



JAN 31 2023

Dr. Mark Toufanian
Owner, CEO, School Director
Prospect College
1220 19th St N.W. Suite 100
Washington, DC 20036

Sent Overnight Via UPS
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OPE ID: 03750300

Re: Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs

Dear Dr. Toufanian:

The U.S. Department of Education (“Department”) has reviewed Prospect College’s (“Prospect’s”) application for recertification to continue to participate in the student financial assistance programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 *et seq.* (“Title IV”). In the normal course, Prospect’s Program Participation Agreement (“PPA”) would have expired on March 31, 2020. However, Prospect timely submitted its recertification application prior to that date. As a result, the Department extended Prospect’s PPA on a month-to-month basis while evaluating the application and related matters. See 34 C.F.R. § 668.13(b)(2). This notice is to inform you that the Department has denied Prospect’s application for continued participation, and that Prospect’s Title IV eligibility will therefore expire at the end of this month, on January 31, 2023.

For purposes of evaluating a recertification application, the Department reviews the institution’s performance during the operation of its previous PPA. The Department must ensure that Prospect meets the Title IV standards of administrative capability and financial responsibility, has complied with Title IV program requirements, and has operated under the high standards required of a fiduciary. In reaching a decision on Prospect’s recertification application, the Department has reviewed all of the documentation it has obtained during its review of the institution, including documentation acquired on site in August 2019, documentation related to the institution’s 90/10 compliance, and information obtained during student and employee interviews.

To continue to participate in the Title IV, HEA programs, an institution must demonstrate to the Department that it qualifies to be certified to participate in those programs under 34 C.F.R. Part 668, Subparts B and L. Specifically, an institution must meet the standards of administrative capability set forth at 34 C.F.R. § 668.16, and the standards of financial responsibility set forth at 34 C.F.R. Part 668, Subpart L. In addition, to participate in the Title IV, HEA programs, an institution must at all times act with the competency and integrity necessary to qualify as a fiduciary. 34 C.F.R. §§ 668.82(a), (b). In the capacity of a fiduciary, an institution is subject to

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the highest standard of care and diligence in administering the Title IV, HEA programs, and in accounting for the funds received under those programs. 34 C.F.R. § 668.82(b)(1). The Department has determined that Prospect does not meet these standards based on its manipulation of its 90/10 calculations for fiscal years 2019, 2020 and 2021 and its failure to meet that standard for those fiscal years, its failure to meet a fiduciary standard of conduct, and its overall lack of administrative capability. Consequently, Prospect's recertification application must be denied.

PROSPECT'S MISCONDUCT CONSTITUTES A SEVERE BREACH OF ITS FIDUCIARY DUTY TO THE DEPARTMENT AND UNDERScores ITS INABILITY TO MEET TITLE IV ADMINISTRATIVE CAPABILITY STANDARDS

Before Prospect began participation in the Title IV, HEA programs, the institution signed a PPA with the Department stating that Prospect would comply with all Title IV, HEA program requirements. These requirements mandate that Prospect use funds received under Title IV solely for the purposes specified in each individual student assistance program, since the funds received under those programs are held in trust for the intended student beneficiaries and the Secretary. 20 U.S.C. § 1094(a)(1); see generally 34 C.F.R. § 668.14. By entering into a PPA with the Department, Prospect, and its officers, accepted the responsibility to act as fiduciaries in the administration of the Title IV, HEA programs. As fiduciaries, the institution and officers are subject to the highest standard of care and diligence in administering the Title IV, HEA programs and in accounting to the Secretary for the funds received. 34 C.F.R. § 668.82(a), (b).

In order to meet its responsibilities to the Department, an institution must be capable of adequately administering the Title IV programs. In this regard, an institution must comply with all Title IV statutory and regulatory requirements. 34 C.F.R. § 668.16(a). Further, an institution must administer the Title IV programs in which it participates with adequate checks and balances in its system of internal controls. 34 C.F.R. § 668.16(c)(1). This includes maintaining accurate and complete records supporting its compliance with all Title IV requirements and supporting Title IV payments made to each student. See 34 C.F.R. §§ 668.16(d), 668.24. An institution's maintenance and submission of accurate records is critical to the Department's oversight responsibilities. The Department relies on those records when determining, among other things, student eligibility and compliance with institutional eligibility requirements.

