



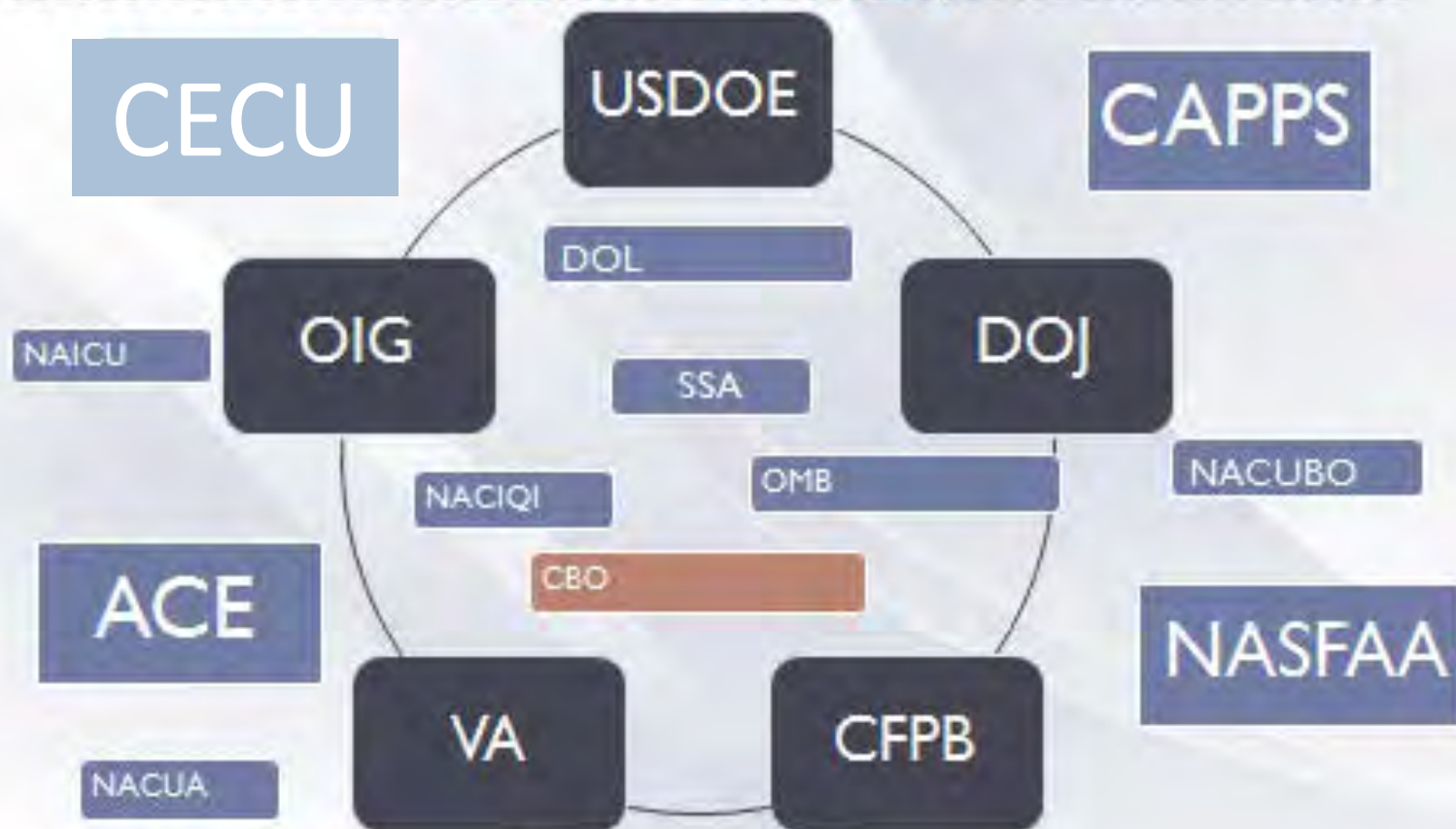
DRAINING THE SWAMP?

