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March 13, 2019

Carlos Santiago, Commissioner
Massachusetts Department of Higher Education
One Ashburton Place, Room 1401
Boston, MA 02108

RE: Mount Ida College

Dear Commissioner Santiago:

This letter contains observations from the chaos that ensued at the time Mount Ida College ("Mount Ida") announced its closure, key findings from the Attorney General's Office ("AGO") investigation of that disorderly and harmful closure, and recommendations for the Department of Higher Education ("DHE") on steps it can take to help protect the higher education community in Massachusetts, particularly students, from another such closure. The AGO undertook its investigation following its review of Mount Ida's sale of substantially all of its assets to the University of Massachusetts at Amherst ("UMass Amherst") (the "UMass Transaction").¹ The AGO hopes that the findings of its investigation, as well as its observations and recommendations, will be helpful to DHE as it continues its work to safeguard students and advance the recommendations of the Board of Higher Education's ("BHE") Working Group on Transitions in Higher Education: Safeguarding the Interests of Students (the "BHE Working Group").²

As you know, on April 6, 2018, without any prior notice to BHE, students, faculty, or staff, Mount Ida publicly announced it would cease operations at the end of the school year and proposed to transfer its assets to UMass Amherst. At the time of the announcement, Mount Ida did not have contingency plans or similar agreements with other higher education institutions that would provide its students with transfer opportunities necessary to complete their degrees.³

¹ The AGO's May 15, 2018 letter to Mount Ida regarding the UMass Transaction is attached for your reference.

² Final Report & Recommendations, BHE Working Group (Jan. 22, 2019), *available at* <https://www.mass.edu/bhe/documents/THESIS%20Working%20Group%20Final%20Report.pdf>. Among other things, the BHE Working Group recommendations include adopting a plan with targeted implementation for academic year 2019-2020 whereby DHE will "(i) proactively identify [institutions] at heightened risk of financial non-viability that could affect students; (ii) actively monitor those [institutions] 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 institutions complete thorough contingency plans for teach out and transfer and inform students and other stakeholders on a timely basis."

³ While the UMass Transaction included an offer of admission for Mount Ida students in good standing to the University of Massachusetts at Dartmouth ("UMass Dartmouth"), it was only after the intervention of regulators that

Moreover, by waiting until April to announce the closure, Mount Ida prevented its students from meeting regular deadlines for seeking transfers of their own accord to other colleges and universities. Without warning, Mount Ida sent its students scrambling to find other options at a time when the transfer admissions process effectively was closed, and hamstrung its faculty by waiting until long after the primary hiring season for fall 2018 had ended. It was only through the involvement of the AGO, DHE staff, UMass and others that options emerged for students.⁴

During April and May 2018, prior to the start of the AGO's investigation, the AGO and DHE heard from hundreds of students and families who were justifiably angry and frustrated by Mount Ida's failure to warn the community and take reasonable steps to guard against the financial, educational, and emotional turmoil that ensued; their experiences are addressed below as a reminder of the disarray that prevailed during this period.

The AGO investigation that followed revealed that Mount Ida's Board of Trustees (the "Board") and its senior leadership, including President Barry Brown ("President Brown"), failed to alert the campus of the college's precarious financial position and failed to develop educational transfer opportunities at many points in time when they reasonably knew it might close, in violation of BHE regulations.⁵ Mount Ida also put students, parents, employees, and others under incredible stress and time pressure that could have been avoided had Mount Ida reasonably prepared for that contingency.

In evaluating the Mount Ida Board's and President Brown's obligations as fiduciaries under state charities law, the AGO has determined that their conduct and communications raise serious questions. At a minimum, their decision-making fell short of what is expected of a charitable board in meeting its obligations to an educational mission. The same activities may well have violated the Massachusetts Consumer Protection Act, Chapter 93A. Notably, Mount Ida's failure to develop a closing plan and transfer opportunities for students violated BHE regulations designed specifically to prevent students from being educationally stranded. The AGO has also determined that with Mount Ida now closed and effectively assetless, pursuing litigation would be costly, time-consuming, and of limited public benefit.

the arrangement addressed essential issues of cost and transfer of credits; nor did the offer provide a viable transfer option for hundreds of students enrolled in several specialty degree programs at Mount Ida.

⁴ For the veterinary technology program, UMass Amherst agreed to teach out students on the Mount Ida campus; for the dental hygiene program, UMass Amherst and Regis College reached an agreement under which Regis College could continue to serve existing and incoming Mount Ida students on the Mount Ida campus; for the funeral services program, UMass Amherst agreed to convey certain programmatic assets without charge to Cape Cod Community College, which (pending approval) would continue to offer an A.S. program; and for the interior architecture and design and fashion design programs, UMass Amherst agreed to convey certain equipment to UMass Dartmouth, to allow UMass Dartmouth to teach out those programs. Additional commitments secured for Mount Ida students are detailed in the attached May 15 letter from the AGO.

⁵ BHE regulations provide that if a Massachusetts-based institution of higher education "knows that it may close, or if it is planning to merge with another institution, it shall notify the Board and should follow appropriate procedures as far as possible in advance of the closure or merger . . . ; and it shall arrange, in association with the Board, to safeguard the needs of students by organizing educational transfer opportunities." 610 CMR 2.07(3)(f)(2).

Of considerably greater public benefit, we believe, is the disclosure of our investigative findings⁶ through this report to DHE, for several reasons: (1) in recent months, several other higher education institutions in Massachusetts and New England have announced that they are in financial distress;⁷ (2) trustees and administrators of these and other higher education institutions are facing common challenges that are depressing their institutions' financial health, particularly escalating costs and declining tuition revenues; (3) students are at risk of substantial harm when higher education institutions close abruptly without appropriate planning and development of transfer opportunities; and (4) regulators, accreditors and others are working now to avoid abrupt and harmful closures of higher education institutions, including through DHE's implementation of the BHE Working Group recommendations. The AGO, which ten months ago called for the creation of a new and well-resourced Office of Financial Stability within DHE, believes these observations, findings, and recommendations may assist DHE, lawmakers, and other interested stakeholders to enact necessary reforms and, most importantly, prevent future harmful closures like Mount Ida's.