If the Department determines that an institution does not meet all requirements and standards in the Title IV regulations, a denial of the institution's recertification application is warranted. See 34 C.F.R. § 668.13. As outlined below, Prospect falls severely short of meeting those standards.

A. Manipulation of 90/10 Calculation

As outlined above, an institution must enter into a PPA with the Department in order to participate in the Title IV programs. 20 U.S.C. § 1094(a). The PPA conditions the institution's continued participation in the program on its compliance with numerous program requirements. Among those requirements for proprietary institutions of higher education is the mandate that it have no more than 90 percent of its revenues derived from Title IV program funds. 20 U.S.C. § 1094(a)(24); 34 C.F.R. § 668.14(a)(16). This is known as the 90/10 Rule. The regulations set

forth specific requirements that must be used when determining an institution's compliance with this requirement. See 34 C.F.R. § 668.28.

Institutions that are subject to the 90/10 Rule must perform a calculation using the following general formula:

$$\frac{\text{Adjusted Student Title IV Revenue}}{\text{Adjusted Title IV Revenue} + \text{Student Non-Title IV Revenue} + \text{Total Revenue From Other Sources}}$$

34 C.F.R. Part 668, Subpart B, Appendix C.

An institution must perform the calculation under the cash basis of accounting and ensure that only permissible sources of revenue are included. As relevant here, only revenue used to pay tuition, fees and other institutional charges can be included in the denominator of the calculation. 34 C.F.R. §§ 668.28(a)(2), (3). The regulations make clear that this revenue must be from a source clearly distinguishable from the Title IV receipts received by an institution.

Institutions are required to perform the calculation and provide it along with supporting documentation to its non-Federal auditor for testing. The auditor is required to report the percentage of the institution's total revenue that was generated from the Title IV programs in a footnote to the financial statements. 34 C.F.R. § 668.23(d)(3). The auditor preparing the financial statements must be independent under the guidelines set forth in the Title IV regulations. 34 C.F.R. § 668.23(d)(1); 34 C.F.R. Part 668, Subpart B, Appendix A. If an institution fails to meet the 90/10 standard for two consecutive years, it loses eligibility to participate in the Title IV programs at the end of the second fiscal year. 34 C.F.R. § 668.28(c)(1). The institution is required to notify the Secretary that it has failed the 90/10 standard within 45 days after the end of each relevant fiscal year. 34 C.F.R. § 668.28(c)(3).

For fiscal year 2019, Prospect submitted financial statements that represented the institution had a 90/10 calculation percentage of 85. For fiscal year 2020, Prospect submitted financial statements that represented the institution had a 90/10 calculation percentage of 88. For fiscal year 2021, Prospect submitted financial statements that represented the institution had a 90/10 calculation percentage of 96.29. The Department reviewed documentation related to these calculations and determined that Prospect misrepresented the 90/10 calculation percentages for all three years.

1. Background

The Department began its review of Prospect's 90/10 compliance during an on-site review of the institution's compliance with Title IV requirements. During the review, the Department requested that Prospect provide back-up documentation for its 90/10 calculations. The Department specifically requested a listing of non-Title IV revenue that was included in the denominators of the 90/10 calculations, student ledger cards, general and subsidiary ledgers, and bank statements so that the revenue sources could be tracked. The Department also requested

that Prospect's auditor, Sikich LLP, provide the workpapers for their attestation of the 90/10 calculation percentages in the 2019, 2020, and 2021 financial statements.

During the course of its review, the Department uncovered a scheme created by Prospect to manipulate its 90/10 percentage. Prospect established what it called a Transportation Reimbursement program under which it provided students \$14 a day for day students and \$17 a day for evening students, if they were present and on time for the day. Students were told these funds were to assist them with their transportation expenses. Day students attend Monday through Friday and evening students attend Monday through Thursday, which means a student can earn up to \$70 per week.

