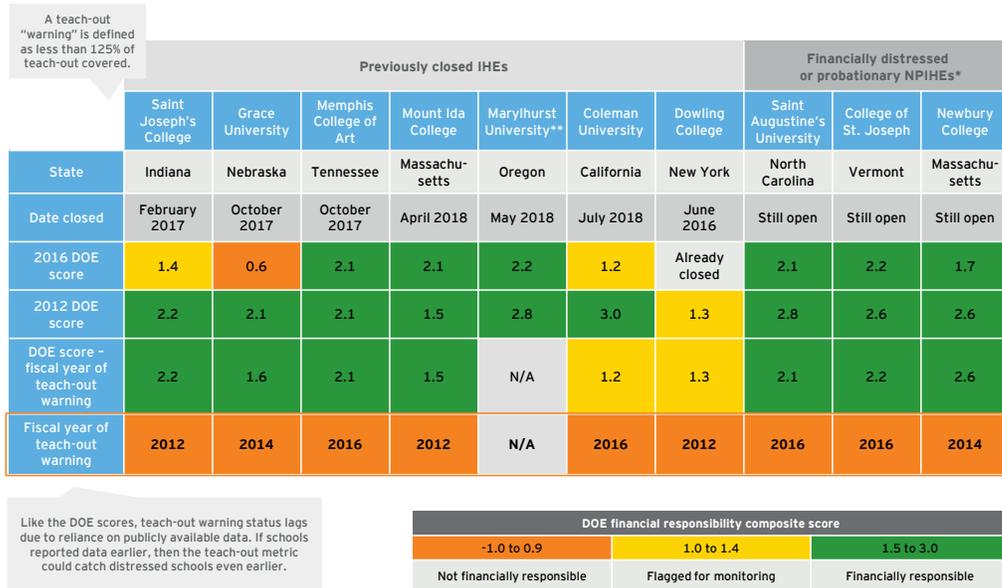
		Teach-out model category (Massachusetts schools)		
		High risk	Medium risk	Low risk
Descriptive characteristics	Average size (middle 50%)	1,000-2,100 students	1,000-4,500 students	1,700-4,900 students
	Average acceptance rate	77%	67%	54%
	Average yearly enrollment growth ('05-'16)	-1.2%	1.4%	1.0%
	Average 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.

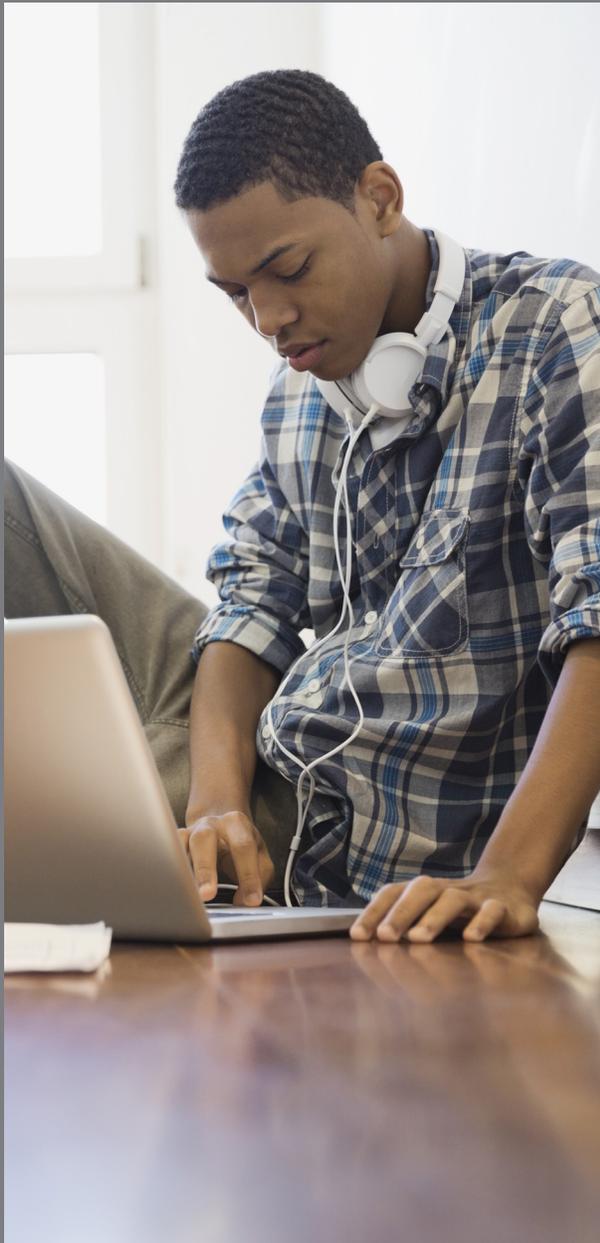
Source: IPEDS; Inside Higher Education, "Too Late for a Fix?" August 8, 2018; TVM

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

- ¹ <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>.
- ² <https://www.insidehighered.com/quicktakes/2018/07/25/moodys-private-college-closures-11-year>.
- ³ Integrated Postsecondary Education Data System (IPEDS), National Center for Education Statistics (NCES).
- ⁴ <https://www.forbes.com/sites/schifrin/2017/08/02/2017-college-financial-grades-how-fit-is-your-school/#49ff4bdd7d68>.
- ⁵ <https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>.
- ⁶ Integrated Postsecondary Education Data System (IPEDS), National Center for Education Statistics (NCES).
- ⁷ <https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>.
- ⁸ <http://products.nacubo.org/index.php/leadership/update-to-the-7th-edition-of-strategic-financial-analysis-in-higher-education.html>.
- ⁹ EY-Parthenon interviews.
- ¹⁰ <http://www.mass.edu/foradmin/closures/home.asp>.
- ¹¹ https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/POLICIES/Pp13a-Teach_Out_Plans_And_Agreements_Policy.pdf.

