



December 6, 2016

Mr. Jeffrey Myhre
President
Minnesota School of Business
1401 West 76th Street, Suite 500
Richfield, MN 55423-3841

Sent Via [REDACTED]

Tracking #: [REDACTED]

Re: Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs – Minnesota School of Business, 1401 West 76th Street, Suite 500, Richfield, Minnesota 55423; OPE ID: 00464600.

Dear Mr. Myhre:

The U.S. Department of Education (Department) has reviewed the application for recertification submitted by Minnesota School of Business (MSB) to continue to participate in the student financial assistance programs authorized pursuant to Title IV of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. §§ 1070 *et seq.* (Title IV programs). MSB's most recent Program Participation Agreement (PPA) expired on December 31, 2015. MSB, however, timely submitted its recertification application prior to that date. As a result, the Department extended MSB's PPA on a month-to-month basis while evaluating the application and related matters. *See* 34 C.F.R. § 668.13(b)(2).

For purposes of evaluating a recertification application, the Department reviews an institution's performance as a participant in Title IV programs and must ensure that the institution has met the standards of administrative capability, has complied with Title IV program requirements, and has operated under the high standards of care, trust, and diligence required of a fiduciary. A denial of an institution's recertification application is warranted if the Department determines that an institution does not meet all requirements and standards set forth in Title IV and regulations issued thereunder. HEA § 498, 20 U.S.C. § 1099c; 34 C.F.R. § 668.13. In reaching a decision on MSB's recertification application, the Department reviewed all materials submitted by MSB in support of its application. The Department also reviewed other relevant documents, including those associated with the litigation captioned *Minnesota v. Minnesota School of Business, Inc. d/b/a Minnesota School of Business and Globe University, Inc. d/b/a Globe University*, No. 27-CV-14-12558, Fourth Judicial District

of Minnesota (2016).¹ Some of these documents are enclosed with this letter and are incorporated herein by reference. Students and employees are referenced throughout this letter by the number assigned to them in the Student/Employee Crosswalk enclosed with this letter. References to trial exhibits are references to the exhibit numbered in the trial named above. References to the trial transcripts are references to the transcripts in the trial named above.

The Department's review of the materials described above establishes that: (1) MSB has been judicially determined to have committed fraud involving Title IV program funds; (2) MSB made substantial misrepresentations about the nature of its criminal justice program and the employability of the graduates of that program; and (3) MSB made substantial misrepresentations about its students' ability to transfer credits earned at MSB to other institutions. Consequently, MSB's application for recertification is denied.

As a result of this denial of its recertification application, MSB is no longer eligible to participate in the Title IV programs, effective December 31, 2016. *See* 34 C.F.R. § 668.13(b)(2). Specifically, this includes: Federal Pell Grant (Pell Grant), Federal Supplemental Educational Opportunity Grant (FSEOG), Iraq and Afghanistan Service Grants (IASG), Teacher Education Assistance for College and Higher Education (TEACH) Grant, Federal Work-Study (FWS), Federal Perkins Loan (Perkins Loan), and William D. Ford Federal Direct Loan (Direct Loan). The Direct Loan program includes the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan program, and the Federal Direct PLUS Program.

I. MSB IS INELIGIBLE TO PARTICIPATE IN TITLE IV PROGRAMS BECAUSE IT HAS BEEN JUDICIALLY DETERMINED TO HAVE COMMITTED FRAUD INVOLVING TITLE IV PROGRAM FUNDS

An institution that has been judicially determined to have committed fraud involving Title IV program funds is not eligible to participate in Title IV programs. HEA § 102(a)(4)(B), 20 U.S.C. § 1002(a)(4)(B); 34 C.F.R. § 600.7(a)(3)(ii). "The phrase 'judicially determined to have committed fraud' means that a court of competent jurisdiction has made such a finding." Institutional Eligibility Under the Higher Education Act of 1965, as Amended, 59 Fed. Reg. 22324-01, 22,329 (Feb. 10, 1994).

On July 22, 2014, the State of Minnesota sued MSB under several theories, including a violation of the Minnesota Consumer Fraud Act (CFA), which, in relevant part, prohibits "[t]he act, use, or employment by any person *of any fraud*, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact

¹ According to documentation MSB has provided to the Department regarding its ownership structure, Minnesota School of Business, Inc., is the owner of Minnesota School of Business, OPEID 00464600.

been misled, deceived, or damaged thereby.” Minn. Stat. § 325F.69, subd. 1 (emphasis added).

On September 8, 2016, following a multi-week trial, Judge James Moore of Minnesota’s Fourth Judicial District issued “Findings of Facts, Conclusions of Law, and Order” (collectively, the “Order”) in which he found that the evidence presented by the State was “*sufficient to establish fraud and/or deception in the marketing of Defendants’ Criminal Justice program.*” Order at 110, Conclusions of Law ¶ 14 (emphasis added). The court also found that numerous MSB students were injured by this fraud, and many of the students received Title IV funds to pay for the program.² Order at 111-13, Conclusions of Law ¶¶ 16-20. Based in part on these factual and legal findings and conclusions, the court found that MSB’s “actions in promoting [its] Criminal Justice Program . . . constitute violations of Minn. Stat. §§ 325F.69, subd. 1” Order at 131, Conclusions of Law ¶ 1.

