



AUG 18 2023

Octavia McDougale  
McDougale Technical Institute  
1901 North Federal Highway #201  
Pompano Beach, Florida 33062

Sent Overnight Via UPS  
# 1Z37X7Y30108864948  
OPE ID: 04228900

Re: Affirmation of Denial of Recertification Application to Participate in the Federal  
Student Financial Assistance Programs

Dear Ms. McDougale:

This is in response to your submission received in hard copy by this office on February 1, 2023, requesting that the U.S. Department of Education ("Department") reconsider and rescind its decision to deny McDougale Technical Institute's ("McDougale's") application for recertification for continued participation in programs authorized by Title IV of the Higher Education Act of 1965, as amended ("Title IV"). The hard copy submission consisted of a request for reconsideration and several binders of documents. Subsequently, the Department provided McDougale an opportunity to upload an electronic copy of the hard copy reconsideration request and supporting documentation to a SharePoint site, and McDougale informed the Department that it was taking that action. On March 1, 2023, counsel for McDougale sent an email to the Department stating that the owner had uploaded digital copies of all supporting documentation that had been delivered to the Department in hard copy on February 1, 2023. McDougale notified the Department it was submitting additional documentation it wanted considered on March 3, 2023, March 20, 2023, and May 10, 2023. In its review of documentation, the Department discovered that McDougale has submitted documentation electronically that was not included in the hard copy request without notifying the Department of the existence of the new documentation. Despite repeated requests from the Department, McDougale failed to provide the Department a listing of all new documentation that had been electronically uploaded to the SharePoint site that was not in the hard copy request.

The Department has reviewed the documentation that was submitted with McDougale's hard copy reconsideration request and the documentation submitted electronically. The Department thoroughly

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Administrative Actions and Appeals Service Group  
830 First St., N.E. Washington, D.C. 20002-8019  
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and carefully reviewed all of this documentation. As a result of this review, the Department has concluded that the documentation does not support the institution's request for reconsideration, and in fact, many of the documents support the Department's finding that McDougle failed to adhere to a fiduciary standard of conduct. In addition, the Department conducted additional student interviews in order to respond to the arguments raised by McDougle in its reconsideration request. This additional information further supports the Department's decision to deny McDougle's recertification application.<sup>1</sup> As a result, the initial decision to deny McDougle's recertification application is hereby affirmed and is now final. Consequently, McDougle became ineligible to participate in the Title IV programs on December 31, 2022.

The Department's December 31, 2022 denial letter set forth several separate grounds for the denial. In its reconsideration request, McDougle provided general arguments related to the specific grounds cited by the Department and additional arguments regarding due process and the actions taken by the Department while conducting its program review. McDougle also submitted narrative statements regarding some of the students cited in the action. In some cases, these narratives raised different arguments than those raised in the reconsideration request. The Department's response to the general issues raised by McDougle in its reconsideration request are outlined below. The Department's response to any additional arguments raised in student specific narratives are set forth in the charts attached to this affirmation.

**I. McDougle's Arguments Regarding Due Process and the Department's Actions During the Program Review Do Not Support a Reversal of the Recertification Denial**

**A. Due Process**

McDougle's initial argument in its request for reconsideration is that the Department denied the institution due process by issuing a recertification denial prior to issuing a program review report and allowing the institution to respond to that report. Reconsideration Request ("Reconsideration") at 2-3. McDougle maintains that since the information relied on in the recertification denial was obtained during a program review, the Department must follow the program review process prior to issuing any type of administrative action. Although it claims to recognize that the recertification process and program review process are different, McDougle goes on to say that the Department must follow the program review directives in the Title IV statute regarding the confidentiality of a program review report and the institution's ability to respond to that report. Reconsideration at 2 (citing 20 U.S.C. §§ 1099c-1(b)(6), (7)). McDougle concludes that by not following these statutory provisions for the recertification denial, the Department's actions rendered these statutory provisions meaningless.

McDougle's arguments are completely misplaced. The Title IV statute clearly provides for the Department's review of an institution's compliance with program requirements when the institution applies for recertification to participate in the Title IV programs. See 20 U.S.C. §§ 1099c(a), (g). Although the statute does not set forth any specific procedures for the recertification process, it does

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<sup>1</sup> The additional information from those interviews is included below and in the attached charts.

contemplate that the Department staff may conduct a “site visit” at the institution before reaching a decision on an institution’s recertification application. Id. As McDougle is well aware, the Department considers visits to obtain information regarding an institution’s past participation in the Title IV programs a program review.

The statute also provides for the conduct of general program reviews of institutions participating in the Title IV programs. See 20 U.S.C. § 1099c-1(a). For general program reviews, the process is for the Department to conduct the review, analyze the information and documentation obtained during the review, issue a program review report, analyze the information and documentation that is submitted in response to the report, and issue a Final Program Review Determination (“FPRD”) assessing liabilities for misspent funds. As McDougle correctly states, the statute does set forth specific directives for the handling of program review reports. The statute specifically states that the Department must “provide an institution of higher education an adequate opportunity to review and respond to any program review report and relevant materials related to the report before any final program review report is issued.” See 20 U.S.C. § 1099c-1(b)(6) (emphasis added). The statute goes on to state that the Department must “review and take into consideration an institution of higher education’s response in any final program review report...” See 20 U.S.C. § 1099c-1(b)(7). Under Department procedures, the final program review report is called an FPRD. It is clear from the plain language of these provisions cited by McDougle, that they apply to a program review report issued as a result of a program review, and not to program review itself.

There is nothing in the statutory provisions regarding program reviews that prohibits the Department from using information and documentation obtained during a review as a basis for a recertification denial, when the information establishes that the institution is not complying with Title IV requirements and is failing to adhere to a fiduciary standard of conduct. In fact, as noted above, the statute actually contemplates a site visit, or program review as the Department calls it, prior to the recertification of an institution. Considering the Department’s responsibility for the oversight of the Title IV programs, it would make no sense for Congress to prohibit the Department from expeditiously taking action, when it finds during a program review that an institution has failed to comply with Title IV requirements. The Department’s obligation to both students and the taxpayers would be severely hampered with such a prohibition or directive. Had Congress intended the provisions cited by McDougle to apply to anything other than a program review report, it would have expressly stated that in the statute. It did not.

In addition, the statute and regulations regarding recertifications do not dictate a specific process that must be followed by the Department. The regulation regarding certifications merely discusses the deadline for the submission of a recertification application and the fact that the institution will participate on a month-to-month basis until the end of the month in which a decision is rendered. 34 C.F.R. § 668.13(b)(2). Neither the statute nor the implementing regulations provide for an internal review of a decision to deny recertification. Consequently, the decisions are considered final agency actions that can be appealed to district court under the Administrative Procedures Act. Despite the fact that the statute and regulations are silent on a review after a denial is issued, the Department has built in a reconsideration process to allow institutions to provide arguments and documentation to dispute the findings in the Denial. McDougle has availed itself of this additional process, and this affirmation is the result of that process.