**CAPPS 2017 Legislative Policy Conference
March 28, 2017
Sacramento, CA**

Presented by:

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Washington Merry-Go-Round – Alphabet Soup



U.S. DEPARTMENT OF EDUCATION IN A STATE OF FLUX AND TRANSITION

- **Key Appointments Still Pending --**
 - **Under Secretary**
 - **Deputy Under Secretary?**
 - **Assistant Secretary?**
 - **General Counsel**
- **“Acting” Officials in Leadership Roles**
- **Scrutiny from Media and Hill**
- **Postsecondary Hires Scrutinized**

U.S. DEPARTMENT OF EDUCATION IN A STATE OF FLUX AND TRANSITION

- **Incoming: Task Force on Higher Education Reform to be Chaired by Jerry Falwell, Jr. of Liberty U.**
- **Fate of Obama Crackdown Initiatives?**
 - **Inter-Agency Task Force (FTC, SEC, VA, DOD, USDE, CFPB)**
 - **New Student Aid Enforcement Unit – Attorneys Hired, But What Next?**

U.S. DEPARTMENT OF EDUCATION IN A STATE OF FLUX AND TRANSITION

Query – Fate of Current Activities:

- **Ongoing Enforcement Activities**
- **Accreditation Initiatives on Transparency, Outcomes, and Coordination Among Agencies**
- **Defense to Repayment and GE: Still on the Books - But Do These Rules Have Future Uncertain Futures?**

CONSUMER FINANCE PROTECTION BOARD – LEADERSHIP AND FUTURE UNCERTAIN AND HOTLY DEBATED

CFPB:

**Enforcement Actions Against Lenders
(Discover, Wells Fargo) and Schools
(Corinthian, Bridgepoint, ITT)**

Even Subpoenaed ACICS!

New Administration Position in Court:

**CFPB Structure Unconstitutional,
Director Cordray Must Be “At Will”**

Legislative Landscape: 115th Congress vs. 114th Congress

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Senate:

- 2017 – 115th Congress – 52 Repubs/46 Dems/2 I's
- 2016 – 114th Congress – 54 Repubs/44 Dems/2 I's

House:

- 2017 – 115th Congress – 237 Repubs/193 Dems
- 2016 – 114th Congress – 246 Repubs/187 Dems

Senate HELP Committee:

- 2017 – 115th Congress – 12 Repubs/ 11 Dems
- 2016 – 114th Congress – 12 Repubs/10 Dems

House Education & Workforce Committee:

- 2017 – 115th Congress – 22 Repubs/17 Dems
- 2016 – 114th Congress – 22 Repubs/16 Dems

Key Legislators in Education

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Senate Help Committee

- Lamar Alexander, Chair (R-TN)
- Patty Murray, Ranking (D-WA)

House Ed & Workforce

- Virginia Foxx, Chair (R-NC)
- Bobby Scott, Ranking (D, VA)
- Duncan Hunter (R-CA-52) (San Diego County)
- Susan Davis (D-CA-53) (San Diego County)
- Mark Takano (D-CA-41) (Western Riverside County)
- Mark DeSaulnier (D-CA-11) (Contra Costa County)

House Ed and Workforce Dev. Sub

- Brett Guthrie, Chair (R-KY)
- Susan Davis Ranking (D-CA-53)
- Mark DeSaulnier (D-CA-11)
- Mark Takano (D-CA-41)

California Members of the House Committee on Education & Workforce Development

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Higher Education Legislative Landscape

California Member of Congress	Higher Ed Subcomm Member?	District	Party
Duncan Hunter	No (K-12 and Workforce Protections Subs instead)	El Cajon	R
Susan Davis	Yes	San Diego	D
Mark Takano	Yes (new)	Riverside	D
Mark DeSaulnier	Yes	Concord	D

California Senators



California Senator	HELP Member?	Comments	Party
Dianne Feinstein	No Appropriations Committee	Up for Re-Election- in 2018 - Retirement Speculation	D
Kamala Harris	No	Surprise: Did Not Sign Onto Recent Pro-GE Letter	D

Higher Education Legislative Landscape

Bipartisan Topics Being Floated in Washington:

- **Recalibrate Regulation of Colleges**
- **Rubio/Bennett : Alternative Accreditation Pathways – Bust the “Cartel” and Let In Proven Low Cost Quality Providers**
- **FAFSA Simplification**
- **Kaine/Portman “JOBS Act” Bill:**
 - **Expand Pell Grant eligibility to short-term skills and job training programs that lead to industry-based credentials**

Higher Education Legislative Landscape

Topics Being Floated by Majority:

- **Chairman Alexander: “Skin In The Game”– CDRs Exceeding 15%, Penalty On School: 5% of Outstanding Debt;**
- **Chairwoman Foxx: “Repeal Unnecessary Reporting and Address Harmful and Misguided Regs of Former Administration”**
- **Chairman Guthrie: Enhance FA Counseling, Streamline Aid Into 1 Grant Program, 1 Loan Program, and 1 Work Study Program.**

Fiscal Year 2018 Trump “America First” Budget

“Skinny Budget” Calls For-

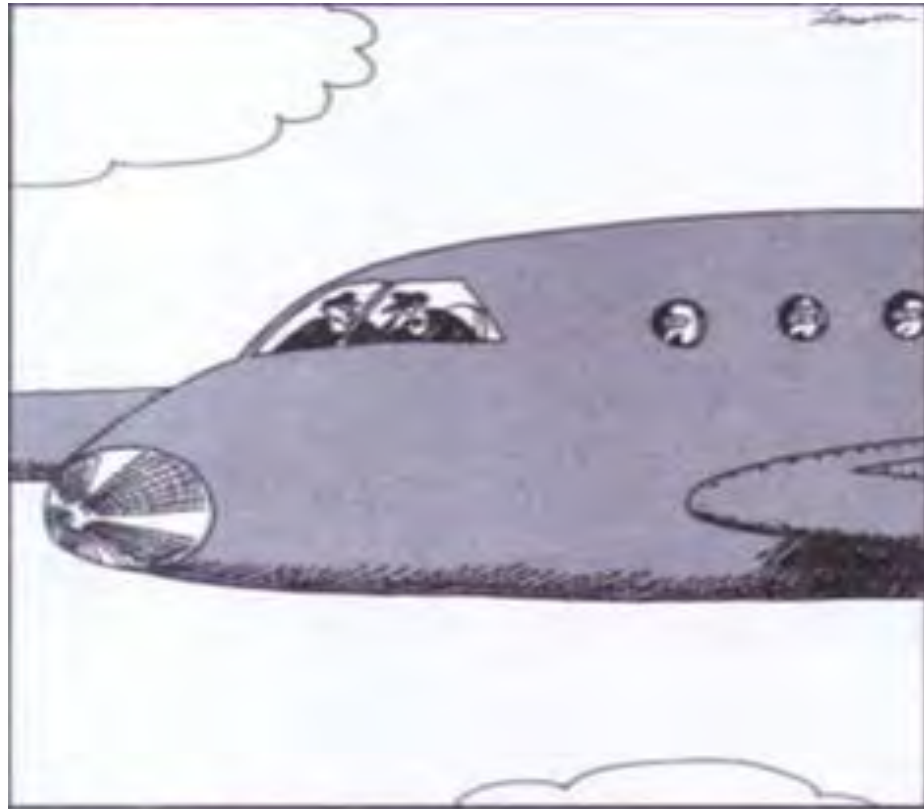
- **Overall 13% Cut in USDOE Funding, Mostly From Higher Ed Aid Programs;**
- **Elimination of SEOG;**
- **Drastic Cuts to Federal Work Study;**
- **Preserves Current Pell Funding, But Max Annual Pell (Currently \$5,920) Uncertain, and Depletes Pell Reserve by \$3.9 Billion;**

Fiscal Year 2018 Trump “America First” Budget

Higher Ed Reactions to the “Skinny Budget” (would affect 2018-19 year)-

- **Hartle at ACE: “This is a budget that beats plowshares into swords”**
- **Rep. Virginia Foxx: Trump delivering on “getting our nation’s fiscal house in order.”**
- **Sen. Lamar Alexander: To beat budget deficit, cut entitlements not discretionary.**
- **NASFAA: Future Pell shortfalls?**

What a difference a year makes



**“The fuel light’s on, Frank! We’re all going to die! ...
Wait, wait, ... Oh, my mistake—
that’s the intercom light.”**

But Private Career Schools Aren't Out Of the Woods

- **Uncertainty about what to expect from the Trump Administration & the 115th Congress**
- **Trends among accreditors and on the state level are unlikely to quickly change course**
- **Effects of recent negative developments and closures linger in the public consciousness**

Things To Keep Your Eye On (Until Further Notice...)