The Order, therefore, constitutes a judicial determination that MSB has committed fraud involving Title IV funds.³ Pursuant to HEA § 102(a)(4)(B), 20 U.S.C. § 1002(a)(4)(b), and 34 C.F.R. §§ 600.7(a) and 668.13(a), MSB is ineligible to participate in Title IV programs and may not be recertified for participation in those programs.

² Of the 15 students mentioned in on pages 111-13 (¶¶ 16, 19) of the Order, 14 received Title IV funds. In addition, numerous students who swore about MSB’s misrepresentations via affidavit received Title IV funds.

³ In addition to the court’s express determination of fraud with respect to MSB, the Department also notes that the court held MSB jointly liable for the fraudulent conduct of Globe University). The court found that “[a]lthough Globe and MSB are separate corporate entities, they have shared management and share certain resources. Defendants are commonly owned by the Myhre family. Jeff Myhre serves as Defendants’ Chief Executive Officer (“CEO”), Terry Myhre serves as President, and Kaye Myhre serves as Vice President. Defendants also share the same corporate management team, which has included but is not limited to: Vice President of Operations, Jeff Myhre (before being named CEO in late 2013 or early 2014); Chief Operating Officer (“COO”), Jeanne Herrmann; Chief Admissions Officer, Roger Kuhl (through the fall of 2014); Chief Financial Officer (“CFO”), Ken McCarthy; Director of Institutional Quality and Effectiveness, Dr. Mitchell Peterson; and Executive Director of Enrollment Services, Seth Tesdall. *This management team or executive committee oversaw uniform operations of Globe and MSB campuses.*” Order at 5, Findings of Fact ¶ 13 (emphasis added) (internal citations omitted). Based upon those findings, the court held that “the evidence adduced at trial shows clearly that Defendants [MSB and Globe] were jointly operated and held themselves out to the public as separately titled, but factually indistinguishable entities.” Order at 108-09, Conclusions of Law ¶ 10. Thus, the Court found that Globe and MSB were “jointly liable for their violations.” *Id.* The Department notes that this shared management team is evidenced by the similarity of practices, including the substance of the misrepresentations made to prospective students regarding the nature of the two institutions’ criminal justice program and the transferability of the institutions’ credits, along with enrollment techniques such as pressuring students to enroll on their first visit. Accordingly, under these circumstances, the misrepresentations at each institution are buttressed by each other, as well as by the similar misrepresentations at the companion institution.

II. MSB DEMONSTRATED A LACK OF ADMINISTRATIVE CAPABILITY AND BREACHED ITS FIDUCIARY DUTY TO THE DEPARTMENT BY SUBSTANTIALLY MISREPRESENTING THE NATURE OF ITS CRIMINAL JUSTICE PROGRAM AND THE EMPLOYABILITY OF THAT PROGRAM'S GRADUATES

In MSB's PPA, which took effect on January 15, 2010, MSB agreed to comply with all conditions specified therein, including compliance with all Title IV, HEA program requirements. PPA at 2; *see also* 20 U.S.C. § 1094(a)(1); 34 C.F.R. § 668.14. By entering into the PPA, MSB and its officers also accepted fiduciary responsibility in the administration of the Title IV programs. 34 C.F.R. § 668.82(a). As fiduciaries, the institution and officers must act with the highest standard of care and diligence in administering the Title IV programs, accounting to the Secretary for the funds received, and in not allowing officers or employees to make substantial misrepresentations. 34 C.F.R. §§ 668.82(a), (b). *See e.g., In re Warnborough College*, Dkt Nos. 95-164-ST, 96-60-SF (Aug. 9, 1996) (finding an institution in violation of the required fiduciary standard due to its failure to properly oversee an employee who made substantial misrepresentations to students). To "continue participating" in any Title IV program, a school must be "capable of adequately administering that program." 34 C.F.R. § 668.16. A school is not considered to have such administrative capability if the institution fails to "administer[] the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA" and "all applicable regulatory provisions prescribed under that authority." 34 C.F.R. § 668.16(a).

Under the Department's regulations, "[s]ubstantial misrepresentations are prohibited in all forms," 34 C.F.R. § 668.71(b), and the Department may deny institutional participation applications, including recertification applications, when it determines that the institution has engaged in a substantial misrepresentation. 34 C.F.R. § 668.71(a)(3). A "misrepresentation" is:

[a]ny false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to deceive. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

34 C.F.R. § 668.71(c).

A “substantial misrepresentation” is “any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person’s detriment.” *Id.* Substantial misrepresentations include misrepresentations made by the institution itself, or one of its representatives, regarding the nature of the institution’s academic programs or the employability of the institution’s graduates. 34 C.F.R. § 668.71(b). Substantial misrepresentations involving the nature of the institution’s education program include misrepresentations concerning: “[t]he particular type(s), specific sources, nature and extent of its institutional, programmatic, or specialized accreditation,” “whether a student may transfer course credits earned at the institution to any other institution,” “whether the successful completion of a course of instruction qualifies a student . . . to perform certain functions in the States in which the educational program is offered or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students,” and the “appropriateness of its courses and programs to the employment objectives it states its programs are designed to meet.” 34 C.F.R. §§ 668.72(a), (b)(1), (c), and (g). Substantial misrepresentations involving the employability of an institution’s graduates include misrepresentations concerning “the institution’s knowledge about the current or likely future . . . employment opportunities in the industry or occupation for which the students are being prepared,” and “other requirements that are generally needed to be employed in the fields for which the training is required.” 34 C.F.R. §§ 668.72(c), (f). Each substantial misrepresentation is a sufficient ground for the Department to deny MSB’s recertification application.