## **B. Department's Actions During Program Review**

In an attempt to deflect from its egregious misconduct, McDougle repeatedly attacks the Department's conduct during the program review. In general, McDougle alleges that the Department acted improperly when interviewing students by showing up at students' houses at night and on weekends, by making disparaging remarks about the institution during interviews, by intimidating the students into speaking with them, and by encouraging the students to make untrue statements about the school with the suggestion that the students would receive money back from the school. Reconsideration at 3. McDougle suggests that because the students interviewed were primarily African-American men and women, some living away from home for the first time, the Department was able to influence the students into making false statements about the institution. McDougle also questions the integrity of Department staff by suggesting that the typed statements for Students 49, 227, and 247 are not even from the students, and the notes of the interview of Student 46 do not actually reflect information provided by the student. See student specific narratives. To support the claim that it believes the Department persuaded students to say bad and untrue things about the institution, McDougle references student surveys of the institution submitted with the reconsideration request that give the institution excellent ratings. McDougle's claims are entirely baseless and provide no support for the Department to rescind the recertification denial.

First, there is nothing improper for the Department to interview students at their homes. From the Department's experience, students speak more freely when they are away from the school where owners and/or employees attempt to influence what is said or prevent the Department from speaking to the students at all. There is also nothing improper about interviewing students on weekends and in the evenings. The Department has also found that students are more likely to be home in the evenings and on the weekends, so interviews are conducted during those times. Further, although the Department understands that being approached by government officials could make a person a little nervous, none of the students were forced to speak to the Department, nor did the students act like they were intimidated by the Department staff during interviews. In fact, many of the students thanked the Department for giving them an opportunity to provide information, and the student football players interviewed at the student housing apartment building all approached Department staff to be interviewed. In addition, a number of the interviews were conducted by phone, where the student could have ended the call at any time if they did not want to speak to the Department or felt uncomfortable. It is not entirely clear what McDougle was suggesting with the comment that many of the students were young African-American men and women, but it should be noted that a number of the young football players were interviewed with their parents present. Last, the Department conducted supplemental interviews of Students 7, 46, 49, 54, 55, 64, 65, 127, 149, 227, and 235, who all stated they spoke to the Department voluntarily.

Even though McDougle's suggestion that the Department provided statements and notes that were not actually from the students is simply ludicrous, staff were able to conduct supplemental interviews of Students 46, 49 and 227, who all confirmed that they provided the information and statements. The students also confirmed that the information provided was all true and accurate. In addition, Students 7, 54, 55, 64, 65, 127, 149, and 235 all confirmed the information previously provided to the Department when interviewed again after the recertification denial was issued.

McDougle's claims that the Department made disparaging remarks about the institution during student interviews is unfounded. First, the institution fails to specifically state what these remarks were or to whom they were made. Further, the Department routinely conducts student interviews as part of the program review process, and staff are well aware of the appropriate way to conduct themselves and would not make "disparaging" remarks about an institution during student interviews. Similarly, McDougle suggests that students told the Department false information because staff indicated that they could get money back from the school but provides no specifics as to what Department staff allegedly said. To the extent that McDougle is referencing conversations with students regarding credit balance funds, this is one of the issues identified during the review. In order to find out if students actually received the credit balances identified on ledgers, staff need to ask the student about the payments. Such questions are completely appropriate and can in no way be construed to suggest that the student could get money from the school if they spoke to the Department officials.

Last, the Department was able to interview some of the students regarding the positive surveys that were provided in the reconsideration request to support McDougle's claim that the Department somehow persuaded the students to relay bad information about the institution. The Department conducted supplemental interviews of Students 46, 49, 65, and 227, who all stated that they did not fill out those surveys.<sup>2</sup> Students confirmed that since they were unhappy with the institution, they would never have provided excellent ratings.

## **II. McDougle's Failure to Adhere to a Fiduciary Standard of Conduct**

### **A. Illegal Disbursement of Funds at an Ineligible Location**

In its recertification denial, the Department found that McDougle disbursed Title IV funds to students attending its Gainesville location prior to receiving required approval from the Department. Since McDougle was participating under a Provisional Program Participation Agreement ("PPPA"), the institution had to receive approval from the Department of any location where it offered 50% or more of an educational program. The location also had to be approved by both the state and the institution's accreditor. The overwhelming evidence obtained by the Department established that McDougle was offering entire "on ground" programs at the Gainesville location. Despite this fact, you lied to the Department's eligibility staff and said the institution was not offering 50% or more of its program at that location.

Students repeatedly informed the Department's staff that they applied and enrolled at the Gainesville campus, were given a set schedule for on-site classes at the Gainesville campus, and attended classes and did their clinical hours at the Gainesville campus. The Barber Styling Program was a fully on ground program. Although the Cosmetology and Restricted Barber Programs were labeled by the

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<sup>2</sup> It should be noted that during the course of the supplemental interviews, the Department discovered that the institution also submitted falsified documentation regarding student placements. Students 49 and 235 informed the Department that they did not sign the placement verification forms. Student 49 also stated that the school required them to set up the Instagram accounts while they were in school. Student 235 stated that he did not work at the salon listed on that form and that it was the school director's shop.

institution as hybrid programs, students informed the Department that virtually all of their work was actually done at the Gainesville campus. Except for some isolated work away from the school, the online hours were also done while the students were seated at the Gainesville location.

In its Reconsideration, McDougle claims that the Department made this finding in error and that students cited in the denial were actually enrolled in a hybrid program in Pompano Beach and not enrolled at the Gainesville location. McDougle claims that the programs were designed so that more than 50% of the programs were completed at the Pompano Beach main location through distance education and onsite education. Reconsideration at 8. McDougle appears to claim that the program is designed so that 50% of the program is on-line through Pompano Beach and students attend at least one day of instruction in Pompano Beach. *Id.* McDougle states that it provided a roster with dates of students attending onsite in Pompano Beach. Based on these facts, McDougle maintains that Octavia McDougle did not lie to the Department's eligibility analyst when she said that the institution did not offer 50% or more of a program at an additional location.

In addition to these general arguments, McDougle provided student specific narratives where it stated that all theory was on-line. See for example Response to Students 55 and 100.<sup>3</sup> McDougle stated that its distance education hours were taken in either the Moodle or Populi learning management systems, and that it switched from Moodle to Populi in 2022. Reconsideration at 16. McDougle also stated that students' official attendance records were in FAME, and the FAME system did not provide for a mechanism for separately logging distance education hours. As a result, McDougle logged distance education hours for the Gainesville students in a lump sum on Sundays. Reconsideration at 10, 15.

McDougle also provided statements from Students 60, 84, 112, 166, 208, 226, 237, 244, and 255 which they appear to claim support its position that the institution did not offer 50% or more of an educational program at the Gainesville location. McDougle also provided statements from employees Brandon Cooper, Peggy McKnight, and Willuance Mesalien, who worked at the Gainesville location.

The information and documentation provided in McDougle's Reconsideration do not support the institution's position that the Department erred in making this finding. Further, McDougle makes additional misrepresentations in the Reconsideration which support the Department's position that the institution does not adhere to a fiduciary standard of conduct.

Prior to addressing the general claims made by McDougle, the Department is identifying two misrepresentations made by the institution in raising their arguments. First, Department staff did an in-depth review of the Populi system when conducting the review. The Populi records themselves show that students began doing work in the system in late 2020, and by April of 2021 virtually all students who started from that point forward that were cited by the Department had work completed in that

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<sup>3</sup> The Department is providing supplemental charts for a number of the findings in the recertification denial. In addition to listing the basis for the finding that was set forth in the Denial, the Department includes a summary of the arguments raised for students for whom McDougle provided an individualized narrative, and the Department's response to those arguments. The chart for this finding is included as Attachment B. This attachment includes a column listing the total number of hours found for each student in the Populi learning management system. Attachment A is the list of students cited in the Denial and Affirmation.

system. This was confirmed in the statement of employee, Kendra Anderson, that was provided with the reconsideration request, who stated that the institution had fully transitioned to Populi in April 2021. In addition, McDougle's claim that it was difficult differentiating between on campus and distance hours in FAME is in direct conflict with the actual FAME attendance records which provide an entry line for distance hours. There is simply no reason why the institution would log distance hours on Sundays in the column for actual hours, when there is an explicit line for those distance hours.

