

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

360 DEGREE EDUCATION, LLC,  
d/b/a Cortiva Institute; and THE COALITION  
FOR CAREER SCHOOLS,

Plaintiffs,

v.

DEPARTMENT OF EDUCATION; and  
SECRETARY MIGUEL A. CARDONA, in his  
official capacity as Secretary of the Department  
of Education,

Defendants.

Case No. 4:24-cv-00508-P

**Notice Regarding Defendants' Failure  
to Initiate Administrative Procedures**

**NOTICE REGARDING DEFENDANTS' FAILURE  
TO INITIATE ADMINISTRATIVE PROCEDURES**

Pursuant to this Court's September 6, 2024, Memorandum Opinion and Order (ECF No. 57 and hereinafter "Order"), Plaintiffs 360 Degree Education, LLC (hereinafter "Cortiva"), and the Coalition for Career Schools (hereinafter "Coalition") are notifying the Court that Defendants, U.S. Department of Education and U.S. Secretary of Education, have "failed to initiate the appropriate administrative procedures within 90 days" of the Order—that is, on or before yesterday, December 5, 2024. Pursuant to this Court's Order, Defendants have thus waived any objection to Cortiva's standing. *See* Order at 6.

The Department sent Cortiva a letter on December 4, 2024, reiterating its legal position and urging Cortiva to submit a request to reduce the hours of its PMT program. Cortiva will

respond to that letter in due course. But as explained herein, the Department’s letter does not constitute the initiation of an “appropriate administrative procedure” as contemplated in the Order.

Following the Order, counsel for Plaintiffs contacted counsel for Defendants to discuss how Defendants intended to proceed administratively. Ex. A (Emails of September 16, 2024, and September 25, 2024) at 1–2. Defendants refused to engage on that issue. In the intervening months, however, the Department renewed Cortiva’s Program Participation Agreement, determining that Cortiva “meets the minimum requirements of institutional eligibility, administrative capability, and financial responsibility as set forth in 34 C.F.R. Parts 600 and 668.” Ex. B (September 27, 2024 Email from Shein Dossa with copy to Shari Mecca). The Department did not raise any concerns about state authorization for Cortiva’s 600-hour PMT Program in the PPA renewal process.

Then, on December 4, 2024, the day before this Court’s 90-day deadline expired, the Department sent Cortiva a letter, Ex. C, and counsel for Defendants responded to the earlier inquiries by sharing a courtesy copy, Ex. A (Email of December 4, 2024) at 1. The letter reiterates the legal position Defendants raised months ago in this litigation and urges Cortiva to apply by next Friday, December 13, to reduce its hours for the PMT program to 500 hours. That letter does not “initiate” any “administrative procedures.” Order at 6. At most, it represents a threat that the Department will initiate such procedures in the future if Cortiva does not submit the requested application. *See* Ex. C at 2 (“Should Cortiva not submit the required application by the deadline, the Department *will initiate* an action to terminate the eligibility of the program for Title IV funding. *See* 34 C.F.R. §§ 600.41(b); 668, Subpart G.” (emphasis added)). Cortiva will respond to the substance of the Department’s December 4 letter in due course. But for present purposes, the key point is that Defendants have not fulfilled the conditions contemplated by this Court’s Order.

Federal regulation prescribes that “[a] designated department official begins a limitation or termination proceeding by sending an institution . . . a notice by certified mail,” which must meet several requirements. 34 C.F.R. § 668.86(b)(1). The December 4 letter does not constitute a “notice” within the meaning of § 668.86(b)(1). It was sent by email, not by certified mail. And it does not “specif[y] the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent,” nor “inform[] the institution . . . that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution . . . by that date a request for a hearing or written material indicating why the limitation or termination should not take place.” *Id.*

If anything, the December 4 letter is an effort to *avoid* the “standard administrative process [that] . . . would afford Cortiva a full opportunity to raise any applicable defenses and obtain judicial review of the final result,” Defs’ Br. in Opp’n to Pls’ Mot. for Order to Show Cause (ECF No. 55) at 3, by getting Cortiva to agree with the Department’s position voluntarily. The Court should not condone the Department’s attempt to circumvent the very administrative procedures that it represented to this Court that it must follow.

