



December 12, 2022

Secretary Miguel Cardona  
Herman Bounds, Director, Accreditation Group  
U.S. Department of Education  
Via email: [ThirdPartyComments@ed.gov](mailto:ThirdPartyComments@ed.gov)

RE: Written Comments - Council on Occupational Education

Dear Secretary Cardona and Director Bounds,

We, the undersigned organizations and individuals who advocate on behalf of students and veterans in higher education, write in response to the call for third-party comments announced on November 14, 2022, in the Department of Education's Notice Accrediting Agencies Currently Undergoing Review for the Purpose of Recognition by the U.S. Secretary of Education.<sup>1</sup> Our comments concern the Council on Occupational Education ("COE") and the senior Department official's (SDO) decision letter dated October 27, 2021, requiring COE to come into compliance with 34 C.F.R. Part 602 within 12 months and to submit a compliance report within 30 days thereafter.

Specifically, we write in regard to the SDO's decision that COE "must demonstrate that it has meaningfully engaged with its obligations under 602.20 to enforce its accreditation standards with respect to complaints of fraud and criminal activity at Florida Career College....The agency should provide evidence that it is monitoring compliance with its standards and actions its [sic] taking to evaluate compliance in light of the lawsuit."<sup>2</sup> The lawsuit referenced is the [action filed by former students](#) against Florida Career College ("FCC")<sup>3</sup> which is now in arbitration.<sup>4</sup>

The amended complaint in the lawsuit summarizes the former students' allegations of FCC's deceptive and unconscionable practices, stating:

(1) [FCC] makes unsupported promises to provide high-value career training; (2) it uses high-pressure sales tactics and unfair, misleading, and false statements and omissions to induce individuals to enroll and borrow thousands of dollars in federal student loans; (3) it fails to disclose that the vast majority of graduates cannot afford to pay back their student loans; (4) it allocates funds in favor of profit and advertising to create future profit instead of on instruction and

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<sup>1</sup> 87 FR 68144

<sup>2</sup> Letter from Jordan Matsudaira, Deputy Under Secretary, Department of Education, to Gary Puckett, Executive Director, Council on Occupational Education (Oct. 27, 2021), p. 2, found here <https://surveys.ope.ed.gov/erecognition/#/public-documents>

<sup>3</sup> *Brit v. IEC Corp. ad IEC US Holdings, Inc. d/b/a Florida Career College*, First Amended Class-Action Complaint, Case No. 20-60814 (S.D.Fla.)

<sup>4</sup> *Brit v. IEC Corp. ad IEC US Holdings, Inc. d/b/a Florida Career College* Order entered September 13, 2021

equipment; and (5) it uses advertising and recruitment tactics to target Black people whom it believes are particularly susceptible to its predatory product.<sup>5</sup>

The amended complaint contains specific allegations about the experience of the named students, and further alleges that FCC fails to tell prospective students information about its job placement rates and low median earnings,<sup>6</sup> that FCC continues to count temporary jobs for its job placement rate,<sup>7</sup> that only 32% of students passed the licensure exam for nurses in 2018,<sup>8</sup> that a recruiter lured prospective students by telling them they were coming in for a job interview,<sup>9</sup> that “FCC’s career services is a sham,”<sup>10</sup> and that FCC “overvalues its education and uses misrepresentations and omissions to induce prospective students to enroll.”<sup>11</sup> Interviews with former employees [reported in the media](#) also include allegations of predatory recruitment tactics, including: luring people onto campus by “claiming to offer job interviews,” “enrolling students whose physical and intellectual disabilities prevented them from doing the jobs trained for,” enrolling students whose criminal convictions made them ineligible for the job wanted, and enrolling students “who didn’t speak English, even though the programs were only in English.”<sup>12</sup>

COE represented at the July 2021 NACIQI meeting that it “is independently looking into the issues raised in the lawsuit on predatory recruiting and job placement fraud,”<sup>13</sup> and the SDO directed COE to submit a report with evidence that it is monitoring and evaluating compliance with its standards in light of the lawsuit.

Publicly available information raises certain questions and indicates that there are issues COE should resolve before the Department continues COE’s recognition.

### **1. The Department should ascertain why FCC has remained in the relatively inconsequential monitoring status of “Notification of Apparent Deficiency” since June 2021.**

On or before June 10, 2021<sup>14</sup>, COE placed FCC on “Notification of Apparent Deficiency.” According to COE’s [Handbook on Accreditation](#),

Notification of Apparent Deficiency is a status which signifies that the institution is apparently deficient with respect to a requirement of the Commission. The

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<sup>5</sup> *Brit*, First Amended Complaint *supra*, para. 47

<sup>6</sup> *Id.* paras. 13, 101, 114-123

<sup>7</sup> *Id.* paras. 125-27

<sup>8</sup> *Id.* paras. 64-65

<sup>9</sup> *Id.* para. 84

<sup>10</sup> *Id.* para. 205

<sup>11</sup> *Id.* at para. 11

<sup>12</sup> David Halperin, *Ex-Employees: Florida Career College Enrolled “Anyone With A Pulse,”* Republic Report (May 6, 2020) <https://www.republicreport.org/2020/ex-employees-florida-career-college-enrolled-anyone-with-a-pulse/>

<sup>13</sup> Letter from Jordan Matsudaira, Deputy Under Secretary, Department of Education, to Gary Puckett, Executive Director, Council on Occupational Education (Oct. 27, 2021), p. 2, found here <https://surveys.ope.ed.gov/erecognition/#/public-documents>.