The Department’s review established that MSB substantially misrepresented to students and prospective students the ability of graduates of MSB’s criminal justice program to become police officers and probation officers in the state of Minnesota. Moreover, by signing its PPA, MSB agreed that, because it advertised job placement rates as a means of attracting students to enroll in the institution,⁴ it will make available to prospective students relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students. PPA at 4. 34 C.F.R. §§ 668.14(b)(10)(i), (ii); 20 U.S.C. § 1094(a)(8). Here, MSB affirmatively misrepresented them.

A. MSB made substantial misrepresentations regarding the ability of its criminal justice program graduates to become Minnesota police officers.

In Minnesota, a person who is not eligible for reciprocity because of prior police service in another state may become a police officer only in one of two ways. First, a person may obtain a degree from a program designated by the Minnesota Peace Officer Standards and Training

⁴ See, e.g., Trial Ex. 202 (email from an admissions representative to a prospective student stating “the majority of our placement rates are 90%. That’s tremendous!”).

(POST) Board. Minn. Stat. § 626.84, Minn. Rules 6700.0100, 6700.0300; Trial Ex. 0046 (listing POST Board designated programs); Trial Transcript 4/4/16 99:19-101:25, 131:4-14; 4/22/16 AM 17:10-18:2, 39:13-44:16; *see also* Order at 12, Findings of Fact ¶ 38. Second, a person may obtain a degree from a regionally-accredited institution and then complete a certified program of Professional Peace Officer Education (PPOE), commonly known as “skills training.” *Id.* MSB’s criminal justice program does not meet the requirements for either of these options. *First*, the program is not currently POST-approved, nor was it POST-approved at the time that MSB made representations regarding the ability of its graduates to become police officers. *Second*, MSB is, and at all times relevant to this determination was, *nationally* accredited, not regionally accredited.⁵ Accordingly, an MSB graduate could not have used an MSB credential to become a police officer in Minnesota. Moreover, at trial, Defendants’ corporate manager of career services testified that these job titles were “not representative of the type of jobs that [MSB] criminal justice [graduates] are able to enter” because MSB’s criminal justice program did not allow graduates to work as Minnesota police officers. *See* Trial Transcript 4/13/16 PM 99:10-19.

Despite the inability of MSB graduates to use the MSB credential to become Minnesota police officers, MSB substantially misrepresented that its programs prepared students for such careers. For example, in MSB’s publicly posted Gainful Employment disclosure for its criminal justice bachelor’s and associate’s programs, MSB stated that those programs prepared students to be “First Line Supervisors/Managers of Police and Detectives,” which, according to MSB, corresponded to the “O*Net Occupational Profile Code SOC: 33-1012.00.” Trial Ex. 24. But that career code, according to O*Net, included high-ranking law enforcement positions that were inaccessible based solely on an MSB credential. *See* Trial Ex. 44 (highlighting sample positions of Chief of Police, Detective Sergeant, Lieutenant, Police Captain, and Police Sergeant). Nevertheless, MSB opted to include these positions in its promotional materials. *See, e.g.*, Trial Ex. 24.

Other MSB advertisements and webpages also contained false and misleading information that would deceive a prospective student to reasonably believe that the criminal justice programs provided a necessary credential for a career as a Minnesota police officer. For instance, MSB published online testimonials from current criminal justice students asserting that they were working towards becoming sworn police officers. Trial Ex. 76 (online question-and-answer style advertisement with a current MSB student who, when asked where he saw himself in five years, responded: “I thought a lot about... [working as a] local sheriff or even a state trooper”). Additionally, MSB ran banner-style online advertisements publicizing its criminal justice programs and featuring a person in a police officer’s uniform. *See, e.g.*, Trial Exs. 14, 70, 76 (webpages containing banner-style MSB advertisements with text “Interested in Criminal Justice?” next to photograph of a person in a police uniform).

⁵ MSB’s online program chair and former interim criminal justice dean, testified at Trial that he would inform MSB admissions representatives that MSB is “not a POST Board school,” and that, if prospective students “want to become law enforcement officers in the State of Minnesota, [the admissions representatives] need to forward them to the POST Board website, where they can research the appropriate schools for that.” *See* Trial Transcript 4/22/16 AM 18:16-19:23.

