



APR 11 2023

Mr. Fardad Fateri  
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Via UPS # 1Z37X7Y30118233477

OPE ID: 02305800

Re: Florida Career College - Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs

Dear Mr. Fateri:

The U.S. Department of Education (“Department”) has reviewed Florida Career College’s (“FCC’s”) application for recertification to continue to participate in the student financial assistance programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 *et seq.* (“Title IV, HEA programs”). In the normal course, FCC’s Provisional Program Participation Agreement (“PPPA”) would have expired on September 30, 2022. Because FCC timely submitted its recertification application, the Department extended FCC’s previous PPPA on a month-to-month basis while the Department reviewed the application and related matters. See 34 C.F.R. § 668.13(b)(2).

To obtain recertification, FCC must demonstrate that it meets all Title IV eligibility requirements, meets the Title IV standards of financial responsibility and administrative capability, has complied with Title IV program requirements, and has operated under the high standards required of a fiduciary. 34 C.F.R. § 668.82(a), (b). For purposes of evaluating a recertification application, the Department reviews the institution’s performance during the operation of its previous PPA. Here, in addition to the recertification application materials, the Department reviewed, among other things, the findings resulting from the Department’s investigation of FCC, which includes, but is not limited to information obtained from interviews with current and former employees of FCC, proctors who administered ability-to-benefit tests for prospective students of FCC, current and former students at FCC, and documents produced by FCC and other parties. The Department also reviewed the letter and accompanying materials you submitted to the Department on November 7, 2022 responding to the issues raised in the Department’s investigation.<sup>1</sup>

As a result of its investigation, the Department has concluded that FCC breached its fiduciary duty to the Department, failed to comply with the Department’s standards of administrative capability, and violated multiple regulations related to the administration of Ability-to-Benefit

<sup>1</sup> Letter from Fardad Fateri, President and Chief Executive Officer, Int’l Educ. Corp., to Christopher Madaio, Director, Investigations Group, (Nov. 7, 2022) (“FCC Nov. 2022 Letter”).

**Federal Student Aid**

An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group  
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(“ATB”) tests to substantiate the eligibility of its students to receive Title IV funding. Based upon the gravity and nature of FCC’s non-compliance with the legal requirements for Title IV participation, the Department has determined that FCC’s recertification application will be denied.

The bases for the Department’s decision are set forth below.

### **SUMMARY**

The Department made findings, supported by substantial evidence, that FCC violated the regulations governing ATB testing, particularly the provisions pertaining to the integrity of the test and the independence of proctors administering the tests. The Department further concluded that those violations were known and encouraged by senior leaders at both FCC and its parent company. Moreover, the investigation revealed that these violations were committed, at least in part, to maximize enrollment of Title IV students in FCC programs. The Department’s findings of fact related to ATB testing are set forth below.

The Department’s investigation also uncovered evidence of other non-compliant conduct, including falsification of attendance records and misrepresentations to FCC’s accrediting agency about its job placement rates. Finally, four former FCC employees told the Department that they were coached on how to respond to questions posed by the Department as part of this investigation, including providing misleading answers about goals and metrics for admissions staff.

In and of themselves, the findings of regulatory violations related to the ATB testing support administrative action by the Department. Further, those violations and the underlying evidence demonstrate that FCC is “not capable of adequately administering the Title IV, HEA program” in violation of 34 C.F.R. § 668.16 and has failed to “act in the nature of a fiduciary” in its administration of the Title IV programs, in violation of 34 C.F.R. § 668.82. The additional evidence related to falsification of attendance records, misrepresentations, and interference with the Department’s investigation, while not necessary to support the Department’s action, further supports that FCC failed the administrative capability and fiduciary standards required of institutions participating in the Title IV programs.

### **BACKGROUND**

FCC is a proprietary institution offering predominantly non-degree certificate programs in various vocational areas, including Heating Ventilation and Air Conditioning, Medical Assistant Technician, and Business Administration. IEC US Holdings, Inc., headquartered in Irvine, California, owns and operates FCC, and IEC US Holdings is, in turn, owned by IEC Corporation (“IEC”). IEC is also the ultimate parent of United Education Institute and UEI College, as well as two other non-Title IV eligible schools.<sup>2</sup>

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<sup>2</sup> The other Title IV eligible institutions include UEI Huntington Park (OPE ID: 02559300), UEI Fresno (OPE ID: 03113300), and UEI Gardenia (OPE ID: 0369600).

FCC advertises its certificate programs as having the benefits of “speed and convenience” and allowing students to “graduate in as few as 10 months.”<sup>3</sup> According to the school’s catalog, the tuition for FCC’s certificate programs is \$21,500.<sup>4</sup> According to the Department’s College Scorecard, the average annual cost to obtain a certificate at FCC is between \$32,000 and \$35,800.<sup>5</sup> According to the same source, the median school that predominately offers certificate programs has an average annual cost of approximately \$15,700.<sup>6</sup>

FCC has eleven Title IV eligible campuses: ten in Florida, and one in Houston, Texas.<sup>7</sup> According to the Department’s records, FCC disbursed approximately \$81 million in Title IV funds to approximately 9,624 students in award year 2021/2022. The Council on Occupational Education (“COE”) has accredited FCC since February 2019.<sup>8</sup> On May 12, 2020, COE placed FCC on “Notification of Apparent Deficiency” status because of “Non-compliance with conditions, standards, and/or criteria of the Commission.”<sup>9</sup> That status was continued at COE’s March 10, 2023 Commission meeting,<sup>10</sup> at which time FCC’s request for reaffirmation of accreditation was deferred.<sup>11</sup>

Nearly half of the recently-enrolled Title IV eligible students at FCC do not possess a high school diploma or a GED equivalent. These students may enroll and qualify for Title IV funding if they pass an ATB test and enroll in an Eligible Career Pathways Program (“ECPP”). The percent of students at FCC who enroll using an ATB test has been between 43.62% and 47.4% for each financial aid award year since 2018. In the 2020-2021 award year, FCC enrolled 5,103 Title IV students via ATB.<sup>12</sup>

Until April 2022, FCC utilized the Wonderlic ATB test to admit students seeking Title IV funds for attendance at FCC. In April 2022, following Wonderlic’s decision to cease offering ATB tests, FCC began using Accuplacer ATB tests in addition to Wonderlic while it phased out

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<sup>3</sup> Home, Fla. Career Coll., <https://www.floridacareercollege.edu/>

<sup>4</sup> FLA. CAREER COLL., Student Success is Our Success 2022 School Catalog (Aug. 18, 2022), at 43, <https://disclosures.ieccolleges.com/wp-content/uploads/2021/03/FCC-Catalog-Florida-and-Houston.pdf>.

<sup>5</sup> U.S. DEP’T OF EDUC., College Scorecard. The term “average annual cost” in the College Scorecard, refers to the average annual cost of the largest program at each FCC campus, and is defined on the College Scorecard website as “The average annual net price that a student who receives federal financial aid pays to cover expenses (e.g., tuition, living expenses) to attend the school’s largest program. Net price is the program’s cost of attendance minus any grants and scholarships received. For public schools, this is only the average cost for in-state students.” *Id.*

<sup>6</sup> See, e.g., U.S. DEP’T OF EDUC., College Scorecard.

<sup>7</sup> *Florida Career College, INT’L EDUC. CORP.*, <https://www.ieccolleges.com/florida-career-college>. The Department denied FCC’s application for Title IV approval for a second Houston campus on June 23, 2022.

<sup>8</sup> Notification of Actions Taken, 2019 February Commission Meeting, Commission of the Council on Occupational Educ. (March 17, 2019).

<sup>9</sup> Letter from Gary Puckett, Executive Director, Commission of the Council on Occupational Educ., to Michael Cole, Chief Administrator, Fla. Career Coll. (May 12, 2020).

<sup>10</sup> Letter from Gary Puckett, Executive Director, Commission of the Council on Occupational Educ., to Dannys Rabello, Executive Director of Compliance, Fla. Career Coll. (March 29, 2023).

<sup>11</sup> Letter from Gary Puckett, Executive Director, Commission of the Council on Occupational Educ., to Dannys Rabello, Executive Director of Compliance, Fla. Career Coll. (March 28, 2023).

<sup>12</sup> See FLA. CAREER COLL., Recipient Data Spreadsheets.

Wonderlic tests. Wonderlic ceased its publication and administration of ATB tests on January 1, 2023.<sup>13</sup>

According to data produced to the Department by FCC, between 53% and 57% of FCC's ATB students withdrew from their program without obtaining a certificate in the 2016-2017 through 2020-2021 award years.<sup>14</sup> Most of these students nevertheless face financial burdens for having enrolled. FCC's data indicates that in financial aid award years 2018-2019 through 2021-2022, between 81% and 88% of ATB students who withdrew from FCC still incurred debt or exhausted Pell eligibility for the relevant award year (usually both), even after funds were returned to the Department via the Return to Title IV ("R2T4") requirements.<sup>15</sup>

Based upon data produced by FCC, essentially all of FCC's students utilized Pell Grants to attend the school. For instance, in the 2021-2022 financial aid award year, 97.8% of FCC's student paid for part of their tuition with a Pell Grant.<sup>16</sup> Because of the cost of tuition is more than the maximum allowable Pell Grant, nearly all of these students also took out Title IV loans.

According to the Department's records, FCC and UEI, IEC's other Title IV school, are by far the largest users of the ATB program. The schools jointly enrolled 10,795 students who are eligible for Title IV through ATB examinations during the 2021-2022 award year. This number represents 74% of all students who became eligible for Title IV through ATB testing at any school. (14,516 total students, including IEC's 10,795, enrolled at approximately 230 institutions that utilized ATB examinations for Title IV eligibility.) IEC, FCC's parent company, disbursed approximately \$91.2 million of Title IV for ATB students in the 2021-2022 award year. The Department's records indicate that the institution with the third-most ATB usage enrolled 746 students via ATB in the 2021-2022 award year and disbursed \$3.7 million.<sup>17</sup>

## FINDINGS OF FACT

### I. FCC COMMITTED WIDESPREAD VIOLATIONS OF REGULATIONS RELATED TO THE ADMINISTRATION OF ABILITY TO BENEFIT TESTS.

The Department's investigation uncovered substantial evidence establishing that the ATB tests at FCC were not "independently administered" or "properly administered,"<sup>18</sup> and that FCC is

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<sup>13</sup> Affidavit of Matt Knox, at ¶7 (Oct. 24, 2022).

<sup>14</sup> See FLA. CAREER COLL., Recipient Data Spreadsheets.

<sup>15</sup> See *id.* In a response to the Department, FCC explains this high withdrawal rate by pointing to the "significant challenge" of the program and states that it is "proud so many ATB test takers were able to benefit from and complete their certificate programs." FCC's November 7, 2022, Letter to Department of Education at 51.

<sup>16</sup> See FLA. CAREER COLL., Recipient Data Spreadsheets.

<sup>17</sup> According to the Department's records, from the 2017-2018 award year through the 2021-2022 award year, the IEC schools enrolled 45,984 students through ATB examinations. These enrollments resulted in \$386,846,394 of Title IV disbursements.

<sup>18</sup> "An institution may use the results of an approved test it received from an approved test publisher or assessment center to determine a student's eligibility to receive title IV, HEA program funds if the test was independently administered and properly administered in accordance with this subpart." 34 C.F.R. § 668.151(a)(2).

responsible for those violations because FCC and its employees “compromised the testing process.”<sup>19</sup> Students were harmed by this violation - more than half of FCC’s ATB students withdrew without obtaining a certificate, failing to benefit from the program. Most of those students nevertheless owe loans and/or utilized eligibility for Pell Grant funds.

### *Applicable Rules, Regulations and Policies*

Under 34 C.F.R. § 668.141, a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive Title IV funds by achieving a passing score on an ATB test.<sup>20</sup> The regulations at 34 C.F.R. §§ 668.142 and 668.151 establish criteria to ensure, among other things, that an ATB test is administered with a requisite degree of independence from the school the student seeks to attend.<sup>21</sup>

Under the regulations, an ATB test is independently administered if it is given by an independent test administrator (ITA, also referred to as “proctor”). The position of ITA was created to ensure that ATB testing is impartially and properly conducted.<sup>22</sup> To be considered independent, an ITA cannot have a financial or ownership interest in the institution, cannot be a current or former employee of the school or a family member of an employee of the school, cannot be a current or former board member of the school, and cannot be a current or former student of the institution.<sup>23</sup>

Schools may rely on ATB tests to determine a student’s eligibility for Title IV if the test was “independently administered and properly administered.”<sup>24</sup> Test administrators can “make[] the test available only to a test-taker, and then only during a regularly-scheduled test,” and must “secure[] the test against disclosure.”<sup>25</sup> In addition, an ITA “may not score a test.”<sup>26</sup> Test takers who do not pass a test “may not retake the same form of the test for the period prescribed by the test publisher.”<sup>27</sup>

In addition to these regulatory requirements, test administrators must be certified by the ATB test publisher and must administer the test in accordance with the publisher’s testing procedures and in a manner that ensures the integrity and security of the test.<sup>28</sup> Rules imposed by Wonderlic, FCC’s ATB test publisher from at least 2015 until 2022, include:

- The use of a calculator on the ATB test is prohibited.<sup>29</sup>

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<sup>19</sup> 34 C.F.R. § 668.154.