I. AGO Observations on the Mount Ida Student Experience

In the days and weeks following Mount Ida's April 6 closure announcement, the AGO's Student Loan Assistance Unit ("SLAU") heard from many concerned students, parents, and others. In addition, personnel from SLAU attended events on the Mount Ida campus to monitor what was being conveyed to students by the Mount Ida administration, by representatives of UMass entities, and by representatives of other colleges and universities. As noted above, the late nature of the closure announcement led to upset and disarray across the Mount Ida community. The section that follows is a reminder of the harm that resulted from a higher education institution's failure to take adequate steps to timely formulate a closing plan and arrange for educational transfer opportunities for its students, emphasizing the importance of having a robust regulatory scheme to help prevent these types of failures.

Mount Ida's closure resulted in turmoil on campus.

Over the weekend following Mount Ida's Friday closure announcement, President Brown held a meeting to explain Mount Ida's closure and the University of Massachusetts at Dartmouth ("UMass Dartmouth") transfer option.⁸ He was confronted by stunned and emotional students who desperately questioned how Mount Ida could have enrolled them without disclosing its dire financial situation. Students explained to President Brown that their programs and majors were not offered at UMass Dartmouth. Parents and students told stories of the sacrifices they had made, the costs they had incurred, and the challenges they had overcome in order to enroll in Mount Ida programs that now appeared to be dead ends. President Brown repeatedly acknowledged his loss of credibility but insisted that students would have no problems transferring to new institutions and that certain specialty programs would continue on the Mount

⁶ None of the information included in this letter was obtained exclusively pursuant to any civil investigative demand ("CID") the AGO issued pursuant to the authorization of the Suffolk Superior Court in docket number 1884CV01615. Information obtained exclusively pursuant to CID remains confidential under G.L. c. 12, § 8H.

⁷ Including Newbury College, Hampshire College, Green Mountain College, and Southern Vermont College.

⁸ See *supra* n.3.

Ida campus.⁹

On the Monday following Mount Ida's closure announcement, UMass Dartmouth Chancellor Robert E. Johnson spoke at Mount Ida about the UMass Dartmouth transfer option, and presented Mount Ida's students and faculty with the reality of the situation: Mount Ida had run out of money and was going out of business at the end of the semester, regardless of UMass Amherst's involvement; Mount Ida was simply selling its campus to UMass Amherst in order to pay its debts. When audience members questioned whether UMass would allow students in specialty programs to complete their studies at the Mount Ida campus, Chancellor Johnson clarified that UMass Amherst was not buying the school – it was buying Mount Ida's real estate and did not plan to continue offering programs at Mount Ida. A speaker from Mount Ida tried to assure students that Mount Ida was in discussions with other schools to potentially "teach out" certain specialty programs at the Mount Ida campus; however, the lack of a concrete plan for these programs was both evident and alarming to the student body.

Later the same day, UMass Dartmouth provided students in good standing with admission offers and preliminary financial aid awards. For the hundreds of students in Mount Ida's specialty programs, these admission offers provided no path to degree completion. Meanwhile, students in other programs struggled to determine whether UMass Dartmouth offered majors that would enable them to complete their degrees without significant extensions of their studies and associated expenses. Due to Mount Ida's lack of closing preparations and failure to create a comprehensive transfer agreement with UMass Dartmouth, no one at Mount Ida could answer these questions.

Even for students whose majors were available at UMass Dartmouth, the school was often not a practical choice. For the nearly forty percent of Mount Ida students who were commuters, moving to Dartmouth would involve significant additional living expenses. For Mount Ida students who were financially dependent on local part-time jobs, moving to Dartmouth was impossible. For some students, other types of personal circumstances made UMass Dartmouth unsuitable. For example, many families had selected Mount Ida for its small close-knit community and reputation for educating students with disabilities, including physical disabilities, behavioral challenges, and special learning needs. Students and parents who had carefully selected Mount Ida for these attributes were often skeptical that a large public institution like UMass Dartmouth could offer the same levels of support. Ultimately, fewer than 250 Mount Ida students transferred to UMass Dartmouth.

Only after Mount Ida's April 6 closure announcement and at the insistence of the AGO and BHE did Mount Ida begin undertaking efforts to create a closure plan that included multiple transfer options for its students. However, by that time, it was already too late to meaningfully organize these options.

As Mount Ida attempted to identify transfer options, the complexities associated with transfer and the consequences of Mount Ida's failure to plan became increasingly clear. At

⁹ President Brown made these representations despite Mount Ida's failure to formalize any such arrangement with other schools or as part of the proposed UMass Transaction.

Mount Ida's April 17 college fair, hundreds of students still did not know where their programs were moving and whether they would have any option to complete their degrees. As parents and students milled the crowded auditorium speaking with admissions representatives from various schools, many were told that they could face significant extensions of their studies, loss of credits, dramatic cost increases, or lack of on-campus housing. Many learned they would have to apply and go through audits of their coursework to obtain answers to transfer questions. Some students tried to weigh whether to abandon transferring their Mount Ida credits in favor of obtaining a closed school discharge for their federal student loans.

In the days and weeks that followed, Mount Ida students and parents raced to visit potential schools, submit applications, and try to resolve questions about the similarities of various degree programs and associated questions concerning costs and credit transfer. Families were forced to undertake these processes at breakneck speed, well past normal application and admission deadlines, during final exams, and while students were still reeling from the announcement of Mount Ida's imminent closure. For specialty programs and certain other majors, doubts lingered for weeks (and in some cases months) as to whether students would have any option to complete their studies. Only through the significant efforts of the AGO, BHE, staff at DHE, UMass and others did additional options eventually emerge for these students.

The failure of the Mount Ida Board and President Brown to develop adequate plans for students to complete their studies and the short runway they provided for students to find alternatives caused immeasurable harm to the students in their care.

II. Key Findings from the Investigation

The Mount Ida Board and President Brown had ample notice of Mount Ida's precarious financial condition.

Like many small colleges and some universities in Massachusetts, Mount Ida was a tuition-dependent institution. Having only a limited endowment, it relied on the revenue from tuition and student fees to support its annual operations. In the early part of this decade, Mount Ida struggled with retention and graduation rates, a fact that Board Chair Carmin Reiss highlighted during her testimony before the Senate Committee on Post Audit and Oversight on May 16, 2018, where Ms. Reiss stated that Mount Ida had lost half of its freshman class after the 2012 year. This catastrophic loss of returning students resulted in a dramatic drop in tuition revenue for 2013-2014, and a similar reduction in the following two academic years.

