

December 2, 2022

U.S. Department of Education
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202

Re: Urgent Help for ASA College Students Following Loss of Accreditation

To the United States Department of Education:

We write from the New York Legal Assistance Group (NYLAG), a non-profit legal services provider, regarding the recent decision by Middle States Commission on Higher Education (MSCHE) to withdraw accreditation from for-profit ASA College (ASA).¹ More than sixty ASA students have already contacted NYLAG for assistance via our ASA student hotline (212-659-6166, ASAHotline@nylag.org) in less than three weeks since the announcement, with more reaching out every day. We urgently seek the Department's assistance for ASA students following ASA's loss of accreditation. We request a meeting with you to discuss the issues raised in this letter.

ASA students need help now. As described below, most importantly, ASA students need the Department to clarify the scope of student eligibility for closed school discharge upon a potential closure of ASA, and to require this information to be disseminated to all students *immediately*, during the current "teach out" period. This is critical, as under the current regulations, a student's acceptance of a teach out would render them ineligible for closed school discharge of post-July 2020 loans. ASA students have also raised numerous other issues that they need help with, detailed below, including issues with the teach outs and information about consequences of withdrawal and Return to Title IV.

Background on ASA:

ASA's loss of accreditation comes after a troubled history, briefly summarized as follows. In 2014, NYLAG represented former ASA students in a lawsuit asserting that ASA systemically defrauded students, government agencies, and accreditors by using misrepresentations and false promises to secure student enrollment, and then failing to disclose these statements to regulatory authorities.² That lawsuit resulted in a settlement providing that, among other things, ASA could no longer make false statements in recruiting.³ Beginning in 2018, news reports indicated that more than ten female ASA students and employees had accused ASA's President and owner, Alex Shchegol, of sexual misconduct, including allegations as severe as rape. Shchegol subsequently left his role as President of the school. But in October 2021, in his role as owner he replaced the majority of the school's board, which then re-appointed him to the role of President.⁴ On October 28, 2021, MSCHE put ASA in warning

¹ Middle States Withdraws Accreditation from ASA College (Nov. 11, 2022), *available at* <https://www.msche.org/2022/11/11/msche-withdraws-accreditation-from-asa-college/>.

² *Frica Sanchez v. ASA*, No. 14 Civ. 5006 (S.D.N.Y.).

³ *Id.*, ECF No. 106.

⁴ *See, e.g.,* Noah Goldberg and Michael Elsen-Rooney, *MeToo U: President of Brooklyn's ASA College, ousted over sexual misconduct claims, boots board and regains power*, New York Daily News (Nov. 20, 2021), *available at*

status and asked ASA to report on, among other things, whether it had “a legally constituted governing body [with] sufficient independence” and “demonstrated adherence to all issues of ethics and integrity.”⁵ On December 6, 2021, MSCHE moved ASA’s status to probation in lieu of the warning.

In early 2022, ASA began an advertisement campaign throughout the New York City subway system and online that was blatantly misleading, including ads that appeared to offer legal status to immigrants that ASA could not actually confer, and a false promise of a multi-thousand dollar “gift” upon graduation. On March 10, 2022, MSCHE put ASA on show-cause status, requiring the school to report, among other things, “evidence that the institution adheres to its policies and represents itself honestly and truthfully in all publications and communications, in all formats, including recruiting and admissions materials.”⁶ On October 3, 2022, the New York City Department of Consumer and Worker Protection entered a settlement with ASA for the false advertisements, calling them “false promises” that “impact immigrant communities and low-income students, as well as their families,” and requiring the school to pay a penalty of over \$100,000.⁷ ASA then publicly said that the settlement “was a business deal at the end of the day”; that the fine imposed by the City was “a fairly nominal amount”; and that ASA “didn’t believe the ads were deceitful in any way.”⁸ On October 7, 2022, MSCHE put ASA on show cause status again. On October 26, 2022, ASA announced that it was withdrawing its efforts to stay licensed in Florida.⁹ On November 11, 2022, MSCHE announced that it was withdrawing ASA’s accreditation and that the last possible date of accreditation would be March 1, 2023.