<sup>20</sup> *Id.* § 668.141.

<sup>21</sup> *Id.* § 668.142, § 668.151.

<sup>22</sup> WONDERLIC, INC., Wonderlic Basic Skills Test (WBST) Ability-to-Benefit Test Administrator’s Examination, at 6.

<sup>23</sup> 34 C.F.R. § 668.142.

<sup>24</sup> 34 C.F.R. § 668.151(a)(2).

<sup>25</sup> 34 C.F.R. § 668.151(d).

<sup>26</sup> 34 C.F.R. § 668.151(e).

<sup>27</sup> 34 C.F.R. § 668.151(f).

<sup>28</sup> 34 C.F.R. § 668.151(d).

<sup>29</sup> WONDERLIC, INC., Wonderlic Basic Skills Test User’s Manual for Ability-to-Benefit Testing, at 30.

- ATB test proctors must maintain test security and should not review test answers with the student or leave the testing room during testing.<sup>30</sup>
- ATB test proctors must maintain the integrity of the testing process by not conducting test preparation classes or changing a test response on a student's answer sheet.<sup>31</sup>
- ATB test proctors must administer the test in exact accordance with the test publisher's procedures and should not allow additional time during the test, provide test takers with coaching or additional information other than the instructions.<sup>32</sup>

ATB tests are not independently administered if an institution (1) compromises test security or testing procedures; (2) pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or (3) otherwise interferes with the test administrator's independence or test administration. See 34 C.F.R. § 668.151(c).

Under the requirements of 34 C.F.R. § 668.154, an institution is liable for the Title IV funds disbursed to a student whose eligibility is determined through an ATB test if (a) **the institution used a test that was not administered independently**; (b) **the institution or an employee of the institution compromised the testing process in any way**; or (c) the institution is unable to document that the student received a passing score on an approved test (emphasis added).<sup>33</sup>

FCC administered the ATB tests in two different ways over time. Until 2018, FCC directly contracted with proctors who were certified to administer the Wonderlic ATB test. Starting in 2018, FCC contracted with a third-party test administration company, Trujillo-Arias, Inc., owned by Art Trujillo, to provide ITAs.

The Department has made the following findings regarding the administration of ATB tests for FCC.

**A. Proctors administering tests at FCC routinely broke the rules governing test administration for the purpose of changing test outcomes for ATB students.**

Multiple witnesses told the Department that they experienced, committed, witnessed, or were aware of ATB test proctors committing the following misconduct: assisting students with questions or providing answers during the administration of the exam; changing incorrect answers to correct answers or filling in blank answers after-the-fact; taking tests for students or providing falsified passing scores; allowing test takers to use calculators in violation of testing policy; and administering tests despite not meeting the statutory definition of an independent test administrator.

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<sup>30</sup> WONDERLIC, INC., Wonderlic Basic Skills Test (WBST) Ability-to-Benefit Test Administrator's Examination, at 10.

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

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

<sup>33</sup> 34 C.F.R. § 668.154.

*1. Proctors assisted students during the test.*

Wonderlic testing procedures expressly state that “[u]nder no circumstances should [a proctor] walk about the room after the test session has begun except to address misbehavior or suspected cheating,”<sup>34</sup> and proctors are instructed to limit their remarks to those “directly related to the testing.”<sup>35</sup> Former proctors, former FCC employees, and students report that proctors helped students during the test. Examples include:

Student 7<sup>36</sup> told the Department that during her ATB exam there was a man in the room that would come around and help her and other students with test questions by saying something like “that’s not right” “pick again.” She believed that his assistance helped her pass the ATB test. She attended the Miami campus from October 2020 to March 2021.

Student 11 reported “I received help with a couple of questions during the test.” This student attended the Miami campus from June 2019 to August 2020.

Former Employee 11 worked at the Orlando campus from 2016 to 2019 and stated that cheating on ATB exams was commonplace and that the proctors helped students on the exams. She personally observed proctors helping students on the exam by reading the questions to them or allowing them to use their phones to solve questions.

Former Employee 42, who worked in Jacksonville in 2022, saw proctors helping students; sitting with them reading the questions or allowing them to use their cell phones to solve the questions. Students told her that admissions representatives told them not to worry about the test because the proctor would help them.

Students 2, 24, 27, 42, 43, 45, 48, 50, and 51;<sup>37</sup> Proctors 1, 11, 13, and 15;<sup>38</sup> and Former Employees 2, 14, 17, 18, 19, 20, 21, 22, 30, 33, 38, 39, 41, and 43<sup>39</sup> also described proctors assisting students with answers on the ATB examinations.

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<sup>34</sup> WONDERLIC, INC., *Wonderlic Basic Skills Test (WBST) Ability-to-Benefit Test Administrator’s Examination*, at 15; *see also, id.* at 18 (“In larger rooms, seat the applicants close enough to hear your instructions and ensure that you can monitor the testing session without walking about the room.”).

<sup>35</sup> *Id.* at 18.

<sup>36</sup> Witnesses are identified by name in the Enclosure.

<sup>37</sup> These students attended the Hialeah, Orlando, Tampa, West Palm Beach, Pembroke Pines, and Miami campuses between 2018 and 2022.

<sup>38</sup> These individuals proctored the ATB tests at the Tampa, Pembroke Pines, Miami, and Lauderdale Lakes campuses between 2018 and November 2021.

<sup>39</sup> These former employees worked at the Orlando, West Palm Beach, Hialeah, Boynton Beach, Jacksonville, Pembroke Pines, Margate, Lauderdale Lakes, and Houston between 2016 and November 2022.

2. *Proctors or employees filled in or changed answers after students finished the test.*

Wonderlic testing procedures expressly prohibited proctors from “changing a test response on an applicant’s WBST Paper and Pencil answer sheet.”<sup>40</sup> Former proctors, former FCC employees, and students report that proctors administering tests at FCC changed answers after the test, or filled in answers that students left blank. Some examples are include:

Proctor 14, who administered ATB tests from June through October 2018, reported that she was specifically instructed to fill in or change students’ answers if they failed the test. She was trained and so instructed by [Proctor 21], who taught her to change some answers, but not too many, and to be careful. (As described *infra*, FCC’s parent company paid for Proctor 21 to train FCC’s proctors.) She would let students take the test the first time, and 90-95% would fail. She would then retest them, and it was on the second test that she would change answers. When she stopped changing answers, she was fired. She noted that most students would not have known that the answers were changed. This proctor’s testimony regarding the timing of her termination is corroborated by October 1, 2018 emails from the Executive Director of the campus where Proctor 14 worked, who complained to the owner of Trujillo-Arias that her pass rates had declined and said “something has to change . . .” The following day, he emailed IEC’s Associate Vice President (“VP”) of Admissions Development saying, “I am sending Art a replacement proctor contact info...we can’t continue with [Proctor 14].”<sup>41</sup>

Proctor 18, who administered ATB tests from 2018 to July 2022, reported that, as recently as summer 2022, she was changing answers and assisting students on the exam. She reported that FCC pressured her to do this. If she tested 10 students a day, they would want 8 to pass. There were three campus Presidents while she was proctoring, and they would ask her if she could do anything to help them out and why students were not passing. One Director of Admissions asked her to pass students for him, and she did. Admissions representatives offered her between \$5-20 to pass a student, and also offered to buy her lunch to pass a student. She eventually took the money. Admissions reps pressured her into allowing students to use calculators and she felt forced to fill in answers for students. More recently, with the Accuplacer test, some students would take a picture of the test, share the picture with an admissions representative, and the admissions representative would send back answers.

Proctor 16 administered ATB tests from 2017 to 2018 and reported that, once the student was done, he would change the answers, but not all of them. He would change just enough so the student would barely pass and not raise any red flags. He reports that he

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<sup>40</sup> WONDERLIC, INC., Wonderlic Basic Skills Test (WBST) Ability-to-Benefit Test Administrator’s Examination, at 10.

<sup>41</sup> See Email from David Whiteford, Executive Dir., Fla. Career Coll., to Art Trujillo, President, Trujillo-Arias, Inc. (Sep, 2018); Email from David Whiteford, Executive Dir., Fla. Career Coll., to Sherri Boyd, Int’l Educ. Corp. (Oct. 2, 2018).



did this because of pressure and instruction from FCC, including from the Director of Admissions, who told him not to follow the rules but to “be careful or we would all go down with the ship.”

Former Employee 13, who worked at the West Palm Beach campus from 2016 through 2018, reported that ATB proctors would bring the tests to the campus’ Director of Admissions, who would change the answers. The Director then met with the students to tell them if they passed or failed.

Proctor 20, who is related to Art Trujillo and who proctored tests at UEI’s California campuses in 2018 and 2019, stated that she was terminated at the direction of UEI officials when she failed to change answers and “cheat” on the ATB exam. She stated this came at the direction of “Kristine.” Proctor 20 further stated that Kristine directed Art Trujillo and his company to pass students and that if he did not, they would fire him.

Former Employees 11, 12, 31, and 39<sup>42</sup> also reported that proctors changed answers on the ATB tests for students who answered incorrectly.

*3. Proctors took tests for students or FCC produced falsified passing scores.*

In addition to proctors changing answers, some witnesses informed the Department that proctors would complete entire ATB tests for students. For example, Former Employee 33, the Director of Education at the Houston Campus from February to October 2022, reported that several ATB students told her that the proctor took the test for them.

Proctor 18 witnessed another proctor taking an ATB test for a student on the computer in the ATB testing room.

Student 58, who FCC indicated to the Department was eligible for Title IV because she passed the ATB test, stated that she never took a test of any kind before enrolling. She attended the Margate campus from 2020-2021.

Former Employee 38, an instructor at Lauderdale Lakes from 2019 through February 2022, also reported that students told her that an admissions representative took the ATB test for them.

The Department obtained a complaint submitted to FCC by Prospective Student 1, who initiated the enrollment process in 2021 but canceled her enrollment due to her concern about the school, including its administration of the ATB exam.<sup>43</sup> She reported that, when she went to the bathroom during the ATB test, someone filled in answers on the math portion of her test. Her boyfriend, who was also taking the ATB exam in the same room, told her that someone came into the room and worked on her test while she was in the bathroom. She was surprised to later

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<sup>42</sup> These employees worked at the Orlando, Jacksonville, Boynton Beach, and Margate campuses between May 2016 through August 2021.

<sup>43</sup> INT’L EDUC. CORP., *Answer Program Record*, Complaint # HOU 042221 (Apr. 22, 2021).

learn that she passed the math portion of the test even though she only answered a few questions. FCC appears to have investigated this complaint by talking to the proctor, who denied the allegation. The proctor who administered this exam was Proctor 22. FCC's internal email indicate that Proctor 22 was favored by Houston campus leaders who often insisted that he serve as the proctor for exams administered at their campus. (See, pages 11-12, *infra*.)

4. *Proctors permitted students to use calculators.*

Students, proctors, and employees all provided evidence that proctors allowed students to use calculators on the ABT test. Wonderlic prohibited the use of a calculator on its ATB test.<sup>44</sup>

Nine students spread across four campuses who took the Wonderlic ATB test reported that their proctor permitted them to use calculators on the ATB test. Student 29 who attended the Miami campus from February 2021 through June 2022 reported, "I took the ATB test on paper, with a calculator." Student 42 attended the West Palm Beach campus from 2021 to 2022 and said that she used the calculator on her phone during the ATB test. Student 57 attended the Pembroke Pines campus from 2021 to 2022 and stated, "I was allowed to use a calculator on the actual exam it was not a practice test." Student 7 attended the Miami campus from October 2020 through March 2021 and said that the proctor allowed her to use a calculator on the ATB test. Student 31 attended the Pembroke Pines campus from October 2019 through November 2019 and reported that a proctor provided a calculator to use during the ATB test. Student 46 who attended the Miami campus starting in August 2021 said he was permitted to use a calculator during the ATB test. Student 47 attended the Miami campus starting in January 2021 and said that she was permitted to use a calculator by the ATB test proctor. Student 43 attended the Pembroke Pines campus from January 2021 through August 2021. She was told that she could use a calculator on the ATB test by the test proctor. Student 59, who attended the Margate campus in 2020, also reported that he was permitted to use a calculator during the ATB test.

These accounts are corroborated by proctors and former FCC employees. For example, Proctor 18 reported that the FCC's admissions representatives told students they could use calculators and pressured her to allow students to use calculators. Former Employee 22, who worked at FCC's Boynton Beach and Margate campuses from June 2021 through April 2022, said that she was told by the director of admissions at the Margate campus that students were allowed to use calculators on the ATB exam. Proctor 17, who proctored tests at the Tampa campus, said that students were told that they could use calculators. Former Employee 43 was an admissions representative at the Jacksonville campus from 2017 through June 2021 and the Orlando campus from June 2021 through June 2022. He heard that students were permitted to use calculators on the ATB examination.

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<sup>44</sup> WONDERLIC, INC., *Wonderlic Basic Skills Test User's Manual for Ability-to-Benefit Testing*, at 30 ("Inform the applicants that using a calculator, opening a web browser or other computer program, or talking to other test takers while taking the test is considered cheating; if caught, they will be reported and the test(s) will be marked "Invalid" (applies to both Paper and Pencil and Online test administrations).").