At the same time, Mount Ida was compelled to address the "many years of neglect on its facilities."¹⁰ This reckoning with an aging and crumbling campus forced Mount Ida to expend and further deplete financial resources, to the detriment of its ongoing financial outlook. Prior to 2012, Mount Ida had allowed its campus to reach what it called "historic levels of deferred maintenance" on its physical structures,¹¹ necessitating major capital improvements right at the moment that revenues plummeted. This crisis was no more apparent than when, two weeks

¹⁰ See Mount Ida Self Study, submitted to the New England Association of Schools and Colleges ("NEASC") in 2017 in support of its reaccreditation, 66.

¹¹ Mount Ida Self Study at 67.

before students were due to arrive in the fall of 2012, the City of Newton identified fire safety issues in one of Mount Ida's dormitories, preventing students from occupying the building. At that time, the level of deferred maintenance on Mount Ida's campus facilities exceeded \$30 million.¹²

Mount Ida sought to address the facilities and maintenance crisis through new construction and renovations between 2012 and 2017. During that period, Mount Ida spent approximately \$30 million on renovations, maintenance, and facility upgrade work. Mount Ida funded this work by spending \$10 million from its "board-designated endowment funds,"¹³ \$12.5 million of bond financing, and \$7.5 million through leasing and vendor financing.¹⁴

The status of Mount Ida's endowment further forecast a financial crisis. By its own admission, Mount Ida did not prioritize philanthropic support.¹⁵ As of June 30, 2012, Mount Ida's audited financial statements reflected approximately \$11.7 million in its endowment, \$10.9 million of which were board-designated endowment funds.¹⁶ Most of these board-designated endowment funds were used to address Mount Ida's deferred maintenance issues.

Amid the convergence of these factors, Mount Ida hired a new President, President Brown, whose tenure began in July of 2012. President Brown, a lawyer with real estate expertise and significant experience in higher education, filled on a permanent basis the leadership post that had been in flux since 2009 when President Carol Matteson retired. Shortly after his appointment, President Brown and Mount Ida leadership sought to stabilize Mount Ida's finances. However, Mount Ida's financial performance during the first several years of President Brown's tenure made clear that the school required a monumental—and highly unlikely—reversal of fortunes to emerge from its financial decline.

Between fiscal years 2014 and 2017, Mount Ida's net assets decreased by over 43%, with deficits of over \$6 million, \$1 million, and \$11 million for fiscal years 2015, 2016, and 2017, respectively. In 2017, Mount Ida predicted a budget deficit of over \$16 million between fiscal years 2016 and 2017. Even when some measures, such as student enrollment, improved during that time period, such improvements created additional financial burdens. Although enrollment increased between 2013 and 2015¹⁷ and beyond, the increased number of students put a strain on Mount Ida's facilities, requiring the long-term housing of some students in an off-site hotel (at considerable expense), and necessitating the construction of new academic and residence buildings. During this time period, and particularly in its last three years of operations, Mount Ida was borrowing more and more money to support its operations. Furthermore, the Mount Ida Board and President Brown were aware in fall 2017 that Mount Ida had projected deficits for the four subsequent fiscal years (\$11.6 million in FY2019, \$9.5 million in FY2020, \$5.6 million in

¹² See the NEASC Report to Mount Ida College, submitted after the reaccreditation site visit, 32.

¹³ In this case, "board-designated endowment funds" denotes funds that the Board had restricted for use as an endowment. Generally, board restrictions – as opposed to donor restrictions – may be modified by a later vote of the board.

¹⁴ Mount Ida Self Study 67.

¹⁵ Mount Ida Self Study 63.

¹⁶ 2013 Audited Financial Statements.

¹⁷ Mount Ida Self Study 45.

FY2021 and \$1.2 million in FY2022). The existence of such enormous actual and projected financial deficits for so many years left no doubt for the Board or President Brown that Mount Ida was in serious jeopardy of closing its doors.

The Mount Ida Board and President Brown relied on nontraditional and sometimes extraordinary transactions to close anticipated budget deficits.

In an effort to close the anticipated budget deficits, the Board and President Brown arranged a number of nontraditional and sometimes extraordinary financial transactions. These transactions included sales of parts of its campus land and nontraditional lending arrangements with private parties. The fact that the Board and President Brown – a real estate lawyer with extensive experience in higher education – pursued these nontraditional sources of funds to sustain operations for years indicates an awareness that Mount Ida’s situation was unusually precarious. This pursuit also rested on an unrealistic view – particularly for such experienced individuals – of the likelihood that these measures would be successful in sustaining Mount Ida.

As early as 2016, Mount Ida and its Board began to explore nontraditional means to raise funds for its operations. Faced with a bleak financial future in the fall of 2017, the Board and President Brown had the knowledge, resources, and opportunity to prepare the school and, most importantly, its students, for closure. For example, the school might have invested some resources in developing transfer agreements with peer institutions to ensure a landing place for students in event of a closure. Instead, to the detriment of its students, Mount Ida chose a path that was unrealistic, unsustainable, and built on fundamentally flawed assumptions regarding the disposition of surplus real estate, major philanthropic support, and continued debt financing.

One of Mount Ida’s financial gambles relied on the uncertain successful disposition of real estate. With a depleted endowment, Mount Ida’s largest remaining hard asset was the land on which it sat. Mount Ida thus began a campaign to sell certain undeveloped parcels of its property, all of which would potentially be developed by the buyers of such parcels. The success of the campaign, however, was inherently unpredictable – if not outright unlikely – based on the need for community support for such land transfers and attendant zoning approvals.

Although in May 2017 Mount Ida completed the sale of a parcel of land to the Church of Latter Day Saints for \$7 million, the Church’s use of the land did not need to comply with the City of Newton’s usual permitting processes, and thus did not represent a model that could be replicated with real estate developers or other individual purchasers. Subsequent anticipated real estate transactions did not materialize, even though Mount Ida highlighted these potential transactions as indicia of its future financial stability in its communications with its accreditor.¹⁸

Mount Ida also came to rely on a substantial gift and loans from a philanthropic family, either through a family trust or through Carlson Property LLC (“Carlson”), a Massachusetts limited liability company and a related party (as noted in Mount Ida’s 2017 audited financial statements) to Mount Ida.¹⁹ Between 2016 and 2018, Carlson entered into a series of

¹⁸ Mount Ida Self Study 66.