ASA’s Status Today:

As of the date of this letter, ASA remains open, at least at its brick and mortar campus in Brooklyn, although most instruction seems to be occurring online. ASA’s messaging to students regarding the future after loss of accreditation has been at best, unclear: in a school-wide email on November 16, 2022, ASA stated that it “will appeal” MSCHE’s decision to withdraw accreditation, but also that it is “prepar[ing] for the closing of the school”; that it “will cease its operations as of March 2023,” that “[t]he last day of classes is February 24, 2023”; and that it is engaging in a “gradual discontinuation of operations that leads to the closure of an institution.”¹⁰ A follow-up email told students that ASA “has started the appeal process with MSCHE” and “hope[s] our efforts will be successful and this way we all can continue, and you will complete your education with ASA.”¹¹ Students have also reported being told that ASA is considering a potential merger with another school.

<https://www.nydailynews.com/new-york/education/ny-alex-shchegol-asa-for-profit-college-sexual-harassment-scandal-20211120-hv7czunsdnprf5wafj7bkwqy-story.html>.

⁵ All accreditation actions are available at <https://www.msche.org/institution/0837/>.

⁶ *Id.* On June 23, 2022, MSCHE put ASA back on warning status.

⁷ *Department of Consumer and Worker Protection Settles With ASA College for Deceptive Advertising Targeting Immigrants and Other Vulnerable New Yorkers* (Oct. 3, 2022), available at <https://www.nyc.gov/site/dca/media/pr100322-DCWP-Settles-With-ASA-College-for-Deceptive-Advertising.page>.

⁸ Amir Khafagy, For-Profit ASA College Deceived Immigrant Students, NYC Says (Oct. 3, 2022), available at <https://documentedny.com/2022/10/07/asa-college-immigrants-fl-visa/>.

⁹ See David Halperin, ASA College Withdraws Bid to Stay Licensed in Florida (Oct. 26, 2022), available at <https://www.republicreport.org/2022/asa-college-withdraws-bid-to-stay-licensed-in-florida/>.

¹⁰ School-wide email to ASA students (Nov. 16, 2022).

¹¹ School-wide email to ASA students (Nov. 23, 2022).

Urgent Need for Information on Closed School Discharge and Teach Outs:

As ASA has not yet closed, there is obviously no school closure date, and ASA students are not currently eligible for closed school discharge. As a result, ASA students (and those of us advising them) are stuck in limbo, unable to determine when and if ASA students will be required to repay their federal loans. In the meantime, ASA students are being steered by ASA toward teach-out programs at other for-profit schools with serious consumer protection problems; for example, ASA’s website and school-wide email state that current teach-out partners include Berkeley College, which was sued by the New York City Department of Consumer and Worker Protection for false advertising.¹² To the best of our understanding, the only message that ASA students have been provided about closed school discharge is the boilerplate statement that “It is possible to have your student debt discharged (or canceled) or reduced, but only under certain specific circumstances, including death or permanent and total disability, school closure, working as a teacher in a low-income school or in a subject-shortage area, working in the public service sector. . . .”¹³ This is plainly not sufficient to properly advise them about the real-world impact of the potential availability of closed school discharge.