5. *One proctor that administered hundreds of ATB tests did not meet the definition of an ITA because he was married to an FCC employee.*

Email evidence and corporate records indicate that Proctor 22, who proctored hundreds of ATB tests at FCC's Houston campus, was married to Employee 55, who worked as a Senior Admissions Representative at FCC's Houston campus starting on or about June 7, 2021. As discussed above, 34 C.F.R. § 668.142 defines an ITA as someone who "is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, **or a member of the family of any of these individuals**" (emphasis added). Proctor 22 cannot meet the regulatory definition of an ITA after his wife was hired by FCC, FCC's affiliate, or FCC's parent company. Consequently, any test he proctored after she was hired by FCC was not administered by an ITA. The Department is aware of at least 806 individuals whose Title IV eligibility at FCC was based upon an ATB test that was administered by Proctor 22 while his wife was employed by the school.

**B. FCC and IEC employees, including senior leaders, knew about and even encouraged violations of the rules governing test administration.**

1. *Senior leaders at IEC and FCC tracked proctor pass rates and picked the "independent" proctors they wanted administering tests at FCC campuses.*

The Director of Financial Aid Operations of IEC routinely tracked the pass rates at all FCC campuses. Pass rates were circulated in a weekly email to Art Trujillo, and copied to the Chief Financial Officer ("CFO") of IEC, Sanjay Sardana. The weekly email included color-coded charts that identified campuses with high pass rates (green) and low pass rates (red).<sup>45</sup> More than once, when a campus had a low pass rate, the email stated "low % maybe need to replace."<sup>46</sup>

The CFO of IEC also insisted on certain proctors. For instance, in an email to Art Trujillo on December 15, 2020, the CFO complained that the Houston campus had been sent a "backup guy we don't like" instead of our "regular proctor."<sup>47</sup> Art Trujillo responded that the campus president had claimed that the backup proctor "fails everyone but in fact out of 15 students he had only 5 failed."<sup>48</sup> The CFO replied, "Let's get the other one that the campus likes please" and

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<sup>45</sup> See, e.g. Email from Amelia Nishida, Dir. Of Fin. Aid Operations, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias Inc. (Feb. 15, 2022).

<sup>46</sup> See *id.*; see also Email from Amelia Nishida, Dir. of Fin. Aid Operations, to Art Trujillo, President, Trujillo-Arias, Inc. copying Sanjay Sardana, Chief Fin. Officer (Feb. 22, 2022); Email from Amelia Nishida, Dir. of Fin. Aid Operations, to Art Trujillo, President, Trujillo-Arias, Inc. copying Sanjay Sardana, Chief Fin. Officer (Feb. 8, 2022).

<sup>47</sup> Email from Sanjay Sardana, Chief Fin. Officer, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Dec. 15, 2020).

<sup>48</sup> Email from Art Trujillo, President, Trujillo-Arias, Inc., to Sanjay Sardana, Chief Fin. Officer, Int'l Educ. Corp. (Dec. 15, 2020).

requested that the preferred proctor get an earlier flight back to Houston so he could proctor.<sup>49</sup> Trujillo-Arias appears to have complied with the request to fly the proctor to Houston.<sup>50</sup>

Additional emails demonstrate that other FCC leaders also directed Trujillo-Arias' placement and deployment of proctors. The President of the Houston campus insisted on certain proctors for ATB tests at his campus. In an email dated June 14, 2022, to Art Trujillo, the Houston campus president said "Hi Art, John is a high performing Proctor who was on the campus today. We would really prefer to have our proctor. What do we need to do to ensure we have John back for tomorrow? We never asked for a backup. We were holding off on testing upon John's return. Another proctor will most likely perform lower test results than John and I don't want to risk that. Please work with me to ensure that John is on campus tomorrow."<sup>51</sup> In a follow-up email on June 27, 2022 to Art Trujillo, the campus President said, "I do not want to replace days John works on my campus" and "I'm not OK with replacing my proctor."<sup>52</sup> From 2020-2021 that proctor, Proctor 22, oversaw 79% of Houston's ATB exams, including the test of Prospective Student 1 discussed above, who reported that someone (her boyfriend said the proctor) took part of her math test for her while she was in the bathroom.<sup>53</sup>

On January 6, 2022, IEC's Vice President of Leadership, Culture, and Learning emailed Art Trujillo to complain that there were seven failed tests so far that day at the Tampa Campus by Proctor 23 and suggested Trujillo-Arias hire Proctor 15.<sup>54</sup> Trujillo-Arias did hire that proctor as requested, and she later told the Department that she eventually quit due to the pressure from FCC to pass students. The same IEC Vice President complained in an email on January 12, 2022 that Proctor 23 had "no passes out of six test takers."<sup>55</sup>

On September 16, 2019, the COO of IEC emailed Art Trujillo and said "Please replace the current proctor in Orlando immediately. Also please send a list of all our current active proctors across all our campuses."<sup>56</sup>

On July 7, 2020, Art Trujillo sent an email to the CFO of IEC complaining that "the DOA [Director of Admissions] at FCC-Orlando was pushing me to rehire [a proctor.] I found out that

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<sup>49</sup> Email from Sanjay Sardana, Chief Fin. Officer, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Dec. 15, 2020).

<sup>50</sup> Email from Art Trujillo, President, Trujillo-Arias, Inc., to Amelia Nishida, Dir. Fin. Aid Operations, Sanjay Sardana, Chief Fin. Officer (Dec. 16, 2020).

<sup>51</sup> Email from Aleco Babikian, Campus President, Fla. Career Coll., to Art Trujillo, President, Trujillo-Arias, Inc. (June 14, 2022).

<sup>52</sup> Email from Aleco Babikian, Campus President, Fla. Career Coll., to Art Trujillo, President, Trujillo-Arias, Inc. (June 27, 2022).

<sup>53</sup> See INT'L EDUC. CORP., Answer Program Record, Complaint # HOU 042221 (Apr. 22, 2021).

<sup>54</sup> Email from Jim York, Vice President of Leadership, Culture, and Learning, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Jan. 6, 2022).

<sup>55</sup> Email from Jim York, Vice President of Leadership, Culture, and Learning, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Jan. 12, 2022) (forwarding an email from Olivia Knighton, Operations Adm'r, Fla. Career Coll.).

<sup>56</sup> Email from Shoukry Tiab, Chief Operating Officer, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Sept. 16, 2019)

[the DOA] had already made an agreement with her to start proctoring and I also found out that they were personal friends.”<sup>57</sup> Art Trujillo did not allow the proctor to administer tests in Orlando; he noted that “When I informed [the DOA] of this he was very upset. I feel that this is the reason why we keep getting complaints about each proctor that is put at the campus.”<sup>58</sup>

Former Employee 42, who worked at the Jacksonville campus in 2022, reported that she was tasked with scheduling tests, and admissions representatives would specifically try to schedule test with the proctors who would help the students.

In early October 2018, the Executive Director of the Lauderdale Lakes campus emailed to Art Trujillo a complaint about Proctor 14’s low pass rates, stating that they had declined to 18% from a previous rate of 67%, and that “something needs to change . . .”<sup>59</sup> The next day, October 2, 2018, he sent an email stating that, “I am sending Art a replacement proctor contact info ... we can’t continue with [Proctor 14]...”<sup>60</sup> These emails corroborate the witness statement of Proctor 14, who reported she was terminated when she stopped changing answers on the ATB exam and, as a result, her student pass rate declined.

The evidence from the investigation indicates that the CFO of IEC was directly involved in proctor management, including the tracking of pass/fail rates. On May 29, 2020, an employee of IEC informed Art Trujillo that “the CFO [of IEC] is going to start having monthly meetings with Art. It sounds like they want to be more involved in the tracking of the pass/fail percentages. These need to be tracked daily.”<sup>61</sup>

In addition, the May 29 email contains two statements that on first glance might suggest care for compliance. First, it notes that “[a]lso, Art [Trujillo] was given the CFO’s cell phone number in case there are compliance issues, meaning the campus staff is pressuring a proctor to pass students,” and, “[t]he CFO wants to know immediately.”<sup>62</sup> Second, it stated “if there is a proctor with 100% pass rate, it needs to be investigated immediately.”<sup>63</sup>

Although at first glance these statements might be interpreted as the CFO wanting to ensure compliance, other evidence undermines that conclusion. First, FCC sought to avoid 100% pass rates from individual proctors because it would look suspicious. Proctor 18 said that if she was testing 10 students a day, FCC would want 8 to pass. Proctor 20, who proctored for IEC’s other Title IV school, reported that “proctors whose pass rates were too high would bring their friends

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<sup>57</sup> Email from Art Trujillo, President, Trujillo-Arias, Inc., to Sanjay Sardana, Chief Fin. Officer, Int’l Educ. Corp. (July 7, 2022).

<sup>58</sup> *Id.*

<sup>59</sup> Email from David Whiteford, Executive Dir., Fla. Career Coll., to Art Trujillo, President, Trujillo-Arias, Inc. (Oct. 1, 2018). Proctor 14 (whose information is also set forth above regarding test cheating) stated in an interview that she was fired once she stopped changing answers on exams.

<sup>60</sup> Email from David Whiteford, Executive Dir., Fla. Career Coll., to Sherri Boyd, Int’l Educ. Corp. (Oct. 2, 2018)

<sup>61</sup> Email from Tiffany Mraz-Quintanilla, Int’l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (May 29, 2020).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

in to come in and test and intentionally fail to keep their pass rates low.” Proctor 19, who also worked at IEC’s other school, reported that “she was not supposed to pass everyone because they wanted it to be believable.” Second, IEC’s CFO actively discouraged written complaints from proctors. When a proctor complained through FCC’s employee complaint channel that she was afraid she would be fired for low pass rates, the CFO said to Art Trujillo in an email “I don’t understand what this is. She is not an employee or a student, why is she submitting compliance complaints? Has someone at the campus said something to her I don’t believe they have, so why is she filing complaints. She is your employee, please handle accordingly. **I don’t want to see this from a proctor again.**” (emphasis added).<sup>64</sup>

Given this context, the May 29, 2020 email does not appear exculpatory to FCC. The CFO of IEC sought to avoid written records of complaints, and the school also discouraged suspiciously high pass rates. Furthermore, significant evidence, described above, demonstrates corporate officials’ involvement in and awareness of the practice of selecting and replacing proctors, including for low pass rates.

*2. Proctors experienced pressure from FCC officials to pass students.*

Multiple proctors stated that they were pressured by FCC to ensure students passed the ATB examination. For example, Proctor 1, who proctored ATB tests at FCC from July 2021 through November 2021, reported that “I was repeatedly pressured to pass students.” I was asked multiple times a day ‘nobody has passed today what are you doing in this room?’ I was told to increase my pass rates for students. Admissions Rep would tell me that before I start testing I could tutor the students or after the exam starts if I see them stuck on a question I should help them.”

Proctor 16 reported that the Director of Admissions made it clear that students needed to pass and instructed him not to follow the rules. He alleges that he was “paid very well to get the job done. I made a ridiculous amount of money to make sure students passed. I was paid by FCC. . . . It was very clear that the money I made was an agreement to pass students.”

Proctor 2, who administered tests from July 2021 to March 2022, stated that “[a]dmissions representatives . . . would pressure me to keep a high pass rate. . . I was informed I would be let go if I didn’t have a high pass rate. FCC wanted students to pass at any cost.”

Proctor 15 said that she was “talked to” anytime she did not pass a student. FCC set the expectation that she needed to pass every student and they were unhappy with her when she didn’t. She left FCC in January 2022 because of concerns about dishonesty and unethical behavior. This was the same proctor that the VP of Leadership, Culture and Learning at IEC had recommended to Trujillo-Arias be hired to proctor tests at FCC.<sup>65</sup>

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<sup>64</sup> Email from Sanjay Sardana, Chief Fin. Officer, to Art Trujillo, President, Trujillo-Arias, Inc. (Aug. 19, 2020).

<sup>65</sup> Email from Jim York, Vice President of Leadership, Culture, and Learning, Int’l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Jan. 6, 2022).

Proctor 18, also a proctor at Jacksonville, states that FCC employees pressured her to pass students and she was told that she was not doing her job properly if she was not passing students.

Proctor 5, who administered tests at the Orlando campus until September 2019, reported his observation that FCC's Admissions reps just wanted students to pass easily, and FCC wanted assurances that students can pass the ATB test. He said he was instructed by FCC to tell the students to leave blank any answers that they did not know.

These accounts are corroborated by employees of FCC. For instance, Former Employee 32, who worked for FCC at the Jacksonville campus from August 2021 to April 2022, reported that the Director of Admissions would call proctors, and that he overheard him "push things with proctors, for example, he would say that he needed a prospective student pass." Former Employee 39, an admissions representative at the Jacksonville campus from November 2017 through August 2021, said he heard the Director of Admissions ask proctors "can you help me out?" in reference to passing students. Former Employee 42, a Customer Services Coordinator at the Jacksonville campus from February through November 2022, said that the admissions representatives asked her to schedule the ATB proctors that would assist students on the exam. Former Employee 43, an admissions professional at the Jacksonville campus from 2017 through June 2022, said that he witnessed Michael Re<sup>66</sup> frequently interacting with one proctor, who would be called in to proctor a test at any time and, he would come in if he was not there already. Former Employee 32, an admissions professional at the Jacksonville campus from August 2021 until April 2022, stated that she heard the director of admissions interacting with proctors and telling them he needed students to pass.