¹⁹ President Brown has been, for many years, the trustee of the beneficial owner of Carlson. He did not participate in any Mount Ida Board discussions concerning the transactions between Mount Ida and Carlson.

transactions with Mount Ida. By April 2018, Mount Ida owed Carlson \$23 million. The debts, which were secured by Mount Ida's real estate, were composed of (1) a 10-year term loan for \$12.5 million at 6% interest and (2) a \$10.5 million revolving credit facility at 7.25% interest. Mount Ida used the loans to support its ongoing operations. In addition to these loans, the family trust also made an unrestricted gift of \$8 million to Mount Ida in fiscal year 2016, a gift the college called "unprecedented" and the "largest gift in its history."²⁰ Philanthropic support at this level was extremely unlikely to be sustainable.

Finally, as early as summer 2017, Mount Ida and Lasell College began exploring a potential statutory merger. In June 2017, Mount Ida and Lasell signed a nondisclosure agreement regarding the potential merger, and on December 18, 2017, Mount Ida and Lasell signed a memorandum of understanding regarding the same. On or about March 23, 2018, Mount Ida and Lasell announced publicly that the entities had ended their merger discussions.

At that point, facing imminent closure, Mount Ida turned to a land deal with UMass Amherst. As detailed more fully in our enclosed May 15 letter, Mount Ida sold substantially all of its assets, including its campus, to UMass Amherst for a payment of \$75 million. The UMass Transaction allowed Mount Ida to pay off its debts to traditional lenders and to make severance payments to Mount Ida faculty and staff.²¹ But the UMass Transaction did not protect Mount Ida students from the disruptions of a precipitous and unplanned school closure.

The Mount Ida Board and President Brown failed to engage in contingency planning, such as developing a closure plan and organizing transfer opportunities through which students could complete their programs of study.

The Mount Ida Board, President Brown and other Mount Ida administrators knew or should have known that developing transfer agreements is a months-long process that takes considerable effort. Such arrangements require academic departments to review program structures, course curricula, and levels of instruction to determine if courses completed at one school will satisfy another school's requirements. Transfer agreements may also include other types of student benefits, such as waiver of applications fees, elimination of minimum credit requirements at the degree-granting institution, or limits on tuition increases. In the absence of well-planned transfer agreements and associated protections, Mount Ida students faced financial risk and significant uncertainty about whether years of accumulated credits would count towards their degree.

To further compound matters, Mount Ida offered a number of specially accredited programs, including dental hygiene, veterinary technology, and funeral services, programs that were not widely available at other schools. These specialty programs helped set Mount Ida apart from other similarly-sized and situated liberal arts colleges and should have been prominent in the strategic plans and awareness of Mount Ida's leadership, including President Brown, who knew or should have known that arranging for the continuation of these programs would be difficult. Yet the Mount Ida Board and President Brown failed to develop contingency plans to

²⁰ Mount Ida Self Study 68.

²¹ In addition, Carlson also agreed to forgive \$11.5 million of Mount Ida's accumulated \$23 million obligation to it.

provide hundreds of specialty students with options to continue their studies in the event Mount Ida had to cease operations. It was these educationally-stranded students for whom the AGO and DHE became most concerned upon learning of the college's abrupt closure plans, as we undertook to do what Mount Ida failed to do: to ensure that these students could continue their studies at other institutions.

Mount Ida failed to provide sufficient notice to BHE, or submit a closing plan, as required by BHE's regulations.

BHE regulations provide that if a Massachusetts-based institution of higher education "knows that it may close, or if it is planning to merge with another institution, it shall notify the Board and should follow appropriate procedures as far as possible in advance of the closure or merger . . . ; and it shall arrange, in association with the Board, to safeguard the needs of students by organizing educational transfer opportunities." 610 CMR 2.07(3)(f)(2). This regulation serves at least two important purposes: (1) protecting students who have entrusted their education to a higher education institution by ensuring that adequate transfer opportunities can be arranged for those students, and (2) providing BHE – the higher education regulator – with sufficient time to prepare for an impending closure and ensure the institution has prepared an adequate closing plan that addresses not just educational transfer opportunities but also student records retention, among other key issues. Mount Ida failed to comply with this regulation.

As a result, students were left educationally stranded while regulators scrambled to hammer out transfer options that already should have been in place. The Mount Ida Board's and President Brown's failure to notify BHE or develop an orderly closing plan was a clear violation of state regulations, and disregarded urgent student needs.

The Mount Ida Board and President Brown failed to communicate the seriousness of Mount Ida's financial problems to students, admitted students, faculty and staff, resulting in serious and avoidable harm.

When Mount Ida announced on April 6, 2018 that it would cease operations at the end of the spring 2018 semester, it left more than current students at risk. Faculty, staff and admitted students had their reasonable plans disrupted as well. In fact, from all the AGO staff has learned, throughout the 2017-2018 academic year, Mount Ida had acted toward existing students and faculty as though everything was normal and gave them no reason to suspect that the college was about to close. In the fall of 2017, even though Mount Ida was well aware of its increasingly dire financial picture, over 530 freshman students began their studies at the school. Through its final year in operation, despite the increasing likelihood of closure, Mount Ida continued recruitment efforts, ultimately admitting hundreds of students for the fall of 2018 and offering financial aid to many of these students, while pursuing its failed merger with Lasell. The Board and President Brown knew or should have known that Mount Ida's ability to fulfill these commitments was tenuous at best and depended on factors beyond Mount Ida's control. As a result, Mount Ida engaged in a misleading and ongoing campaign to retain current students and recruit new students under the false pretense that Mount Ida was financially stable and not verging on the brink of collapse. At no time prior to its public announcement of closure did

Mount Ida indicate to current or prospective students and families that the school was on the precipice of financial collapse.

For example, in stark contrast to Mount Ida's impending failure, Mount Ida's public-facing image was one of a viable and thriving institution of higher education that offered undergraduate and graduate degrees in a variety of schools, programs, and specialty degrees. As of September 3, 2017, Mount Ida was inviting, through its website, prospective students to visit its campus and apply for admission. Mount Ida touted its four schools of Applied Science, Business, Design, and Social Sciences & Humanities, as well as its graduate study programs. Mount Ida enticed prospective students with the statistic that 98% of its students receive some form of financial aid.

Mount Ida also marketed its viability to its current students, including through its Fall Fest, which took place September 22 to 24, 2017, where students, family, and alumni were invited for a weekend of "fun for everyone." In October 2017, Mount Ida actively promoted its Fall Open House, which was held on October 28, 2017. Mount Ida invited prospective students to reserve a spot and visit the campus. Mount Ida continued to recruit, accept applications and enroll students through the fall of 2017 and early 2018. In March 2018, only one month before announcing closure of the college, Mount Ida renewed its contracts with faculty.