The maximum amount of Title IV funds that students are eligible to receive annually does not cover the tuition and fees charged by the institution. Prospect developed a Tuition Payment Plan Agreement requiring thirty-two weekly installments of \$47 from the student to cover the outstanding tuition. The agreement also authorizes Prospect to deduct any past-due balances owed by a student from the Transportation Reimbursement they are entitled to receive.

Prospect calculates the Transportation Reimbursement on a weekly basis, based on the student's attendance two weeks prior to the calculation date. The Transportation Reimbursement calculation is run by the Student Accounts Representative on Friday mornings, and it involves pulling attendance and student account information from the institution's student information system, CampusVue, and merging it into a "transport_target" excel spreadsheet ("Transport Target Spreadsheet"). The Transport Target Spreadsheet calculates how much the student is eligible for each week based on their attendance, and based on that amount, how much should be posted to the student's account. This is typically \$47, which matches the amount of the student payments under the tuition payment plan. Any remaining amount due to the student after the amount due to the school is taken out would be paid to the student in cash. If the student had perfect attendance and didn't have any prior attendance issues, the cash payment to the student for transportation would be \$23.

The amount of the transportation payment that is posted to the student account is marked as a student payment to mask the fact that the funds are actually being paid by the institution. Although it is impossible to distinguish an actual student payment from a Transportation Reimbursement payment on the student ledgers, the Department compared the weekly Transport Target Spreadsheets with the student ledgers and determined that "transportation" funds make up a majority of Prospect's non-Title IV revenue that is included in the institution's 90/10 calculation. Although masked as student payments, these are actually institutional funds that cannot be included as independent revenue for purposes of the 90/10 calculation.

Beginning in the latter part of the 2020 fiscal year, Prospect received funds under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") funds. (Pub. L. 116-136)¹.

¹ The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136), the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116-260), and the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117-2), (collectively referred to as "HEERF") represents the three streams of funding appropriated to prevent, prepare for, and respond to the coronavirus pandemic. Subsequently, Prospect received an additional student award under CRRSAA.

The student portion of the CARES Act funds were required to be provided directly to students to be used for any component of the student's cost of attendance or for emergency costs that arose due to coronavirus, such as tuition, food, housing, health care, mental health care, or childcare.

During the review of the institution's compliance with the 90/10 requirements, the Department found that for the period June 2020 through September 2020, Prospect used the CARES Act funds for the Transportation Reimbursement rather than the institution's own funds. Similar to the transportation funds, the CARES Act entries on the student ledgers were labeled as student payments to mask Prospect's illegal scheme. Since the CARES Act funds were to be distributed directly to students and were not to be posted to student ledgers by the institution as payment to the student accounts, those funds could not be used as non-Title IV revenue in the 90/10 calculation.

The Department recalculated the 90/10 percentage for the 2019 and 2020 fiscal years, removing the tuition reimbursement and CARES Act funds that had been improperly included. Based on these recalculations, and as outlined below, Prospect fails the Title IV 90/10 standards for both the 2019 and 2020 fiscal years. The Department's recalculations for these fiscal years are included as Attachment A.

2. Fiscal Year 2019

Prospect improperly included \$305,365 in Transportation Reimbursement postings as non-Title IV revenue in its fiscal year ended ("FYE") September 30, 2019, 90/10 calculation. As noted above, the Transportation Reimbursement postings on student accounts are not independent revenue and cannot be included as non-Title IV revenue in the 90/10 calculation. When the Transportation Reimbursement postings are removed from the calculation, Prospect's 90/10 percentage for fiscal year 2019 is 95.6. As outlined above, this percentage does not meet the required Title IV standards.

3. Fiscal Year 2020

Prospect improperly included \$255,240 in Transportation Reimbursement postings as non-Title IV revenue in its FYE September 30, 2020, 90/10 calculation. Neither the institution's transportation funds, nor the CARES Act funds, should have been included in the 90/10 calculation as non-Title IV revenue. When those funds were removed from the calculations, Prospect's 90/10 percentage for FYE 2020 is 99. As outlined above, this percentage does not meet the required Title IV standards.

