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January 26, 2024

Mr. Fardad Fateri  
Chief Executive Officer  
International Education Corporation  
16485 Laguna Canyon Rd., Ste. 300  
Irvine, CA 92618

Re: Florida Career College  
OPE ID: 02305800  
Affirmation of Denial of Recertification Application to Participate in the Federal Student  
Financial Assistance Programs

Dear Mr. Fateri:

The U.S. Department of Education (“Department”) advised Florida Career College (“FCC”) on April 11, 2023 that its application for recertification 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), had been denied. As discussed in the letter denying FCC’s application (the “Denial Letter”), the Department found 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 (“ATB”) tests to substantiate the eligibility of its students to receive Title IV funding.

Your letter requesting that the Department reconsider and rescind the Denial decision (the “Reconsideration Request”) was timely submitted on May 24, 2023. As the Reconsideration Official, I have independently reviewed the Reconsideration Request, along with the evidence provided by the Investigations Group and FCC. My conclusion, after reviewing the evidence, is that it does not warrant a reversal of the Department’s decision to deny FCC’s application and, the evidence further supports the Department’s conclusions in the Denial Letter.

When I prepared to issue this written decision in November, I was informed that your counsel had been notified of the decision to affirm the denial of recertification application and had requested that the Department refrain from issuing the written decision pending settlement negotiations. While I am advised that those negotiations are ongoing, the Department has determined that given the pending effective date of the denial of recertification as agreed upon in the Agreement for Limited Continuation of Program Participation (“Limited PPA”) executed by FCC on or about April 18, 2023, it is appropriate to issue the written decision at this time.

Accordingly, the decision to deny FCC’s recertification application is affirmed and is now final. As set forth in the Limited PPA, FCC will be ineligible to participate in the Title IV programs as of January 31, 2024.

### **Summary of Denial of Recertification Application and FCC’s Request for Reconsideration**

As discussed in the Denial Letter, the Department found 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 there is substantial evidence that those violations were known and even encouraged by some senior leaders at FCC and the parent company that owns and operates FCC, IEC Corporation (“IEC”).<sup>1</sup> The Department also concluded that FCC’s conduct constituted a breach of its fiduciary duty to the Department in violation of 34 C.F.R. § 668.82 and demonstrated that FCC is “not capable of adequately administering the Title IV, HEA program” in violation of 34 C.F.R. § 668.16.

In the Denial Letter, the Department notes that its investigation “uncovered substantial evidence establishing that the ATB tests at FCC were not ‘independently administered’ or ‘properly administered,’<sup>2</sup> and that FCC is responsible for those violations because FCC and its employees ‘compromised the testing process.’”<sup>3</sup> The Department also found that FCC and IEC leadership imposed extreme pressure on FCC staff to meet enrollment and start metrics. Additionally, the Department found that FCC, in turn, pressured ATB proctors to pass prospective students.

The Denial Letter also cited evidence related to falsification of attendance records, misrepresentations, and interference with the Department’s investigation. There were no Department findings relating to this evidence. Notably, however, rebuttal evidence provided by the Investigations Group and discussed below suggests that the apparent interference by FCC may have continued after the issuance of the Denial Letter.

FCC, in its Reconsideration Request, asserts that the Department’s evidence is refuted by FCC evidence and therefore should not be believed. FCC maintains that the Department’s findings are inconsistent with FCC’s culture and values and that FCC leadership did not know about the ATB violations. Additionally, the Reconsideration Request includes a number of arguments relating to the evidence, including that the Department’s evidence is largely refuted by evidence produced by FCC, that there were no widespread ATB violations, and that the violations, if any, were isolated incidents. FCC further argues that any clear cases of misconduct described by the

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<sup>1</sup> Except where otherwise indicated, FCC and the leaders of IEC who FCC managers reported to are collectively referred to herein as “FCC.” 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> “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).

<sup>3</sup> 34 C.F.R. § 668.154.

Department are the responsibility of the proctors and Wonderlic and that FCC has no responsibility for the proctors' ATB violations. Finally, FCC argues that it has not received due process and is entitled to a hearing pursuant to Subpart G of Title 34, Part 668 ("Subpart G").

Notably, FCC in both its November 7, 2022 letter (the "FCC November letter") and the Reconsideration Request is disturbingly unconcerned about the many serious charges of ATB misconduct at FCC as described by its students, employees, and proctors. FCC disclaims any responsibility, attempts to shift blame to others, and claims that the evidence cited in the Denial Letter in fact establishes its compliance. As discussed below, this further demonstrates FCC's failure to meet a fiduciary standard of care and supports the Department's decision to deny the application for recertification.

### **Applicable Regulations and Some Basic Facts Relating to the ATB Testing Process at FCC**

FCC and the Department generally agree on the applicable regulations and some basic facts relating to the ATB testing process at FCC. As FCC notes, the ATB – ability to benefit – test measures adult language and math skills that are generally learned in high school. As FCC's training materials note:

If a prospective student doesn't meet institutional eligibility requirements (i.e., HS Grad, GED or equivalent, Homeschool), the student must seek admission into an ATB eligible program and must take and pass a two-part, independently proctored and administered, nationally standardized test recognized and approved by the U.S. Department of Education that measures basic skills in reading and arithmetic prior to enrollment. These eligibility requirements are in place to ensure students have the ability to benefit from college level work if they enroll in an Eligible Career Pathway Program (ECP).

For the past several years, a substantial percentage of the students that FCC enrolled did not possess a high school diploma, GED, or equivalent that would have made them eligible for Title IV funding. However, FCC certified to the Department that thousands of these students passed ATB tests that demonstrated their ability to succeed at the postsecondary level. Based on representations by FCC that each of these individuals achieved passing scores on a Wonderlic ATB test, the Department disbursed tens of millions in taxpayer dollars to FCC over the last several years.

FCC and the Department appear to be in agreement on the regulations applicable to ATB testing, including 34 C.F.R. §§ 668.142 and 668.151, which will not be repeated in full here but which establish criteria to ensure that ATB tests are conducted impartially, without influence or interference from the school certifying the enrollment. *See* Denial Letter at pp. 5-6. FCC acknowledges that an institution is not permitted to rely on an ATB test as a basis to certify an individual's eligibility for Title IV funding if the institution compromises test security or testing procedures or interferes with the test administrator's independence or test administration. *See* 34

C.F.R. § 668.151(c). *See also* the regulations and Wonderlic rules discussed in the Denial Letter at pp. 5-6, including that tests must be administered by an Independent Test Administrator ("ITA" or "proctor"), who must be certified and cannot be married to a present or former employee of the school.

FCC notes that its administration of ATB testing evolved over time. Until 2018, FCC directly contracted with proctors who were certified to administer the Wonderlic ATB test. In 2018, FCC contracted with a third-party test administration company, Trujillo-Arias, Inc. ("Trujillo"), owned by Art Trujillo, to provide ITAs.<sup>4</sup> Starting in 2019, IEC "centralized" ATB testing throughout IEC schools, including FCC, and in 2020, IEC contracted with Trujillo on FCC's behalf. FCC states that Trujillo was responsible for employing the proctors, scheduling them, and ensuring that they were properly certified and trained.

### **FCC's Fiduciary Duty to the Department**

FCC's conduct must be evaluated through the lens of its fiduciary duty to the Department. By entering into a PPA with the Department, FCC and its officers accepted the responsibility to act as fiduciaries in the administration of the Title IV programs. 34 C.F.R. § 668.82(a).

As fiduciaries, the institution and officers are subject to the highest standard of care and diligence in administering the Title IV programs and in accounting to the Secretary for the funds received. 34 C.F.R. § 668.82(a), (b). "Fiduciary" is defined as "[a] person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking." Black's Law Dictionary 431 (6th ed. 1991). As to matters within the scope of a fiduciary duty, the person having the fiduciary duty must not benefit at the expense of the beneficiary to the duty. *In re United Education Institute*, Docket No. 96-9-SA U.S. Dep't of Education (Aug. 16, 1996), *citing* Restatement 3d Trusts, S.170, p. 5.

As it relates to the administration of the ATB testing process, FCC had a fiduciary duty to ensure that only eligible students received Title IV funds. *See In re Fortis College*, Docket No. 12-55-SP, U.S. Dep't of Education (July 30, 2013). As noted in a matter involving a school's breach of fiduciary duty by failing to ensure that only eligible students were receiving Title IV funds, the Department's Office of Hearing and Appeals stated, "[it] is clear that the antithesis of acting as a fiduciary is 'putting your head in the sand' and ignoring clear reasons for concern." *Id.*

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<sup>4</sup> It is not clear from the evidence as to how IEC selected Trujillo or whether IEC performed any due diligence to determine whether Trujillo and his employees would proctor exams and perform their work consistent with FCC's fiduciary duty to the Department. However, based on data provided by Wonderlic, Art Trujillo proctored hundreds of ATB tests for UEI (another institution owned by IEC) and was decertified by Wonderlic in November of 2017. IEC either knew or should have known that Trujillo had been decertified, which also calls into question IEC's decision to hire Art Trujillo and his company to administer all of its ATB testing, including at all FCC campuses beginning in or about 2018.

**I. Substantial Evidence Supports the Department’s Conclusions that FCC Breached its Fiduciary Duty, Failed to Demonstrate Administrative Capability, and Violated Regulations Relating to Ability to Benefit**

That there were widespread violations of the regulations relating to ATB testing is clear from the evidence. As discussed in the Denial Letter and below, numerous FCC employees describe, and even admit to, conduct that violated the regulations and would render a tester’s score invalid and, therefore, not a basis for Title IV eligibility. The proctors who provided information and testimony to the Department as discussed or referenced in the Denial Letter administered ATB tests at numerous FCC’s campuses and collectively account for hundreds, if not thousands, of ATB tests at FCC between 2016 and 2023. The evidence provided to the Department by the proctors is consistent with and supported by a number of students who described compromised testing. Additionally, there is evidence from a significant number of former FCC employees who describe proctors assisting testers, allowing the use of calculators/phones, making changes to answers, and even taking the test or allowing FCC staff to take the test for a prospective student.

FCC concedes that much of the conduct described in the Department’s letter of October 20, 2022 (the “Department’s October Letter”) and the Denial Letter, if true, constituted “clear violations.”<sup>5</sup> FCC’s arguments that it was not responsible for the ATB violations generally fall into four categories: 1) FCC management was not aware of the violations and did not interfere with the testing or compromise the testing process; 2) the Department’s evidence should not be believed because FCC evidence refutes it and establishes that the ATB violations were limited to isolated incidents that do not justify denial of its recertification application; 3) the Department did not establish harm, and 4) Wonderlic and the proctors, not FCC, are responsible. These arguments are not persuasive.

