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April 12, 2017

The Honorable Betsy DeVos
The Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Charlotte School of Law

Dear Madam Secretary:

We are writing to outline briefly recent developments at Charlotte School of Law ("CSL"), following up on two letters our office issued regarding CSL on March 10, 2017. We copied the U.S. Department of Education ("Department") on both of those letters.

Since we issued those letters, our concerns have intensified based on several new developments. We are troubled that CSL may proceed without the type of formal plan that would protect students under your Department's regulations. As of today, based on public information:

- Most CSL students have left the school.¹
- CSL's landlord recently stated that CSL is willing to sublet all of its classroom space.²
- CSL required 169 days after the due date to pay its city and county taxes, incurring thousands of dollars in interest.³
- CSL's current enrollment is well beneath the 500-student target that the school identified as its minimum for continuing operation in January.⁴

Realistically, CSL's ability to continue to operate is in considerable doubt. Under Department of Education regulations, the precise timing of any closure date will have significant financial consequences for students. The closed school discharge rule, 34 C.F.R. § 685.214, makes students eligible for loan forgiveness only if they withdrew "not more than 120 days before the school closed." A large majority of CSL's student body took steps towards withdrawing in January 2017 and early February 2017, at the beginning of the Spring Semester,

when CSL provided multiple signals that its closure was imminent. Those students' 120-day time limit under the regulations may run in the near future.

Our office, which is responsible *inter alia* for civil enforcement of North Carolina's unfair trade practice laws, opened an investigative file on CSL and is gathering information.* The Department's closed school discharge rule is among students' most powerful potential remedies. We would be very concerned if CSL were to close under timing that left doubtful whether students would receive loan forgiveness under the rule.

Therefore, in this letter we ask that the Department, in addition to continuing its own investigation and taking such further steps as it deems appropriate, confirm several features about how the rule would work in practice. First, we believe the date on which a student is deemed to have withdrawn should be no sooner than February 3, 2017, the last day of CSL's "drop/add" period for the Spring Semester. Second, we believe students should not be deemed to have withdrawn under the rule if they took a leave of absence or stated they would seek to transfer from CSL. Third, we suggest that exceptional circumstances exist in this case that would justify extending the 120-day discharge period under the rule.

A. New Developments

First of all, recent information has helped illustrate how decisions made many years ago by CSL management led directly to the untenable position faced by students today. CSL's new Dean, Scott Broyles, has acknowledged in recent interviews that in previous years, CSL management systematically lowered the school's admissions standards over the objections of CSL faculty.⁵ This strategy appears to have allowed CSL to bolster its enrollment during the first half of this decade, when the overall supply of law students dropped. As the students with lower qualifications passed through the school and graduated, CSL's bar passage rates diminished. When results were released last month from the February 2017 state bar examination, CSL's passage rate was 25%, down from 34.7% in the previous year.⁶

Second, it has become evident that even if the Department of Education restores Title IV funding, CSL will remain at risk of closure. As noted above, CSL appears to be in tenuous financial condition, as it is contemplating subleasing its classroom space, and had difficulty paying a significant tax bill. To reach its enrollment target, CSL must attract new students, but it has suffered significant, self-inflicted reputational damage that will make that more difficult. CSL students must pass a state bar exam in order to make use of their education, but repeatedly, the majority of CSL students taking the bar exam have failed it, and CSL admits that its pass rate is not acceptable.⁷ CSL's accreditor placed CSL on probation. Finally, both students and the Department of Education have argued that CSL made substantial misrepresentations to students.⁸

B. Students' Dilemma

CSL's actions, including its repeated mixed signals, have created an extremely difficult dilemma for students. In December 2016 and January 2017, the situation facing CSL students

* To avoid confidentiality concerns, this letter discusses only information in the public press, not any documents provided under the Civil Investigative Demand made by this office.

was changing almost daily. On January 4, CSL indicated to students that it was uncertain whether it would reopen for the 2017 Spring Semester.⁹ Two days later, on January 6, CSL announced it would reopen.¹⁰ Four days after that, on January 10, CSL and the Department of Education were reportedly discussing the immediate closure of CSL under a teach-out plan.¹¹ On January 16, CSL delayed its reopening date by a week.¹² On January 18, students were informed that negotiations had failed between the Department of Education and CSL.¹³ On January 19, CSL fired more than half of its employees and faculty.¹⁴ Nevertheless, classes convened on January 23, two business days later.¹⁵

During January 2017, students faced extreme uncertainty about whether CSL would reopen, and on many occasions were given information suggesting that it would not. Even when classes began on January 23, students could reasonably have expected that CSL would be unable to complete the semester, given the substantial uncertainty during the three weeks preceding that date. Even students who were fully comfortable with the revised CSL educational offerings would have been unable to use federal loan money – their primary means of finance – to pay their tuition and living expenses.

