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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

Case No. 1002039

13 **ITT EDUCATIONAL SERVICES, INC.,**
DBA ITT TECHNICAL INSTITUTE
14 **(continued on page 8)**
13000 North Meridian St.
15 **Indianapolis, IN 46032**

FIRST AMENDED ACCUSATION.

16 **Approval to Operate Accredited Institution**
School Code Numbers 44971351 (362 North
17 **Clovis Avenue, Clovis, CA 93612); 66733893**
18 **(1140 Galaxy Way, Suite 400, Concord, CA**
19 **94520); 32243734 (4160 Temescal Canyon**
Road, Suite 100, Corona, CA 92883);
continued on page 10)

20 Respondent.

21
22 Complainant alleges:

23 PARTIES

24 1. Joanne Wenzel ("Complainant") brings this First Amended Accusation, pursuant to
25 Government Code section 11460.60, subdivisions (a) and (b), solely in her official capacity as the
26 Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs.

27 2. The Bureau granted an approval to operate by means of accreditation to five ITT
28 Technical Institute schools, Institution Code Numbers 44971351, 66733893, 32243734, 3901451,

1 and 91554400; one ITT Technical Institution – Orange school, Institution Code Number
2 3004931; one ITT Technical Institute Oxnard school, Institution Code Number 5601571; one ITT
3 Technical Institute Rancho Cordova school, Institution Code Number 3400531; one ITT
4 Technical Institute San Bernardino school, Institution Code Number 3602131; one ITT Technical
5 Institute San Diego school, Institution Code Number 3703911; one ITT Technical Institute San
6 Dimas school, Institution Code Number 1909091; one ITT Technical Institute Sylmar school,
7 Institution Code Number 1900961; two ITT Technical Institute Torrance schools, Institution
8 Code Numbers 1916401 and 46576621; and one ITT Technical Institute Vista school, Institution
9 Code Number 48441864. Obtaining approval by means of accreditation requires that the schools’
10 owner have accreditation through an accredited agency recognized by the United States
11 Department of Education (“USDOE”). The schools listed above are owned by ITT Educational
12 Services, Inc. (“Respondent”).

13 JURISDICTION

14 3. This First Amended Accusation is brought before the Director of the Department of
15 Consumer Affairs (“Director”) for the Bureau for Private Postsecondary Education, under the
16 authority of the following laws.

17 4. Business and Professions Code section 118 states, in part:

18 ...

19 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
20 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
21 order of a court of law, or its surrender without the written consent of the board, shall not, during
22 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
23 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
24 provided by law or to enter an order suspending or revoking the license or otherwise taking
25 disciplinary action against the licensee on any such ground.

26 “(c) As used in this section, ‘board’ includes an individual who is authorized by any
27 provision of this code to issue, suspend, or revoke a license, and ‘license’ includes ‘certificate,’
28 ‘registration,’ and ‘permit.’”

1 5. Business and Professions Code section 477 states:

2 “As used in this division:

3 “(a) ‘Board’ includes ‘bureau,’ ‘commission,’ ‘committee,’ ‘department,’ ‘division,’
4 ‘examining committee,’ ‘program,’ and ‘agency.’

5 “(b) ‘License’ includes certificate, registration or other means to engage in a business or
6 profession regulated by this code.”

7 6. Education Code section 94933 states:

8 “The bureau shall provide an institution with the opportunity to remedy noncompliance,
9 impose fines, place the institution on probation, or suspend or revoke the institution’s approval to
10 operate, in accordance with this article, as it deems appropriate based on the severity of an
11 institution’s violations of this chapter, and the harm caused to students.”

12 7. Education Code section 94937 states, in part:

13 “(a) As a consequence of an investigation, and upon a finding that an institution has
14 committed a violation, the bureau may place an institution on probation or may suspend or revoke
15 an institution’s approval to operate for:

16 ...

17 “(2) A material violation or repeated violations of this chapter or regulations adopted
18 pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph,
19 ‘material violation’ includes, but is not limited to, misrepresentation, fraud in the inducement of a
20 contract, and false or misleading claims or advertising, upon which a student reasonably relied in
21 executing an enrollment agreement and that resulted in harm to the student.

