

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW YORK,**

Employer

and

**GRADUATE WORKERS OF COLUMBIA-
GWC, UAW**

Petitioner

Case No. 02-RC-143012

**POST-HEARING BRIEF OF THE TRUSTEES OF
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK**

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PRELIMINARY STATEMENT

The Regional Director's responsibility in this case is limited and clear. The petition filed by Graduate Workers of Columbia – GWC, UAW (“GWC”) was administratively dismissed on February 6, 2015 “on the basis that it seeks an election among graduate students who are not employees within the meaning of Section 2(3) of the Act, pursuant to *Brown*.” The Board remanded the case on March 13, 2015 for the purpose of developing a factual record on which it could reconsider *Brown University*, 342 NLRB 483 (2004). Now that the record requested by the Board has been created, the petition must again be dismissed. As the Regional Director explained in the February 6 Order, she is “constrained by current Board precedent” as “reconsideration of current law is a decision for the Board.”

Consequently, there is no reason for the Trustees of Columbia University in the City of New York (“Columbia” or the “University”) to address arguments or evidence in the record as to the correctness of *Brown* or for the Regional Director to make any ruling in that regard. *Brown* remains controlling precedent and, as the record indisputably demonstrates, that decision directly applies to the Columbia students Petitioner seeks to represent.

As in *Brown*, graduate student teaching and research assistants at Columbia perform services for the University in connection with their studies. Because they “have a predominantly academic, rather than economic, relationship with their school”, they “are primarily students and not statutory employees.” *Id.* at 483. Indeed, every significant factor the Board relied on in holding that graduate student assistants in *Brown* were not employees within the meaning of the Act applies with equal – or greater – force at Columbia. Most significantly, as in *Brown*, the evidence demonstrates that doctoral students at Columbia serve in teaching and research positions as an integral part of their graduate education programs. *Id.* at 489. They are not compensated for work like employees, but receive tuition, stipends, health insurance and

payment of university fees as financial aid to support them during their lengthy educational programs.

While the Regional Director can do no more than find the facts supporting the applicability of *Brown* and dismiss the Petition on that basis, the hearing also addressed a number of issues relating to the scope of the bargaining unit, should the Board ultimately decide to reverse *Brown* and direct an election. If the Regional Director considers these potential issues, she should exclude Masters and undergraduate students with instructional or research appointments from the bargaining unit due to the temporary nature of their appointments and the absence of a community of interest with doctoral students. In addition, doctoral students supported by training grants should be excluded, as their responsibilities are entirely educational and are indistinguishable from those of students supported by University funds.

Finally, the Petition must be dismissed because Petitioner is not a “labor organization” within the meaning of the Act. Petitioner is simply an organizing committee of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”). It has no independent legal status or authority, and will not itself deal with Columbia in the event it is certified as a representative.

STATEMENT OF FACTS

A. PROCEDURAL HISTORY

On December 17, 2014, Petitioner filed a petition seeking to represent the following bargaining unit of student instructional and research assistants at Columbia:

INCLUDED: All student employees who provide instructional services, including graduate and undergraduate Teaching Assistants (Teaching Assistants, Teaching Fellows, Law Associates, Preceptors, Instructors, Listening Assistants, Course Assistants, Readers and Graders): All Graduate Research Assistants (including those compensated through Training Grants) and All Departmental Research Assistants employed by

the Employer at all of its facilities, including Morningside Heights, Health Sciences, Lamont-Doherty and Nevis facilities.

EXCLUDED: All other employees, guards, and supervisors as defined in the Act.

(Bd. Ex. 1A)

On January 12, 2015, the Regional Director issued an Order To Show Cause directing Petitioner to “provide written cause as to why this petition should not be dismissed based on the decision in *Brown*” and “identify facts that it intends to present during a hearing that support its position and would distinguish this case from *Brown*.” Columbia replied to the Petitioner’s response on January 27, 2015.

After receipt of these submissions the Regional Director, by Order dated February 6, 2015, dismissed the petition without a hearing based on *Brown*, as it sought an election among graduate students who are not employees entitled to representation under the Act.

On February 20, 2015, Petitioner filed a Request for Review, which Columbia timely opposed. On March 13, 2015, the National Labor Relations Board entered a brief order granting Petitioner’s Request for Review “as it raises substantial issues warranting review. *See New York University*, 356 NLRB No. 7 (2010).” The Order reinstated the petition, and remanded the case to the Regional Director for a hearing and issuance of a decision. On March 19, 2015, the Regional Director entered an order scheduling a hearing in the matter to begin on March 31, 2015. The hearing began as scheduled on March 31, 2015 and continued for twelve sessions. The record closed on June 8, 2015.

By stipulation of the parties, the petition was amended to delete the classifications of Law Associate, Instructor and Listening Assistant from the list of inclusions in the petitioned-for bargaining unit. (Tr. 1072:11-15)

B. OVERVIEW OF COLUMBIA UNIVERSITY

Columbia University is one of the nation's oldest private institutions of higher education and has played an eminent role in American education since 1754.¹ Columbia University has approximately 30,000 students. Of these, approximately 8,500 are undergraduate students, and 21,500 are graduate students. (Tr. 66:7-16)

Columbia University is located in the New York metropolitan area, with its main campus in Morningside Heights in Manhattan between 114th Street and 120th Street, along Broadway. Columbia University also has a Health Sciences campus, located in Washington Heights, and research facilities in Palisades, New York (the "Lamont-Doherty Observatory") and Irvington, New York (the "Nevis Laboratories").

Columbia is governed by a 24-member Board of Trustees, which is responsible for the overall management of the University. The President of Columbia University is hired by the Board of Trustees, serves as the University's chief executive officer, and is responsible for the University's administrative and academic affairs. The Provost is Columbia's chief academic officer.

Academically the University has three main areas: (1) the Arts and Sciences (which accounts for about half of Columbia University's student body); (2) the Health Sciences; and (3) the professional schools (*i.e.*, the Graduate School of Business, the Fu Foundation School of Engineering and Applied Science, the School of Journalism, the School of Law, the School of Architecture Planning and Preservation, the School of International and Public Affairs ("SIPA"), and the School of Social Work) A number of the schools that fall within these three main

¹ Unless otherwise indicated, the facts in this section are based on the parties' Stipulated Facts, dated March 31, 2015. (Tr. 9:25-13:17; Joint. Ex. 1)

academic areas are further broken down into departments and academic programs. (*see* Empl. Ex. 3)

The Executive Vice President for Arts and Sciences and the Deans of the professional schools report to the Provost. The Executive Vice President of Health and Biomedical Sciences reports to the President. The Executive Vice President of Arts and Sciences oversees a number of Schools that do not report directly to the Provost, including the School of the Arts, Columbia College, the School of Continuing Education, the School of General Studies, and the Graduate School of Arts and Sciences (“GSAS”). The Executive Vice President of Health and Biomedical Sciences is also responsible for a number of schools that report to him – namely the College of Physicians and Surgeons (Columbia University’s Medical School), the School of Dental Medicine, the School of Nursing, and the Joseph P. Mailman School of Public Health.

Columbia University also has a University Senate, which is composed of faculty, administration, and student representatives. The University Senate is primarily an advisory body that addresses issues relating to educational policies, physical development, budget, and the University’s external relations. In regards to the University’s budget, individual schools develop a budget each year with the assistance of the Executive Vice President for Finance. The individual budgets must ultimately be approved by the Board of Trustees.

Columbia University offers a number of degrees, including: (1) undergraduate degrees (*i.e.*, bachelor degrees) from Columbia College, the School of General Studies and the Fu Foundation School of Engineering and Applied Science; (2) professional degrees from the professional schools; (3) a number of Master’s Degrees²; and (4) the Doctor of Philosophy

² Unless expressly stated otherwise, reference in this brief to the “M.A. Degree” or to “Master’s Degree” refers to the terminal Master’s degree, not the M.A. degree that doctoral students typically receive *en route* to the Ph.D. (Tr. 264:18-25)

(“Ph.D.”). (Tr. 12:3-14; 63:22-65:1) The University offers 225 Master’s degree programs and 61 Ph.D. degree programs. (Tr. 64:16-65:5; 99:14-21)

C. COLUMBIA’S GRADUATE PROGRAMS

1. The Graduate School of Arts and Sciences

a. Academic Departments And Degree Offerings

GSAS is one of the nation’s oldest and most distinguished graduate schools. (Empl. Ex. 34) GSAS consists of 28 academic departments, which are informally broken down among the Humanities, the Social Sciences and the Natural Sciences. (Tr. 257:8-9; Empl. Ex. 34) GSAS currently enrolls approximately 3,300 doctoral students and 1,400 M.A. students. (Tr. 264:5-17) GSAS offers the M.A. degree, the M. Phil. Degree, the Ph.D. degree, the D.M.A. (Doctor of Musical Arts) degree, as well as certain dual degree programs³ and non-degree programs⁴. (Tr. 259:4-17; 260:10-18; 262:3-7; Empl. Ex. 27)

Thirty of the University’s sixty-one Ph.D. programs are based in the GSAS departments. (Tr. 12:22-25; 257:3-9) All Ph.D. degrees (including the 31 programs based in other Schools) are awarded exclusively through GSAS, irrespective of whether a program sits in another School. (Tr. 12:15-17; 64:18-25; 257:10-18; Empl. Ex. 27) For example, Ph.D. programs that sit in the Faculty of Medicine Basic Science departments, such as Anatomy and Cell Biology and Physiology and Cellular Biophysics, are awarded by GSAS.⁵ (Tr. 12:15-22; 256:23-257:18)

³ Dual degree programs combine the curricula of at least two other Schools or programs. (Tr. 259:15-17)

⁴ Non-degree programs award a certificate for completing a course, but do not confer the M.A. or Ph.D. degree. (Tr. 259:9-14)

⁵ Although GSAS awards the degrees, students remain subject to the rules and policies of their individual Schools and programs. (Tr. 474:18-21)

GSAS also offers 47 M.A. programs. (Empl. Ex. 27) M.A. programs offer advanced course work beyond the undergraduate degree, and typically take one year or slightly longer. (Tr. 413:23-414:6; 832:7-13; Empl. Ex. 25)

b. Admissions and Student Qualifications

Applications to Ph.D. programs and M.A. programs are generally made directly to GSAS through an online application portal. (Tr. 13:4-5; 287:19-288:7; 809:17-24; Empl. Exs. 25; 34; 35) Applications typically consist of the applicant's post-secondary education transcripts, letters of recommendation, a curriculum vitae, a statement of purpose and scores from relevant standardized tests, such as the GMAT or GRE. (Tr. 257:10-18; 200:7-12; 747:1-15; Empl. Exs. 22; 25; 34; 35; 106; Pet. Ex. 19) GSAS distributes the completed applications to the individual departments and those departments evaluate the applicants and submit recommendations for admission to GSAS. (Tr. 289:9-24; 747:1-15) Specifically, the departments evaluate the applicants' submission materials to determine their academic achievements and potential. (Tr. 747:16-748:14) The student's teaching ability or experience is not one of the factors considered in the Ph.D. admission process. (Tr. 200:13-15; 291:9-11; 653:22-24; 748:4-14; 810:14-811:10) GSAS then generates a letter offering admission as a "candidate for the degree of Doctor of Philosophy" and noting Columbia's recognition of the student's "impressive academic credentials" and "the promise [of the student's] future development as a scholar, pedagogue and researcher." (Tr. 293:9-15; Empl. Exs. 23; 36-38; 86-88; 99)

For Ph.D. students, the letter of admission offers the student a fellowship as a Dean's Fellow, contingent on good progress towards the degree. (Empl. Exs. 23; 36-39) The letter expressly states that the fellowship "includes some teaching and research responsibilities" that are regarded as "a vital part of your education." (Empl. Exs. 23; 36-38; 99; Tr. 875:2-8) The extent of the required teaching and research responsibilities varies by department. (Tr. 301:9-15)

Columbia's Human Resources department is not involved in the admission process for students in GSAS. (Tr. 290:4-6)

c. Financial Aid

All doctoral students enrolled in GSAS receive a standard five-year funding package ("Fellowship Package"), subject only to the student making satisfactory progress toward the doctoral degree. (Tr. 297:14-298:1; 200:20-25; 579:23-25; 749:14-22; 809:4-10; 875:9-11; Emp. Ex. 24.) The Fellowship Package consists of a stipend of \$28,586 (for academic year 2014-15), full tuition, payment for student health services, University facilities fees, a health insurance premium, and guaranteed access to student housing. (Tr. 299:9-300:21; Empl. Ex. 38; *see also* Empl. Exs. 22; 23; 36; 37; 99) The total value of the Fellowship Package for the past year was \$73,617 for a student in the Humanities and Social Sciences (students in the Natural Sciences received a stipend of \$35,048, with a total value of \$81,903). (Empl. Exs. 36; 37; 99; Tr. 297:14-19) Stipend levels are typically set based on expected living expenses and to compete with the stipends offered by other Ivy League and like institutions in order to attract the best students. (Tr. 298:2-22; 303:15-25) Each year, all students in a particular program receive an identical increase to their Fellowship Package, usually in the range of 3-4%. (Tr. 298:2-11; 460:7-19) The Fellowship Package does not include vacation leave, sick leave, retirement benefits, or any other Columbia benefits programs available to employees of the university. (Tr. 87:24-88:3; Empl. Exs. 2; 36) The Fellowship Package is paid out of the University's financial aid budget. (Tr. 313:25-314:4)

The stipend is paid in three yearly installments in the Fall, Spring and Summer. (Tr. 308:21-309:7) When a student has teaching or research responsibilities, a portion of the stipend is typically issued in the form of salary, subject to withholding of income tax pursuant to Federal tax law requirements. (Tr. 308:21-309:15; 841:2-7) Typically, one third of the stipend while

teaching is paid as salary and two thirds is paid as a stipend. (Tr. 308:21-309:15; 606:3-11; Empl. Exs. 42; 45)

Doctoral students receive the same Fellowship Package each year (subject to annual increases) regardless of whether they have teaching or research responsibilities in a given year — meaning students will receive the same package in year one as in year two even if they only teach in year two. (Tr. 301:16-303:14; 633:1-5) In the Humanities and Social Sciences, doctoral students typically do not hold an instructional or research appointment in their first or fifth years of study. (Tr. 301:16-302:6) Yet, these students receive the same Fellowship Package during these years as they do when they are appointed to teach. (Tr. 302:7-11)

By contrast, M.A. students receive very little or no financial assistance and must pay tuition of nearly \$50,000 per year. (Tr. 299:23-300:1; 414:7-21; 832:14-19) M.A. students can receive a relatively small amount of financial assistance, typically a \$3,000 stipend or tuition remission, by applying for and being awarded an instructional appointment. (Tr. 414:7-21; Empl. Ex. 3)

2. Coordinated Program in the Biomedical Sciences

The College of Physicians and Surgeons offers doctoral programs in the biomedical sciences at the Columbia University Medical Center.⁶ (Tr. 83:13-17; 967:2-9) Doctoral students who enroll in these programs typically aspire to be researchers in a university setting, in the pharmaceutical or biotech industries, or in the science policy and science management field. (Tr. 83:17-19; 971:22-972:9)

⁶ The Coordinated Program in Biomedical Sciences does not train medical students. That training is provided by the Medical School. (Tr. 971:2-7)

The Coordinated Program offers the Ph.D. degree, the M.D./Ph.D. degree (a joint degree) and the M.A. degree in Medical Informatics. (Tr. 966:1-3; 970:4-9; Empl. Ex. 114) Approximately 300 students are currently pursuing the Ph.D. degree, while another 50 or 60 are pursuing the M.D./Ph.D. degree. (Tr. 83:20-24; 264:10-11; 966:1-3) The Ph.D. programs typically take five and a half years to complete. (Tr. 257:13-18; 970:17-21; 983:15-18)

Doctoral students in the Coordinated Program are fully funded throughout their entire graduate career, provided they remain in good academic standing. (Tr. 972:10-15; Empl. Ex. 115) These students receive a financial aid package similar to their counterparts in GSAS, which includes a tuition exemption, a \$35,088 per year stipend (for academic year 2014-15), medical insurance, payment of computer and other fees. (Tr. 972:10-15; Empl. Ex. 115) The total value of the financial aid package for the 2014-15 academic year was \$82,088. (Empl. Ex. 115)

3. Fu Foundation School of Engineering and Applied Science

The Fu Foundation School of Engineering And Applied Science (“School of Engineering”) is a top engineering school in the country that prides itself on educating leaders in industry, government, and academia and advancing interdisciplinary research to solve grand challenges that are faced by society. (Tr. 650:17-22; 651:3-7)