With respect to the substantive finding, the initial argument made by McDougle is that the students attending the Gainesville location were actually enrolled in a distance education program through its Pompano Beach location, and were not actually enrolled in Gainesville. The evidence obtained by the Department does not support such a claim. When given the option, students attending at the Gainesville location specifically marked Gainesville, and not Pompano Beach, as the location they were seeking to attend. In addition, virtually all of the transcripts for the students cited in this finding have Gainesville marked on them, including students who provided statements for the institution. There is simply no designation on documents in the student files which establish these students enrolled through Pompano Beach.

Further, the Department interviewed 17 students who attended the Gainesville location and they all stated that they enrolled at the Gainesville location and that they attended class at the Gainesville location. Not one of these students stated that they were enrolled in a distance education program through Pompano Beach, and their transcripts were marked Gainesville. Although McDougle submitted 9 statements for students who attended the Gainesville location only three, Students 84, 208, and 244, stated that they were actually enrolled in Pompano Beach.<sup>4</sup> The records for these students, however, undermine these statements. In her application for admission, Student 84 marked that she intended to enroll in Gainesville, Populi indicates that her campus was MTI-Gainesville, and her transcript is marked Gainesville. Although the applications used for Students 208 and 244 did not have a spot to designate the Gainesville location, both of their transcripts are marked Gainesville, and Populi indicates that Student 244's campus was MTI-Gainesville. Consequently, this documentation calls into question the statements made by these individuals.

McDougle went on to argue that the "Pompano Program" was designed so that the theory hours and at least one day of on-ground instruction was done at Pompano Beach. McDougle acknowledges that the remainder of its hands on instruction was done in Gainesville. These statements are also inconsistent with the evidence the Department obtained. First, there is nothing in the catalogues for the award years in question that supports the claim that the program was designed to have at least one day of instruction in Pompano Beach. The catalogues show that both the Cosmetology and Restricted Barbering Hybrid programs are divided so that half of the hours are theory and half are hands on instruction. There is no mention of mandatory training at the Pompano Beach location, which is 5 hours away from Gainesville. Further, none of the students the Department interviewed stated that they were told anything about mandatory training in Pompano Beach. Since the Pompano Beach location was 5 hours away from Gainesville, this is certainly something students would be told prior to enrolling. They were not.

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<sup>4</sup> It should be noted that Student 208 worked as a coach for MTI Prep.

To support its claim that students attended at least one day of instruction at Pompano Beach, McDougle provided a list of students marked as Attachment IA1. Although McDougle stated in the Reconsideration that the list had dates of attendance, all that was provided was the list of student names. First, the list did not include all students attending the Gainesville location.<sup>5</sup> Further, the Department conducted supplemental interviews of some of the students identified on that list. Student 54 stated that he never attended anything at the Pompano Beach location. Students 49, 55, and 235 stated that they only went to Pompano Beach one day to play a football game and did not take any classes there. None of the students interviewed told the Department they attended classes or hands on training in Pompano Beach.

McDougle submitted only one statement, Student 166, where the student stated that he did attend “barbering in Pompano fl for 2 days when I came with prep.” It is not clear exactly what he meant by “attend barbering”, however, the student was on the football team and would have at least gone to Pompano for the game.<sup>6</sup> Even if the student was stating that he received educational training in his program in Pompano for 2 days, this does not change the fact that all other students interviewed by the Department stated that they only attended instruction in Gainesville. Clearly, the program was not provided with required attendance at Pompano Beach as claimed by McDougle.

McDougle’s claim that students actually attended 50% of their programs on-line is also inconsistent with the information obtained from students and with the school’s own attendance records. McDougle’s catalogue shows that 50% of the students’ hours of instruction for the Restricted Barbering and Cosmetology hybrid programs were theory hours that the institution claims were provided online. McDougle maintains that the online hours were completed by students in either the Moodle or Populi online learning platforms depending on the year of attendance. McDougle acknowledges that the clinic service hours, except for the required day of attendance in Pompano Beach discussed above, were completed at the Gainesville location.

The evidence establishes that McDougle’s representation that all students in Gainesville took 50%, or the theory portion, of their programs online is false. First, McDougle does not even address that fact that some of the students cited in the recertification denial in this finding were enrolled in the Barber Styling program and that program was not hybrid. See Students 47, 62, 85, 93, 102, 159, 188, 202, 206, 208, and 209. In addition, Students 122 and 220 were enrolled in the non-hybrid Master Barbering program. These students received Title IV aid for programs that were fully on-ground at the unapproved Gainesville location. The Department acknowledges that students 188, 202, 206, 208, and 209 switched to the Restricted Barbering program. This does not change the fact that McDougle disbursed Title IV funds to the students while in the fully on ground program at the ineligible location.

Further, both the Populi records and the FAME attendance records establish that McDougle’s statement is false. Department staff thoroughly reviewed the Populi system to determine the number of hours

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<sup>5</sup> The list contained only the players on the football team and one other student.

<sup>6</sup> The statement provided for this student suggests that he was interviewed “out of the blue” and that staff asked questions he didn’t know how to answer. This student voluntarily returned a phone call made by the Department to request an interview. The conversation was not “out of the blue”, and as the notes of the conversation show, was very limited.



logged for students attending the Gainesville location. Populi was the online learning management system used when most of the students in the finding attended the institution. The actual hours each student earned in Populi is included in Attachment B.<sup>7</sup> These hours are not even close to the 50% claimed by McDougle. For some students, the online hours were less than 20.

The FAME attendance records also undermine McDougle's claim that students took 50% of their programs online. In an attempt to respond to the claim that attendance records were falsified because students had hours logged on FAME attendance sheets for Sundays and the students stated that they did not attend on Sundays, McDougle claimed that those hours were actually the distance hours earned during the week that were entered on Sundays. Based on this statement, the hours logged on Sundays should represent 50% of students' programs. They don't. See Attachment B. Even if the Department accepted the claim that McDougle had to enter distance education hours earned by the students on Sundays, which it does not, removal of those hours shows the students completed virtually all of their programs by physically attending the Gainesville location. Id.

In addition, when interviewed by the Department, students stated that virtually all of their work, including any quizzes or work done on the computer, was done while they were physically at the Gainesville location.<sup>8</sup> Students informed the Department that the day students had a schedule of attendance from 9:00 am to 3:00 pm and the night students had a schedule of attendance from 6:00 pm to 10:00 pm.<sup>9</sup> While on site students did bookwork and hands on training each day. Work done by students is not considered distance education simply because the work was done on a computer. Distance education is defined as "delivering instruction to students who are separated from the instructor..." 34 C.F.R. § 600.2. What occurred in Gainesville is clearly not distance education.

McDougle submitted statements from 9 students to support its position that 50% of the program was done online. Although some of the students stated that they did 50% of their programs on-line, none of the students stated that the computer work was done away from the school. Further, these statements are inconsistent with the information in the online learning management system and/or the official FAME attendance records.