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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

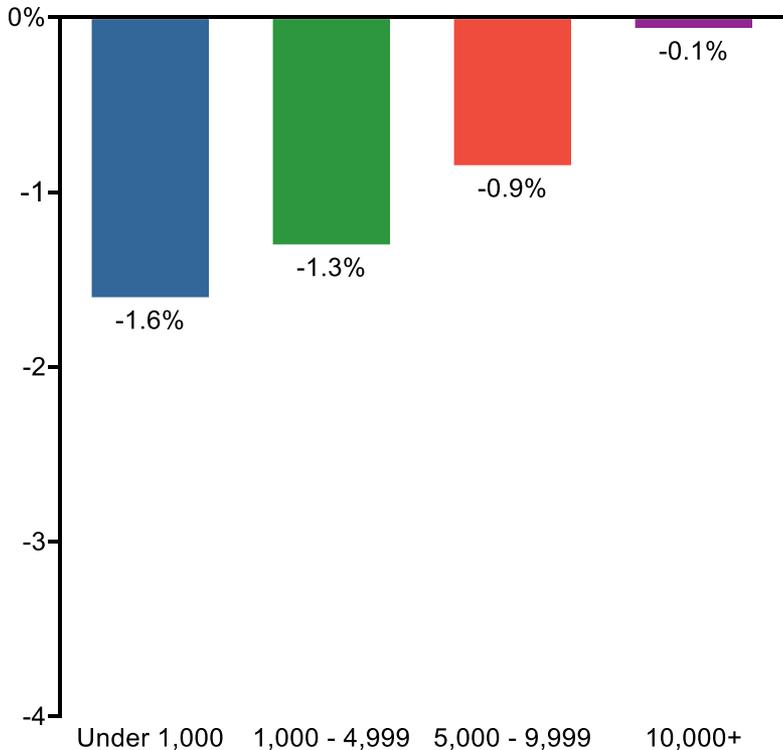
The DHE should adopt a new process to identify and manage risk including

- 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 1st of each year if a school is judged financially uncertain to complete current **and** subsequent school year

1. Pressures on higher education

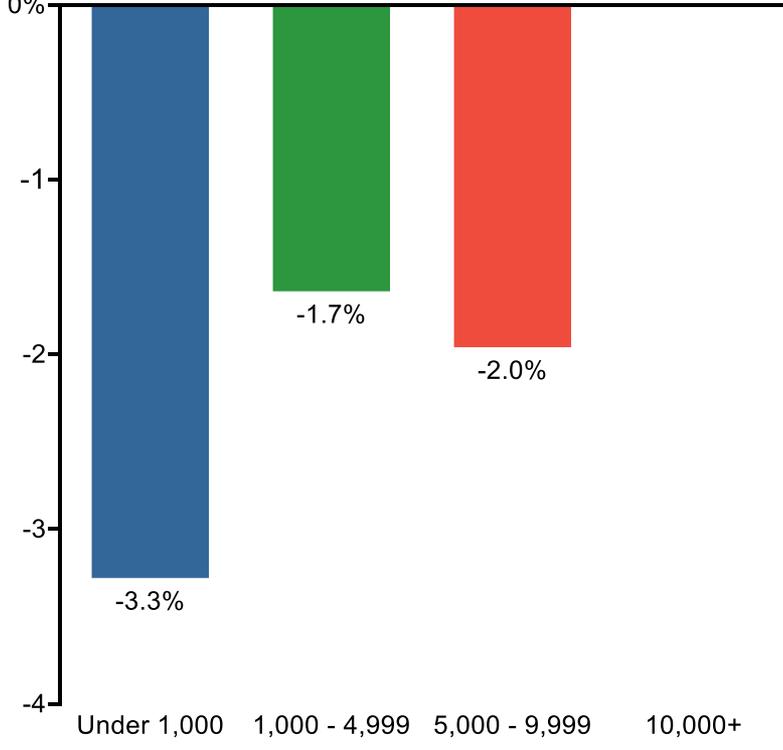
Enrollment declines are likely to continue to disproportionately affect small schools