3. *FCC and IEC leaders influenced test administration and proctor training in a manner that is inconsistent with ITA independence.*

IEC paid for a trainer to conduct in-person training for FCC and UEI proctors, and three former proctors reported that this training taught and encouraged misconduct. The contract ("Training Proposal") executed by IEC states "The purpose of this proposal is to have [Proctor 21] provide the proper training to all FCC & UEI campuses. She has the expertise that will create better performance **so that we can quickly start to see an increase in passing rates.**"<sup>67</sup> The plan provides for "in-person training to each individual proctor" at a rate of \$60 per hour, funded by the school, rather than their purported employer, Trujillo-Arias.<sup>68</sup>

Art Trujillo, owner of Trujillo-Arias, suggested this training to IEC as follows: "Before we started working there, IEC had sent [Proctor 21] to a few FCC Campuses to train proctors there. This is why some of the proctors from FCC have a successful passing rate."<sup>69</sup>

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<sup>66</sup> Michael Re appears to have served in several roles at FCC. Currently, he appears to serve as a Regional Director of Admissions. Records indicate that he previously served as the National Director of Training, and a Regional Associate Vice President of Admissions.

<sup>67</sup> TRUJILLO-ARIAS, INC., *Training Proposal* (Dec. 11, 2020) (emphasis added).

<sup>68</sup> *Id.*

<sup>69</sup> Email from Art Trujillo, President, Trujillo-Arias, Inc., to Amelia Nishida, Dir. Fin. Aid Operations, Int'l Educ. Corp. (Dec. 10, 2020).

Three proctors reported that Proctor 21 trained them to change answers or help students on ATB tests, or helped prospective proctors pass the test required to qualify as a proctor. Proctor 14 stated that Proctor 21 trained her to help students pass the ATB test by, for instance, filling in answers after students completed the test. Proctor 19 stated “I did my training with [Proctor 21] . . . [Proctor 21] gave me a cheat sheet with the answers filled out. [Proctor 21] told me to use the cheat sheet to change their answers . . . I shadowed [Proctor 21]. I observed her give a test and see a student get an incorrect answer and tell a student to change their answer to a correct one. I was told to memorize the answers to I could change their test.” Proctor 20 reported that “[Proctor 21] took the administrator’s test by Wonderlic and recorded all of the answers. She then gave out the answers to all of the employees who were getting certified to proctor.” (The administrator’s test is the test required to qualify as a proctor; it is not the ATB test.)

On December 22, 2020, IEC’s Director of Financial Aid Operations emailed Art Trujillo, copying the CFO of IEC, stating that Proctor 21 is “done with all FCC visits [...] Will do these check-ins every 2 months – identify which proctors need more focus and do more as needed.”<sup>70</sup>

IEC and FCC leaders directly instructed Trujillo-Arias on substantive details of test administration, such as the format of tests and when retests should occur when a student fails the ATB test. For example, in an email conversation on June 15 and 16, 2020 involving IEC’s CFO, its Director of Financial Aid Operations, and a Trujillo-Arias employee, the Trujillo-Arias employee expressed concern that she had been “receiving calls from the proctors that the presidents [at FCC campuses] are requiring them to retest the student when they do not meet the requirements.”<sup>71</sup> The CFO responded that he “was “not sure [he] agree with the interpretation” of Wonderlic’s retesting rules provided to him by Trujillo-Arias.”<sup>72</sup> The discussion was moved to the telephone, after which IEC’s Director of Financial Aid Operations stated in a follow-up email “In regards to retesting, there is no limitation to retesting student the same day student failed (regardless of their scores).”<sup>73</sup> She then stated “our recommendation moving forward” about how and when to retest students. When the Trujillo-Arias employee expressed confusion, the Director of Financial Aid Operations repeated her recommendation and stated that “technically there is no issue with retesting same day and the proctor should discuss [the potential to retest] with the campus president on that for those students.”<sup>74</sup> In an email dated July 13, 2020, complaining that a student was not retested immediately, the Director of Financial Aid Operations at IEC stated to

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<sup>70</sup> Email from Amelia Nishida, Dir. Fin. Aid Operations, Int’l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (December 22, 2020)

<sup>71</sup> Email from Doreen Tolentino, Admin. Assistant, Trujillo-Arias, Inc., to Sanjay Sardana, Chief Fin. Officer, Int’l Educ. Corp. (June 15, 2020).

<sup>72</sup> Email from Sanjay Sardana, Chief Fin. Officer, Int’l Educ. Corp. to Doreen Tolentino, Admin. Assistant, Trujillo-Arias, Inc. (June 15, 2020).

<sup>73</sup> Email from Amelia Nishida, Dir. Fin. Aid Operations, Int’l Educ. Corp., to Doreen Tolentino, Admin. Assistant, Trujillo-Arias, Inc. (June 15, 2020).

<sup>74</sup> Emails from Amelia Nishida, Dir. Fin. Aid Operations, Int’l Educ. Corp., to Doreen Tolentino, Admin. Assistant, Trujillo-Arias, Inc. (June 15, 2020; June 16, 2020).



Art Trujillo that “there should be no issue with retesting same day as long as it comes from the [Executive Director/Campus President.]”<sup>75</sup>

In fact, Wonderlic rules specifically provide that “it is NOT acceptable to automatically retest an applicant simply because they did not pass the initial test administration.”<sup>76</sup> Rather, “an applicant may need to be retested if there is an inaccurate or incomplete test administration. For example, a school announcement over the PA system may have disturbed the testing session, or an applicant may have had to leave the testing session for medical reasons.”<sup>77</sup> Applicants could also be retested if their scores fell within certain ranges (putting them close to passing).<sup>78</sup> Here, not only are IEC and FCC leaders pressuring the “independent” test administrators to interpret the testing rules to their liking; they are doing so in a way that appears to violate those rules.

IEC and FCC leaders also directed the “independent” proctors in other ways. Emails from June 2020 show that the CFO of IEC “requested a proctor meeting to go over new procedures” and that he “verbally approved that the proctors be paid for the meeting since he wanted it to be all together and it had to be after hours.”<sup>79</sup> In an email dated May 27, 2020, the Executive Director of the Pembroke Pines campus emailed Art Trujillo to check whether the ITAs were “notified that we are moving to Paper Tests in Pembroke Pines.”<sup>80</sup> In an email dated October 23, 2020, the Director of Financial Aid Operations at IEC emailed Art Trujillo to instruct him to move back to paper testing at Orlando.<sup>81</sup> In an email dated June 25, 2020, the Director of Financial Aid Operations at IEC emailed Trujillo-Arias to complain that the Houston proctor is administering tests both online and on paper. “I already told Aleco that he should have the conversation with the proctor that we only do paper tests currently. Please confirm after you have communicated with the proctor there.”<sup>82</sup>

IEC’s active engagement in ATB testing with the goal of passing scores was corroborated by Proctor 20, who is Art Trujillo’s sister. Although her statement to the Department focused on her experience at UEI, another IEC-owned school, it raises the same concerns described in multiple witness reports. Proctor 20 reported that IEC directed Trujillo-Arias to assist students on the ATB exam to ensure students passed. Proctor 20 reported “IEC corporate controlled Art by saying that if they didn’t ensure pass rates by cheating, then they would give the contract to

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<sup>75</sup> Email from Amelia Nishida, Dir. of Fin. Aid Operations, Int’l Educ. Corp., to Art Trujillo, President and Doreen Tolentino, Admin. Assistant, and Proctor 21, Trujillo-Arias, Inc. (July 13, 2020); Email from Art Trujillo, President, Trujillo-Arias, Inc., to Doreen Tolentino, Admin. Assistant and Proctor 21, Trujillo-Arias, Inc., and Amelia Nishida, Dir. Fin. Aid Operations, Int’l Educ. Corp. (July 13, 2020).

<sup>76</sup> WONDERLIC, INC., *Wonderlic Basic Skills Test User’s Manual for Ability-to-Benefit Testing*, at 42.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 43.

<sup>79</sup> *See, e.g.*, Email from Doreen Tolentino, Admin. Assistant, Trujillo-Arias, Inc., to Michelle Hale, Accounts Payable Assoc., Int’l Educ. Corp. (June 29, 2020).

<sup>80</sup> Email from Gregory Falcon, Executive Dir., Fla. Career Coll., to Art Trujillo, President, Trujillo-Arias, Inc. (May 27, 2020)

<sup>81</sup> Email from Amelia Nishida, Dir. Fin. Aid Operations, Int’l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Oct. 23, 2020).

<sup>82</sup> Email from Amelia Nishida, Dir. of Fin. Aid Operations, to Doreen Tolentino, Admin. Assistant, Art Trujillo, President, Proctor 21, Trujillo-Arias, Inc. (June 25, 2020).

someone else.” She stated that Art Trujillo would teach new proctors how to assist students and told them that the expectation was to pass students.

Proctor 20 made a contemporaneous report of this misconduct when she filed a complaint with Wonderlic on December 20, 2019.<sup>83</sup> In that complaint, she stated that “applicants who fail to demonstrate their ability to benefit when tested, their answer sheets are altered, they are passed, enrolled in programs and incur large student loans that they will never be able to benefit from...” She also said that the IEC schools “pay him [Art Trujillo] to provide them with ITAs that will cheat.” She specified that this conduct occurred at FCC schools in Orlando, Florida and Houston, Texas, in addition to other schools operated by IEC in California and Georgia.

*4. Campus leaders looked the other way at compromising communications between proctors and FCC employees, including admissions staff.*

The Department is in possession of evidence that ATB test proctors provided test scores to FCC employees and leaders, including in those in the admissions department.<sup>84</sup> While this practice alone may not explicitly violate the ATB regulations, as part of its response to the Department, FCC referred the Department to its internal policy prohibiting communication between the admissions department and ATB test proctors as a defense to any suggestion of test interference.<sup>85</sup>

In emails dated July 25, 2018, FCC’s Regional Associate Vice President of Admissions instructed Proctor 14 to attach individual score reports to him, the Director of Admissions, and various other admissions representatives “once the scores are ready.”<sup>86</sup> The proctor complied.<sup>87</sup> On September 15, 2020, the Executive Director of the Pembroke Pines campus emailed Art Trujillo to complain that a proctor refused to email test results to him and other employees.<sup>88</sup> Art Trujillo responded that he “did inform [the proctor] of the procedure for sending unofficials at your campus. **When speaking with [the proctor] I did stress the importance of complying with President’s request at any campus.**”<sup>89</sup> (emphasis added). Mr. Trujillo’s reference to “unofficials” relates to the unofficial test results or score reports. In emails from February, May, November and as late as December 7, 2022, a proctor sent score reports directly to admissions representatives at the Hialeah campus.<sup>90</sup> On May 10, 2022, the Director of Admissions from Hialeah specifically asked that proctor to send score reports to the admissions representatives on

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<sup>83</sup> Complaint from Proctor 20, to Chris Young, Operations Dir., Wonderlic; Email from Proctor 20, to Chris Young, Operations Dir., Wonderlic (Dec. 12, 2019).

<sup>84</sup> See *infra* nn. 87-94.

<sup>85</sup> FCC Nov. 2022 Letter, at 26.

<sup>86</sup> Email from Michael Re, Regional Associate Vice President of Admissions, Fla. Career Coll., to Various FCC Admissions Employees (July 25, 2018).

<sup>87</sup> See, e.g., Email from Edna Whalen, Proctor, to Various FCC Admissions Employees (July 27, 2018).

<sup>88</sup> Email from Gregory Falcon, Executive Director, Fla. Career Coll., to Doreen Tolentino, Admin. Assistant, Trujillo-Arias, Inc. (Sept. 15, 2020).

<sup>89</sup> Email from Art Trujillo, President, Trujillo-Arias, Inc., to Gregory Falcon, Executive Director, Fla. Career Coll. (Sept. 28, 2020).

<sup>90</sup> See *infra* nn. 87-94.

this campus.<sup>91</sup> Emails also show that proctor socializing and ordering take-out food with admissions staff.<sup>92</sup>

On June 16, 2020, Art Trujillo instructed the proctors that worked for him that there should not be any more communications between proctors and admissions, in response to complaints that ITAs were being pressured to send scores to admissions.<sup>93</sup> IEC reports that it instructed its admissions staff to cease communications with proctors and not to request scores from proctors.<sup>94</sup> However, the practice continued.

Additional emails produced by FCC show seven other proctors sending score reports to FCC and/or UEI admissions staff in 2021 and 2022: (1) August 26, 2021, October 18, 2021, January 11, 2022 emails from a proctor at a UEI campus (FCC's sister school);<sup>95</sup> January 3, 2022, January 4, 2022, January 5, 2022 emails from Proctor 2 for FCC's Tampa campus;<sup>96</sup> (3) March 15, 2022, April 21, 2022 emails from a proctor to UEI campus;<sup>97</sup> (4) May 26, 2022 emails from a proctor for FCC Houston Campus.<sup>98</sup> On April 5, 2022, an FCC employee at its Houston campus requests that the proctor send a score report for a student, which she does;<sup>99</sup> (5) September 14, 2022, November 4, 2022, November 7, 2022, November 7, 2022, November 11, 2022, November 14, 2022 emails from a proctor to admissions staff from FCC's Jacksonville campus, including a note stating "He Passed! 🎉";<sup>100</sup> (6) July 29, 2022 and October 25, 2022 emails from

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<sup>91</sup> Email from Brian Brown, Fla. Career Coll., to Shemina Mawji, Proctor (May 10, 2022).