The statements by two of the Gainesville employees that were provided by McDougle actually support the Department's position in this finding. In the statement written by Brandon Cooper, who was a Restricted Barbering instructor during the period under review, he said that in addition to being a "hands on" teacher he also taught theory. Peggy McKnight, who was also a Restricted Barbering instructor, stated that she taught theory as well as practical training daily. These instructor statements are consistent with the information provided to the Department by Derrick Johnson who stated that he taught both the classroom (theory) and clinical hours.<sup>10</sup> As McDougle repeatedly stated in its Reconsideration, the entire theory portion of the program was what was being taught on-line to students

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<sup>7</sup> In noting the hours online, the Department removed hours where it is clear the student simply did not log out of the system after completing an assignment or quiz.

<sup>8</sup> Students 49, 54, 55, 100, 101, 115, 120, 155, 227, 235, and 247.

<sup>9</sup> This schedule of attendance is consistent with what is stated in the institution's catalogue and in Populi.

<sup>10</sup> Mr. Johnson also stated that most of the students' program hours were done at the Gainesville location.

out of the Pompano Beach location. As evidenced by McDougle's own instructors in Gainesville, that statement is clearly false.

McDougle's claim that the Department erred in finding that the institution was providing 50% or more of its education at the unapproved Gainesville location is not supported by the evidence gathered by the Department. As outlined above, there is nothing in the information and documentation submitted by the institution that changes that fact.

### **B. Falsified Attendance**

In reaching its decision to deny recertification, the Department found that McDougle falsified attendance records for a large percentage of the students attending the institution. In the recertification denial, the Department laid out the various falsifications it discovered during the course of its review. First, the students in Gainesville who were also football players informed the Department that due to overcrowding, the offense and defense attended classes on different days. On the days the players were not in class, they did not complete any coursework. Despite these facts, the attendance records for the students generally show six hours of attendance per day, every weekday.

The Department also found that McDougle falsified attendance by entering 10 and 12 hours in a single day and by including hours on Saturdays and Sundays that the students said they did not complete. The Department also found that McDougle improperly awarded clock hours for students who simply took a video or picture of themselves performing an activity or did services away from the school, and for students who were working for a company called Handy during class hours. Last, the Department found that McDougle awarded hours even though there was little or no instruction being provided and would enter more hours on the FAME attendance for the online portion of the hybrid programs than were actually completed in the online learning platform.

In its Reconsideration, McDougle spends a significant amount of time telling the Department what its own Title IV regulations and Covid guidance mean. In this regard, McDougle contends that the definition of a clock hour, the distance education regulations, the academic engagement definition, and the emergency Covid guidance permit an institution to assign clock hours for work done by students for the distance education portion of its hybrid programs. Reconsideration at 11-13. McDougle suggests that with the 2021 changes to the definition of a clock hour, "instructors have to assign time on task within the Populi system and/or assign a time for each assignment or activity in order to monitor and track online hours as the system does not account for reading or hands on practice on mannequins not done directly inside of the Populi system." Reconsideration at 11. McDougle further claims that its learning management system, Populi, does not reflect time on task, and that distance hours such as reading the textbook or a live Google Meet or Zoom meeting are not logged into Populi. Reconsideration at 18. McDougle also states that it uses the Milady curriculum which sets forth the time it should take students to complete a task and that this is used by instructors when certifying hours. Ms. McDougle also claims that since she and the other administrators do not actually certify hours, there is no way for them to determine if there was actual instruction going on for the hours certified. Reconsideration at 18.

As an initial matter, McDougle's characterization of what is permitted for clock hour schools based on the definition of a clock hour, the distance education regulations and the Covid guidance is incorrect. First, the operative regulation for the issue is the actual definition of a clock hour. That regulation makes clear that in order for instruction to be counted as a clock hour for purposes of the Title IV programs, the instruction, whether theory/bookwork or the hands-on training, must be supervised by an instructor. See 34 C.F.R. § 600.2 (definition of a clock hour). Prior to the 2021 award year, there was nothing in the distance education definition that established clock hours offered online were permitted. During this period, the Department did acknowledge that clock hours of instruction online are permitted, however, the guidance provided to institutions at the time made clear that the online system used by the institution must be able to track the student's supervised instruction for the full 50 to 60 minutes each hour in order to meet the definition of a clock hour for Title IV purposes. The distance education regulations effective July 1, 2021, specifically acknowledge that a clock hour can be asynchronous, but make clear that if technology is used the system must be able to "monitor and document the amount of time the student participates in the activity." 34 C.F.R. § 600.2 (definition of a clock hour) (2021).

There is nothing in either definition of a clock hour that suggests an instructor must or can assign a time for a given task using items like the Milady curriculum or the instructor's estimate of how long it should take a student to complete a task. In fact, the Department's guidance and the 2021 clock hour definition specifically require that the technology used have the capability to monitor and track the student's activity. Further, that activity has to be supervised in some manner by an instructor. Contrary to McDougle's suggestion, the guidance issued by the Department to assist institutions during the Covid emergency does not change the definition of a clock hour. The guidance informs institutions that even during the emergency, an institution offering asynchronous clock hour instruction must maintain an online learning platform or another system for monitoring to ensure students are academically engaged for at least 50 minutes of each clock hour recorded as attendance. The guidance goes on to state that an instructor can complete a student's timesheet, but the hours must be based on data or the instructor's own knowledge that the student was academically engaged. "Instructor's own knowledge" as used in this guidance would apply in a situation where the instructor was conducting something like a Zoom class or was engaged online with the student for the hour required. It does not permit the institution to simply assign hours based on a picture or video of activities that were not supervised, or based on a Milady estimate of how long a task usually takes.

McDougle appears to also argue that the instructors had no choice but to assign hours to work because the Populi system does not record time on task, and that distance hours on tasks like reading textbooks or having Zoom meetings are not logged into Populi. Reconsideration at 18. First, contrary to McDougle's claim, Populi does record the time students take to perform assignments or tasks. This was confirmed during a conversation with the CEO of Populi where he actually showed Department staff how to obtain that information in the system. The Department recognizes that tasks like reading textbooks or attending Zoom meetings may not be done in the Populi system. With respect to reading textbooks and similar activities, these are not supervised instruction, and therefore, do not meet the definition of a clock hour. Activities like Zoom meetings would be considered synchronous instruction, which does meet the definition of a clock hour, however, McDougle must have a mechanism for monitoring the time spent on those activities. McDougle only provided one small clip of what appeared to be videoed instruction, and neither of the students interviewed by the Department who attended when the institution was fully online mentioned Zoom or Google Meet instruction.