Mount Ida's deceptive actions and failure to communicate its tenuous financial future effectively precluded admitted students from making an informed choice about what college to attend, failed to facilitate an orderly transition for continuing students, prevented faculty from participating in the main higher education hiring season, and shortened the period of time that staff would have to consider other job opportunities.

Within the year leading up to Mount Ida's closure, Mount Ida's accreditor and external accountants did not note publicly the significant risk to sound finances and stable operations under which Mount Ida was operating.

As set forth above, the AGO's investigation found that Mount Ida's communications with regulators (among others) was severely lacking. That said, neither the accreditation standards nor the auditing process conducted by external accountants²² functioned to require Mount Ida to be more forthcoming or transparent, or to require notice to the Mount Ida community about the risk of closure. In other words, while Mount Ida disclosed at least some of the information about its financial condition to its accreditor and auditor (as evidenced by the notes in the audited financial statements), doing so did not result in Mount Ida being any more transparent with the public about its financial status.

For example, in the fall of 2017, Mount Ida's accreditor, the New England Association of Schools and Colleges ("NEASC"), prepared a report after a study of Mount Ida's August 2017 self-evaluation report and an October 2017 site visit. The stated purpose of this report was to be both "an educational service to [Mount Ida] and to assist the [NEASC] Commission [on

²² Higher education institutions are required to submit annually to regulators an audited financial statement, prepared by external accountants.

Institutions of Higher Education] in making a decision about the institution's accreditation status." NEASC's evaluation team identified many of the asset transactions and land sales on which Mount Ida was relying to remain solvent, noted Mount Ida's projected \$10.4 million operational deficit for FY2018, and Mount Ida's projected deficits for the four subsequent fiscal years (\$11.6 million in FY2019, \$9.5 million in FY2020, \$5.6 million in FY2021 and \$1.2 million in FY2022). While this report reflected the dire state of Mount Ida's finances, the report and the evaluation team's subsequent recommendations would not formally be presented to the NEASC Commission for action until an April 18, 2018 hearing. By that time, Mount Ida had already announced its impending closure. So while the NEASC process might have identified concerns about Mount Ida's financial state and business model, the process did not move fast enough for any meaningful action to be taken.

Furthermore, none of Mount Ida's financial statements included any auditors' notes of financial risk to Mount Ida's continued operation. The FY2017 audit report that was prepared for Mount Ida – which did not include such a "going concern" note – was completed and submitted to regulators less than six months before Mount Ida ceased operations. The fact that the auditing process apparently allowed Mount Ida to downplay its financial risks and rely on extraordinary and uncertain sources of revenue enabled the Mount Ida Board and President Brown to employ what seems, in retrospect, wild and unsustainable optimism in their strategic planning.

III. Observations and Recommendations

There are valid concerns about breach of fiduciary obligations, violation of consumer protection requirements, and violation of BHE regulations at Mount Ida.

The Mount Ida Board and President Brown failed to engage in realistic and comprehensive strategic and financial planning, and they failed to account for the disastrous impact the risks they took were bound to have on students and others. The Board and President Brown also failed to apprise the Mount Ida community of the ongoing financial problems and threat of closure. Mount Ida's communications with admitted students, continuing students, faculty, and staff were misleading and, arguably, deceptive.

Many have questioned whether the actions and decisions of the Mount Ida Board and President Brown are consistent with the fiduciary duties they owed to Mount Ida's charitable educational mission. Those questions are well founded. We note that our investigation revealed no diversion of Mount Ida charitable funds for personal use, nor did we identify affirmative misrepresentations to regulators or accreditors. We found that the Mount Ida Board and President Brown engaged several consultants, none of whom appear to have counseled that it would be prudent to make contingency plans for students in the event of closure. Moreover, as noted above, the oversight structure under which Mount Ida operated enabled it to perpetuate the financial risk-taking that eventually led to its demise.

Nevertheless, Mount Ida's continued recruitment of students, promising a four-year education while serious questions remained as to its financial viability, raises serious fiduciary duty and Chapter 93A consumer protection concerns. Material nondisclosures as well as outright

misrepresentations can constitute Chapter 93A violations. And, as noted at the outset, Mount Ida failed to meet its obligations under BHE regulations to prepare a closing plan and organize transfer opportunities in association with BHE.

Although we have many concerns about this conduct, the AGO has determined that pursuing litigation against Mount Ida and the Board at this time would not be in the public interest. With Mount Ida now closed and with negligible assets remaining, drawn out litigation likely would be of limited utility. In addition, with the immediate and problematic financial state of many higher education institutions in the Commonwealth, the more important public interest is in the disclosure of these findings – and related recommendations – about the harmful and calamitous closure of Mount Ida, with the hope and expectation that the regulators and other higher education institutions will implement safeguards to prevent any similar occurrence. For its part, the AGO will use this experience to inform our ongoing work to prevent future unplanned and chaotic closures.

Informing trustees and officers of nonprofit higher education institutions about their obligations is necessary.

The AGO endorses the BHE Working Group's recommendation that DHE and the AGO collaborate to more fully educate, inform and support trustees and officers of nonprofit higher education institutions. That effort should include ensuring that trustees and officers understand that they must account adequately for and to students, prospective students, faculty, staff, accreditors, regulators and others about the true financial conditions and challenges their organizations face. In particular, trustees and officers should recognize that they owe fiduciary duties to the charitable mission of higher education more than to the continuation, at all costs, of the particular institution they serve.

Contingency planning and awareness are paramount.

Institutions must prepare necessary contingency plans. The disorderly closure of Mount Ida makes clear that colleges and universities at any risk of closure must begin to develop contingency plans for their students well before that decision is made final. Trustees and officers should expect that planning to be in tandem with efforts to explore alternatives to closure.

Trustees and officers must not be blind to the difficulties, complexities, expenses and deadlines associated with transfer, including the potential for transfer students to face extensions of their studies at enormous cost in the absence of well-plotted transfer agreements. Trustees and officers must also understand that creating transfer agreements requires months of planning and work by faculty. The higher education community can help support the students it serves by working together now to establish more transfer and articulation agreements that minimize the costs and burdens associated with transfer. Much like other types of strategic decision making, we believe that robust contingency planning by Massachusetts colleges and universities will strengthen public faith in these institutions and result in better governance and better outcomes across the sector.