- **Gainful Employment**
- **Accreditation Developments**
- **Significant Audit Changes**
- **Defense to Repayment**
- **Thoughts on Reauthorization**

Accreditation Update

- **Accreditation Landscape Has Been Changing – the loss of recognition of ACICS has accelerated the pace of change.**
 - **Department's and Congressional agenda: Outcomes & Enforcement driven**
 - **Establishment of Accreditor Dashboards**
 - **ACICS decision sends a message**

Accreditation Developments

NACCAS

- **Revised Policy VII.03 (12/21/2016) Phases in requirement that school's audited financial statements demonstrate cash reserves of at least 3% of Net Revenue.**
 - **FYE between 7/1/2017 and 6/30/2017 = 1%**
 - **FYE between 7/1/2018 and 6/30/2019 = 2%**
 - **FYE between 7/1/2019 and 6/30/2020 = 3%**
 - **Must maintain average reserve balance described above (a) for 90 period prior to FYE; (b) for at least 9 months of the fiscal year**

Accreditation Developments

NACCAS

- **11/22/2016 Accreditation Handbook Revision – Section 3.9 Exit Interview**

Section 3.9 Exit Interview

At the conclusion of a scheduled visit, the team shall hold an exit interview with the school's chief executive officer, manager, and/or any other staff the school's chief executive officer wishes to have present. During this interview, the team shall present the strengths and limitations of the school in relation to each of the NACCAS Standards as described in the Visit Report. ~~The administration of the school shall then have the opportunity to present documentation to support that a limitation should not be cited or to provide evidence that a certain Standard and Criterion is being met by the institution. If the school's documentation is found to be appropriate, the limitation cited will be removed and not included in the Visit Report.~~

Accreditation Developments

ACICS

- **Loss of Recognition Effective 12/12/16**
- **Institutions placed on Provisional Approval**
- **Ongoing obligations to update DOE on transition to another accreditor**
- **Approval for “Major Changes”**
- **Ongoing reporting obligation: litigation/investigations**
- **SEVP/Homeland Security Development for ACICS schools**

Accreditation Developments

ACICS

- **Triggering Events**
 - **Closure**
 - **90-day milestone (3/12/17)**
 - **In process application**
 - **180-day milestone (6/11/17)**
 - **In process application**
 - **300-day milestone (10/8/17)**
 - **Site visit**

Accreditation Developments

ACCSC

- **7/1/2016 Republication of the *Standards of Accreditation***
 - **for programs that require programmatic accreditation as a condition for employment or licensure, such programmatic accreditation must be obtained within 4 years of Commission's Approval**

Accreditation Developments

ACCSC

- **7/1/2016 Republication of the *Standards of Accreditation***
 - **Faculty qualifications for Gen Ed courses:**
 - **Courses for credit toward a degree/non-degree program that articulates to degree programs must be taught by instructor with a master's degree with appropriate academic coursework and preparation in the subject area(s). Other non-degree courses require at least a bachelor's and appropriate academic coursework and preparation.**

Accreditation Developments

ACCSC

- **1/13/2017 Call For Comment proposes to modify change of ownership standards**

ACCSC Call for Comment

January 13, 2017

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The Commission will not approve a change of ownership transaction which would allow for an individual/entity/group (owner or manager) that would have any financial interest in the non-profit organization to be a board member, have a Board seat, or be a member of the organization.