Another webpage contained the text, “When designing our criminal justice degrees, we went to the source. We called on seasoned professionals in security, *law enforcement*, the court system, and corrections to advise us on exactly what skills and knowledge they look for in job candidates. And you can be sure, as a graduate of Globe University/Minnesota School of Business criminal justice program, *you will have those qualifications.*” Trial Ex. 28 (emphasis added). Prospective students viewing these advertisements and webpages could reasonably assume that completing the criminal justice program could lead to employment in Minnesota as a police officer. Therefore, this advertising scheme, considered as a whole, constitutes a substantial misrepresentation. *Cf. In the Matter of Warnborough College*, U.S. Dep’t of Educ. Dkt. Nos. 95-164-ST and 96-90-SF (Aug. 9, 1996) (reviewing various promotional materials and holding that, based upon those materials considered together, prospective students could be “reasonably convinced” that the institution was part of Oxford University and that the institution therefore committed a misrepresentation, notwithstanding that the promotional materials disclaimed that the institution was “independent”).

Over the course of several years, MSB’s admissions representatives and other personnel also misrepresented the abilities of MSB’s graduates to obtain employment in Minnesota as police officers. In multiple cases involving students whom MSB’s representatives knew were enrolling to become police officers, MSB’s representatives wrongly informed the prospective students, or otherwise led these individuals to believe, that the MSB criminal justice program would allow them to become police officers in Minnesota, or that they could attend the “skills training” after completing the MSB program. Those statements constituted substantial misrepresentations, as none of those students were able to attend skills training, or otherwise become police officers in Minnesota. In all, the Department reviewed the sworn testimony of 29 students swearing to these substantial misrepresentations, including sworn affidavits and sworn testimony given by the students at trial.⁶ *See* Enclosure 1.

⁶ The court found that at some point in 2010, MSB inserted into its enrollment agreement a disclaimer indicating that criminal justice students were not eligible to become police officers in Minnesota. In MSB’s role as a fiduciary of Title IV funds, it is incumbent upon the institution to not make substantial misrepresentations to Title IV recipients. Whether such misrepresentations are later disclaimed is immaterial to that duty. Likewise, after-the-fact contractual statements, especially when they are buried within a lengthy document, are generally insufficient to cure misrepresentations made to induce a person to enter the contract. *See, e.g., Giant Foods, Inc. v. FTC*, 322 F.2d 977, 986 (D.C. Cir. 1963), cert. dismissed, 376 U.S. 967, 84 (1964) (holding that a disclaimer in small print at the bottom of an advertisement did not cure deceptive language in the advertisement); *FTC v. EMA Nationwide*, 767 F.3d 611, 631-33 (6th Cir. 2014) (holding contractual disclaimers do not absolve seller’s liability for false and deceptive practices). Here, the disclaimer was two sentences in an eight-page enrollment agreement, buried among such innocuous provisions as an acknowledgement of receipt for the student handbook and consent for use of the student’s picture in advertisements. As the court stated, “Defendants’ contractual disclaimer . . . was also ineffective and legally irrelevant as to liability for false and misleading statements made in advertising and by their admissions representatives. As the Court observed at summary judgment, even a contractual disclaimer that clearly contradicts prior misstatements does not prevent liability under [Minnesota’s fraud laws]. . . The Court finds that the disclaimer regarding the Criminal Justice Program that was buried in the enrollment agreement was eclipsed by the emphatic and repeated claims to the contrary in Defendants’ advertising and sales presentations” Order at 114-15, Conclusions of Law ¶ 23. Finally, the statements of many students indicate that MSB affirmatively avoided the disclaimer by telling the students they needed to quickly sign the enrollment agreement without a meaningful opportunity to review it, or risk losing their opportunity to enroll. *See, e.g.,* Student 41’s Affidavit ¶ 3 (“MSB’s admissions representative recommended that I enroll in

For instance, student 2 told MSB-Blaine’s admissions representatives that she wanted to be a police officer. Trial transcript 4/11/16 AM Tr. 61:10-62:4. Likewise, on the first day of her criminal justice class, student 2 announced to instructors and classmates that she wanted to be a Minnesota police officer. *Id.* at 67:1-14. No one corrected her or told her this was not possible with an MSB criminal justice degree. *Id.* at 67:18-20. Not until halfway through her two-year program did she discover that MSB’s criminal justice program was not POST-certified and satisfied none of the educational or training requirements needed to become a Minnesota police officer. *Id.* at 65:4-66:20. Yet, when she asked one of her instructors if this was true, he indicated that she could work in another state as a police officer and then return to Minnesota after accruing three to five years of experience. *Id.* at 67:24-68:11, 106:15-107:2. Student 2’s instructor continued to lead her to believe that she could become a police officer through “loopholes.” *Id.* at 70:22- 71:1. Similarly, in 2013, student 2 told another instructor that she was “stuck” because she wanted to be a police officer, and asked that instructor if there was any way that she could still become a police officer with an MSB criminal justice degree. *Id.* at 74:20-23. The instructor told her that she would be eligible to participate in skills training at Hibbing Community College (HCC), through a relationship that MSB had with HCC’s law enforcement coordinator. *Id.* at 75:3-7. In an email, the instructor encouraged her to contact HCC’s law enforcement coordinator “about attending [HCC’s] ‘skills training.’” Trial Ex. 0410-0130. However, HCC’s law enforcement coordinator stated at trial that the instructor’s statement was not true, and that graduates of MSB’s criminal justice program were not eligible to enter skills training at HCC because Defendants’ criminal justice program was not regionally-accredited or POST certified. Trial Transcript 4/4/16 106:16-25, 109:1-12, 113:4-114:3, 114:11-23. *See* Order at 73, Findings of Fact ¶¶ 127(d), (f). The testimony this student gave was subject to cross-examination by MSB, and the judge, sitting as trier-of-fact, found this student’s testimony to be credible. Order at 75, Findings of Fact ¶ 127(h).