The Court should therefore reject the Defendants’ challenge to Cortiva’s standing, as it indicated it would. *See* Order at 6. Plaintiffs respectfully submit, however, that rather than reopening the case, the Court should keep it administratively stayed for a separate reason: the impending change in Presidential Administration. On January 20, 2025, a new Presidential Administration will assume responsibility over the Department. There is a strong possibility that the new Administration will have different positions from the current Administration on both the merits of the Bare Minimum Rule and on this state-authorization issue. It is well-established that a new Administration is entitled to make changes in policy and regulations. *See, e.g., Federal*

*Communications Commission v. Fox*, 556 U.S. 502 (2009). It would best preserve judicial and party resources to keep this case administratively stayed through the Presidential Transition to determine the positions of the new Administration before proceeding to summary judgment—which cannot effectively be briefed, argued, and decided before January 20, 2025, in any event. Plaintiffs respectfully propose that the Court keep the case administratively stayed and direct the parties to submit a status report on April 15, 2025, unless they determine at an earlier date that the case has become moot.

Plaintiffs also submit that it would be appropriate for the Court to direct the Department not to proceed with any administrative proceedings against Cortiva or any member of the Coalition until April 15, 2025. The Department was already content to forgo an administrative proceeding during the 90-day period following the Order and likewise refrained from initiating a proceeding in the months prior after it first raised this issue. The Department can certainly wait a little longer to ensure that it initiates an administrative proceeding only if it is supported by the new Administration which will see it through.<sup>1</sup>

Dated: December 6, 2024

Respectfully submitted,

/s/ Melissa M. Hensley

Melissa M. Hensley (Texas Bar No. 00792578)

Cory R. Ford (Texas Bar No. 24121098)

Michael C. Elliott (Texas Bar No. 24086916)

MCGUIREWOODS LLP

2601 Olive Street, Suite 2100

Dallas, TX 75201

Telephone: (469) 372-3926

Facsimile: (214) 273-7475

cford@mcguirewoods.com

mhensley@mcguirewoods.com

melliott@mcguirewoods.com

---

<sup>1</sup> Counsel for Plaintiffs raised this proposal with counsel for Defendants earlier today to determine their position on the approach, but has not received a response in the brief intervening period. If Plaintiffs do determine Defendants' position, they will update the Court or ensure that Defendants themselves do so.

Farnaz Farkish Thompson (*pro hac vice*)  
John S. Moran (*pro hac vice*)  
Jonathan Helwink (*pro hac vice*)  
Stephen Tagert (*pro hac vice*)  
MCGUIREWOODS LLP  
888 16th Street NW, Suite 500  
Black Lives Matter Plaza  
Washington, DC 20006  
Telephone: (202) 828-2817  
Facsimile: (202) 828-3327  
fthompson@mcguirewoods.com  
jmoran@mcguirewoods.com  
jhelwink@mcguirewoods.com  
stagert@mcguirewoods.com  
*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document has been served upon all counsel of record, via email, on December 6, 2024, as follows:

KATHRYN L. WYER  
U.S. Department of Justice, Civil Division  
1100 L Street, N.W., Room 12014  
Washington, DC 20005  
Tel. (202) 616-8475  
kathryn.wyer@usdoj.gov

*/s/ Melissa M. Hensley*  
\_\_\_\_\_  
Melissa M. Hensley

# **Exhibit A**

**From:** [Wyer, Kathryn \(CIV\)](#)  
**To:** [Thompson, Farnaz Farkish](#)  
**Cc:** [Moran, John S.](#)  
**Subject:** RE: Cortiva - Time to Confer  
**Date:** Wednesday, December 4, 2024 2:20:24 PM  
**Attachments:** [Cortiva Instiute - Texas Massage Program Letter 12.4.2024.pdf](#)

