



Deputy Commissioner
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June 30, 2022

Via email and first class mail

Matthias Gebhardt, President
Olivet University
36401 Tripp Flats Road
Anza, CA 92539

Dear President Gebhardt:

I write regarding Olivet University's (Olivet) June 25, 2020 renewal application to operate with a physical presence in New York pursuant to Section 3.56 of the Rules of the Board of Regents. After reviewing the application and additional materials submitted by Olivet for renewal of a Permission to Operate (PTO) in the state of New York, the New York State Education Department ("NYSED" or the "Department") determined that Olivet failed to meet the requirements for PTO as follows

1. Olivet has operated with resources insufficient to accomplish the mission and purposes of its curricula. (See Section 3.56(a) of the Rules of the Board of Regents and Part 52.2(a)(1) of the Regulations of the Commissioner.)
2. Olivet has failed to responsibly administer institutional policies and programs. (See Section 3.56(a) of the Rules of the Board of Regents and Part 52.2(e)(1) of the Regulations of the Commissioner.)
3. Olivet has failed to establish, publish, and enforce explicit policies with respect to working conditions. (See Section 52.2(e)(3)(ii) of the Regulations of the Commissioner.)

In a letter dated May 17, 2022, the Department informed Olivet that the Department would not recommend Olivet for renewal by the Board of Regents, provided the applicant additional detail in an accompanying Observations and Findings document attached to the letter, and informed Olivet of the process for an appeal. The institution was granted an extension of the appeal deadline and, thereafter, submitted a timely appeal on June 6, 2022. The institution states that its appeal is generally based on the following three grounds, identified as follows:

First, Olivet takes issue with NYSED's conclusion that Olivet's application should be denied because Olivet has failed under Parts 52.2(a)(1), 52.2(e)(1), and 52.2(e)(3)(ii) of the Regulations of the Commissioner and Section 3.56(a) of the Rules of the Board of Regents.

Second, Olivet believes that, to the extent that there were any deficiencies in June 2020, when the application was filed, it has sufficiently remedied those deficiencies and should be evaluated based upon its current standards of operation and governance; not based on its performance in

the past. The NYSED Documents¹ are either incorrect, no longer timely, and/or do not constitute the sort of violation warranting the extreme remedy proposed; therefore, any such decision by NYSED is without sound basis in reason and without regard to accurate facts.

Third, over the course of the past two-year period during which Olivet's application was under review, Olivet consistently kept NYSED apprised of its situation and has relied upon NYSED's acquiescence in the remedial steps it had undertaken. It would be inequitable and unreasonable for NYSED to now change its mind and abruptly order the University to discontinue operating in New York, which will have a negative impact on students enrolled at Olivet in New York as well as the faculty and staff of the University who reside in New York.

The applicant also submitted additional documents it believes are pertinent to the decision under consideration and set out its position in the appeal with respect to each of the Observations and Findings underlying the Department's determination.

Upon review of the entire record and after careful consideration, as the Commissioner's designee for this purpose, I hereby deny Olivet's appeal and uphold the Department's determination not to recommend renewal to the Board of Regents. My decision is based upon those reasons stated in the Department's letter of May 17, 2022 with accompanying Findings and Observations, except for the one Finding noted below in respect of which I credit Olivet's argument. I will briefly address how I find each of Olivet's stated grounds for appeal to be unconvincing.

GROUND 1

Olivet has, indeed, operated while out of compliance with Parts 52.2(a)(1), 52.2(e)(1), and 52.2(e)(3)(ii) of the Regulations of the Commissioner and Section 3.56(a) of the Rules of the Board of Regents.

As for resources (52.2(a)(1)), Olivet claims in part that it is fiscally sound and solvent, and that the quantity of its assets, along with its equity ratio, refute the conclusion that Olivet has operated without sufficient resources. However, I decline to consider resources to be simply a matter of the institution's current balance sheet, as considerations of financial health, the ability to implement, support and sustain the proposed program at a strong level, and effective – indeed lawful – financial management is necessary.² Resources include appropriate deployment of assets and the infrastructure to avoid lapses and/or non-compliance such as those Olivet has a history of making. The evidence (including tax liens, civil lawsuits for defaulting on contracted payment terms, failure to pay workers compensation insurance, and the criminal case in which Olivet pled guilty to falsification of business records and conspiracy) shows a pattern of mismanagement of the institution's finances, indicating a lack of capacity or lack of commitment on the part of Olivet to manage its finances in a manner conducive to operating a degree-granting institution in this State.

