

Via Email

March 1, 2022

Dr. Heather Perfetti
Dr. Idna Corbett
Middle States Commission on Higher Education
3624 Market Street, Suite 2 West
Philadelphia, PA 19104

Re: Concerning Advertising by ASA College

Dear Dr. Perfetti and Dr. Corbett:

We write from the New York Legal Assistance Group (NYLAG), a non-profit legal services provider in New York City. NYLAG provides free legal assistance to New Yorkers in a variety of issue areas, including federal student loan debt. We are writing to direct your attention to new and concerning advertisements for ASA College (ASA) that currently blanket many New York City subway cars, as well as similar advertisements that appear online. These ads, all from February 2022, are described in more detail below and attached as Exhibits 1-19.¹

We are aware that the MSCHE recently placed ASA “on probation” status and that ASA’s accreditation “is in jeopardy.”² MSCHE recently required ASA to report its “demonstrated adherence to all issues of ethics and integrity as outlined in the standard (Standard II),”³ which includes “honesty and truthfulness in . . . advertisements, recruiting and admissions materials and practices. . . .”⁴ Because we believe that many of ASA’s ads are, or are likely to be, misleading to prospective and current students and thus may not meet MSCHE’s standards of accreditation, we think it is absolutely critical that MSCHE review the enclosed advertisements, as well as all other advertisements, marketing, and promotional materials ASA is using, in the context of any review of ASA’s accreditation status.

NYLAG has been aware for years of ASA’s deceptive and predatory practices. In 2014, after being approached by a number of former ASA students, our office filed a class action lawsuit against the school, alleging that it systematically made fraudulent statements to prospective students to induce them to enroll.⁵ Specifically, ASA provided its students with false job placement rates, engaged in illegal recruiting practices, manipulated its cohort default rates,

¹ NYLAG retrieved the online ads during the weeks of February 14 and 21, 2022. NYLAG staff reported seeing the subway advertisements beginning in early February 2022, and as recently as last week. NYLAG staff’s photographs of the subway ads were recently featured in an article in the Republic Report. *See* David Halperin, *NYC For-Profit College With Troubling Owner is Running Troubling Subway Ads* (February 18, 2022), available at <https://www.republicreport.org/2022/nyc-for-profit-college-with-troubling-owner-is-running-troubling-subway-ads/>. The attached ads are only examples; ASA offers many other ads online, and additional ads on the subway.

² Letter from Dr. Perfetti to Alex Shchegol (Dec. 8, 2021) at 1, available at <https://msche.box.com/shared/static/bm39b21k6rcqkgkc64lx9zw7je4uwghbb.pdf>.

³ *Id.* at 2.

⁴ Standards for Accreditation and Requirements of Affiliation at 5, available at <https://msche.box.com/shared/static/6upfla8coxha663p0j10u3gatow38jel.pdf>.

⁵ *Frica Sanchez v. ASA College*, No. 14 Civ. 5006 (S.D.N.Y.).

and made additional misrepresentations, including regarding job placement assistance, the price and structure of its programs, whether its programs would make students eligible for particular state licenses, the transferability of its credits, the cost of its programs, and available financial aid.⁶ The lawsuit resulted in a 2016 settlement, which required ASA to make many changes to its recruitment and enrollment practices, including that ASA could not make, “directly or indirectly, any deceptive, false, or misleading statement of any kind” in its ads and recruiting materials.⁷

We appreciate that our prior lawsuit and settlement are not directly relevant to the Commission’s present mission of ensuring ASA’s adherence to accreditation standards. Nor is ASA in technical violation of the settlement, since the Court’s jurisdiction ran only three years from the settlement date. Nonetheless, it is notable that many of ASA’s current advertisements and marketing materials contain precisely the type of misrepresentations over which they already faced legal action and which the settlement they entered recognized were fraudulent. This underscores that ASA *knows* and *has known for years* these communications are inappropriate, but has made a decision to use them anyway, and is unlikely to cease misleading students in the future unless they are required to do so. We strongly encourage MSCHE to review these advertisements and take appropriate action.