---

**\*\*EXTERNAL EMAIL; use caution with links and attachments\*\***

Farnaz,

I hope you had a good Thanksgiving. As you know, I do not represent the Department in administrative matters, and I have had little visibility into their process, but I conveyed your messages to the Department and was told that the Department's policy is to provide an initial notification to a school when it receives information establishing that a program offered by the school is ineligible for Title IV. I've now received word that the Department provided such notification to Cortiva this morning and am providing the attached copy of the Department's letter as a courtesy.

Regards,  
Kathy

*Kathy Wyer*  
(202) 616-8475

---

**From:** Thompson, Farnaz Farkish <FThompson@mcguirewoods.com>  
**Sent:** Wednesday, September 25, 2024 9:44 AM  
**To:** Wyer, Kathryn (CIV) <Kathryn.Wyer@usdoj.gov>  
**Cc:** Moran, John S. <JMoran@mcguirewoods.com>  
**Subject:** [EXTERNAL] RE: Cortiva - Time to Confer

Kathy,

I hope you are doing well. Have you had a chance to touch base with the U.S. Department of Education? If so, please let us know when you may be available to connect soon.

Schools with programs other than a massage therapy program are members of the Coalition for Career Schools and are located in the Northern District of Texas.

We hope that the Department would give Cortiva an opportunity to weigh in before it decides whether to proceed with any enforcement action.

Thanks,  
Farnaz

**Farnaz Farkish Thompson** 

Partner

McGuireWoods LLP

T: +1 202 857 2488 | M: +1 703 798 0182

[ftompson@mcguirewoods.com](mailto:ftompson@mcguirewoods.com)

---

**From:** Thompson, Farnaz Farkish

**Sent:** Monday, September 16, 2024 2:35 PM

**To:** Wyer, Kathryn (CIV) <[Kathryn.Wyer@usdoj.gov](mailto:Kathryn.Wyer@usdoj.gov)>; Moran, John S. <[JMoran@mcguirewoods.com](mailto:JMoran@mcguirewoods.com)>

**Subject:** RE: Cortiva - Time to Confer

Kathy,

I hope you had a good weekend. Let's touch base later after you have had a chance to touch base with the U.S. Department of Education. If you plan to touch base with the Department this week, do you have any availability to connect this Thursday or Friday?

Thanks,  
Farnaz

**Farnaz Farkish Thompson** 

Partner

McGuireWoods LLP

T: +1 202 857 2488 | M: +1 703 798 0182

[ftompson@mcguirewoods.com](mailto:ftompson@mcguirewoods.com)

---

**From:** Wyer, Kathryn (CIV) <[Kathryn.Wyer@usdoj.gov](mailto:Kathryn.Wyer@usdoj.gov)>

**Sent:** Monday, September 16, 2024 9:00 AM

**To:** Thompson, Farnaz Farkish <[FTompson@mcguirewoods.com](mailto:FTompson@mcguirewoods.com)>; Moran, John S.

<[JMoran@mcguirewoods.com](mailto:JMoran@mcguirewoods.com)>

**Subject:** RE: Cortiva - Time to Confer

**\*\*EXTERNAL EMAIL; use caution with links and attachments\*\***

Farnaz,

Tuesday at 1pm would work but I have not been able to touch base with the agency yet, so I would not have anything to share on my end. I'm still happy to have a call tomorrow if you think it would be useful.

