STUDENT DEFENSE
NATIONAL STUDENT LEGAL DEFENSE NETWORK

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**TESTIMONY OF DANIEL A. ZIBEL**
**Testimony to the Ohio House of Representatives Education Committee**
**House Bill 96**
**March 4, 2025**

Thank you for the opportunity to provide testimony regarding H.B. 96. I am the Vice President and Chief Counsel of Student Defense, a non-partisan, 501(c)(3) non-profit organization that works, through litigation and advocacy, to advance students' rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. I am pleased to provide our organization's support for, and technical suggestions regarding, important aspects of the legislation designed to protect students enrolled in higher education across the state of Ohio.

**Sec. 1713.032: Online Program Managers**

Student Defense supports efforts to increase access to affordable, accessible, and high-quality postsecondary programs. Unfortunately, we are concerned by a growing trend of established universities outsourcing online educational programs to for-profit companies (known as an "Online Program Managers" or "OPMs") without telling their students that they are doing so. Those universities and companies use the universities' well-known reputations and brands to induce students to enroll in the programs and pay high tuition fees, while concealing the dominant role of the for-profit companies in operating the programs. According to *The New York Times*, at least 600 colleges and universities have used OPMs to increase online postsecondary offerings, with little oversight or regulation.[1] According to the U.S. Government Accountability Office, about 90 percent of colleges using OPMs were public and private non-profit institutions.[2] Since 2023, our organization has been representing a putative class of online students (including some based in Ohio) who enrolled in a program offered by Caltech, without knowing that all educational components of the program, including its teachers and curriculum, were developed and provided by a for-profit company that was partnering with Caltech.[3]

We strongly support the policies embodied in proposed section 1713.032 to increase oversight of the use of unregulated OPMs. We are particularly supportive of the provisions that will provide the Chancellor of Education with the tools necessary to ensure that OPMs are meeting the academic standards that citizens of Ohio deserve. We are also pleased with the inclusion of a requirement that institutions that enter into a contractual agreement with an OPM must "notify students" of key components of the contractual relationship, including which parties are "providing instruction, recruitment, and other services under the agreement."

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[1] Alan Blinder, *Students Paid Thousands for a Caltech Bootcamp. Caltech didn't teach it.*, N.Y. Times (Sept. 29, 2024), https://www.nytimes.com/2024/09/29/us/caltech-simplilearn-class-students.html.
[2] U.S. Gov't Accountability Off., GAO-22-104463, Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers ("GAO Report"), at 12 (Apr. 2022), https://www.gao.gov/assets/gao-22-104463.pdf.
[3] *See generally* National Student Legal Defense Network, *Lopez v. Caltech*, https://defendstudents.org/cases/lopez-v-caltech (last visited March 3, 2025).

In addition to our broad support for the policies, we offer suggestions for technical amendments and improvement.

1. **Prohibiting the use of Incentive-Based Compensation by OPMs engaged in recruiting.** Many OPMs are compensated through a "tuition-share" or "revenue-share" arrangement, whereby an OPM (which conducts both recruitment and educational activities for the institution) is compensated based on its success in securing enrollments. In 2022, the U.S. Government Accountability Office issued a report revealing that most OPMs received between 41-60% of each enrolled students' tuition.[4]

The concern with recruitment-based compensation is that OPMs will be financially incentivized to enroll students who are unlikely to succeed. Such a financial incentive is both perverse and unnecessary, as institutions have many options for securing necessary services without using a revenue-share arrangement. For example, OPMs can operate on a fee-for-services or fee-for-time, rather than fee-per-customer model (as some already do).[5]

We encourage the Committee to consider banning the payment of incentive-based compensation to OPMs, as other states already do. In 2024, Minnesota passed a law prohibiting colleges and universities from "tuition sharing" with OPMs, meaning that OPMs cannot be compensated "based on a percentage of revenue or fees collected" from the OPM-managed programs. *See* Minn. Stat. Ann. § 135A.195 (eff. July 1, 2024). Likewise, since 2011, Maryland has prohibited institutions from paying any "person or entity engaged in student recruitment or admission activity" an amount "based on success in securing enrollments or the award of financial aid." Md. Educ. Code Ann. § 11-402.1. The concept is simple: individuals and companies who are providing recruitment and enrollment services should not be financially incentivized to enroll as many students as possible, irrespective of student needs or the prospect for student success. The approaches taken by both Minnesota and Maryland are strong, and we are available to assist with including similar policies in the proposed legislation.

2. **Enhance the notification requirement to require a student acknowledgment.** As noted above, the legislation requires institutions using OPM-based programs to "notify students which parties are providing instruction, recruitment, and other services under the agreement." Although this provision is a strong first step towards ensuring students have the information necessary to make an informed decision, we are concerned that any notice provided pursuant to this requirement could be buried in small print or institutional disclosures. For this reason, we suggest that institutions be required to obtain and retain a written acknowledgment from each student enrolling in an OPM-run program, to establish that the student was informed of the role of the OPM.

**<u>Sec. 1713.033: Student Records</u>**

For years, Student Defense has advocated to protect students from the harms of abrupt college closures. In addition to our policy and advocacy work, we have also represented former students of

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[4] GAO Report at 15.
[5] *Id.*

schools owned by the Dream Center, including the Art Institutes and Argosy University, in several legal proceedings, including in Ohio. These schools, which closed in late 2018 and early 2019, enrolled over 10,000 students whose lives were disrupted by an abrupt closure. Our clients include former graduate students from Argosy University who had clinical and academic records destroyed when the school vacated its leased office space, and who faced great difficulties trying to reestablish the necessary documentation for professional licensing and continuing their careers. We have also heard from countless students who had great difficulties in accessing transcripts after a college closure, students who received transcripts filled with errors or on plain paper (and without any indication of legitimacy or veracity), and who have generally struggled to transfer to new schools due to the disorderly nature of a shutdown.

The proposed legislation takes numerous steps to protect against the types of harms that our clients have experienced. For example, the bill requires every institution with a certificate of authorization to certify to Ohio's Chancellor of Education a plan to preserve records indefinitely if the institution was to cease operations. We are particularly supportive of giving the Chancellor authority to require an institution to produce an executed agreement with a designated custodian, that is "paid in full" to ensure that the custodian has the capacity and resources to ensure the implementation of the institution's plan. We also strongly support requirements for institutions to digitize student records—including, but not limited to, transcripts—in manners that would prevent situations where records at closing institutions like Argosy are lost or destroyed.

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