The School of Engineering is organized into nine departments: Applied Physics and Applied Mathematics; Biomedical Engineering; Chemical Engineering; Computer Science; Civil Engineering and Engineering Mechanics; Earth and Environmental Engineering; Electrical Engineering; Industrial Engineering and Operations Research; and Mechanical Engineering. (Tr. 650:23-651:3)

The School of Engineering offers undergraduate, M.S. and doctoral programs. (Tr. 651:3-4) The School offers both a Ph.D. degree that is awarded through GSAS and a Doctor of

Engineering Science (“DES”) degree that is administered through the School of Engineering.⁷

(Tr. 651:18-21; 652:2-9) The School of Engineering has approximately 2,800 graduate students — about 2,000 are M.S. students and 800 are doctoral students. (Tr. 651:22-652:1)

Doctoral students in the School of Engineering are fully funded for four or five years contingent on good academic standing and irrespective of whether they have an instructional or research appointment in any year. (Tr. 657:2-10; Empl. Ex. 88; *see also* Empl. Exs. 86; 87) These doctoral students receive a financial aid package similar to that received by their counterparts in GSAS, consisting of full tuition (worth approximately \$41,000), a stipend of \$26,286, medical coverage and partial coverage for a facilities fee. (Tr. 657:14-19; Empl. Exs. 86, 87, 88)

By contrast, M.S. students are not funded and are required to pay tuition. (Tr. 667:1-4) These M.S. programs typically take three semesters. (Tr. 666:23-25) M.S. students can apply for financial aid by serving in instructional positions. (Tr. 667:5-8)

4. School of the Arts

The School of the Arts is both a graduate and professional school focused on establishing a community of artists who can engage peers in a profound and meaningful exchange of work and process. (Tr. 334:2-10; 347:22-348:2) The mission of the School of the Arts is to create an environment where the students can develop the fundamental skill and ability to critique their own work and to respond effectively and meaningfully to the work of others. (Tr. 334:11-335:10)

⁷ The DES program is similar to the Ph.D. program, although the residency requirements are slightly lower. (Tr. 652:10-20) The DES program is typically pursued by practicing engineers who are collaborating in research with large corporations and the University. (Tr. 652:10-20) On average, the School graduates five DES students per year. (Tr. 652:10-20)

In addition to undergraduate majors, the School of the Arts offers the Master of Fine Arts (“MFA”) degree in four disciplines (Film, Theater, Writing and Visual Arts) and the M.A. degree in film studies. (Tr. 334:2-10; 336:13-337:14) The School of Arts also offers the Ph.D. degree in theater, which is administered through GSAS.⁸ (Tr. 337:15-21)

The MFA is the terminal degree in the Fine Arts. (Tr. 336:13-24) The MFA consists of two years of course work followed by immediate presentation of a thesis, or a third and/or fourth year for developing a thesis, depending on the program. (Tr. 340:9-341:25) Upon completion of the degree, MFA students often pursue careers in teaching or work in the film industry or in the arts. (Tr. 342:1-23; 383:12-18; 384:21-386:24) The M.A. in Film Studies is a three semester program consisting of two semesters of course work followed by one semester of a pro seminar and work on a thesis. (Tr. 366:21-25)

Although MFA students are not fully funded, the School of the Arts offers financial aid to MFA students in the form of scholarships, fellowships, assistantships, service fellow positions, and work-study positions. (Empl. Exs. 46; 49) M.A. students are ineligible for need-based institutional aid, and only in rare cases may M.A. film students receive aid by holding academic appointments. (Empl. Ex. 46)

5. School of International And Public Affairs

SIPA is an independent professional school that offers three degrees: the M.A. of International Affairs; the M.A. of Public Administration; and the Ph.D. in Sustainable Development, which is administered by GSAS.⁹ (Tr. 702:10-14; 703:8-19; 703:20-704:3) The M.A. programs are generally two-year programs that lead students to pursue a career in the

⁸ Ph.D. students in the Theatre program receive the five-year Fellowship Package described in Section 1(c) above. (Tr. 370:11-23)

⁹ Ph.D. students in the Sustainable Development program receive the five-year Fellowship Package described in Section 1(c) above. (Tr. 703:23-704:3)

private sector, or alternatively in the public or non-profit sectors, such as NGO's and other types of international organizations. (Tr. 704:17-23)

M.A. students in SIPA are not funded and are required to pay tuition for their studies. (Tr. 704:24-25) SIPA offers financial aid to M.A. students in the form of scholarships and assistantships, provided that the student satisfies SIPA's eligibility requirements. (Tr. 704:24-705:13; 705:20-24; Empl. Exs. 89, 93-96) First year students are eligible to receive fellowships or scholarships that do not require a service commitment. (Empl. Ex. 89) Second year students who maintain a 3.4 GPA or better may apply for assistantship positions which provide a combination of tuition credit and/or salary, typically ranging from \$4,700-\$15,000 in tuition credit and \$1,300-\$5,000 in salary. (Tr. 719:1-7; Empl. Exs. 89; 93-96) SIPA also allows students to work in hourly positions. (Empl. Ex. 91)

6. Other Schools

Due to the similarities between schools and departments at Columbia and the repetitive nature of the testimony concerning the programs, financial aid and student appointments available therein, as well as the desire to expedite the hearing, the parties agreed, based on the following stipulation, that testimony would not need to be presented for each department and school at Columbia:

1. Evidence offered at the hearing as to the Columbia students serving in instructional and research positions in various schools and departments will be treated as representative of the students in doctoral, masters and undergraduate degree programs serving in such positions in all other schools and departments; [and]
2. Neither party will argue for or seek an inference of any kind based on the failure to present testimony as to any school or department.

(Tr. 1070:17-25; Joint Ex. 12)

D. THE PURPOSE AND ELEMENTS OF DOCTORAL EDUCATION

The purpose of doctoral education is to train the next generation of scholars, academics and scientists with the highest degree in their field. (Tr. 625:21-23; 626:17-24; 652:24-653:5; 746:9-14; 815:2-14; Empl. Exs. 2; 22; 25; 32) As explained by Carlos Alonso, Dean of the Graduate School of Arts and Sciences, doctoral education is “the means through which the University reproduces itself as an institution” and creates “the future teachers of the nation.” (Tr. 269:21-270:3) Accordingly, Columbia University views teaching and research as indispensable aspects of doctoral education. (Tr. 269:17-271:18; 284:14-285:12; 762:1-6; Empl. Exs. 23, 36, 37, 38)

1. General Course of Doctoral Study

In order to earn the Ph.D. degree, a student must first satisfy the requirements for the M.A. and M.Phil. degrees. (Tr. 262:3-7; 262:25-263:3; 813:14-20; 658:15-25; 853:20-22; 970:4-13; Empl. Exs. 28; 29; 100) Students in their first and second years of doctoral study will typically complete coursework culminating with an oral or written qualifying exam. (Tr. 275:2-19; 198:3-15; 658:15-660:10; 978:11-979:7; 981:23-982:21; Empl. Ex. 30, 117) The M.A. degree is ordinarily awarded at the end of the first year. (*Id.*)

Once the required coursework and examinations are completed, the student will begin to identify an area of research and formulate a dissertation proposal. (Tr. 275:2-19; 659:20-660:10; 854:10-16; 978:11-979:7; 981:23-982:21; Empl. Ex. 117) At the end of the third or fourth year of study, once all requirements of the Ph.D. degree (including the teaching requirement) have been completed except for the dissertation, the student is awarded the M. Phil. degree. (Tr. 12:13-14; 13:10-14; 275:12-19; Empl. Ex. 29) After obtaining the M.Phil. degree, the student begins full-time work on the doctoral dissertation. (Tr. 275:2-19; 820:7-14; 659:20-660:10;

854:19-25; 982:22-983:5) Upon completion and defense of the dissertation, the student is awarded the Ph.D. degree. (Tr. 275:16-276:20; 659:20-660:10; Empl. Ex. 28)

The time it takes to obtain a Ph.D. degree varies by field. Typical times to degree are five to six years in the Natural Sciences, six to seven years in the Social Sciences, eight to nine years in the Humanities, five to six years in the School of Engineering, and five and a half years in the Biomedical Sciences. (Tr. 279:2-10; 657:23-658:2; 983:15-20) GSAS has a limit of nine years for completion of the degree. (Tr. 279:11-18)

2. The Instructional Requirement

Doctoral students in GSAS Ph.D. programs must fulfill a one-year teaching requirement in their first four years or before receipt of the M.Phil. degree, whichever comes first. (Empl. Ex. 28) The one-year teaching requirement is a “baseline requirement” that “individual departments can supplement...based on their own disciplinary or field requirements.” (Tr. 283:21-284:5) Indeed, many programs require students to teach for two or three years, typically with escalating responsibilities and independence. (Empl. Ex. 28; Tr. 164:19-25; 202:23-203:4; 429:2-25; 448:11-16; 821:7-822:5; 855:4-6) Failure to fulfill this instructional requirement will render a student ineligible for the Ph.D. degree.¹⁰ (Tr. 412:25-413:17; Empl. Ex. 52) In fact, 730 of 732 (99.8%) students receiving a Ph.D. in the Arts & Sciences in the past three years held instructional appointments. (Joint Ex. 11)¹¹

¹⁰ Although not all Ph.D. programs outside the Arts & Sciences require doctoral students to hold an instructional appointment, students in those programs are nevertheless encouraged to do so, and the vast majority do. Indeed, 96.6% of students receiving Ph.D. degrees in the past three years in the other schools held instructional appointments (excluding the Biomedical Science Programs). (Joint Ex. 11)

¹¹ Dean Alonso explained that one of the students who was permitted to graduate without a teaching appointment had transferred to Columbia with his faculty advisor after completing

3. **The Training And Supervision Of Student Instructors**

Columbia takes the training of its graduate student teachers very seriously and has created training and supervision mechanisms geared specifically for that purpose. (Tr. 315:4-316:8; 322:24-323:19) GSAS requires individual departments to train their graduate students to teach. (Tr. 312:1-17; Empl. Ex. 40) GSAS also houses a Teaching Center focused exclusively on training graduate student teachers. (Tr. 425:14-426:22) Thus, graduate student teachers typically receive training on teaching before and during their instructional appointments through a variety of means including formal workshops and seminars, orientation programs, manuals, supervision and mentorship. (Tr. 315:4-18; Empl. Exs. 109; 110)

a. Practicums And Pedagogy Seminars

Since many graduate students do not have experience in teaching, they are required to attend training courses and seminars, many of which provide course credit. (Tr. 321:3-19; Empl. Ex. 41 (sixteen programs in GSAS provide course credit for pedagogical training); 74 (listing training initiatives); Tr. 631:18-632:23 (Music students undertake a “Professional Strategies and Skills” seminar)) These seminars have both a practical and theoretical component, addressing topics from teaching techniques and exercises to teaching philosophy. (Tr. 859:1-11)

For example, the Art History department requires Teaching Fellows to attend a two-semester teacher training program that takes students through all aspects of teaching, from learning how to grade to leading their own section of Art Humanities, an undergraduate course. (Tr. 824:11-827:8) When Ph.D. students are actually teaching Art Humanities, the program holds biweekly seminars where a faculty member provides an introductory lecture on the subject matter that is being covered in the undergraduate course and also explains how to teach that

several years of the Ph.D. program elsewhere, and had teaching experience previously at that school. (Tr. 412:25-413:17)

subject matter. (Tr. 824:11-827:8) After students teach a particular subject, the program conducts didactical thematic discussion sessions with students. (Tr. 825:18-24)

The Mathematics department similarly requires students to take a seminar entitled “Teaching of Mathematics,” where they learn how to create a course web page, prepare a syllabus, write and grade exams, and lecture on Calculus topics. (Tr. 206:1-7; 207:6-9) Likewise, in the Germanic Languages department, students are required to take a weekly pedagogy seminar discussing topics in teaching philosophy and approaches to foreign language teaching. (Tr. 858:19-859:17) Students attend this seminar during their first semester of teaching, so that the seminar “can have an immediate connection with what is actually going on in the classroom.” (*Id.*)

Preceptors in the Core Curriculum¹² are also required to attend a pedagogy seminar for first-year Preceptors, which is a credit course that meets once a week. (Empl. Ex. 15-19; Tr. 159:15-17) The seminar addresses both substantive intellectual matters that are being taught in the course, and teaches Preceptors how to conduct class discussion, assess student performance and design effective assignments. (Tr. 159:23-160:8) This seminar is mandatory for first-year Core Preceptors. (Tr. 160:7-8)

b. Orientation Programs

Many programs in GSAS require their students to attend orientation programs and visit classes as an observer before teaching their own class. (Tr. 760:13-17; 856:22-857:15; Empl.

¹² The Core Curriculum consists of courses that all Columbia College students are required to take, including Literature Humanities, Contemporary Civilization, Art Humanities, Music Humanities, and Frontiers of Science. (Empl. Exs. 8-10; Tr. 142:11-22) Advanced doctoral students appointed as Preceptors teach sections of Literature Humanities and Contemporary Civilization, together with Columbia faculty members and other instructors. (*see pp. 29-30, below*)

Exs. 54; 74; 102; 107) These programs may last anywhere from one day to one month. (Empl. Ex. 74)

For example, Ph.D. candidates in the Germanic Languages department attend a one or two day orientation program before the semester. (Tr. 857:21-858:18) The program typically begins with the students receiving a mock lesson from an instructor in a language they have never seen before, such as Finnish. (Tr. 857:21-858:18) This allows the students to experience firsthand the challenge of learning a completely foreign language, and to reflect on what it means to engage with foreign language and culture. (*Id.*) From there, the students participate in hands-on exercises and observations, and learn about how to establish a good classroom setting where all students are engaged, how to time a class and set a rhythm for a course. (Tr. 857:24-858:15)

Similarly, before serving as Preceptor in the Core Curriculum, doctoral students must visit two classes as an observer and also attend orientation programs. (Tr. 158:1-9) The first orientation takes place at the end of the spring semester and allows these students to meet one another and learn about the course and their general responsibilities. (Tr. 158:13-20) The second orientation, which occurs in August, is more substantive and is followed by a three-day workshop where the students are explicitly instructed in how to teach some of the subject matter that they will be teaching. (Tr. 158:21-159:5) Other programs, such as chemistry, physics and the School of Engineering, require their students to attend a new teacher orientation prior to the start of classes. (Empl. Ex. 74; 102; Tr. 664:23-665:3)

c. Teaching Manuals And Other Materials

Graduate student teachers are also provided with written materials to guide them through their teaching responsibilities. (Empl. Ex. 40; 41; 53-55; 57; 74-76) These materials range from technical guidelines on how to read and analyze student papers to materials on observing standards of professionalism in the classroom and lab. (Empl. Ex. 74-79)

In addition, graduate students who teach from a common curriculum will typically have access to materials such as a common book and a model syllabus. (Tr. 209:23-210:5)

d. The GSAS Teaching Center

The Teaching Center offers programs, activities and initiatives designed to develop and enhance the pedagogical skills of graduate students. (Tr. 426:9-11; 479:16-19; Empl. Ex. 71) The Teaching Center's main constituency is GSAS doctoral students, although all Columbia University graduate students are welcome. (Tr. 479:20-25) Among other programs, the Teaching Center offers a Teaching Fellows Orientation program each fall (which supplements department-based orientation programs) where graduate student instructors from all GSAS departments are introduced to the resources available to them, active learning principles, and survival tactics for the first week of classes. (Tr. 481:6-19; 760:16-18; Empl. Exs. 68-71) The Teaching Center also offers an array of workshops and programs throughout the academic year. (Tr. 493:22-494:15 ("Art of Communication Series"); 495:14-20 ("The Workshop Tracks"); Empl. Ex. 71) In many cases, doctoral students receive a certificate for their participation and successful completion of these programs. (Empl. Ex. 72; 73) In addition, the Teaching Center offers individual sessions where doctoral students may consult with Teaching Center staff on any number of pedagogical issues. (Tr. 500:11-24)

i. The Lead Teaching Fellows Program

The Teaching Center offers the Lead Teaching Fellows Program, where select doctoral students participate in discussions about teaching methods and ultimately conduct a pedagogy workshop or events in their home department. (Tr. 490:16-24; Empl. Ex. 71) Graduate students are selected to serve as Lead Teaching Fellows through a competitive application process. (Tr. 491:24-492:7) Lead Teaching Fellows host town-hall meetings, organize discussion panels and conduct informal discussion groups. (Tr. 491:5-21; Empl. Ex. 71) The Teaching Center staff

assists students in organizing these events, hosts mandatory support meetings in the Teaching Center, and meets with students following the events to discuss and evaluate the events' effectiveness. (Tr. 493:4-20)

ii. The Teagle Summer Institute and Teagle Fellows Program

The Teaching Center also offers the Teagle Summer Institute to approximately 50 doctoral students each summer. (Empl. Ex. 71) The four-day Summer Institute focuses on the integration of new technologies into learning. (Tr. 484:20-485:2) Students engage in group discussions and develop an innovative assignment during the course of the program. (Tr. 485:3-486:16) Doctoral students receive a certificate upon successful completion of the program. (Empl. Ex. 71)

