



1 I, Christine M. Rose, declare as follows:

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3 1.) I am a Staff Attorney in the Office of the General Counsel at the United States  
4 Department of Education (Department). I participated in the Department's response to the  
5 October 25, 2004 request for documents made by Apollo Group, Inc. under the Freedom of  
6 Information Act (FOIA).  
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9 2.) On September 21, 2006, I submitted a declaration in support of the Motion to  
10 Quash or, in the Alternative, Motion for Protective Order filed by Julie Albertson and Mary  
11 Hendow in the above-captioned action.  
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14 3.) In paragraph 2 of my declaration, I state, "a copy of the Department's May 3,  
15 2005 final determination on Apollo Group's FOIA request is attached hereto as Exhibit 1."  
16 However, the stated date of the final appeal determination is incorrect. The correct date of  
17 the final appeal determination is October 31, 2005. May 3, 2005 is the date of the  
18 Department's final FOIA response to Apollo Group enclosing responsive documents.  
19

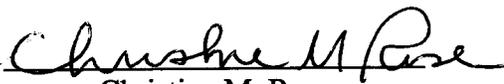
20  
21 4.) I have personal knowledge that the Department takes the position that the  
22 Disclosure Statement and witness interview notes are privileged documents inadvertently  
23 released in response to Apollo Group's FOIA request as explained in the Department's  
24 September 29, 2006 letter attached to this declaration as Exhibit 1. Since the Disclosure  
25 Statement and interview notes are considered by the Department to be privileged, it is the  
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1 Department's position that the specific documents contained in Exhibit U to the Declaration  
2 of Kristopher P. Diulio and found at the 122<sup>nd</sup> to 124<sup>th</sup> (witness interview notes) and 135<sup>th</sup> to  
3 160<sup>th</sup> (Disclosure Statement) pages of Exhibit U.  
4

5 5.) Exhibit T to the Declaration of Kristopher P. Diulio is a copy of the Disclosure  
6 Statement, which is considered by the Department to be privileged and therefore should be  
7 kept under seal.  
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10 I declare under penalty of perjury that the foregoing is true and correct.  
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12  
13 Dated: October 12, 2006

14 By:   
15 Christine M. Rose  
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**Exhibit 1**



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

ASSISTANT SECRETARY

September 29, 2006

Via Facsimile – (949) 475-4627

Joseph P. Busch, III, Esq.  
Gibson, Dunn and Crutcher LLP  
Jamboree Center  
4 Park Plaza  
Irvine, California 92614-8557

Re: FOIA Request No. 05-00093-F,  
In re: Apollo Securities Group, Inc., Securities Litigation  
and Related Matters

Dear Mr. Busch:

The Department's Office of the General Counsel has referred to me for appropriate administrative action your September 27, 2006 letter to Assistant United States Attorney Sara Winslow.

Your letter to Ms. Winslow reveals that the Apollo Group, Inc. and its counsel (collectively, "Apollo") possess one or more documents identified as privileged by the U.S. Department of Education and that Apollo received those privileged documents in error pursuant to the above-referenced FOIA request. Examples of the documents identified as privileged and of concern to us include your reference to the Agency's witness interview notes and a March 7, 2003 draft disclosure statement. This letter constitutes a demand for Apollo to return to the Department all originals and any and all copies of the CDs released with the Department's April 8, 2005, May 3, 2005, and August 31, 2006 letters to Douglas R. Cox, Kristopher P. Diulio and Jared M. Toffer of your firm, as well as all printed hard copies of documents contained on those CDs. The Department is seeking a return of the documents and CDs to determine the extent of any disclosure of privileged documents. The Department also asks that Apollo certify that Apollo has accounted for and returned to the Department each of the foregoing materials.

This is a very serious matter. Apollo and its counsel possess documents that they know the Department has identified as privileged. I ask that you contact Joanna Dailey of the Office of the General Counsel at (202) 401-6000 by no later than October 4, 2006 to make arrangements for the return of the above-described records.

Letter to Mr. Busch

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The Department looks forward to your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitchell Clark for". The signature is written in a cursive, flowing style.

Michell Clark  
Assistant Secretary for Management  
and Chief FOIA Officer

cc: Douglas R. Cox, Esq.  
Gibson, Dunn and Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
Via Facsimile – (202) 530-9539

Kristopher P. Diulio, Esq.  
Gibson, Dunn and Crutcher LLP  
Jamboree Center  
4 Park Plaza  
Irvine, CA 92614-8557  
Via Facsimile – (949) 475-4627

Jared M. Toffer, Esq.  
Gibson, Dunn and Crutcher LLP  
Jamboree Center  
4 Park Plaza  
Irvine, CA 92614-8557  
Via Facsimile – (949) 475-4627

Sara Winslow, Esq.  
Assistant United States Attorney  
Northern District of California  
10<sup>th</sup> Floor, Federal Building  
450 Golden Gate Avenue  
San Francisco, California 94102  
Via Facsimile – (415) 436-6748

Robert S. Eitel, Esq.  
Deputy General Counsel  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202