22 ...”

23 8. Government Code section 11460.60 states:

24 “(a) After issuing an emergency decision under this article for temporary, interim relief, the
25 agency shall conduct an adjudicative proceeding under a formal, informal, or other applicable
26 hearing procedure to resolve the underlying issues giving rise to the temporary, interim relief.

27

28

1 “(b) The agency shall commence an adjudicative proceeding under another procedure
2 within 10 days after issuing an emergency decision under this article, notwithstanding the
3 pendency of proceedings for judicial review of the emergency decision.”

4 STATUTORY & REGULATORY PROVISIONS

5 9. Education Code section 94885 states, in part:

6 “(a) The bureau shall adopt by regulation minimum operating standards for an institution
7 that shall reasonably ensure that all of the following occur:

8 ...

9 “(6) The institution is financially sound and capable of fulfilling its commitments to
10 students.

11”

12 10. Education Code section 94926 states, in part:

13 “At least 30 days prior to closing, the institution shall notify the bureau in writing of its
14 intention to close. The notice shall be accompanied by a closure plan, which shall include, but not
15 necessarily be limited to, all of the following:

16 “(a) A plan for providing teach-outs of educational programs, including any agreements
17 with any other postsecondary educational institutions to provide teach-outs.

18 “(b) If no teach-out plan is contemplated, or for students who do not wish to participate in a
19 teach-out, arrangements for making refunds within 45 days from the date of closure, or for
20 institutions that participate in federal student financial aid programs arrangements for making
21 refunds and returning federal student financial aid program funds.

22 “(c) If the institution is a participant in federal student financial aid programs, it shall
23 provide students information concerning these programs and institutional closures.

24 “(d) A plan for the disposition of student records.”

25 11. Education Code section 94927 states:

26 “An institution shall be considered in default of the enrollment agreement when an
27 educational program is discontinued or canceled or the institution closes prior to completion of
28 the educational program. When an institution is in default, student institutional charges may be

1 refunded on a pro rata basis if the bureau determines that the school has made provision for
2 students enrolled at the time of default to complete a comparable educational program at another
3 institution at no additional charge to the students beyond the amount of the total charges in the
4 original enrollment agreement. If the institution does not make that provision, a total refund of all
5 institutional charges shall be made to students.”¹². Code of Regulations, title 5, section 71745
6 states, in part:

7 “(a) The institution shall document that it has at all times sufficient assets and financial
8 resources to do all of the following:

9 “(1) Provide all of the educational programs that the institution represented it would
10 provide.

11 “(2) Ensure that all students admitted to its educational programs have a reasonable
12 opportunity to complete the programs and obtain their degrees or diplomas.

13 “(3) Maintain the minimum standards required by the Act and this chapter.

14 “(4) Pay timely refunds as required by Article 13 of the Act.

15 “(5) Pay all operating expenses due within 30 days.

16 “(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
17 end of the most recent fiscal year when using generally accepted accounting principles, or for an
18 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
19 composite score requirements of the U.S. Department of Education. For the purposes of this
20 section, current assets does not include: intangible assets, including goodwill, going concern
21 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
22 returnable deposits, or state or federal grant or loan funds that are not the property of the
23 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
24 be accounted for in accordance with general accepted accounting principles.

25”

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1 13. Code of Regulations, title 5, section 76240 states:

2 "All institutions, including those exempt from Bureau regulation pursuant to the Code, shall
3 do the following prior to closing:

4 "(a) At least 30 days prior to closing, the institution shall notify the Bureau in writing of its
5 intention to close and provide a closure plan. The closure plan shall include:

6 "(1) The exact date and reason for the closure.

7 "(2) The last date of instruction for each educational service or program.

8 "(3) A list of students who were enrolled at any time during the 60 days prior to closure.

9 "(4) If any student will not be provided complete educational services or the educational
10 program, the institution shall provide:

11 "(A) A plan for providing teach-outs or transfers, including the details of any agreements
12 with other institutions.