As with Student 2, MSB’s admissions representatives made substantial misrepresentations to numerous other students that were not corrected until long into the program when instructors asked the students what they had hoped to do with their MSB degrees. Prior to beginning class one day, Student 16, who had already been assured by MSB-Elk River’s admissions representatives that he could attend skills training to become a Minnesota police officer after graduating from MSB’s criminal justice program, explained to his criminal justice instructor that he was interested in becoming a police officer. Trial Transcript 4/6/16 at 41:19-42:8. In

MSB’s criminal justice associate’s degree program that day, asking me how great it would be to be working in my new career in less than two years. My mom and I told him that we needed time to visit some other colleges. MSB’s admissions representative said that MSB’s criminal justice program filled up fast and told me that if I did not enroll that day, I likely would not get a spot.”); Student 42’s Affidavit ¶4 (“I told MSB’s admissions representative that I was also considering Hennepin Technical College (Hennepin Tech). MSB’s admissions representative encouraged me to apply to MSB right away, and told me that I could always transfer to Hennepin Tech if I did not like MSB. She rushed me through an enrollment agreement, and before I knew it, I was enrolled in MSB’s criminal justice program and meeting with MSB’s financial aid department”). When the misrepresentation comes from an individual holding themselves out to be an expert, such as MSB’s “admissions representatives,” the prospective student is even more entitled to rely upon it. *See, e.g.,* Restatement (Second) of Torts § 542(a) (1977).

response, the instructor provided words of encouragement, telling him that he could do anything because he had the type of personality with which most people would get along. *Id.* Near graduation, during a mock interview for a police officer job with another instructor at the school, Student 16 again stated his desire to become a police officer. *Id.* at 42:9-17, 48:5-7; *see also* Trial Ex. 0404-0019. This instructor told him the truth: that he would have to complete skills training at another school, such as [a local community college], in order to work as a police officer. 4/6/16 Tr. 48:17-49:1; *see* Order at 45, Findings of Fact ¶ 118(d). The testimony this student gave was subject to cross-examination by MSB, and the judge, sitting as trier-of-fact, found this student's testimony to be credible. Order at 46, Finding of Fact ¶ 118(g).

Other students swore to this same practice in affidavits. *See, e.g.*, Student 5's Affidavit ¶¶ 4-5 ("About halfway through my program, one of my instructors asked the class what we planned to do with our degrees. I told the class that I wanted to become a police officer. After class, my instructor pulled me aside and told me that I was at the wrong school if I wanted to become a police officer. She told me that MSB was not approved by the Minnesota Peace Officer Standards and Training (POST) Board, so a degree from MSB would not allow me to work as a police officer in Minnesota. She recommended that I transfer schools."); Student 21's Affidavit ¶ 4 ("About halfway through my program, one of my instructors, a former police officer, asked my classmates and I about our career goals. When I explained that I wanted to be a police officer, my instructor told me that I could not become a police officer with an MSB criminal justice degree because MSB was not approved by the Minnesota Peace Officer Standards and Training Board."); Student 29's Affidavit ¶¶ 9-10 ("About two weeks later, I had a substitute professor in one of my classes. He introduced himself as the former Program Chair and asked us about our career goals. I again told the class I was going to be a cop. The substitute professor responded that I was at the wrong school if I wanted to be a cop and moved on to the next student. I had a hard time paying attention for the rest of the class. I could not stop thinking about the substitute professor's comment, and I stayed after class to talk to him. He told me that MSB did not have the kind of accreditation needed to take POST Board training in Minnesota, a requirement to becoming a police officer. I was very upset and told the professor that this could not be true, explaining how I had told MSB so many times I wanted to be a cop. The professor seemed troubled and told me he would look into this issue for me.").

In additional cases, other MSB instructors failed to correct the substantial misrepresentations that the admissions counselors had made to the students.⁷

⁷ Viewed in the context of the circumstances, these failures by MSB officials to correct substantial misrepresentations made by other MSB officials constitute additional violations of the obligation not to make substantial misrepresentations. In addition, the instructors' silence in these cases had the practical effect of causing students to remain at MSB longer than they otherwise may have, leading MSB to draw, under false pretenses, additional Title IV funds. Such conduct is inconsistent with the fiduciary obligation owed to the Department by MSB.

