Higher Education: The Legal Framework

I. The University of the State of New York

- **New York State Constitution, Article XI, §2**: Continues The University of the State of New York (“USNY”) as a corporation governed by the Board of Regents (“BOR”); specifies that the Legislature may increase, modify, or diminish the BOR’s powers.

- **Education Law §214**: USNY includes all institutions of higher education incorporated in New York State, all secondary institutions, and such other institutions as admitted by the BOR.

II. Incorporation and Governance

- **Education Law §216 and 8 NYCRR §3.20**: Authorizes the BOR to charter (incorporate) colleges and universities.

- **Education Law §219**: Authorizes the BOR to revoke charters it issues.

- **Education Law §226(4) and 8 NYCRR §3.31**: Authorizes the BOR to remove trustees of a corporation it charters for misconduct, incapacity, neglect of duty and/or failure or refusal of the institution to carry into effect its educational purposes.

- **Education Law §216 and 8 NYCRR §3.26**: The Commissioner of Education (“Commissioner”) may consent to the formation of for-profit institutions of higher education and to the amendment of certificates of incorporation of corporations so formed.

III. Degree Authority

- **Education Law §218 and 8 NYCRR §3.46**: No institution in this State shall confer any degree unless so authorized by its charter or by authorization of the BOR. The BOR is authorized to determine whether an institution has adequate financial resources to carry out its educational programs prior to awarding the power to confer degrees.

- **8 NYCRR 3.50**: Lists degree titles available to be awarded by institutions of higher education.

- **8 NYCRR 3.47**: Sets requirements for the award of earned degrees, identifies the recognized equivalents to completion of a four-year high school course of study, classifies degree titles listed in 8 NYCRR 3.50 by level and type.
- **Education Law §224(1)(a) and 8 NYCRR §3.29:** Use of the terms “college” and “university” are generally restricted to institutions chartered by the BOR or the Legislature. The Commissioner may consent to the use of the terms for for-profit institutions provided certain requirements are met. N.b. Section 224(1) also prohibits operation by out-of-state higher education institutions in New York without permission of the BOR as well as the operation in the State of “degree mills.”

- **Education Law §224(1)(b) and 8 NYCRR §3.58:** A for-profit institution may not through a change or ownership or control, convey, assign or transfer degree-conferring authority without the consent of the BOR. The BOR may grant for-profit institutions provisional and permanent authority to confer degrees.

- **Education Law §§208, 217 and 8 NYCRR §3.22:** The BOR may confer degrees upon students of a not-for-profit institution during the period which the institution operates under a provisional charter and/or upon closure of such institution.

- **Education Law §§355(2)(f) and 6206(8):** Authorize the Board of Trustees of the State University of New York (“SUNY”) and The City University of New York (“CUNY”), respectively, to award degrees the respective SUNY institutions were authorized to award upon establishment of SUNY or, in the case of CUNY, in 1926, and such additional degrees as the BOR may authorize them to award.

### IV. Registration

#### A. Statutes and Caselaw

- **Education Law §210:** Empowers the BOR to register domestic and foreign institutions if they meet New York standards.

  The New York Court of Appeals in *Moore v. Board of Regents*, 44 NY2d 593 (1978), held that this implicitly includes the power to register particular programs and courses of study, not just institutions.

- **Education Law §215:** Empowers the BOR to visit, examine, inspect and require reports of any USNY institution, and to suspend the charter of institutions for refusal/failure to make such reports.

- **Education Law §305:** Empowers the Commissioner to supervise courses for the training of teachers.

- **Education Law §6506(2):** Directs the BOR to establish the educational requirements for licensure in the professions regulated by the BOR pursuant to Title VIII of the Education Law.
Education Law Articles 131 – 166: Include provisions relating to each licensed professions exempting from the requirement for licensure for students enrolled in programs approved by the Commissioner. These programs are approved by registration under 8 NYCRR Part 52.

B. Regents Rules and Commissioner’s Regulations

- **8 NYCRR §13.1**: Gives the Commissioner the power to establish regulations governing the registration of courses of study.