Targeting Immigrants without Status to “Stay Legally in America”

ASA’s ads (Exhibits 1, 9, 15) state “J1*F1*B1/B2 STAY LEGALLY IN AMERICA.” These ads are extremely misleading because they imply that ASA College can provide its students with these particular visas to stay legally in America. Specifically, the ad implies that if a person is out of status or about to be out of status because she is in the United States temporarily or has already overstayed her visa, somehow if she enrolls at ASA or finishes their program, doing so would put her into lawful status or cause her to be hired by an employer that would put her into lawful status. But that is not the case. B-1 and B-2 visas are temporary visas for business and leisure travel on which one is not supposed to work and cannot remain legally past a certain date, usually 6 months from entry, and so it does not make sense that enrollment at or graduation from ASA could affect one’s entitlement to B-1 or B-2 visas. J-1 visas are available only for particular exchange programs, which we do not know if ASA offers. And while students at ASA may be able to obtain F-1 student visas, it doesn’t mean that they will be able to find an employer to sponsor them to gain status after graduation. Indeed, ASA cannot guarantee (or suggest that it could guarantee) employment to any student, regardless of immigration status. Most importantly, this ad is plainly targeted at immigrants without lawful status — a particularly vulnerable population — and aimed at getting them to enroll at ASA to obtain a visa, when ASA’s offer of that relief is almost certainly illusory.

Students without a High School Diploma or GED

One of ASA’s subway ads (Exhibit 2) says “No HS Diploma or GED? We can help! Get your GED while studying at ASA College.” We could not locate any information on ASA’s website regarding programs that allow a student to obtain a GED at ASA, but ASA’s College Catalog⁸ suggests that these students can enroll in, and be eligible for Title IV aid through, an

⁶ See *id.*, ECF No. 76 (Second Amended Complaint), attached as Exhibit 20.

⁷ See *id.*, ECF No. 106 (Settlement Agreement), attached as Exhibit 21, ¶ 5.

⁸ Available at <https://www.asa.edu/wp-content/uploads/catalog/ASA-College-Catalog-NY-v34.pdf>.

ability to benefit program. We are concerned that ASA’s program may not meet the statutory and regulatory requirements for an Eligible Career Pathway Program to qualify for Ability to Benefit, and encourage MSCHE to undertake review of this program, as well as to review these advertisements.

\$4,000 to \$8,000 Bonus at Graduation

ASA advertises that students can receive “a present [of] \$4000 to \$8000 at graduation ceremony*,” (Exhibit 3) with fine print that adds that this “present” is only available to students with certain scholarships. Scanning the barcode on the ad leads to a page on ASA’s website⁹ that also advertises “Get a \$4000 scholarship at the graduation ceremony.” It seems highly likely that this ad is misleading—unless ASA is, in fact, handing out thousands of dollars in cash or checks to each graduate at its graduation ceremonies. NYLAG’s lawsuit specifically targeted a pattern of misrepresentations in ASA’s marketing materials designed to mislead students about the true cost of an ASA degree, and the settlement expressly forbade ASA from making misrepresentations about financial aid,¹⁰ so ASA has long been on notice that these types of advertisements have the potential to be extremely deceptive.

Graduate in 16 Months

A number of ASA’s ads (Exhibits 4, 5, 8, 10, 19) advertise that a prospective student can “graduate in 16 months*.” ASA’s website also advertises that students can “Start your career in the field of study in just 16 months*”¹¹ and earn “national industry certifications in just 8 months*.”¹² The fine print adds: “*If no remedial courses are required.” It is not clear from the advertisements or from ASA’s website exactly which programs ASA is representing could be completed in the advertised timeframe. Especially because ASA’s name contains the word “college,” this ad could suggest that one could obtain a bachelor’s degree in sixteen months, which seems highly implausible. Moreover, advertising that a student can “start your career in the field of study in just 16 months” is akin to guaranteeing employment. Such guarantees are fundamentally inappropriate and, again, were a subject of NYLAG’s lawsuit and settlement prohibition,¹³ such that ASA has been on notice for years of their potential to mislead.

“Job Placement Services” and “Lifetime Job Placement Assistance”

ASA advertises “Job Placement Services” and “lifetime job placement assistance for all graduates” (Exhibits 6, 10, 14, 16). At the time of NYLAG’s lawsuit, this promise was absolutely false. In practice, ASA did not expend any meaningful efforts on job placement, particularly for students whose graduation dates put them outside the accreditation reporting periods. ASA regularly told students to stop contacting them for job placement, did not convene promised job fairs, referred students to Internet postings they could find on their own, or offered them employment at ASA itself. ASA’s job placement office was so under-staffed that each employee would have been responsible for providing services to thousands of former students.

⁹ <https://info.asa.edu/nyc-postcard/>

¹⁰ See Settlement ¶ 5(f).

¹¹ <https://info.asa.edu/nyc-postcard/>

¹² <https://www.asa.edu/why-asa/>

¹³ Settlement ¶ 5(a).

The settlement obligated ASA to in fact provide “lifetime job assistance” to all students if it advertised it¹⁴; however, we have serious doubts that ASA currently provides such assistance.