For example, Student 28 met with multiple MSB-Saint Cloud admissions representatives who told him he could become a Minnesota Conservation Officer, which is a specialized form of Minnesota Police Officer and carries the same prerequisites, by graduating from MSB's criminal justice program and then attending skills training. Trial Transcript 4/7/16 6:21-16:3. After enrollment, Student 28 became president of MSB-St. Cloud's criminal justice club. *Id.* at 18:5-12. Through this club, he attended field trips to different law enforcement facilities in the state. *Id.* at 18:8-12. His criminal justice coursework included direct instruction on police work. *Id.* at 18:13-22. Globe and MSB's blog, which was published on their website, featured student 28's statements. *Id.* at 20:8-21:8; Trial Ex. 0913. Within the blog, Student 28 said, "I would like to be a Conservation Officer after I am done with school." Trial Ex. 0913-0002. After providing this information for purposes of the blog post, no one from MSB told Student 28 that his degree would not enable him to work as a conservation officer or corrected his blog statements to include the requirements to become a conservation officer in Minnesota. Trial Transcript 4/7/16 at 23:16-24:1. At the beginning of each of his MSB courses, Student 28 informed both his instructors and his classmates of his career goal of becoming a conservation officer. *Id.* at 25:3-17. The testimony this student gave was subject to cross-examination by MSB, and the judge, sitting as trier-of-fact, found this student's testimony to be credible. Order at 60, Findings of Fact ¶ 122(j).

Military veterans were also induced to enroll by false promises of being able to become police officers. These student-veterans did not learn that their MSB degrees would not allow them to become police officers until after they had exhausted all or much of their G.I. Bill benefits. Student 6's Affidavit ¶ 7 ("I remain disappointed I wasted thousands of dollars of my G.I. Bill benefits at MSB"); Student 22's Affidavit ¶ 7 ("I graduated with my MSB criminal justice bachelor's degree in less than three years in 2012 with about four months of my 36 months of Post-9/11 G.I. bill funding remaining").

B. MSB made substantial misrepresentations regarding the ability of graduates of its associate's programs to become probation officers in Minnesota.

In Minnesota, probation officers are employed by a county or by the State Department of Corrections. Those entities use one of three "delivery systems" for probation services: (1) the Department of Corrections ("DOC") delivery system, which is utilized by 28 counties; (2) the County Probation Officer ("CPO") delivery system, which is utilized by 27 counties and adheres to the educational standards for probation officers set by the Department of Corrections; and (3) the Community Corrections Act ("CCA") delivery system, which the remaining 32 counties utilize. Each of those delivery systems requires a person to have obtained a bachelor's degree to be a probation officer. Trial Transcripts 4/7/16 109:1-111:9, 111:10-114:13, 116:12-117:5, 118:7-9, 120:19-121:6, 123:15-124:20, 125:20-23, 127:24-129:19; Trial Ex. 0043; *see also* Order at 13-14, Findings of Fact ¶¶ 42-44. Therefore, only MSB's bachelor's programs could directly lead to employment as a probation officer.

Nevertheless, MSB urged many students whom it knew to be enrolling to become probation officers to enroll in one of MSB's associate programs and claimed that those programs were a

good fit for that goal. In all, the Department reviewed the testimony, given either through affidavit or at trial, of 24 students who swore to these misrepresentations. *See* Enclosure 2.

For example, an MSB admission representative advised a prospective student, who informed the school's admission representative that she was enrolling to become a probation officer, to register for the school's criminal justice associate's degree. Student 34's Affidavit ¶ 4. The admissions representative also advised her that MSB's credits would transfer "anywhere." *Id.* ¶ 5. Relying on these representations, the student enrolled in the program. This student did not complete her MSB degree. She later learned that she would have had to complete a bachelor's degree to apply to be a probation officer – a degree MSB did not even offer in criminal justice when she enrolled. *Id.* ¶ 4.

MSB urged another prospective student to enroll in the criminal justice associates program after the prospective student told an MSB admissions representative that she wanted to be a probation officer. Student 36's Affidavit ¶ 2. This student also told several MSB instructors about her career plans, but was never advised that she needed a bachelor's degree. *Id.* ¶ 4. She discovered that requirement through her own investigation near the end of her associate's program, after taking on significant student debt. *Id.* ¶ 6.

Another student, who was enrolled in MSB's paralegal program, was advised by her academic advisor to switch to MSB's associates in criminal justice program after telling her academic advisor that she wanted to be a probation officer. Student 48's Affidavit ¶ 4. MSB did not have a bachelor's in criminal justice program at the time that she switched, but her advisor told her that, if she ever wanted to get a bachelor's degree, she could transfer her MSB credits elsewhere. *Id.* She told some of her criminal justice instructors about her plans to become a probation officer, and was never advised that her associate's degree would not allow her to become one. *Id.* ¶ 5. As she began to look for jobs, she was surprised to learn that she needed a bachelor's degree to be a probation officer. *Id.* ¶ 7. She contacted MSB's career services department for help, and received job postings that were entry level, required no degree, and paid less than the job that she had held before enrolling at MSB. *Id.* ¶ 8. Heavily in debt, she withdrew from school and, along with her son, moved in with her parents. She enrolled in community college, but had to start her collegiate career over because the community college would not accept MSB's credits for transfer. *Id.* ¶¶ 11-13.

Student 35 swore under oath in her affidavit that: "During my first quarter, I decided that I wanted to use my MSB associate's degree to pursue a career as a probation officer. In almost every class, I told MSB's instructors during introductions that I wanted to become a probation officer. MSB's instructors never told me that I needed a bachelor's degree to become a probation officer in Minnesota. . . . After over two years at MSB, one of my instructors told my class that she was leaving MSB and recommended that we all do the same. She told us that MSB was not properly accredited and employers looked down on MSB's degrees. She told my class to leave MSB before it was too late, because we would never get good jobs with our MSB degrees. Concerned, I withdrew from MSB. Student 35's Affidavit ¶¶ 5, 6.