ASA students need to be informed **immediately** that they will have a right to discharge all of their student loans from ASA upon a potential closure of the school. But this messaging must also clearly explain: (1) a date of attendance for which they will definitely be eligible if they were enrolled at the school on or after that point, and (2) that, under current regulations, “accept[ing] the opportunity” of a teach-out will make them ineligible for closed school discharge. As to the date, we ask the Department **now** to announce that in the event that ASA closes as a result of this loss of accreditation, the Department will apply the “exceptional circumstances” exception in 34 C.F.R. §§ 685.214(c)(1) (i)(B) and 685.214(c)(2) (i)(B), to adjust the “closure” date of ASA to be November 11, 2022 — the date ASA lost accreditation, which is specifically listed by the regulations as a basis for the exceptional circumstances exception.¹⁴ As to the teach-out programs, we think it is deeply problematic that ASA is offering the teach-out programs without explaining that, under 34 C.F.R. § 685.214(c)(2)(ii), “accept[ing] the opportunity to complete . . . the program of study or a comparable program through either an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school’s accrediting agency” will render them ineligible for closed school discharge. We ask that the Department and/or MSCHE develop communications to students that clearly explain their options.

Additionally, we ask the Department and MSCHE to closely oversee any teach out options available to students and any communication about them to students. Already, we have heard numerous complaints from students about the teach outs, including that the schools are pressuring students to enroll quickly and that they will not confirm whether any ASA credits will transfer until the students actually enroll.

¹² See *Department Of Consumer Affairs Files Charges Against Berkeley College For Deceptive And Predatory Practices*, available at <https://www.nyc.gov/site/dca/media/pr101918-DCA-Berkeley-Investigation.page>.

¹³ School-wide email to ASA students (Nov. 16, 2022).

¹⁴ While we believe that the Department to go further, and that this date should be October 28, 2021 (the first time MSCHE put ASA on negative accreditation status, in the wake of highly-publicized sexual assault allegations), we believe that extending the period further could be addressed later, but that ASA students need some certainty now.

Current Federal Aid, Withdrawal, and Return to Title IV Issues:

The most common question we receive from ASA students are whether they should withdraw now and try to transfer to another school. This is particularly important to them because ASA's current semester is running from October 24th, 2022- February 23rd, 2023, which is not aligned with traditional academic calendars. Many students have, understandably, sought transfer options that would begin with the start of the typical academic semester in January—including through the teach out partners proposed by ASA.¹⁵ ASA has strongly encouraged students not to leave the school, telling them that “by dropping out now you are going to lose the credits you might have earned this semester transferable to other colleges since ASA has a regional accreditation” and “if you withdraw now, you will still be liable for the whole semester tuition and fees.”¹⁶ The school also said that “students who have balances will be responsible to pay them to a third party,” suggesting that ASA intends to either sell student accounts or employ a third-party debt collector.¹⁷

Multiple students have indicated that they have not yet received any federal loan disbursement credited to their account for the current semester, even though they are in the sixth week of classes. Moreover, ASA has told students that if they withdraw, they will be responsible to pay out of pocket for the full cost of the semester and cannot receive federal aid for any of it, even the semesters they already completed. This appears not to follow Return to Title IV rules. Many ASA students are likely to withdraw and face credit balances due to ASA's articulated policy and the Return to Title IV rules, so it is extremely important that the Department ensure that ASA is accurately calculating account balances and accurately informing students about the availability of federal aid for the current semester.

Further, ASA students have reported new, unexplained charges on their accounts, including fees for labs, activities, and IDs, and insurance that they do not understand, which were almost a month after the semester started, and after the announced loss of accreditation. We understand that these may be outside the Department's purview, but we ask for assistance from regulators in ensuring that ASA charges and pursues only lawful payments from its students.

Myriad Other Issues Raised by ASA Students:

ASA students have sought help from NYLAG with numerous other issues presented by the school's loss of accreditation. Students need assistance from the Department, MSCHE, and City and State regulators to help resolve their many problems, including those listed below:

Lack of Communication with Students: Students have reported that they are unable to reach anyone at ASA to answer their questions by phone or at the designated email address. Students need accurate information from the school and individuals to be responsive to their inquiries.

Recent deceptive recruitment tactics: Students reported deceptive recruitment tactics by ASA as recently as this semester. One student, new to ASA just last month, was falsely told that she would have her full tuition covered by grants, and it was not until speaking with NYLAG

¹⁵ This is another reason why we ask the Department to move urgently to set a date certain for closed school discharge eligibility: students should be able to withdraw from ASA now without jeopardizing their potential entitlement to closed school discharge, should the school close as a result of the loss of accreditation.