13 "(B) If no teach-out is contemplated, or for students who do not wish to participate in a
14 teach-out, arrangements for making refunds within 45 days from the date of closure, or for
15 institutions that participate in federal student financial aid programs arrangements for making
16 refunds and returning federal student financial aid program funds.

17 "(5) A plan for the disposition of student records.

18 "(6) A plan to notify students of their rights and options under the Act and this chapter.

19 "(b) The institution shall notify the students of the following:

20 "(1) If the institution is a participant in federal student financial aid programs, it shall
21 provide students information concerning those programs and institutional closures.

22 "(2) If any student will not be provided complete educational services or the educational
23 program, information regarding the Student Tuition Recovery Fund and the Bureau's physical and
24 Internet addresses."

25 COST RECOVERY

26 14. Business and Professions Code section 125.3 provides, in part, that the Bureau may
27 request the administrative law judge to direct a licentiate found to have committed a violation or
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation

1 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
2 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
3 may be included in a stipulated settlement.

4 FACTUAL BACKGROUND

5 15. Respondent is currently subject to considerable monitoring and scrutiny by the
6 USDOE and Respondent's accrediting agency, the Accrediting Council for Independent Colleges
7 and Schools ("ACICS"). As a result, the USDOE has required that Respondent post, in a letter of
8 credit or a surety, \$247,292,364.00 to ensure funds are available in case of institution closure or
9 termination of classes prior to the end of the academic period. Similarly, ACICS ordered
10 Respondent to appear before it in August 2016 to show why it should maintain its accreditation.

11 16. In a Form 8-K Respondent filed with the U.S. Securities and Exchange Commission
12 ("SEC") on July 12, 2016, Respondent admitted that USDOE's order requiring that Respondent
13 post a letter of credit or surety:

14 could have a material adverse effect on [Respondent's] financial condition, results
15 of operations, cash flows and ability to meet its contractual and regulatory
16 obligations. Further, there can be no assurance that [Respondent] will be able to
17 fund the [amount] to be held in escrow or submit a letter of credit [The
18 monetary amount ordered by the USDOE] will have a material adverse effect on
19 [Respondent's] liquidity, and will significantly reduce the amount of cash that it
20 will have available for other purposes The fact that a significant amount of
21 the [Respondent's] cash is and will be held in connection with the [USDOE's]
22 requirements could also negatively affect [Respondent's] ability to satisfy the
23 financial metrics of the [USDOE], state education and professional licensing
24 authorities and the accrediting commissions that accredit the [Respondent's]
25 institutions.¹

26 17. In addition, the SEC is currently prosecuting two civil actions against Respondent and
27 two of Respondent's corporate officers.

28 18. On August 26, 2016, the Bureau issued Respondent a Notice of Emergency Decision
and Emergency Decision, pursuant to Code of Regulations, title 5, section 75150, subdivision (d)
and Government Code section 11460.50. Pursuant to the Emergency Decision, the Bureau
ordered Respondent to "cease enrollment of any new students in all programs" at the schools

¹ This Form 8-K is available on the SEC's website at
https://www.sec.gov/Archives/edgar/data/922475/000092247516000070/form8_k.htm

1 referenced by institution code in the caption of this First Amended Accusation. This Emergency
2 Decision became effective on September 1, 2016.

3 19. Without notice, on or about September 6, 2016, Respondent closed all of its schools.

4 FIRST CAUSE FOR DISCIPLINE
5 (Financial Resources)
6 (Cal. Code Regs., title 5, § 71745, subd. (a))

7 20. Respondent has subjected its approvals to operate to disciplinary action as it lacks the
8 assets and financial resources required by Code of Regulations, title 5, section 71745, subdivision
9 (a). (Cal. Code Regs., title 5, § 71745, subd. (a)). The circumstances are set forth in paragraphs
10 15 through 17, above.