These substantial misrepresentations, upon which students relied when choosing to enroll at MSB, are incompatible with MSB's fiduciary duty to the Department and demonstrate the institution's lack of administrative capability.

III. MSB BREACHED ITS FIDUCIARY DUTY AND DEMONSTRATED A LACK OF ADMINISTRATIVE CAPABILITY TO THE DEPARTMENT BY SUBSTANTIALLY MISREPRESENTING TO STUDENTS AND PROSPECTIVE STUDENTS THE TRANSFERABILITY OF MSB CREDITS

MSB made numerous misrepresentations to prospective students about the ability of students to transfer credits earned at MSB to other institutions.⁸ These misrepresentations were made as early as 2007 and continued through at least 2014, were made at each MSB campus, and were made to students who enrolled in a variety of programs of study, including criminal justice, health sciences, paralegal, accounting, business, and massage therapy programs. The individuals to whom MSB made these misrepresentations could reasonably have been expected to rely, or did in fact reasonably rely, on these misrepresentations to their detriment. Accordingly, these misrepresentations constituted substantial misrepresentations. 34 C.F.R. §§ 668.71, 668.72(b)(1).

The non-transferability of MSB's credits is partly a function of MSB's accreditation by a national accreditor rather than a regional accreditor. Credits earned at nationally accredited institutions often do not transfer to regionally accredited institutions.⁹ Thus, blanket statements MSB made to prospective students conflating national and regional accreditation, such as "because MSB is accredited, [the student] could complete a bachelor's degree at MSB or transfer [an MSB] associate's degree to another school to complete a bachelor's degree"

⁸ On this issue, the court found in favor of MSB because, "[t]o the extent that witnesses were misinformed by admissions representatives by affirmative statements that credits would transfer, those statements were not authorized by Defendants." Order at 118, Conclusions of Law ¶ 33. This aspect of the court's decision is not dispositive to the Department's conclusion that MSB violated 34 C.F.R. § 668 Subpart F because, under those regulations, an institution is responsible for substantial misrepresentations made by its agents, irrespective of whether those substantial misrepresentations are "authorized." See, e.g., *In the matter of Philander Smith College*, U.S. Dep't of Educ. Dkt. No. 09-28-SA at 2 (Nov. 16, 2009) ("[A]n institution is fully responsible for the conduct of its employees. This Tribunal has consistently held that an institution is subject to liability arising from the conduct of its employees in administering Title IV expenditures even if the conduct is criminal."); see also 34 C.F.R. § 668.71(b) (establishing that a substantial misrepresentation can be made by "one of [an institution's] representatives").

⁹ See, e.g., Government Accountability Office, *Transfer Students: Postsecondary Institutions Could Promote More Consistent Consideration of Coursework by Not Basing Determinations on Accreditation*, GAO-06-22, (October 18, 2005) available at: www.gao.gov/products/GAO-06-22 (last visited December 1, 2016); U.S. Senate Committee on Health, Education Labor, and Pensions Majority Committee Staff Report and Accompanying Minority Committee Staff Views, *For Profit Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (July 30, 2012) available at: www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf? (last visited December 1, 2016).

constitute substantial misrepresentations. Student 67's Affidavit ¶ 4. Likewise, many of the substantial misrepresentations at issue were made to prospective students who informed MSB that they were interested in transferring credits earned at MSB to an institution within the University of Minnesota or within the Minnesota State Colleges and University system. All of those institutions are accredited by the Higher Learning Commission, a regional accreditor, and MSB's credits did not transfer. In addition, in many cases, the prospective student asked MSB about the transferability of MSB's credits to a particular institution, and MSB misrepresented the transferability of MSB's credits to that institution. *Infra*. In those cases also, the MSB credits did not transfer.¹⁰ In all, the Department reviewed affidavits prepared by 58 former MSB students and two former MSB employees swearing that MSB's representatives made substantial misrepresentations to them regarding the transferability of MSB's credits. *See* Enclosures 3 and 4.

Several of these affidavits are illustrative of MSB's misrepresentation. For example, in one case, MSB represented to a prospective Information Technology (IT) student at the Moorhead campus that MSB's credits would transfer to Minnesota State. At his initial meeting with the admissions representative, he said that the representative "encouraged me to enroll right away, telling me that if I did not like MSB, I could always transfer to another school. When I asked whether other schools accepted MSB's credits, MSB's admissions representative told me that other schools, including M State, would accept most of MSB's credits if I decided to transfer." Student 56's Affidavit ¶ 3. When this student did not enroll during his first visit to MSB, MSB's representatives "called me repeatedly, telling me that if I wanted a chance to enroll at MSB, I needed to return to campus within a week. I met with MSB's admissions