Based on the facts of this case, the only time that the Covid guidance would even be applicable was the period of time in 2020 when McDougle actually moved students from on ground to online instruction due to the pandemic. Although Ms. McDougle never answered the Department's request to provide the time period that the institution went fully online, based on the interviews conducted by the Department it appears that students were switched to fully online sometime in late March/early April until August. Students informed the Department that during this time period there was virtually no instruction and students were simply given hours for turning in activities, such as curling hair, or watching videos and taking quizzes. In a supplemental statement, Student 46 stated that the institution had her rewatch the same videos and retake the same quizzes in order to get hours. This is certainly not supervised instruction as required by the regulations. Further, failing to provide actual instruction for the programs hurt students who needed that instruction in order to pass their licensing exams and be employed in their field of study. Of the 16 students cited in the action for attendance during the pandemic, only Student 176 received her license.<sup>11</sup>

In its Reconsideration, McDougle repeatedly stated that it was in a great position for online training when Covid hit because the institution had already been providing hybrid programs prior to the start of the pandemic. Since McDougle claimed that it had previously been providing theory online, the only form of exception it should have needed was for the hands-on portion of the students' programs. There is nothing in the Covid guidance that suggests institutions could provide hands-on training online. Further, the State of Florida only permitted institutions to provide the didactic (theory) portion of the programs online. The Department did provide institutions offering programs requiring hands-on instruction the opportunity to place all students on a leave of absence until it could bring the students back on campus to provide actual hands-on training. McDougle did not avail itself of this opportunity, rather, it simply added hours to students' attendance without actually providing required clock hours of instruction. It should be noted that in June and July of 2020, when McDougle still had other students fully online allegedly due to the pandemic, the institution enrolled football players into the institution and brought them to campus for their training. It is completely disingenuous for McDougle to now rely on guidance that was designed to assist institutions that had to move fully online due to the pandemic, when the institution brought students in for on campus instruction during the same time period.

In addition to the fact that McDougle's claims regarding how the distance education regulations apply to clock hour schools are incorrect, the distance education rules are simply not applicable to the majority of the students in the recertification denial. Although McDougle maintains that it offers hybrid programs with the theory/bookwork being done online through distance education and the hands-on training being done onsite, the institution's programs were operated as on ground programs. Except for the students who were enrolled when the institution transferred students to fully online in March/April 2020 due to the pandemic, all of the students interviewed in both Gainesville and Pompano Beach told the Department that their entire programs were done on campus. Some students informed the Department that they did a little homework or makeup work away from school, but their programs were on ground at the two locations. Any other online work that was completed was done while at the institution.

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<sup>11</sup> Although Student 127 did earn her Full Specialty license, she had switched to that program after returning to on ground training.

The records reviewed in the Populi learning management system support the students' statements that their programs were on ground. See Attachments B and C. There are limited hours logged in Populi for the students attending during the program review period. Further, as students repeatedly stated, most of these were done while on site. McDougle argues that the Department did not review all of the records since many of the students were in the Moodle system, not Populi. First, as outlined above, McDougle switched to the Populi system in April 2021, which covers approximately two-thirds of the students in the Denial. With respect to Moodle, McDougle only provided Moodle records for one student and that student had withdrawn from the program. The overwhelming evidence establishes that these were on-ground, in-person programs.

The falsification of the attendance records for these on ground students was the primary basis of the Department's finding. Despite this fact, McDougle failed to provide valid evidence to dispute the finding. McDougle did not even address the Department's finding that the football players in Gainesville alternated days of attendance beginning Denial, these students' attendance records showed 6 hours of attendance each day despite the fact that the offense and the defense switched off days of attendance during the week. The only evidence provided by McDougle that remotely deals with the issue is the statement of Willuance Mesalien submitted by the institution. Although Mr. Mesalien fails to acknowledge that the football players did not attend class every day, he appears to suggest that the students did work online outside of school when they did not attend class. As evidenced by the multiple interviews conducted of these football players, and the information in Populi, Mr. Mesalien's statement is patently false.

McDougle also failed to provide valid evidence to dispute the Department's allegation that students were awarded hours on the weekends and for 10-12 hours a day, when the student did not actually attend those hours. In response to these allegations McDougle stated that students were allowed to make up as many hours as they wanted, even on the weekends, in order to complete the programs. McDougle also claimed that the hours on Sunday represented the online hours accumulated during the week. The Department does not dispute that students were permitted to make up hours. The issue is that students consistently informed the Department that they did not attend 10-12 hours in a day or attend on the weekend, when the FAME attendance records showed that attendance. Not only are the attendance records inconsistent with the information provided by students and the information in Populi, McDougle failed to provide any back-up documentation, such as sign in sheets, to support those hours.<sup>12</sup> As fully outlined in the finding above, McDougle's claim that the Sunday hours represent online hours earned during the week and entered on Sundays is simply not supported by the evidence. Since many of these additional hours were entered for football players, it is clear that McDougle simply added hours of attendance so that it could graduate the football players at the end of the season.

In reaching its conclusion on falsified hours, the Department found that Student 149 was awarded hours for hands-on work done on her own at the homeless shelter where she lived. McDougle maintains that this is not true and provides an email from the former director of education, Kendra Anderson, stating

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<sup>12</sup> Although McDougle did not provide the sign-in sheets during the review because the institution claimed that they were not the official attendance records, the Department did obtain a small handful of those records. As noted in Attachment C, the Department found that the FAME records did not match the sign-in sheets for some students in those records.

that she never awarded service hours for the work Student 149 did at the shelter. Ms. Anderson, who was not employed at McDougle the entire time Student 149 was in attendance, stated in her formal statement provided in the Reconsideration that she was not the only person recording attendance for students. Consequently, the fact that Ms. Anderson did not record the hours does not mean that Student 149's statement is incorrect. In addition, there is simply no reason for the student to lie about this fact as she would be unaware that this was not permitted, and the student confirmed the information during her supplemental interview. Last, the information provided by the student is corroborated by the fact that Student 202 informed the Department in an interview conducted after the Denial was issued that he received hours for cutting hair at the sawmill where he worked. This is clearly something that McDougle did despite it being inconsistent with Title IV requirements.

The Department also found that McDougle falsified the attendance for students working for a company called Handy. Students informed the Department that they worked during class hours and the students still received clock hours during that time. McDougle contends that the Department erred in reaching that conclusion because the students only worked during lunch, after school or on weekends. See Student Specific Response for Student 71. McDougle's claim is inconsistent with the information provided by all students the Department interviewed that had been hired by Handy. In addition, subsequent to the Department's program review, McDougle sent an email, dated December 7, 2022, to the students who worked for Handy stating that they could only work outside of the 9 am to 3 pm school hours. The fact that McDougle felt the need to send this email shortly after the program review supports the students' statements that at the time of the program review, they had been working during class hours.

In its Reconsideration, McDougle appears to contend that the hours logged on the FAME attendance must be accurate since only one student complained about having hours logged that he did not actually attend. This argument has no merit. In general, students do not monitor the hours on their official attendance record, and they simply rely on the institution to ensure they have the required hours to graduate. This would be even more likely at McDougle where many of the students were only at the institution to play football. What the students do know is whether they attended 6 hours every day of the week, attended 10-12 hours in a day, or attended on the weekends.

Equally meritless is the suggestion that the Department made its findings, including the falsified attendance finding, as a result of a disgruntled employee. Student 123, who had also been an employee at the institution, and her son, were merely 2 of 48 students who provided information to the Department. Even if the student had some type of grudge against the institution, which was not apparent to the Department, the information she provided was only used to make the falsified attendance finding with respect to her. The finding of falsified attendance for the remaining students was based on the information those students provided, or information found in the school's own documents. McDougle's argument with respect to Student 123, was merely an attempt to deflect from its own misconduct.

It is the Department's position that the information set forth for this finding in the recertification denial was sufficient to establish that McDougle falsified student attendance. The Department, however, found additional falsifications after the recertification denial was issued. Subsequent to the recertification denial, the Department conducted a supplemental interview with Student 64. The student informed the Department that he stopped attending in November 2019 after the football season ended. The student's

transcript states that the last date attended was April 17, 2020, and the student was marked as graduated. McDougle clearly falsified this student's attendance as well.