Doctoral students who complete the Teagle Summer Institute may apply to participate in the Teagle Fellows Program. (Empl. Ex. 71; Tr. 488:3-489:3) The Teagle Fellows Program is a two-semester program that encourages graduate student teachers to develop "reflective teaching practices and also to connect graduate students across disciplines with each other around issues of effective teaching" by pairing students up to conduct peer teaching observations. (Tr. 488:24-489:10) Students receive a certificate for successful completion of this course. (Tr. 489:11-23; Empl. Ex. 72)

Both the Teagle Fellows Program and the Teagle Summer Institute are supported by a grant from the Teagle Foundation, a non-profit foundation that strives to "support and strengthen liberal arts education." (Tr. 484:18-485:3)

e. *The Teaching Scholars Program*

The Teaching Scholars Program allows advanced doctoral students who have obtained the M.Phil. degree to teach a course of their own creation either during the academic year or during the summer term. (Tr. 429:6-8; 430:14-18; Empl. Exs. 58; 61-64) Specifically, the Ph.D.

student (*i.e.*, the Teaching Scholar) works in consultation with faculty (usually the dissertation sponsor) to develop a syllabus and set requirements for a course that is based on the student's dissertation topic. (Tr. 429:6-25; 430:19-431:4; Empl. Exs. 61-64) Proposals selected by GSAS are then presented to the undergraduate Committee on Instruction for final approval. (Tr. 430:1-13)

The program is an opportunity for the student to have a "supervising faculty course sponsor [who is] commit[ted] to visiting the [student's] class at least twice during the semester to evaluate and offer guidance on the student's pedagogical performance." (Empl. Ex. 59) It is an opportunity for Ph.D. students to have a culminating pedagogical experience from which they can develop the various skills that they will need to be an effective teacher in the future. (Tr. 320:4-25; 429:6-25; 431:8-15)

f. Observation And Evaluation Of Student Instructors

Faculty members typically observe student instructors and provide feedback. (Tr. 160:20-161:1; 210:10-12; 440:21-441:5; 617:21-618:6; 664:23-665:3; 856:25-857:1; Empl. Exs. 40; 53; 74; 102) For example, in the Art History department, the faculty member observes the graduate student instructor, provides guidance and feedback, and prepares a written evaluation at the end of the semester, which is discussed with the student and included in the student's file. (Empl. Ex. 53) Similarly, in the Physics Ph.D. program, the TA supervisor engages in ongoing evaluation of graduate students and will address any problems that may arise. (Tr. 763:22-25) Likewise, with respect to Preceptors who teach in the undergraduate Core Curriculum, the Chair of a course will observe first-year Preceptors, and then meet with them to provide feedback. (Tr. 160:20-161:1) In some departments, such as Psychology, faculty evaluate students' teaching individually at an annual meeting and also grade the students on their teaching. (Pet. Ex. 23)

Undergraduate students also evaluate graduate students through their online course evaluations. (Empl. Exs. 54; 65; Tr. 436:3-11; 763:11-21) Faculty then review these evaluations to determine whether a student is advancing in terms of his/her pedagogical skills. (Tr. 440:8-20) Because graduate students are viewed as teachers in training, these evaluations are not publicly available. (Tr. 316:21-317:21)

Notably, where a graduate student's teaching is defective or ineffective, the University will intervene to provide training and resources to the student so that he or she may teach effectively. (Tr. 187:16-25; 314:16-316:8; 470:18-471:20; Empl. Ex. 40) This help could come from the academic department or from the Teaching Center. (Tr. 315:4-316:21) By contrast, faculty members and adjuncts are expected to resolve those issues on their own, or face non-renewal of their contract. (*Id.*) Dean Alonso testified that during his 30 years of supervising graduate students, he had "never seen a graduate student be terminated, [or] be dismissed from [the] graduate program on account of difficulties with teaching," though teaching inadequacies are "on a regular basis, grounds for non-renewal of a contract" for an professor or adjunct. (*Id.*)¹³

Further, whereas faculty members are subject to discipline as determined by the Executive Vice President of Arts and Sciences, graduate student instructors who engage in behavioral or academic misconduct are subject to the Dean's student discipline policy. (Tr. 442:12-443:2; Empl. Ex. 66) Similarly, a student grievance against a graduate student is

¹³ This discussion relates to helping a student who is struggling with their teaching fellow duties to teach more effectively. Where the issues are behavioral, such as a student who acts in dereliction of his or her teaching duties, the student would be dealt with through the Dean's Discipline process, which could result in sanctions up to and including dismissal from the program. (Tr. 317:22-318:23)

governed by a student policy, which differs from the faculty grievance policy. (Empl. Ex. 67; Tr. 444:4-10)

4. The Original Research Requirement

The cornerstone of the doctoral program is the advancement of academic knowledge through original research. (Tr. 269:17-271:18) Unlike undergraduate education, which focuses on the “transmission of received knowledge” to undergraduates, “the purpose and reason for graduate education is the production of new knowledge, the advancement of whatever field we may be speaking about.” (Tr. 271:1-18; 769:13-770:1; 1021:18-22) Thus, the final requirement for any Ph.D. degree is the creation and defense of the student’s dissertation, a piece of original research and exposition. (Tr. 271:1-18; 752:11-15)

5. Graduate Student Participation In Scientific Research

In the scientific fields of study – such as the programs within the Natural Science departments in GSAS, the Engineering School and the Biomedical Sciences – the student’s dissertation research takes place in the context of a research laboratory environment. (Tr. 71:21-25; 409:21-410:5; 410:21-411:2; 775:13-19)

Under the tutelage of the faculty, students learn the process of doing research and receive the technical research training necessary to become independent scientists, and to go on to work in academia, in industry or for a research organization. (Tr. 116:20; 117:5; 119:24-120:5; 659:20-660:1; 979:22-980:15; Empl. Ex. 32) Graduate students accepted to laboratory science Ph.D. programs at Columbia are not accepted or assigned to a particular laboratory upon being admitted, except in rare instances. Rather, during the first one or two years in the program, these students meet the faculty, take courses, and attend seminars and colloquia on ongoing research, all the while refining their research interests and identifying the faculty member with whom they want to perform their thesis research. (Tr. 656:5-20; 660:18-66:15; 750:3-765:17; 980:24-

982:21) In the Coordinated Program in Biomedical Sciences, first year doctoral students complete three laboratory rotations in which they explore potential areas of research. (Tr. 976:11-16) Typically beginning in the second year of these programs, the students select a professor's laboratory in which to conduct their own dissertation research. (Tr. 976:21-977:3; 981:23-982:7) That faculty member will become the student's dissertation mentor, and the student's relationship with that mentor will be an important aspect of the student's education. (Tr. 115:22-117:2)

Once the student joins a research laboratory, the student's research will contribute to the faculty member's project while simultaneously developing original research. (Tr. 72:1-4; 278:9-21; 409:21-410:5; 775:13-19; Empl. Ex. 2) Specifically, the student's original research falls within the overall scope of research that is being undertaken by the faculty member. (Tr. 71:21-25; 409:21-410:5; 410:21-411:2) Generally, the faculty member's research offers the student preliminary work upon which the student will base his/her thesis. (Tr. 775:13-19) For example, by working on a faculty member's research project in physics, the student learns, among other things, how to collect and analyze data, design an experiment, build and operate equipment, and develop software to calibrate equipment so that the student can apply that knowledge directly to his/her thesis. (Tr. 766:9-767:3; 773:19-774:3; 979:22-980:15) Because the student's research on the advisor's project overlaps with his/her original research, it is impossible to separate the time spent on the student's dissertation work from his/her time working on the faculty advisor's research. (Tr. 801:1-802:1)

Graduate student researchers learn from all aspects of their research appointment. (Tr. 767:23-768:2) The students work under the guidance of faculty advisor who trains the student to be a scientist. (Tr. 984:8-16) They may also assist in publishing research papers and presenting

research at conferences, through which the student not only builds his/her resume, but also learns how to write a paper and to carry out an analysis. (Tr. 116:14-117:5; 659:20-660:10; 775:20-776:20)

Students also benefit from the tutelage and supervision of their faculty mentor. (Tr. 116:24-117:2) Doctoral students typically meet with their faculty advisor on a weekly or more frequent basis to discuss the direction and progress that the student has made on his/her original research. (Tr. 767:12-16) Through these meetings, as well as working together on the faculty advisor's research, a mentorship relationship develops. (Tr. 767:4-768:2) The mentor assumes the responsibility of ensuring that the student is on track to complete the Ph.D. degree, that the student's research project is well designed, and that he/she is making appropriate progress. (Tr. 984:24-985:4) Often, the mentor-mentee relationship that forms between the faculty member and student endures long after the student receives his/her Ph.D. degree. (Tr. 765:18-766:8) As described by Dr. Arthur Palmer, Professor of Biochemistry and Molecular Biophysics, when a student joins a faculty advisor's lab, the advisor has a "lifetime commitment" to the student that entails "training the student to be an outstanding scientist" both during their time at the University and thereafter. (Tr. 984:8-23)

6. Sources of Funding For Graduate Researchers

Most doctoral students working in faculty research laboratories are supported on research grants. Typically, scientific research grants are funded by government agencies such as the National Institutes of Health, the National Science Foundation, NASA or the Department of Defense. (Tr. 661:22-662:1; 768:3-14; 976:2-10) Less frequently, funding may come from private foundations. (Tr. 768:14-16) When a student works with a faculty member who has a research grant, that grant provides the student's funding. (Tr. 976:2-10; 1018:25-1019:2)

Funding is becoming increasingly competitive and difficult to obtain. (Tr. 118:11-12; 662:2-12) To obtain a research grant, a faculty member, referred to as the “principal investigator,” typically applies for the grant by submitting a detailed research proposal to an outside funding source. (Tr. 454:15-455:20; 768:17-769:2; 993:22-994:9) The proposal outlines the research issue, the research methodology, and the potential impact of the research; it also includes a budget, which may include support for graduate students. (Tr. 118:1-119:18; 662:2-12; 769:3-12; Empl. Ex. 119) If the grant is awarded, graduate students supported by the grant will work on one of the research topics described in the grant, with the qualification that the student is also fulfilling the requirements of the Ph.D. degree. (*Id.*; 455:25-456:7)

Graduate student scientists can also be supported by training grants, particularly in the biological sciences. (Tr. 996:14-17) Training grants are grants awarded by the NIH for the purpose of training doctoral students, usually for one to three years, in a particular area of biological research that is “viewed as important for the future workforce ... of the country.” (Tr. 72:8-13; 985:19-986:15; 992:16-25; Empl. Ex. 118) Funding under a training grant is not tied to any particular research lab or project. (Tr. 985:19-986:15) The purpose of training grants is to “ensure that a diverse and highly trained workforce is available in adequate numbers and in the appropriate research areas and fields to carry out the nation’s biomedical and behavioral research agenda.” (Empl. Ex. 118; *see also* Empl. Ex. 32) Training grants provide a stipend “as a subsistence allowance to help defray living expenses during the research training experience,” which, pursuant to the terms and conditions of the NIH Grants Policy Statement, is not a salary and is not provided as a condition of employment. (Empl. Ex. 118)

Graduate students who are not supported by a research grant or a training grant will typically be supported by general funds from within schools or departments. (Tr. 663:1-5;

985:5-15; 994:19-995:3) Regardless of how the students are funded, all doctoral students in a given program receive the same financial package and, after selecting a laboratory to work in, perform largely the same research duties as their peers in the laboratory who may be funded differently. (Tr. 663:1-5; 973: 2-16; 995:4-7; 1019:23-1020:4; 1021:2-10; 1024:20-1025:3; Empl. Ex. 116)

E. STUDENT POSITIONS

Pursuant to the Faculty Handbook, “[o]n the nomination of the deans and vice presidents, and with the concurrence of the Provost, the Secretary of the University appoints students to assist in the instructional and research programs of their departments and schools.” (Empl. Ex. 2) These appointments are made by the office of the Vice Provost for Academic Administration. (Tr. 63:13-19) There are five categories of student officers of instruction: Teaching Fellow; Preceptor; Teaching Assistant (“TA”); Teaching Assistant III (“TA III”); and Reader. (Tr. 68:6-13; Empl. Ex. 3) Student officers of research receive one of four appointments: Graduate Research Assistant (“GRA”); GRA Fellow; Research Fellow; and Departmental Research Assistant (“DRA”). (Tr. 70:8-16; Empl. Ex. 3) In the Fall Semester 2014, there were a total of 2,094 students with instructional appointments and 1,059 with research appointments. (Empl. Ex. 3)

Although these are the only positions in which students can receive an instructional or research appointment, other students may be assigned to instructional or research positions without an academic appointment. These positions are paid on an hourly basis through the casual payroll.¹⁴ For example, course assistants and graders in some departments within the

¹⁴ The overwhelming majority of students on the casual payroll (and the separate work-study payroll) have clerical or administrative positions – such as shelving books in the library or working in an office – and thus are not covered by the petition.

School of Engineering are coded as casual employees. (Tr. 672:18-674:4) The various types of instructional and research appointments and casual positions are discussed below.

1. **Instructional Appointments**

a. ***Teaching Fellow***

Teaching Fellow is a title used predominantly in GSAS. A Teaching Fellow is a doctoral student who, as part of his/her academic program and training, is engaged in instruction of undergraduate students in varying capacities and levels of responsibility. (Tr. 68:23-69:7; Empl. Exs. 2; 39) Among the duties that may be performed by a Teaching Fellow are:

- Attending lectures;
- Holding office hours;
- Assisting the instructor prepare course materials;
- Reading and grading assignments or exams;
- Staffing student help rooms;
- Leading exam review sessions.
- Running discussion sections or labs; and/or
- Teaching sections of select undergraduate courses.

(Tr. 68:23-69:7; 203:16-204:5; Empl. Exs. 39, 76) The nature of a Teaching Fellow's responsibilities may vary significantly based on the nature and requirements of the academic program and the training that the student needs in his/her specific field. (Tr. 307:16-308:9) Students will typically begin with simpler responsibilities in their first year, taking on functions with increasing responsibility and independence in their later years of teaching: "Teaching fellows should be offered a range of teaching responsibilities with increasing independence and student contact to gradually prepare them for independent teaching." (Empl. Ex. 40; Tr. 812:24-815:1; 1043:7-16) Although it varies among departments, Teaching Fellows are typically

expected to commit 15-20 hours per week to the role. (Empl. Ex. 39; 40; see also Empl. Ex. 100 (maximum of four teaching hours in physics)) Teaching Fellows receive the standard GSAS funding package. (Tr. 302:7-11)

b. Preceptor

A Preceptor is an advanced GSAS doctoral student who teaches a section of Contemporary Civilization or Literature Humanities, which are full-year courses in the undergraduate Core Curriculum that meet twice a week for two hours each time. Each of these courses is taught from a common curriculum by a mix of instructors including doctoral students, retired faculty, regular faculty, tenured faculty, untenured faculty, post-doctoral appointments, adjunct faculty and visiting Fellows. (Tr. 152:25-153:10) Typically, graduate student Preceptors make up about one third of the instructors for each course. (Tr. 152:14-24) Graduate students have served as instructors in the Core Curriculum since 1919, and the mixed faculty provides an inter-generational perspective to the undergraduate students. (Tr. 151:3-6; 164:4-6) A faculty member serves as course chair responsible for each course. (Tr. 68:14-21; Tr. 152:1-6; 164:19-25; 307:4-7; 408:20-409:2; 429:2-25; Empl. Exs. 12-15; 39) Graduate students typically in their fourth and fifth years apply to be preceptors through a competitive selection process. (Tr. 172:9-16)

By teaching in the Core Curriculum, doctoral students can “broaden their teaching experience.” (Empl. Ex. 40) Preceptor duties include all of the responsibilities of teaching a course, such as lecturing, administering and grading exams and papers, submitting final grades for the course, and holding office hours. (Tr. 164:19-165:2) To prepare Preceptors for their teaching duties, they receive “extensive training” including a three day workshop and orientation session for new preceptors, weekly faculty meetings and a pedagogy seminar for first-year preceptors. (Tr. 158:1-160:12; Empl. Exs. 14-15)

Preceptor is a one-year appointment that may be renewable for a second year. (Tr. 152:1-6; Empl. Ex. 39) Doctoral students are eligible for this appointment only if they have obtained the M.Phil. degree and have not completed their seventh year. (Tr. 151:16-25; Empl. Exs. 11-15)

c. Teaching Assistant

Teaching Assistant is an instructional appointment which varies depending on the school in which the student is appointed.