**A. FCC Knew about the ATB Violations and Compromised the Test Process**

In breach of its fiduciary duty to ensure that only eligible students received Title IV funds, FCC certified to the Department the eligibility of a large number of students whose ATB testing was compromised. FCC (including some top leaders and executives within both FCC and IEC)<sup>6</sup>

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<sup>5</sup> In roughly twenty or more instances in the FCC November letter, FCC discusses conduct described in the Department’s October Letter and notes that such conduct would be a “clear case of misconduct” by the proctor and a violation or Wonderlic policies or uses similar language acknowledging clear violations by the proctors, if true. As with the Reconsideration Request, however, FCC attempts to shift the blame to Wonderlic and the proctors and takes no responsibility for violations relating to ATB testing. As discussed in Section I(D), FCC’s position that it has no responsibility is unavailing.

<sup>6</sup> As described below, the conduct at issue involved or was witnessed by some of the top leaders at FCC campuses, including campus presidents, executive directors, and directors of admissions. *See* FCC November letter at p. 4 (each campus is led by a campus president and a leadership team that includes the director of admissions and the director of education). The directors also report to “corporate” counterparts at IEC. The campus president reports to a regional vice president who reports to senior leadership at IEC. FCC also discusses that starting in 2019, the IEC Chief Financial Officer, Sanjay Sardana, and the IEC Director of Financial Aid Operations, Amelia Nishida,

knew of significant problems with the administration of the ATB testing process, including allegations of proctor and FCC staff misconduct, compromised tests, interference in the test administration, and other violations of the regulations applicable to ATB testing (“ATB violations”). The violations were not committed by Trujillo proctors alone; FCC management and staff interfered with the purportedly independent administration of the ATB testing process. Moreover, FCC/IEC leadership was complicit in the interference and the compromising of tests, both through the culture and values of the organization and the conduct of leadership itself.

**i. FCC and IEC senior leadership knew of significant problems with the administration of the ATB testing process, including interference by FCC management and staff**

FCC claims that leadership did not know about or encourage alleged testing violations and that it was “surprised” by the allegations regarding ATB violations in the Denial Letter, but it should not have been. There were multiple occasions going back to at least 2019 that would have alerted FCC to potential regulatory violations relating to the ATB program:

- February to May 2019:  
Christopher Lynn, who was President and the most senior leader at FCC’s Orlando campus, sounded the alarm bells in February and into May of 2019, starting with his resignation email, followed by a detailed email to several executives at IEC, including the following FCC and IEC leaders:
  - Fardad Fateri, President and Chief Executive Officer of IEC
  - Sanjay Sardana, Chief Financial Officer of IEC
  - Shoukry Tiab, Chief Operating Officer of IEC
  - Sherri McKaig, Director of Human Resources of IEC
  - Aleco Babikian, Campus President of FCC’s Houston North campus

In those emails, Lynn described a number of concerning compliance issues at the campus, including that the then Director of Admissions<sup>7</sup> had “asked proctors to manipulate ATB test scores to get more students passed.”<sup>8</sup> Lynn also noted the

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centralized oversight and training relating to ATB at all IEC schools including FCC and became the single point of contact for Trujillo and for the campuses in connection with ATB test administration processes.

<sup>7</sup> Although the Director of Admissions reported to the President, he *also* reported “to a regional or corporate counterpart,” evidently an IEC executive, which appears to explain why the President was escalating the misconduct rather than terminating or disciplining the Director of Admissions himself. *See* FCC November letter at pp. 3-4 (“while each of the Directors at the campus report to the Campus President, they also report to a regional or corporate counterpart”). The Director of Admissions referenced in the Lynn emails is also discussed separately by multiple other Department’s witnesses in connection with ATB violations. *See* fn. 39.

<sup>8</sup> In further describing the issue, Lynn referenced four students who had failed their exams that week “who either can’t read at all or very little.” When Lynn looked into their ATB scores, he noted that each had failed their first ATB exam but when retested by a different proctor, passed in the top quartile. As discussed in Section I(a)(ii),

following: “[The Director of Admissions] has a husband and wife ATB proctor team here that he knows and at one point they were removed because this was brought up before and found to be true. When the dust settled he brought them back and has them proctor still.”

- May 2020:  
An article entitled, *Ex-Employees: Florida Career College Enrolled “Anyone With a Pulse,”* was published online on Republic Report. The article quoted former employees who stated that the ATB testing process at FCC “is highly compromised” and “corrupt as hell.”<sup>9</sup>
- May 2020:  
Even if FCC did not see the Republic Report article when published, it surely learned about it when its accrediting agency placed FCC on “Notification of Apparent Deficiency,” citing the Republic Report article, as well as another article and *Britt v. IEC Corporation*, a lawsuit that had recently been filed against FCC.<sup>10</sup>
- May 2020:  
The same month, the new Executive Director in Orlando, Deb Ferrari, was alarmed by the suspiciously high ATB scores at her campus and emailed Trujillo, with a follow-up email in June that escalated the matter to IEC CFO Sardana, IEC COO Shoukry, and IEC Director of Financial Aid Operations (DFAO) Nishida. The executive director expressed concern that the ATB pass rates by two proctors were “consistently the highest in the company” and the proctors were leaving the testing room while students were testing. With respect to one of the proctors, she stated, “I do not believe her scores are accurate. There is no way 95% of these students can consistently pass every month.”<sup>11</sup>
- July 2020:  
Art Trujillo emailed the CFO of IEC regarding test interference by the Director of Admissions who was pressuring Trujillo to rehire a particular proctor for the Orlando campus: “I found out that [the DOA] had already made an agreement with her to start

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FCC’s retesting policy is just one example of FCC’s prioritizing passing ATB tests and enrollments over its fiduciary duty to ensure that only students who demonstrated an ability to benefit from college level work received Title IV funds.

<sup>9</sup> David Halperin, *Ex-Employees: Florida Career College Enrolled “Anyone With a Pulse,”* Republic Report (May 6, 2020), <https://www.republicreport.org/2020/ex-employees-florida-career-college-enrolled-anyone-with-a-pulse/>

<sup>10</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>11</sup> See Email from Deb Ferrari, Executive Director, FCC Orlando Campus, to Sanjay Sardana, Chief Fin. Officer, Int’l Educ. Corp. (May 19, 2020). Notably, FCC did not produce any evidence to indicate that it reported these two proctors to Wonderlic, nor does it appear that it took any action to determine whether the tests given by these proctors were compromised.

proctoring and I also found out that they were personal friends.” While the CFO supported Trujillo’s position that he should not hire the proctor friend of the DOA based on the conflict of interest, the email exchange is notable, both because the CFO does not seem to take issue with the concept of FCC campus leaders choosing their own proctors, and also because there is no indication that FCC took any disciplinary action with respect to the Director of Admissions.

- August 2020:  
An Orlando proctor called FCC’s “Answer Program” (a complaint hotline)<sup>12</sup> indicating that she did not know who she should contact,<sup>13</sup> but she was concerned that the campus would get rid of proctors “when they do not pass the prospective students” on ATB exams. She also stated that she was “very uncomfortable while working at the Orlando campus when a student does not pass” the ATB test. The Executive Director of Corporate Regulatory Compliance at IEC received the complaint and forwarded it to CFO Sardana, DFAO Nishida, and Executive Director Deb Ferrari, noting the following: **“I realize proctors are to only proctor exams and have nothing to do with student performance on ATB exams.** However, this proctor has concerns or fears. Can someone talk to her or give her reassurance?”<sup>14</sup>

The email thread establishes that IEC’s CFO received and reviewed the email, but he did not respond that FCC should provide such reassurance to the proctor. Instead, the CFO emailed the following to Art Trujillo: “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.” He went on to state, “[s]he is your employee, please handle accordingly. I don’t want to see this from a proctor again.”

Conspicuously, the CFO included the director of financial aid on the email to Trujillo but omitted the Executive Director of Corporate Regulatory Compliance who had initiated

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<sup>12</sup> The Answer Program, according to FCC, included prominently displayed posters at every campus that provided employees and students with an email or telephone number to contact. FCC provided samples in the FCC November letter to the Department that state, “CALL US WITH YOUR CONCERNS.” See FCC November letter at pp. 6-7. As discussed herein, however, FCC did not want to hear concerns from proctors about pressure from FCC.

<sup>13</sup> FCC states that they had just improved their training and compliance processes relating to ATB testing in June 2020. It did not include a mechanism for proctors to bring to the school’s attention interference in the testing process by FCC admissions or management. Given the high volume of ATB testing at FCC (nearly half of FCC’s enrollments were declared eligible based on ATB tests), that there was not a process for FCC to receive complaints from proctors about FCC’s own employees and management further supports the Department’s administrative capability finding.

<sup>14</sup> See Angela Paul email to Sanjay Sardana relating to proctor complaint, 8.19.20. As discussed below in Section I(a)(ii) at p. 12, FCC now evidently disagrees with its own Executive Director of Corporate Regulatory Compliance and takes the incongruous position that proctors should be evaluated (and retained or dismissed) based on how many of the exams that they proctor have passing scores.

the email thread escalating the proctor's concern that her job was dependent on prospective students passing the ATB test.<sup>15</sup>

- August 2021:  
Plaintiffs in the *Britt* litigation filed a motion containing the Christopher Lynn email sent on February 26, 2019 discussing potential violations of ATB regulations at FCC.

A school acting with the highest standard of care certainly would have investigated these alarming allegations. But there is no indication that FCC did so. FCC, in response to the evidence relating to Christopher Lynn's initial email to FCC and IEC leadership describing manipulation of ATB tests, notes only that the CFO responded, thanking Lynn for his "brutally honest email and feedback" and asking whether he had any other concerns. There is nothing in the Reconsideration Request to indicate that FCC ever took appropriate actions in connection with the statement by the head of FCC's Orlando campus that senior leadership at FCC was pressuring proctors to falsify ATB test results.

Similarly, while FCC claims that it took the 2020 article and subsequent accreditor notice seriously, and that "[c]omplaints about employee and manager behavior is addressed with the utmost seriousness and dealt with accordingly," FCC was unable to provide evidence to support such statements.<sup>16</sup> Rather, the evidence shows that FCC repeatedly received information about violations of regulations relating to ATB administration, *did not* act to address it, and as further discussed below, leadership was complicit.

**ii. FCC and IEC senior leadership created a culture that valued high passing rates and enrollments over FCC's fiduciary duty and was complicit in violating regulations relating to ATB.**

Contrary to FCC's pronouncements of having a culture of compliance,<sup>17</sup> the evidence regarding administration of ATB testing reveals a culture that valued passing ATB scores – which became

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<sup>15</sup> FCC's argument that this is simply a "process" issue and that Trujillo was the appropriate person/entity to receive the complaint is not persuasive. The proctor raised concerns about FCC – that the "campus" would get rid of her and that FCC staff made her "uncomfortable" when students did not pass the ATB test. If she had complained to Trujillo first, and Trujillo in turn brought the issue to FCC's attention, it still would have been up to the CFO to decide whether to take action with respect to pressure exerted by FCC staff and management.