¹⁶ School-wide email to ASA students (Nov. 23, 2022).

¹⁷ School-wide email to ASA students (Nov. 16, 2022).

that she learned that her financial aid package included federal loans. Another student who enrolled in October 2022 enrolled to attend the Manhattan campus, and was not told that it had shut down, or about ASA's precarious accreditation status. A third reported to us that the ASA financial aid office helped her obtain student loans and told her that she would not have to pay them back at all because of the Biden-Harris loan forgiveness.

Immigration Status for Students on Visas: Many ASA students are in the United States on F-1 visas. ASA specifically targeted these students for enrollment, including by offering false promises of certain avenues to lawful status after graduation.¹⁸ These students are desperate for information on how to maintain lawful status and how they may be able to continue studying in the United States. We worry that they are particularly vulnerable to predatory actors.

ATB Students: ASA enrolled a number of students without high school diplomas or GEDs, including enrolling new students as recently as a few weeks ago, presumably through a purported ability to benefit program. We have previously raised, and continue to maintain, serious doubts that ASA's program meets the statutory and regulatory requirements for an Eligible Career Pathway Program to qualify for ability to benefit, and believe that these students have particular concerns that need to be addressed, including the lack of availability of transfer programs and potential loan discharge availability.

Access to Student Records: Based on our prior experience, we are very concerned that ASA students will be unable to access their records in the event of a school closure. Now, students can access their records for a fee from a third-party company. We ask the Department and MSCHE to require ASA to provide free transcripts to students given the uncertainty surrounding the loss of accreditation.

Withholding of Certificates and Access to Classes for Unpaid Balances: We have heard that ASA is withholding former students' certificates (the equivalent of their diplomas, for certificate programs) due to a purported outstanding balance. Likewise, for current students, we have heard that ASA is threatening to shut the students out of the online software system they would need to participate in classes.

Not Getting Promised Payments from ASA: ASA made various promises to students of free money, including widely publicized ads of \$4,000-\$8,000 gift upon graduation,¹⁹ and a promise of a \$1,000 for each semester of attendance. It seems obvious that these were false promises meant to lure students to attend, and keep attending, ASA. But students who relied on them now want their money, and have been unable to get it from ASA.

These are just the issues that have by raised to us by ASA students within the first three weeks of the announced loss of accreditation. We expect many more to come to our attention in the future. NYLAG seeks to work together with the Department, MSCHE, City and State regulators, and other interested parties (including our partners at The Century Foundation, who are particularly interested in information regarding ASA's Florida campus) to ensure that ASA students receive the help that they need.

¹⁸ *Department of Consumer and Worker Protection Settles With ASA College for Deceptive Advertising Targeting Immigrants and Other Vulnerable New Yorkers* (Oct. 3, 2022), available at <https://www.nyc.gov/site/dca/media/pr100322-DCWP-Settles-With-ASA-College-for-Deceptive-Advertising.page>.

¹⁹ *Id.*

Specifically we ask that the Department now: (1) provide to ASA students, or require ASA to provide, accurate information about potential closed school discharge that takes into account the complications regarding the potential closure date and teach outs; (2) commit that, at a minimum, students enrolled at ASA after November 11, 2022 will be eligible for closed school discharge if ASA closes due to the loss of accreditation; (3) investigate whether federal aid for the current ASA semester is being lawfully disbursed and Return to Title IV rules are being followed; (4) ensure that only accurate information regarding teach out programs is being provided to ASA students; (5) require ASA to provide free transcripts to current and former students; and (6) schedule a meeting with us to address these and other concerns raised by ASA students.

We hope to meet with you as soon as possible to help address ASA students' urgent concerns.

Sincerely,



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