- **8 NYCRR §13.2**: After notice and opportunity to be heard, the Commissioner may rescind registration of any institution which fails to (1) maintain approved standards of equipment and instruction; (2) possess adequate resources; or (3) make the reports required by the Department.

- **8 NYCRR §50.1 and Parts 52 and 54**: Contain definitions and standards for registration of undergraduate and graduate curricula. Specifically, §52.2 prescribes the general requirements with respect to resources, faculty, curricula and awards, admissions and administration. Sections 52.3 – 52.21 prescribe additional requirements for programs leading to licensure in specific professions licensed by the BOR pursuant to Title VIII of the Education Law and for programs preparing candidates for teacher certification. Sections 52.23 and 52.24 set forth the procedures on denial of registration. Part 54 addresses off-campus instruction.

V. Master Planning Function

- **Education Law §237 and L.1995 c.82**: Requires the BOR to create a detailed Statewide Plan for Higher Education that (a) defines and differentiates the missions and objectives of higher education; (b) identifies the needs, problems and interests that programs in higher education must address; (c) defines and differentiates the missions and objectives of institutions of higher education; (d) meets the needs and solves the problems, affects the conditions and respond to the public’s interests; (e) optimizes the use of resources; and (f) evaluates program effectiveness. It requires that the Statewide Plan incorporate the long-range plans of SUNY and CUNY, adopted pursuant to §§354(2) and 6206(3)(b), to the extent the BOR approves them, and include the plans of independent institutions (which are not subject to approval).

- **Education Law §§354(2) and 6206(3)(b)**: Authorize the BOR to review and approve/disapprove the proposed long-range plans submitted by CUNY and SUNY and any revision thereof by incorporating them into the Statewide Plan.

N.b. Generally, Article 8 of the Education Law provides that actions of the SUNY Board of Trustees shall be in accordance with the plan adopted pursuant to §354.
VI. Chairs in the Sciences and the Humanities

- **Education Law §239**: Establishes Albert Einstein chairs in the sciences and Albert Schweitzer chairs in the humanities to be awarded by the BOR by contract with higher education institutions and scholars.

VII. Student Financial Aid

- **Education Law §602 and 8 NYCRR Subparts 145-1 and 145-2**: Prescribes the duties of the Commissioner in the administration of the Tuition Assistance Program (TAP) and other State student aid programs and implements the requirement that the Commissioner promulgate certain regulations.

- **Education Law §603**: Requires the BOR to report annually to the Governor and the Legislature on its evaluation of State student financial aid programs.

- **Education Law §607 and 8 NYCRR Part 53**: Requires that higher education institutions include in catalogs information on institutional and financial aid for students.

- **Education Law §612 and 8 NYCRR §55.3**: Establishes the Liberty Partnership Grant Program of aid administered by the Commissioner to higher education institutions or consortia to provide support services to students in public and non-public schools who have a high risk of dropping out.

- **Education Law §661(4), as added by L.2007 c.57, and 8 NYCRR 145-2.15**: Requires the BOR to identify acceptable federally approved Ability-to-Benefit tests for purposes of determining eligibility for State student financial aid of applicants who do not have a U.S. high school diploma and acceptable passing scores on such tests, and requires the Commissioner to define independent administration of such tests.

VIII. Non-Degree Schools

- **Education Law §5001 and NYCRR §126.10 and NYCRR §126.13**: Requires any private school which charges tuition, unless exempt under this Section, must be licensed as a non-degree proprietary school.

- **Education Law §5001(4)(f) and NYCRR §§126.1 and 126.10**: Provides alternative licensing procedures for non-publicly funded, for-profit ESL schools.

- **Education Law §5001 and NYCRR §126.10**: Annual financial statements on which to base tuition assessment are required, as are annual reports on enrollment, completion, and placement for non-degree proprietary schools.
- **Education Law §5001 and NYCRR §126.10**: Provides for schedule of application and renewal fees to fund the proprietary school supervision account for supervision and regulation and the Tuition Reimbursement Account (“TRA”) for student protection.

- **Education Law §5002 and NYCRR §§126.4, 126.5, 126.6, 126.7, 126.8, and 126.9**: Defines standards for non-degree proprietary schools for facilities and equipment, admissions requirements including ability-to-benefit students, curriculum approval, teaching and management qualifications and licensure, elements of enrollment agreements and catalogs, financial viability, recordkeeping, institutional access, refund policies and tuition liability, and director responsibilities.