In this constantly shifting environment, many students likely would have made decisions about withdrawal from the school based on the understanding that it would be closing soon, only to learn later that it might not be. In these circumstances, we believe it should be understood by all that the date of formal withdrawal for any affected student cannot be earlier than February 3, 2017, the last day of CSL's drop/add period. As noted above, we believe it would be helpful if the Department would confirm that cut-off date to all potentially affected students.

Both withdrawn and present students carry a very significant debt burden. Students who graduate from CSL have a median of \$161,910 in debt.¹⁶ If CSL closes in Summer 2017 due to poor financial health, CSL's investors and officers would be free to walk away; at worst, they would have lost the value of their investment. CSL's students, on the other hand, would be left with debt they cannot discharge, incurred for a legal education of diminished value, which in many cases will not lead to their obtaining the professional qualification they sought at the outset of their studies. We believe the Department of Education's closed school discharge rule, 34 C.F.R. § 685.214, was created to resolve precisely this kind of problem.

C. The Closed School Discharge Rule

Should CSL close, one of the most powerful potential remedies for CSL students would be a closed school discharge pursuant to 34 C.F.R. § 685.214. Under the rule, discharge would remove "the obligation of the borrower and any endorser to make any further payments on the loan." 34 C.F.R. § 685.212(d). Discharge would allow the borrower to receive "reimbursement of amounts paid voluntarily on the loan" and would relieve the borrower of adverse credit history and accrued collection costs. 34 C.F.R. § 685.214(b).

More than half of CSL's student body ceased attending classes in January 2017. Some of these students may have gone on a leave of absence intending to re-enroll, others may have intended to transfer, and some may have intended to permanently withdraw. If CSL closes, these students' ability to seek loan forgiveness depends on three factors. First, on what date is the

student deemed to have withdrawn under the closed school discharge rule? Second, are students who went on a leave of absence deemed to have withdrawn under the rule? Third, will the Department determine that “exceptional circumstances” existed in January 2017 that justify extending the normal 120-day discharge period?

1. The Rule Should Deem CSL Students to Have Withdrawn No Sooner Than the Date When the Drop/Add Period Ended, February 3, 2017.

The key provision of the rule, 34 C.F.R. § 685.214(c)(1)(i)(B) requires that in order to “qualify for discharge of a loan,” the borrower must truthfully state that he or she:

“Did not complete the program of study at that school because the school closed **while the student was enrolled**, or the student **withdrew from the school not more than 120 days before the school closed.**”

(Emphasis added.) We are not aware of any applicable case law or interpretive decision to assist in calculating the date on which a student “withdrew.”

Confusion in application of this rule stems from a novel situation – CSL’s continued operation despite the loss of more than half of its student body – and the school’s numerous representations in January 2017 indicating an intent to close imminently. Unless the Department provides clarity, it would be natural for students to be concerned that each day CSL continues to operate reduces the number of students who would qualify for loan forgiveness. Indeed, since CSL and its associated companies are liable to the Department for any closed school discharges granted, CSL would appear to have a vested interest in continuing to operate to decrease their potential liability to your Department. The Department should not allow any self-serving delay.

On May 23, 2017, it will have been 120 days since January 23, 2017, CSL’s first day of classes for its spring semester. On June 3, 2017, it will have been 120 days since February 3, 2017, when CSL students’ drop/add period ended and students were disenrolled.

In light of the foregoing, we believe the rule should be applied so that students are deemed to have withdrawn no earlier than the time when CSL’s drop/add period appears to have ended, February 3, 2017. This is the most natural, plain reading of the rule – on this date, the student’s decision was locked in, and students not currently enrolled became unable to enroll in Spring Semester classes for credit. Any other interpretation of the rule would not only lead to confusion and uncertainty, but also would upset students’ reasonable reliance on statements made by CSL and the Department of Education. As noted above, throughout the month of January many CSL students would have reasonably understood statements from CSL and the Department of Education to indicate CSL was substantially likely to close.

As a result, we are asking that the Department confirm that the 120-day deadline will run 120 days after the end of the drop/add period, June 3, 2017.

2. Students Taking a Leave of Absence or Stating an Intent to Transfer Should Not Be Deemed to Have Withdrawn.

Given the extraordinary uncertainty in January 2017 about whether CSL would reopen and, if so, the conditions under which it would reopen, we believe it is essential that students be deemed to have withdrawn only if they unequivocally intended to withdraw, not temporarily disenroll. In January, a student could reasonably have hoped to sit out the 2017 Spring Semester, then return once CSL became stable and he or she had sufficient financial resources to attend. Other students may have hoped to transfer, given the recent reputational damage to CSL and the recent uncertainty about CSL's future, but may have been willing to attend CSL classes if transfer became impossible. We believe that the rule should not deem a student to have withdrawn if the student indicated a desire to take a leave of absence or, if possible, transfer to another school.