<sup>92</sup> See, e.g., Email from Shemina Mawji, Proctor, to Brian Brown, Fla. Career Coll. (May 31, 2022) (sharing Red Lobster Rewards email); Email from Shemina Mawji, Proctor, to Dairon Hung, Fla. Career Coll. (Nov. 12, 2020) (sharing Chili's eBonus Card).

<sup>93</sup> Email from Art Trujillo, President, Trujillo-Arias, Inc., to Sanjay Sardana, Chief Fin. Officer, Int'l Educ. Corp. (June 16, 2020).

<sup>94</sup> FCC Nov. 2022 Letter, at 26. See also, Email from Deb Ferrari, Fla. Career Coll., to Amelia Nishida, Fla Career Coll. and Sanjay Sardana, Chief Fin. Officer, Int'l Educ. Corp. (June 16, 2020).

<sup>95</sup> Email from Brandon Trujillo, Proctor, Trujillo-Arias, Inc, to Rose Lopez, Admissions Professional, UEI Oceanside (Aug. 26, 2021); Email from Brandon Trujillo, Proctor, Trujillo-Arias, Inc., to Monica Romero, Assoc. Dir. of Admissions, UEI Oceanside (Oct. 18, 2021); Email from Brandon Trujillo, Proctor, Trujillo-Arias, Inc., to Monica Romero, Assoc. Dir. of Admissions, UEI Oceanside (Jan. 11, 2022).

<sup>96</sup> Email from Proctor 2, to Greta North, Dir. of Admissions, Bonnie McIntosh, Assoc. Dir. of Admissions, and other FCC employees (Jan. 3, 2022); Email from Proctor 2, to Greta North, Dir. of Admissions, Bonnie McIntosh, Assoc. Dir. of Admissions, and other FCC employees (Jan. 4, 2022); Email from Proctor 2, to Greta North, Dir. of Admissions, Bonnie McIntosh, Assoc. Dir. of Admissions, and other FCC employees (Jan. 5, 2022).

<sup>97</sup> Email from Jiselle Cabrera, Proctor, Trujillo-Arias, Inc., to Claudia Santizo, Assoc. Dir. of Admissions, UEI Huntington Park (Mar. 15, 2022); Email from Jiselle Cabrera, Proctor, Trujillo-Arias, Inc., to Claudia Santizo, Assoc. Dir. of Admissions, UEI Huntington Park (Apr. 21, 2022).

<sup>98</sup> Emails from Destini Williams, Proctor, Trujillo-Arias, Inc., to Gregory Williams, Dir. of Admissions, and other FCC employees (May 26, 2022).

<sup>99</sup> Email from Sandy Barrera, Fla. Career Coll. Houston, to Destini Williams, Proctor, Trujillo-Arias, Inc. (Apr. 5, 2022); Email from Destini Williams, Proctor, Trujillo-Arias, Inc., to Sandy Barrera, Fla. Career Coll. Houston (Apr. 5, 2022).

<sup>100</sup> Email from Huldya Sinkler, Proctor, Trujillo-Arias, Inc., to Carmen Reynolds, Exec. Admissions Prof'l, Fla. Career Coll. Jacksonville (Sept. 14, 2022); Email from Huldya Sinkler, Proctor, Trujillo-Arias, Inc., to Betty Marbury, Senior Admissions Prof'l, Fla. Career Coll. Jacksonville and other FCC Jacksonville employees (Nov. 4, 2022); Email from Huldya Sinkler, Proctor, Trujillo-Arias, Inc., to Betty Marbury, Senior Admissions Prof'l, Fla.

another proctor and a Director of Admissions at Hialeah's FCC campus where the director asks to be cc'd on all score reports and the proctor complies;<sup>101</sup> and (7) March 15, 2022, July 2021, November 2021, December 2021: a proctor sent score reports to admissions employees at FCC's Tampa campus.<sup>102</sup>

**C. Leadership exerted substantial pressure on admissions representatives to meet enrollment goals and metrics**

The evidence collected during this investigation also demonstrates that IEC and FCC leadership imposed extreme pressure on FCC staff to meet enrollment and start metrics, and to keep students enrolled. While not necessarily a regulatory violation in and of itself, the evidence contradicts FCC's statements that it has no enrollment quotas,<sup>103</sup> and provides context for why the widespread ATB violations described above may have occurred. This conflicting evidence negatively reflects on IEC's and FCC's candor with the Department and adherence to fiduciary duty standards.

A January 2018 email from IEC's Associate Vice President of Admissions Development to an admissions representative stated "You are trending to miss expectations, specifically due to low show rate and lack of daily enrollments. In your position, you should [have] at least 12-15 starts and you are currently at 5 net with a show rate of 45% (well below expectations on show rate), we have had a total of 33 days to enroll and only have 9 days left. Based on your current trend you will miss your expectations."<sup>104</sup> In a similar email exchange in March, she finishes with "So you are basically saying you will be underperforming this month is this correct?"<sup>105</sup>

On February 28, 2018, the Director of Admissions from the Orlando Campus emailed an admissions representative stating "you have a target of 12-13 new starts every month . . . and you are grossly underperforming for the month. . . All Admissions Representatives are expected to

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Career Coll. Jacksonville and other FCC Jacksonville employees (Nov. 7, 2022); Email from Huldarya Sinkler, Proctor, Trujillo-Arias, Inc., to Keller Florestal, Admissions Prof'l, Fla. Career Coll. Jacksonville and other FCC Jacksonville employees (Nov. 11, 2022); Email from Huldarya Sinkler, Proctor, Trujillo-Arias, Inc., to Rodney Hames, Admissions Prof'l, Fla. Career Coll. Jacksonville and other FCC Jacksonville employees (Nov. 14, 2022).

<sup>101</sup> Email from Shemina Mawji, Proctor, Trujillo-Arias, Inc. to Brian Brown, Dir. of Admissions, Fla. Career Coll. Hialeah (July 29, 2022); Email from Shemina Mawji, Proctor, Trujillo-Arias, Inc., to George Hardy, Exec. Dir., Brian Brown, Dir. of Admissions, and Jessica Martinez, Admissions Prof'l, Fla. Career Coll. Hialeah (Oct. 25, 2022).

<sup>102</sup> Email from Ryan Drachenberg, Proctor, Trujillo-Arias, Inc., to Greta North, Dir. of Admissions, Bonnie McIntosh, Assoc. Dir. of Admissions and other FCC Tampa employees (March 15, 2022); Email from Ryan Drachenberg, Proctor, Trujillo-Arias, Inc., to Bonnie McIntosh, Assoc. Dir. of Admissions and other FCC Tampa employees, Fla. Career Coll. Tampa (Nov. 2, 2021); Email from Ryan Drachenberg, Proctor, Trujillo-Arias, Inc., to Greta North, Dir. of Admissions, Bonnie McIntosh, Assoc. Dir. of Admissions and other FCC Tampa employees, Fla. Career Coll. Tampa (Dec. 9, 2021).

<sup>103</sup> FCC Nov. 2022 Letter, at 124.

<sup>104</sup> Email from Sherri Boyd, Assoc. Vice President of Admissions Development, Int'l Educ. Corp., to Former Employee 15 (Jan. 16, 2018).

<sup>105</sup> Email from Sherri Boyd, Assoc. Vice President of Admissions Development, Int'l Educ. Corp., to Former Employee 15 (Mar. 26, 2018)

see 3 students per day and enrolling at least 1 student per day at a 64% start rate or higher. . . at this point you will be receiving a poor performance evaluation.”<sup>106</sup>

Former Employee 1 worked at FCC from 2020-2021 and reported that FCC provided the admissions representatives with monthly minimum enrollments. She stated, “In my position I was expected to enroll a minimum of 7 or 8 students a month.”

Former Employee 3 worked at FCC from 2019-2022 and reported that “FCC was all about high pressure sales.” She stated she was constantly pressured to meet enrollment quotas. Her superiors would remind her that she “need[ed] to get [her] numbers up.” It was implied that she would be terminated if she did not meet her numbers.

Former Employee 10 worked at FCC from 2018-2019 and reported that she was told by the Director of Admissions that, if she could not come up with three enrollments, FCC would have to replace her.

Former Employee 17, who worked at FCC from 2021-2022, stated, “I was required to put the same pressure on my admissions representatives. I was told by corporate leadership at IEC what enrollment numbers we had to meet, and the campus president at that time, would fire admissions representatives who did not make their numbers.”

Former Employee 20, who worked at FCC from 2017-2018 stated, “Admissions advisors had to meet certain quotas, otherwise they were terminated.”

Former Employee 21 worked at FCC from 2014-2021 recalls being told, “It’s 1 enrollment/day. 1 enrollment a day keeps the threatening away.”

Former Employee 22, who worked at FCC from June 2021 through April 2022, recalled that admissions reps were urged to meet enrollment targets at all costs.

Former Employee 32, who worked at the Jacksonville campus from August 2021 to April 2022, reported, “FCC placed a lot of pressure on me on a day-to-day basis to perform the way they wanted. For example, FCC management would praise high enrollment days and then publicly ridicule me on lower enrollment days.”

Former Employee 43 worked at FCC from 2017 to 2022 and stated that the goal was to enroll as many people as possible and that that representatives would get terminated for not meeting their enrollment numbers.

Former Employee 39 worked at FCC from 2017 to 2021 and stated that there was “extreme pressure to enroll students and hit my numbers. I was told if I did not hit my numbers I would be fired.”

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<sup>106</sup> Email from Melissa Donatone, Dir. of Admissions, Fla. Career Coll., to Former Employee 15 (Feb. 28, 2018).

**D. Students are harmed by this misconduct.**

The majority of FCC's ATB students fail to complete the 10-month certificate program, yet are left with debt and reduced Pell eligibility.

As demonstrated below, FCC's ATB students have poor graduation rates and high withdrawal rates. Between 53% and 57% of FCC's ATB students withdraw from their programs each year without obtaining a certificate.

<b>Award Year</b>	<b>Total Enrollment</b>	<b>ATB Student Enrollment Count and Percent of Total FCC Students Enrolled via ATB<sup>107</sup></b>	<b>Graduation Rate (Overall)<sup>108</sup></b>	<b>Number and Percent of ATB Students that withdrew<sup>109</sup></b>	<b>Number and Percent of non-ATB students that withdrew<sup>110</sup></b>
2016-2017	8,968	3,912  43.62% of FCC students are enrolled via ATB tests	53.97%	2,163  55.3% of ATB students withdrew	1,964  38.84% of non-ATB students withdrew
2017-2018	10,014	4,747  47.4% of FCC students are enrolled via ATB tests	52.3%	2,709  57.07% of ATB students withdrew	2,067  39.2% of non-ATB students withdrew
2018-2019	9,430	4,359  46.22% of FCC students are enrolled via ATB tests	54.9%	2,390  54.83% of ATB students withdrew	1,858  36.63% of non-ATB students withdrew
2019-2020	10,665	5,019  47% of FCC students are enrolled via ATB tests	52.5%	2,833  56.4% of ATB students withdrew	2,190  38.79% of non-ATB students withdrew
2020-2021	11,727	5,103  43.5% of FCC students are enrolled via ATB tests	37%	2,806  53.23% of ATB students withdrew	2,465  37.21% of non-ATB students withdrew

<sup>107</sup> See FLA. CAREER COLL., Recipient Data Spreadsheet (Dec. 2021).

<sup>108</sup> *Id.* (reflecting the current status of students who were attending during that award year).

<sup>109</sup> *Id.* The percentages were determined by dividing the number of withdrawn ATB students by the total number of ATB students attending during that award year.

<sup>110</sup> *Id.* The percentages were determined by dividing the number of withdrawn non-ATB students by the total number of non-ATB students attending during that award year.

The ATB students who withdraw nevertheless face financial burdens for having enrolled. FCC's data indicates that in financial aid award years 2018-2019 through 2021-2022, between 81% and 88% of ATB students who withdrew from FCC still incurred debt or exhausted Pell eligibility for the relevant award year (usually both), even after funds were returned to the Department via the Return to Title IV (R2T4) requirements.<sup>111</sup>

As stated in the Wonderlic manual for ITAs, "In ATB testing, it is equally important to identify applicants who do not have the ability to benefit from academic training as it is to identify those who do. Applicants who fail to demonstrate their ability to benefit when tested are more likely to fail or drop out of their academic programs and incur large student loan payments that they may not be able to afford. As a result, these applicants are denied future opportunities to receive financial assistance. Therefore, to knowingly ignore or alter Wonderlic ATB testing procedures is against the best interests of applicants, and additionally, it is against the law."<sup>112</sup>

The evidence gathered as part of the Department's investigation establishes that FCC's widespread and pervasive violations of the regulations and rules governing administration of ATB testing imposed significant burdens on students, who, in addition to lost time and energy, are left with reduced Pell Grant eligibility and debt from Title IV loans. In addition, this misconduct harms the Title IV programs and federal taxpayers, as they are often left to absorb the cost when students are unable to benefit from FCC's program.

