

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

March 30, 2017

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

CC: Marcella Goodridge, Assistant General Counsel for Ethics

Dear Secretary DeVos,

I write today because of reports that one of your senior advisers, Robert Eitel, is employed at both the Department of Education (“the Department”) *and* at a for-profit college company. There are also reports that Mr. Eitel has been permitted to work on implementation of the Department’s new borrower defense to repayment regulations. If these reports are accurate, then this arrangement poses an unacceptable conflict of interest. I urge you to address this matter immediately.

I wrote to you earlier this month seeking information about Mr. Eitel and Taylor Hansen, Department of Education senior officials with deep ties to for-profit colleges.¹ I shared my concern about these individuals’ compliance with federal conflict of interest statutes and rules. The same day my letter arrived at the Department, one of those officials—Taylor Hansen—reportedly resigned from the Department.² I welcomed the news of Mr. Hansen’s resignation. As I wrote, I had deep concerns about his ability to advise you in an objective fashion on higher education policy issues because of his recent record as a for-profit college lobbyist. But I continue to have serious concerns about Mr. Eitel.

My March 17th letter raised concerns about Mr. Eitel’s hiring and his ability to advise you in an objective fashion given his connections to Bridgepoint Education Inc.—a for-profit college company that was recently fined \$23.5 million by the Consumer Financial Protection Bureau for deceiving students into taking on expensive private loans. The company is currently under investigation by the Department of Justice, the Securities and Exchange Commission, and

¹ Warren, E. [Letter to Secretary Betsy DeVos]. *United States Senate* (March 17, 2017). Online at: https://www.warren.senate.gov/files/documents/2017-3-17_Letter_to_DeVos_re_ED_official_hires.pdf.

² Nasiripour, Shahien. “Betsy DeVos Hands Victory to Loan Firm Tied to Adviser Who Just Quit.” *Bloomberg* (March 20, 2017). Online at: <https://www.bloomberg.com/news/articles/2017-03-20/betsy-devos-hands-victory-to-loan-firm-tied-to-adviser-who-just-quit>.

multiple state attorneys general—including the Massachusetts Attorney General—for violating federal and state laws. The for-profit college company also currently owes the Department a fine for miscalculating their federal student aid eligibility, and it may appeal this fine directly to you.

According to the *New York Times*, Mr. Eitel never formally left his previous employer. He reportedly has been working on your staff while on unpaid leave from, but still employed by, Bridgepoint as the company's Vice President for Regulatory Legal Services. If the *New York Times* reports are accurate, this arrangement is highly problematic, posing obvious and harmful conflicts of interest.³

My concerns about Mr. Eitel's arrangement have been exacerbated by one of your first major higher education actions as Secretary. You delayed critical deadlines related to the Department's implementation of Gainful Employment regulations—regulations that Bridgepoint has acknowledged could pose a negative impact to the company's enrollment, finances, and operations.⁴ Considering that Bridgepoint has multiple programs in the Gainful Employment warning zone, implementation delays clearly benefit the company, Mr. Eitel's *current* employer.

A Department spokesman has reportedly indicated that Mr. Eitel would recuse himself from policy decisions related to Bridgepoint and Gainful Employment, but it is not clear if Mr. Eitel recused himself from these matters immediately upon his appointment to your office or after public scrutiny.⁵ Furthermore, he reportedly received written permission from Department ethics officials to work on the Department's new "borrower defense to repayment" regulations, which are supposed to take effect on July 1st.⁶ This arrangement would be extremely troubling, because the new rule will affect how defrauded borrowers with pending claims for relief from their student loans—including outstanding claims from students who were defrauded by Bridgepoint colleges—are processed.

According to SEC filings this month, Bridgepoint acknowledges that borrower defense claims under the new rule "could damage our reputation in the industry **and have a material adverse effect on enrollments and our revenues, financial condition, cash flows and results of operations.**"⁷ By the company's own admission, the new borrower defense to repayment rules, which Mr. Eitel may be working on, will have a significant, material, and direct impact on the financial condition and reputation of his *current* employer.

If Mr. Eitel is indeed working on the new borrower defense to repayment regulations or any pending claims for relief under the current borrower defense to repayment process, then the Department's blatant disregard for federal conflict of interest rules and guidelines as they relate

³ Cohen, P. "Betsy DeVos's Hiring of For-Profit College Official Raises Impartiality Issues." *The New York Times* (March 17, 2017). Online at: <https://www.nytimes.com/2017/03/17/business/education-for-profit-robert-eitel.html>.

⁴ Form 10-K." Bridgepoint Education, Inc. *United States Securities and Exchange Commission* (March 7, 2017). Online at: <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001305323/c9270e18-c8d7-4d2a-902e-622ce040a8dc.pdf>.

⁵ *Id.*

⁶ Rubin, J. "Trump does his hires no favors: The ordeal of an ethical public servant." *The Washington Post* (March 21, 2017). Online at: <https://www.washingtonpost.com/blogs/right-turn/wp/2017/03/21/trump-does-his-hires-no-favors-the-ordeal-of-an-ethical-public-servant/>.

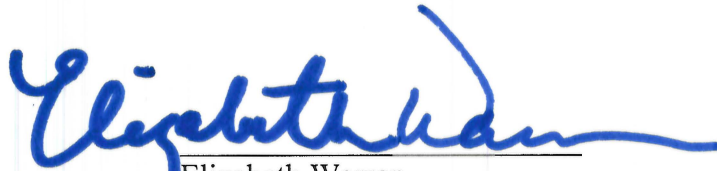
⁷ "Form 10-K." Bridgepoint Education, Inc. *United States Securities and Exchange Commission* (March 7, 2017). Online at: <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001305323/c9270e18-c8d7-4d2a-902e-622ce040a8dc.pdf>.

to Mr. Eitel's arrangement would be baffling. You have not responded to my previous questions. I therefore ask that, in addition to the questions in my March 17th letter, you provide me with answers to the following questions no later than April 7th, 2017:

1. Were the reports in the New York Times accurate? Was Mr. Eitel still on unpaid leave from—but not separated from—his position with Bridgepoint?
 - a. Is Mr. Eitel still officially employed by both Bridgepoint and the Department?
 - b. If not, when did he formally sever his ties as an employee of Bridgepoint?
2. Please provide any written permission or guidance provided by ethics officials at the Department of Education, or at any other federal agency, to Mr. Eitel regarding what matters he is permitted to work on.
3. Has Mr. Eitel worked on borrower defense to repayment regulations while at the Department in any capacity? If so, was this arrangement approved by Department of Education ethics officials? If so, please provide approval documents.
4. Please provide all emails and written correspondence sent to or received from Mr. Eitel regarding all Higher Education Act regulations promulgated during the previous administration, including all notes, agenda, guest lists, and minutes from meetings in which Mr. Eitel has participated regarding Higher Education Act regulations promulgated during the previous administration—including borrower defense to repayment and gainful employment regulations.

Thank you for your prompt response. Please do not hesitate to contact Josh Delaney (202-224-4543) of my staff with any questions or concerns.

Sincerely,



Elizabeth Warren
United States Senator