GSAS. In GSAS, a small number of M.A. students are appointed as Teaching Assistants. These students perform functions such as grading exams or homework. (Tr. 220:4-9; 414:10-21) M.A. programs in GSAS are typically one-two years, and M.A. students are “virtually never” appointed during their first year. (Tr. 95:18-23; 220:14-221:6; 413:23-414:6) Accordingly, M.A. Teaching Assistants are appointed for one or two semesters. (Tr. 95:23-25) These students receive a small stipend for their service of approximately \$3,000. (Tr. 414:7-21; Empl. Ex. 3)

Engineering. In the School of Engineering, doctoral students are typically appointed as Teaching Assistants in their first year of study while they complete their mandatory coursework. These TAs are assigned to a course in their department and discipline and assist faculty with various aspects of the course, including designing exams and homework assignments, conducting office hours, conducting weekly recitation or laboratory sections and answering emails from students. (Tr. 664:8-18; 665:6-11; 889:7-14) They typically commit 8-12 hours per week to this position. (Tr. 664:19-22) Faculty members mentor and supervise TAs, collaborating on pedagogical needs and providing them with guidance on how to teach effectively. (Tr. 665:3-5; Pet. Ex. 40) Prior to serving as a TA, all doctoral students are required to attend the training workshop conducted by the School of Engineering in conjunction with

GSAS. (Tr. 664:23-665:3) TAs in the School of Engineering receive the full funding package given to all doctoral students. (Tr. 657:2-13) Generally, TAs in the School of Engineering perform tasks similar to GSAS Teaching Fellows.

School of the Arts. Every MFA student in the Visual Arts division is given the opportunity to serve as a TA for one or two semesters in a studio class in his/her discipline. (Tr. 343:13-344:8; 344:14-18; Empl. Ex. 49) As a TA, students have the opportunity to develop and perfect their skills in the critique process, which is the School's fundamental goal. (Tr. 343:21-25) Specifically, while the instructor circulates the classroom to teach students, the TA also rotates among students to talk about their work, help them through a creative or technical problem, or discuss the conceptual framework of the work. (Tr. 345:11-347:7) In addition, the TA participates in the group critique session. (Tr. 345:11-347:7) The faculty member serves as a mentor whom the TA can observe and engage both in and outside the classroom. (Tr. 348:3-21)

In the Film division, only second and third-year MFA students (and in rare cases M.A. film students) may serve as TAs. (Empl. Exs. 47; 48) Under the supervision of a faculty member, TAs in film learn how to teach by assisting instructors of large lectures or seminars on the history, theory and criticism of film. (Tr. 349:7-350:12) TAs attend class lecture, lead discussion sections, prepare film clips, assist in the development of the syllabus and grade papers (but will not determine the grade). (Empl. Exs. 47; 48; Tr. 349:7-350:12; 399:7-23) Typically, students serve as a TA in film for only one or two semesters. (Tr. 350:19-351:1)

TAs in Visual Arts and Film receive financial aid consisting of tuition remission of \$4,300 and a stipend of \$2,116 per semester. (Tr. 348:22-25; 351:2-7; Empl. Exs. 47; 48; 49)

SIPA. Second year students in SIPA with a GPA above 3.4 can be appointed as Teaching Assistants. (Tr. 707:13-708:3; 719:1-7; Empl. Exs. 89; 93-96) These TAs support course instructors on a variety of tasks, including attending class lectures, holding office hours to address students' questions, and assisting with grading and proctoring of exams. (Empl. Ex. 90) TA appointments are for one semester, but may be renewed for a second semester in limited circumstances. (Tr. 713:8-15) Indeed, during calendar years 2013/14 and 2014/15, some 65% percent of students served as a TA for one semester only; the remaining 35% percent were appointed for a second semester. (Empl. Ex. 97) TAs typically commit 20 hours per week to the position. (Empl. Ex. 91) They receive financial aid consisting of a tuition credit of \$15,000 and a salary of \$5,000 per semester. (Empl. Exs. 89; 93)

d. Teaching Assistant III

A TA III is an undergraduate teaching assistant in GSAS or the School of Engineering. (Empl. Ex. 3; Tr. 69:19-70:2; 669:17-22)

In the Mathematics department, TA IIIs assist in computer labs and grade homework. (Tr. 222:1-5) They also can lead problem sections or staff the help room. (Tr. 69:19-70:2; 222:1-5) They are generally appointed for two semesters and receive a stipend of \$1,800 per semester. (Tr. 222:17-19; 223:1-2; 245:3-9)

In the School of Engineering, undergraduate students in Computer Science who have done exceptionally well in a course and who are being groomed to go to graduate school may serve as a TA III for that course. (Tr. 669:17-770:9) They assist students in computer programming courses to learn programming languages. (Tr. 669:20-670:7; 670:15-21) TA IIIs in Computer Science typically hold the position for one or two years. (Tr. 669:20-670:7) On average, they provide services for 8-15 hours per week. (Tr. 670:22-24) TA IIIs receive financial aid consisting of a \$2,500 stipend per semester. (Pet. Ex. 36; Tr. 670:25-671:3)

e. Reader

GSAS. In GSAS, readers are M.A. students who are appointed to grade papers or exams. (Tr. 70:3-7; 414:10-21) Students typically serve in this role for only one semester. (Tr. 220:14-221:2; 221:3-6) Readers receive a \$1,800 tuition rebate and a \$1,800 stipend per semester. (Tr. 220:10-13)

SIPA. Second year students in SIPA with a GPA above 3.4 can be appointed as Readers. (Tr. 707:13-708:3; 719:1-7; Empl. Exs. 89; 93-96) Readers help instructors to prepare course materials and assist with administrative issues. (Empl. Ex. 90) Reader appointments in SIPA typically last one semester, but may be renewed for a second semester in limited circumstances. (Tr. 713:8-15) On average, students commit approximately five hours per week to this role. (Empl. Ex. 91) Readers receive financial aid consisting of a tuition credit and a salary of \$6,000 per semester. (Empl. Exs. 89; 96)

f. Other Instructional Appointments in School of the Arts

The School of Arts uses informal titles to describe several of the instructional appointments available to students. Although students with these appointments are referred to as “Preceptor in Film,” or “Teaching Fellow in Creative Writing,” they are not doctoral students like the “Preceptors” and “Teaching Fellows” in GSAS, but rather MFA or M.A. students.

i. Preceptor in Film

MFA students who have finished their coursework and are in their research arts year (*i.e.*, third or fourth year) may serve as Preceptors in Film. (Tr. 351:23-352:2; Empl. Ex. 47) Preceptors in Film serve as instructors in a lab in screenwriting or film making for undergraduate seniors. (Tr. 352:2-7) Although the MFA student is the sole teacher in the lab, the student works under the close supervision and mentorship of the Director of Undergraduate Studies – for example, the student prepares a syllabus for the Director’s review and discusses the class with

the Director. (Tr. 352:2-353:6; 354:20-355:5) Generally, Preceptors in Film hold this position for only one semester. (Tr. 354:15-24) Preceptors in Film, like TAs, receive financial aid consisting of a tuition remission of \$4,300 and a stipend of \$2,116 per semester. (Tr. 355:1-7; Empl. Exs. 47; 50)

ii. Teaching Fellow in Creative Writing

In the School of Arts, third year MFA students in the Writing program may be appointed as a Teaching Fellow in Creative Writing for one semester. (Tr. 357:3-6; Tr. 360:25-361:1) These advanced MFA students teach a beginner workshop in the Undergraduate Creative Writing Program. (Empl. Ex. 51 at 13; Tr. 355:25-358:7) The Teaching Fellow develops a syllabus, selects reading texts and develops lesson plans for the year, all of which are reviewed by the head of the concentration and/or the Director of Undergraduate Studies. (Tr. 358:1-7) Teaching Fellows in Creative Writing receive financial aid consisting of a \$5,000 stipend and a \$5,000 scholarship. (Empl. Ex. 51; Tr. 360:16-24)

iii. Instructor

MFA students may also serve as instructors in the Undergraduate Writing Program (“UWP”), which is separate from the Creative Writing Program. (Empl. Ex. 51) UWP instructors teach expository writing, an undergraduate Core Curriculum course. (Tr. 362:25-363:7; Empl. Ex. 51) UWP instructors prepare for and teach two classes per week, grade papers, and hold office hours. (Empl. Ex. 51) UWP instructors are selected, trained, and supervised by GSAS. (Tr. 363:7-9) UWP instructors receive tuition exemption in an amount equivalent to up to 11.5 credits, plus a stipend. (Empl. Ex. 51; Tr. 363:19-23; 365:23-25)

2. Research Appointments

Nearly all student research assistants at Columbia are doctoral students, with the exception of a handful of M.A. students who serve as DRAs in certain GSAS departments. (Empl. Ex. 3.)

a. Graduate Research Assistant

A Graduate Research Assistant (“GRA”) is an advanced doctoral student who conducts laboratory research funded by external grants. (Tr. 70:17-25; Empl. Ex. 2) The function of a GRA is substantially the same whether the student is appointed in GSAS, the School of Engineering, or the Coordinated Program of Biomedical Sciences. (Tr. 409:4-12; 663:1-5; 1019:4-13) The GRA, under the supervision of a faculty member, performs research that relates simultaneously to the goals of the specific grant that has been awarded to a faculty member and to the student’s dissertation. (Tr. 71:21-25; 409:21-410:5; 983:19-24) The faculty member supervising the GRA serves as the student’s dissertation advisor. (Tr. 984:8-16)

GRAs are paid from funding received by the research grant. (Tr. 409:8-12) All GRAs receive the same stipend as other students in their program regardless of the number of hours spent in the lab working on their dissertation research. (Tr. 973:14-16)

b. GRA Fellow

A GRA Fellow is a doctoral student in GSAS who participates in research projects in the sciences that are funded by the University, rather than a research grant. (Tr. 70:17-25; Empl. Exs. 2; 3)

c. Research Fellow

A Research Fellow is also a doctoral student in GSAS who participates in research projects that are funded by the University. (Tr. 70:17-25; Empl. Exs. 2; 3) The distinction between a GRA Fellow and a Research Fellow is that a Research Fellow conducts research

outside of the sciences while a GRA Fellow conducts research *in the sciences*. (Tr. 70:17-25; Empl. Exs. 2; 3)

d. Departmental Research Assistant

GSAS. In GSAS, a small number of M.A. students are appointed as DRAs to assist faculty members with research. (Tr. 76:7-18) These DRAs are appointed for either one or two terms. (Tr. 76:19-22)

Engineering. In the School of Engineering, advanced doctoral students may also be appointed as DRAs. (Tr. 663:5-6) The only distinction between a GRA and a DRA in the School of Engineering is the source of funding: GRAs are funded by external research grants, while DRAs are funded by University funds. (Tr. 663:1-5)

SIPA. Second year students in SIPA with a GPA above 3.4 can be appointed as DRAs. (Tr. 707:13-708:3; 719:1-7; Empl. Exs. 89; 93-96) Despite their title, DRAs in SIPA are not research appointments. Rather, they are responsible for instructional tasks in quantitative courses such as grading weekly assignments and exams, holding office hours and performing other tasks assigned by the course instructor. (Empl. Ex. 90) Alternatively, DRAs may assist a director in a specific concentration with the management of their courses, student communications, and administrative matters, such as planning events. (Empl. Ex. 90) DRAs receive a tuition credit and a salary of \$10,500 per semester. (Empl. Exs. 89; 94) DRA appointments in SIPA typically last one semester, but may be renewed for a second semester in limited circumstances. (Tr. 713:8-15) Indeed, during calendar years 2013/14 and 2014/15, most students served only one semester and no student served more than two semesters in any SIPA assistantship. (Empl. Ex. 97) On average, students commit approximately fifteen hours per week to this role. (Empl. Exs. 91; 94; Tr. 714:9-15)

3. Non-Appointment Positions

a. Service Fellow

The School of Arts provides financial aid to MFA students in the form of Service Fellow positions, which require the students to perform duties for the program, for which they are compensated through the casual payroll at an hourly rate of \$20 or \$25 per hour. (Empl. Ex. 49; Tr. 376:2-6; 376:18-20; 404:15-18) These positions are viewed as co-curricular positions—not academic appointments—because they are not in the classroom and do not involve teaching. (Tr. 376:12-17) The responsibilities of service positions could include serving as a monitor in a sculpture shop, assisting in the production of a film, building an audience through social media or working for the communications office. (Tr. 371:10-373:12) MFA students are eligible for these positions starting in their second year. (Tr. 375:9-18) Given the temporary nature of many of the School’s activities, these positions do not offer consistent work on a weekly basis. (Tr. 373:13-17) On average, students holding these positions perform services for five to fifteen hours per week. (Tr. 373:13-17) Students typically hold these positions for only one semester. (Tr. 373:3:13-17; 375:19-376:1) Petitioner is not seeking to represent hourly employees of the School of the Arts who are not engaged in performing research. (Tr. 648:6-16)

b. Program Assistant

In SIPA, Program Assistants perform non-instructional work in the School’s administration offices, and carry out administrative and support functions. (Empl. Ex. 90) For example, students may assist Career Services with the coordination of career events and networking receptions, and other administrative tasks. (Empl. Ex. 91) They may also assist the Admissions and Financial Aid office by performing general office duties and interacting with prospective applicants. (Empl. Ex. 91) On average, students commit approximately 15 hours per week to this role. (Empl. Exs. 91; 95; Tr. 714:9-15) Program Assistants receive a tuition

credit and a salary of \$10,500 per semester. (Empl. Exs. 89; 95) Petitioner has taken no position on whether Program Assistants should be included in the proposed bargaining unit and Columbia avers that they should not be included in the proposed bargaining unit. (Tr. 728:23-729:2)

c. Course Assistant

M.A. students in the School of Engineering may serve as Course Assistants. (Tr. 667:5-8) Course Assistants help with the administration of a course, which typically involves printing homework assignments, collecting homework, assisting with the grading of homework and proctoring exams. (Tr. 667:23-668:9) Course Assistantships are held for one semester, and students are never appointed to serve in this position for more than two semesters. (Tr. 668:10-13) On average, Course Assistants provide services for eight to fifteen hours per week. (Tr. 668:14-16) Course Assistants typically receive financial aid consisting of a \$1,800-\$2,500 stipend per semester. (Tr. 668:19-23; 674:5-7; 694:12-25) The majority of Course Assistants are coded and paid as Casuals, although some have been incorrectly appointed as Readers. (Tr. 673:19-674:7)¹⁵

d. Grader

M.A. students in the School of Engineering may also serve as Graders. (Tr. 667:5-8) Graders are responsible for grading assignments and, in some cases, exams. (Tr. 669:6-8) Grader is a one semester appointment, and students will never serve as a Grader for more than two semesters. (Tr. 669:9-13) On average, they provide services for eight to fifteen hours per week. (Tr. 669:14-16) Graders receive financial aid consisting of a \$2,500 stipend per semester. (Tr. 674:5-7; Pet. Exs. 36, 39) As with Course Assistants, Graders in the School of Engineering

¹⁵ Beginning in Fall 2015, all Course Assistants in Engineering will be coded as casual students. (Tr. 672:18-674:7)

have been inconsistently appointed as Readers; going forward they will be paid as Casuals. (Tr. 673:19-674:4)

e. Lab Assistant

M.A. students in the School of Engineering may also serve as Lab Assistants. (Tr. 694:4-10) Lab Assistants assist students in labs to perform the experiments that are assigned as part of a course assignment, like a homework exercise. (Tr. 695:22-696:8) These students are paid through the casual payroll. (Tr. 693:25-94:12)

ARGUMENT

I. THE PETITIONER IS NOT A LABOR ORGANIZATION

As a preliminary matter, the Region should dismiss the Petition because the Petitioner is not a labor organization within the meaning of the Act.

