

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
ITT EDUCATIONAL SERVICES, INC., *et al.*¹) Case No. 16-07207-JMC-7A
)
Debtors.) Jointly Administered

**NOTICE OF FILING OF TRUSTEE’S SUBPOENA
REQUIRING THOMPSON COBURN LLP TO PRODUCE DOCUMENTS**

PLEASE TAKE NOTICE that on October 11, 2016, Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), filed the *Trustee’s Motion for an Order Pursuant to Bankruptcy Rule 2004 Authorizing the Trustee to Issue Subpoenas Requiring Parties in Interest Identified Therein to (A) Produce Documents and/or (B) Provide Deposition Testimony* (the “Rule 2004 Motion”) [Doc 314] with the United States Bankruptcy Court for the Southern District of Indiana (the “Court”).

PLEASE TAKE FURTHER NOTICE that by order entered on November 10, 2016 [Doc 606], the Court granted the Rule 2004 Motion in part. Pursuant to such order, any subpoena to be issued by the Trustee shall be (a) filed with the Court (the “Filing Requirement”), (b) served in accordance with the *Notice, Case Management and Administrative Procedures* (the “Case Management Procedures”) approved by the Court on October 4, 2016 [Doc 220], and (c) served on the party to whom the subpoena shall be issued, at least seven (7) days prior to such subpoena’s issuance.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit 1** is a copy of a subpoena to be issued on Thompson Coburn LLP in satisfaction of the Filing Requirement.

[Remainder of Page Intentionally Left Blank]

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers, are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

Dated: October 20, 2017
Indianapolis, Indiana

Respectfully submitted,

/s/ H. Jeffrey Schwartz

H. Jeffrey Schwartz (admitted *pro hac vice*)

ROBINS KAPLAN LLP

399 Park Avenue, Suite 3600

New York, NY 10022

Telephone: (212) 980-7429

Facsimile: (212) 980-7499

/s/ Deborah J. Caruso

Deborah J. Caruso (Atty. No. 4273-49)

John C. Hoard (Atty. No. 8024-49)

James E. Rossow Jr. (Atty. No. 21063-29)

Meredith R. Theisen (Atty. No. 28804-49)

RUBIN & LEVIN, P.C.

135 N. Pennsylvania Street, Suite 1400

Indianapolis, IN 46204

Telephone: (317) 634-0300

Facsimile: (317) 263-9411

–and–

General Co-counsel and Litigation Co-counsel to the Trustee

Ronald James Schutz (admitted *pro hac vice*)

Michael Anthony Collyard (admitted *pro hac vice*)

ROBINS KAPLAN LLP

800 LaSalle Avenue, Suite 2800

Minneapolis, MN 55402

Telephone: (612) 349-8500

Facsimile: (612) 349-8500

Litigation Co-counsel to the Trustee

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2017, a copy of the foregoing *Notice of Filing of Trustee's Subpoena Requiring Thompson Coburn LLP to Produce Documents* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

John Joseph Allman jallman@hbkfirm.com, dadams@hbkfirm.com
Robert N Amkraut ramkraut@riddellwilliams.com
Scott S. Anders scott.anders@jordanramis.com, litparalegal@jordanramis.com
Manuel German Arreaza manuel.arreaza@cfpb.gov
Todd Allan Atkinson tatkinson@ulmer.com
Darren Azman dazman@mwe.com
Joseph E Bain joe.bain@emhllp.com
Kay Dee Baird kbaird@kdlegal.com, rhobdy@kdlegal.com;crbpgpleadings@kdlegal.com
Michael I. Baird baird.michael@pbgc.gov, efile@pbgc.gov
Christopher E. Baker cbaker@hbkfirm.com, thignight@hbkfirm.com
James David Ballinger jim@kentuckytrial.com, jennifer@kentuckytrial.com
Joseph E. Bant jebant@lewisricekc.com
William J. Barrett william.barrett@bfkn.com, mark.mackowiak@bfkn.com
Ashley Flynn Bartram ashley.bartram@oag.texas.gov, elizabeth.martin@oag.texas.gov
Alex M Beeman alex@beemanlawoffice.com, alexbeemanECF@protonmail.com
Thomas M Beeman tom@beemanlawoffice.com
Richard James Bernard rbernard@foley.com
John J Berry john.berry@dinsmore.com, Christina.Lee@DINSMORE.COM
Brandon Craig Bickle bbickle@gablelaw.com
Robert A. Breidenbach rab@goldsteinpressman.com
Wendy D. Brewer wbrewer@jensenbrewer.com, info@jeffersonbrewer.com
Kayla D. Britton kayla.britton@faegrebd.com, rachel.jenkins@faegrebd.com
Jason R Burke jburke@bbrlawpc.com, kellis@bbrlawpc.com
Erin Busch ebusch@nebraska.edu
Kevin M. Capuzzi kcapuzzi@beneschlaw.com,
lmolinaro@beneschlaw.com;docket@beneschlaw.com
James E. Carlberg jcarlberg@boselaw.com,
mwakefield@boselaw.com;rmurphy@boselaw.com
Steven Dean Carpenter scarpenter1@dor.in.gov
Deborah Caruso dcaruso@rubin-levin.net, dwright@rubin-levin.net;jkrichbaum@rubin-
levin.net;atty_dcaruso@bluestylus.com
Deborah J. Caruso trustee caruso@rubin-levin.net, DJC@trustesolutions.net
Joshua W. Casselman jcasselman@rubin-levin.net, angie@rubin-
levin.net;atty_jcasselman@bluestylus.com
Ben T. Caughey ben.caughey@mcdlegalfirm.com
Sonia A. Chae chaes@sec.gov
John Andrew Chanin jchanin@lindquist.com, srummery@lindquist.com
Ebony Delane Cobb ecobb@pbfc.com
Michael Edward Collins mcollins@manierherod.com