11 SECOND CAUSE FOR DISCIPLINE
12 (Failure to Provide Notice of Intention to Close and Closure Plan)
13 (Educ. Code § 94926 and Cal. Code Regs., title 5, § 76240)

14 21. Respondent has subjected its approvals to operate to disciplinary action for failing to
15 notify the Bureau in writing, at least 30 days prior to closing, of its intention to close its
16 institutions or provide a closure plan; offering a plan for providing teach-outs of educational
17 programs; making arrangements for refunds within 45 days from the date of closure; making
18 arrangements for refunds and returning federal student financial aid program funds; providing
19 students information concerning these programs and institutional closures; and making a plan for
20 disposition of student records. (Educ. Code § 94926, subs. (a), (b), and (d), and Cal. Code
21 Regs., title 5, § 76240, subd. (a)).

22 THIRD CAUSE FOR DISCIPLINE
23 (Default of Enrollment Agreement)
24 (Educ. Code § 94927)

25 22. Respondent has subjected its approvals to operate to disciplinary action for failing to
26 make a total refund of all institutional charges to students. (Educ. Code § 94927). In particular,
27 Respondent's institutions are in default, pursuant to Section 94927, because their educational
28 programs are discontinued or canceled and its institutions closed prior to completion of their
educational programs. In addition, the Bureau did not determine that Respondent's institutions
have made provision for students enrolled at the time of default to complete a comparable

1 educational program at another institution at no additional charge to the students beyond the
2 amount of the total charges in the original enrollment agreement. Accordingly, pursuant to
3 Section 94927, Respondent was required to make a total refund of all institutional charges to its
4 students. Respondent, however, failed to refund these charges to its students.

5 PRAYER

6 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
7 First Amended Accusation, and that following the hearing, the Director of the Department of
8 Consumer Affairs issue a decision:

9 1. Sustaining the Bureau's Emergency Decision which orders Respondent to cease
10 enrollment of any new students in all programs at Institution Code Numbers 44971351,
11 66733893, 32243734, 3901451, 91554400, 3004931, 5601571, 3400531, 3602131, 3703911,
12 1909091, 1900961, 1916401, 46576621, and 48441864.


13 2. Revoking or suspending Respondent's Institution Code Number 44971351,
14 66733893, 32243734, 3901451, 91554400, 3004931, 5601571, 3400531, 3602131, 3703911,
15 1909091, 1900961, 1916401, 46576621, and 48441864;

16 3. Ordering Respondent to pay the Bureau for Private Postsecondary Education the
17 reasonable costs of the investigation and enforcement of this case; and

18 4. Taking such other and further action as deemed necessary and proper.

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DATED: 9/26/16


JOANNE WENZEL
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

90692341

1 **Additional “Doing Business As” (continued from caption):**

- 2 ITT Technical Institute – Orange
3 ITT Technical Institute Oxnard
4 ITT Technical Institute Rancho Cordova
5 ITT Technical Institute San Bernardino
6 ITT Technical Institute San Diego
7 ITT Technical Institute San Dimas
8 ITT Technical Institute Sylmar
9 ITT Technical Institute Torrance
10 ITT Technical Institute Vista

11 **Approval to Operate Institution Code Numbers (continued from caption):**

- 12 3901451 (16916 S. Harlan Road, Lathrop, CA 95330)
13 91554400 (1200 Clay Street, Suite 200, Oakland, CA 94612)
14 3004931 (4000 Metropolitan Drive, Suite 100, Orange, CA 92868)
15 5601571 (2051 North Solar Drive, Oxnard, CA 93030)
16 3400531 (10863 Gold Center Drive, Rancho Cordova, CA 95670)
17 3602131 (670 East Carnegie Drive, San Bernardino, CA 92408)
18 3703911 (401 Mile of Cars Way, Suite 100, National City, CA 91950)
19 1909091 (650 West Cienega Avenue, San Dimas, CA 91773)
20 1900961 (12669 Encinitas Avenue, Sylmar, CA 91342)
21 1916401 (2555 West 190th Street, Suite 125, Torrance, CA 90504)
22 46576621 (19800 South Vermont Avenue, Torrance, CA 90502)
23 48441864 (440 South Melrose Drive, Suite 100, Vista, CA 92801)
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