Section 2(5) of the Act defines a “labor organization” as “any organization... in which employees participate and which exists for the purposes, in whole or in part, of *dealing with* employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” (Emphasis added) Petitioner is a committee that was established for the sole purpose of organizing graduate students at Columbia. It does not – and has no intent to – deal with Columbia or any other employer.

To satisfy the “dealing with” requirement of Section 2(5), Petitioner must participate in, or seek to participate in, “a bilateral mechanism involving proposals from the [organization]. . . coupled with real or apparent consideration of those proposals by management.” *Electromation*, 309 NLRB 990, 995 (1992). “The bilateral mechanism ordinarily entails a pattern or practice in which a group of employees, over time, makes proposals to management, and management responds to those proposals by acceptance or rejection by word or deed.” *Polaroid*, 329 NLRB 424, 425 (1999).

The undisputed evidence presented by Petitioner's own witness clearly demonstrates that GWC will not engage in any "bilateral mechanism" with Columbia. Rather, it is a committee formed exclusively for the purpose of organizing activity at Columbia. Kenneth Lang, International Representative of the UAW, testified that GWC is an organizing committee, that was established by the UAW for the sole purpose of "form[ing] a union" of graduate student workers at Columbia. (Tr. 45:6-9, 56:2-57:23) Lang admits that if its petition is successful, GWC will not *deal with* Columbia in any way. Rather, the UAW either would deal with Columbia itself or delegate all representative functions to a local union, likely Local 2110. (Tr. 48:16-24) Thus, while GWC may be a committee of a labor organization – *i.e.*, the UAW and/or Local 2110 – it is not a labor organization itself. This is confirmed by the Constitution and By-Laws of the UAW, which make clear that an organizing committee, such as Petitioner, has no legal autonomy under the Constitution:

Local Unions, District Councils organized pursuant to Article 34, Family Auxiliaries and Community Action Program (CAP) Councils shall be the only chartered subordinate bodies of this International Union. All other subordinate bodies of the International Union which may at any time exist shall not be chartered and shall have no autonomy under this Constitution, but shall exist upon the authority of, and be generally supervised by and responsible to, the International Executive Board.

(Empl. Ex. 1 at 102, Art. 36 § 15)

The fact that the UAW likely will assign a local union to represent any bargaining unit certified by the Board makes the identity of GWC as the petitioner in this representation proceeding not only inappropriate, but misleading to potential voters who will be voting for or against an entity that has no intention of representing them. Indeed, voters will not know with certainty what entity would represent them in bargaining if Petitioner were to win the election. That is fundamentally inconsistent with the Board's notion of informed choice.

Whether in the context of an unfair labor practice or representation proceeding, the NLRB has consistently held that entities like GWC, which do not *deal with* employers are not labor organizations as defined in the Act. *See, e.g., Glove Workers' Union*, 116 NLRB 681, 688-89 (1956) (finding that a union organizing committee was not a Section 2(5) labor organization despite its affiliation with one because the committee's objective was to secure recognition and there was no evidence that it intended to engage in collective bargaining); *Center for United Labor Action*, 219 NLRB 873 (1975) (finding that the respondent entity was not covered by the Act's prohibitions on secondary boycotts because it did not seek to deal with employers, and, thus, was not a labor organization covered by the Act); *Northeastern Univ.*, 235 NLRB 858 (1978), *enfd in part and denied in part*, 601 F.2d 1208, 1212 (1st Cir. 1979) (holding that the Northeastern University chapter of the 9-to-5 Organization for Women Office Workers, consisting of Northeastern University employees who organized a petition drive and demanded a cost-of-living wage for employees, was not a labor organization because it "eschew[ed] a collective bargaining role."); *EFCO Corporation*, 327 NLRB 372, 376 (1998), *enfd.*, 215 F.3d 1318 (4th Cir. 2000) (holding that an Employee Suggestion Screening Committee did not constitute a labor organization, and did not violate 8(a)(2) of the Act, because it did not formulate or present proposals to management); *see also* Advice Memorandum in *Rest. Opportunities Ctr. of N.Y.*, 2-CP-1067, *et al.* (Nov. 30, 2006) (finding that an organization in which employees participate is not a labor organization under the Act despite its dealing with employers to settle employment litigations because such actions do not constitute a pattern or practice of dealing with employers).

On facts virtually identical to those presented by the instant petition, the Board has found that an organizing committee that eschewed *dealing with* employers is not a labor organization

within the meaning of the Act and cannot petition for certification as the representative of employees. In *Sterling Processing Corp.*, 119 NLRB 1783 (1958), the Teamsters and Butchers Joint Organizing Committee (“TBJOC”), a joint committee of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the Amalgamated Meat Cutters and Butcher Workmen of North America, petitioned for certification as the representative of Sterling Processing Corp.’s employees. Similar to GWC, there was no evidence that TBJOC ever processed grievances or was a party to a collective bargaining agreement. Just as Lang testified would occur at Columbia if GWC were successful in its organizing effort, a witness for TBJOC testified that after the employees were organized they would be turned over to the locals for the negotiation of a contract, although it would continue to process grievances until a contract was negotiated. Nevertheless, the Board found that TBJOC was not a labor organization within the meaning of the Act.

Columbia recognizes that the Acting Regional Director held that a similar organizing committee of the UAW – the Graduate Student Organizing Committee (“GSOC”) – satisfied the definition of a “labor organization” in *New York University*, Case No. 2-RC-2384 (DDE dated June 16, 2011 at 3-4). That decision sought to distinguish *Sterling Processing Corp.* on the basis that “the affiliated petitioning committee existed *solely for organizing purposes* and was explicitly *not empowered* to deal with employers concerning labor disputes, wages, hours or grievances, or other conditions of employment.” (*Id.*) (emphasis added) Lang’s testimony confirms that Petitioner here, like the committee in *Sterling Processing Corp.* exists solely for organizing purposes, and that the Petitioner would delegate all responsibility for dealing with Columbia to a local union immediately after certification. It is particularly telling in this respect, furthermore, that notwithstanding the ruling in *NYU* holding GSOC to be a labor organization,

the UAW and UAW Local 2110 – not GSOC – jointly negotiated and signed a collective bargaining agreement with NYU after a private representative election among NYU’s graduate students. (Tr. 48:22-49:2; 54:15-55:14; Pet. Ex. 47)

Accordingly, Petitioner is not a labor organization under the Act and on that basis alone the Petition must be dismissed.

II. COLUMBIA’S STUDENT ASSISTANTS ARE NOT “EMPLOYEES” UNDER THE NLRA

A. *Brown University* Is Controlling And Mandates Dismissal Of The Petition

In *Brown University*, 342 NLRB 483 (2004), the Board expressly overruled *New York University*, 332 NLRB 1205 (2000) (“*NYU I*”), restoring a line of legal precedent that had been followed since the early 1970s. See *Adelphi University*, 195 NLRB 639 (1972); *Leland Stanford*, 214 NLRB 621 (1974). *Brown* held that “graduate student assistants, who perform services at a university in connection with their studies, have a predominantly academic, rather than economic, relationship with their school” and thus “are primarily students and not statutory employees.” 342 NLRB at 483. *Brown* declared “Federal law to be that graduate student assistants are not employees within the meaning of Section 2(3) of the Act.” *Id.* at 493.

The Board identified a number of factors in *Brown* which were instrumental to its holding that the relationship between graduate student assistants and the university was principally educational, rather than economic:

- Graduate student assistants are admitted into, not hired by, the university;
- Graduate student assistants must be students enrolled in the university in order to receive an instructional or research appointment;
- The principal time commitment of the graduate student assistants is focused on obtaining a degree, i.e., being a student, and service time is limited;

- Teaching is an important component of most Ph.D. programs offered, and is often required as a condition to receipt of the Ph.D. degree;
- Graduate student assistants perform their service under the direction and control of department faculty members, typically the student's dissertation advisor;
- Financial support is provided only to students, and only for the period in which the students are enrolled;
- Fellows without appointments receive the same financial aid as students with instructional or research appointments; and
- The vast majority of doctoral students receive financial aid.

Brown, 342 NLRB at 488-89. As set forth below, each of the above factors applies equally, if not more strongly, to the current record before the Regional Director.

Notably, in its brief to the Regional Director in *The New School*, 02-RC-143009, the UAW all but concedes that the facts of *Brown* apply squarely to graduate student assistants at Columbia. (pp. 33-36) In distinguishing the student assistants at the New School from those in *Brown*, it observed that at the New School, unlike *Brown*: (i) there is no automatic opportunity to be a graduate assistant; (ii) graduate students are admitted to the school, then fill out an application and interview for those assistant positions; (iii) only about half of doctoral students receive financial aid; (iv) student assistants do not receive tuition remission; (v) service in assistant positions is not required for receipt of the Ph.D. degree; and (iv) the amount of remuneration varies depending on the number of hours anticipated and the level of responsibility. (*Id.*) It is beyond dispute that not a single one of these distinguishing facts applies to graduate assistants at Columbia.

The holding of *Brown* applies as well to Masters and undergraduate students holding instructional appointments who provide assistance to faculty instructors with grading homework, preparing laboratory exercises, or other tasks in connection with a class within their home school or department. Similar to doctoral students, the primary relationship between Masters and

undergraduate student assistants and Columbia is clearly educational, not economic. For example, in the Computer Science department, undergraduate TAs are selected by faculty members based on their exceptional performance in the classroom, and are groomed by faculty members to continue on to graduate school. (Tr. 669:17-770:9) In addition, these students pay substantial tuition in order to participate in their academic programs, and the tuition remission and stipend these students receive for their appointments is simply a form of financial aid to offset the cost of their education.¹⁶

There can be no serious dispute that *Brown* is controlling and requires that the petition be dismissed. As the Regional Director stated in her February 6, 2015 Order:

Although I recognize that the Petitioner is seeking to have the Board reconsider *Brown*, it is improper for me to ignore Board precedent. While the Petitioner's argument that the Board has remanded similar cases suggests that the Board would likely remand the instant case, I am, nonetheless, constrained by the current Board precedent.

The Board's March 13, 2015 Order simply stated that "Petitioner's Request for Review of the Regional Director's Order Dismissing Petition without a hearing is granted as it raises substantial issues warranting review. See *New York University*, 356 NLRB No. 7 (2010) [*NYU II*]." In *NYU II*, a 2-1 majority of the Board remanded the case to develop a factual record on which *Brown* could be reconsidered. As the Board said in that case, "We believe the factual representations, contentions and arguments of the parties should be considered based on a full evidentiary record ..." *NYU II*, at *2. There is no plausible basis for Petitioner's suggestion that the Board's March 13, 2015 Order somehow represented a *sub silentio* reversal of *Brown* (Tr.

¹⁶ In any event, as discussed in Point IIIA below their work is too temporary and distinct from what doctoral students do to include them in the bargaining unit.

22:6-23:3), rather than a simple direction that the Regional Director develop a complete factual record on which *Brown* can be reconsidered – as in *NYU II*.¹⁷

B. Columbia's Student Assistants Have A Primarily Educational, Rather Than Economic, Relationship With The University

Like the students at issue in *Brown*, graduate student assistants at Columbia have a primarily educational, rather an economic, relationship with the university.

As in *Brown*, the funding package Ph.D. students receive is financial aid which is guaranteed upon admission, and which flows from their status as students in the program. 342 NLRB at 488. This important distinction is demonstrated by the uniformity of the financial aid package provided to all students in Ph.D. programs without respect to (i) whether the student holds an instructional or research appointment, or holds no appointment at all; (ii) the number of hours the student actually spends fulfilling the service requirements of his or her appointment, which can vary dramatically between schools and/or academic appointments; (iii) the value of the services provided or the cost to replace those services (such as with an adjunct professor); or (iv) the quality of the student's performance in past appointments. *Id.*

It is beyond serious dispute that the teaching and research performed by graduate student assistants is an integral component of their doctoral education at Columbia. The ability to convey complex, technical information in a clear and cohesive manner is a critical skill for all candidates for the Ph.D. degree, one that will serve them as a professor at a college or university or a keynote speaker at a professional seminar or symposium. Likewise, student research is an

¹⁷ Petitioner somehow seeks to draw this untenable conclusion from the footnote by Members Miscimarra and Johnson noting that the Regional Director properly dismissed the petition based on *Brown*, and “the Board does not here decide whether or not existing law should be overruled.” It is impossible to understand how this observation can be interpreted to mean that the other three Board members decided to overrule *Brown*, when they said nothing to suggest they did anything other than send the case back to the Regional Director to develop a factual record.

inextricable ingredient of doctoral education, the cornerstone of which is the creation of a dissertation containing new knowledge in one's field of study. The research performed by graduate research assistants in the library or laboratory is the very same research that will constitute their doctoral dissertation. This research is a necessary component of the student's education and as such is required to fulfill the requirements of the Ph.D. degree.

1. Student Assistants Must Be Enrolled As Students At Columbia

All of the petitioned-for individuals are students at Columbia. Status as an enrolled student is a prerequisite for appointment to any student assistant position. (Empl. Ex. 2) Likewise, continuation in any student assistant position is contingent on a student's remaining in good academic standing. (Empl. Ex. 40) As the Board noted in *Brown*, being a student "is synonymous with learning, education and academic pursuits." 342 NLRB at 488. The requirement that each member of the petitioned-for unit must first be enrolled as a student at Columbia demonstrates, at the most elementary level, their primarily educational relationship with Columbia. *Id.* ("Because they are first and foremost students, and their status as a graduate student assistant is contingent on their continued enrollment as students, we find that they are primarily students.")

To become enrolled as a student in Columbia's Ph.D. programs, prospective candidates must complete an application form on the GSAS website. (Empl. Exs. 34; 35) Prospective students apply to and are admitted into the doctoral program as Ph.D. students; they are not hired as employees. (*Id.*) The application requires a comprehensive submission of the student's prior academic achievements and potential for doctoral study, including undergraduate and/or graduate transcripts, a statement of academic purpose, a writing sample, multiple letters of recommendation, and GRE test scores. (Empl. Ex. 35) Candidates for the Ph.D. degree (and M.A. degrees) are selected based on the excellence of their academic achievement and their

potential to succeed as a graduate student, *not* their prior teaching or research experience. (Tr. 200:13-15; 291:9-11; 653:22-24; 748:4-14; 810:14-811:10)

Upon acceptance to Columbia, prospective students receive a letter notifying them of their acceptance *as students* into the program. (Empl. Exs. 23; 36-38; 86-88; 99) The acceptance letters from GSAS offer the student admission as a “candidate for the degree of Doctor of Philosophy” and note Columbia’s recognition of the student’s “impressive academic credentials” and “the promise [of the student’s] future development as a scholar, pedagogue and researcher.” (Empl. Ex. 36) The letters note that students will be expected to participate in teaching and research activities in the department, as “a vital part of [the student’s] education.” (*Id.*)

In sum, Columbia’s evaluation and acceptance of students in the doctoral programs demonstrates the singular focus on academic achievement and potential as the criteria for admission.

2. *Columbia Provides Its Graduate Students With Financial Aid, Not Compensation For Services*

a. Doctoral Stipends Are Guaranteed Upon Admission

The admission letter students receive upon acceptance to the Ph.D. program sets forth the financial aid package offered by Columbia. (Empl. Ex. 36) For the doctoral programs in GSAS, all students receive an identical package. (*Id.*) The total value of the package is \$73,617 for a student in the Humanities and Social Sciences and \$81,903 for students in the Natural Sciences, including a stipend, full tuition, payment for student health services, University facilities fees, a health insurance premium, and guaranteed access to student housing. (Tr. 297:14-19; 299:9-300:21; Empl. Exs. 22; 23; 36-38; 99) The student financial aid package does not include vacation leave, sick leave, retirement benefits, or any other Columbia benefits programs available to employees of the university. (Tr. 87:24-88:3; Empl. Exs. 2; 36) This funding

package is guaranteed for five years upon admission, provided the student maintains good academic standing within the student's department and GSAS. (Empl. Ex. 36)

Students in other Ph.D. programs at Columbia, including the Coordinated Program in Biomedical Sciences and the Fu Foundation School of Engineering, receive similar financial aid packages which are uniform among the Ph.D. students in those programs. (Empl. Exs. 86-88; 115) These funding packages are similarly guaranteed. (*Id.*)

b. Stipends Do Not Depend On Appointment

Many Ph.D. students are not on academic appointment, yet receive the same stipend as students holding instructional or research appointments. For instance, first-year students in Ph.D. programs in the Humanities and Social Sciences typically do not have service appointments. (Tr. 301:16-302:6) These students are considered Dean's Fellows, and are expected to acclimate themselves to the graduate program, take courses, and begin to develop a conception of their anticipated area of dissertation research. (*Id.*) Fifth-year students in GSAS also typically do not hold service appointments. (Tr. 301:16-302:6) These students are considered Dissertation Fellows, and are expected to focus on writing their Ph.D. dissertation. (*Id.*) Yet, despite the fact that not all GSAS Ph.D. students are appointed, they nonetheless receive exactly the same stipend irrespective of whether they are on an instructional appointment:

Q: And is there any difference in the fellowship support that's provided to the doctoral students in the years when they have teaching responsibilities and in the years when they're on a dean's fellowship or a dissertation fellowship?