Institutions of higher education need to be more accountable with respect to their financial condition.

We strongly support the recommendation of the BHE Working Group to require institutions to be more accountable with regard to their financial condition. And while the AGO respects the need for confidentiality through the monitoring process that DHE is implementing, the Mount Ida experience highlights the critical need for college and university communications with students and prospective students to disclose risks along with benefits from enrolling in the college or university. This is particularly true where there is a sufficient risk that a college or university may not be able to fulfill expectations of the education promised through its recruitment of prospective students.

We acknowledge and understand the concern that premature notice of financial instability can result in a “self-fulfilling prophecy,” particularly for those tuition-dependent institutions that are working diligently to improve their financial outlook. But the Mount Ida experience shows that hiding such risks out of a fear of triggering a downward financial spiral can result in waiting too long and effectively deceiving current and future community members about the commitments an institution is able to make. When the risk to students becomes sufficiently imminent, students must be notified. And the timing of any such notification must account for student application deadlines, transfer deadlines and faculty hiring deadlines.

Reliance on nontraditional and extraordinary transactions can indicate financial vulnerabilities.

We strongly support the creation of the Office of Student Protection at DHE, provided it has the resources to actively monitor institutions and the kind of contingency planning noted above. In proactively identifying institutions at heightened risk of financial non-viability and actively monitoring those institutions, the proposed Office of Student Protection should consider whether these institutions are relying on nontraditional or extraordinary measures – as opposed to traditional lending, credit arrangements, development efforts, or other routine revenue – to address budget deficits. Such indicia could demonstrate that an institution is not creditworthy or may be in greater financial trouble than its balance sheet – or its audited financial statements – would reflect. These red flags should trigger consideration of active monitoring and contingency planning for students.

Higher education consultants need to be aware of the factors placing institutions at risk.

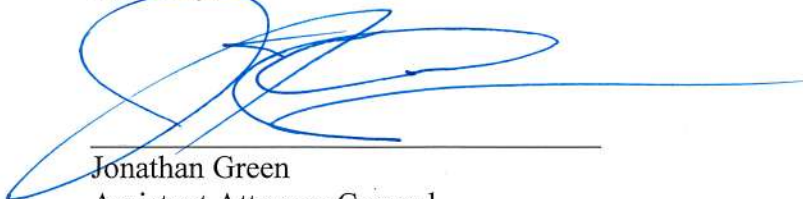
It is also incumbent on other entities that intersect with and provide services to the higher education sector to consider their role in ensuring that colleges and universities are not taking the kind of unrealistic financial gambles that Mount Ida did here – or that if they do, there is consideration of providing regulators and the public with the financial transparency that would enable students and others to make informed decisions. Accreditors, auditors, and other consultants each play a role in shaping the communications, public statements, and regulatory filings of institutions of higher education. Each of those groups has a responsibility to consider how their processes might better incorporate considerations of long-term institutional financial

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health. Are there demographic, financial, or other trends that combine to make an institution vulnerable? If so, how can an accreditor or auditor accurately portray that risk in a manner that protects students? Ongoing discussions with DHE, NEASC, and the auditing community about reforms in standards and increased accountability and transparency are critically important.

We do not wish to confront another catastrophic closure of an institution of higher education. We look forward to working with you and your staff to find ways to identify distressed institutions, and working with institutions and their trustees to find ways to better safeguard student outcomes at such institutions.

Sincerely,



Jonathan Green
Assistant Attorney General
Deputy Chief, Non-Profit
Organizations/Public Charities Division
Health Care & Fair Competition Bureau

cc: Constantia Papanikolaou, Esq., DHE



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May 15, 2018

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Joshua Grubman, Esq.
Mount Ida College
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RE: Mount Ida College Asset Transfer

Dear Messrs. Lannon and Grubman:

On April 27, 2018 you provided this office (the "AGO") with written notice, pursuant to the provisions of G.L. c. 180, § 8A(c) ("Section 8A(c)"), that Mount Ida College ("MIC") intends to sell substantially all of its property and assets to the University of Massachusetts at Amherst ("UMass Amherst") (the "Transaction").¹ You have also informed us that MIC is in financial extremis and in the absence of closing the Transaction by May 16, 2018, MIC will be unable to meet its financial obligations to employees and creditors and will file for bankruptcy.

We are deeply disappointed by MIC's decision to close its doors without a school closing plan and without appropriate notice to students, faculty, staff, and regulators. Your treatment of your own students is particularly upsetting and extremely unfair to them. Over the past several weeks, in addition to reviewing the financial components of the Transaction, the AGO has worked intensely with the University of Massachusetts system ("UMass"), other colleges, and state regulators to attempt to mitigate the harms to current MIC students whose futures and substantial educational investments have been jeopardized by MIC's conduct.

As you know, Section 8A(c) requires a charity to provide written notice to the AGO not less than thirty (30) days before conveying all or substantially all of its assets if the conveyance will result in a material change in the nature of the activities the charity conducts. The AGO reviews transactions under Section 8A(c) for compliance with charities law.

¹ The University of Massachusetts Building Authority ("UMBA") is a party to the Transaction. The UMBA is a public entity that, among other responsibilities, owns and manages residence halls and student activity facilities for the UMass system.



Due to the exigent circumstances that MIC has presented, including its inability to meet payroll obligations and its plan to file for bankruptcy if the Transaction does not occur by May 16, the AGO has concluded that it has little choice but to waive the thirty-day written notice requirement under Section 8A(c) and complete its investigation of MIC in two stages.

The first stage addresses the value of the Transaction to MIC, and whether the consideration MIC will receive comports with charities law. After the completion of the Transaction we will further review this disorderly and harmful closure to consider whether or not MIC's senior administrators and its Board of Trustees (the "Board") violated their fiduciary duties in addressing MIC's financial condition and in carrying out its educational mission.

Thus, this letter analyzes the proposed Transaction, including the financial details and the commitments UMass has made to assist MIC students. For the reasons described below, the AGO concludes that the proposed Transaction does not require court approval.