Thanks,  
Kathy

*Kathy Wyer*  
(202) 616-8475

---

**From:** Thompson, Farnaz Farkish <[FThompson@mcguirewoods.com](mailto:FThompson@mcguirewoods.com)>  
**Sent:** Friday, September 13, 2024 9:14 AM  
**To:** Wyer, Kathryn (CIV) <[Kathryn.Wyer@usdoj.gov](mailto:Kathryn.Wyer@usdoj.gov)>; Moran, John S. <[JMoran@mcguirewoods.com](mailto:JMoran@mcguirewoods.com)>  
**Subject:** [EXTERNAL] RE: Cortiva - Time to Confer

Kathy,

We are available before 10:30 am and between 1 pm and 2 pm on Tuesday. Please let us know what works well for you.

Thanks,  
Farnaz

**Farnaz Farkish Thompson**   
Partner  
McGuireWoods LLP  
T: +1 202 857 2488 | M: +1 703 798 0182  
[fthompson@mcguirewoods.com](mailto:fthompson@mcguirewoods.com)

---

**From:** Wyer, Kathryn (CIV) <[Kathryn.Wyer@usdoj.gov](mailto:Kathryn.Wyer@usdoj.gov)>  
**Sent:** Thursday, September 12, 2024 2:18 PM  
**To:** Moran, John S. <[JMoran@mcguirewoods.com](mailto:JMoran@mcguirewoods.com)>  
**Cc:** Thompson, Farnaz Farkish <[FThompson@mcguirewoods.com](mailto:FThompson@mcguirewoods.com)>  
**Subject:** RE: Cortiva - Time to Confer

**\*\*EXTERNAL EMAIL; use caution with links and attachments\*\***

John,  
Sure, I have been on the road myself but I'm generally available next Tuesday if you want to schedule a call then.

Kathy

Kathy Wyer  
(202) 616-8475

---

**From:** Moran, John S. <[JMoran@mcguirewoods.com](mailto:JMoran@mcguirewoods.com)>  
**Sent:** Tuesday, September 10, 2024 7:06 PM  
**To:** Wyer, Kathryn (CIV) <[Kathryn.Wyer@usdoj.gov](mailto:Kathryn.Wyer@usdoj.gov)>  
**Cc:** Thompson, Farnaz Farkish <[FThompson@mcguirewoods.com](mailto:FThompson@mcguirewoods.com)>  
**Subject:** [EXTERNAL] Cortiva - Time to Confer

Kathy,

I am currently on the road, but I wanted to reach out because we thought it might be useful to touch base about Judge Pittman's recent order in the Cortiva matter. I don't know if either side yet knows for sure what we plan to take as a next step. But we may have at least some insights we can share with one another.

At a minimum, we hope that the Department would give Cortiva an opportunity to weigh in before it makes a decision to proceed with an enforcement proceeding.

Would you have time later this week or early next week to touch base?

Regards,

**John S. Moran**

McGuireWoods LLP

T: +1 202 828 2817 | M: +1 202 525 0356

---

*This e-mail from McGuireWoods may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.*

# **Exhibit**

---

**From:** Dossa, Shein <Shein.Dossa@ed.gov>

**Sent:** Friday, September 27, 2024 9:28 AM

**To:** Neal R. Heller <nheller@hi.edu>; Nicole Vitez <NVitez@hi.edu>; Rene Lezcano <renel@cortiva.edu>

**Cc:** Mecca, Shari <Shari.Mecca@ed.gov>; Frola, Michael <Michael.Frola@ed.gov>

**Subject:** Immediate Action – Institutional Eligibility Decision-Cortiva Institute's (03766300,03296300,02279600 and 02316600) and Hollywood Institute OPE ID 03706300 and Hollywood Institute of Beauty Careers OPE ID 04162500

---

**CAUTION:**

**HI.EDU or Cortiva.EDU**

Dear, Mr. Heller,

The Multi-Regional Schools Participation Division - School Participation Division (SPD) has completed its review of the following:

1. Cortiva Institute OPE ID 03766300
2. Cortiva Institute OPE ID 03296300
3. Cortiva Institute OPE ID 02279600
4. Cortiva Institute OPE ID 02316600
5. Hollywood Institute OPE ID 03706300
6. Hollywood Institute of Beauty Careers OPE ID 04162500

---

---

Senior Institutional Review Specialist  
Multi-Regional and Foreign Schools Participation Division  
Federal Student Aid, US Department of Education  
100 S. Penn Square East-511  
Philadelphia, PA 19107  
(215) 656-6461  
fax (215) 656-6499  
email ([shein.dossa@ed.gov](mailto:shein.dossa@ed.gov))

# **Exhibit**



December 4, 2024

Neil Heller  
President/CEO  
Cortiva Institute  
420 South State Road 7  
Hollywood, FL 33023-6720.