During the interviews conducted at the time of the program review, Student 90, who was a football player attending in the Summer and Fall 2020, informed the Department that the players attended class no more than a couple of hours a day, even though the attendance records showed 6 hours of attendance per day. Interviews conducted by the Department after the recert denial was issued confirmed this fact. Students 51, 81, 168 and 198 all informed the Department that based on their daily schedule, which included a team meeting, weight room training and practice, the students were only in class 1.5 to 2 hours daily. The students' attendance records showed 6 scheduled hours each day, and 6 or more actual hours a day for most days during the time the students were attending the school.<sup>13</sup> As with other students cited, these attendance records were also falsified.

In addition to the football players attending in 2020, the Department also uncovered an attendance falsification issue for football players attending in the Summer/Fall of 2021. The Department interviewed Students 103, 110, 119, and 254, who were enrolled in associate's programs at MTI JUCO and also played football. MTI JUCO is not accredited, and therefore, not eligible for Title IV participation. When students enrolled in MTI JUCO in the Summer, they were told they could not receive federal funding for their educational programs. At some point after the students started, they had meetings with Octavia and Stockar McDougle and Coach Norm, where the students were told they could get Federal financial aid to cover JUCO charges if they enrolled in the MTI Barbering Program. The students were told they would take the Barbering classes in addition to the Associate degree classes.

After learning this new information, the Department went back and reviewed these student files again. According to the file documents, the students' enrollments in the Barbering Program were in September and October of 2021, and the students' ledgers are marked dual enrollment. The FAME attendance records for these students show 6 scheduled hours Monday through Friday from the start date until they placed the students on a leave of absence in mid-November when they went on break for the holidays. Students 103 and 119 returned in February and again had 6 scheduled hours every day of the week. The records for all four students show actual attendance of 6 hours a day for many days during those time periods. The Department has determined that these attendance records were falsified. The students informed the Department that they were not offered Barbering instruction 6 hours every weekday as stated on the attendance record. In addition, the students stated that they did not attend the number of hours marked on their attendance sheets. On the days that they did go, the students only had Barbering instruction 1.5 to 2 hours a day, not 6, and they were juggling JUCO classes and Barbering. Student 110 stated that he received no Barbering instruction despite having hours of attendance on his FAME

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<sup>13</sup> The information provided to the Department established that very few of the students who were on the football team in 2020 actually finished their programs. In October 2020, Octavia McDougle and/or the coaches told the football players the school was closing, and those staying in the dorm had to leave immediately. McDougle claimed this was due to Covid, however, the students were not aware of a Covid outbreak in the dorm and the students heard other reasons for the closure. A number of the students interviewed stated that they did not withdraw and wanted to finish their programs but were not given the opportunity. In some cases, this was because the massage students did not have a teacher at the time this incident occurred. Students 6, 90, 51, 81, 168 and 198 all provided information regarding this situation.

attendance record.<sup>14</sup> These JUCO students represent additional attendance falsifications committed by McDougle.

The documentation obtained by the Department establishes a clear pattern of falsification of attendance records, especially for the football players. As outlined above, the information and documentation provided to the Department in the Reconsideration does not change that fact. As the additional information obtained after the Denial was issued establishes, McDougle's falsification of attendance was even more widespread than the Department initially uncovered. These actions clearly establish that the institution cannot be trusted with Title IV funds, and the evidence fully supports the Department's finding and the recertification denial.

### **C. Disbursement to Students That Did Not Meet the Definition of Regular Student**

As set forth in the recertification denial, the Department found that McDougle disbursed funds to students that did not meet the definition of a regular student. In order to be eligible to receive Title IV assistance, a student must be enrolled for the purpose of obtaining a degree, certificate, or other recognized credential offered by the institution he/she is attending. See 34 C.F.R. § 600.2 (definition of regular student). The Department found that McDougle illegally disbursed Title IV funds to 26 students who did not meet this definition.<sup>15</sup> In addition to operating MTI, Octavia McDougle and her husband operated a sports academy called MTI Prep, which was not Title IV eligible. The students identified in the recertification denial were all recruited to play football at MTI Prep, and many of the students wanted to take recovery classes at MTI Prep in order to bring up their GPAs. The students all informed the Department that they only enrolled in the Barbering or Massage programs because school officials or coaches stated that they needed to enroll in one of these programs in order to play football and obtain aid to cover the MTI Prep costs. The students stated that this was the reason they enrolled in MTI.

McDougle's main argument in its Reconsideration is that it is being treated differently from other schools that have students who play extracurricular sports, and that the Department's ruling here would mean that no student athlete could ever receive Title IV funds. Reconsideration at 20-21. McDougle's argument creates a false equivalency by comparing students who enroll in Title IV eligible postsecondary institutions to obtain degrees or certificates and also participate on the school's own sports teams, with students who are playing football at MTI Prep, a separate entity not eligible for Title IV funding, being directed to enroll in MTI for the purpose of obtaining Title IV funds to pay for the football program at the ineligible entity. These two scenarios are simply not the same.

Students enrolling at a Title IV eligible institution that has its own sports teams are not being directed to apply for Title IV funding to cover the costs of participation in the institutions' own sports programs. If students are receiving Title IV funds it is for tuition and fees or other costs related to the educational program they chose to enroll in. Further, any credit balances owed to the students are not being commandeered to pay for the sports program. In contrast, students in this finding were recruited by MTI Prep to play football and that is all they wanted to do. The students only enrolled in the Barbering or Massage programs at MTI because they were told they had to in order to participate in the football

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<sup>14</sup> The specific attendance falsifications for these students are listed in Attachment C.

<sup>15</sup> The chart for this finding is included as Attachment D.



program they actually wanted at the ineligible MTI Prep. As outlined further below, the Title IV credit balances for these students were taken to pay for charges at the ineligible entity. Contrary to the argument made by McDougle, this was clearly a scheme to obtain Title IV funds for the ineligible sports academy.

McDougle maintains that it is being singled out and that the Department has not made this finding with other institutions that have a sports program. Reconsideration at 21. This is inaccurate. As noted above, the issue is not about the institution having a sports program, it is about an ineligible prep sports academy directing students into programs at a Title IV eligible institution in order to obtain funds to cover the costs of attending the sports academy. The Department has reviewed other schools and has made the same finding regarding “regular student” where the facts were similar to those identified here.

Although not raised in the Reconsideration, McDougle argued in some student specific narratives that the football players were enrolled under its First Ability program which required students to be enrolled in an educational program. See for example Narratives for Students 100 and 235. McDougle references attachments to these narratives which supposedly describe this program, but there were no attachments to the documents. The Department did find an email in one of the student responses that had been provided to a Departmental staff member during the program review. The email was from Octavia McDougle describing the difference between MTI, MTI Prep and MTI JUCO, and the email merely mentions First Ability. There is no documentation provided fully describing this program, and the student files contain no applications or other forms for this program that the students were supposedly enrolled in. In addition, during supplemental interviews, the Department asked Students 49, 51, 55, 64, 81, 227, and 235 whether they knew anything about First Ability and they all said no. If these students were truly enrolled through a program called First Ability, they would certainly have knowledge of it.

Subsequent to the issuance of the recertification denial, the Department found additional students that fell into this category. Students 51, 81, and 168, who were enrolled in the Summer/Fall 2020, all informed the Department that they were recruited to play football at MTI Prep and were told they had to take a trade at McDougle in order to play football and get financial aid to cover the costs. These are additional students who do not meet the definition of a regular student.