A: None. None whatsoever. It's exactly the same amount.

(Tr. 302:7-11)

These facts are nearly identical to those in *Brown*. The financial aid given to graduate students at Brown University was similarly independent of whether the students held an appointment. 342 NLRB at 485. First and fifth year students at Brown were typically supported with non-service fellowships. *Id.* Yet the financial support package received by these students was “not dependent on whether the student performs services.” *Id.* The *Brown* Board concluded that because “the money received by TAs, RAs and proctors is the same as that received by fellows,” the funds were “financial aid” and not “consideration for work.” *Id.* at 488.

c. Doctoral Stipends Are Not Determined By The Nature Or Hours Of Service

The amount of the stipend received by Ph.D. students is also independent of type of work or the time the student spends performing the service. As set forth above, all Ph.D. students at Columbia receive an identical stipend, which does not vary depending on the nature or time commitment of the service required, even among students with like appointments:

Q: Is the amount – just to be clear, so the amount of the stipend or total fellowship package that the student receives, does that vary at all depending on the type of work that’s required? Does it – when they’re teaching for example does the amount vary depending on the type of work that’s required, or the number of hours that they put in or the particular skill that’s involved?

A: No. Because of the fact that that the teaching responsibilities for a student are determined by the pedagogical and academic needs of the training that the department is trying to give the student. When you look at the responsibilities that various graduate students have throughout the departments they vary immensely. ... [I]t’s a huge diversity of duties, all of which are not reflected in the stipend that students receive. *Meaning that all students receive the same stipend irrespective of the amount of activity and responsibility that is required of them, as part of the teaching appointment.*”

(Tr. 302:12-303:14) (emphasis added)

Similarly, students on GRA appointments would receive the same stipend regardless of the number of hours spent in the lab working on their dissertation research. (Tr. 973:14-16)

Moreover, all of these students will receive an identical increase in their financial aid packages the following year, regardless of whether they held a service appointment the prior year and/or performed well in that appointment.

d. Doctoral Stipends Are Not Determined By The Value Of The Services Provided

The stipends awarded to Ph.D. students are not based, in any respect, on the value of the service or the cost of replacing those services. Rather, stipend levels are set based on expected living expenses and to compete with the stipends offered by other Ivy League and like institutions in order to attract the best students. (Tr. 298:2-22; 303:15-25)

The stipend received by graduate students exceeds, by a significant margin, the replacement cost of the services provided by the students. Adjunct professors can be retained for a cost of approximately \$6,625 per course (including salary and fringe benefits). (Tr. 605:10-606:2; Empl. Ex. 84) Thus, if Columbia sought to minimize its expenses, it could save substantially by hiring adjuncts to provide the services performed by Teaching Fellows, TAs and other instructional appointments. (Tr. 304:1-305:1) Similarly, the stipend for a first year GRA is approximately the same as the cost of hiring a postdoctoral researcher who has already received his or her Ph.D. training and degree and requires far less supervision than a graduate student. (Tr. 1022:6-1023:4) Columbia chooses to appoint graduate students to perform these services, despite the cost, precisely because of the value to the students and Columbia's commitment to discharge its mission of training the next generation of academics. (*Id.*; Tr. 271:1-18; 1021:11-1022:5)

e. Tax Treatment of Doctoral Stipends

Graduate student stipends are paid in three yearly installments in the Fall, Spring and Summer. (Tr. 308:21-309:7) Students with instructional appointments typically receive 2/3 of

their stipend in lump sums and the remaining 1/3 as salary. (*Id.*; Empl. Exs. 42; 45) Columbia is required by IRS requirements to apportion some percentage of the stipend paid to students on instructional and research appointments as W-2 income. (Tr. 308:10-309:17)

The tax treatment of student stipends does not support viewing these amounts as compensation for services instead of financial aid. The stipends that the University provides to its graduate students are treated as taxable income (with the exception of the relatively small amounts paid for books and supplies) under the Internal Revenue Code, whether students are serving as TAs, GRAs or receiving a fellowship.¹⁸ The only variation, which is determined by reference to the Internal Revenue Code, is what amounts must be withheld by Columbia and what amounts the students are independently responsible for paying taxes on. This is a distinction without a difference. In any event, the Board has made clear that the tax treatment and payroll procedures that are utilized by a university in funding its students are not dispositive of employee status. *See NYU I*, 332 NLRB, 1221 n. 52 (deduction of standard payroll taxes from student stipends was “not dispositive of employee status”)¹⁹

3. *Teaching Is An Integral Component of Doctoral Education*

In both philosophy and practice, Columbia and its faculty regard teaching to be an indispensable part of the training that Ph.D. students receive during their studies. To that end, all Ph.D. students in the 30 GSAS-administered programs are required to have *at least* one year of

¹⁸ Summary available at <http://www.irs.gov/taxtopics/tc421.html>.

¹⁹ As the Board explained in *Leland Stanford*, the sporadic use of terms like “employee” and “salary” used in university documents is not determinative on the issue of whether these students are employees under the NLRA. 214 NLRB 621 n. 5 (1974).

teaching experience in order to receive the Ph.D. (Empl. Ex. 28)²⁰ Failure to fulfill this instructional requirement will render a student ineligible for the Ph.D. degree. (Tr. 412:25-413:17; Empl. Ex. 52) As Dean Alonso explained, “[T]he teaching requirement ... is an affirmation of the fact that pedagogical training is an integral component of the graduate career of a student.” (Tr. 284:6-13; *see also* Empl. Ex. 39)

Importantly, the one-year GSAS teaching requirement is merely a “baseline requirement,” such that “individual departments can supplement” that requirement “based on their own disciplinary or field requirements.” (Tr. 283:21-284:5) Ph.D. students in many GSAS programs receive considerably more than one year of teaching experience, often with escalating levels of instructional responsibilities and independence. (Empl. Ex. 28; Tr. 448:11-16; 855:4-6)

For example, in the Art History & Archaeology department, students begin teaching as a classroom assistant to a professor in a large lecture – grading papers, assignments and exams, and taking students on museum excursions. (Tr. 812:24-814:3) In their second year of teaching, the PhD students serve as section leaders, moderating a weekly discussion section as part of a larger lecture course. (Tr. 814:4-815:1) In their final year of teaching, the students are appointed as instructors in the Art Humanities course in the Core Curriculum. (Tr. 821:7-18) These more advanced students are in charge of a course section of no more than 21 students for which they serve as the primary instructor, within a predetermined syllabus. (Tr. 821:7-18, 823:18-824:3)

This progression is similar in the Germanic Languages department, where students begin teaching elementary German in their first year of instruction, progress to intermediate German,

²⁰ Although teaching is not an explicit requirement for the Ph.D. degree in schools outside GSAS, 96.6% of students who graduated in the past three years in the other schools held a teaching appointment (excluding the Biomedical Sciences programs, which principally train research scientists). (Joint Ex. 11)

then finally teach a more advanced course teaching original course materials in German. (Tr. 856:7-16) Similarly, advanced Ph.D. students seeking an advanced teaching experience can apply for appointment as Preceptors in the Core Curriculum or as Teaching Scholars, both of which will give the student an opportunity to teach his or her own class or class section with significant independence. (Tr. 164:19-25; 429:2-25)

The central importance of graduate teaching at Columbia is underscored by the wealth of resources, guidance and mentoring made available to student teachers. Within GSAS is a Teaching Center dedicated exclusively to graduate student teaching. The Teaching Center provides student teachers with a summer orientation and a variety of pedagogical programs throughout the year. The academic departments within GSAS provide more specific training and guidance for student teachers in the form of new teacher orientations, written teaching guidelines, as well as mandatory pedagogical practicums and seminars. (*See pp. 19-20, above*)

For these reasons and those that follow, there can be no serious dispute that graduate student is an inextricable component of doctoral education at Columbia, one that is nurtured meticulously by GSAS and the academic departments.

a. Fundamental Importance of Teaching

The teaching experience is essential to the education of graduate students for several different reasons. (Empl. Ex. 40, 53; Tr. 423:22-425:11) It is the first time where the students are leading rather than merely participating in the pedagogical process. (Tr. 353:21-23.) According to Dean Alonso, doctoral education is, in the simplest terms, “the means through which the University reproduces itself as an institution” by creating “the future teachers of the nation.” (Tr. 269:21-270:3) The academic departments also take this responsibility seriously, repeatedly reaffirming the importance of teaching instruction as a central pillar of doctoral education in their various fields of study:

- Art History: "Teaching experience is an essential component of the doctoral program in Art History and contributes to the intellectual development of graduate students in many ways. ... [T]eaching and scholarship enrich each other in crucial ways. This cross-fertilization between pedagogy and research is a distinguishing quality of the intellectual life of the faculty in our department, and we are committed to provide the same enriching educational opportunities to our doctoral students." (Empl. Ex. 53)
- Physics: "Two years of active teaching experience form an important part of the study for a Ph.D. in Physics at Columbia. ... [L]earning to give clear explanations and answer students' questions in introductory courses contributes substantially to your understanding of the fundamental concepts of physics." (Empl. Ex. 55)
- Religion: "The three-year teaching apprenticeship is an integral part of academic training in the Religion [d]epartment. ... The teaching apprenticeship provides students with diverse first-hand teaching experiences: lectures, individual consultation, guiding class discussions, and grading exams and papers. Learning and participating in new technologies and teaching methods are fundamental to teaching in the academy ...") (Empl. Ex. 57)
- History: "[C]lassroom teaching is an essential part of the scholarly training of doctoral candidates ...") (Empl. Ex. 54)
- Psychology: "[A]ll students must gain teaching experience at part of their graduate training. Moreover, teaching is regarded as essential for the student's academic career." (Pet. Ex. 23)

Teaching is also critically important to the career aspirations of doctoral students. GSAS records show that two-thirds of students graduating from Ph.D. programs in the past five years were employed in some type of academic pursuit. (Tr. 280:10-21) Students who have teaching experience, particularly experience teaching a course independently as advanced graduate students, will have a significant advantage in the academic job market. (Tr. 201:17-23; 815:2-14)

Regardless of whether a student intends to pursue a career in academia or elsewhere in finance, business, government, or the non-profit area, training in teaching provides excellent experience in giving oral presentations, and assists all students in gaining a deeper and broader

understanding of the subject matter that they seek to communicate. (Empl. Exs. 55, 102; Tr. 762:7-763:5; 860:6-8)

For all of these reasons, Columbia considers teaching to be an integral component of its doctoral programs.

i. Training To Be A Communicator

The pedagogical experience is viewed as an integral and formative time when students become interlocutors. (Tr. 285:1-2; Empl. Exs. 24; 40) Teaching forces students to explain complicated concepts and terms in a simple, accessible way that undergraduates will understand. (Tr. 173:8-12) (Tr. 665:6-18: “The[re’s] also an important component of really earning a doctorate, is the ability to communicate very technical, very advanced knowledge to individuals who are not as well prepared academically and be able to explain complex concepts in an easier way. And that is achieved by doctoral students both through serving as teaching assistants, but also through attending conferences and presenting at conferences.”) Teaching also often requires the graduate student to “go beyond their specialty and teach material that’s not in their field,” preparing students for the real world experience that they will likely face in academia. (Tr. 173:8-12) Dean Alonso described the importance of the pedagogical requirement in terms of learning to communicate one’s expertise:

“[T]he pedagogical requirement is essentially a requirement that you learn how to communicate the content, and the questions and criteria of your field. And you are going to be considered a representative of your discipline when you go out with a PhD from Columbia. And we want to make sure that you have had the experience of having to synthesize and to present your field to an audience, before you go out into the world.”

(Tr. 284:14-24; *see also* Tr. 666:2-8) In other words, one cannot be considered an academic until one has taught.

Service as a teaching fellow or other instructional position can also enhance the student's skills as a scholar. Roosevelt Montas, the Director of the Core Curriculum, served as a Preceptor at Columbia in the Literature Humanities course of the Core Curriculum while studying for his Ph.D. in English. (Tr. 166:4-9) Professor Montas described his own experience teaching as "intellectually formative," and testified that his service as a Preceptor was "where [he] learned to speak authoritatively about text and how to get underneath the surface of the text and kind of uncover its architecture and how it deploys meaning." (Tr. 166:10-20) Professor Montas "found the voice" for his dissertation while serving as a preceptor. (Tr. 166:10-20; Joint Ex. 12, at ¶ 7)

The teaching experience gives Ph.D. students insight into the teaching profession. Through working with undergraduate students, graduate students "forge rewarding bonds...and they find that this interaction reinforces their own sense of purpose and reaffirms their scholarly mission." (Empl. Ex. 53; Tr. 168:1-6) Simultaneously, "working closely with faculty members affords [graduate students] the opportunity to learn about vital aspects of [the] profession from evaluation to advising." (Empl. Ex. 53) Moreover, from a more practical standpoint, the instructional requirement provides the student with "experience in teaching because once they get their degree...there's an expectation that our Ph.D.s have some experience and some ability to teach." (Tr. 201:12-15) Indeed, many colleges now ask for proof in the form of teaching letters²¹ and student-teacher evaluations to establish that prospective faculty members have teaching experience. (Empl. Ex. 24)

Even for students who choose to pursue careers outside academia, their experience as instructors will pay dividends in their chosen careers. The ability to communicate one's

²¹ Teaching letters are letters of recommendation devoted exclusively to an individual's ability to teach. (Tr. 218:3-8)

expertise to an audience in simple and concise terms is an invaluable skill in any professional pursuit. (Empl. Ex. 55: “It is hoped that this experience will not only serve as a foundation for those of you who go on to careers in teaching but will also be of value in preparing all of you to make effective oral presentations at future seminars and professional meetings.”)

ii. Enhancing Breadth of Study

Teaching also requires students to learn and master subject matter which may not be squarely within their subfield of expertise. For example, in the Art History department, advanced Ph.D. students serve as instructors in the Art Humanities course in the Core Curriculum. (Tr. 821:7-822:5) The experience of teaching such a survey-type course will expose the students to areas of art history where they have little preexisting familiarity and prepare them to be an art historian in the broadest sense. (Tr. 818:17-819:5; 830:6-831:11: “The expectation among the faculty is very much that a student who is able to teach art history needs to be able to teach art history outside of their specialty area, outside of their area of focus.”) Other departments have also noted the importance of the teaching experience in expanding the scholarly horizons of the graduate student. (Empl. Ex. 57: “Having knowledge of traditions, ritual systems, or doctrines outside one’s own specialization will be a powerful intellectual tool for students in developing their academic career.”)

iii. Facilitating Deeper Understanding of Core Subject Matter

The experience of teaching also improves the Ph.D. student’s understanding of the bedrock principles of the discipline. As Dean Alonso explained, “the pedagogical experience is formative for students as interlocutors in their particular field, in the sense that having to explain your field, the fundamentals of your field to an audience is one of the ways in which not only you prepare yourself to represent your field, but also one of the ways in which you understand your field better.” (Tr. 284:14-285:11)

Whether in the Physics department (“[H]aving to explain and having to do the teaching helps to reinforce these fundamental principles of physics understanding”), Math department (“[T]hey get a completely new vision of calculus from having to teach it”), Art History department (“Teaching induces graduate students to master art works, interpretations and methodologies more thoroughly ...”) or Religion department (“Teaching Fellow responsibilities provide important opportunities for students to develop insight into the study of religion from a comparative perspective”), teaching provides students with a new appreciation of the core subject matter of their discipline. (Tr. 213:18-214:7; 423:25-242:1; 762:7-763:5; Empl. Exs. 53, 57; 104 at 41) As Soulaymane Kachani, the Vice Dean of the School of Engineering explained, “[A]n important element of really serving as a TA, is explaining to others these concepts, and you really never – and know for sure that you – you know a topic up until you try to teach it to somebody else, and that’s really when you understand the gaps in your understanding of various concepts, and that’s when you actually try to remedy and fill those gaps.” (Tr. 665:19-24) After all, “you never really know how little you know about something until you have to explain it to somebody else.” (Tr. 285:6-8)

b. The GSAS Teaching Center Provides Pedagogical Programs Specifically Geared Towards Graduate Students