<sup>16</sup> FCC's argument that the allegations in the Republic Report should not be believed because its accreditor did not make any findings is misplaced. The Department is not bound by the evidently limited information considered by FCC's accreditor.

<sup>17</sup> FCC touts its compliance processes and protests the Denial Letter's criticism that FCC audits do not address administration of ATB testing because "FCC is not in a position to audit what occurs in the testing room" and importantly, it monitored ATB pass rates. FCC did not indicate any effort to identify proctors who were passing unqualified individuals (such as by looking at ATB scores of students failing classes or withdrawing), nor does it provide any evidence of disciplining or terminating employees who engaged in the conduct that FCC supposedly prohibited in order to safeguard the integrity of the tests. FCC's compliance as it relates to ATB testing was beyond underwhelming and closer to nonexistent – certainly not the highest standard of care required of a fiduciary.

new student enrollments<sup>18</sup> and Title IV dollars – over the legitimate assessment of a prospective student’s ability to benefit from a postsecondary education. Numerous witnesses who had no motivation to lie to the Department, and whose testimony is supported by the documentary evidence, describe an FCC culture laser focused on enrollments. FCC acknowledges that its admissions representatives had required “goals,” that based on those goals, FCC expected admissions representatives to enroll new students or “starts,”<sup>19</sup> and that admissions representatives were evaluated based on their ability to obtain new enrollments.<sup>20</sup> Essentially, the admissions representatives had to develop and convert sales leads into students who were actually enrolled in the school and had “started” classes (that would be paid for with Title IV dollars). A substantial percentage of FCC’s pool of prospective enrollments did not have high school diplomas or GEDs, so the only way that an admissions representative could succeed was for a substantial percentage of the admissions representative’s prospective starts to pass ATB tests.

FCC did not provide evidence to indicate that it made allowances for admissions representatives whose prospective starts failed their ATB tests. Instead, the evidence from numerous witnesses makes clear that FCC’s incentive structure was such that admissions representatives (and their managers and leaders) *needed* passing ATB scores to succeed.<sup>21</sup> It was not just the FCC admissions staff who were dependent on high ATB passing rates. Multiple Directors of Admissions at different campuses pressured proctors.<sup>22</sup> Indeed, one director of admissions, in a sworn declaration, stated the following:

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<sup>18</sup> FCC’s argument that it has no incentive to enroll people who could not handle postsecondary work because they would withdraw and affect the school’s completion percentage is speculative and appears to be an effort to deflect from FCC’s clear incentive to bring in more Title IV funding by increasing ATB enrollments.

<sup>19</sup> FCC mischaracterizes the Department’s “position” and the evidence cited in the Denial Letter. Employees reported being told that they would be fired for not meeting their enrollment metrics, which created extreme pressure in the work environment. Whether FCC did in fact terminate employees every time they did not hit their metrics is irrelevant; the evidence demonstrates that FCC used the fear of termination to create a high-pressure sales environment.

<sup>20</sup> *See, e.g.*, February 28, 2018 email from a director of admissions Melissa Donatone to an admissions representative regarding “poor performance,” stating that “[a]ll Admissions Representatives are expected to see 3 students per day and enrolling at least 1 student per day at a 64% start rate or higher” and that the admissions representative was grossly underperforming because he had only five new starts for the month. *See also* Denial Letter at pp. 20-21, and Reconsideration Request at p. 53 (“Admissions Representatives . . . are not terminated *solely* on the basis of failure to obtain enrollments”) (emphasis added).

<sup>21</sup> For example, Proctor 2 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.” Another proctor, Proctor 18, told the Department that she was pressured by admissions staff to pass prospective students, but she also was incentivized, including that admissions representatives offered to buy her lunch or even pay her per passing student. *See also* Denial Letter at pp. 14-15.

<sup>22</sup> Proctor 16 reported that the director of admissions asked him to falsify tests for him but to “be careful or we would all go down with the ship.” Employee 18 described a director of admissions evidently so in need of a new enrollment that she falsified an ATB test herself. Another employee, who was a customer service representative,

I had conference calls two or three times per day with the other directors of admission at other FCC campuses and the regional vice president of admissions.... The other directors of admissions and I were threatened that we had to get the specified number of enrollments for the next start date of classes, or we would be fired.... 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.... The result was that admissions representatives did anything they could to enroll students.<sup>23</sup>

As discussed in the Denial Letter, campus officials and IEC also picked the proctors who they wanted administering ATB tests (who generally had high percentages of passing ATB scores) and wanted to replace proctors who had low percentages of passing scores.<sup>24</sup>

Further, the evidence shows that FCC, including some IEC executives at the highest levels, participated in the pressure on proctors to deliver passing ATB scores and, thus, new enrollments and Title IV dollars for FCC. For example, starting in late 2020, in meetings between the supposedly independent testing administrator, Trujillo, and the CFO and DFAO, they reviewed the percentage of students who passed the ATB test that week at each campus as a measure of “proctor quality.” Consistent with the above-referenced evidence relating to campus leaders requesting or demanding proctors with high ATB scores and/or removal of proctors with low ATB scores, the CFO and DFAO similarly communicated to Trujillo their dissatisfaction with the “low %” passing ATB scores at certain campuses and noted that Trujillo “maybe need[s] to replace” those proctors.

FCC’s primary contention in response is that the school’s focus on passing ATB scores was encouraged by Wonderlic “for testing integrity purposes because Wonderlic has found that a positive testing environment created by a proctor is correlative with test success.” FCC further refers to Wonderlic tips noting that a “courteous” proctor can “help reduce [testers’] natural test anxiety” and therefore have an impact on the test scores. FCC, in its Reconsideration Request, seems to place great weight on its claim that it only “reviewed pass rates for proctor quality and

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told the Department that the director of admissions at the time (2016/2017) changed test answers. Proctor 18 discussed a director of admissions who asked her to pass students for him, and she did. Employee 39 heard a director of admissions ask a proctor to “help him out.” Employee 18 heard a director of admissions pressure proctors, telling them that he needed certain prospective students to pass. *See also* Denial Letter at pp. 14-15.

<sup>23</sup> *See* October 21, 2022 Declaration of Steve Worrell, Director of Admissions at FCC’s Pembroke Pines campus in 2021-2022. Worrell subsequently provided a declaration to FCC in or about May 2023 in which he claims, “I did not make any of those statements to the ED. The statements attributed to me by the ED are not true.” As discussed in Section I(b)(i) at pp. 24-25, Worrell’s first sworn statement is more credible.

<sup>24</sup> For example, a Houston campus president insisted on his preferred proctor, explaining that “[a]nother proctor will most likely perform lower test results than John and I don’t want to risk that.” *See* Denial Letter at pp. 11-13.

compliance reasons.”<sup>25</sup> FCC’s argument is not persuasive for two reasons. First, the evidence does not appear to support the conclusion that for proctors with low pass scores, FCC requested Trujillo to do additional training to make a proctor more “courteous” or to ensure that the test environment minimized test anxiety.<sup>26</sup> Instead, it strongly suggests that FCC demanded that the proctors with low scores be replaced.<sup>27</sup>

Second, a proctor is a monitor, not a teacher. FCC’s position that proctors should be judged based on the test scores of exams they merely proctored (not taught) is incongruous. If a prospective student lacks basic reading or math skills, the proctor’s positive attitude – “proctor quality” per FCC – is not going to change their incorrect answers to correct ones and turn a failing score into a passing score. Moreover, it is significant that FCC’s (and IEC’s) Executive Director of Corporate Regulatory Compliance evidently did not share FCC’s view that proctors should be judged on the scores of the testers they proctored. When a proctor expressed concern that she might be discharged because of the ATB scores of her testers, IEC’s top compliance official stated that “***proctors are to only proctor exams and have nothing to do with student performance on ATB exams.***”<sup>28</sup>

FCC misunderstands the Department’s concern in the Denial Letter regarding the communications between FCC and Trujillo regarding ATB test scores. It is not the fact that FCC was tracking the scores; it is that FCC then used the scores as a basis to direct Trujillo to replace proctors who were not delivering sufficiently high passing percentages in FCC’s view, which even IEC’s head of compliance evidently would not approve if she had been involved in those

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<sup>25</sup> FCC did not provide any evidence to indicate that it reported proctors to Wonderlic for unusually high ATB passing percentages or that it wanted to replace such proctors, further calling into question its purported focus on compliance. Regarding the email that “if there is a proctor with a 100% pass rate, it needs to be investigated immediately,” FCC provides no evidence to indicate that it required such investigations or inquired about the results of such investigations. It appears that in practice, an ATB “compliance issue” only seemed to be of concern if the proctor’s passing rates were too low.

<sup>26</sup> Proctor training did not appear to focus on “proctor quality,” courtesy, or test anxiety. The proctor training materials reference courtesy exactly once in a thirteen-page presentation (“Do be courteous and well mannered”) and neither the testing environment nor tester anxiety is mentioned once. See Reconsideration Request Exhibit H.

<sup>27</sup> See Denial Letter at pp. 11-14. Emails documenting meetings between IEC’s CFO and DFAO and Trujillo explicitly state, “low % maybe need to replace.” FCC offers no reasonable explanation for the “low % maybe need to replace” statements in these emails, which certainly seem to show that FCC wanted Trujillo to replace (not train) proctors with low passing ATB scores. As discussed in Section I(a)(ii) at p. 15, FCC’s explanation of the email of September 16, 2019 regarding decertification of the proctor is persuasive and that email, therefore, is not given any weight here. However, there is other, unrebutted evidence cited in the Denial Letter for the same proposition. It also is consistent with the perception of several proctors that low passing rates would result in termination, not additional training on test anxiety and courtesy. See, e.g., Section I(A)(i) discussion regarding proctor complaint to the Answer Program expressing concern that she was concerned that the campus would get rid of proctors who do not have high percentages of passing ATB exams.

<sup>28</sup> See Angela Paul Aug. 19, 2020 email in series of emails discussed in Denial Letter, at p. 14, regarding proctor call to Answer Program.

communications with Trujillo.<sup>29</sup> Further, it is the pressure, whether unintentionally or not,<sup>30</sup> that FCC placed on Trujillo to provide only proctors who delivered high ATB passing percentages and to remove those proctors whose testers did not pass at as high a rate.<sup>31</sup> This was interference with the independence of the ATB test administration, and it compromised the tests by communicating to proctors that their jobs were dependent on the scores of the tests that they proctored.