Further, as set forth above, the Department interviewed Students 103, 110, 119, and 254, who explained their experience at McDougle. The students were recruited to play football for MTI JUCO and enrolled in Associate’s programs at that entity. Since MTI JUCO was not accredited, the students could not receive Title IV aid to attend. In order to get federal aid to cover the costs of the JUCO program, the McDougles created another scheme to obtain Title IV funds for this additional football program. Octavia and Stockar McDougle and Coach Norm called meetings and told the football players who were in the JUCO program that they could enroll in the Barbering Program at MTI to obtain financial aid to cover JUCO charges. These students were not interested in the barbering program and only enrolled because they were told by the owners that they could obtain financial aid to cover the football costs. Based on the facts, these students do not meet the definition of a regular student, and therefore, were not eligible for Title IV funds. The McDougles certainly cannot argue that they were unaware of the rules, since they specifically called meetings to inform the football players about this option, after previously telling the students at MTI JUCO the programs were not eligible for federal aid.

There is nothing provided by McDougle that establishes a basis to overturn this finding. In fact, the information obtained regarding the JUCO students solidifies the Department's finding that the institution illegally disbursed Title IV funds to students that did not meet the definition of a regular student.

#### **D. Illegal Certification of Direct Loans**

In the recertification denial, the Department found that McDougle processed Direct Loans for 7 students who informed the Department they did not apply for the loans or request that McDougle apply for loans on their behalf. In some cases, students specifically told McDougle staff they did not want loans when they were pressured to obtain them. The Department also found that students were pressured into taking out loans so that there would be funds available for football charges.

In its Reconsideration, McDougle maintains that it did not process loans for students who did not fill out the required loan paperwork and that the institution has processes in place for the awarding of federal aid, including student loans. McDougle states that it is not possible to take out loans on behalf of students, and that its processes ensure that students are fully informed during the financial aid process. Reconsideration at 23-25. The Department acknowledges that the institution may have processes in place, but as the evidence establishes, McDougle did not follow those processes in all cases, and the school could take out loans on behalf of students if staff had a student's FAFSA log in username and password.

Student 49 told the Department that the Director, Will, entered the FAFSA information on his own computer. This would have required obtaining the student's login username and password.<sup>16</sup> Student 55 informed the Department that an individual from the Pompano Beach location named Larry went to Gainesville and assisted him with the financial aid paperwork. Larry set up the username and password for the student and Larry filled in the FAFSA on his own computer. Student 149 told the Department that Ms. Kendra did a video chat with her to fill out her financial aid paperwork. This also would have provided an opportunity to obtain the FAFSA login information. All three of these students had told the institution's staff that they did not want to take out loans. In the case of Students 49 and 55, the parents also told the institution they did not want loans.

Additional information obtained by the Department establishes that McDougle's statements that it could not take out loans on behalf of students is incorrect. Although she was aware of her loan, Student 127 told us that the school logged into FAFSA and studentloans.gov for her and the financial aid director had sent her an email requesting her login information. A message in the App file of Student 235, entered by Will Mesalien, stated that he "went ahead and complete this students enrollment and also his MPN and Entrance." This student told the Department that he never applied for a federal loan and did not recall signing a promissory note. This information establishes that McDougle not only could, but did, fill out loan paperwork for students.

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<sup>16</sup> McDougle contends that the two statements provided by this student are inconsistent with respect to who assisted him with the FAFSA. That is incorrect. In both the original and second statement, the student stated that Will had entered the FAFSA information into the computer.

In addition to processing loans without students' authorization, the Department found that McDougle failed to act in the capacity of a fiduciary by pressuring students into taking out loans they did not want. In response, McDougle contends that no student wants loans, and if it is considered pressuring because a student has to take out loans to pay tuition then millions of students are "pressured" all over the country. McDougle also claims that the statement is vague and the institution needs more details.

Reconsideration at 25. Student 49 is a prime example of the excessive pressure put on students to take out loans, especially those in the football program whose costs for the football program were being covered with Title IV credit balance funds. After both he and his mother told the institution they did not want to take out loans, the Director of Gainesville, Will Mesalien, approached the student's grandmother, who was waiting for the student in her car in the parking lot, and attempted to push her into obtaining a PLUS loan on behalf of the student. She refused. See Attachment E (Statements of Student 49). McDougle's actions to pressure students into taking out loans they do not want clearly do not align with a fiduciary standard of conduct.

### **E. Failure to Pay Credit Balances**

In its reconsideration denial, the Department found that McDougle failed to pay credit balances and/or the Higher Education Emergency Relief Fund ("HEERF") funds posted on student ledgers. In its reconsideration request, McDougle stated that it was providing a chart with a student specific response for each student cited by the Department and supporting documentation that established the credit balances were paid or the student provided authorizations to use the funds to pay for other outstanding charges at MTI and MTI Prep. McDougle maintains that if the Department had just asked for this information, the institution would have provided it and this finding would have been avoided.

Reconsideration at 26. McDougle did state that it was confirming the payment status for a few students, and it would update the chart when that information was obtained. Reconsideration at 26.

The Department reviewed all of the student specific information and responded to McDougle's arguments for each student in the chart included as Attachment F. The Department notes that McDougle never updated the chart with the few students it was still reviewing for payment status. The evidence provided with the Reconsideration established that McDougle paid the outstanding credit balances for 11 students after the recertification denial was issued. These credit balances were paid approximately one to two years after they should have been, and all but one had notations on their ledgers obtained during the review making it appear that the payments had been made. Further in some cases, the institution had placed a copy of a written check in the student file as further evidence of the payment, even though the checks were apparently never sent. Failing to pay these credit balances when due, and maintaining documentation to make it appear the credit balances had been paid, is inconsistent with a fiduciary standard of conduct.

McDougle also maintains that it has provided proof of payment of the credit balances or HEERF funds for many of the students identified by the submission of its bank account information. What McDougle provided to the Department are the bank statements with what appears to be the notes entered by the institution regarding who the payment was for. Since staff had interviewed students who stated they never got the funds, the Department asked the institution for the transaction report generated by the bank that would show the full routing number and full account number of the payments in question. McDougle never provided that back up documentation. Students checked and double checked their

bank accounts to see if the specific deposits were made, in some cases while sitting with Department officials, and confirmed that they never received those funds.<sup>17</sup> Student 49 informed the Department that the bank account number on the transaction for him was not his. There are additional students, identified on Attachment F, where the documentation itself shows the transaction being relied on by McDougle was later reversed and the credit balance or HEERF funds were never paid.

McDougle's final argument is that many of the students identified signed authorizations that allowed the institution to keep the funds to pay for charges at MTI Prep. There is nothing in the Title IV regulations or the HEERF guidance that permits an institution to have students authorize the payment of Title IV credit balances or HEERF payments to an outside entity for non-educational football charges. McDougle was required to pay these funds to those students, and it did not. Despite its claim in the Reconsideration, McDougle was well aware that it could not do what it was doing with the credit balance funds for the football players, since the institution entered a cash payment notation on the ledger to make it appear the credit balances were paid to the student. If McDougle truly believed its actions were proper, the institution would not have taken the steps to cover up its actions with a falsified ledger. Further, McDougle's actions regarding these credit balances further supports the Department's position that the institution was forcing students to sign up for the Barbering or Massage programs to obtain Title IV funds to pay for MTI Prep or MTI JUCO.