## **ADDITIONAL EVIDENCE OBTAINED IN THE DEPARTMENT'S INVESTIGATION**

### ***I. Falsification of Attendance Reporting***

An institution participating in the Title IV programs must "establish and maintain, on a current basis, any application for Title IV, HEA program funds and program records that document," among other things, "its administration of the Title IV, HEA programs in accordance with all applicable requirements."<sup>113</sup> In addition, as required by 34 C.F.R. §§ 668.24(b), (c), institutions must establish and maintain fiscal records and other required records. Attendance records are required to, among other things, establish academic payments periods or establish the last date of attendance for a student who withdraws or stops attending, or to establish completion of a program of study.

If a student does not begin attendance in a payment period or period of enrollment, or if the student withdraws during a payment period or period of enrollment, the institution must calculate and return the appropriate amount of Title IV funds that were credited to the student's account

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<sup>111</sup> See FLA. CAREER COLL., Recipient Data Spreadsheets. In a response to the Department, FCC explains this high withdrawal rate by pointing to the "significant challenge" of the program and states that it is "proud so many ATB test takers were able to benefit from and complete their certificate programs." FCC's November 7, 2022, Letter to Department of Education at 51.

<sup>112</sup> WONDERLIC, INC., Wonderlic Basic Skills Test (WBST) Ability-to-Benefit Test Administrator's Examination, at 6.

<sup>113</sup> 34 C.F.R. § 668.24(a).



based upon the student's last date of attendance.<sup>114</sup> FCC's enrollment agreement provides students with 7 days to cancel their enrollment and stipulates that FCC will make a determination on that cancellation within 14 days.<sup>115</sup>

Over thirty witnesses described instances where FCC falsified attendance records, with the effect of establishing or increasing the amount of Title IV funds the school could retain for a particular student. While much of that evidence was consistent, the Department is not, at this time, making a finding of widespread and pervasive violations of the regulations related to the return of Title IV funds. Nevertheless, the consistent descriptions of inaccurate attendance reporting, when combined with the Department's findings outlined above, further undercuts the institution's claim that it meets the administrative capability and fiduciary duty standards required of institutions participating in the Title IV programs.

*1. FCC employees reported that they were aware of misconduct related to attendance and students corroborate this narrative.*

Former Employees 11, 34, and 36 all reported misconduct related to student attendance records. Former Employee 34 who worked at the Houston campus from 2021 to 2022, stated, "the Director of Education instructed me to search for a local homeless student...he was about to be dropped if he did not clock attendance. I drove around and I eventually found him sitting by a pool. I approached him and allowed him to use my personal laptop to login for attendance. He did not attend class, but merely signed in on my laptop. This was all done so that he would not be dropped from the program." Former Employee 34 also told the Department that, in 2021, he observed an admission representative sign a student into his class for which he was not present. This instructor reported the misconduct to the campus president in an email and then subsequently reported it to IEC's Director of Human Resources.<sup>116</sup> The campus president told him he wished he had not put so many things in an email and that he was being "dramatic."<sup>117</sup> The admissions representative who signed the student into his class, according to Former Employee 34, is still employed at FCC.

Former Employee 11, who worked at the Orlando campus from 2016 to 2019, told the Department that she once drove to a McDonalds to get a student to sign an attendance sheet even though the student did not attend class that day. Former Employee 36 worked at the Pembroke Pines campus from 2021 to 2022 and stated that sometimes the instructors would falsely sign attendance records for students who did not attend. Because Former Employee 36 taught in a shared lab, she witnessed another instructor direct students to just sign in the attendance and allowed them immediately to leave the classroom after that. She also saw some students sign in for other students, especially if they were friends. Former Employees 12, 14, 16, 20, 21, 22, 27, 33, 37, 38, 39, 40 41, 44, and 48 also reported that attendance was inaccurately recorded or manipulated.

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<sup>114</sup> 34 C.F.R. §§ 668.21-22.

<sup>115</sup> See FLA. CAREER COLL., Hialeah Enrollment Agreement (May 27, 2020), at 2

<sup>116</sup> Email from Former Employee 34, to Sherri McKaig, Dir. of Human Res., Int'l Educ. Corp. (Oct. 28, 2021).

<sup>117</sup> *Id.*

Students interviewed by the Department likewise disputed FCC's attendance records and stated that they did not attend classes on the date that FCC claimed that they did. For example, Student 24 reported, "I withdrew from FCC after attending for over one month, no more than two months in 2018. The last date of attendance FCC has on file in my transcript of May 20, 2019 is not correct. The date of withdrawal FCC has on file in my Return of Title IV Funds Worksheet of June 5, 2019 is not correct." Student 23 said, "I enrolled at FCC in the HVAC program around January 2020. I took two classes with the HVAC Program...only...I stopped attending during mid-March 2020 and did not return to HVAC Program." This student's HVAC attendance record lists him as present through November 2020. Students 3, 6, 12, 13, 14, 15, and 30 also provided similar reports. Students 6, 12, 15 report that they did not attend on the dates that FCC lists. Students 12 and 15 report they never attended. Student 6 reports she attended in 2016 and did not reenroll in 2018, as reflected in her FCC student record.

2. *Evidence suggests that IEC and FCC leaders pressured instructors to manage attendance and limit drops.*

School leadership monitored attrition and drops according to corporate targets. Former Employee 11, a Dental Assisting Instructor and eventual department Chair, stated, "When I was working there, Michael Re was employed as the Director of Admissions, and he was beyond toxic. As an instructor, I received a lot of pressure from the Director of Education to ensure that students were marked as in attendance. This instruction came from Shoukry Tiab, the Chief Operating Officer of IEC, himself. Shoukry was our driving force as he oversaw starts and stops. Shoukry directed us to not drop more than 2.5-3% of our starts."<sup>118</sup>

In an email from May 2022 between the campus president of Houston and IEC's Director of Human Resources, the campus president describes the need for instructors to control attrition and drops.<sup>119</sup> The email justifies the firing of Former Employee 34 in part due to the number of drops in his classes. The email states, "From an operational perspective, all Instructors are tasked with controlling their attrition and student drops. We have a corporate target of 3.5% per month. Our campus budget is 5.24% for the year. The Campus target through April 2022 is 6.3% and the campus actual performance through the same period was 5.5%. Better than target."<sup>120</sup> It further states that Employee 34's attrition is 9.1% and that he had 20 drops from his classes. Another email from May 2021 contains a similar narrative.<sup>121</sup>

Former Employee 12, the former Orlando campus president, detailed concerns about attendance in an email to FCC's corporate leadership in February 2019.<sup>122</sup> He stated in that email that the

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<sup>118</sup> Former Employee 11 worked at the Orlando campus from 2016 to 2019.

<sup>119</sup> Email from Aleco Babikian, Campus President, Fla. Career Coll., to Sherri McKaig, Dir. Human Res., Int'l Educ. Corp. (May 27, 2022).

<sup>120</sup> *Id.*

<sup>121</sup> Email from Cari Andreani, Dir. of Educ., Fla. Career Coll., to Sherri McKaig, Int'l Educ. Corp (May 25, 2021).

<sup>122</sup> Email from Christopher Sam Lynn, Campus President, Fla. Career Coll., to Fardad Fateri, President, Aleco Babikian, Campus President, Shoukry Tiab, Chief Operating Officer, Sherri McKaig, Dir. of Human Res., and Sanjay Sardana, Chief Fin. Officer, Fla, Career Coll. (Feb. 26, 2019).

corporate Director of Admissions, Michael Re, was aware of and encouraged the practice of falsifying attendance records by encouraging new enrollees who did not want to start right away to “sit in class for 15 minutes to audit how the class is.” FCC would then mark the students as attending the course and beginning the program.<sup>123</sup>

Former Employee 33, the Director of Education at the Houston campus from February to October 2022, reported that admissions representatives, not students, signed rosters. The admissions representatives did this to get credit for a start. This employee reported concerns about attendance falsification to the Campus President; he is not aware of any action taken in response.

## **II. Substantial Misrepresentations to FCC’s Accreditor**

As outlined in 34 C.F.R. §§ 668.71-668.74, institutions are prohibited from making substantial misrepresentations “directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency” regarding the nature of their educational programs, the nature of their financial charges, or the employability of their graduates. 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.” 34 C.F.R. § 668.71(c).

The Department is not, at this time, making a finding of widespread and pervasive substantial misrepresentation by FCC to its accreditor. The Department will refer this evidence to COE for it to determine whether FCC manipulated data or made misrepresentations in its reporting to the accreditor. However, the consistent descriptions of misconduct found in the Department’s investigation on this issue, when combined with the Department’s findings outlined above, further undercut the institution’s claim that it meets the administrative capability and fiduciary duty standards required of institutions participating in the Title IV programs.

FCC’s accreditor, COE, requires institutions to maintain a program completion rate of 60% and a job placement rate of 70%.<sup>124</sup> Institutions may exempt students who are “documented to be unavailable for employment” or are “unavailable to earn a credential in their programs” because of “situations such as: pregnancy, other serious health-related issues (physical/mental/behavioral), caring for ill family members, incarceration, death, etc.”<sup>125</sup> Witnesses reported that FCC pressured them to falsely attest to such conditions for students, which may have resulted in artificially high completion and/or job placement rates.

FCC maintained a spreadsheet showing the number of job placement and completion waivers needed to meet the required minimum from its accreditor.<sup>126</sup> Three out of the four former

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<sup>123</sup> *Id.*

<sup>124</sup> COUNCIL ON OCCUPATIONAL EDUC., *Policies and Rules of the Commission* (2022), at 21.

<sup>125</sup> COUNCIL ON OCCUPATIONAL EDUC., *Completion, Placement, and Licensure Form for Postsecondary Programs* (2018), at 5.

<sup>126</sup> See e.g., FLA. CAREER COLL., *Waiver Spreadsheet 1* (Aug. 31, 2021).

employees from FCC's Compliance Department interviewed by the Department reported that they were overruled by management when they were unable to verify a job placement in FCC's records. Former Employee 51, a compliance officer from the Miami and Hialeah campuses until September 2018, stated that she marked job placements as invalid because the graduate was not using the required percentage of skills to count as a placement. However, her manager would override her decision and would instead classify those individuals as "placed." She also explained that FCC's career services staff would argue with compliance staff regarding how placements should be counted. She spoke to her supervisor about this, but nothing improved. She stated that she spoke with other compliance officers, and they had similar issues.

Former Employee 50, a compliance staff member from the Miami and Hialeah campuses until June 2021, told the Department "I would go to an address to verify placements and I would end up in an empty field with a for sale sign...Many times I would call and no one would answer...but [another compliance representative] could instantly verify all the placements. I later heard from other employees that [other employees] were pretending to be employers by calling each other or anyone they could find."

Former Employees 33 and 46 reported that that were told by superiors to get students to sign waivers that they were not seeking jobs. Former Employee 33, who worked at FCC from February to October of 2021, said that FCC employees would offer former students gift cards to sign waivers related to their completion metrics. She recalled one person calling her to say that they did not get their \$150 gift card after signing a document stating that she withdrew from FCC because she was taking care of her sick mother. The former employee knew, however, that the student was not actually taking care of her mother. Students 23, 32, and 35 stated that they were asked to sign job placement waivers for reasons that did not exist like taking care of a sick family member who contracted COVID.

### ***III. Interference in the Department's Investigation***

Pursuant to 34 C.F.R. § 668.24, FCC is obligated to cooperate with the Department's investigation. Four former employees independently told the Department that they were coached on what to say to the Department, including falsely denying that the school had enrollment quotas or goals for its employees. As described above, evidence obtained during the Department's investigation demonstrates that admissions reps faced significant pressure to meet "metrics" or "measures" for enrollments and starts. One more employee reported that they were kept from speaking to the Department.

This evidence, when combined with the Department's findings outlined above, further undercuts the institution's claim that it meets the administrative capability and fiduciary duty standards required of institutions participating in the Title IV programs.

Four former FCC employees, who left FCC after March 2022, report that, prior to the Department's March 2022 site visit to various FCC campuses, FCC and IEC leaders held preparatory meetings with staff at the campuses. These leaders included the Director of Admissions of the Tampa campus, IEC's Vice President of Leadership, Culture, and Learning,

IEC's Associate Vice President of Admissions Development, IEC's Vice President of Government Relations, and IEC's Regional Associate Director of Regulatory Compliance.

Former Employee 16, who worked at the Tampa campus from October 2021 through May 2022, told the Department that admission staff was instructed "not to say that we have quotas or necessary 'goals'", and they "told us to lie if asked whether admissions staff were fired for not meeting our enrollment quota." He further stated that this was "absolutely untrue" and that, "[d]uring the time I worked at FCC, I witnessed several colleagues fired for failing to meet enrollment goals."

Former Employee 22, who worked at the Boynton Beach and Margate campuses from June 2021 through April 2022, also reported that she was instructed to tell the Department they did not have enrollment goals, which was not true, and that there were no incentives or prizes awarded to admissions representatives for meeting their enrollment quotas and goals, which she also said was not true.