4. Fiscal Year 2021

Prospect's FYE September 30, 2021 audit included a finding for the inaccurate calculation of the 90/10 revenue percentage (Audit Control Number (ACN) 03-2021-21728, finding number FS 2021-02). The finding noted that institution did not properly identify all transactions and inaccurately included HEERF funds. When the auditor excluded the inaccurately included HEERF funds, the institution's fiscal year ended 90/10 calculation percentage was 96.29. Since Prospect posted the HEERF payments and Transportation Reimbursement payments as "Student

Payments” on student ledgers it is possible that additional funds should be removed from the calculation. Since the auditor’s calculation already yielded a percentage that violates the standards, the Department did not perform any additional analysis for this fiscal year.

B. Invalid Basis of Admission

Only eligible students may receive Title IV program funds. 20 U.S.C. § 1091; 34 C.F.R. § 668.32. To be eligible, students must be academically qualified to study at a postsecondary level. In this regard, a student must have a high school diploma or its equivalent or be beyond the age of compulsory school attendance and have the ability to benefit from the program of instruction that is being provided. See 20 U.S.C. § 1091; 34 C.F.R. § 668.32(e). Prior to July 1, 2012, a student who did not have a high school diploma or its equivalent could meet this requirement by passing an independently administered ability to benefit (“ATB”) test prior to receiving Title IV funds. 34 C.F.R. § 668.32(e)(2) (2011). The Department considers the test to be independently administered if the test is given by an independent test administrator who maintains the tests at a secure location and submits the test for scoring by the test publisher or is given at an assessment center by a certified test administrator who is an employee of the center. 34 C.F.R. § 668.151(b). A student could also meet this eligibility criterion if he/she satisfactorily completed six credits or equivalent coursework applicable toward a degree or certificate offered by the institution. 20 U.S.C. § 1091(d) (2008). If a student did not meet one of these criteria, he/she was ineligible to receive Title IV funds. Subsequent to July 1, 2012, a student was required to have a high school diploma or its equivalent to be eligible for Title IV funds. 34 C.F.R. § 668.32(e)(2).

In 2013, in order to fill the void in student enrollment when the ATB alternative for student basis of admission was eliminated, Prospect partnered with Parkridge Private School (“Parkridge”) in Long Beach, California, to offer a high school completion program to students wishing to enroll at the institution. The Parkridge high school completion program was administered by Prospect. Prospect would collect the Parkridge application, the student’s high school transcript, and pay Parkridge \$300 for each student. Students took the Parkridge high school completion tests on a computer at Prospect, and the test was set up and proctored by Prospect staff. Parkridge sent the students’ diplomas to Prospect for distribution rather than sending them directly to the students. Prospect held the diplomas for many of the students until after they completed a set portion of the Prospect program of study. The length of time between the student inquiring at Prospect and the time the student took the Parkridge test did vary; however, the time frame was significantly shorter than the time it would take to finish a high school completion program and much less than the six to eight-week timeframe estimated by Parkridge in its representations to Departmental officials.

During an on-site interview with Department officials, you indicated that Prospect stopped administering the Parkridge program in February of 2016 after you had heard the Department had taken an action at a California school that was administering the same Parkridge high school completion program. It is clear that the Parkridge high school completion program was a scheme created by Prospect to fill the void in student enrollment when the ATB alternative for student basis of admission was eliminated. The Department issued the action related to Parkridge on February 1, 2016, and by February 10, 2016, Prospect had entered into an ATB license

agreement with Wonderlic, Inc. (“Wonderlic”) for purposes of enrolling students who do not have a high school diploma or GED.