#### **F. Misrepresentation**

In the reconsideration denial, the Department found that McDougle made several misrepresentations to students in order to get them to enroll in the institution. The most significant misrepresentations were made to students who were recruited to play football at MTI Prep. McDougle contends that any statements made that the Department found improper were done by employees of MTI Prep and the Department does not have jurisdiction over that entity. Reconsideration at 29. Although the Department does not have jurisdiction over MTI Prep, as it is not a Title IV eligible institution, the activities that are performed by employees of MTI Prep to recruit students for McDougle are specifically covered under the Title IV misrepresentation regulations. Consequently, McDougle can be charged for the misrepresentations made by the coaches recruiting students to play football and to enroll in the institution.

McDougle also argues that neither the coaches nor the institution made misrepresentations to the football players in order to induce them to enroll in the institution. McDougle goes on to argue that it never guaranteed things like the chance to play football at a higher level, and that the institution did provide game film to players and provided credit recovery classes to all students who requested them. With respect to housing, McDougle maintains that while it helped students in Gainesville with finding housing, the institution did not promise school provided housing options. These statements are inconsistent with the information provided to the Department by multiple students. It is the Department's experience that when multiple students relay similar information, that information tends to be true and accurate. This is called corroboration.

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<sup>17</sup> These students are identified in Attachment F. It should be noted that although Student 54 was not cited in the recertification denial for this finding, the Department discovered when conducting his supplemental interview that he did not get the payment of \$225.50 posted to his account on 8/13/21.

Further, one of the coaches, Corey Dennison, whose statement was provided in McDougale's initial reconsideration submission, provided additional information that supported the student statements. Coach Dennison stated that students had the "same story time and time again" regarding what they had been promised by the head coach during the recruitment process.<sup>18</sup> With respect to housing, the property manager at the Canopy apartment complex told Department reviewers that the MTI students signed 12-month leases in their names, then did not pay the monthly rent and were eventually evicted. Several students were from out of town and became homeless. The students seemed angry and confused, because they thought MTI was paying for the housing. The students' parents complained to Canopy staff that MTI made promises that were not kept. The statements by Coach Dennison and Canopy staff lend even more validity to the information provided to the Department by multiple students.

It is clear from all of the evidence gathered by the Department that the football coaches were under pressure to recruit as many players as possible for both the Gainesville and Pompano Beach locations. In fact, Gainesville recruited so many players to attend McDougale that the institution had to alternate days the students were attending classes because there was not sufficient room for them all at the institution's facility. These coaches operated in the same manner as admissions staff and recruiters do at other institutions. Many times, these employees will say anything necessary to enroll students to meet numbers, even if that information is not true. The coaches recruiting for McDougale were no different. Contrary to McDougale's arguments, the institution is responsible for the actions of these individuals. Further, based on the information found in student files and in the AppFile system, Ms. McDougale was heavily involved in the day-to-day operations of the institution, and it is unlikely she was unaware of what was going on with these coach recruiters.

With respect to the quality of the educational programs and the kits, McDougale maintains that the information provided to the Department is not accurate. Reconsideration at 28-29. As with the information provided by the football players, this information was provided by multiple students, and therefore, properly relied on by the Department. In addition, McDougale admitted that some students did not receive their kits until the end of the program, which made them useless for training.

As a fiduciary, McDougale was expected to act in a forthright manner when dealing with students and when providing educational programs. McDougale failed to meet that obligation.

### **G. Invalid Basis of Admission**

The Department found that McDougale improperly disbursed Title IV funds to 25 students, who did not have a high school diploma or its equivalent, that were admitted based on passing an Ability To Benefit ("ATB") test. These students were identified from a list provided by McDougale in response to the Department's request for a listing of students who were enrolled under the ATB alternative. Based on the interviews conducted, the Department determined that employees of McDougale were administering the test, rather than the required independent test administrator. In its Reconsideration, McDougale

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<sup>18</sup> This statement was not uploaded to the Sharepoint site, although it was in the documentation accompanying the initial written reconsideration request.

admitted that the ATB tests, used as the basis for Title IV eligibility, were not independently administered as required by the Title IV regulations. McDougale goes on to argue that although it did not properly administer the ATB tests, some of the students were eligible for the funds received because they supposedly met other basis of admission criteria. Reconsideration at 30. This argument does not resolve the issue, as McDougale itself provided the list of students for whom it used an ATB test to establish Title IV eligibility. Institutions cannot retroactively establish a different basis for Title IV eligibility.

#### **H. Improper Use of Title IV Funds**

The recertification denial outlined a number of fees charged by McDougale that were improperly paid with Title IV funds. These fees included athletic fees, additional equipment and unreturned equipment fees, and licensing fees. The main argument raised by McDougale was that the charges for students exceeded the Title IV funds received, and therefore, Title IV funds did not pay those charges. Reconsideration at 31-33. This argument is without merit for two reasons. First, McDougale fails to recognize that the Title IV for many students exceeded the tuition and fee costs, so there is no question that Title IV was covering these unallowable charges. Even where the total costs exceeded the Title IV funds received, the Title IV cash management regulations make clear that Title IV is applied on a payment period basis. Consequently, as evidenced by the student ledger cards, these unallowable charges were being covered by Title IV funds.

With respect to the licensing fee, McDougale contends that it was only helping the students by including the fee on the ledgers so that students would have sufficient funds to obtain their license. Reconsideration at 33. As outlined in the recertification denial, the licensing fee is a pass-through charge that is not assessed by the institution. Title IV funds can only be used for allowable educational charges assessed by an institution. In addition, McDougale was charging the licensing fee up front for many students, when the institution could not have known the student would complete the program.

The evidence establishes that neither the equipment fee nor the athletic fee were charged to all students. The \$295 equipment fee was only charged if students did not complete their program and failed to return the chrome books.<sup>19</sup> The athletic fee was only charged to the football players, not all students. McDougale maintains that this was allowable because it was charged to all students dually enrolled at MTI and MTI Prep. That is not the appropriate standard as it must be assessed to all students in similar educational programs. In addition, the athletic fee was assessed for costs associated with MTI Prep, and not the institution. These are not allowable charges, and the institution improperly used Title IV funds to cover these fees. The school failed to address the \$150 additional equipment fee found on some student ledgers.

As outlined above, the information in your Reconsideration does not support rescinding the decision to deny recertification to McDougale. Consequently, the Denial now constitutes a final agency decision and McDougale is therefore ineligible to participate in the Title IV programs, effective December 31, 2022.

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<sup>19</sup> It should be noted that some students told the Department that they did return the chrome book, but were still charged the fee.

The Atlanta School Participation and Financial Analysis Division will contact you regarding the proper procedures for closing out McDougle's Title IV, HEA participation.

Sincerely,



Susan D. Crim  
Director  
Administrative Actions and Appeals Service Group

Attachments

cc: Darin Wallace, Esq., National Accrediting Commission of Career Arts and  
Sciences via [dwallace@naccas.org](mailto:dwallace@naccas.org)  
Manny Diaz, Jr., Commissioner ,Commission for Independent Education - Florida Department of  
Education via [Commissioner@fldoe.org](mailto:Commissioner@fldoe.org)  
Department of Defense, via [osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil](mailto:osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil)  
Department of Veteran Affairs, via [INCOMING.VBAVACO@va.gov](mailto:INCOMING.VBAVACO@va.gov)  
Consumer Financial Protection Bureau, via [CFPB\\_ENF\\_Students@cfpb.gov](mailto:CFPB_ENF_Students@cfpb.gov)