FCC's assertion that Trujillo and its proctors were "independent" is undermined by numerous other interactions between FCC and Trujillo as discussed in the Denial Letter at pp. 12-14. Indeed, when the CFO wanted a particular proctor to replace a proctor in Houston whose ATB scores were lower, Trujillo complied, stating, "I am not used to going against my employers wishes or plans i (sic) am here to service your company."<sup>32</sup> Trujillo similarly appears to have deferred to FCC on its immediate retesting policy,<sup>33</sup> and the Denial Letter also notes that Trujillo deferred to FCC on proctor procedures.<sup>34</sup>

Moreover, contrary to FCC's arguments, the evidence does not establish that the misconduct and regulatory violations were unknown to FCC leadership or that communications with Trujillo demonstrate compliance.

#### August 19, 2020 Email Communications

Relating to an email thread regarding a proctor's call to an FCC hotline expressing concern that the school got rid of proctors with low tester ATB scores, FCC claims that the email was misconstrued in the Denial Letter. Specifically, FCC argues that the email from the CFO does not show that FCC "actively discouraged" complaints from proctors and, instead, demonstrates compliance. The evidence does not support that contention.

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

<sup>30</sup> The Department need not establish intent to conclude that FCC violated ATB regulations, breached its fiduciary duty, or failed to meet administrative capability standards. While there is ample evidence that FCC management and executives were complicit in the test violations, it is sufficient that FCC knew or should have known of the violations and "buried its head in the sand." See *In re Fortis College*, Docket No. 12-55-SP, U.S. Dep't of Education (July 30, 2013).

<sup>31</sup> While not a proctor at FCC, Art Trujillo's sister provided a sworn statement to the Department in which she described various ways that Trujillo's IEC proctors are trained to cheat and stated that "[w]hen pass rates go down, UEI threatens Art that they will take the contract."

<sup>32</sup> See December 15, 2020 email Trujillo to Sardana.

<sup>33</sup> See Denial Letter at 16-17 and *infra* at pp. 16-17.

<sup>34</sup> See Denial Letter at 17 regarding a "proctor meeting to go over new procedures." Although the record is not clear on the issue, it appears that IEC was involved in the development of training materials for FCC proctors. Because the evidence is not clear on this issue it is given minimal weight.

As previously discussed, IEC's head of compliance forwarded the email to CFO Sardana, DFAO Nishida, and Orlando Executive Director Deb Ferrari, noting that "proctors . . . have nothing to do with student performance on ATB exams" and requesting that someone "give [the proctor] reassurance." FCC argues that what followed was not an effort by the CFO to discourage proctors from making complaints to FCC and that it was merely a discussion over process, that the complaint was not in accordance with the Wonderlic manual, and that the CFO concluded that in order to be compliant with the processes that IEC had set up, he wanted Trujillo to have the proctor "rais[e] the complaint through her employer Trujillo." That is not what the email thread demonstrates though. The CFO stated, "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."<sup>35</sup> He went on to state, "[s]he is your employee, please handle accordingly. *I don't want to see this from a proctor again.*"<sup>36</sup>

FCC's interpretation does not account for the tone or the challenging remark, "[*h*]as someone at the campus said something to her I don't believe they have." The follow-up email, after the CFO directs Trujillo to "handle" it and Trujillo states that he will call the proctor, is not exculpatory as FCC claims. The CFO, in an albeit less excited tone, states that "if she has an issue she should call you guys" – but evidently not Wonderlic as the manual that FCC cites to would require – and offers to "jump on a call" if helpful. At no time does the CFO indicate that he would look into the concerns that the proctor expressed about pressure on the proctor from FCC campus employees when ATB students did not pass.

FCC's claim that it was complying with the Wonderlic manual by refusing proctor complaints also is unpersuasive. The manual instructs proctors, "[i]f you learn that any other problem has jeopardized the integrity of a school's testing program, it is your responsibility to immediately inform Wonderlic at (877) 605-949." This is not helpful to FCC's argument. There is nothing in the Wonderlic rules that precludes a proctor from bringing violations *by the school* to the attention of the school leadership. And the Wonderlic cite speaks to a responsibility of the proctor and says nothing about the school's responsibility. It certainly does not obviate FCC's fiduciary duty to the Department.

That the CFO did not want proctors making compliance complaints to the school is clear from the email. What is also clear, however, is that a proctor put him on notice that she felt pressured by FCC employees when testers did not pass and was concerned that she could be let go unless she had high passing ATB scores – and the CFO did nothing to address the issue.<sup>37</sup> Said another way, at best, he buried his head in the sand.

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<sup>35</sup> Email from Sanjay Sardana, Chief Fin. Officer, to Art Trujillo, President, Trujillo-Arias, Inc. (Aug. 19, 2020) (emphasis added).

<sup>36</sup> *Id.* (emphasis added).

<sup>37</sup> As stated previously, it is also noteworthy that although the proctor's compliance was communicated to the CFO by IEC's Executive Director of Corporate Regulatory Compliance, the CFO evidently did not respond to disagree with her statement that "proctors . . . have nothing to do with student performance on ATB exams," nor did he include her on the compliance "process" email to Trujillo.

#### December 2020 Email Communication

FCC argues that the series of emails in December 2020 regarding Houston proctors does not support the Department's conclusion that FCC selected or preferred proctors that had high passing scores; FCC claims instead that the communications relate only to a scheduling issue and not interference. In point of fact, they relate to a scheduling issue for a preferred proctor with high passing rates and show interference by FCC by choosing proctors based on passing rates. FCC glosses over the part of the email showing that the reason for the scheduling issue is that the Houston campus "did not like the Los Angeles back-up proctor" because he did not pass enough people.<sup>38</sup>

#### September 16, 2019 Email Communication

FCC argues that the September 2019 email from Shoukry Tiab, IEC COO, to Trujillo requesting removal of a particular proctor was appropriate because the proctor at issue was decertified by Wonderlic. I agree that the communication does not provide support for the Department's conclusion that IEC interfered with independent test administration because it was appropriate for FCC to request that a decertified proctor be replaced immediately. The email does, however, indicate that the proctor that FCC had been using in Orlando in 2019 was decertified by Wonderlic.

#### January 6, 2022 Communication

FCC again argues that it is appropriate to judge proctors based on the test scores of the individuals whose tests they proctored, an issue already addressed. This email exchange is noteworthy for two other reasons though. Contrary to FCC's claim that it had strong training and compliance processes to ensure that all communications with Trujillo were through the IEC CFO and DFAO, FCC does not acknowledge here that IEC's Vice President of Leadership, Culture and Learning, Jim York, evidently ignored those processes and sent a series of emails to Trujillo complaining about a proctor's test scores. *See* FCC's Training materials at Exhibit M ("If there is any issue with the Proctor or anything related to Testing/Wonderlic, please direct all questions/concerns to Sanjay Sardana or Amelia Nishida. DO NOT CONTACT SERVICER [Trujillo] DIRECTLY"). The emails also included a number of other FCC officials from Tampa and Orlando. Further, the 2022 emails (that are not from the CFO and DFAO Nishida and were sent long after the new training and processes that IEC touts as evidence of compliance) show that FCC management were, in fact, making proctor selections and even sending Trujillo individuals who they wanted hired. Notably, Trujillo complied with the request of IEC's Vice President of Leadership, Culture and Learning to hire his chosen proctor; she is Proctor 15. Proctor 15 told the Department that she resigned because FCC pressured her to pass students, and she was talked to by FCC any time a prospective student did not pass an ATB test that she proctored.

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<sup>38</sup> *See* Denial Letter at fn. 49 and email from Art Trujillo, President, Trujillo-Arias, Inc., to Sanjay Sardana, Chief Fin. Officer, Int'l Educ. Corp. (Dec. 15, 2020).

### July 7, 2020 Communication

FCC's characterization of the July 7, 2020 email exchange between Sanjay Sardana and Art Trujillo does not demonstrate compliance as FCC argues. FCC places significant weight in its Reconsideration Request on the "IEC ATB Test Process" that it rolled out in June 2020, and Nishida notes that "[i]t included Do's and Don'ts to guide campus employees on interactions with proctors." Nishida also states that training of FCC employees was completed on June 11, 2020. Yet, there is no indication in the email exchange that this director, Michael Re, was disciplined or reprimanded for ignoring the prohibition against admissions personnel – including the Director of Admissions – communicating with Trujillo, nor does the CFO indicate that it would be improper for Re to have selected a proctor for Trujillo to hire, but for the conflict of interest because the proposed proctor was Re's personal friend. The IEC training also states, "[v]iolating anything related to material presented today may lead to termination of employment." Clearly, that did not happen after this occurrence or the other instances of Re interfering with the testing process;<sup>39</sup> instead, it appears that Re later was promoted to National Director of Admissions Training at IEC and then Regional Director of Admissions at FCC.

### FCC Policy Relating to Retests

Finally, IEC's practice (implemented at FCC) regarding "retests," where an individual who fails the ATB is then tested again, often the same day, is noteworthy. Wonderlic rules state that under certain circumstances, retesting for an inaccurate or incomplete test administration may be appropriate, such as an alarm during the test or the student having to leave the test for medical reasons. However, "*it is NOT acceptable to automatically retest an applicant simply because they did not pass the initial test administration.*"<sup>40</sup> Wonderlic did permit retesting when the scores on the first test were very close to passing.<sup>41</sup> FCC's practice, however, was automatic retesting.<sup>42</sup> Regardless of the margin by which the individuals failed, FCC wanted the prospective new enrollees retested immediately. FCC argues that its retesting practices were "not material" because "only" a few thousand individuals were admitted after failing a first test by low scores and then obtaining a much higher test score immediately following the failed test.<sup>43</sup> The contention that it was not material that FCC enrolled hundreds or thousands (or any)

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<sup>39</sup> In addition to the previously discussed red flags pertaining to the Orlando campus during the time that Michael Re was the Director of Admissions, including those discussed in Section I(A), multiple witnesses referenced Re in connection with ATB violations, including pressure on proctors to pass students. One proctor noted that Re made it clear that students needed to pass so that FCC could get the federal aid and that when he told Re that there was no way that a certain individual could pass the test, Re told him to "make it happen." There is not a declaration from Re, but it does appear that he was promoted up the ranks at IEC.

<sup>40</sup> WONDERLIC, INC., Wonderlic Basic Skills Test User's Manual for Ability-to-Benefit Testing, at p. 42. (emphasis added).

<sup>41</sup> WONDERLIC, INC., Wonderlic Basic Skills Test User's Manual for Ability-to-Benefit Testing, at p. 43.

<sup>42</sup> FCC's training materials included the following Q&A: "Q: What if student fails for the first time? How soon can they retest? A: If student fails their first test, they can retest (same day) as long as it's a different version."