- **Education Law §5003 and NYCRR §126.14**: Defines for non-degree proprietary schools the parameters for administrative hearings, civil and criminal penalties and sanctions, levying of fines, suspension of license, referrals to the attorney general, and the student’s private right of action.

- **Education Law §5004 and NYCRR §126.12**: Specifies for non-degree proprietary schools the requirements for soliciting or enrolling students, along with a schedule for limited commission payments.

- **Education Law §5005 and NYCRR §126.15**: Requires non-degree proprietary schools to provide specific student disclosure in the student’s native language, including school information and student obligation.

- **Education Law §5006 and NYCRR §126.16**: Provides for teach outs for non-degree proprietary schools that have closed to protect students unable to complete their programs.

- **Education Law §5007 and NYCRR §126.17**: Defines for non-degree proprietary schools the provisions for student complaints, refund eligibility, and for the management of the TRA.

- **Education Law §5008**: In the presence of a pattern of non-compliance for non-degree proprietary schools, the Commissioner may require the establishment of a trust account to protect the financial interests of the students and the TRA.

- **Education Law §5009 and NYCRR §126.11**: Requires for the maintenance and distribution by the Commissioner of closed non-degree proprietary school records for a period of 20 years post closure.

- **Education Law §5010**: Defines for non-degree proprietary schools the composition and appointments of the Council members, along with the purpose of the Council.
IX. Aid for Independent Institutions of Higher Education

- **Education Law §6401 and 8 NYCRR §§3.54, 13.10 and 150.1 – 150.2**: Establishes a program of grants administered by the Commissioner to independent higher education meeting constitutional eligibility and academic requirements in support of the operation of such institutions, apportioned on the basis of earned degrees awarded ("Bundy Aid").

- **Education Law §6402 and §6403 and 8 NYCRR §150.3**: Establishes a program administered by the Commissioner of grants to independent institutions operating schools of medicine or dentistry meeting constitutional eligibility and academic requirements, apportioned on the basis of capitation.

- **Education Law §6405 and 8 NYCRR Subpart 145-5**: Establishes a program administered by the Commissioner for reimbursement to independent higher education institutions meeting constitutional eligibility and academic requirements that participate in the federal Work-Study Program (20 U.S.C.A. §1001 et seq.) of a portion of their required institutional match of federal aid received.

X. Regulation by Colleges of Conduct on Campus

- **Education Law §6430**: Requires every higher education institution that has a campus to adopt rules for the maintenance of public order on campus and to file its rules with the Commissioner.

XI. Opportunity for Higher Education

- **Education Law §6451 and 8 NYCRR Subparts 27-1 and 152-1**: Establishes a program of contracts between the Commissioner and independent higher education institutions for the enrollment and support of educationally and economically disadvantaged students.

- **Education Law §6452 and 8 NYCRR Subpart 27-2 and §152-2.1**: Establishes similar programs at SUNY and CUNY subject to review by the BOR.

- **Education Law §6455**: Establishes the Collegiate Science and Technology Entry Program (CSTEP) of grants by the Commissioner to higher education institutions or consortia thereof to increase access by minority or disadvantaged students to programs preparing for licensure in a profession regulated by the BOR under Title VIII of the Education Law or for employment in scientific and technical fields.

XII. Student Lending Accountability and Enforcement (SLATE)

- **Education Law article 13-B, as added by L.2007 c.41**: Regulates relationships of higher education institutions and certain of their employees with student-loan making entities. Requires administration, investigation, and enforcement by the
Commissioner, including promulgation of regulations. Went into effect on November 30, 2007.

XIII. Accreditation

- **8 NYCRR Subpart 4-1**: The BOR has been recognized by the U.S. Department of Education as a national accrediting agency for purposes of federal financial aid (under 34 CFR Part 600). The standards for institutional accreditation are set forth in subpart 4-1.

- **8 NYCRR Subpart 4-2**: Authorizes the BOR to accredit teacher education programs in accordance with the standards set forth in subpart 4-2.

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