I. Background

MIC is a private college in Newton, Massachusetts with over 1,500 students and a history dating back to 1899. In recent years, MIC has offered a course of general education as well as a number of specialized programs that culminate in either associate's or bachelor's degrees, including programs in Dental Hygiene, Veterinary Technology, Funeral Services, Interior Architecture & Design, and Fashion Design. Due to financial challenges and following unsuccessful merger discussions with Lasell College earlier this year, the Board recently reached an agreement with UMass Amherst, described more fully in the following section, for UMass Amherst to acquire substantially all of MIC's assets.

MIC and UMass Amherst reached an agreement in principle with regard to the proposed Transaction in early April 2018. MIC thereafter announced its intention to close at the end of the academic year. The timing of this announcement provided current students, admitted students, faculty, and staff with virtually no notice, and little time to make alternative arrangements for the forthcoming academic year. The announcement also occurred without a closing plan, which the Massachusetts Department of Higher Education ("DHE") requires closing institutions to submit to DHE "as far as possible in advance" of intentions to close. *See* 610 CMR 2.07(3)(f)(2).

MIC has informed us that, based on its calculations, without the Transaction it will be unable to meet its financial obligations to employees and creditors. If the proposed Transaction does not close by May 16, MIC reportedly plans to file for bankruptcy.

II. The Proposed Transaction

Under the terms of the proposed Transaction, MIC will transfer all of its real property, personal property, intellectual property assets, and relatively small restricted assets to UMass Amherst in exchange for UMass Amherst paying off (or arranging for the discharge of) all of MIC's scheduled liabilities, including providing funds to allow MIC to meet its obligations to its faculty and staff prior to concluding its operations. In addition, conditioned on the closing of the proposed Transaction, UMass Amherst and other UMass campuses are making certain commitments to MIC students. These commitments, which form an important part of our analysis, are detailed further below.

As a precondition of the sale of MIC's assets to UMass Amherst, one MIC creditor will forgive \$11.5 million (50% of the outstanding debt balance with that creditor) to help ensure that MIC's assets continue to be used for educational purposes. We understand from discussions with this creditor that the forgiveness of \$11.5 million will only take place as part of the proposed Transaction, and would not be offered if MIC files for bankruptcy.

As a result, the value to MIC of the Transaction combines both a \$75 million payment from UMass Amherst and the \$11.5 million debt forgiveness, amounting to \$86.5 million.

III. The Review Process

On April 5 and 6, MIC's and UMass's respective boards of trustees voted to proceed with the Transaction. On April 6, MIC publicly announced the proposed Transaction and concurrent closure. Since the time of their initial outreach, the AGO has been in regular contact with counsel for both MIC and UMass regarding the proposed Transaction, including numerous meetings and telephone conferences. AGO staff have had extensive communications with current MIC students, family members, staff, faculty, DHE, and a number of other colleges and universities to help ensure that MIC students are provided with as many options as possible under these deeply regrettable circumstances to complete their degrees on time and with the minimum of disruption and additional expense.

On April 27, MIC provided the Non-Profit Organizations/Public Charities Division of the AGO (the "Division") with written notice pursuant to requirements of Section 8A(c) and further notified the AGO that due to adjustments in impending liabilities, the Transaction would need to close on May 18, 2018; otherwise MIC would run out of money. That closing date was later revised to May 16, 2018.

The Division undertook expedited information gathering and investigative efforts regarding the proposed Transaction, including: (a) reviewing organizational documents, transaction documents, financial records, board meeting minutes and materials, reports and other documents provided in response to information requests from the AGO; (b) interviewing MIC's and UMass Amherst's valuation consultants and a major MIC creditor; and (c) consulting regularly with counsel for MIC and UMass Amherst.

IV. Compliance with Charities Law

As noted above, the Division is charged with review of the proposed Transaction for compliance with charities law. Customarily, that means considering such factors as whether the organization will receive fair value for its assets and whether the board exercised due care and avoided conflicts of interest in making its determinations. Due to the exigent circumstances MIC presented, this letter addresses solely whether the proposed Transaction will result in MIC receiving fair value for its charitable assets; this determination helps inform whether court approval would be required for the sale.

Review of deal documents, valuation analyses, and interviews with valuation consultants confirm that the \$86.5 million value to MIC of the Transaction amounts to fair value for the real and personal property that is not restricted. Additionally, although difficult to quantify, UMass's commitments to displaced MIC students are an important component of this proposed

Transaction. Without the closing, as discussed below, important options for MIC students, particularly those in certain specialty degree programs that MIC previously operated, will not be available.

V. Commitments to MIC Students

The AGO has worked with UMass, the UMass campuses, other higher education institutions, and DHE to secure the following commitments for MIC students, many of which are contingent on the closing of the proposed Transaction:

A. Specialty Degree Programs

Veterinary Technology. UMass Amherst will teach out MIC's Veterinary Technology Associate of Arts ("A.A.") and Bachelor of Science ("B.S.") programs on the MIC campus with seamless credit transfer pending approval from the Board of Higher Education ("BHE") and the American Veterinary Medical Association. As part of the teach out, UMass Amherst will provide technical and general education courses, housing, dining services, library, and academic support services on the MIC campus.

Dental Hygiene. To allow MIC dental hygiene students to continue their education with minimal disruption, UMass Amherst and Regis College ("Regis") have announced a plan for the lease of space and assets to Regis that UMass Amherst will acquire through the Transaction. We understand that this agreement will enable Regis to serve the needs of MIC's incoming, pre-dental, Associate of Science ("A.S.") and B.S. dental hygiene students, pending approvals. We appreciate the joint commitment of the schools to assist these students.

Funeral Services. UMass Amherst has agreed to convey free of charge to Cape Cod Community College (a) certain physical assets that UMass Amherst will acquire through the Transaction that are specifically needed for funeral services, (b) a specialized MIC library, and (c) an MIC historical archive. We understand that this conveyance will enable Cape Cod Community College to offer the A.S. program in funeral services starting with the Fall 2018 semester, pending BHE and accreditor approvals.

Interior Architecture & Design and Fashion Design. UMass Amherst has agreed to convey equipment specifically needed for each program to UMass Dartmouth, which has agreed to teach out these programs with seamless credit transfer, pending BHE and accreditor approvals.

B. Admissions

UMass Dartmouth has agreed to offer admission to all MIC students in good academic standing. All four UMass campuses have agreed to waive application and deposit fees for MIC students. UMass has committed to providing the AGO with biweekly reports on the number of MIC students admitted, with pending applications, and who have been referred to partnering community colleges through September 1, 2018.