<sup>14</sup> COE Notification of Actions Taken June 2021 Commission Meeting (Effective Date June 10, 2021) <https://council.org/wp-content/uploads/2021/07/Notification-of-Actions-Taken-July-9-2021.pdf>

institution has **30 calendar days** to respond. This status may be removed at any time by the Commission upon clarification or remediation of the apparent deficiency, or may be changed by the Commission to a violation status.<sup>15</sup> (emphasis added)

According to COE, a Notification of Apparent Deficiency is not considered a “violation status”<sup>16</sup> and does not require notification to appropriate state, federal, and accrediting agencies.<sup>17</sup>

Under the COE framework, “Warning,” “Probation,” and “Show Cause” are all “violation statuses.”<sup>18</sup> Violation statuses “are imposed by the Commission [COE governing board] when, after a thorough review of issue-specific documentation, it determines that an institution is in violation of one or more of the Standards, Criteria, and/or Conditions of the Council. Violation statuses, when imposed, are a matter of public record and will be published on the Council’s website in the form of a notification.”<sup>19</sup> Under COE policies, these “violation statuses” require notice to all appropriate state, federal, and accrediting agencies,<sup>20</sup> as well as public notice.

Further, pursuant to 34 C.F.R. § 602.26, an accrediting agency must give notice to the Department, state licensing or authorizing agency, accreditation agencies, and the public whenever it places a school on probation or equivalent status, or initiates an adverse action, and it must require the school to disclose the accreditor’s action.

Eighteen (18) months after placing FCC on “Notification of Apparent Deficiency,” and almost fourteen months after the SDO decision letter, COE has neither removed the Notification of Apparent Deficiency upon “clarification or remediation of the apparent deficiency” nor changed the status to a violation status. The long duration of this pending notification raises questions about COE’s diligence in investigating and addressing the SDO concerns. Despite this pending deficiency and the serious concerns that COE was instructed to investigate, COE gave final approval to FCC opening a new campus in Houston on June 2, 2022.<sup>21</sup>

Moreover, COE is supposed to take “adverse action” when an institution fails to demonstrate compliance with the “Standards, Criteria, and/or Conditions of the Council within 12 months immediately following the first deferral of action by the Commission, unless the Commission extends the time period for compliance with good cause.”<sup>22</sup>

In order to demonstrate that it is enforcing its standards and taking actions to monitor and evaluate FCC compliance, COE’s report should document and explain:

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<sup>15</sup> Council on Occupational Education Handbook of Accreditation for Public and Non-Public Institutions (2022) p. 18 found at <https://council.org/wp-content/uploads/2022/06/2022-Generic-HB-5-11-2022-w-Covers-B.pdf>

<sup>16</sup> *Id.*

<sup>17</sup> [Council on Occupational Education Policies and Rules of the Commission](https://council.org/wp-content/uploads/2022/07/2022-PR-Manual-7-19-2022-FINAL-w-Covers-FINAL.pdf) (2022) pp. 52 found at <https://council.org/wp-content/uploads/2022/07/2022-PR-Manual-7-19-2022-FINAL-w-Covers-FINAL.pdf>

<sup>18</sup> COE Handbook *supra* pp. 18-19

<sup>19</sup> *Id.* at 18

<sup>20</sup> COE Policies and Rules *supra*, p. 52

<sup>21</sup> US Department of Education, Database of Accredited Postsecondary Institutions and Programs, *Florida Career College profile* <https://ope.ed.gov/dapip/#/institution-profile/109457>

<sup>22</sup> COE Handbook *supra*, p. 51

- the deficiencies cited in the Notification;
- the basis for any extension it granted to FCC to clarify or remedy the deficiencies in the Notification;
- why FCC’s status was not elevated to a violation status in accordance with COE policies;
- how long FCC has to address the apparent deficiencies before its status is elevated, and if elevated how much more additional time FCC would have to resolve the deficiencies;
- what standards COE used to approve the opening of a new campus, in light of the known deficiencies and concerns, and
- whether COE’s application of the “Notification of Apparent Deficiency” status avoided alerting the public and appropriate oversight agencies about serious concerns with FCC’s compliance.