<sup>43</sup> See Reconsideration Request at fn. 25.

students whose tests apparently were not administered in accordance with Wonderlic rules and, therefore, applicable regulations is plainly wrong.

Additionally, FCC's immediate retesting policy, which was directed by the most senior leaders in FCC and IEC and implemented by Trujillo at FCC's direction, is emblematic of FCC's culture of urgency to find Title IV eligible enrollments and of prioritizing enrollments over ensuring that FCC was not certifying Title IV funds for individuals who lacked the language and math skills to succeed. The reason for FCC's retesting policy is questionable: why would FCC believe that a significant number of people who failed the ATB test by a considerable margin (thus demonstrating an *inability* to benefit through low English and/or math scores) would then pass a second test taken right after failing the first test? Might it be because there was an expectation at FCC that proctors were doing something to change the outcome and an understanding by proctors that their work at FCC was contingent on those individuals passing? That is the conclusion that the evidence suggests.<sup>44</sup>

### **B. FCC's Evidence Does Not Refute the Department's Findings of Widespread Violations of Regulations Related to the Administration of ATB Tests.**

In the Denial Letter, the Department found that there were widespread violations of the regulations relating to ATB testing, and the Department's evidence included emails and documentary evidence as well as evidence and testimony from numerous former FCC proctors, employees, and students. The evidence discussed in the Denial Letter is not limited to a few isolated incidents; rather, it includes information from dozens of witnesses at different campuses over several years that describe compromised tests and interference in the ATB testing process by FCC and its leadership. In response, FCC produced hundreds of declarations from employees, proctors and students and documentary evidence. FCC claims that the declarations that it produced establish that the misconduct and regulatory violations were not widespread, but rather, limited to isolated incidents or "mistakes." As the Reconsideration Official, I have concluded for the reasons described below that FCC does not provide sufficient evidence to support a basis for reversal of the denial decision.

As a preliminary matter, FCC seems to argue that it has produced such a large volume of exculpatory evidence that the misconduct could not have been widespread. However, FCC's evidence is largely comprised of declarations that fall into two categories:<sup>45</sup> 1) boilerplate declarations of limited probative value; and 2) declarations that lack credibility; are contradicted

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<sup>44</sup> See Lynn email describing multiple students who failed their first ATB test, were retested and received high scores, and were unable to pass their courses because they had limited or no ability to read. Proctor Churion described the different process that he used for second tests to help prospective students pass after they had failed the first ATB test. Proctor Edna Whalen described how she would not interfere with the first test, but for those who failed, she would falsify the second test. See also discussion *infra* at Section I(A)(ii) regarding the pressure on proctors to pass prospective students.

<sup>45</sup> FCC's declarations also included testimony from students and employees who describe how FCC benefits students. The good experience of some students and employees cannot erase the misconduct and violations relating to other students, nor is it relevant to FCC's breach of fiduciary duty or failure of administrative capability.

by documentary evidence or more specific evidence from the Department's witnesses; or do little to refute the Department's evidence.

The first category of FCC's declarations are boilerplate documents, rather than facts and information provided by witnesses in their own words. The boilerplate declarations generally deny misconduct by the declarants and state an overall lack of awareness of any misconduct by any proctors or FCC employees; they do not indicate personal knowledge of any of the specific events described by the Department's witnesses or referred to in the email evidence or other documents. Even if the boilerplate declarations are taken as true, they simply evidence a lack of awareness of the misconduct and regulatory violations by the declarants and not that the misconduct and violations by others did not occur.<sup>46</sup> Furthermore, as discussed in Section II, the Department has learned from several FCC employees that they were contacted by FCC and asked, and in some cases pressured, to sign boilerplate declarations that appear to have been sent out to hundreds or perhaps thousands of individuals. In short, the vast majority of the FCC declarations are of the boilerplate variety and are of minimal probative value.

The second and much smaller category of declarations are not entirely boilerplate and include at least some specific information. Some of them are from witnesses who worked with the former employees and proctors identified in the Denial Letter and note that the Department witnesses did not report<sup>47</sup> or convey information regarding misconduct to them. Most are from individuals who either are accused of misconduct or otherwise have reason to lie or be less than forthcoming. Particularly relating to FCC and IEC leaders, much of their testimony is not credible in light of documentary evidence and/or their culpability for having participated in or allowing the violations to occur. As discussed below, the FCC declarations do not establish, as FCC argues, that the misconduct and violations were isolated, nor do they refute the Department's evidence that FCC leadership knew of and was complicit in the violations.

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<sup>46</sup> Similarly, the declaration of Sam Ferguson, former Executive Director of the Florida Commission for Independent Education, adds little to FCC's argument that FCC should not be held accountable by the Department because other oversight organizations failed to identify the ATB violations. The absence of evidence or findings from other parts of the regulatory triad is not relevant. The other entities had a different scope and focus and their lack of awareness or action has no bearing on the Department's decision as to whether a school failed to demonstrate administrative capability, breached its fiduciary duty to the Department, or otherwise complied with Department regulations.

<sup>47</sup> FCC takes issue with the absence in the Denial Letter of discussion of FCC's "robust employee- and student-reporting systems." The evidence demonstrates that FCC systems did not have sufficient controls to identify and address ATB violations. As described herein, there is no indication that FCC took seriously the complaints that it received, such as those discussed in Section I(A)(i). Moreover, given FCC's focus on ATB scores and enrollments and the compromising of the test process *by FCC leadership*, it is not surprising that many employees did not report the violations. With respect to student complaints, witnesses advised the Department that students would not necessarily know that their tests were altered or that the conduct of the proctors was improper and violated the regulations. And as noted, there was no process at FCC for individuals most likely to be in need of a process to complain – the proctors who were being pressured by FCC to ensure high passing percentages.

**i. FCC’s evidence does not establish that the misconduct and regulatory violations were limited to isolated incidents or “mistakes.”**

FCC’s evidence does not demonstrate that the ATB violations at FCC were a few isolated incidents as FCC argues. FCC attempts to minimize the Department’s evidence, arguing that it essentially boils down to a small number of witnesses whose evidence and testimony is rebutted by FCC evidence. FCC further asserts that five witnesses identified in the Denial Letter, including two proctors, did not make the statements that are attributed to them. FCC’s characterizations of the evidence grossly understate the scope of the violations that it relates to, both in terms of locations and timeframe. Further, the purported recantations of the two proctors and three employees<sup>48</sup> are simply not credible.

ATB violations by *Ronaldy Pierre-Paul*, Proctor from November 2018 - September 2022 at FCC’s **Hialeah, Houston, Miami, Orlando, Pembroke Pines, Tampa, and Margate campuses**

FCC first argues that the evidence from Students 7 and 11 that their proctor compromised the test should not be believed because the proctor for the students, Ronaldy Pierre-Paul, provided a declaration denying the misconduct and violations. FCC also notes that "another proctor [Alejandro Churion] who administered tests at the Miami campus in or near the same time period as Mr. Pierre-Paul (and who the Department contacted) confirmed that he did not provide students with test answers or hear of or observe any misconduct in the administration of the ATB tests at FCC." FCC then argues that "the Denial Letter makes clear that the Department, if it even considered this contrary evidence, improperly disregarded it in making its findings and conclusions." However, it is not that the evidence was disregarded; it is that the evidence is not credible.

Mr. Pierre-Paul was one of the proctors at issue in connection with compromised tests. He also has an incentive to deny the testing violations because admitting to them could impact his employment, whereas the students had no reason to make such allegations. Moreover, there are several inconsistencies regarding the declaration Mr. Pierre-Paul provided to FCC, starting with the fact that he claims to not have spoken with the Department, but Mr. Pierre-Paul *did* speak with an investigator during the Department’s site visit to the Margate campus.<sup>49</sup> As attested to in a sworn statement from the Department investigator, Mr. Pierre-Paul admitted to two separate instances where he did not follow ATB testing rules. He reported to the Department that he caught a student using a calculator on the computer and only gave the student a warning, even

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<sup>48</sup> The five employees who, according to FCC, did not make the statements attributed to them are proctors Lance Pollard and Alejandro Churion and employees Steve Worrell, Tamara Alexander, and Sasha Najman. As discussed below, the declarations that they provided to FCC are not credible.

<sup>49</sup> Indeed, Mr. Pierre-Paul was selected by IEC to meet with the Department. Investigator Gwen Deurell explained that at each campus where Investigations conducted an onsite investigation, she requested to meet with people in certain positions, one of which was proctor. At each campus, the CFO and Vanesa Alfaro, Regional Director of Student Finance, selected an interviewee in each position to meet with Investigations and “hand-delivered them” to the investigator in an onsite conference room. The proctor selected by IEC to meet with Investigations in Margate was Mr. Pierre-Paul.

though it was in the procedures to invalidate the test. He also reported that on one occasion, he left the room for a family emergency but evidently did not invalidate the tests. In Mr. Pierre-Paul's declaration provided to FCC, he states that he did not "instruct [students] to leave answers blank," but he told the Department that he encourages testers to leave questions blank. Additionally, while Mr. Pierre-Paul did not openly admit to providing answers on the ATB test, the Department investigator noted that he became visibly uncomfortable, began to fidget, and looked away when the investigator asked him about his pass rates.

Further, FCC's "corroborating" witness, Churion, is himself accused (by different witnesses) of engaging in violations.

ATB violations of *Alejandro Churion*, Proctor from December 2020-September 2022 at FCC's **Pembroke Pines, West Palm Beach, Lauderdale Lakes, Miami, and Orlando** campuses

FCC argues that Students 42, 43, 45, 50, and 51, all of whom took tests proctored by Alejandro Churion and state that he helped them with the test, should not be believed. The students stated that Churion tried to provide or point to correct answers or stated, "not that answer." FCC states that the Department inaccurately attributed admissions to Mr. Churion, who apparently provided a declaration to FCC maintaining that he never spoke with the Department. Mr. Churion's recantation is simply not credible.

Mr. Churion spoke with a Department investigator and provided detailed information during a site visit to the Miami campus as attested to in an affidavit of the investigator. Mr. Churion seemed to take pride in his assistance of testers and may have been unaware that his conduct compromised the tests and violated the regulations. According to the investigator, when she asked Mr. Churion how many students fail the ATB exam, he replied "With me? Not too many. I am here for them, and I make sure they get through it." He stated that if a student fails the first test, then he walks them through the second. He told the investigator that he reads questions to the prospective student and explains what the question means. He then provided an example, stating that if a question asks how many seasons are there and the students thinks the word "seasons" is "states" and they select "50," then he will tell the student it says "seasons" not "states," explains the difference, and allows the student to change their answer. Mr. Churion also reported to the investigator that he caught a tester cheating with an earbud in his ear, and the student was reading the question out loud. He instructed the student to remove the earbud but allowed him to continue taking the test. Mr. Churion acknowledged to the investigator that he should have ended the student's exam immediately. Mr. Churion explained that Trujillo-Arias, Inc. did not provide him with written procedures, but he was trained by another proctor. Mr. Churion also reported to the investigator that if a student fails the first test, they are immediately able to take the second test.