Housed with GSAS is a dedicated Teaching Center which offers programs, activities and other initiatives geared towards developing and enhancing the pedagogical skills of graduate students. (Tr. 426:9-11; 479:16-19) The Teaching Center offers a variety of pedagogical programs and services to graduate student instructors in GSAS or any other graduate program:

- *Teaching Fellows Orientation.* Each fall, the Teaching Center offers a Teaching Fellows Orientation program to introduce student teachers to the resources available to them, active learning principles, and also survival tactics for the first week of classes. (Empl. Exs. 68-71; Tr. 481:6-19; 485:7-486:16)

- *Lead Teaching Fellows.* Teaching fellows selected through a competitive process from GSAS departments work with the Teaching Center to develop pedagogical programs to present in their own departments, such as town halls, panel discussions, or informal gatherings of student instructors and faculty. (Tr. 488:3-489:10; 490:14-24; 491:24-492:7)
- *Teagle Summer Institute and Teagle Fellow Program.* Select Teaching Fellows attend a four-day Summer Institute at which they learn about integrating technology into the classroom. (Empl. Exs. 71; Tr. 484:18-485:3) Teagle Fellows work in pairs to arrange peer observed teaching.
- *Art of Communication Workshops.* A series of workshops focused on active communication practices, including topics such as public speaking presentation skills, communicating scientific research to non-specialists, and the practice of active listening the classroom. (Empl. Ex. 71; Tr. 493:21-495:4)
- *Workshop Tracks.* Three-part workshop series which engage participants in different styles and methods of collaborative learning, as well as unique learning tools such as Wikispaces. (*Id.*; Tr. 495:21-496:24) Participants receive a certification signifying their participation. (Empl. Ex. 73)
- *Teacher's Lounge Lunches.* Informal weekly gatherings where graduate student teachers can discuss pedagogical issues. (Empl. Ex. 71; Tr. 499:15-21)
- *Individual consultations.* Meetings available by appointment where students can come to discuss any aspect of teaching with Teaching Center staff. (*Id.*; Tr. 500:11-24)

(See pp. 19-20, above; Tr. 479:20-25) Columbia's creation of the Teaching Center and the ongoing support for its initiatives and programs demonstrates the critical role that instructional training and development play in doctoral education at Columbia.

c. Academic Departments Provide Extensive Resources And Support To Students With Instructional Appointments

In addition to the programs offered by the Teaching Center, Columbia's academic departments provide graduate student instructors with an array of formal and informal workshops, seminars, programs, resources and other mentorship and support, which are available

to students both before and during their instructional appointments. As described in more detail above (pp. 16-19, 21-22), this includes:

- *New Teacher Orientations*: Prior to beginning their service, newly-appointed student instructors are typically provided with a formal orientation by their department focusing on the discipline-specific aspects of their teaching responsibilities. (Tr. 760:13-17; 857:21-858:15; Empl. Exs. 54; 102; 107)
- *Teaching Manuals and Guidelines*: Many academic departments provide student teachers with written teaching guides, manuals and other literature to help them acclimate to their teaching responsibilities. (Empl. Exs. 53, 54, 55, 57, 74, 75, 76-79)
- *Practicums And Pedagogical Workshops*: Many departments offer mandatory one or two semester teaching practicum courses that discuss best teaching practices and other pedagogical issues. (Empl. Exs. 15-19; Tr. 159:15-17)
- *Evaluation and Observation*: Student teachers are supervised by faculty members, who routinely observe the student instructors and provide feedback.²² (Tr. 160:20-161:1; 210:10-12; 440:21-441:5; 617:21-618:6; 763:22-25; Empl. Ex. 53) Graduate student instructors also receive evaluations from the undergraduates in their classes through online course evaluations, which are reviewed by departments to determine whether a student is advancing in terms of his/her pedagogical skills. (Empl. Exs. 54; 65; Tr. 436:3-11; 440:8-20; 763:11-21)

Notably, poor performance as an instructor is not grounds for dismissal of a graduate student. Where a graduate student's teaching is defective or ineffective, Columbia will intervene to provide training and resources to the student to help them improve. (Tr. 187:16-25) This help could come from the academic department or from the Teaching Center. (Tr. 315:4-316:21) By contrast, a professor or adjunct having difficulties with teaching would be expected to resolve those issues on his or her own, or face non-renewal of their contract. (*Id.*) Dean Alonso testified that during his 30 years of supervising graduate students, he had "never seen a graduate student

²² Senior faculty and post-doctoral lecturers are not observed in this manner. (Tr. 170:20-171:16)

be terminated, be dismissed from [the] graduate program on account of difficulties with teaching,” though teaching inadequacies are “on a regular basis, grounds for non-renewal of a contract” for an professor or adjunct.²³ (*Id.*)

At the hearing, much was made of the unprecedented and extraordinary dismissal of Longzi Zhao from his TA position. This evidence was received over Columbia’s objection as to its relevance to the status of graduate student assistants. Simply put, Mr. Zhao, a student in the School of Engineering, was removed as a TA not because of any difficulties with teaching, but rather because of insubordination and willful dereliction of his TA responsibilities – behavior which called into question his admission to the program in the first instance.²⁴ (Tr. 884:17-885:2) Although the School of Engineering decided to stop payment of Mr. Zhao’s stipend for the balance of the semester, it did not terminate his enrollment in the program at that time, and elected to continue paying his tuition through the end of the semester (the financial consequences of not doing so would likely have necessitated his immediate withdrawal from the program). (*Id.*) The Chemical Engineering department will conduct a review of students at year end, and will determine at that time what the academic implications, if any, are of Mr. Zhao’s dereliction of TA responsibilities, and whether he will be permitted to continue in the program. (Tr. 934:9-

²³ This discussion relates to helping a student who is struggling with his or her teaching fellow duties to teach more effectively. Where the issues are behavioral, such as a student who acts in dereliction of his or her teaching duties, the student would be dealt with through the Dean’s Discipline process, which could result in sanctions up to and including dismissal from the program. (Tr. 317:22-318:23)

²⁴ Mr. Zhao traveled to China during Spring Break, but left before the break began, thereby missing a quiz that he was supposed to proctor, *despite* having received “very clear and very straight directives” from the professor of the course in which he served as a TA, and from his advisor, Professor Kumar, that he could not leave early. (Tr. 932:17-933:14) Mr. Zhao did not ask Professors Banta or Kumar for permission to leave early, and he admitted, tellingly, that he did not tell either professor the specific date he was leaving because he didn’t “want to piss them off” and he thought that “the less I say, the safer I will be.” (Tr. 923:20-924:3)

24) Columbia contends that this isolated and unfortunate incident has absolutely no bearing on the issues presented by the petition.

4. *The Research Performed By Graduate Research Assistants Is The Same As The Students' Dissertation Research*

The distinguishing characteristic of graduate education is the requirement that the student produce a piece of original knowledge. (Tr. 271:1-18) In the sciences, the student's original work product takes place in the context of a laboratory environment, where the student spends the majority of his or her time performing research that will form the basis for the student's dissertation. (Tr. 278:9-21) That original research typically occurs within the context of a larger research effort, which is funded by research grants awarded by federal agencies or other outside sources to faculty members, called Principal Investigators, who will typically also serve as the sponsor or mentor to graduate students working in his or her laboratory. (Tr. 409:21-410:5; 410:21-411:2) Thus, the service performed by a GRA on a research grant will be identical to the research the student performs to complete his or her dissertation.

For example, in the Physics department, six or seven graduate students are participating as GRAs on the ATLAS project at the Large Hadron Collider in Geneva, Switzerland. (Tr. 770:2-23; 774:14-20) These students live in Switzerland and work on research projects related to the research being conducted by the team of physicists on the ATLAS project. (Tr. 771:18-774:3) The research conducted by these students while appointed as GRAs will be the very same research they ultimately publish as their Ph.D. dissertation. (Tr. 775:13-15) The inextricable relationship between the student's GRA work and his or her dissertation research is identical for doctoral students performing research under grants in laboratories at the Engineering School and the Biomedical Sciences campus. (Tr. 662:17-25: "It's one and the same. They align. So the research that the student conducts aligns with the research of the grant. And so as they are

working on the grant, they are developing knowledge that will make it into the papers and the dissertation they would write.”) (Tr. 983:19-24: “They’re the same thing. Their dissertation, their written dissertation is going to be a record of the research that they conducted in the laboratory during their Doctoral training.”)

Further, there is no difference in the responsibilities of a student performing research as a GRA, supported by an external grant, and those of students who are supported by other means, such as University funds or outside fellowships. (Tr. 994:19-995:7; 1019:14-1020:1; 1024:20-2015:3) Indeed, GRAs can work side-by-side with such students in the same laboratory. Similarly, the same students can move back and forth between appointments as a GRA and support from University funds without any change at all in their role or responsibilities. (Tr. 994:19-995:7; 1019:14-1020:1; 1024:20-1025:3)

GRAs at Columbia are indistinguishable from research assistants held not to be “employees” in both *Brown* and *Leland Stanford*, 342 NLRB at 489; 214 NLRB at 623. In *Brown*, RAs also affiliated with faculty members with outside grants from federal agencies or foundations to perform research. 342 NLRB at 485. The faculty members served as mentors to the students, who performed research under the grants that formed the basis of their doctoral dissertation. *Id.* The Board found that the Ph.D. degree is “primarily a research degree” and that the research performed by RAs was “integral to the education of the graduate student,” and on that basis held that RAs were primarily students, not employees. *Id.* at 488; *accord Leland Stanford*, at 623 (graduate research assistants enrolled in Ph.D. program in Physics department were not “employees” under NLRA because they were required to perform research as a condition of receiving their degree and their stipend was not set based on the value of the services they provided).

a. Doctoral Students Select Their Faculty Advisors Based On Their Own Research Interests

Graduate students accepted to laboratory science Ph.D. programs at Columbia are not accepted or assigned to a particular laboratory upon being admitted, except in rare instances. Rather, during the first one or two years in the program, these students meet the faculty, take courses, and attend seminars and colloquia on ongoing research, all the while refining their research interests and identifying the faculty member with whom they want to conduct research and write their dissertation. (Tr. 750:3-752:19)

In the Physics department, for instance, some students enter the program “knowing very much what they want to do,” while others have not yet developed a focus. (Tr. 752:20- 753:13) During the first and second years, the students learn about the ongoing research in department, refine their research interests, and ultimately choose a faculty member with similar research aspirations to be their faculty mentor. (Tr. 752:20-753:13; 764:25-765:17) If the faculty member has grant support available in his or laboratory, and believes the student is a good fit for the research, the student will join the laboratory. (Tr. 752:24-765:17) Similarly, first year doctoral students in the Biomedical Sciences do three laboratory rotations during which they gain experience in research methods, but also identify research areas where they may be interested in doing their doctoral research. (Tr. 980:24-981:9) Although students may enter the program with an idea of the type of research they want to work on, it is not uncommon for students to change their minds during their rotations and ultimately end up choosing a different laboratory. (Tr. 981:10-22) By the second year, the students have joined the laboratories where they will conduct their dissertation research. (Tr. 981:23-982:21)

In the School of Engineering, some students follow a similar progression, narrowing their research interests in their first year by attending research seminars and talking with faculty and

more senior Ph.D. students. (Tr. 660:18-661:15) Other students are accepted directly into the laboratory of a faculty member. (Tr. 656:5-20) These are students who pre-selected, in their application, one or two areas of research they sought to specialize in for their dissertation. (*Id.*) These students are not bound by that selection, however, and may change laboratories in the event their research interests evolve. (Tr. 660:18-661:15)

In sum, although there must be a mutuality of interest in having a student join a particular laboratory, the students' research interests for their dissertation are the guiding consideration in the selection of their faculty advisor. (Tr. 661:16-17; 981:10-22)

b. Graduate Research Assistants Learn How To Conduct And Publish Research

Students working in scientific laboratories as GRAs are learning important skills that are necessary for conducting scientific research. The student's experiences as a GRA will provide them training on the fundamental aspects of performing scientific research in their field of choice, including building equipment, analyzing data, or other techniques needed for laboratory work. (Tr. 775:20-776:20; 979:22-980:15) These are skills the students will need to complete their own doctoral research.

GRAs also typically experience for the first time the process of writing and publishing an academic paper. (Tr. 775:20-776:20) These students learn how to carry out an analysis, write an academic paper, and often how to present their research at a conference or symposium. (Tr. 659:20-660:10; 776:10-20)

III. IN THE EVENT BROWN IS REVERSED BY THE BOARD, THE BARGAINING UNIT SHOULD EXCLUDE MASTERS AND UNDERGRADUATE STUDENTS

If the Regional Director decides to address the scope of the bargaining unit that would exist if the Board decides to reverse *Brown*, Masters and undergraduate students with instructional appointments should be excluded from the bargaining unit as temporary employees.

The great majority of these students are appointed for one (or possibly two) semesters in part-time roles, and have no substantial expectation of continued employment. Because they have no real continuing interest in the terms and conditions of their appointment, they are not eligible to participate in an election under the Act and, in any event, share no community of interest with Ph.D. students.

Preliminarily, Columbia notes that the parties agree to the broad contours of a bargaining unit as found appropriate by the Regional Director in *Columbia University*, 2-RC-22358 (DDE February 11, 2002) (“*Columbia I*”)²⁵ including doctoral students in various instructional positions and Graduate Research Assistants in all Columbia schools at all of its campuses in the New York metropolitan area. Petitioner, however, seeks to include a number of student positions that were expressly excluded as temporary by the Regional Director in *Columbia I* due to the limited duration of their appointments. Columbia maintains that all Masters and undergraduate student should be excluded as temporary, for the same reasons the Regional Director excluded specific positions in *Columbia I*.

A. Masters and Undergraduate Students Should Be Excluded Because Their Positions Are Temporary

In *Columbia I*, the Regional Director excluded a number of positions from the bargaining unit on the grounds that they were temporary employees including Teaching Fellows in the Law School (generally serve for one semester); SIPA TAs and Course Assistants (about half appointed for one year and half for one semester); DRAs in the Film division of the School of the Arts (generally appointed for one semester only); Research Assistants in the Law School (most do not serve more than one semester); Program Assistants in SIPA (about half appointed for one

²⁵ The Regional Director’s decision in *Columbia I* was vacated in light of the Board’s decision in *Brown*.

semester and about half appointed for an additional semester) and Service Fellows in the School of the Arts (appointed for one semester or one year at a time). (*Columbia I* at 45-46)

Similarly here, the evidence supports the exclusion of all Masters and undergraduate students whose positions are almost all for one – or at most two – semesters. Dr. Stephen Rittenberg, Vice Provost for Academic Administration at Columbia, conducted a study analyzing the average length of appointment for doctoral, Masters and undergraduate students who graduated from 2012 through 2015, and who held an instructional or research appointment. (Empl. Ex. 4) He found that while doctoral students were appointed for an average of 9.19 terms during their academic studies, Masters students were appointed for only 1.88 terms, and undergraduates were appointed for 2.37 terms.²⁶ (*Id.*)

As a general matter, the Board's determination as to which employees are eligible to participate in an election under the Act is intended "to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer." *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (2002). To this end, the Board often finds that temporary or "casual" employees do not have a sufficient interest in the outcome of collective bargaining to participate in the process. *Columbus Symphony Orchestra, Inc.*, 350 NLRB 523, 524 (2007). Similarly, the Board has held in other cases that students who work for their universities in a variety of part-time positions "are best likened to temporary or casual employees" and has thus historically excluded them from collective bargaining under the Act. *Saga Food Serv. of Calif.*, 212 NLRB 786 (1974); *San Francisco Art Inst.*, 226 NLRB 1251, 1252 (1976).

²⁶ Dr. Rittenberg's study used "terms" as the measure of appointments, rather than years, since there are three academic terms each year at Columbia: Fall, Spring and Summer. Thus, a student could theoretically be appointed for three terms in a single academic year. (Tr. 72:22-73:15)

The Board first held that temporary student employment is insufficient to confer collective bargaining rights in *Saga Food Service*. In that case, the Board found that student and non-student food service employees did not share a community of interest sufficient to warrant their inclusion in the same bargaining unit. 212 NLRB at 787. However, the petitioner there also sought, in the alternative, a unit consisting solely of student food service workers. The Board denied that unit as well, stating:

[i]n view of the nature of [the students'] employment tenure and our conclusion that their primary concern is their studies rather than their part-time employment, we find that it would not effectuate the policies of the Act to direct an election among them as a separate unit for purposes of collective bargaining.