As for the responsible administration of institutional policies and programs (52.2(e)(1)), Olivet's appeal argues that because the institution informed NYSED of its significant deficiencies related to internal controls

¹ "The NYSED Documents" refers to the May 17, 2022 determination letter and accompanying "Observations and Findings" document.

² See e.g., "Program Registration Guidance Documents, Department Expectations: Financial Resources and Instructional Facilities" <http://www.nysed.gov/college-university-evaluation/department-expectations-financial-resources-and-instructional>; "What is the financial status of the institution?" https://www.regents.nysed.gov/about/statement_governance. See also NYSED's current PTO application available at <http://www.nysed.gov/college-university-evaluation/application-submission-and-review>.

and had taken steps to remedy them when required to do so by the criminal plea agreement, that it is unfair to consider these failings in the review of its renewal application.³ On the contrary, these failings are part of a larger pattern of poor administration and addressing such problems only after being caught in a criminal conspiracy does not render them moot.

Olivet further claims that the dozens of lawsuits filed against it neither singly or *in toto* represent a deficiency in Olivet's administrative processes and submits that only open or unfavorably adjudicated cases are relevant. In fact, however, the total number of lawsuits presents a clear picture of Olivet's habitual failure to provide competent stewardship of the institution via clearly established policies and programs. NYSED's analysis of Olivet lawsuits revealed that the majority of cases were prompted by Olivet allegedly defaulting on contracted payment terms. In some cases, Olivet settled cases and then again defaulted on the settlement agreement^{4, 5, 6}. Of the more than fifty cases that Olivet informed NYSED about, all but three were settled by the University. Olivet's twenty tax liens as well as its multiple lapses in workers compensation insurance, further confirm Olivet's pattern of neglect toward its administrative responsibilities, and I am not convinced that Olivet's representations of remedial measures are sufficient to overcome this demonstrated pattern.

As for working conditions (52.2(e)(3)(ii)), I do credit the applicant's submissions with respect to Finding 6.2 and will not use that as a basis for my decision. However, I find the other Observations and Findings in this regard still weigh against renewal. Briefly, Olivet argues that violations of federal and state labor laws, the Clean Air Act, and the National Emissions Standards for Asbestos by its subsidiary, Dover Greens, LLC, are not relevant because the campus was not yet being used for educational activity and Olivet was not specifically named in the violations. I consider these violations relevant, however, because the institution is responsible for appropriate oversight of its subsidiary, the campus was purchased and being renovated for the express purpose of offering credit-bearing courses, and the violations were tied to a campus fundraising event that exposed the broader campus community to hazardous materials. Additionally, adequate job descriptions or not, lines of responsibility for the administration of institutional policies and programs have clearly been lacking (Finding 6.1).

Overall, I can neither conclude Olivet operated in compliance with Parts 52.2(a)(1), 52.2(e)(1), and 52.2(e)(3)(ii) of the Regulations of the Commissioner and Section 3.56(a) of the Rules of the Board of Regents, nor that it would do so in the future if renewed. I therefore reject Ground 1 in the appeal.

GROUND 2

The problems at Olivet have been so extensive and pervasive that it took about two years (admittedly during the COVID pandemic) for NYSED to complete a thorough and thoughtful review of the materials relevant to the institution's renewal application. Given the nature and extent of these problems, the amount of review time was justified, and I do not feel that submission of a new application is warranted. This is especially the case given the applicant's ability to submit information on appeal which was duly considered.

³ Olivet makes a similar argument regarding the OSHA, EPA, and NYS Department of Labor violations by its subsidiary, Dover Greens, LLC. I likewise find these safety violations part of the larger pattern of poor administration.

⁴ See *CSI Leasing Inc. v. Olivet University*, Case No. 157198/2018 Affirmation in Support of Motion for Entry of Judgment. July 25, 2019. Relief requested: \$421,252.64.

⁵ See *First National Bank of Layton v. Olivet University* case no. 653075/2018 Stipulation of Settlement. December 18, 2019. Relief requested: \$450,000

⁶ See *Wells Fargo Financial Leasing, Inc. v. Olivet University* case no. 2018-53900 Judgment. February 12, 2019. Relief requested: \$289,090.12

In the course of the review, NYSED discovered that Olivet has a well-established pattern of non-compliance with laws, rules, and regulations. Some instances of non-compliance date back several years, further emphasizing that Olivet's neglect of its administrative responsibilities has been long standing. Consequently, I find that, given the nature and extent of the problems identified at Olivet, as well as the limited scope⁷ of its authority to operate in New York State, the determination not to recommend renewal of PTO is warranted and appropriate. Furthermore, New York State Education Law §§ 214, 215 and 224(1)(a) and Section 3.56 of the Rules of the Board of Regents give NYSED the authority to make this decision in the sound exercise of discretion.