During the time period that Prospect was administering the Parkridge program, the Title IV statute was amended to allow for students that enrolled on or after July 1, 2014 to be eligible for Title IV through the ATB alternative, but only if the student is enrolled in an "eligible career pathway program" as defined in statute. 20 U.S.C. § 1091(d)(1)(A). An eligible Career Pathway Program (“CPP”) means a program that combines rigorous and high-quality education, training, and other services that—

1. Aligns with the skill needs of industries in the economy of the State or regional economy involved;
2. Prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937, commonly known as the ‘National Apprenticeship Act’;
3. Includes counseling to support an individual in achieving the individual’s education and career goals;
4. Includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
5. Organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;
6. Enables an individual to attain a high school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and
7. Helps an individual enter or advance within a specific occupation or occupational cluster.

20 U.S.C. § 1091(d)(2).

Institutions are required to maintain documentation that each eligible CPP it offered met the above requirements. During the on-site review, Department officials requested documentation to establish how Prospect was meeting the requirements for an eligible CPP. Prospect was only able to provide documentation that it had been providing students information about a free GED.com website, and that it scheduled optional office hours for tutoring sessions. Department officials interviewed all of Prospect’s admissions staff while on-site during the program review and asked them to explain the admissions requirements for students that did not have a high school diploma or GED. The admissions staff were only aware of the ATB test and were not familiar with any of the CPP requirements.

On March 4, 2022, the Department requested a list of all CPPs along with documentation and detailed descriptions that demonstrated how the program and/or institution was meeting each of the requirements of an eligible CPP. In response, Prospect provided some policies and procedures and copies of emails that were sent to students regarding their GED efforts. Most of the emails provided only asked the students how their efforts were going toward getting a GED, provided the students with a link to the “Khan Academy” YouTube page, and indicated that these were “GED prep videos” to help them study. One email described the GED preparatory

sessions that were available to students at Prospect as “informal, so there are no assessments...it is self-driven...and you get to work at your own pace.” These efforts are negligible, and do not even come close to what is necessary to provide a valid CPP that will benefit students.

The GED effort emails provided additional insight that students were confused about the ATB alternative admission process. One student indicated they thought they had “already passed the high school diploma class” when they started at Prospect. Another internal email between Prospect staff discussed another student that appeared to be confusing the ATB test with having earned a GED. It is clear that Prospect’s staff and students were not clear on the requirements for the ATB alternative or the CPP requirements.

In addition, Prospect failed to independently administer the ATB tests. An ATB test can only be administered by a certified Independent Test Administrator (“ITA”), or by a Certified Test Administrator (“CTA”) in an assessment center. On July 20, 2022, you confirmed that Prospect has never been an ATB assessment center. Despite this fact, Prospect employees administered virtually all of the tests used as the basis of admission for the Title IV students attending your institution since 2016. Since August of 2019, the ATB tests have been administered by Prospect’s Director of Operations and Registrar. Employees administering the ATB test directly violates the requirements that the tests be independently administered. Consequently, none of the tests administered by Prospect employees are valid for purposes of establishing student eligibility for Title IV funds. Attachment B is a list of students whose Title IV eligibility was based on ATB tests administered by Prospect.

In addition, Prospect failed to accurately report any of the students it enrolled under the ATB alternative to the Department. When an institution reports disbursement information to the Department’s Common Origination & Disbursement (“COD”) system it is required to report applicable student eligibility information. In October 2015, the Department introduced four student eligibility code values for ATB students:

- 11 - ATB-Test Completed- 1st Enrolled 7/1/12 to 6/30/15;
- 12 - ATB-Test Completed- 1st Enrolled 7/1/15 or After;
- 13 - ATB-College Credits-1st Enrolled 7/1/12 to 6/30/15; and
- 14 - ATB-College Credits-1st Enrolled 7/1/15 or After.

If an institution reports code 11 or 12 it is required to report how the test was administered, what test was administered and the date the test was completed. *COD Technical Reference, Volume II*.

Prospect enrolled hundreds of students under the ATB alternative since 2015, but only reported an ATB student eligibility code for one student in the 2019-2020 award year. That student was reported with a code 14 for having earned enough college credit to qualify for the ATB alternative. Prospect falsely reported all the other ATB students as having a high school diploma or GED.

