

# United States Senate

WASHINGTON, DC 20510

March 15, 2018

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Secretary DeVos:

We write today to request information on whether Mr. Robert Eitel, a Senior Counselor to the Secretary at the U.S. Department of Education (“the Department”), plans to recuse himself from matters related to the proposed merger of University of the Rockies and Ashford University, two for-profit entities currently owned by Bridgepoint Education, and the conversion of these companies into “nonprofit” status.<sup>1</sup>

On March 13, 2018, Bridgepoint Education (“Bridgepoint”) announced its plans to “separate from its academic institutions, Ashford University and University of the Rockies, and become an Online Program Management (OPM) company.” Simultaneously, Ashford University “submitted an application to the [accrediting agency] Western Association of Schools and Colleges Senior College and University Commission (WSCUC)...to merge with University of the Rockies” and become a nonprofit institution. Should “these and other necessary approvals” be granted, “the merged institution of Ashford University and University of the Rockies” plans to “become Bridgepoint Education’s first client as an OPM.”<sup>2</sup>

The complicated process that Bridgepoint must go through to separate itself from Ashford University and the University of the Rockies, and the process that Ashford University and University of the Rockies must go through to merge, require a number of state and federal approvals—including by the Department, the accrediting agency WSUC, the Internal Revenue Service, and their state authorizers (California and Colorado for Ashford and University of the Rockies, respectively). Approving these changes will require robust scrutiny of the parent company’s intentions and its financial situation to determine whether the conversion is appropriate. For example, due to its change in ownership, Ashford University and the University of the Rockies would no longer be eligible for Title IV funding under the Higher Education Act.<sup>3</sup> It would then become the Department’s responsibility to evaluate the new institution’s “initial eligibility application” and for the “Secretary to determine that [the institution] satisfies the relevant certification requirements.”<sup>4</sup>

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<sup>1</sup> Bridgepoint Education, “About Us” (online at <http://www.bridgepointeducation.com/aboutus/>).

<sup>2</sup> Bridgepoint Education, “Bridgepoint Education, Inc. Plans to Separate from Ashford University, Improve Access to High-Quality Education,” *PR Newswire* (March 13, 2018) (online at <https://www.prnewswire.com/news-releases/bridgepoint-education-inc-plans-to-separate-from-ashford-university-improve-access-to-high-quality-education-300612798.html>).

<sup>3</sup> 34 C.F.R. §§668.14(g)(1), 668.26(a)(5).

<sup>4</sup> 34 C.F.R. §600.20(a)

The Department recently granted “initial approval” of the Dream Center Foundation’s acquisition and planned transition of the Education Management Corporation’s for-profit portfolio (31 Art Institute schools, and the Argosy University and South University systems) to non-profit status before all relevant accrediting agencies approved the transaction.<sup>5</sup> Because of this unusual action by the Department, we are concerned that there may be an opportunity for inappropriate political influence in the Department’s approval processes regarding Bridgepoint, Ashford University, and the University of the Rockies that could be heavily influenced by Mr. Robert Eitel.

As you know, Mr. Eitel joined the staff of the Department as a Special Assistant to the Secretary on February 13, 2017.<sup>6</sup> Mr. Eitel was later promoted to be your Senior Counselor<sup>7</sup> and “charged with advising” you on the “implications of proposed, new, or revised policies, regulations, and legislative proposals and assessing their potential impact on the Department’s mission.”<sup>8</sup>

Prior to serving at the Department, Mr. Eitel worked as the Vice President of Regulatory Legal Services at Bridgepoint.<sup>9</sup> From February 13, 2017 to April 5, 2017, Mr. Eitel was, in fact, a joint employee of the Department and Bridgepoint. He was reportedly on an “unpaid leave of absence” from Bridgepoint during this nine-week period before officially resigning from the for-profit college company.<sup>10</sup>

As a federal employee, Mr. Eitel is governed by ethics laws, rules, and regulations designed to prevent conflicts of interests and prohibit the misuse of government resources for private gain.<sup>11</sup> For example, Mr. Eitel is governed by the Standards of Ethical Conduct for Employees of the Executive Branch, which make clear that “public service is a public trust” and that federal employees “shall not use public office for private gain” and “endeavor to avoid any actions creating the appearance that they are violating the law or [executive branch] ethical standards.”<sup>12</sup>

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<sup>5</sup> Moore, D., “EDMC sale gets initial blessing from U.S. Department of Education,” *Pittsburgh Post-Gazette* (September 20, 2017) (online at <http://www.post-gazette.com/business/pittsburgh-company-news/2017/09/20/EDMC-Dream-Center-Art-Institute-Department-of-Education-Betsy-DeVos-Argosy-Kaplan-Purdue/stories/201709200147>).

<sup>6</sup> See Robert Scott Eitel in ProPublica, “Department of Education: Deregulatory Task Force Members” (online at <https://projects.propublica.org/trump-town/agencies/education/taskforce>).