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



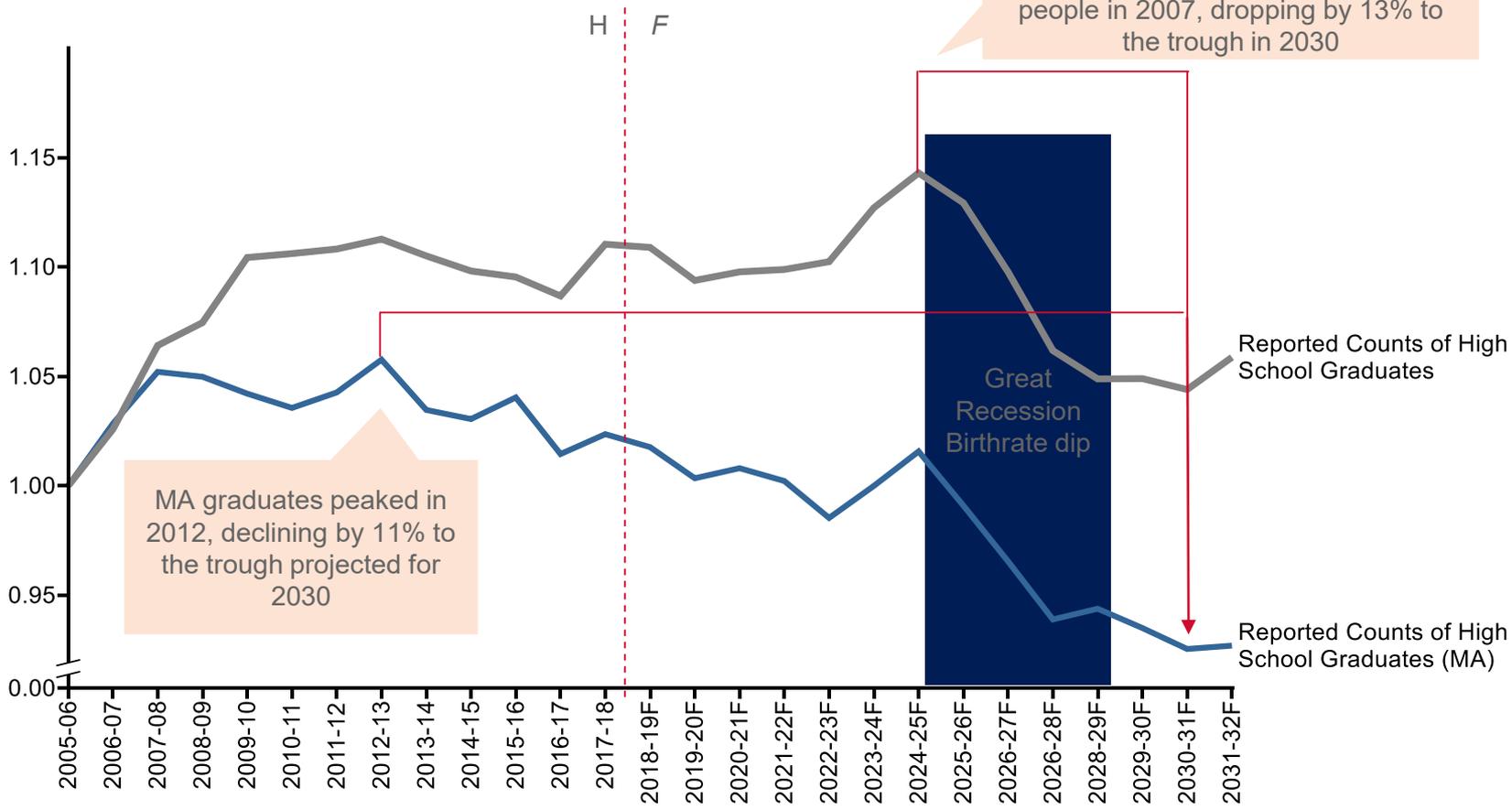
Count of Institutions: Under 1,000 (26), 1,000 - 4,999 (56), 5,000 - 9,999 (21), 10,000+ (11)

*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

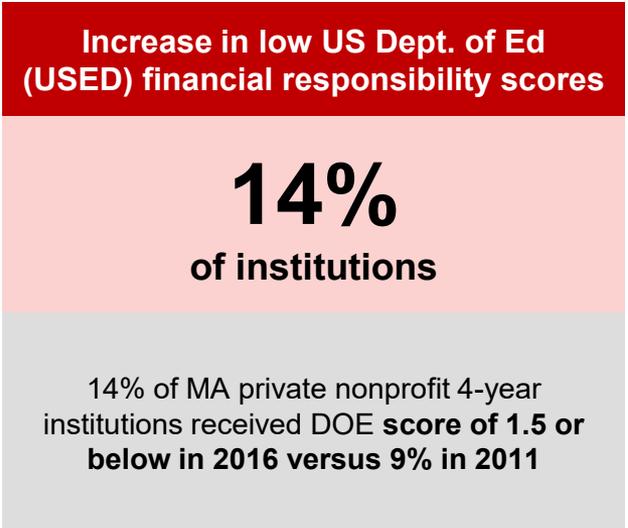
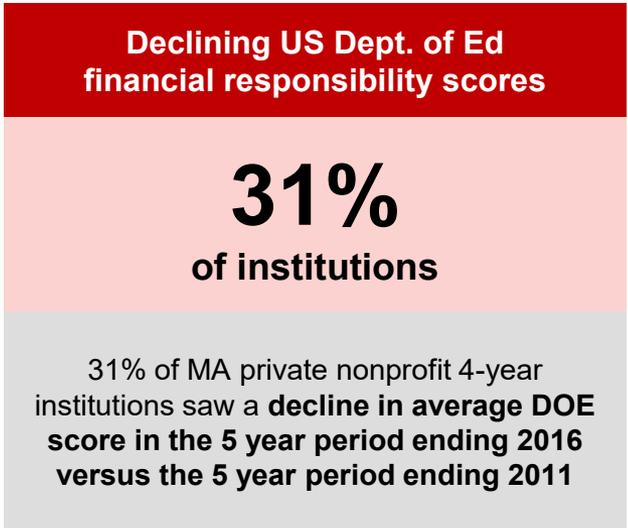
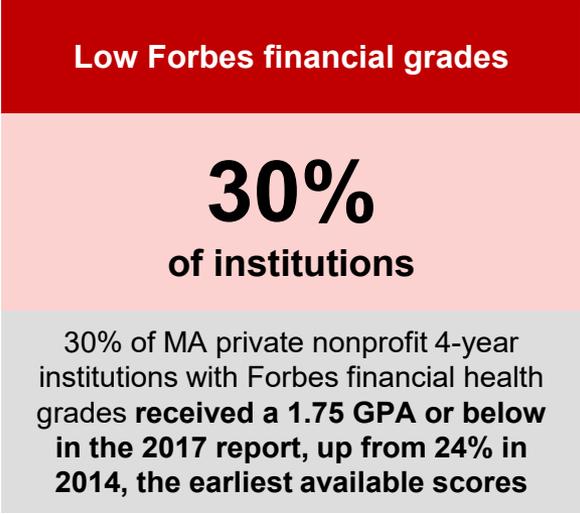
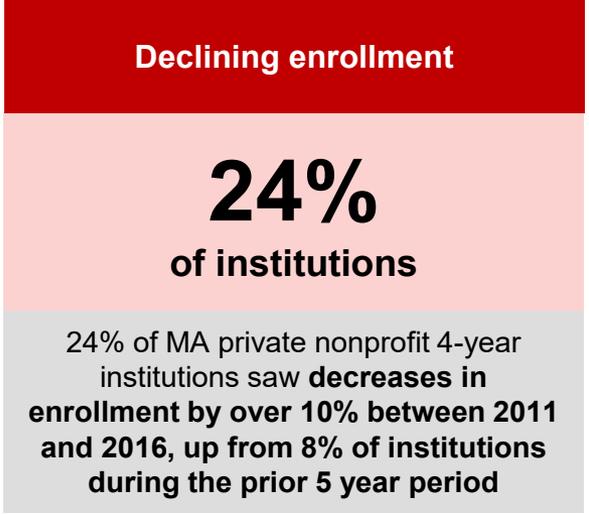
1 pending institutional **closure**