Since the ATB regulations changed in 2012, Prospect has been developing various schemes to boost its enrollment by targeting students without a high school diploma or GED. First, it

implemented the Parkridge program scheme that awarded bogus high school diplomas to students, and then it started improperly administering the ATB alternative option. The institution's disregard for independently administering the test, failing to implement the CPP requirements and failing to report the students accurately to the Department is a blatant disregard for the Title IV program requirements, and Prospect's responsibility as a fiduciary of Title IV funds.

C. Misuse of Federal HEERF Funds

As a fiduciary, Prospect is expected to operate in a manner that exhibits a high standard of care and trustworthiness. In an audit of Prospect's receipt of funds disbursed under the various HEERF acts, the auditor found several violations in addition to the improper use in the 90/10 calculation. Although HEERF funds are not part of the Title IV programs, institutions were required to be Title IV eligible to receive those funds, and they are Federal Government funds with specific requirements that must be met. The following are the HEERF related findings from the institution's FYE 2021 audit:

- Finding 2021-001: Duplicate Drawdown (of \$415,427)
- Finding 2021-002: Insufficient Financial Management
- Finding 2021-003: Activities Unallowed – ledger postings
- Finding 2021-004: Activities Unallowed – Ineligible Students
- Finding 2021-005: Activities Unallowed – Restriction of Use
- Finding 2021-006: Earmarking
- Finding 2021-007: Insufficient Procurement Policies
- Finding 2021-008: Expenditures Incurred Outside the Period of Performance
- Finding 2021-009: Commingled Reporting
- Finding 2021-010: Insufficient Reporting
- Finding 2021-011: Inaccurate Reporting
- Finding 2021-012: Untimely Reporting

Finding 2021-005 noted that the institution restricted a portion of the HEERF funds to be used for transportation expenses and required attendance as a condition for receiving the grant funds. Prospect's failure to comply with HEERF requirements is further evidence of the institution's blatant disregard for its responsibilities, and the need for this denial.

The Department has determined that Prospect has failed to exhibit the trustworthiness required of a fiduciary and has failed to meet the standards of financial responsibility and administrative capability. Prospect's failure to meet these critical requirements underscores the need for this denial. Consequently, the Department cannot continue Prospect's Title IV program eligibility and after January 31, 2023, Prospect may no longer continue to receive Title IV program funds.

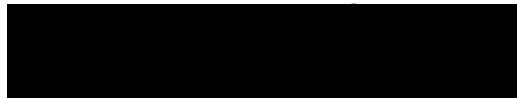
Should Prospect have factual evidence to dispute the Department's findings, and demonstrate their inaccuracy, Prospect may submit that evidence via overnight mail to me at the following address:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid
830 First Street, NE (UCP-3, Room 84F2)
Washington, DC 20002-8019

This denial of recertification is effective January 31, 2023. If Prospect chooses to submit material for the Department's consideration, it must be received within two weeks of the date of this letter. Any such material will be reviewed by the Department, and Prospect will be notified whether the recertification denial will be modified, rescinded, or left in place. If the denial of recertification is left in place, the Philadelphia School Participation Division will then contact you concerning the proper procedures for closing out Prospect's Title IV, HEA program accounts.

The Department will notify Prospect in a separate letter of any liabilities it owes for the Title IV funds the institution improperly received. That letter will provide Prospect with the opportunity to contest these liabilities under the procedures set forth at 34 C.F.R. Part 668, Subpart H. If you have any questions about this letter, you may contact Tara Sikora at tara.sikora@ed.gov.

Sincerely,



Susan D. Crim
Director
Administrative Actions and Appeals Service Group

Enclosures

cc: Gary Puckett, President/Executive Director, Council on Occupational Education, via Gary.Puckett@council.org
Angela Lee, Executive Director, District of Columbia Higher Education Licensure Commission, via Angela.Lee@dc.gov
Department of Defense, via osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil
Department of Veteran Affairs, via INCOMING.VBAVACO@va.gov
Consumer Financial Protection Bureau, via CFPB_ENF_Students@cfpb.gov