Sent via email to: [nheller@hi.edu](mailto:nheller@hi.edu)

Re: Cortiva Institute/ Arlington, Texas Additional Location, OPE ID 02279601.

Dear Mr. Heller:

This letter is to address an issue that has been identified regarding Cortiva Institute's (Cortiva's) Massage Therapy Program. Based on the information previously provided to the Multi-Regional and Foreign Schools Participation Division, Cortiva's 600-clock hour Massage Therapy Program was approved as an eligible program under Title IV of the Higher Education Act of 1965, as amended. (Title IV). Cortiva is licensed by the Texas Department of Licensing and Regulation (TDLR). Subsequent to the approval of the Massage Therapy Program in 2019, the Department obtained information from TDLR establishing that it has only approved Cortiva's Massage Therapy Program for 500 clock hours of instruction. TDLR informed the Department that under state law it is only authorized to approve massage therapy programs for 500 clock hours. This information raised an eligibility issue with your institution's 600-clock hour Massage Therapy Program.

In order to be approved as an eligible Title IV program, the program must be approved by both the institution's accreditor and licensing body. See 34 C.F.R. §§ 600.2, 668.8. Where a state approves an educational program for a specific number of clock or credit hours, the Title IV eligibility of that program is limited to that specific number of approved hours. Since TDLR has only approved the Massage Therapy Program for 500 clock hours, the Department can only approve the program for 500 clock hours. In order to come into compliance with Title IV requirements, Cortiva must reduce its Massage Therapy Program to 500 clock hours.

When an issue such as this arises with an educational program, the first step in the Department's enforcement process is to notify the institution of the issue and provide the institution an opportunity to remedy the situation. At this time, the Department considers the 600-clock hour program ineligible, since it exceeds the state approved number of clock hours. To remedy the issue, Cortiva should submit an application to the Department for approval of the 500-hour Massage Therapy Program. Since TDLR has already approved the program for 500 clock hours, Cortiva will only need to obtain an additional approval from its accreditor for the lower program hours. Once the application is received, the Department will work with Cortiva on the timing for obtaining accreditor approval. Although this may vary depending on the accreditor, the Department believes that this approval can be obtained within 30 days.

**Federal Student Aid**  
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Multi-Regional Foreign Schools Participation Division  
Union Center Plaza, 830 First Street, NE, 9<sup>th</sup> Floor Washington, DC 20202  
[StudentAid.gov](http://StudentAid.gov).

Please submit the application for approval of the 500-clock hour program to the Department no later than December 13, 2024. Should Cortiva not submit the required application by the deadline, the Department will initiate an action to terminate the eligibility of the program for Title IV funding. See 34 C.F.R. §§ 600.41(b); 668, Subpart G.

Should you have any questions regarding this letter, you can email Shari Mecca at [Shari.Mecca@ed.gov](mailto:Shari.Mecca@ed.gov).

Sincerely,



Michael Frola  
Division Chief  
Multi-Regional and Foreign Schools Participation Division

cc: Rene Lezcano, Vice President of Campus Operations, [renel@cortiva.edu](mailto:renel@cortiva.edu)  
Nicole Vitez, Director of Compliance, [NVitez@hi.edu](mailto:NVitez@hi.edu)  
Cameron Burroughs, Director of Financial Aid, [cburroughs@hi.edu](mailto:cburroughs@hi.edu)