**2. COE should provide documentation demonstrating that it has evaluated all job placement rates reported by FCC to COE, and that it has enforced its policies with respect to program benchmarks.**

FCC was pre-accredited by COE as of November 7, 2017, and accredited by COE on February 17, 2019.<sup>23</sup> The minimum benchmarks required by COE for program outcomes are 60% Total Completion Rate, 70% Total Placement Rate, and 70% Licensure Exam Pass Rate.<sup>24</sup> Institutions failing to meet one or more of the benchmarks in its annual report to COE are supposed to be placed on “Warning status.”<sup>25</sup>

COE Standard 3, Criteria (5) requires the institution to submit “accurate program placement data each year to the Commission for comparison with required benchmarks.”<sup>26</sup> Criteria 6 requires the institution to submit “verifiable program placement data each year to the Commission.”<sup>27</sup> Standard 3 has the same requirements for licensure exam pass rates and completion rates.<sup>28</sup>

In light of the allegations in the former students’ lawsuit regarding placement rates, employment, and licensure exam rates – and the SDO’s request that COE examine these allegations – COE should provide the Department at a minimum:

- all job placement rates and licensure exam pass rates reported by FCC;
- documentation that COE has monitored and evaluated all FCC’s reported rates, including providing copies of the underlying documentation that COE presumably would have demanded and reviewed related to the reported rates;
- evidence that COE is enforcing its standards, including any actions it has required FCC to take to address failing benchmarks; and

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<sup>23</sup> US Department of Education, Database of Accredited Postsecondary Institutions and Programs, *Florida Career College profile* <https://ope.ed.gov/dapip/#/institution-profile/109457>

<sup>24</sup> COE Policies and Rules *supra*, p. 21

<sup>25</sup> *Id.*

<sup>26</sup> COE Handbook *supra*, p. 66

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

- an explanation for any decision by COE to not elevate FCC to at least a “Warning” status in accordance with its policies.

**3. COE should provide evidence of its monitoring and evaluation of FCC’s compliance with COE accreditation criteria pertaining to integrity, recruitment practices, program cost and quality, and instructional resources and equipment.**

The students’ amended complaint contains serious allegations of predatory recruitment practices coupled with high cost and low-quality programs. COE’s compliance report should address its monitoring and evaluation of FCC’s practices under the following COE criteria and standards:

- COE policies provide that when the “Commission has any cause to believe that a candidate or accredited institution has acted in an unethical or untruthful manner, it will evaluate the matter and take action as described in the policies governing statuses.”<sup>29</sup>
- COE accreditation criteria specifies that institutions “**must** demonstrate compliance with the following requirements for recruitment activities for all programs: (1) Recruitment activities are truthful and avoid any false or misleading impressions of the institution, its programs and services, or employment.”<sup>30</sup> (emphasis in original)
- COE’s accreditation criteria expressly prohibits certain predatory recruitment practices, including misrepresenting job placement and employment opportunities, misrepresenting program costs, advertising employment to recruit students, and implying guaranteed employment.<sup>31</sup>
- COE Standard 2(A)(5) includes considering “the entry level earnings of completers [] in relation to the cost and length of programs.”<sup>32</sup>
- COE Standard 5 includes the “presence and adequate maintenance of learning resources appropriate and essential for the achievement of the objectives for each program offered.”<sup>33</sup>

The Department should require COE to explain how it is enforcing these standards in light of the lawsuit’s allegations of serious wrongdoing by FCC.

**4. COE’s website does not provide adequate notice to the public of accreditor decisions.**

COE’s [webpage](#) provides a directory of accredited and candidate institutions.<sup>34</sup> The directory, however, does not disclose whether a school is in violation status. To discover whether COE has placed a school on violation status, the viewer must go to the “Resources” tab and look through

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<sup>29</sup> *Id.* 29

<sup>30</sup> *Id.* at 46

<sup>31</sup> *Id.* at 47

<sup>32</sup> *Id.* at 57

<sup>33</sup> *Id.* at 69

<sup>34</sup> Council on Occupational Education Member Directory <https://council.org/membership/>

the list of [Commission Actions](#) and search for the school's name.<sup>35</sup> The purpose of violation status disclosures is to inform prospective and current students about issues with a school. COE policies require public disclosure of a school's violation status, and such disclosures also are required under 34 C.F.R. 602.26. COE's website makes it difficult to find a school's violation status, calling into question whether COE is in compliance with the federal rule.<sup>36</sup> We urge the Department to inquire:

- whether FCC is placed in a violation status, and
- whether COE will prominently display that information, including a description of the violation(s), in the directory listing for FCC.

We thank the Department for taking seriously the importance of accreditation standards. If you have any questions, please feel free to contact:

Della M. Justice  
Vice President for Legal Affairs  
Veterans Education Success  
1501 K Street NW, Suite 200  
Washington DC 20005  
[help@vetsedsuccess.org](mailto:help@vetsedsuccess.org)  
202-838-5050

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)  
New America Higher Education Program  
Veterans Education Success  
Carolyn Fast, Senior Fellow at The Century Foundation  
David Halperin, Attorney

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<sup>35</sup> Council on Occupational Education Commission Actions <https://council.org/commission-actions/>

<sup>36</sup> We also encourage the Department to review COE's disclosures about COE decisions generally because the scant information available on the [COE website](#) (council.org) does not appear to meet the requirements of 34 C.F.R. 602.26.