

# Cosmetology Earns a Seat at the Table

*No longer part of a coalition, cosmetology gets recognition in latest Neg Regs*

By Sean Johnson

Ray Testa has just about seen and heard it all when it comes to negotiated rulemaking.

After all, this is the fourth time he has been involved in the policy shaping process conducted by the Department of Education. He has been there, working on the issues that affect cosmetology schools in particular and proprietary schools in general.

But there is something different to the negotiated rulemaking sessions he will participate in this year. In the past, he has always been there as a representative of a coalition in which cosmetology schools were a part. This year, cosmetology schools have earned their own place at the table.

“In past years, the best we were able to do was invite ourselves along as part of a coalition,” said Testa, of Empire Education Group. “It’s a big acknowledgement for us and the differences we have with some of the other programs.”

In recent years, the cosmetology sector has been able to win recognition of those differences, such as the difference between running a program on clock hours instead of credit hours—a difference that had implications for Title IV funding.

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It’s not that Testa won’t represent the proprietary schools in general. After all, cosmetology is a part of the broader for-profit sector. But now,

cosmetology will have a specific voice in the negotiations to implement the latest reauthorization of the *Higher Education Act*.

“We have a lot of things that are unique, and this is recognition that we have enough to offer; that it is not enough just to have us be part of a 50 to 60 member coalition,” Testa said. “It adds another voice to the process.”

## It Is Quite a Process

Each time the *HEA* is reauthorized or substantial changes to the law are made by Congress, a round of negotiated rulemaking follows. The intent of negotiated rulemaking is to determine how changes passed by Congress are actually implemented.

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There are five teams that meet in three, three-day sessions to hammer out the proposed rules. The objective is to resolve many of the objections to the proposals before the new rules are actually implemented.

Negotiated rulemaking has not always been part of the process. When the *HEA* was first passed in 1965, implementation did not include input from any of the affected parties, a process that sometimes led to objections and unintended consequences.

Congress then decided to put some of the burden on sectors involved and established negotiated rulemaking, which allows the different sectors to nominate parties to help draft the rules. The caveat was that rulemaking had to achieve consensus, or implementation was left up to the Secretary of Education.

In this case, consensus means no one objects—not always easy when you are dealing with a group of diverse interests and a multitude of rules.

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Since its inception, negotiated rulemaking has evolved into a highly structured process. There are five working groups that will meet for three days on three different occasions. The first meeting is organizational, the second where changes and amendments are offered, and a third where the package is approved.

### **It Starts With a Call for Nominations**

This year, the American Association of Cosmetology Schools decided to take a different tack than in previous years. They focused on nominations for two groups: Group II, which will discuss the rules for school-based loan issues; and Group IV, which will work on the rules for non-loan and other programmatic issues.

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“That seemed to be the best use of our political capital,” said Anthony F. Fragomeni, immediate past president of the AACCS and a veteran of several past negotiated rulemaking sessions.

For Group II, AACCS went with an expert in the field rather than a member of its own ranks, and

nominated Mary Lyn Hammer, president and CEO of Champion College Services, Inc. With default rates already on the rise, Hammer seemed to be a good choice.

“Mary Lyn was just a better fit for that group,” Fragomeni said. “When we looked at the issues, it just seemed like a good opportunity to go beyond the group. She brings an in-depth knowledge to the group. We decided to put our pride aside and do what was best for the group.”

Key issues Group II is working on include:

- Making certain that the collaborative CDR process AACCS helped draft in legislation is matched in regulation.
- Promoting a series of new CDR appeals procedures, which would provide both student and institutional relief during the current economic crisis.
- Working to ensure the most favorable outcome on all other important issues including exit and entrance counseling, preferred lender lists, and institutional codes of conduct.

Group II has already had its first two meetings and will be holding its final round of negotiations May 6–8.

While he may not be a negotiator this time around, Fragomeni is still involved. He is active in the analysis of the draft regulations proposed by the Department of Education and has attended many of the sessions held.

For Group V, AACCS nominated Testa, who Fragomeni considers to be one of the best in the industry in understanding how all of the issues that affect cosmetology and proprietary schools fit together.

“He is able to see the picture from 30,000 feet,” Fragomeni said. “There is no one in the country who has a better understanding of how this all works.”

Testa has been quick to get into action, perhaps benefiting from his three previous stints with the process.

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"I'm just lucky, I guess," he said of his participation in previous sessions.

Testa quickly asked for, and received approval of, a subcommittee to make recommendations on the issue of 90/10, a potential cliff many schools could find themselves up against as Congress pumps more and more money into grant programs and continually raises loan limits.

The subcommittee has already met twice to articulate some of the concerns institutions have with 90/10. Some of those concerns have already appeared in the draft language that has been circulated by the Department.

Additionally, Group V is working on:

- Eligibility for certificate and diploma students under year-round Pell.
- Recognition and attribution of institutional loans under 90/10.
- The allocation of Unsub loans as non-Title IV revenue, among many others.

Since the first meeting, it appears the Department and all non-federal negotiators agree that all students are eligible to participate in, and receive the benefits of, year-round Pell.

Joining Testa on Group V is Richard Dumaresq, executive director of the Pennsylvania Association

of Private School Administrators. Dumaresq is an alternate for Group V, and this is his first time as a member of the negotiating group.

So far, he has found the experience a positive one.

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"It seems like the Department is listening," Dumaresq said. "Then again, the veterans tell me it was only the first meeting."

Dumaresq provides technical expertise and will sit in at the negotiating table should Testa have to step away for any reason. To him, the most interesting, and potentially difficult, aspect of negotiated rulemaking is the consensus requirement.

"The idea of 100 percent consensus on every issue is pretty infinitesimal," Dumaresq said. "There is a pretty good incentive to work on it, though."