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



■ 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

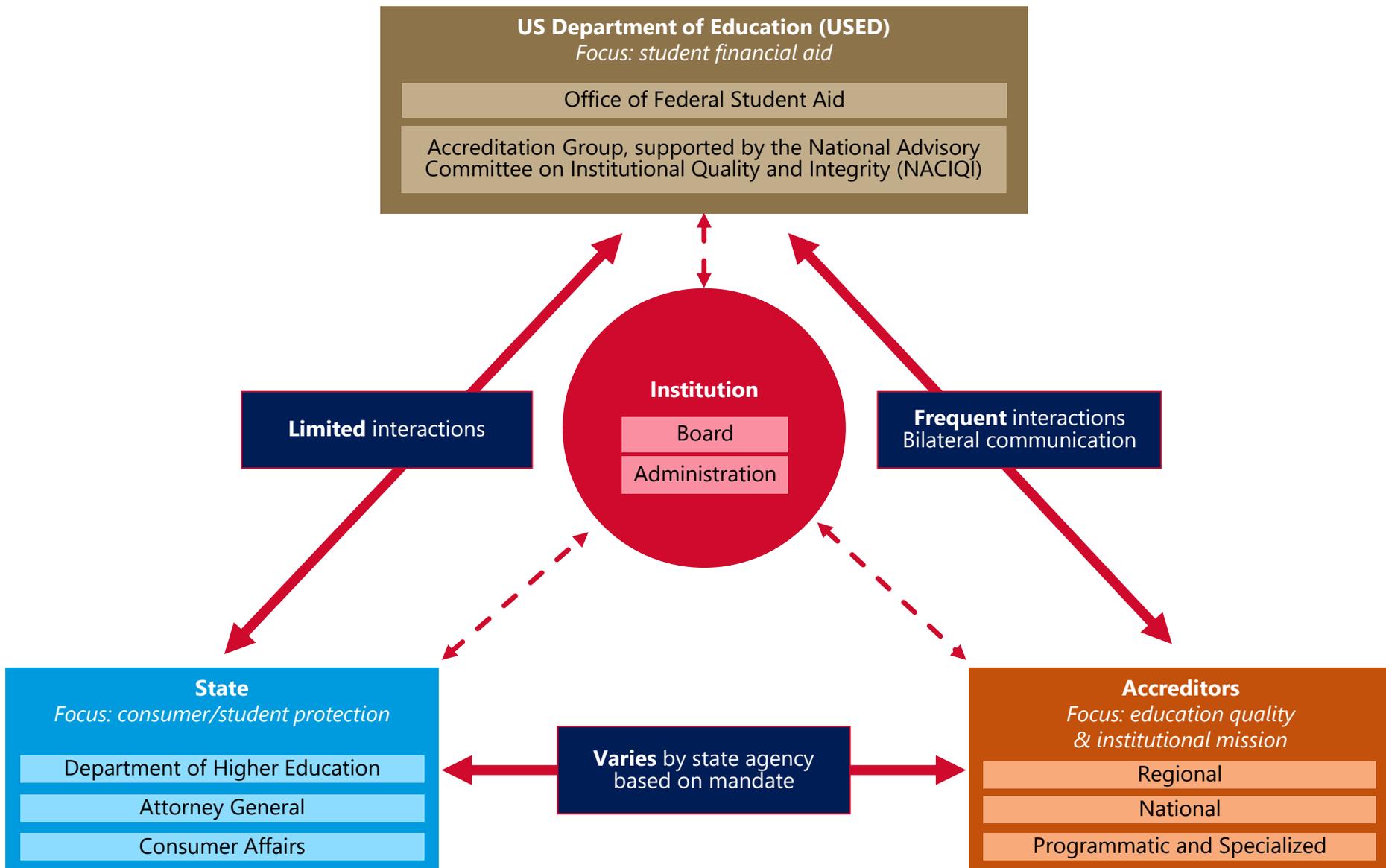
"Students will be automatically accepted for fall enrollment at [other institution]– more than 50 miles away"
– *National Newspaper* (2018)

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">• Analyze annual IHE data submission, considering relevant financial metrics to meet standards of resource to achieve mission, e.g. DOE score, CFI, enrollment, etc.• “Holistic Review” evaluation based on professional judgement of all available facts and context• Follow-up with institution to gather additional data or site visits as needed | <ul style="list-style-type: none">• Create report on cause for concern, where accreditation is withdrawn by set date if no evidence of improvement• Institution responds with plan to address concerns• Follow-up actions include:<ul style="list-style-type: none">• Guidance or training• Further sanctions or probation• Withdraw accreditation if exceeds maximum probation period | <ul style="list-style-type: none">• Review and approve teach out plans based on established criteria• Continued engagement (i.e., monitoring closing process, intervening if necessary) |
|---|---|--|

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
- | | | |
|--|---|---|
| <ul style="list-style-type: none"> • Analyze annual financial audits of private nonprofits to maintain integrity of Title IV eligibility | <ul style="list-style-type: none"> • Place on Heightened Cash Monitoring if DOE score falls below thresholds • Sets maximum of 2 years on sanctions before ineligible for Title IV funding | <ul style="list-style-type: none"> • 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
- | | | |
|---|--|---|
| <ul style="list-style-type: none"> • Varies by state; can include oversight of segment of private nonprofits such as: <ul style="list-style-type: none"> • Periodic general reauthorization of institutional status • Follow-up on student concerns • Review licensure rule adherence | <ul style="list-style-type: none"> • Limited role across many states | <ul style="list-style-type: none"> • Varies by state; can include: <ul style="list-style-type: none"> • 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
Statutory Level of Oversight by the State*					
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: 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