<sup>7</sup> U.S. Department of Education, “U.S. Secretary of Education Announces Chief of Staff and Additional Staff Hires” (April 12, 2017) (online at <https://www.ed.gov/news/press-releases/us-secretary-education-announces-chief-staff-and-additional-staff-hires>).

<sup>8</sup> Letter from Marcella Goodridge-Keiller, Assistant General Counsel & Designated Agency Ethics Official, Department of Education, to Senator Elizabeth Warren (June 21, 2017).

<sup>9</sup> Patricia Cohen, “Betsy DeVos’s Hiring of For-Profit College Official Raises Impartiality Issues,” *New York Times* (March 17, 2017) (online at <https://www.nytimes.com/2017/03/17/business/education-for-profit-robert-eitel.html>).

<sup>10</sup> Financial disclosure of Robert S. Eitel; Patricia Cohen, “Betsy DeVos’s Hiring of For-Profit College Official Raises Impartiality Issues,” *New York Times* (March 17, 2017) (online at <https://www.nytimes.com/2017/03/17/business/education-for-profit-robert-eitel.html>).

<sup>11</sup> See U.S. Office of Government Ethics, “Laws and Regulations” (online at <https://www.oge.gov/web/oge/nsg/Laws%20and%20Regulations>).

<sup>12</sup> 5 C.F.R. 2635.101 (online at <https://www.law.cornell.edu/cfr/text/5/2635.101>).

actions creating the appearance that they are violating the law or [executive branch] ethical standards.”<sup>12</sup>

In addition, Mr. Eitel is bound by Executive Order 13770, which outlines an “ethics pledge” that executive branch employees must adhere to. Paragraph six of the ethics pledge states that federal appointees “will not for a period of 2 years from the date of...appointment participate in any particular matter involving specific parties that is directly and substantially related to [a] former employer or former clients, including regulations and contracts.” The executive order defines a “former employer” as “any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee....”<sup>13</sup> A “particular matter involving specific parties,” meanwhile, “includes any judicial or other proceeding, application, request for a ruling or other determination...involving a specific party or parties.”<sup>14</sup>

Given that Mr. Eitel worked at Bridgepoint in the two years prior to his appointment at the Department, and that any specific determinations regarding Bridgepoint, Ashford University, and University of the Rockies are clearly to an identifiable set of three parties with which he was affiliated, Mr. Eitel must recuse himself from any and all matters related to the separation from Bridgeport and the proposed merger of Ashford University and the University of the Rockies.

To clarify if Mr. Eitel will be recusing himself in this matter, we request that you answer the following questions no later than April 5, 2018:

1. Does Mr. Eitel currently work on any Department of Education policies, regulations, or guidance related to the merger of for-profit educational institutions or the transition of for-profit institutions to non-profit ones? If so, please provide a list of the relevant policies within Mr. Eitel’s portfolio.
2. Does Mr. Eitel plan to recuse himself from any particular matters involving specific parties related to the pending restructuring of Bridgepoint Education, Ashford University, and the University of the Rockies?
3. Please provide a summary of any verbal guidance provided to Mr. Eitel regarding this recusal and copies of any written guidance provided to Mr. Eitel regarding this recusal.
4. If Mr. Eitel does not plan on recusing himself, or plans on only a partial recusal with regard to these matters, please provide a detailed explanation of the Department’s reasoning for not requiring a complete recusal.


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<sup>12</sup> 5 C.F.R. 2635.101 (online at <https://www.law.cornell.edu/cfr/text/5/2635.101>).

<sup>13</sup> The White House, “Executive Order: Ethics Commitments by Executive Branch Appointees” (January 28, 2017) (online at <https://www.whitehouse.gov/presidential-actions/executive-order-ethics-commitments-executive-branch-appointees/>).

<sup>14</sup> 5 C.F.R. 2640.102 (online at <https://www.law.cornell.edu/cfr/text/5/2640.102>); U.S. Office of Government Ethics, Legal Advisory LA-17-03: Guidance on Executive Order 13770 (March 20, 2017) (online at [https://www.oge.gov/Web/OGELegal.nsf/Legal%20Advisories/CE52BD5FD1149C85852580EA005F039A/\\$FILE/LA-17-03.pdf?open](https://www.oge.gov/Web/OGELegal.nsf/Legal%20Advisories/CE52BD5FD1149C85852580EA005F039A/$FILE/LA-17-03.pdf?open)).

Sincerely,




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Elizabeth Warren  
United States Senator




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Richard J. Durbin  
United States Senator




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Kamala D. Harris  
United States Senator



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Margaret Wood Hassan  
United States Senator



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Sherrod Brown  
United States Senator



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Catherine Cortez Masto  
United States Senator

Cc:

Mr. Steven Menashi, Acting General Counsel, U.S. Department of Education

Ms. Marcella Goodridge, Assistant General Counsel & Designated Agency Ethics Official, U.S. Department of Education