We encourage MSCHE to investigate for itself how ASA’s claims of job placement services match with the reality of those services. According to an analysis by Legal Services NYC, 71% of ASA graduates earn less than a high school graduate six years after completing their program and 76% are unable to afford their loan payments.¹⁵ These results seem inconsistent with the advertised robust, lifetime job placement services. These ads are particularly concerning given ASA’s precarious accreditation status. If ASA were to lose accreditation it would likely close, and no job placement assistance would be available at all.

Nursing Tuition, Salary, and Graduation Time

ASA advertises a Registered Nurse program (Exhibits 11, 17) for which students “Pay less,” “Graduate in less than 2 years,” and states that “THE STARTING MEDIAN ANNUAL WAGE FOR REGISTERED NURSES /RN/ IS \$73,000 [and] THE ANNUAL WAGE FOR AN RN NURSE WITH 3 YEARS OF EXPERIENCE IS ABOUT \$110,000.” First, “pay less” suggests ASA is more affordable than other options, without providing any meaningful comparators or any other basis for that representation. Additionally, the specific wages cited are tantamount to a guarantee that ASA graduates would be likely to obtain those wages. NYLAG’s lawsuit specifically targeted false promises regarding salary, and the settlement agreement barred ASA from making “projections of specific salaries or earning after completing a program at ASA”; despite being on notice, ASA is once again advertising specific salaries.¹⁶ We believe any salary projection is misleading, but this one seems especially so. Nine of ten ASA programs failed the 2014 gainful employment rule’s debt-to-discretionary-earnings test, and the median annual earnings for those programs ranged from \$14,691 to \$21,873.¹⁷ It seems unlikely that many ASA graduates at all are earning the advertised rates, which are up to five times higher than even the highest reported program’s median salary.

Targeting Veterans

ASA advertises itself as a “Veterans Friendly College” and “Military Friendly College” (Exhibits 8, 16). While of course serving veterans is in and of itself not problematic, we have concerns that ads specifically targeting veterans also include the misleading information described above, such as graduation in 16 months and lifetime job placement assistance. As you are aware, deceptive recruitment at for-profit schools targeting veterans and members of the military is an extremely important problem, driven by the historic application of the 90/10 rule, and we encourage MSCHE to investigate ASA’s practices.

¹⁴ Settlement ¶ 7.

¹⁵ See Legal Services NYC Comments to New York City Department of Consumer Affairs (Oct. 17, 2019), available at <https://www1.nyc.gov/assets/dca/downloads/pdf/about/PublicComments-ProhibitDeceptiveTradePracticesbyCertainForProfitSchools.pdf> at 69.

¹⁶ Settlement ¶ 5(c).

¹⁷ Data available at <https://studentaid.gov/data-center/school/ge>.

ESL Program Ranking

ASA advertises that its “ESL program . . . is ranked as one of the best in New York State,” with no source citation (Exhibit 12). We suggest that MSCHE inquire as to the source of this claim; without a source, it certainly may be misleading.

Free Laptops

A number of ASA’s ads (Exhibits 4, 13, 18) purport to offer “FREE LAPTOPS*” to students. The fine print adds “when graduate.” While not actually clear, that language suggests that ASA is recruiting students to *enroll* in its program by offering free laptops, but those laptops are not actually available until after graduation.¹⁸

Credit Transfers

ASA’s website repeatedly tout that credit transfers are available. For example, the “Why ASA?” page states that “ASA College’s credits are accepted widely at many institutions across the United States.”¹⁹ In the experience of NYLAG’s clients around the time we brought the lawsuit, this was absolutely false; in practice, because the decision whether to accept transfers was within the sole discretion of the accepting institution, many students could not obtain transfers. This is why the settlement agreement bound ASA not to represent that “credits earned at ASA are automatically transferable to other colleges”; ASA is knowingly making similar misrepresentations now.²⁰ As accreditor, MSCHE is in the best position to evaluate the actual credit transfer options available to ASA students. We urge MSCHE to investigate whether these ads are misleading.

For the reasons explained, we view ASA’s ads with particular concern, and hope that MSCHE undertakes a serious investigation into whether these and other advertisements are deceptive or misleading in the context of its ongoing review of ASA’s accreditation status. And, to the extent that ASA may be subject to future accreditor action and/or risks steps that may lead to its closure, we are eager to coordinate with MSCHE and regulators in any manner possible to ensure that all ASA students have access to free, clear, timely, and accurate information regarding their legal rights and options. We would be happy to speak further with you about that, or about any of the issues raised in this letter, at any time. You can reach us at jranucci@nylag.org and dtarantolo@nylag.org, or 212-613-7578 and 212-613-6551.

¹⁸ https://info.asa.edu/remote_learning_subwayqrcode-sm/

¹⁹ *Id.*

²⁰ Settlement at ¶ 5(j).

Sincerely,



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