3. Exceptional Circumstances Exist in This Case.

You have the discretion to extend the discharge period on the basis of "exceptional circumstances." 34 C.F.R. § 685.214(c)(1)(i)(B). The rule reads:

"The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law...."

(Emphasis added.)

For four reasons, the CSL matter should be regarded as "exceptional" under any reasonable interpretation.

- First, in this matter, due to repeated mixed signals, CSL's loss of students has been an unusually slow-developing process. This would make application of a rigid 120-day deadline potentially defeat the purpose of the rule.
- Second, there is an unusually high potential for significant monetary injury to former CSL students because the cost of legal education is high compared to other programs.
- Third, a substantial portion of CSL's academic program appears to have been discontinued in January, when CSL terminated clinical professors and bar exam coaches.
- Fourth, in January, an exceptional event occurred – CSL accepted a teach-out plan provided by the Department of Education, but then CSL and the Department were unable to come to terms on the details of CSL's closure.¹⁷

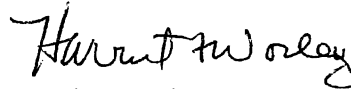
Finding exceptional circumstances and extending the deadline for affected students would not harm the federal government, since it can recoup its closed school discharge losses from CSL and its owners, but it would do a great service for many of the students hurt by this situation.

D. Our Goal to Cooperate and Share Information with Regard to CSL's Situation

As you have noted in your public statements, educational institutions must be accountable. Inevitably, some schools will not be a success. When those unsuccessful schools shut down, their former students will be left with long-lasting impacts from debt. If CSL closes, this case will be the first opportunity to establish how your Department will protect students' interests when post-secondary educational institutions do not succeed.

As our office moves forward with its analysis of the facts, we hope to continue to build upon our working relationship with your Department. If any actions become necessary regarding CSL, I hope that our organizations will work together to take those actions in the way that best protects CSL's students.

Sincerely,



Harriet Worley
Special Deputy Attorney General



Matt Liles
Assistant Attorney General

cc: Josh Stein, Attorney General of North Carolina
Swain Wood, General Counsel, N.C. Department of Justice
Thomas Shanahan, Senior Vice President and General Counsel, University of
North Carolina
Kimberly van Noort, Vice President for Academic Programs & Instructional Strategy,
University of North Carolina General Administration
Elizabeth LeVan Riley, Legal Counsel for Charlotte School of Law, at Womble Carlyle
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Endnotes

¹ See, e.g., Jennifer Thomas, *Charlotte Law's Interim Dean Navigating Difficult Path Forward*, Charlotte Business Journal, Mar. 22, 2017, <http://www.bizjournals.com/charlotte/news/2017/03/22/charlotte-laws-interim-dean-navigating-difficult.html>.

² See Ashley Fahey, *Big Block of Space Available for Sublease in Charlotte Plaza*, Charlotte Business Journal, Mar. 31, 2017, <https://www.bizjournals.com/charlotte/news/2017/03/31/big-block-of-space-available-for-sublease-in.html>

³ Bill Number 0007042776-2016-2016-0000-00 available at Mecklenburg County, NC Office of the Tax Collector Property Tax System, <http://charmeck.org/mecklenburg/county/TaxCollections/PTS/Pages/PTS.aspx>. Payment appears to have taken place only after a press story noted the delinquent tax payment. See Jennifer Thomas,

Charlotte Law delinquent on \$148K in taxes; School Says Check Issued, Feb. 17, 2017, <http://www.bizjournals.com/charlotte/news/2017/02/17/charlotte-law-delinquent-on-148k-in-taxes-school.html> . The law school's dean, when explaining why the school had not provided more financial assistance to its students, admitted, "Finances are tight." *Charlotte Talks* (WFAE-FM radio broadcast Apr. 6, 2017), at 16:10 in recording, available at <http://wfae.org/post/new-law-school-dean-challenges-ahead-cult-ignorance-wages-attack-expertise> .

⁴ Press reports indicate that in a Wednesday, January 4, 2017 meeting with students, school leaders told students "CSL needs at least 500 students ... to commit to taking classes this spring." Michael Gordon, *Students: Charlotte School of Law to Announce Fate of Classes This Week*, Charlotte Observer, Jan. 4, 2017, <http://www.charlotteobserver.com/news/politics-government/article124503289.html> . Nonetheless, CSL was able to open its Spring Semester with an enrollment beneath 500. Current enrollment is approximately 220, down from 787 in Spring 2016, and roughly one-half will graduate in May. See Jennifer Thomas article, *supra* note 1.