Question 1

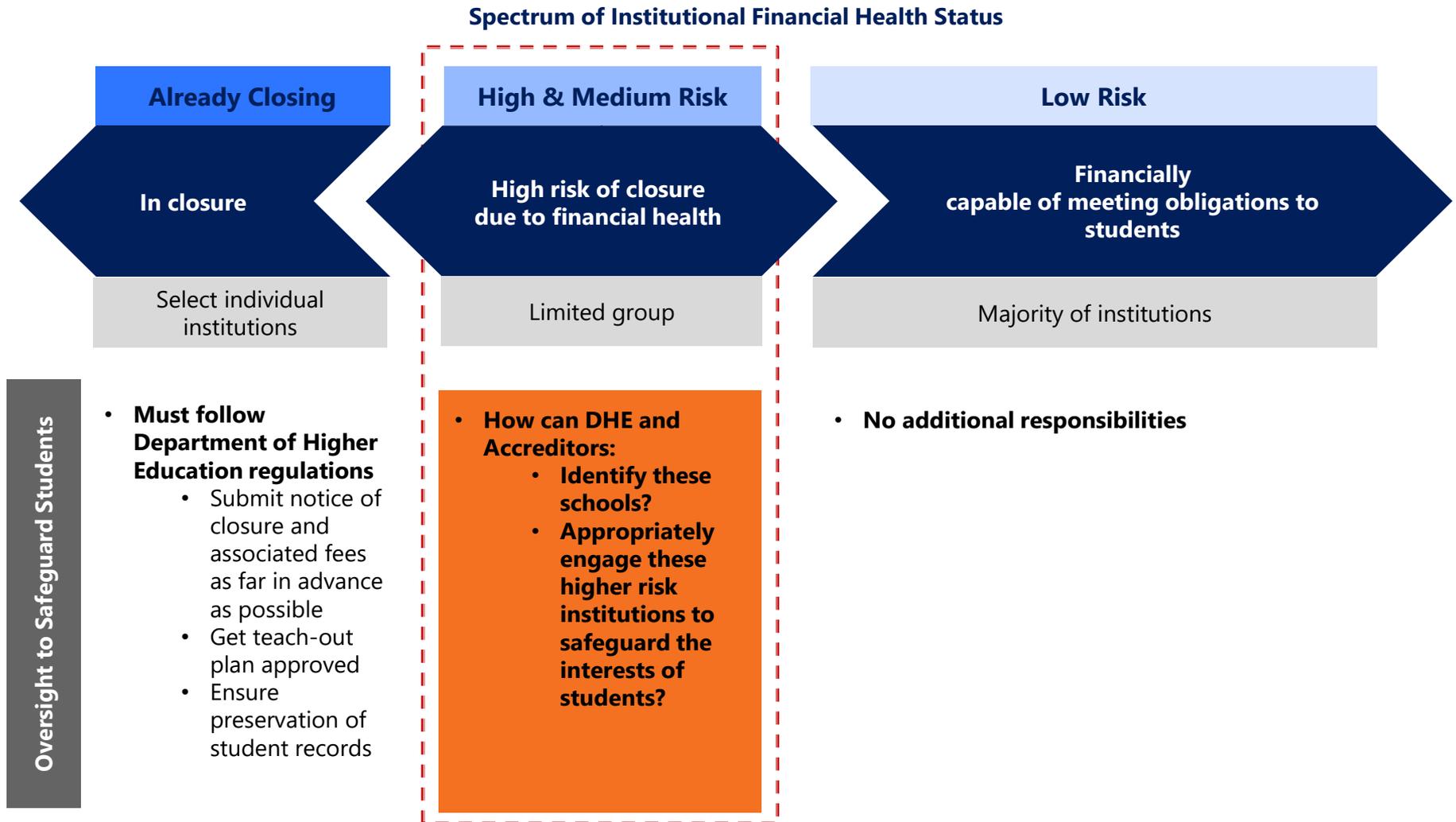
Recommendation ratified by THESIS Working Group that *"The risk of further challenges to viability at non-profit institutions of higher education (NPIHEs) leading to potential student disruption is significant, ongoing and likely growing."*