In addition to the information relating to ATB testing, Mr. Churion provided some personal background to the investigator, including that he started at FCC at the Pembroke Pines location but he was in a car accident and subsequently changed to the Miami location to be closer to his home.

Mr. Churion now attests under oath that he “did not assist prospective students with their ATB tests.” While it is possible that Mr. Churion previously did not understand that he was compromising tests by helping students with their answers, his denial of such assistance is not credible, particularly since he curiously also denies having ever spoken with the Department.

ATB violations witnessed by Dawn Craig in **Orlando** between 2016 and 2019

FCC argues that the testimony of FCC instructor Dawn Craig that 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” should not be believed. FCC’s logic is that as an instructor, “she would not have been in the testing room or in a position to observe the testing environment” and therefore could not have observed such violations. Ms. Craig’s testimony, however, clearly addressed the falsity of FCC’s argument. Her statement explicitly states that the door to testing room was often open and the room “was like a fishbowl” and easy to observe from the outside.

ATB violations witnessed by Johnetta Hicks in **Jacksonville** in 2022

FCC similarly argues that the Department should disregard the information provided by Johnetta Hicks, who stated that she saw proctors helping students, including sitting with them reading the questions or allowing them to use their cell phones to solve the questions. Hicks also stated that students told her that admissions representatives advised them not to worry about the test because the proctor would help them. FCC claims that the proctor help described was not improper because “proctors can help students prior to the test by making them feel comfortable, creating a good test environment, and providing practice problems.” Such an interpretation seems inconsistent with Ms. Hicks’ description of the use of cell phones, which is clearly prohibited, and FCC does not claim otherwise.

ATB Violations by *Shemina Mawji*, proctor at **Boynton Beach, Hialeah, Jacksonville, Lauderdale Lakes, Pembroke Pines, Orlando**  
2015 to 2023<sup>50</sup>

FCC states that Student 2 should not be believed that her proctor, Shemina Mawji, violated the ATB regs by helping her on the test. FCC provides a declaration from Mawji denying that she helped Student 2 or any other students with the test. FCC further notes that the Department interviewed Mawji and did not “disclose or consider this evidence in its Denial Letter.” However, the Department considered the evidence, but did not find it credible. Despite Mawji’s declaration and what FCC described as robust training of both FCC employees and Trujillo proctors, the documentary evidence shows that on several occasions, Mawji inappropriately interacted with FCC employees, communicating about ATB test scores with admissions personnel, including the Director of Admissions in Hialeah, and interacting socially with the FCC admissions employees.<sup>51</sup>

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<sup>50</sup> Mawji was still working as a proctor at FCC in April 2023, which is when FCC stopped ATB testing.

<sup>51</sup> See, e.g., Email from Shemina Mawji, Proctor, to Darion Hung, Admissions Rep. (Sept. 11, 2020); Email from Brian Brown, Dir. of Admissions, Fla. Career Coll., to Shemina Mawji, Proctor (March 26, 2022); Email from George Hardy, Exec. Dir, in Residence, Fla. Career Coll., to various staff (March 26, 2022) (asking staff members

ATB Violations by *Edna Whalen*, Proctor at **Lauderdale Lakes** 2018

Remarkably, FCC also disputes the admission against interest of Proctor 14, Edna Whalen, who admits that she falsified tests. She stated that she was specifically instructed to fill in or change students' answers if the tester failed the test and was trained by Proctor 21.<sup>52</sup> She described how she would let students take the test the first time and then, if they failed, she would retest them. It was on the second test that she would change answers. She also stated that Proctor 21 told her to be careful in changing the answers and to not change so many so that the results would be suspect. FCC argues that her admissions are not believable because her estimation that 90-95% of testers failed the first test is not supported by the data; while it is possible that Whalen's estimation of the test failure rate may have been imprecise, FCC did not provide data regarding the failure rate on tests administered by Whalen, and the data it did provide raises more questions than answers.<sup>53</sup> FCC then argues that "if Ms. Whalen compromised test results, then she was in violation of Wonderlic rules and had an obligation as a certified proctor to report [herself] to Wonderlic," and since she failed to do so, FCC evidently questions whether she falsified the tests at all. This argument is not persuasive.

FCC also states that the email evidence does not support Whalen's statement that after a few months of falsifying tests, she stopped changing answers in or around September 2018 and was fired soon after. The email evidence shows that Whalen's "pass" rate during the time that she admits to falsifying tests was 67%, whereas it dropped to 18% after she stopped changing answers, which is consistent with and corroborates Whalen's admissions.

Finally, FCC claims that Whalen should not be believed because she states that she was fired in 2018 after her scores dropped, but she proctored tests in 2019-2021. However, the email evidence demonstrates that Whalen was, in fact, replaced in the fall of 2018.<sup>54</sup> Evidence from other witnesses further shows that FCC and Trujillo occasionally brought back proctors who had previously been let go, which appears to have been the case with Whalen.

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what they would like from Wing Stop, including the proctor, eight admissions employees, and a student finance advisor).

<sup>52</sup> As discussed in Section I(B)(3) of the Denial Letter, pages 15-16, multiple proctors, including Proctor 14, reported that Liset Sanchez (Proctor 21) trained them to change answers or help students pass. Sanchez was the proctor approved by IEC to conduct a training for FCC and UEI proctors because, per Art Trujillo, "she has the expertise that will create better performance so that we can quickly start to see an increase in passing rates."

<sup>53</sup> FCC notes that 45,214 individuals who took the ATB test at FCC from January 1, 2016 to October 27, 2022, and of those, 6,704 re-tested and 30,782 did not retest. Since the numbers do not add up and seemingly fail to account for over 7,700 testers, the data is conclusive of absolutely nothing.

<sup>54</sup> FCC argues that Whalen was replaced because she called in sick and therefore was unreliable, not because her ATB scores were too low. The email thread at issue includes discussion of both, and even if her sick day was a factor, the email chain does not refute that FCC complained to Trujillo about Whalen's low ATB scores, that the decline in scores coincides with Whalen's decision to stop falsifying tests, and that FCC no longer wanted her as a proctor at that point in time.

ATB violations by **Lance Pollard**, Proctor in **Boynton Beach, Hialeah, Jacksonville, Lauderdale Lakes, Margate, Miami, Pembroke Pines, Orlando, Tampa** in 2022

FCC asserts that the statements attributed to Lance Pollard (Proctor 11) are not accurate and that Mr. Pollard attests that they are inaccurate under oath. Specifically, Mr. Pollard states that he “did not help students during the test or otherwise engage in or observe any ATB misconduct.” Mr. Pollard recalls speaking with an investigator from the Investigations Group at the Lauderdale Lakes campus. Mr. Pollard says he does not agree that he was someone who “described helping students with test answers” as the Department stated in its Denial Letter. Mr. Pollard also asserts that he followed the training provided by Trujillo-Arias, Inc., but he does not mention any training from Wonderlic.

A Department investigator interviewed Mr. Pollard during a site visit to the Lauderdale Lakes campus. Consistent with his declaration to FCC, Mr. Pollard described to the investigator that he did not feel pressure to pass students. In fact, Mr. Pollard was listed in the Department’s Denial Letter as part of a section of the letter addressing employees interviewed by the Department who denied the wrongdoing found by the Department. However, Mr. Pollard also told the investigator that he offers help with certain words during the testing. He stated that if a test-taker does not understand a word, he puts it in a sentence, and he reported that he does this frequently. In spite of the training that he should have received to become a proctor, Mr. Pollard appears to not realize that this type of assistance violates the testing rules.

ATB violations in **Houston** 2021-2022

FCC argues that Former Employee 33, the Director of Education at the Houston Campus from February to October 2022, should not be believed that several ATB students told her that the proctor took the test for them. FCC cites to the boilerplate declarations to refute the Director’s statements. However, she also made admissions against interest, including that she signed enrollment agreements of three students who did not meet eligibility requirements, which supports the credibility of the evidence she provided to the Department.

ATB violations at **Lauderdale Lakes** 2019-2022

FCC argues that Former Employee 38, an instructor at Lauderdale Lakes, should not be believed that students told her that admissions took the test for them. FCC cites to the boilerplate declarations to refute the Director’s statements. Employee 38 provided specific information and noted that she reported the misconduct by Admissions; the boilerplate declarations do not relate to the specific occurrences and are less compelling evidence of what this witness experienced.

ATB violations at **Margate** 2020

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. FCC maintains that “her student records indicate that she took the ATB test.” However, given the evidence discussed herein and, in the Denial Letter, relating to compromised proctors who worked at the Margate campus, a record indicating the existence of a test in her name is not compelling.

ATB Violations by *John Johnson*, proctor at **Houston** campus 2016-2022

FCC also disputes the veracity of the evidence provided by Prospective Student 1 that someone completed the math portion of her ATB test while she left to use the restroom. The witness filed a contemporaneous complaint noting that she was surprised to learn that she had passed the math portion of the test since she only answered a few questions and also stated that her boyfriend who took the test at the same time and in the same room told her that someone worked on her test while she was in the restroom. FCC investigated Prospective Student 1's complaint by speaking with Proctor 22, who denied any misconduct and stated that the tester could not have been gone long, walking the distance to the restroom to confirm that it only "took 40 seconds to get there," and speaking to admissions regarding whether the complaint was brought to their attention. FCC then concluded that there was no merit to the complaint.

FCC in its perfunctory "investigation" does not appear to have interviewed the witness herself or her boyfriend and seems highly deferential to the proctor. There is no evidence that FCC referred the matter to Wonderlic for its consideration or to Trujillo, the proctor's employer, both of which would appear to be required under FCC's policies. Further, the email evidence shows that Johnson was the preferred proctor in Houston."<sup>55</sup>

Johnson himself evidently did not provide a sworn statement to FCC. He also happens to be Proctor 22, the same proctor whose wife was a "backup" proctor for FCC Houston and then was hired by FCC and worked at the same campus; her employment at FCC made Johnson ineligible to administer ATB tests,<sup>56</sup> but FCC continued to use him as a proctor.<sup>57</sup> FCC claims that it did not know when Johnson's wife, Natasha, was hired that she was married to a proctor, but the evidence suggests otherwise.<sup>58</sup> Further, there is no indication that FCC, after learning of the clear conflict, directed Trujillo to replace Johnson in light of his marriage to a current (or former) employee of FCC, as it was required to do under the regulations. Rather, the evidence supports the conclusion that FCC decided to overlook the clear regulatory and Wonderlic requirements so that they did not have to replace their favored proctor with his very high ATB passing rates.