¹⁰ At trial, MSB noted that the transferability of credits is ultimately the decision of the institution a student transfers to. That is correct, and had MSB's admissions representative made solely that statement and not affirmatively represented that MSB credits *would* transfer, it would not have been a misrepresentation. But MSB, as a fiduciary to the Department, may not falsely inform prospective students that credits *will* transfer, receive Title IV funds because of those students' attendance, and then claim that transferability is out of its control. Likewise, MSB's course catalogs, which were hundreds of pages long, contain disclaimers regarding the transferability of MSB credits to other institutions. Pro forma statements or disclaimers, buried within a document of hundreds of pages, do not cure otherwise deceptive messages, particularly when those deceptive messages were conveyed by a person such as an MSB admissions representative who holds themselves out as an expert. *Supra* at note 5. Moreover, according to affidavits of former MSB employees, MSB representatives affirmatively avoided the disclaimer contained in the course catalog, in this case by not providing the catalog to the prospective students until they were signing their enrollment agreements or thereafter. Affidavit of MSB Employee 1 ¶ 18 ("MSB's goal was to enroll as many students as possible, and quickly transition them to financial aid to fill out financial aid paperwork before they had time to think about their enrollment decision. MSB's practice was to have admissions representatives "recommend" students for acceptance and ask them to sign an enrollment agreement which was supposedly contingent on acceptance. As students signed the enrollment agreement, not beforehand, we would give them copies of MSB's Course Catalog, I never saw a student stop the enrollment process to review the dense catalog"); Affidavit of MSB Employee 2 ¶ 16 ("I was trained to have him sign an enrollment agreement in which he acknowledged that he had been given copies of MSB's Student Handbook and Course Catalog. We did not give students these materials before they signed the enrollment agreement, rather, we were trained to hand them the materials as they were signing the agreement. I never saw any students review these voluminous materials before signing the enrollment agreement, as the materials were provided while they were busy signing the enrollment agreement.").

representative the next week and told him that I did not want to start school until the fall. He pressured me to enroll right away, telling me that it would give me the opportunity to use more financial aid. Reluctantly, I enrolled in MSB's IT program and began classes in the spring of 2014." *Id.* ¶ 4. This student attempted to transfer the credits he earned at MSB to Minnesota State. *Id.* ¶ 8. Despite the assurances that MSB gave to the student, the credits did not transfer. *Id.*

Another student, who enrolled in a criminal justice associates degree program at the Shakopee campus in 2011, "told MSB's admissions representative that I was also considering Hennepin Technical College (Hennepin Tech). MSB's admissions representative encouraged me to apply to MSB right away, and told me that I could always transfer to Hennepin Tech if I did not like MSB. She rushed me through an enrollment agreement, and before I knew it, I was enrolled in MSB's criminal justice program and meeting with MSB's financial aid department." Student 42's Affidavit ¶ 4. This student later learned that Hennepin Tech, a constituent institution of the Minnesota State Colleges and University system, would not accept MSB's credits for transfer. *Id.* ¶ 5. She graduated, but was unable to find work in the criminal justice field. *Id.* ¶ 6. MSB proposed that she continue on in the school's criminal justice program and earn a bachelor's degree. *Id.* ¶ 7. This student was unable to take on more debt to enroll in the bachelor's program, and eventually found work as a car wash attendant and waitress. *Id.* ¶¶ 7-8.

A fourth student, who enrolled in the Brooklyn Park campus' Bachelors of Business Administration program in 2007, told the MSB admissions representative, "I may later want to return to the University of St. Thomas (St. Thomas), where I had previously attended college, to pursue a Master of Business Administration (MBA) degree and I asked whether St. Thomas would accept a bachelor's degree from MSB. MSB's admissions representative told me that because MSB was accredited, St. Thomas would accept a bachelor's degree from MSB if I later decided to pursue an MBA." Student 85's Affidavit ¶ 3. In 2013, this student graduated from MSB and applied to St. Thomas's MBA program. *Id.* ¶¶ 5-6. Yet St. Thomas did not accept the credits or degree earned at MSB for transfer into its MBA program. *Id.* This student "applied to many human resource and business management positions but I did not receive any job offers." *Id.* Instead, she took a job which "requires a high school diploma and pays \$13.61 an hour." *Id.* ¶ 7.

* * * *

The denial of recertification will be effective on December 31, 2016. Should MSB have factual evidence to dispute the Department's findings and demonstrate their inaccuracy, MSB 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/Enforcement
830 First Street, NE (UCP-3, Room 84F2)
Washington, DC 20002-8019

If any such material is received by December 20, 2016, the Department will review it and notify MSB if the recertification denial will be modified, rescinded, or left in place. There will be no additional opportunity for appeal or reconsideration. If the recertification denial remains in effect following the Department's review of such submission, or if the school opts not to make such a submission, the Chicago-Denver School Participation Division will then contact MSB concerning the proper procedures for closing out MSB's Title IV program accounts.

In the event that MSB submits an application to participate in the Title IV programs in the future, that application must address the deficiencies noted in this letter. If you have any questions about this letter, you may contact Kerry O'Brien at [REDACTED].

Sincerely,

[REDACTED]
Susan D. Crim
Director
Administrative Actions and Appeals Service Group

Enclosures

cc: Roger Williams, Interim President, ACICS, via rjwilliams@acics.org
Betsy Talbot, Manager, Institutional Registration and Licensing, Minnesota Office of
Higher Education, via betsy.talbot@state.mn.us
VA State Council for Higher Education via peterblake@schev.edu
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