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."*

2. Oversight and metrics

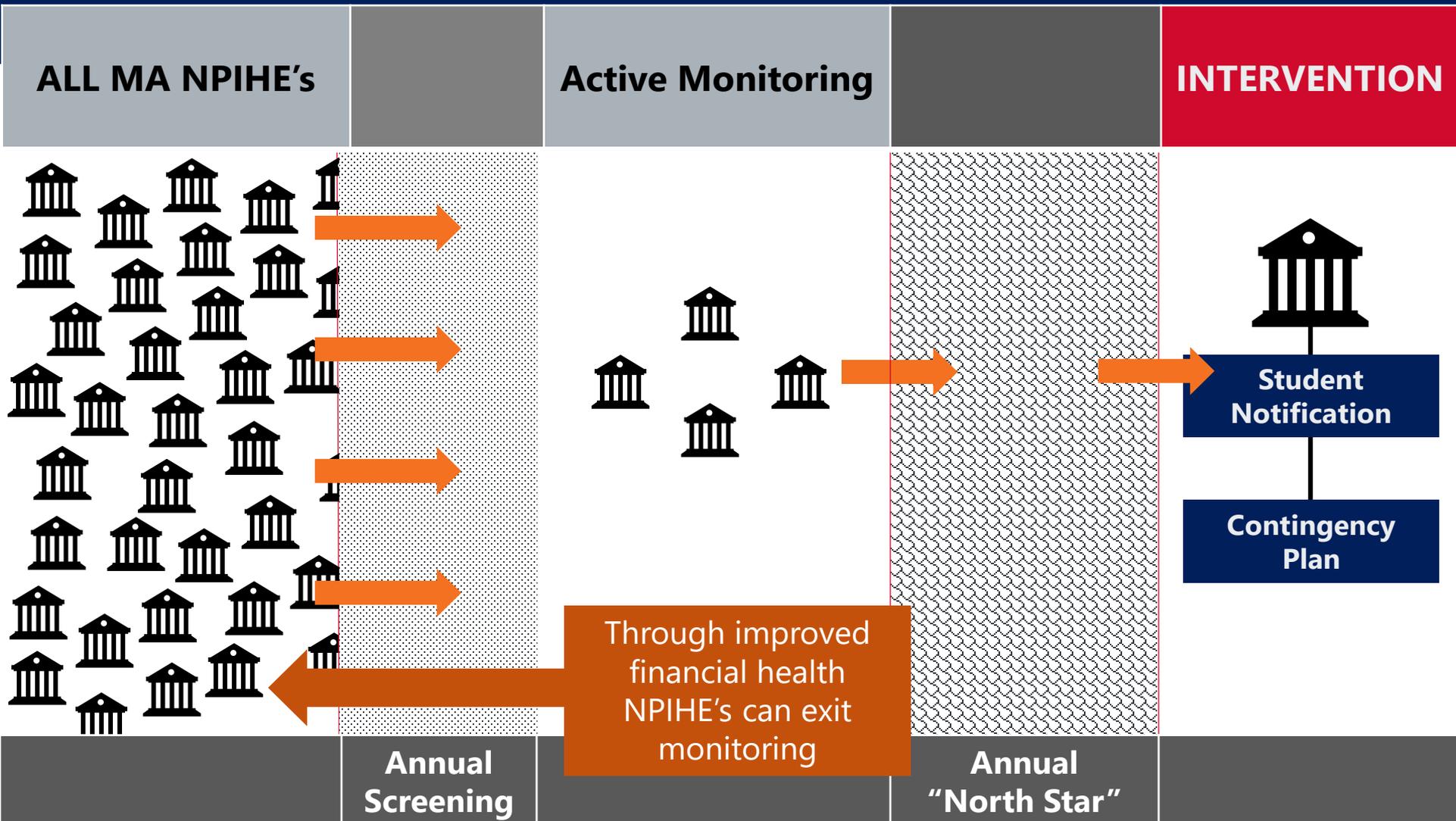
The challenge remains to identify high risk institutions and provide safeguards to students



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

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

If by December 1st 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 1st; 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

June 18, 2019

10:00 a.m.

University of Massachusetts Boston
Campus Center, 2nd 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 1st 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 1st 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

**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 19th) 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"> • 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) • Letters will be sent to DHCD/MMA per E.O. 145
July 8, 2019	<ul style="list-style-type: none"> • 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)
July 12, 2019	<ul style="list-style-type: none"> • Publication of draft regulations and notices of public hearing in the Massachusetts Register
July 12, 2019 – August 9, 2019	<ul style="list-style-type: none"> • Public comment period • At least two public hearings will be held at different locations across the Commonwealth
Week of August 12, 2019	<ul style="list-style-type: none"> • Final regulations distributed to BHE for review
August 19, 2019	<ul style="list-style-type: none"> • Special BHE meeting (final regulations presented for approval, along with associated policies)
August 22, 2019	<ul style="list-style-type: none"> • Submit final small business impact statement to Secretary of the Commonwealth’s Office.
August 23, 2019	<ul style="list-style-type: none"> • Submit final regulations to Secretary of the Commonwealth’s Office for publication in the next edition of the Massachusetts Register (September 6, 2019)
September 6, 2019	<ul style="list-style-type: none"> • Publication of the final Regulations in the Massachusetts Register • Regulations will be final

610 CMR 13.00: Financial Review 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 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 1st 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 1st 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

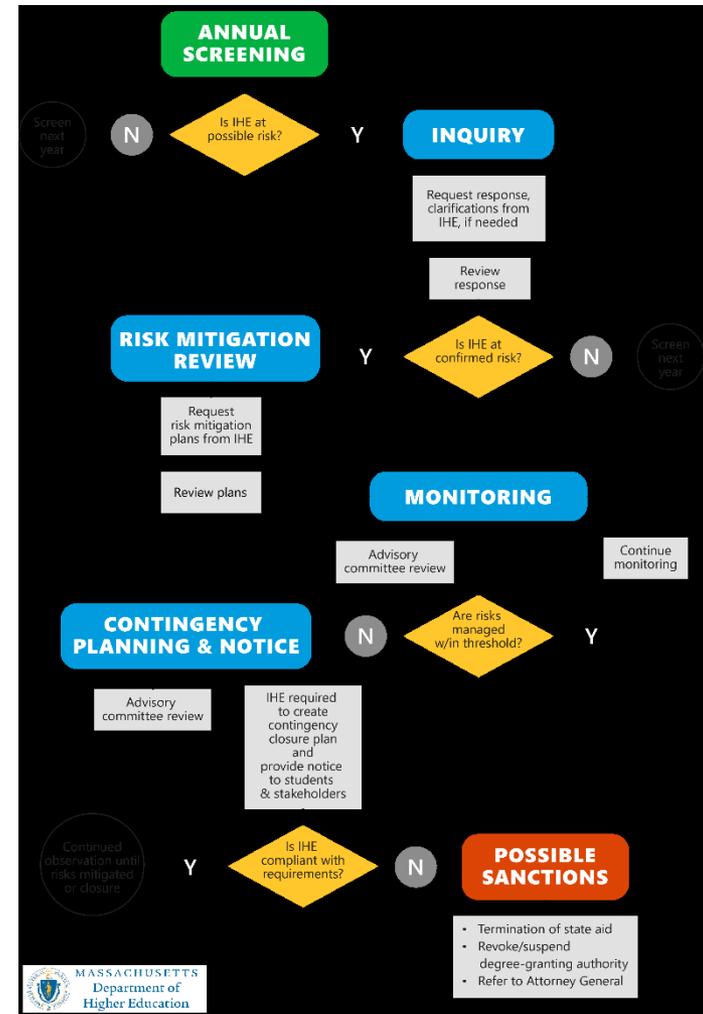
I. Annual Review Process

- 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

January 10, 2020
10:00 a.m.