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<sup>55</sup> See June 14, 2022 email from the Houston campus president to Art Trujillo, referring to Johnson as a "high performing Proctor," "my proctor," and "our proctor," and noting that the campus was holding off on any ATB testing until Johnson's return because they did not want to "risk" having any other proctor because their ATB scores likely would be lower. Johnson proctored the majority of Houston's ATB exams between 2016 and 2022, including the test of Prospective Student 1.

<sup>56</sup> An ITA is eligible if he "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." 34 C.F.R. § 668.142.

<sup>57</sup> The Denial Letter notes, "[t]he 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."

<sup>58</sup> See Email from Amelia Nishida, Dir. Fin. Aid Operations, Int'l Educ. Corp., to Art Trujillo, President, Trujillo-Arias, Inc. (May 18, 2021) ("wife will be his backup").

ATB Violations witnessed by Steve Worrell in **Pembroke Pines** 2021-2022

Former Employee 17, Steve Worrell, a former Campus President, provided a declaration to FCC that purports to retract the declaration that he provided to the Department stating that he was required to put pressure on his admissions representatives and that the campus president “would fire admissions representatives that did not make their numbers. The result was that admissions representatives did anything they could to enroll students.” Worrell’s FCC declaration is very different from the sworn statement that he provided to the Department after speaking with multiple Department employees, and his FCC declaration also fails to acknowledge that he had even signed a sworn statement. In his declaration that he provided to the Department, he also attests to the fact that FCC staff were “told what they should say and what they should not say to the Department.” Because Mr. Worrell’s first declaration was based on an interview with Department investigators, is both an admission against interest and is far more detailed, the first declaration is more credible.

ATB Violations of **Kailyn Wright**, proctor in **Jacksonville** 2018-2022

Proctor 18, Kailyn Wright, admits to ATB violations, including filling in tests for students and allowing the use of calculators. FCC notes that it is not clear from the Denial Letter whether students actually used calculators. Per the proctor’s statement to the Department, she was told to make sure that students were passing the ATB test, that if she tested 10 students, FCC would expect 8 out of 10 to pass, and that “it was the proctor’s fault if the students did not pass.” She stated that the Director of Admissions was the person pressuring her. She also admits that she was friendly with the admissions representatives and felt forced to falsify ATB tests for them.

ATB Violations at **Pembroke Pines** in 2015-2022

The Denial Letter referenced Former Employee 18, Tamara Alexander, as one of approximately twenty witnesses who described proctors assisting students and cheating on the ATB exam. FCC provided a declaration from Alexander which appears to retract the information that she gave the Department, which included that she reported one of her supervisors, the director of admissions, for falsifying an ATB score. That information was supported by emails produced by FCC,<sup>59</sup> which casts significant doubt on her statement to FCC that she “never heard of or observed any improper conduct related to the administration of ATB exams at FCC.”

ATB Violations at **Boynton Beach** and **Margate** in 2018-2019

FCC also provided a declaration from Former Employee 31, Sasha Najman, in which she states that she “never heard of or observed anyone on the Admissions team . . . asking a proctor to pass a student taking an ATB exam.” This contradicts information that she provided to two Department investigators, including that she reported Director of Admissions Rosanna Faretti for having a proctor alter an ATB test, that proctors at FCC were “responsible for passing students,” the Director of Admissions expected students to pass, and at the two campuses that she worked at, ATB tests were falsified. While her declaration as a sworn statement is entitled to some

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<sup>59</sup> See Email from Gregory Falcon, Campus President, Fla. Career Coll., to Sherri McKaig, Int’l Educ. Corp. (Nov. 11, 2021).

weight, it is a general retraction of a detailed statement provided to the Department and attested to by two Department investigators, which casts considerable doubt on its credibility.

Other Proctor Declarations of Dubious Veracity Produced by FCC

There are additional proctor declarations produced by FCC that are contradicted by credible Department evidence or are of dubious veracity at best:

- Regarding Proctor D'Anthony Achille, FCC states that he does not recall speaking to the Department, and that if he had, he would have reported no misconduct. A Department investigator interviewed Mr. Achille during the Department's site visit at the West Palm Beach campus, took contemporaneous notes of the interview, and attests to the accuracy of those notes in a signed affidavit.<sup>60</sup> While Mr. Achille did not directly admit to committing misconduct, he did state that paper tests were kept unsecured in the testing room and also that it was common for FCC staff, including the Director of Admissions, to reach out to him directly despite FCC prohibition against communications between proctors and Admissions. Mr. Achille also explained that the campus president and another proctor, Ronaldy Pierre-Paul, called him the night before he was interviewed by the Department. Mr. Achille admitted to the investigator that Mr. Pierre-Paul prepared him for what questions would be asked.
- FCC provided a declaration from Javier Cabrera, a proctor who stated that he proctored at FCC's Houston campus from February-July 2022 and followed all ATB testing rules. He also stated that someone from the Department emailed him, but he did not respond and if he had, he would have said what is in his declaration. Mr. Cabrera did, however, speak with two investigators from the Investigations Group; during their site visit to the Tampa campus, they interviewed Mr. Cabrera virtually because he was proctoring ATB exams virtually on the campus from another location. The investigators documented the interview in contemporaneous notes, and the accuracy of those notes are sworn to in a signed affidavit. Notably, Mr. Cabrera did not include in his declaration the virtual proctoring he did for the Tampa campus, and he also did not include the proctoring he did at UEI beginning at least in 2018 at multiple campuses. Mr. Cabrera was identified by former IEC proctor Delia Trujillo-Montez as a proctor who UEI flew from one campus to another to proctor exams because he falsified tests and had very high ATB passing rates.<sup>61</sup>
- FCC provided a declaration from Nicketa Ferguson, a proctor, in which she attested that she did not help students with the test and also observed all test rules. However, in the same document, she stated that the Department did not contact her. Ms. Ferguson was interviewed by two investigators from the Department during its site visit to the Orlando

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<sup>60</sup> Achille was the proctor selected by IEC to meet with Department Investigators during their onsite visit at the West Palm Beach campus.

<sup>61</sup> Delia Trujillo-Montez, Proctor 20, March 9, 2023 Declaration.

campus. The investigators took contemporaneous notes of this interview, and the accuracy of those notes are sworn to in a signed affidavit.

- FCC provided a boilerplate declaration from Chloe Ways, another proctor, denying any involvement in or knowledge of ATB violations. In the same document, she states that the Department did not contact her, but “[i]f it had, I would have provided the information set forth in this statement.” Notably, however, the Department’s evidence includes an investigator’s contemporaneous notes from an interview with her in August 2022, which conflicts with her boilerplate declaration.
- FCC also provided a declaration from Kathy Wilmore, a proctor, who stated that a woman came to her house and interviewed her. Ms. Wilmore, however, was interviewed onsite at the Boynton Beach campus according to the sworn statement of an investigator who noted that Wilmore was the proctor selected by IEC leadership to meet with the Department. The interview at the Boynton Beach campus was documented in contemporaneous notes and attested to in a signed affidavit.

#### Decertified or otherwise Compromised Proctors

Moreover, the evidence noted above, as well as that discussed in the Denial Letter, does not even account for the dozens more of FCC’s other proctors who were decertified by Wonderlic since 2016. The evidence also includes information that still more FCC proctors who were not decertified or otherwise discussed in the Denial Letter are nevertheless implicated by witnesses who spoke with and/or provided evidence to the Department. Indeed, the Department’s Investigations Group estimates that for the 2022-2023 Title IV award year, as many as half of the proctors who administered tests at FCC were “compromised” in that they were decertified by Wonderlic or they were implicated in the misconduct or violations related to ATB testing discussed in the Denial Letter. While it is not necessary here to reach a determination as to the precise number of compromised proctors or tests, the evidence is clear that there were ATB violations and compromised tests and that they were not isolated incidents. They were in fact widespread, occurring at many campuses over several years<sup>62</sup> and involving numerous senior leaders at FCC’s campuses and at IEC.

It is indisputable that some proctors, employees, and students denied any wrongdoing in the administration of FCC’s ATB testing. There were numerous witnesses who the Department spoke with and who either did not recall, did not know, or did not admit to violations relating to the ATB testing process at FCC. That fact was explicitly acknowledged in the Denial Letter. It is further acknowledged here that FCC provided declarations from more than 100 former students who reportedly took the ATB test, 47 proctors, and more than 140 former and current employees, all generally denying participation in or awareness of the compromising of or

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<sup>62</sup> Contrary to FCC’s argument that the isolated incidents would have ended after IEC “centralized” ATB oversight in 2019-2020, the evidence discussed in previous sections includes ongoing ATB violations well after the 2020 training and changes to oversight.

interference with ATB tests at FCC. However, the weight of the evidence is not simply a numbers game; the information (or lack thereof) provided by witnesses must be considered in light of the quality and credibility. Generic boilerplate denials from FCC witnesses are far less compelling than information provided by Department witnesses regarding specific incidents, students who were harmed, and statements by FCC employees and proctors who consistently described the ways that FCC compromised testing across campuses and years.

Moreover, the witnesses who provided information and evidence to the Department generally had no reason to be untruthful, and some made statements against their own self-interests. FCC employees and proctors, however, may have incentives to be less than forthcoming, such as continued or future employment. With respect to proctors, who are not employed by FCC and theoretically “independent,” the reality is that if a proctor acknowledges compromising ATB tests, the proctor may be barred from any future employment as a proctor and also could be referred to the Department’s Office of the Inspector General.<sup>63</sup> Additionally, as discussed in Section II below, FCC appears to have exerted pressure on some witnesses to provide favorable testimony. On balance, the evidence does not demonstrate that the violations were isolated.

ii. **The absence of findings from other regulators, evidence relating to quality metrics and student outcomes, and the data relating to national ATB scores are not relevant or probative.**

Contrary to FCC’s contention, the Department did not ignore FCC’s evidence or arguments. Much of it was referred to or discussed in this letter. For the reasons described below, the absence of findings from other regulators, the evidence discussed by FCC relating to quality metrics and student outcomes, and the data relating to national ATB scores are simply not material to FCC’s breach of fiduciary duty, its failure to meet administrative capability standards, or its ATB violations.

FCC complains that the Department did not consider “evidence” from its other regulators or, more aptly, did not consider it exculpatory that other regulators failed to find the same violations that the Department did in its Denial Letter. The inaction or the absence of findings by other regulators is not relevant to this decision.