In addition, UMass Amherst is developing and will maintain and update an informational webpage for MIC students to ensure that students have a central place to review detailed information about the policies of each UMass campus on credit transfer and residency

requirements; application and associated appeal processes; cost commitments, incentives, and financial aid application and associated appeal processes; and transfer credit and degree completion audits and associated appeal processes.

C. Credit Transfer

All four UMass campuses have expressed a good faith commitment to ensuring that as many MIC students as possible complete their degrees on time. Specifically, UMass Amherst, UMass Dartmouth, and UMass Lowell have agreed to waive all residency requirements for MIC students (including campus-wide and major-specific residency requirements). UMass Boston has agreed to waive major-specific requirements for MIC students, though it will continue to maintain a 30-credit residency requirement that applies to all students.

All four UMass campuses have also agreed to accept MIC's general education courses toward fulfilling the UMass general education requirements, and all four campuses will make every effort to interpret prior academic work in a way that preserves momentum, even when there are no exact course equivalents. Additionally, all four UMass campuses have committed to ensuring that MIC students have a clear understanding of how many credits will transfer and count toward degree requirements and whether anticipated graduation dates will be extended before requiring students to make final enrollment decisions or payments.

To that end, UMass has agreed to work with the AGO and MIC to create an anonymized set of unique student identifiers and report to the AGO each continuing MIC student's total number of credits, anticipated MIC degree conferral date, degree level sought, and anticipated Fall 2018 enrollment status (i.e., full- or part-time). Using the unique identifiers, UMass will provide the AGO with information showing the anticipated UMass degree conferral date for each admitted MIC student who plans to maintain a full-time enrollment status at UMass in the Fall 2018 semester and has provided the relevant UMass campus with all necessary information to analyze the transferability of his or her MIC credits.

Additionally, pending BHE and accreditor approvals, MIC's Board will make a designee available, post-Transaction, to continue to confer MIC degrees to MIC students who currently have 105 or more MIC credits and might otherwise be unable to complete a degree on time from another institution because of credit or residency requirements elsewhere. These students will be permitted to enroll at a new school to take the courses needed to complete their degrees according to MIC's requirements, and then transfer those credits back to MIC to obtain their degree from MIC. This option will be available to MIC students who obtain the remainder of their outstanding credits by the conclusion of the Spring 2019 semester. UMass Amherst has agreed to help advise MIC students about this "reverse transfer" option as part of its advising services, and will facilitate contacts at other UMass campuses to help MIC students find appropriate coursework to complete their MIC degrees.

D. Transfer Advising and Support Services

UMass Amherst has committed to providing academic advising, information, and outplacement assistance by phone and on the MIC campus for all MIC students throughout the summer, and until the end of 2018 if demand continues. Because MIC specialized in serving

students with disabilities, UMass will maintain access to someone with appropriate expertise and understanding of disability needs of MIC students to help MIC students and their families coordinate their transition planning, whether to UMass or another school.

In addition, UMass Amherst agrees to maintain MIC's email system through the end of 2018. UMass Amherst also agrees to maintain the critical parts of MIC's website for one year so that MIC students, families and advisors may continue to have access to important reference points in identifying transfer options and comparing program and course information.

Finally, each UMass campus will designate a single point of contact for the AGO to utilize in helping to resolve the individual issues and concerns of MIC students who contact the AGO.

E. Tuition & Financial Aid

All four UMass campuses have agreed to charge in-state tuition to all MIC students who are citizens or permanent U.S. residents and who matriculate by September 1, 2018; the UMass campuses will maintain this policy for six semesters within a five-year window provided students are enrolled full-time.

Also, UMass Lowell will provide a merit award of \$2,500 per year for in-state students who have a 3.0 GPA at admission and maintain a 3.0 GPA or higher in subsequent semesters. This merit award is renewable for up to three years (or six semesters) provided the student maintains a 3.0 GPA or higher and completes the degree within five years of the date of admission. In addition, UMass Lowell will provide students who live in UMass Lowell dormitories with \$1,000 per term as a housing scholarship.

All four UMass campuses have agreed that the financial aid amounts awarded to MIC students who matriculate by September 1, 2018 will not be adversely affected by late application or enrollment for the Fall 2018 semester.

Using the anonymized student identifiers described in Subsection C, for each MIC student, UMass and MIC have also agreed to respectively report to the AGO, on or before October 31, 2018, the actual or scheduled charge, on a net basis, for the Fall 2018 semester, including tuition, fee, room, and board charges, and the associated number of credits.²

F. Student Records & Degrees

UMass Amherst has agreed to become the "institution of record" for MIC's digitized transcripts, graduation lists and "college catalogues" going back 50 years. To the extent any of these records from the last 50 years are not digitized, MIC will digitize them and transfer them to UMass Amherst. UMass Amherst has also agreed to become the "institution of record" for digitized student conduct records and athletic eligibility records for the required preservation period, which is during the student's attendance at MIC and UMass.

² UMass will only report on MIC students who matriculate at a UMass campus by September 1, 2018.


VI. Conclusion

MIC's abrupt closure has caused real harm to students and families, many of whom are still unsure of what to do. Your faculty and staff have lost their jobs. Based on the deeply regrettable circumstances here, the AGO expedited its review of the narrow issue of whether MIC will receive fair value for its assets through the Transaction and concludes that the proposed Transaction amounts to fair value for MIC's assets. We also understand that a closing before May 16, 2018 will avoid bankruptcy, ensure payment of outstanding wages to MIC employees, and secure many UMass commitments to MIC students. If the Transaction does not take place, the consequences to the MIC community will be more devastating than they would be if the Transaction occurs.

Based on our analysis, including all of the above factors, we conclude that court approval of the sale of MIC's real and personal property as contemplated in the proposed Transaction is not necessary. However, please contact us when MIC plans to transfer restricted assets pursuant to the proposed Transaction, as AGO assent and court approval will be required due to the restricted nature of the assets. Please let us know if we have misstated any of the above so that we can discuss the Transaction further.

We will continue to be in touch as, in the coming weeks, we will review the actions of the MIC Board and senior administrators in addressing MIC's financial condition to consider whether or not these parties violated their fiduciary obligations under charities law.

Sincerely,


Jonathan Green
Assistant Attorney General
Deputy Chief, Non-Profit
Organizations/Public Charities Division
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Arwen Thoman
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Public Protection & Advocacy Bureau

cc: Gerry Leone, Esq., UMass
Dena Papanikolaou, Esq., DHE
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