Massachusetts Department of Higher Education
One Ashburton Place
21st 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 21st 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 5th 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 18th 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 20-02¹ APPROVAL AND ADOPTION OF 610 CMR 13.00: FINANCIAL ASSESSMENT AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION

¹ 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

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

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

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 1st 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~~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 1st 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 of 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"> • A college's alumni contributions and positive impacts on society should also be considered when evaluating the strength of an institution's financial stability. • 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. • The TVM or other metrics utilized by DHE should be calibrated to not over-emphasize financial risks.
7/26/19 (oral)	Ed Bourgeois, Amherst resident	<ul style="list-style-type: none"> • The state should consider community and environmental impacts when closing farm operations housed at a land grant university like UMass Amherst.
7/26/19 (oral and written)	Kevin McCaffrey, Director of Government and Community Relations, Mount Holyoke College	<ul style="list-style-type: none"> • 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.
7/26/19	Laura Wenk, Faculty, Hampshire College	<ul style="list-style-type: none"> • Diversity of Massachusetts' colleges and universities is important to social justice, to ensure that there is a college for everyone regardless of background. • The proposed regulations make sense. • 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.
7/26/19 (oral)	Lynn Griesemer, President, Amherst Town Council, Town of Amherst	<ul style="list-style-type: none"> • 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. • DHE should work with other state agencies in other sectors to consider community impacts that may result if a college closes.

DATE	NAME/TITLE/INSTITUTION	COMMENT
7/26/19 (oral)		<ul style="list-style-type: none"> • 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. • The state should consider its role in helping institutions thrive in addition to protecting students in the event of institutional closure. • DHE should consider how regulations could provide opportunity to assess community impacts of an institution’s closure. • If Hampshire College were to close, there would be significant, detrimental, and long-lasting impacts on the Town of Amherst. • 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.
8/8/19 (written)	Paul Bockelman, Town Manager, Town of Amherst	<ul style="list-style-type: none"> • Host communities need to be notified as soon as possible if an institution is under threat of closure • 13.03(1)(c): include “The Department shall notify the chief executive officers of the host communities” at the end of the section • 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” • 13.03(2)(d)(1): risk mitigation plans should also be submitted to host communities and should include explicit impacts on the communities • 13.03(2)(d)(2): “the chief elected officials of the host communities and all neighboring communities” should also be notified • Host communities need to be part of the advisory committee to monitor the condition of institutions • 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.” • Host communities should be offered a “right of

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<p>first refusal" if tax-exempt land is offered for sale</p> <ul style="list-style-type: none"> • Closures impact employees, retail destinations, and towns in many ways, and so communities need to be a part of this process
7/26/19 (oral)	Heather Ornek, Amherst resident	<ul style="list-style-type: none"> • 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?
7/26/19 (oral)	Leo Hwang, Dean of Humanities, Greenfield Community College	<ul style="list-style-type: none"> • 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?
7/26/19 (oral)	Christina Royal, President, Holyoke Community College	<ul style="list-style-type: none"> • 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.
7/26/19 (oral)	Stacy McCullough, Amherst resident	<ul style="list-style-type: none"> • 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.
7/26/19 (oral)		<ul style="list-style-type: none"> • The proposed regulations are vague, and it is unclear how the process of institutional screening will be carried out. • It is unclear whether DHE metrics are sufficient for predicting institutional closure. • DHE should work with economics or education departments to evaluate DHE's metrics.
7/29/19 (written)	Suzanne Perkins, Alumna, Hampshire College	<ul style="list-style-type: none"> • Opposed to the adoption of the regulations. • 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. • The screening tool cannot be analyzed, and the methodology should be spelled out. • 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 • The EY-Parthenon metric has already been shown to "spook" administrators (citing Hampshire College) which would have major ramifications for many small colleges

DATE	NAME/TITLE/INSTITUTION	COMMENT
7/26/19 (oral)	Andrew Steinberg, Amherst Town Council, Town of Amherst	<ul style="list-style-type: none"> • What sources of data will DHE use in carrying out the proposed regulations? Metrics only work if current data are available.
7/30/19 (written)	Judith Mann, Professor Emerita, Hampshire College	<ul style="list-style-type: none"> • 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. • The BHE should also investigate boards that make decisions to close or announce instability to ensure that any financial distress is longstanding and irremediable. • Small institutions are vulnerable and need better protection and advocacy.
8/2/19 (written)	AICUM (by and through Richard Doherty (written) and Rob McCarron (oral))	<ul style="list-style-type: none"> • 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 • The vast majority of institutions that have faced fiscal difficulties have been able to reinvent themselves and are doing well • A creative and sensible solution is needed, one that leverages NECHE’s expertise and processes, uses multiple financial and performance metrics, and ensures confidentiality • 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 • 13.01: insert “reviewing the institution’s eligibility for” after “for the limited purpose of” • 13.03: replace “undertake” with “ensure” to reflect the possibility of NECHE conducting the annual screening • 13.03(1)(a): refine term “past” so that it refers to the institution’s two immediately preceding fiscal years • 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 • 13.03(1)(c): amend to make clear that documents or information shared as part of the inquiry shall

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<p>be confidential</p> <ul style="list-style-type: none"> • 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 • 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 • 13.05: confidentiality should explicitly include documents and information provided to or created by an advisory committee
8/8/19 (oral)		<ul style="list-style-type: none"> • The regrettable actions of one institution should not define the entire private higher education community • Institutions operate in a challenging environment, but the vast majority of institutions that have faced difficulty have reinvented themselves through innovation and strategic efforts • A solution to the issue of higher education financial stability will leverage NECHE’s experience and use multiple metrics • 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 • The regulations and legislation should align with the TBC/NECHE process
8/5/19 (oral)	Michael Bergman, Faculty, Simon’s Rock College of Bard	<ul style="list-style-type: none"> • 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 • The regulations seem like a blunt instrument, don’t take into account all the things that colleges are trying to do • Accreditors already look at an institution’s financial situation, so it is not necessary for the state to step in. • While requiring an exit plan is reasonable, it should not become such a public thing that it become a self-fulfilling prophecy.