Id. at 787, n.9. Thus, the Board excluded the student workers from the bargaining unit. *Id.*

In *San Francisco Art Institute*, the Board again considered this issue when determining whether to include student janitors in a unit with non-student janitors. The Board first found no community of interest between full-time non-student janitors and student janitors who worked, on average, less than 20 hours per week on a semester by semester basis. 226 NLRB at 1251. In doing so, the Board specifically noted that no student had ever continued as a full-time janitor after graduation. *Id.*

When asked to consider certifying a student-only bargaining unit, the Board concluded that it would “not effectuate the policies of the Act to direct an election” among students only. *San Francisco Art Institute*, 226 NLRB at 1252. The Board cited “the brief nature of the students’ employment tenure, [] the nature of compensation for some of the students, and [] the fact that students are concerned primarily with their studies rather than with their part-time employment,” adding that “owing to the rapid turnover that regularly and naturally occurs among student janitors, it is quite possible that by the time an election were conducted and the

results certified the composition of the unit would have changed substantially.” *Id.* at 1252.²⁷

In both *Saga Food Service* and *San Francisco Art Institute*, the Board held that the fact that the duration of the student’s employment was limited made it inappropriate to certify such a bargaining unit. In *University of West Los Angeles*, 321 NLRB No. 14 (1996), the Board distinguished these earlier cases in finding that students working as clerks in the university law library were properly included in a non-student bargaining unit where the positions were not related to their enrollment as students and they did not have a certain end date to their positions, evidenced by the fact that students often continued in the same positions after they graduated. *Id.* at 61.

The facts regarding Masters and undergraduate students at Columbia are consistent with *Saga Food Service* and *San Francisco Art Institute* and distinguishable from *University of West Los Angeles*, as the positions at Columbia are a direct consequence of the students’ enrollment at Columbia and for a limited duration, which in no event can continue beyond graduation. Indeed, the temporary nature of the Masters and undergraduate student positions at Columbia is similar to the grader and tutor positions in *NYU I* which were excluded from the unit because they were of short duration and had no substantial expectation of continued employment in those roles. 332 NLRB at 1221.

²⁷ In reaching this conclusion, the Board took note of several decisions in which students working part-time were found to be employees under the Act. *Id.*; see, e.g., *Hearst Corp.*, 221 NLRB 324, at 325; *Display Sign Serv., Inc.*, 180 NLRB 49, at 50; *Delight Bakery, Inc.*, 145 NLRB 893, at 905-06 (1964). However, none of these cases involved a determination that a student working for his or her university was an employee under the Act, a distinction that the Board found “critical.” *San Francisco Art Inst.*, 226 NLRB at 1252. Further, unlike here, in both *Hearst* and *Delight Bakery*, the Board noted that the students at issue could continue their employment with the commercial employer following graduation, and in all three cases, the students worked at least 20 hours per week. See 221 NLRB at 325; 180 NLRB 49 at 50; 145 NLRB at 905-06.

Contrary to Petitioner's assertion (Tr. 23:24-25:5), the Board's decision in *Kansas City Repertory Theatre, Inc.*, 356 NLRB No. 28 (2010), does not support inclusion of the Masters and undergraduate students in a bargaining unit here. In that case, the Board held that a bargaining unit consisting entirely of musicians who worked intermittently was appropriate. The decision was premised on the unique conditions in the entertainment industry and utilized the specific eligibility formula for that industry as articulated in *Julliard School*, 208 NLRB 153 (1974), in determining that the musicians had a sufficient continuing interest in the terms and conditions of their employment. Furthermore, there was evidence that some employees were hired for multiple productions, or were hired during more than one season, so that they had "an expectancy of future employment." *Kansas City Repertory*, 356 NLRB No. 28 at 1, n. 4.

Kansas City Repertory does not support a finding that Masters and undergraduate students, who have no expectation of continuing or repeated employment in the future, should be accorded collective bargaining rights. *Saga Food Service* and *San Francisco Art Institute* govern the eligibility of students employed by the schools in which they are enrolled and whose positions are of a limited duration. These cases are guided by the specific facts relevant to students in positions at educational institutions where, unlike in the entertainment industry, the students' positions are limited in duration. Accordingly, *Saga Food Service* and *San Francisco Art Institute*, and not *Kansas City Repertory*, are the controlling precedents and require that Masters and undergraduate students must be excluded from the petitioned-for unit. The evidence regarding Masters and undergraduate students in specific schools, discussed below, supports the exclusion of all such students, in light of the parties' stipulation that such evidence would be treated as representative of all other schools and departments. (Tr. 1070:17-25; Joint Ex. 12, at ¶¶ 1-2)

1. School of International and Public Affairs

The School of International and Public Affairs (“SIPA”) offers two M.A. degrees, the Masters of International Affairs and the Masters of Public Administration, which are both two year programs. (Tr. 702:10-14; 703:12-19)

Second year SIPA students with a 3.4 GPA in their first year are eligible to apply for four types of assistantship positions: Teaching Assistant, Departmental Research Assistant, Reader or Program Assistant.²⁸ (Tr. 707:13-708:3) SIPA assistantships typically last one semester, but could be renewed for a second semester in limited circumstances. (Tr. 713:8-15) During calendar years 2013/14 and 2014/15, not a single student served more than two semesters in an assistantship. (Empl. Ex. 97) Sixty-five percent of the instructional appointments served only one term, while 35% percent of the instructional appointments served two terms. Similarly, SIPA students with a non-instructional position as Program Assistants serve a maximum of two terms, with 27% serving one term and 73% serving two terms. (Empl. Ex. 97)

Notably, SIPA students with both academic positions (TAs and Course Assistants) and administrative positions (Program Assistants) were excluded by the Regional Director in *Columbia I* because they were appointed for only one or two semesters “with little expectation of serving for more than a finite period of time.” (*Columbia I*, at 36, 46)

2. School of the Arts: MFA Students in Visual Arts, Writing and Film Divisions

Nearly all of the graduate students in the School of Arts are pursuing the Master of Fine Arts (“MFA”), which is the terminal degree in the Fine Arts. (Tr. 336:13-24; 342:1-23) MFA degrees are offered in four disciplines: Film, Theatre, Writing and Visual Arts. (Tr. 334:2-10;

²⁸ Petitioner takes no position as to whether Program Assistants, who provide administrative support, should be included in the unit. (Tr. 728:23-729:2)

336:13-337:14) The standard MFA program is two years, though it varies by discipline: the Visual Arts program is typically two years, the Writing program is two or three years, and the Film program is typically three years, but can be as long as four years. (Tr. 340:9-341:25)

In the Visual Arts program, all students are given the opportunity to serve as a TA for either one or two semesters in a studio class. (Tr. 343:13-344:8; 344:14-18; Empl. Ex. 49) In the Film program, students can be selected to serve as a TA in a lecture or seminar class for one, or a maximum of two, semesters. (Tr. 349:7-350:12) Third year students in Film can also be selected as Preceptors who lead undergraduate labs in screenwriting or filmmaking, typically only for one semester. (Tr. 351:23-352:7; 354:20-353:5) In the Writing program, third year students can serve as Teaching Fellows in undergraduate fiction, non-fiction and poetry workshops, typically only for one semester. (Tr. 355:25-356:3; 357:3-6; 360:25-361:1) All of these assistants should be excluded as temporary.

Notably, DRA's in the School of the Arts were excluded by the Regional Director in *Columbia I* because they were appointed for only one semester "with little expectation of serving for more than a finite period of time." (See *Columbia I* at 45)

3. GSAS Masters Students

Students in the Masters programs in GSAS are permitted to hold instructional appointments as a Teaching Assistant or Reader. (Tr. 414:7-24) M.A. programs in GSAS are typically 1-2 years, and M.A. students are "virtually never" appointed during their first year. (Tr. 95:18-23; 220:14-221:6; 413:23-414:6) Masters students are appointed to these positions in their second year, and thus would have only one, or at most two, terms of appointment. (Tr. 95:18-25; 220:14-221:2)

4. Undergraduate Assistants

Undergraduate students at Columbia College and the School of Engineering can be appointed to Teaching Assistant III positions. (Tr. 69:20-70:2; 669:20-670:21) TA IIIs in Columbia College typically serve for two semesters, while TA IIIs in the Engineering School typically serve for one to two years. (Tr. 222:17-19; 245:3-9; 669:20-670:7)

In *Columbia I*, the Regional Director included undergraduate teaching assistants in the bargaining unit based on her finding that in the prior semester 70 undergraduates had served as TAs in the Computer Science department for a duration of up to 5 semesters. These facts have changed significantly since 2001. As explained by Vice Dean Kachani of the School of Engineering, there are now only approximately 20 undergraduate students who serve as TA IIIs.²⁹ (Tr. 672:18-674:4) These are outstanding undergraduate students who do extremely well in a course and are being groomed by faculty to go to graduate school while they are serving as TA III's for that course. (Tr. 669:17-770:9) Thus, the experience of undergraduates in Computer Sciences is not typical of TAs generally. The vast majority of undergraduates appointed to TA III positions, including the approximately 155 undergraduates appointed to TA III positions in GSAS during the Fall of 2014, serve in the positions for only about two semesters. (Tr. 222:17-19; Empl. Exs. 3; 4)

B. Masters and Undergraduate Students Should Be Excluded Because They Do Not Share a Community of Interest

²⁹ Dr. Kachani explained that the number of TA III appointments in the Computer Science department as reflected in Employer Exhibit 3 was inaccurate due to inconsistencies and "miscoding" by some departments within the School of Engineering. (Tr. 672:18-674:4) Dr. Kachani further testified that while TA IIIs in the Computer Science department could serve in those positions for up to three years, the typical expectation is one to two years. (Tr. 669:19-670:14)

Even if undergraduate and Masters students are found to be employees under the Act, they have little in common with doctoral students and should not be included in the same bargaining unit.

In determining the appropriate scope of a bargaining unit, the Board will not certify a grouping of employees that is “arbitrary” or “heterogeneous.” *Am. Cyanamid Co.*, 110 NLRB 89, 95 (1954). When the interests of one group of employees are dissimilar from those of another group, a single unit is not appropriate. *Swift & Co.*, 129 NLRB 1391 (1961). The Board has articulated the importance of being “especially watchful in guarding the rights of minority groups whose ... interests differ in kind from the bulk of the [bargaining unit].” *Syracuse University*, 204 NLRB No. 85, at *643 (1973). Indeed, there are significant dangers of conflicts of interests with over-inclusive units where the interests of a “minority interest group” may become “submerged in an overly large unit.” *T.K. Harvin & Sons*, 316 NLRB No. 90, at *533 (1995). As a result, to the extent that a petitioner seeks such an inappropriate unit, the Board will deny certification. See *Brand Precision Serv.*, 313 NLRB 657 (1994); *Moore Business Forms, Inc.*, 204 NLRB 552 (1973); *United States Steel Corp.*, 192 NLRB 58 (1971).

Petitioner seeks to lump undergraduate and Masters students into the same bargaining unit as Ph.D. students simply because they are all students who hold academic appointments at Columbia. However, as set forth below, undergraduate and Masters students are treated differently from Ph.D. students in a myriad of ways, face completely different pressures and have completely different goals; for that reason, they have distinct and divergent interests from Ph.D. students.

First, undergraduate and Masters students are not required to hold instructional or research positions. A limited number of these positions are available as optional means of

receiving financial aid from Columbia. Undergraduate and Masters students who wish to focus solely on their classes may do so. To the contrary, Ph.D. students are required to hold instructional and research positions, because the teaching and research they perform is an integral (and thus mandatory) component of the training they receive in their programs.

Second, undergraduate and Masters students are compensated in a different manner than Ph.D. students. Undergraduates and Masters students typically receive a small stipend and/or partial tuition remission for serving in academic appointments. Ph.D. students, on the other hand, receive a full funding package, which includes a guaranteed stipend, payment of tuition and fees, health benefits, and access to student housing. Accordingly, issues likely to be important to Ph.D. students, such as the quality of health insurance, the availability of health coverage for spouses and other dependents, or the quality, cost and options of student housing, are simply inapposite to Masters and undergraduate students.

Third, the compensation received by undergraduate and Masters students is directly tied to the service they provide. Masters students only receive a stipend or tuition remission during semesters in which they hold an academic appointment. To the contrary, Ph.D. students are guaranteed funding for five years and will receive that funding regardless of whether they hold an appointment. Ph.D. students typically have one or more years where they do not hold an academic appointment, and yet receive an identical funding package as students in the same program who are appointed.

Fourth, undergraduate and Masters student assistants perform largely different functions than Ph.D. student assistants. Undergraduate and Masters assistants typically grade homework assignments, or assist professors with the administrative tasks of running a lecture class. As a rule, undergraduate assistants cannot grade exams. (Tr. 222:3-5) Ph.D. assistants, though they

may at times perform some of the same functions as undergraduate and Masters assistants, are required to take on more advanced responsibilities such as grading exams, leading a discussion or laboratory section, or teaching a section of their own.

Fifth, undergraduate and Masters students pay substantial tuition to attend school, unlike Ph.D. students, who are fully funded and do not pay tuition for their studies. Accordingly, undergraduate and M.A. students are under an entirely different set of pressures to finance their education through financial aid or other means.

Sixth, even if undergraduate and Masters students are not excluded as temporary employees, they have very different interests and objectives, and spend a much shorter period as student assistants than doctoral students.

For these reasons, Ph.D. students share few similarities or issues with either Masters or undergraduate students who have instructional appointments that would warrant including them together in a single bargaining unit.

IV. GRADUATE RESEARCH ASSISTANTS SUPPORTED BY TRAINING GRANTS SHOULD BE EXCLUDED

Ph.D. students in the sciences can be funded during a portion of their studies through training grants. (Tr. 985:19-986:15) Training grants are funds awarded by the NIH to support the creation of programs to train outstanding students in specific areas of scientific research. (Tr. 985:19-986:15; 1005:20-1006:7; Empl. Ex. 118) According to the NIH, the purpose of these grants is to “develop or enhance research training opportunities for individuals, selected by the institution, who are training for careers in specified areas of biomedical, behavioral, and clinical research” in order to “ensure that a diverse and highly trained workforce is available in adequate numbers and in appropriate research areas and fields to carry out the nation’s biomedical and behavioral research agenda.” (Tr. 989:11-21; Empl. Ex. 118)

In the Biomedical Sciences, certain departments have been awarded training grants by NIH which support a number of Ph.D. students in those programs. (Tr. 996:14-17) Departments seeking these grants are required to create a training program for students under the grant which has a curricular element, i.e., coursework in the training area, and also networking and teambuilding activities in which the students interact with faculty members assigned to the program. (Tr. 989:22-991:16) Selected students will typically be supported by the training grant for one to three years, after which they will be supported on either a faculty research grant or general University funds. (Tr. 992:16-25; 994:19-995:3) Biomedical Sciences Ph.D. students supported by training grants do not receive an academic appointment. (Tr. 995:8-11)

Unlike GRAs who are supported by a specific research grant, funding under a training grant is not tied to any particular research lab or project, but rather is intended simply to provide for the training of the student. (Tr. 985:19-986:15) The only “deliverable” under the training grant is the education of the Ph.D. student. (Tr. 985:19-986:15; 1005:20-1006:7) Indeed, the annual progress reports required under the training grant, and the application for renewal of the grant, require extensive documentation of the academic achievement of students supported by the grant. (Tr. 1005:20-1006:7) As explained by NIH’s policy statement, trainees under training grants “receive a stipend as a subsistence allowance to help defray living expenses during the research training experience,” and “[t]he stipend is not ‘salary’ and is not provided as a condition of employment.” (Empl. Ex. 118; Tr. 996:4-13) In this respect, students on a training grant are indistinguishable from those supported on University funds.

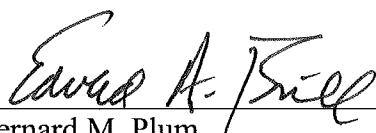
For this reason, even if GRAs were to be considered “employees” under the Act, doctoral students supported by training grants must be excluded from any bargaining unit.

CONCLUSION

The petition should be dismissed, as Petitioner seeks to represent Columbia students who are not “employees” under the controlling authority of *Brown*, and for the additional reason that Petitioner is not a “labor organization” within the meaning of the Act. In the event that the Regional Director considers the scope of a bargaining unit if the Board decides to reverse *Brown* and direct an election, the unit should exclude all Masters and undergraduate students and Ph.D. students supported on training grants.

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