Section I (A)(1)(b) Substantive Standards, Standards of Accreditation

A. Management and Administrative Capacity

1. The school must have adequate management and administrative capacity in place that includes:
 - b. Owners, **board members**,¹ members of school management, and administrative employees who are qualified for their particular roles and who possess the appropriate education, training, and experience commensurate with the level of their responsibilities;

Electronic Announcement #105



January 30 2017 Notice on Regulatory Delays at ED

- **Topic: New ED Rules Not Yet In Effect**
- **BDR Not Addressed But Notice States, “This is the first of several regulatory actions the Department intends to take regarding regulations that have ... not taken effect as of January 20, including ...Borrower Defense.”**
- **More To Come? Sure Sounds Like It.**

GE EE #105

- **New date to file alt. earnings appeals:
July 1, 2017.**
 - **Timely notice of intent to appeal was timely filed.**
- **GE Disclosure Template update now due July 1, 2017**

GE EE #105

We are announcing that the Department is allowing additional time, until **July 1, 2017**, for institutions to (1) submit an alternative earnings appeal to the GE Debt-to-Earnings rates that were released by the Department on January 9, 2017, and (2) comply with the GE program disclosure requirements as noted in Gainful Employment Electronic Announcement #103, published on January 19, 2017. This action is taken to allow the Department to further review the GE regulations and their implementation.

- More to Come?

Gainful Employment

- **Final Rates Released 1/16/2017**
 - **Rates released for 8,637 GE programs**
 - **6,595 programs (76.3%) are passing**
 - (annual loan payment < 8% of annual earnings or 20% of discretionary earnings.)
 - **1,239 programs (14.3%) are “in the zone”**
 - (annual loan payment between 8% and 12% of annual earnings or between 20% and 30% of discretionary earnings)

Gainful Employment

- **Final Rates Released 1/16/2017**
 - **Rates released for 8,637 GE programs**
 - **803 programs (9.2%) are failing**
 - **(annual loan payment < 12% annual earnings or 30% of discretionary earnings.)**

GE Disclosures

- **Enhanced Dissemination**
 - **Starting with release of 2017 template**
 - **Distribute to prospective students prior to enrollment, registration or financial commitment**
 - **Hand delivery (individually or in group meeting)**
 - **Email to primary email (with read receipt)**
 - **Use alternate email address or method if your email bounces back**
 - **Keep records to document delivery**

GE Disclosures

- **GE Warnings: Schools are Not Required to update 2016 template to comply with warnings until following the release of the 2017 template (60 days)**
- **New Items:**
 - **GE program status**
 - **Median earnings for graduates**
 - **If State licensure requirements are met:**
 - **Within the School's MSA**
 - **In any other states the School is aware of**

GE Disclosures

- **GE Electronic Announcement #99**
 - **Template delayed**
 - **No need to update 2016 template until release of 2017 template**
 - **60 days to comply upon release of 2017 template**
- **Reminder: link to any web page containing academic, cost, FA, or admissions information about a GE program**

Nonprofit Status

- **Some school owners in recent years have transferred assets or merged with tax-exempt non-profit organizations for reasons related to estate planning, educational policy advancement, and general philanthropic commitments.**
- **The former Secretary of Education expressed that such transactions were generally disfavored and in one reported case has denied a change of ownership application.**

Nonprofit Status

The Department announced a new standard of review. Previously, the Department relied upon I.R.S. and state law decisions to determine nonprofit status. The Department now reinterprets its definition of “nonprofit” to provide a framework for analysis.

The Department regulations define a nonprofit institution as an institution that:

- (i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;
- (ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
- (iii) Is determined by the Internal Revenue Service to be an organization to which contributions are tax deductible under 26 U.S.C. §501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

New OIG Audit Guide

- **Published September 2016**
- **90-10 calculation to be provided by the School not the Auditor**
- **Sample Size – Non-w/d students: 25% with a maximum of 60 files. Schools with 25-99 students = 25 files**
- **Drop Sample: same**
- **Auditor may not provide list of students in advance**

New OIG Audit Guide

- **Expanded Student Confirmations**
 - **Enrollment/period of attendance**
 - **Receipt of T4 aid by program (Pell, DL, FWS)**
 - **Confirmation student received required consumer disclosures**
 - **Completion, grad rate, transfer-out rate**
 - **Annual Security Report**
 - **Occupations for which program prepared student**
 - **Costs of tuition, fees, books & supplies**
 - **Program's placement rate**