Evidence relating to quality metrics, such as cohort default rates, composite scores, financial aid audits, and 90/10 compliance are irrelevant to whether FCC violated ATB regulations, breached its fiduciary duty, and failed to demonstrate administrative capability in relation to its administration of ATB testing. Similarly, the data that FCC produced regarding student outcomes is not, as FCC asserts, evidence demonstrating that FCC was a “competent and honest fiduciary in its administration of Title IV funds.” Positive student outcomes, even if established

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<sup>63</sup> See 34 CFR 668.150(b)(3)-(8) and 668.150(b)(16).

by the evidence,<sup>64</sup> would not negate violations of ATB regulations, breaches of fiduciary duty, or failure to demonstrate administrative capability.

FCC's argument and data purporting to demonstrate that FCC cannot be manipulating ATB scores because its ATB passage rates are within the national average is speculative and also circular and, therefore, not probative. FCC and the other IEC-owned school in the Title IV program *set* the national average. According to Department data, IEC schools are responsible for 75% of all Title IV students enrolled via ATB tests in the most recent award year for which data is available (2021-2022). The remaining 25% of Title IV students enrolled via ATB tests are distributed widely at institutions across the country; no one institution enrolls nearly as many ATB students as IEC schools. As such, FCC's pass rates figure prominently in the national average. FCC's argument that it cannot be engaged in any wrongdoing simply because its passage rates track the national average (that it sets) is unavailing.

### **C. FCC's Arguments Regarding Liability and Harm are Inapposite**

FCC appears to argue that the Department was required to identify and establish harm to individual students and financial liabilities for the loans of those students pursuant to 34 C.F.R. § 668.154 in order to determine that denial of FCC's application for recertification was appropriate. FCC's arguments regarding liabilities and individual harm are misplaced. At issue here is not whether FCC is "liable for the title IV, HEA program funds" disbursed for specific students whose eligibility was based on compromised ATB tests. FCC's financial liabilities, if any, pursuant to the 34 C.F.R. § 668.154 (Institutional Accountability) were not addressed in the Denial Letter, and FCC's arguments relating to that regulation are inapposite. Moreover, the fiduciary duty at issue in the Denial Letter is not FCC's duty to individual students; it is FCC's duty to the Department, and whether FCC breached that duty is not dependent on establishing harm to students. Similarly, the Department's findings regarding ATB violations and failure to demonstrate administrative capability in the administration of ATB regulations are not contingent on establishing harm to individual students, but rather, are based on obligations that FCC owes to the Department.

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<sup>64</sup> It is certainly the case that some students properly received a passing score demonstrating their ability to benefit and went on to graduate and obtain employment. As the Denial Letter notes, however, more than half of FCC's ATB students fail to complete their programs, which is not a positive outcome and also suggests that some or even many of FCC's ATB students lacked the ability to benefit from postsecondary programs. The data that FCC provided regarding its numerous different codes purporting to explain the reasons for withdrawal of thousands of students is not to the contrary. "Inability to handle the work" is not one of the codes that FCC uses to track the reason for a student's withdrawal, although several of the codes, such as "absenteeism," "academic," "exceeded maximum time frame," "incomplete externship," "no longer interested," or "non LOA return" (which appears to be not returning after a leave of absence) all are possible or likely outcomes of students who enroll and find themselves incapable of handling postsecondary school work.

#### **D. FCC Cannot Avoid Responsibility for Violations by Blaming Wonderlic or Contracting Out its Fiduciary Duty**

In FCC's November letter and in the Reconsideration Request, FCC attempts to avoid responsibility for the numerous regulatory violations by pronouncing the school's purportedly limited role in the ATB testing process. FCC essentially asserts that it had no responsibility to take any action regarding proctor violations and that it primarily discharged its obligations as it relates to ATB by contracting with Trujillo to provide certified proctors for ATB tests at FCC campuses. But FCC cannot avoid by contract the fiduciary duty that it owes to the Department. Its efforts to shift the blame to Wonderlic are similarly unavailing.

With respect to Trujillo, FCC did not contract away the fiduciary duty that it owes to the Department. FCC was required to certify the Title IV eligibility of its students in good faith and having exercised the highest standard of care to ensure that the basis for that eligibility was not compromised ATB testing. FCC also did not provide evidence to demonstrate a high standard of care in its selection of Trujillo,<sup>65</sup> nor did it demonstrate adequate oversight processes to prevent ATB violations by Trujillo proctors.

Similarly, FCC cannot simply blame Wonderlic to avoid responsibility. Wonderlic decertified over two dozen of FCC's proctors since 2016, but it likely was unaware that many more proctors were falsifying or otherwise compromising ATB scores under pressure from FCC to deliver high passing percentages.<sup>66</sup> FCC's apparent argument, that these proctors should have self-reported their own violations, which would assure that they would be decertified and no longer able to work as a proctor, is disingenuous. Moreover, the violations of the ATB testing process were not by the proctors alone. The evidence shows that FCC employees, management, and executives were complicit, and Wonderlic had no authority over them. Nothing Wonderlic did or allegedly failed to do mitigates FCC's interference or breach of its fiduciary duty.

## **II. Other Evidence and Continued Interference by FCC**

The Department did not make findings regarding its evidence as stated in the Denial Letter regarding attendance, misrepresentations, or interference by FCC in the Department's investigation and therefore, I need not consider FCC's evidence purporting to refute the Department's evidence on those issues. However, as it relates in particular to FCC's conduct in connection with the Department's investigation, it is noteworthy that there seems to have been a continuation of FCC's apparent interference after FCC received the Denial Letter. Specifically,

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<sup>65</sup> As noted *supra*, Art Trujillo himself was decertified by Wonderlic, as were many of the proctors employed by Trujillo.

<sup>66</sup> Proctor witnesses described how they were instructed to manipulate tests scores by ensuring passing scores, but not by so much that the scores would be flagged as potentially compromised. They also were instructed not to pass 100% of tests taken as that would be flagged as indicating a compliance problem. Some witnesses, for example, described that proctors might not assist on the first tests, but then would try to ensure passing scores on the second tests.

according to a declaration from the Assistant Director of Investigations, after the Denial Letter was sent to FCC, seven witnesses reported to the Department problematic encounters with FCC relating to the information that they had provided to the Department. One former employee described receiving harassing texts and calls. Another similarly stated that he was called by multiple people at FCC and on social media and described FCC's attempts to contact him as very aggressive and "borderline harassment." A different former employee accepted one of the phone calls from FCC and stated that the current employees were calling her and other witnesses to try to persuade them to change their statements.

Yet another former employee witness reported that FCC sent a pre-written affidavit, telling the witness that the information that they provided was a significant aspect of the Department's decision to deny the recertification application, and attempting to "guilt trip" the witness into signing the affidavit. One witness called to express concern about FCC's communications, including that management asked her friend, a current FCC employee, to find out what she said to the Department; she also expressed concern that FCC would take legal action against her because she spoke with the Department. Similarly disconcerting communications were reported by other witnesses.

While not the basis for affirmation of the denial of FCC's application, I note it here because the Department must not condone or ignore such conduct. Additionally, it may explain the "change of heart" of some of the witnesses described herein who provided information to the Department and then provided boilerplate declarations to FCC in which they now appear to deny any knowledge of anything. The post-Denial Letter communications from FCC with the former employees also shed light on the otherwise seemingly inexplicable claims of several witnesses who gave detailed information and, in some cases, signed declarations, and now claim not to have spoken with anyone from the Department at all.

### **III. FCC has Received Due Process and is Not Entitled to a Subpart G Hearing.**

FCC's contention that it has not received due process is misplaced. The Department's Office of Hearings and Appeals has made clear that "[t]he very process of applying for recertification suggests that there is no 'entitlement to certification' or continued eligibility." *In the Matter of Truck Driving Academy*, U.S. Dep't of Educ., No. 98-4-SP (Aug. 10, 1998), at 2. Further, courts have found no property interest for schools to continue to "participate in programs that provide federal aid money to students." *Ass'n of Proprietary Colls. v. Duncan*, 107 F.Supp.3d 332, 348 (S.D.N.Y. 2015). Nevertheless, the Department has provided FCC with more than ample opportunity to be heard in connection with its application. Indeed, FCC has had multiple opportunities to provide information and evidence to support its position. The Department sent a detailed letter to FCC on October 20, 2022, which put FCC on notice of the Department's evidence and concerns of potential violations, and the letter invited FCC to provide information or other arguments why the Department should not take action. FCC took advantage of that opportunity and provided a lengthy letter with multiple attachments on November 7, 2022.

The Department issued the decision denying FCC's application for recertification on April 11, 2023. Even though not required by the regulations, the Department invited FCC to request a reconsideration of the Department's decision. FCC did so on May 24, 2023. As the Reconsideration Official, I now affirm the decision to deny FCC's application for recertification.

FCC is incorrect in its argument that it is entitled to a hearing pursuant to the process established in 34 C.F.R. Part 668, Subpart G before the Department can deny its application for recertification. The Higher Education Act and applicable regulations regarding the recertification process do not dictate a specific process that must be followed by the Department, and they do not provide for an internal review of any kind of a decision to deny recertification. Subpart G, on the other hand, states that it applies only "for the following actions with respect to a participating institution or third-party servicer:" an emergency action; the imposition of a fine; the limitation, suspension, or termination of the institution or eligibility of the servicer to contract with the institution; and the determination of borrower defense to repayment claims and liabilities arising from those claims. 34 C.F.R. § 668.81(a). Subpart G does not apply to a decision on whether to approve or deny an application for recertification.

FCC's denial of recertification properly fits within the procedures for reestablishing or maintaining institutional eligibility pursuant to 34 C.F.R. § 600.20(b)(2)(ii). It is this section, not Subpart G, that applies to FCC. An eligible institution must reapply "for a determination that the institution continues to meet the requirements of this part and in 34 CFR part 668." When the Secretary receives an application for reestablishing or maintaining institutional eligibility, the Secretary notifies the institution whether it continues to be certified and, if so, the scope of such approval.

FCC's provisional PPA was up for recertification. The Department determined that FCC did not meet the requirements of 34 C.F.R. part 668 because of FCC's violation of the program rules; its failure to act in the nature of a fiduciary in its administration of Title IV; and its failure to exercise adequate standards of administrative capability. The Department then issued its decision in the form of its Denial Letter as outlined in 34 C.F.R. § 668.13(b).

### **Conclusion**

Substantial evidence supports the Department's conclusions that FCC breached its fiduciary duty, failed to demonstrate administrative capability, and violated regulations relating to ability to benefit, and the information provided by FCC does not provide a basis to reverse the Department's decision to deny FCC's application for recertification to participate in the Title IV program. Consequently, the Denial is affirmed and now constitutes a final agency decision.

In accordance with the regulations, the Denial Letter, and the Limited PPA, FCC's eligibility to participate in Title IV programs will end on January 31, 2024.

Sincerely,

*Colleen M. Nevin*

Colleen M. Nevin  
Deputy Chief Enforcement Officer

#### Index and Attachments

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