⁵ In a radio interview on April 6, 2017, CSL Interim Dean Scott Broyles spoke extensively about the process that led to CSL lowering its admissions standards. He said:

[At 2:08 in recording] "When we opened in 2006, we had a very strong faculty. And we were having high bar pass rates.... I think what happened at a certain point – I know what happened – the admissions began to drop, in terms of the criteria.... [T]he administrators had an unrealistic belief in how you could provide additional resources -- academic support – for students with low indicators coming in and that would address the problem of the low indicators.

[At 3:56] "No, they weren't only paying attention to the bottom line. They were paying close attention to the bottom line, but again, I think they were of the belief that if you add all these additional resources in academic support terms, then that could address these lower indicators. That turned out to be not the case. The faculty was pushing back against that on a consistent basis, but they were not sufficiently listened to."

[At 12:30] "Don't like to point fingers of blame, right? But it was the administration who made the decision to bring in students who were not capable of performing at the law school level."

[At 11:50] "The pressure we felt was that we were dealing with students that – that we could not properly teach, to put it simply."

Charlotte Talks (WFAE-FM radio broadcast Apr. 6, 2017), available at <http://wfae.org/post/new-law-school-dean-challenges-ahead-cult-ignorance-wages-attack-expertise> . When asked by another reporter, "Did you feel like you saw those red flags?", CSL Interim Dean Scott Broyles said, "Yes I did." He added, "Not only me, but a number of faculty members said we are not on the right path, we've got to stop this." *Eyewitness News* (WSOC-TV television broadcast Mar. 22, 2017), available at <http://www.wsoc.tv/news/local/interim-dean-at-charlotte-school-of-law-hopeful-it-will-stay-open/505133228> .

⁶ See Jennifer Thomas, *Charlotte Law Dean: Bar Passage Rates Not Acceptable*, Mar. 29, 2017, <http://www.bizjournals.com/charlotte/news/2017/03/29/charlotte-law-dean-bar-passage-rates-not.html> .

⁷ *Id.*

⁸ Dec. 19 letter from U.S. Department of Education to Chidi Ogene, President, Charlotte School of Law, p. 10.

⁹ See Michael Gordon, Charlotte Observer, Jan. 4, 2017, *supra* note 4.

¹⁰ See Mark Washburn and Michael Gordon, *Charlotte School of Law Will Reopen, Students Told*, Charlotte Observer, Jan. 6, 2017, <http://www.charlotteobserver.com/news/local/article125098999.html> .

¹¹ See Michael Gordon, *Is Charlotte School of Law Taking Steps to Shut Down?*, Charlotte Observer, Jan. 10, 2017, <http://www.charlotteobserver.com/news/local/education/article125737084.html> .

¹² See Kevin Sloan, *Is Doomsday Imminent for Charlotte Law School?*, National Law Journal, Jan. 16, 2017, <http://www.nationallawjournal.com/id=1202776513793/Is-Doomsday-Imminent-for-Charlotte-Law-School?slreturn=20170310184957> .

¹³ See Michael Gordon, *Feds, Charlotte School of Law Fail to Reach Agreement Over Federal Student Loans*, Charlotte Observer, Jan. 18, 2017, <http://www.charlotteobserver.com/news/local/education/article127341129.html> .

¹⁴ See Michael Gordon, *Charlotte School of Law Fires Dozens of Faculty*, Charlotte Observer, Jan. 19, 2017, <http://www.charlotteobserver.com/news/politics-government/article127438764.html> , and Michael Gordon, *Classes Reopen in Stripped-Down Charlotte School of Law*, Charlotte Observer, Jan. 23, 2017, <http://www.charlotteobserver.com/news/politics-government/article128275794.html> .

¹⁵ Concerning the rescheduled first day of classes, see Michael Gordon, *Classes Reopen in Stripped-Down Charlotte School of Law*, Charlotte Observer, Jan. 23, 2017, <http://www.charlotteobserver.com/news/politics-government/article128275794.html> .

¹⁶ Charlotte School of Law, *ABA Required Disclosures and Gainful Employment*, retrieved on Apr. 7, 2017, <http://www.charlottelaw.edu/gainful-employment-aba-required-disclosures.html> .

¹⁷ See Letter from Chidi Ogene and Jay Conison to CSL students, <http://www.charlottelaw.edu/jan-19-2017-update-from-president-ogene-and-dean-conison.html> (“After intense discussions, we accepted a two–page plan provided by the Department’s Office of Federal Student Assistance.”)