New OIG Audit Guide

- **Verification that disbursement dates on ledger card match dates in COD**
- **HCM1/2 Schools did not withhold T4 credit balances, and that disbursements of cb were made in advance of reimbursement**
- **Advance Pay Schools verify that cash reserves cover all T4 credit balance owing**
- **Review written authorization to hold T4 credit balances**

New OIG Audit Guide

- **Evaluate school's compliance with internal policies and procedures governing awarding, disbursement & delivery of T4**
- **Verify crimes reported in ASR by review of source documents and confirm ASR distribution/availability to students**
- **Verify accuracy of GE reporting based on sample**
- **Verify GE warnings were given timely.**

Borrower Defense To Repayment

- **Final Rule 11/1/2016, Eff. Date: 7/1/2017**
- **Broadens grounds for loan discharge**
 - **Current law limits basis to acts/omissions that constitute a violation under applicable state law**

Borrower Defense to Repayment

- **Final Rule provides basis when there is:**
 - **Favorable, contested judgement based on State or Federal law**
 - **Breach of contract**
 - **Substantial misrepresentation (34 C.F.R. Part 668, Subpart F)**

Borrower Defense to Repayment

- **Modifies Financial Responsibility Standards to create pre-emptive option for the Department, e.g., LOC, increasing existing LOC, Set-aside.**
- **An institution is deemed financially not responsible when the school's actual composite is <1.0 due to a triggering event, or if the Department recalculates it to be < 1.0 based on a triggering event**

Stanley A. Freeman



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Stanley A. Freeman joined Powers Pyles Sutter & Verville in 1994. He is the former president of the firm and founder of the firm's education practice.

Stanley counsels postsecondary educational institutions from all sectors of higher education regarding strategic issues pertaining to participation in the federal student financial assistance programs, accreditation, licensure, and related regulatory concerns. He was selected by his peers for inclusion in the 2009 - 2016 editions of The Best Lawyers in America in the specialty of Education Law.

Stanley has been actively involved in representing educational institutions for more than 20 years. In his practice, he counsels individual educational institutions, corporate investors in higher education, associations of schools and colleges, and allied educational companies on administrative, transactional, regulatory and litigation matters. He has represented numerous schools before the U.S. Department of Education and before other federal agencies, state educational oversight agencies, and accreditors on compliance matters, financial responsibility concerns, legislative issues, and investigative matters. He has also litigated cases in the state and federal courts. He spends much of his time advising clients concerning regulatory and compliance matters arising under the Higher Education Act of 1965, including program reviews, audits, substantive changes, changes in ownership and control, and other oversight matters.

Stanley has authored numerous articles on federal student financial aid issues for higher education publications and frequently speaks to gatherings of college officials and student aid administrators.

Stanley graduated with distinction from the Honors College of the University of Michigan in 1978 and earned his law degree from the Georgetown University Law Center in 1982. He is admitted to practice law in the District of Columbia, Maryland and Virginia. Stanley is a lifelong resident of the Washington area, and he and his wife Cecilia have five children.

Questions, Comments?

Peter S. Leyton



Mr. Leyton is co-founder and President of the Washington, D.C. area law firm of Ritzert & Leyton, P.C. and head of the firm's Higher Education Practice Group. Since 1980, Mr. Leyton has represented many institutions of higher education, publicly traded companies, private investment groups and others including foreign institutions with respect to resolving regulatory/compliance matters at the federal and state levels and before accrediting agencies (national, regional and programmatic) and on occasion with respect to legislative matters. His practice also includes achieving desired transactional results through mergers, acquisitions and reorganizations.

The firm's higher education practice group of eight attorneys are involved on a daily basis with matters concerning the U.S. Department of Education (DOE), national, regional and programmatic accrediting agencies, state licensing and other regulatory agencies, other third parties, and when necessary litigation. Mr. Leyton has served three two-year terms on the Association of Private Sector Colleges and Universities and predecessor board of directors and is a frequent speaker and writer on postsecondary education matters. He received his law degree from Catholic University School of Law in 1980, a master's degree in public administration from American University in 1974, and a bachelor's degree in political science from Antioch College in 1971.

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