Former Employee 17, who worked at the Pembroke Pines campus from December 2021 through March 2022, reported: "Before the Department of Education came to our campus, we had a meeting with the entire admissions department, the campus director, Regional Vice President of admissions and employees from the IEC corporate compliance office...The meeting was to prepare everyone for what questions the Department would ask. We knew many of the questions that were asked to employees at FCC's Margate Campus by the Department, so we prepared for those. Everyone was told what they should say and what they should not say to the Department."

Former Employee 23 worked at the Boynton Beach and Margate campuses from December 2017 through April 2022. She reported that, before the Department visited the Margate campus, corporate leaders met with staff members to notify them about the Department's visit. She was told by those IEC executives not to mention goals or enrollment quotas to the Department. She later told the Department it would have been a lie to say there were no enrollment goals.

Former Employee 30, who reported that she left FCC after three months due to significant sales pressure, stated that she was required to stay out of sight when the Department arrived for a site visit so that she would not be interviewed.

**FCC'S DEFENSES SET FORTH IN ITS NOVEMBER 7, 2022 LETTER DO NOT  
UNDERMINE THE DEPARTMENT'S FINDINGS**

On October 20, 2022, FSA's Investigations Group sent FCC a summary of the evidence that had been gathered to date and indicated that it was considering a referral to the Department's Administrative Actions and Appeals Service Group ("AAASG") for possible administrative

action.<sup>127</sup> FCC responded in a letter dated November 7, 2022.<sup>128</sup> The defenses set forth in that letter, do not warrant a change in the conclusions of this letter.

FCC primarily places any blame on ATB testing administration issues with its third-party test administrator, Trujillo-Arias, or its proctors.<sup>129</sup> It claims that proper test administration is the responsibility of the specific ITAs, and the Department's witness allegations do not provide credible evidence of FCC interference with independent test administration. However, email evidence and witness statements gathered by the Department demonstrate that corporate leaders at FCC and IEC actively managed the ITAs, defeating their independence and compromising test results, and that any "independence" attributed to Trujillo-Arias was a mirage. FCC cannot attempt to distance itself from ATB violations by funneling that interference through a third-party test administrator. Evidence of high-level interference in proctor independence include February 2022 emails showing that senior leaders at IEC, including the Director of Financial Aid Operations and the Chief Financial Officer, tracked each proctors' pass rates and held a weekly call with Trujillo-Arias at which pass rates were reviewed and included suggestions such as "low % maybe need to replace."<sup>130</sup>

In its letter, FCC asserted that, "other than test scheduling, FCC limits any interactions between its employees and ITAs."<sup>131</sup> This claim is belied by significant email evidence to the contrary showing regular communications between proctors and FCC staff, including admissions staff, including the sharing of scores even after IEC claims to have formally prohibited those communications.<sup>132</sup> These communications were ongoing as of November 2022.

FCC also claimed that the instances of ATB impropriety identified do not reach a proportionality threshold, and that "isolated incidents do not indicate institution-wide noncompliance."<sup>133</sup> The testimonial evidence suggests that these problems were not isolated. Sixty-one witnesses, including thirty former employees, twelve former ATB test proctors, and nineteen former students, described violations of the regulations related to the ATB test. These accounts came from individuals associated with all eleven of FCC's Title IV-eligible campuses, and from dates ranging from 2008 through November 2022. At least twenty-nine of these witnesses were associated with FCC in 2022.

Significantly, the testimonial evidence is corroborated by email evidence (see above), demonstrating that senior leaders at IEC and FCC knew about, encouraged, and even participated in ATB misconduct. This active involvement touched all campuses. The substantial evidence undermines any claims that the misconduct was isolated.

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<sup>127</sup> Letter from Christopher Madaio, Dir., Investigations Group, to Fardad Fateri, President and Chief Executive Officer, IEC. (Oct. 20, 2022).

<sup>128</sup> See FCC Nov. 2022 Letter.

<sup>129</sup> *Id.* at 20.

<sup>130</sup> See, e.g. Email from Amelia Nishida, Dir. Of Fin. Aid Operations, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias Inc. (Feb. 15, 2022); see also email dated February 8, 2022; February 22, 2022.

<sup>131</sup> FCC Nov. 2022 Letter, at 27.

<sup>132</sup> See *supra* nn. 87-94.

<sup>133</sup> FCC Nov. 2022 Letter, at 19.

FCC also points to its compliance department and system of internal controls “to identify any regulatory issues” and take necessary corrective action. FCC noted that “the Compliance Department conducts independent weekly and biannual audits of each of FCC campuses to assess the various areas of internal and external compliance.”<sup>134</sup>

Significantly, evidence demonstrates that FCC knew or should have known about non-compliance in ATB test administration as of at least May 2020. In May 2020, the Republic Report published an article titled “*Ex-Employees: Florida Career College Enrolled ‘Anyone With a Pulse,’*”<sup>135</sup> In addition to attendance fraud and misrepresentations, the article discussed the ATB process, which was described by former employees as “widely compromised” and “corrupt as hell,” including allegations about school officials coaching students and school management imposing quotas for test passage rates.<sup>136</sup> FCC was alerted to this article by its accreditor on May 12, 2020, when COE sent FCC a letter of Notice of Apparent Deficiency (“Notice”) based in part on “two news report articles from Republic Report.”<sup>137</sup> The Notice also cited a lawsuit filed in the United States District Court Southern District of Florida, the record of which included an affidavit from a former campus President attaching emails (some of which were sent to IEC officials in 2019) alleging, among other things, ATB test interference by an FCC official.<sup>138</sup>

Following receipt of the letter in which FCC pointed to its compliance department’s weekly and biannual audits, the Department required FCC to produce “All documents or reports reflecting ‘the weekly and biannual audits of each of FCC campuses to assess the various areas of internal and external compliance’ from January 1, 2017 to the present.” The audits produced by FCC reflect no meaningful oversight of the administration of the ATB testing program by its compliance team. In addition, the Department interviewed four former compliance officers, all of whom reported that their job primarily consisted of verifying job placements, with little if any focus on ATB testing.<sup>139</sup> FCC was on notice of ATB testing violations, including by its own employees, and yet appears to have conducted no meaningful oversight of the program.

Furthermore, evidence gathered during the Department’s investigation showed that the CFO of IEC objected in an email message when an ATB proctor tried to complain through FCC’s internal complaint system that she was pressured to pass students.<sup>140</sup> This evidence undermines FCC’s statement on page 49 of its November 7, 2022 letter questioning a proctor’s account of misconduct, where FCC stated that “any non-compliance is a violation of FCC [policy] and is required to be reported to corporate so the necessary action can be taken.”<sup>141</sup> The CFO’s email

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<sup>134</sup> FCC Nov. 2022 Letter, at 3-4, 27.

<sup>135</sup> Republic Report, David Halperin, May 6, 2020.

<sup>136</sup> *Id.* at 4.

<sup>137</sup> Letter from Gary Puckett, Executive Dir., Comm’n of COE, to Michael Cole Chief Adm’r, Fla. Career Coll. (349400) regarding Notification of Apparent Deficiency (May 12, 2020).

<sup>138</sup> *Id.*

<sup>139</sup> In fact, for the job placements, Former Employees 50, 51, 52, and 53, all compliance officers, reported that placements were doctored, or they were often overruled when they questioned the validity of a placement.

<sup>140</sup> Email from Sanjay Sardana, Chief Fin. Officer, Int’l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (Aug. 19, 2020).

<sup>141</sup> FCC Nov. 2022 Letter, at 49.

suggests that IEC leadership is not, in fact, willing to listen to formal accounts of misconduct from proctors.

FCC claims that ITAs are allowed to coach and interact with students during the practice portion of the exam, and that some of the alleged wrongdoing may have occurred during practice tests.<sup>142</sup> However, the regulations require FCC to follow Wonderlic's policies,<sup>143</sup> and those policies do not permit proctors to hold test preparation classes.<sup>144</sup> Wonderlic defines "failure to maintain the integrity of the testing process" as including "conducting test preparation classes on how to take the WBST" and "providing test takers with coaching in addition to the instructions provided in the ITA proctor's guide." "It is unlawful for any school or test administrator to develop, publish, write or teach any study materials designed specifically to instruct or coach ATB applicants or school personnel on how to answer WBST questions."<sup>145</sup> In addition, several student statements obtained by the Department confirmed the help that they obtained was not on a practice test. For example, Student 57 attended the Pembroke Pines campus from 2021 to 2022 and states, "I was allowed to use a calculator on the actual exam it was not a practice test."

FCC claims that the national passing rate of the ATB exam is over 60%, and its pass rate is within the national average, making widespread cheating implausible.<sup>146</sup> However, as noted, IEC schools are responsible for the vast majority (approximately 75%) of all Title IV students enrolled via ATB tests in the most recent award year for which data is available (2021-2022). As a result, FCC's pass rate would dramatically impact the national average. Furthermore, evidence shows that IEC schools managed pass rates to avoid suspiciously high numbers. *See* pages 11-14 *supra*.

FCC also points to preliminary findings by the Inspector General stating it found no testing improprieties<sup>147</sup> at UEI, FCC's sister school. FCC also claims that the Department instructed the OIG not to finalize its report. This is not correct; FSA does not instruct the OIG's office, and no such instruction was given in this case. The OIG confirmed for the Department that its audit does not pertain to FCC; it pertains to UEI (a different IEC-owned school). Furthermore, the OIG has not yet released a final report regarding UEI's ATB program.

FCC also cites to clean audits from state and accreditation visits and states this excludes the possibility of widespread non-compliance. FCC fails to mention that it has been on "Notification of Apparent Deficiency" status with its accreditor, COE, since May 2020.<sup>148</sup> COE has

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<sup>142</sup> FCC Nov. 2022 Letter, at 48. ("It is not a violation of Title IV regulations for an ITA or FCC to assist in preparing students for an ATB test.")

<sup>143</sup> 34 C.F.R. § 668.151(d) (requiring that test administrators must be certified by the ATB test publisher and must administer the test in accordance with the publisher's testing procedures).

<sup>144</sup> WONDERLIC, INC., Wonderlic Basic Skills Test (WBST) Ability-to-Benefit Test Administrator's Examination, at 10.

<sup>145</sup> *Id.* at 9-10; 11.

<sup>146</sup> FCC Nov. 2022 Letter, at 48.

<sup>147</sup> FCC Nov. 2022 Letter, at 27.

<sup>148</sup> Letter from Gary Puckett, Executive Dir., Comm'n of COE, to Michael Cole Chief Adm'r, Fla. Career Coll. (349400) regarding Notification of Apparent Deficiency (May 12, 2020).



provided this explanation for placing FCC on this status: “Non-compliance with conditions, standards, and/or criteria of the Commission.”

Some FCC employees interviewed by the Department denied the wrongdoing outlined in this memo. For example, the Department interviewed approximately 26 current FCC employees at various FCC campuses during our site visits in February and March 2022, including six registrars, one customer service coordinator, two in career services, six in financial aid, one student advisor, six in admissions, three in administration/operations, one in compliance, and one Director of Education. Most of these individuals provided no information or had no knowledge about the ATB test administration process. Approximately five of them described ATB testing in some way, including one registrar who said there is a separation of duties between admissions and ATB proctors, and three admissions representatives who said they don't or are not allowed to talk to the proctors. On ATB misconduct, the information provided by current employees was not detailed. To the extent it undercuts claims of misconduct or fraud, the weight of the evidence provided by other current and former proctors, employees, and students vastly outweighs the denials of the few individuals who (at least at the time of the interview) were currently working at FCC and may have an incentive to deny, hide, or claim unawareness, or may be actually unaware of, any misconduct or violations. Furthermore, as noted above, there is evidence that FCC employees were coached on how to respond to Department questions.

The Department also interviewed eight current proctors at the FCC campuses in February and March 2022. Six of them stated that they were not aware of students cheating or that they did not improperly assist students during the exam (although one of them said the Director of Admissions commonly called him directly on his cell phone (Proctor 10)). That said, not all of the information they provided was beneficial to FCC. One of these six proctors reported that she feels a lot of pressure when she fails a tester and believes she was fired (but later re-hired and fired again) for failing testers (Proctor 9). Another of those six proctors said that he was trained by Proctor 21, who is referenced above as someone who trained proctors on how to commit misconduct. The other two of the eight proctors that the Investigations Group interviewed at the campus freely described helping students with test answers (Proctor 13 and Proctor 11).

Nevertheless, and regardless of any exculpatory evidence provided by these proctors, the weight of the ATB evidence from those who admitted to misconduct or explained how they had knowledge of it outweighs the denials by some of the current proctors. Moreover, it is not surprising that some proctors would deny committing misconduct, especially while undergoing interviews at the school, as there would be a desire to protect themselves from liability or retribution from FCC or Trujillo-Arias.

In addition, some students interviewed by the Department reported positive interactions with the instructors or reported favorable opinions about their program in general. But these reports do not undermine the substantial evidence of widespread and pervasive violations. With regard to ATB testing, some students might not be aware of misconduct related to their test administration, if, for example, their answers were changed. Student 1 said that he was surprised when he was

told he passed the ATB test, which he described as miraculous because he spoke Spanish and knew he needed to “practice [his] English.”

In sum, FCC’s defenses or potential counterarguments do not undercut the factual findings outlined in this letter, or the conclusion that FCC violated the regulations applicable to Ability-to-Benefit tests; failed to act as a fiduciary; and failed to demonstrate administrative capability.