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<ul style="list-style-type: none"> • Closure would have a tremendous impact on an institution's community financially and culturally • The BHE should proceed with caution.
8/5/19	Harry Dumay, President, Elms College	<ul style="list-style-type: none"> • 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 • 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 • The role of small institutions- those that are "healthy but not wealthy"- is important, and 1st generation students may not find a home if those institutions close. • The regulations may make closure of these institutions a self-fulfilling prophecy.
8/5/19 (oral)	Gabe Pofcher, Student, Hampshire College	<ul style="list-style-type: none"> • 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? • 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 • The metric also penalizes schools for receiving Pell grants and having 1st generation students; it is unethical and will perpetuate class disparities. • The regulations will create self-fulfilling prophecies and are a weapon in the arsenal to close schools that serve non-traditional, 1st generation, underserved students. • 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
8/5/19	Barbara Moffat, Associate Vice-	<ul style="list-style-type: none"> • The regulations should also apply to public

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"> 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.
8/6/19 (written)	Bob Hildreth, Inversant and Hildreth Institute	<ul style="list-style-type: none"> 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. 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. 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. 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.
8/8/19 (oral)		<ul style="list-style-type: none"> Closures will result in “student refugees”: students who have been displaced and derailed from their higher education paths Some will incur more expenses and have to spend more time to earn their degrees; others will be forced to start over Lack of accountability in private non-profit higher education sector If Chapter 93A protections are stripped from colleges, regulations will not be needed
8/8/19 (written)	Massachusetts Attorney General’s Office	<ul style="list-style-type: none"> It is important to ensure that the thousands of students who enroll in Massachusetts institutions each year have confidence that their investments are secure AGO supports the DHE/BHE’s efforts to protect students from substantial harm caused by school closure without appropriate planning and transfer

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"> • 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 • 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” • Contingency plans should also provide for permanent maintenance of student transcripts and essential records • 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 • Notice should also be included in any promotional materials aimed at recruiting or retaining students and should be clear and conspicuous
8/8/19 (written)	Senator Jo Comerford and Representative Mindy Domb	<ul style="list-style-type: none"> • 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 • Communities should have advance warning of closures to begin to assess the threat of closure on the local economy • 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 • 13.03(1)(a) or 13.03(2)(a): institution must provide contact information for stakeholders to DHE • 13.03(2)(d)(2): identify the “other relevant stakeholders” as set forth in the proposed definition; DHE should be required to notify

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"> • 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
8/8/19 (oral)	Deanna Colella, former student, Newbury College	<ul style="list-style-type: none"> • Newbury College “student refugee” • 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 • She is disappointed that the school and government owe students nothing when a school closes • BHE should require that all private colleges ensure that all students can complete their degrees without incurring more debt if their institution closes
8/9/19 (written)	Carol Leary, President, Bay Path University	<ul style="list-style-type: none"> • 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. • 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. • Public disclosure is tantamount to a self-fulfilling death sentence. • 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. • 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

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"> • 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.
8/9/19 (written)	Basil Stewart, higher education finance professional	<ul style="list-style-type: none"> • Institutions will pass along the costs of compliance with new regulations to students, which will not help to control rising higher education costs. • 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. • Key factors to consider are: governance and management; engagement with higher education professional associations and consortiums; and activity within the higher education community.
8/9/19 (written)	Jonathon Podolsky, Alumnus, Hampshire College	<ul style="list-style-type: none"> • 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 • Before implementing the requirements of these regulations, prudent measures should be adopted that will be least likely to have unintended consequences • Institutions should be provided with additional help to offset the negative consequences of regulation • It may be inappropriate to analyze smaller/younger/alternative colleges the same way as older/larger institutions (e.g., Amherst vs Hampshire) • 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 • 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

DATE	NAME/TITLE/INSTITUTION	COMMENT
		<ul style="list-style-type: none"> 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)
8/9/19 (written)	Nicole Cestero, Chief of Staff, American International College	<ul style="list-style-type: none"> The regulations are flawed and require significant revision to avoid imposing unreasonable burdens on institutions 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 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 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 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 It is "likely fatal" to impose an obligation to notify the public under 13.03(2)(d); that requirement should be removed

*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"> Greenfield Community College is happy to collaborate and partner with Hampshire College.
7/26/19 (oral)	Joanna Brown, Former Employee and Alumna, Hampshire College	<ul style="list-style-type: none"> Hampshire College could invest more effort into alumni relations and land development as opportunities to stabilize.
7/26/19	Steve Girard, Faculty, UMass Amherst	<ul style="list-style-type: none"> Thank you for funding the bridges program.
8/15/19	Laura Wenk, Faculty, Hampshire College	<ul style="list-style-type: none"> The regulations are focused on protecting students, but there is much missing in preventing colleges from closing and in safeguarding local communities BHE should work across governmental agencies to explore cost-saving measures for colleges, including single-payer health care and increasing state financial aid 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
8/19/19	John Cox, President, Cape Cod Community College	<ul style="list-style-type: none"> It is challenging to develop regulations monitoring the financial sustainability of institutions, but necessary given the state of higher education 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 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

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 4th).



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

REQUEST FOR BOARD ACTION

NO.: BHE 20-09

BOARD DATE: April 08, 2020

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 law¹ 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

¹ *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 NECHE².

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.

² 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

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 1st 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.¹ 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

¹ 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.

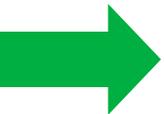
Financial Assessment and Risk Monitoring - Implementation and NECHE MOU



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.