Olivet argues that the institution has addressed any deficiencies since submission of its 2020 application. Although changes⁸ have apparently been made, in great part, in order to satisfy the terms of the criminal plea agreement related to the equipment finance fraud scheme, the Department's concerns about this organization are too weighty and numerous to justify a renewal. The president of Olivet University during the time of criminal activity, Tracy Davis, has continued her employment at the institution as the University's Dean of Academic Affairs, with a special focus on the University's New York State operations. The Chief Financial Officer at the time of the criminal activity, Barnabas Jung, continues in the same role. Additionally, you were a high-level administrator (Vice President of Academics) at Olivet during the time of the criminal activity and are currently President of the University. Further, five of the six current board members were serving at Olivet as either a board member or high-level administrator prior to the indictment for criminal activity, with four of the six serving at Olivet throughout the time of the criminal conspiracy. These concerns are augmented by the fact that the changes to governance and internal controls highlighted in the appeal were only made after the institution was held accountable for its criminal activity. The record reveals to me a larger pattern of only coming into compliance only when forced to do so. Because these concerns and this pattern directly relate to programmatic standard and present an unreasonable risk if permission to operate is renewed, I reject Ground 2 in the appeal.

Further, I note that while Olivet presented its Certificate of Relief from Disabilities issued subsequent to the criminal action, and argues, in essence, that the Department should ignore its criminal conviction, the applicability of such a certificate to a corporation (as opposed to a natural person) is questionable. Regardless and in any event, the Certificate submitted, by its own terms and under the section of law pursuant to which it was purportedly issued, does not prevent any administrative, licensing or other body or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to refuse to renew any license, permit or other authority or privilege. I do not find Olivet's suppositions that the District Attorney or Court meant to guarantee continued operations in this State by virtue of the plea agreement to be convincing or supported in the record.

GROUND 3

Contrary to the appeal statements, at no point did NYSED acquiesce to Olivet's remedial steps or in any way suggest that they were sufficient to guarantee future renewal(s). To the contrary, NYSED granted only

⁷ Olivet, a California-based degree-granting institution, has a very limited enrollment in this State (fewer than fifty students according to its appeal letter) and is only authorized to offer seven courses from its M.B.A. program in New York City and seven courses from its M.Div. program in New York City and Dover. Under Olivet's current scope of authority, students taking courses at the New York locations are not able to complete full degree programs in New York State.

⁸ Changes include the specific individuals indicted in the criminal case no longer having an official role with Olivet, changes to the board of trustees, new policies, including an ethics code, and adding a Financial Controller.

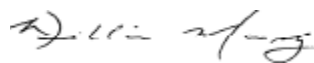
short-term extensions of PTO because the ultimate outcome of the review of the renewal application had not been determined. In each Regents' action explaining the short-term extension, it was clearly stated that the Department needed additional time to complete its review. NYSED's ultimate determination does not represent the agency "changing its mind," as suggested by the appeal, but rather represents the outcome of due deliberation after a thorough review of large amounts of information. Furthermore, renewal of PTO in this State is not an entitlement, as the appeal papers suggest it to be. PTO is a privilege, granted only to those institutions which demonstrate compliance with programmatic registration responsibilities, and is it is only granted, after an appropriate discretionary determination, for limited terms. The most recent short-term extension of PTO clearly ends on June 30, 2022, as communicated to the applicant, and Olivet should not have labored under any presumption that it would be renewed as a matter of course.

CONCLUSION

For the reasons explained herein, it is my decision to uphold the Department's May 17, 2022 determination not to recommend that the Board of Regents renew Olivet University's permission to operate pursuant to Section 3.56(d)(2) of the Rules of the Board of Regents. This represents a final administrative decision and, as such, the renewal application is denied.

As of July 1, 2022, Olivet's permission to operate is expired and the institution is no longer authorized to operate credit-bearing courses or programs in New York State. Olivet should implement the institution's teach-out plan for the students in New York programs and make arrangements for the maintenance of student records, including academic transcripts.

Sincerely,



William P. Murphy, Ph.D.
Deputy Commissioner

CC: Commissioner of Education
Tracy Davis, Olivet University
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Janet Silver, Hinman Straub
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