### **FLORIDA CAREER COLLEGE FAILED TO ACT IN THE NATURE OF A FIDUCIARY IN ITS ADMINISTRATION OF TITLE IV**

Pursuant to 34 C.F.R. § 668.82(a), (b), an institution “acts in the nature of a fiduciary in the administration of the Title IV, HEA programs,” such that to participate the institution “must at all times act with the competency and integrity required of a fiduciary.” “A fiduciary has ‘an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading’ the beneficiary of the fiduciary duty.”<sup>149</sup> Black’s Law Dictionary defines “fiduciary duty” as “[a] duty of utmost good faith, trust, confidence, and candor owed by a fiduciary . . . to the beneficiary. . . .”<sup>150</sup> The findings of the Department’s investigation establish that FCC has not adhered to this standard.

Substantial evidence gathered by the Department demonstrated that FCC leadership has engaged in longstanding and systematic manipulation of the administration ATB testing to establish Title IV eligibility of students. They did so through close monitoring and management of test proctors to ensure that pass rates of prospective students in FCC’s ECPP would maximize ATB enrollments and hence increased Title IV funding for FCC. This focus on enrollments at all costs demonstrates a lack of integrity that cannot be squared with the expectations of a fiduciary.

These violations caused significant harm, both for students and the Title IV programs. ATB testing is meant to enhance educational opportunities for prospective students who seek to better their prospects in spite of not having a high school diploma. As noted in Wonderlic’s ITA manual, “[i]n ATB testing, it is equally important to identify applicants who do not have the ability to benefit from academic training as it is to identify those who do. Applicants who fail to demonstrate their ability to benefit when tested are more likely to fail or drop out of their academic programs and incur large student loan payments that they may not be able to afford. As a result, these applicants are denied future opportunities to receive financial assistance. Therefore, to knowingly ignore or alter Wonderlic ATB testing procedures is against the best interests of applicants, and additionally, it is against the law.”<sup>151</sup>

FCC ignored these principles at scale. According to the Department’s data, FCC enrolled nearly half of its student body through the ECPP. In the last award year for which data is available, FCC and a second institution owned by IEC enrolled 74.4% of students across the nation who

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<sup>149</sup> See *Sec. & Exch. Comm’n v. Cap. Gains Res. Bureau, Inc.*, 375 U.S. 180, 194 (1963) (emphasis added).

<sup>150</sup> Black’s Law Dictionary (11th ed. 2019).

<sup>151</sup> WONDERLIC, INC., Wonderlic Basic Skills Test (WBST) Ability-to-Benefit Test Administrator’s Examination, at 6.

obtained Title IV funds based on passage of an ATB exam. It did so while demonstrating widespread and pervasive disregard for these students by compromising the integrity of the testing process and focusing on enrollments at all costs. Actions that compromised the testing process were taken, encouraged, and tolerated at the highest levels of FCC and its parent company.

Efforts to maximize enrollment without regard for a student's ability to benefit from the educational programs offered by FCC imposed serious harm on many of the students FCC claims it is trying to help. More than half of FCC's ATB students dropped out of their educational program without earning a credential. Most of those students were nevertheless left with loan balances and reduced Pell eligibility for the award years at issue. These students were, to put it plainly, not able to benefit from FCC's educational programs, and many were left worse off for having tried. FCC, on the other hand, retained Title IV funds disbursed for many students even after those students dropped out.

In at least one prior administrative case, the Department has found, and the Department's Office of Hearings and Appeals ("OHA") has affirmed, a fiduciary duty violation and termination from the Title IV program based on violations related to ATB tests. In a 1993 appeal of a termination action, a Departmental ALJ noted that "Once Yorktowne had secured an expression of interest from prospective students, it engaged in a practice of altering admission test scores to ensure that the revenue from the students would be realized. This egregious misconduct alone mandates the school's termination, even if there was perfect compliance with all other regulatory requirements."<sup>152</sup> Although in that case, the institution was administering ATB tests directly, not through a third party, the evidence in this case demonstrates that Trujillo-Arias' independence from FCC was largely a fiction, and FCC and IEC employees and leadership knew about and even orchestrated the misconduct that compromised test results and violated the regulations governing proctor independence.

The ATB misconduct itself provides ample basis to conclude that FCC did not meet its duties as a fiduciary. That conclusion is further strengthened by the additional evidence gathered as part of the Department's investigation, including evidence suggesting that IEC and FCC leaders attempted to interfere in the Department's investigation.

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<sup>152</sup> *In the Matter of Yorktowne Business Institute*, U.S. Dep't of Educ., No. 92-33-ST, 1993 WL 13957186 (Mar. 10, 1993) (emphasis added), *aff'd In the Matter of Yorktowne Business Institute*, U.S. Dep't of Educ., Dkt. No. 1992-33-ST, 1993 WL 13152156 (July 1, 1993). Cited in: *In the Matter of Pro. Career Training Ins.*, U.S. Dep't of Educ. No. 19-55-ST, 2020 WL 5250443 (July 14, 2020), *aff'd In the Matter of Pro. Career Training Ins.*, U.S. Dep't of Educ., No. 19-55-ST, 2021 WL 9493280 (Dec. 3, 2021); *In the Matter of N.C. Acad. of Cosmetic Art*, U.S. Dep't of Educ., No. 98-123-EA, No. 98-129-ST, 2000 WL 34531937 (Dec. 12, 2000); *In the Matter of Huston-Tillotson Coll.*, U.S. Dep't of Educ., No. 99-2-SP, 2000 WL 36732234 (Feb. 10, 2000); *In the Matter of Jon Louis Schs. of Beauty*, U.S. Dep't of Educ., No. 96-108-ST, No. 97-19-ST, 1998 WL 736219 (Apr. 3, 1998); *In the Matter of Nat'l Computer Coll.*, U.S. Dep't of Educ., No. 95-156-ST, 1996 WL 1056664 (Oct. 10, 1997).

The evidence gathered by the Department on this point also contradicts FCC's claims in its November 7, 2022 letter to the Department.<sup>153</sup> This lack of candor with the Department is an additional factor undermining any claim by FCC that it has acted as a fiduciary.

### **FCC FAILED TO EXERCISE ADEQUATE STANDARDS OF ADMINISTRATIVE CAPABILITY**

“To begin and to *continue* to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established” by the Department.<sup>154</sup> 34 C.F.R. § 668.16 (*emphasis added*). Pursuant to 34 C.F.R. § 668.16(n), an institution meets the standards of administrative capability if the institution: (1) administers the Title IV, HEA programs in accordance with all statutory and regulatory provisions, § 668.16(a); (2) utilizes “adequate checks and balances in its system of internal controls,” § 668.16(c)(1); and (3) “[d]oes not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.” 34 C.F.R. § 668.16(n).

FCC's failure to adhere to the statutory and regulatory provisions applicable to the administration of ATB testing requirements itself establishes that FCC failed to meet prong (1) of the administrative capability standard outlined above.

FCC's failure to monitor, investigate and correct problems in the ATB program, in addition to its willful or negligent failure to identify and/or meaningfully address the other compliance issues reported to the Department by many other witnesses, also demonstrates that FCC failed to meet prongs (2) and (3) of the standard.

FCC knew or should have known about potential problems in its administration of ATB testing at least as of May 2020. And yet, its internal audits and compliance monitoring appear not to have touched on ATB testing in any meaningful way (see page 31, *supra*). Rather, as noted above, when a proctor complained directly to FCC about pressure to pass students, rather than investigate the complaint, the CFO of IEC chided Trujillo-Arias and stated “She is not an employee or student, why is she submitting compliance complaints? . . . I don't want to see this from a proctor again.”<sup>155</sup> Finally, three former FCC compliance professionals reported that their work (confirming job placements) was overruled in order to inflate job placement statistics. The failure to substantively and materially address known potential compliance issues, and evidence

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<sup>153</sup> Compare FCC Nov. 2022 Letter, at 92 (“All admissions representatives are evaluated on 20 characteristics, none of which are based on the number of enrollments or starts”), with Email from Melissa Donatone, Dir. of Admissions, Fla. Career Coll., to Former Employee 15 (Feb. 28, 2018) (email to admissions representative “you have a target of 12-13 new starts every month . . . and you are grossly underperforming for the month. . . All admissions representatives are expected to see 3 students enrolling per day and enrolling at least 1 student per day at a 64% start rate or higher. . . at this point you will be receiving a poor performance evaluation.”).

<sup>154</sup> 34 C.F.R. § 668.16 (*emphasis added*).

<sup>155</sup> Email from Sanjay Sardana, Chief Fin. Officer, Int'l Educ. Corp., to Art Trujillo, President, Doreen Tolentino, Admin. Assistant, Trujillo-Arias, Inc. (Aug. 19, 2020).

of interference with compliance work, undercut FCC's claim that it has adequate checks and balances in its system of internal controls.<sup>156</sup>

**THE FACTUAL FINDINGS BY THE DEPARTMENT EVIDENCE REGULATORY  
VIOLATIONS SUPPORTING DENIAL OF FCC'S APPLICATION FOR  
RECERTIFICATION**

As a result of the factual findings and regulatory violations outlined above, the Department denies FCC's application for recertification to participate in the Title IV, HEA programs.

However, given the short-term nature of most of FCC's educational programs, the Department has determined that these circumstances provide a reasonable basis to defer the effective date of the denial to September 30, 2023, subject to the conditions outlined in the separate letter also issued on this date ("Participation Conditions Letter"). Providing this extended period will allow FCC to engage in an orderly wind down of its participation in the Title IV programs and will allow some students who are currently enrolled (and who have begun attendance at FCC) to affirmatively decide to complete their program of study, should they choose to do so.

If FCC wishes to continue participation in the Title IV programs through September 30, 2023, under the terms set forth in the Participation Conditions Letter, please sign and return the Participation Conditions Letter to Michael Frola within five (5) business days of the date of this recertification denial notice letter. If FCC fails to return the signed Participation Conditions Letter to the Department by that deadline, FCC's participation will end on April 30, 2023, the last day of the month in which this recertification application denial notice is issued.

Whether or not FCC elects to continue its participation under the terms of the Participation Conditions Letter, FCC may seek reconsideration of the Department's decision to deny recertification. Should FCC have factual evidence to dispute the Department's findings, and demonstrate their inaccuracy, FCC may submit that evidence via overnight mail to me at the following address:

Administrative Actions and Appeals Service Group  
U.S. Department of Education  
Federal Student Aid  
830 First Street, NE (UCP-3, Room 92G4)  
Washington, DC 20002-8019

If FCC chooses to submit material for the Department's consideration, it must be received within two weeks of the date of this letter. Any such material will be reviewed by the Department, and FCC will be notified whether the recertification denial will be modified, rescinded, or left in place.

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<sup>156</sup> 34 C.F.R. §668.16(c)(1).

If FCC elects to continue its participation under the terms of the Participation Conditions Letter, it must comply with the terms and conditions of the Participation Conditions Letter, unless the Department withdraws the denial of recertification. Further, if FCC fails to comply with any condition in that letter, or if any circumstance arises that causes the Department to determine that it is no longer reasonable to defer the effective date of the recertification denial, the Department will notify FCC that the Department intends to rescind the deferred effective date and FCC's participation will end on the last day of the month in which the notice of non-compliance is sent.

If the denial of recertification is left in place, the Multi-Regional School Participation Division will then contact you concerning the proper procedures for closing out FCC's Title IV, HEA program accounts. In the event that FCC submits an application to participate in the Title IV, HEA 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 [kerry.obrien@ed.gov](mailto:kerry.obrien@ed.gov). If you have any questions about the Participation Conditions Letter, please contact Michael Frola at [michael.frola@ed.gov](mailto:michael.frola@ed.gov).

Sincerely,



Susan D. Crim  
Director  
Administrative Actions and Appeals Service Group

Enclosure: Table of Witnesses

cc: Gary Puckett, Executive Director, Council on Occupational Education, via [gary.puckett@council.org](mailto:gary.puckett@council.org)  
Executive Director, Florida Commission for Independent Education, via [susan.hood@fldoe.org](mailto:susan.hood@fldoe.org)  
Milan George, Director, Texas Workforce Commission – Career Schools and Colleges, via [career.schools@twc.texas.gov](mailto:career.schools@twc.texas.gov)  
Tina Marberry, Director of Human Resources, Texas Workforce Commission - Veterans Education, via [tina.marberry@tvc.texas.gov](mailto:tina.marberry@tvc.texas.gov)  
Harrison Keller, Commissioner of Higher Education, Texas Higher Education Coordinating Board, via [commissioner@highered.texas.gov](mailto:commissioner@highered.texas.gov)  
Silvia Anguiano, Executive Assistant, Texas Higher Education Coordinating Board, via [silvia.anguiano@highered.texas.gov](mailto:silvia.anguiano@highered.texas.gov)  
Department of Defense, via [osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil](mailto:osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil)  
Department of Veteran Affairs, via [INCOMING.VBAVACO@va.gov](mailto:INCOMING.VBAVACO@va.gov)  
Consumer Financial Protection Bureau, via [CFPB\\_ENF\\_Students@cfpb.gov](mailto:CFPB_ENF_Students@cfpb.gov)