Michael Anthony Collyard mcollyard@robinskaplan.com, rhoule@robinskaplan.com
Eileen Connor econnor@law.harvard.edu
Lawrence D. Coppel lcoppel@gfrlaw.com
Heather M. Crockett Heather.Crockett@atg.in.gov,
carrie.spann@atg.in.gov;molly.funk@atg.in.gov;kenyatta.peerman@atg.in.gov
J Russell Cunningham rcunningham@dnlc.net, reaster@dnlc.net
David H DeCelles david.h.decelles@usdoj.gov
Dustin R. DeNeal dustin.deneal@faegrebd.com, rachel.jenkins@faegrebd.com
Laura A DuVall Laura.Duvall@usdoj.gov, Catherine.henderson@usdoj.gov
Henry A. Efrogmson henry.efrogmson@icemiller.com
Abby Engen aengen@nmag.gov, eheltman@nmag.gov
Annette England annette.english@btlaw.com
Charles Anthony Ercole cercole@klehr.com, acollazo@klehr.com
Carolyn Meredith Fast carolyn.fast@ag.ny.gov
Elaine Victoria Fenna elaine.fenna@morganlewis.com
Andrew W Ferich awf@chimicles.com
Patrick F.X. Fitzpatrick pfitzpatrick@beneschlaw.com,
docket@beneschlaw.com;sgarsnett@beneschlaw.com;ccanny@beneschlaw.com;mdabio@beneschlaw.com
John David Folds dfolds@bakerdonelson.com, sparson@bakerdonelson.com
Jennifer N Fountain jfountain@iislaw.com, sfilippini@iislaw.com
Sarah Lynn Fowler Sarah.Fowler@icemiller.com, Kathy.chulchian@icemiller.com
Lydia Eve French lydia.french@state.ma.us
Jonathan William Garlough jgarlough@foley.com, mstockl@foley.com;mdlee@foley.com
Robert P Goe rgoe@goeforlaw.com
Douglas Gooding dgooding@choate.com
John Andrew Goodridge jgoodridge@jaglo.com, angray@jaglo.com;dwhiggs@jaglo.com
Michael Wayne Grant michael.w.grant@doj.state.or.us
Alan Mark Grochal agrochal@tydingslaw.com
Gregory Forrest Hahn ghahn@boselaw.com, jmcneeley@boselaw.com
Julian Ari Hammond Jhammond@hammondlawpc.com, ppecherskaya@hammondlawpc.com
Wallace M Handler whandler@swappc.com, jnicholson@swappc.com
Adam Craig Harris adam.harris@srz.com
Brian Hauck bhauck@jenner.com
Jeffrey M. Hawkinson jhawkinson@pcslegal.com, danderson@pcslegal.com
Claude Michael Higgins Michael.Higgins@ag.ny.gov
Michael W. Hile mhile@jacobsonhile.com, assistant@jacobsonhile.com
Sean M Hirschten shirschten@psrb.com
Robert M. Hirsh robert.hirsh@arentfox.com
John C. Hoard johnh@rubin-levin.net, jkrichbaum@rubin-levin.net;atty_jch@trustesolutions.com
Andrew E. Houha bkecfnotices@johnsonblumberg.com
James C Jacobsen jjacobsen@nmag.gov, eheltman@nmag.gov
Christine K. Jacobson cjacobson@jacobsonhile.com, assistant@jacobsonhile.com
Jay Jaffe jay.jaffe@faegrebd.com, rachel.jenkins@faegrebd.com
Benjamin F Johns bfj@chimicles.com, klw@chimicles.com

Russell Ray Johnson russj4478@aol.com
Kenneth C. Jones kcjones@lewisricekc.com
Anthony R. Jost tjost@rbelaw.com, baldous@rbelaw.com
Timothy Q. Karcher tkarcher@proskauer.com
John M. Ketcham jketcham@psrb.com, scox@psrb.com
Taejin Kim tae.kim@srz.com
Edward M King tking@fbtlaw.com, lsugg@fbtlaw.com;tking@ecf.inforuptcy.com
Roy F. Kiplinger bankruptcy@kiplingerlaw.com, bankruptcy@kiplingerlaw.com
James A. Knauer jak@kgrlaw.com, tjf@kgrlaw.com
Kevin Dale Koons kkoons@kgrlaw.com, smr@kgrlaw.com
Harris J. Koroglu hkoroglu@shutts.com, fsantelices@shutts.com
Lawrence Joel Kotler ljkotler@duanemorris.com
Robert R Kracht rrk@mccarthyebit.com
Andrew L. Kraemer akraemer@johnsonblumberg.com, akraemerlawoffice@att.net
David R. Krebs dkrebs@hbkfirm.com, dadams@hbkfirm.com
Jerrold Scott Kulback jkulback@archerlaw.com
Jay R LaBarge jlabarge@stroblpc.com
Vilda Samuel Laurin slaurin@boselaw.com
Jordan A Lavinsky jlavinsky@hansonbridgett.com
David S Lefere dlefer@mikameyers.com, jfortney@mikameyers.com
Martha R. Lehman mlehman@salawus.com,
marthalehman87@gmail.com;pdidandeh@salawus.com;lengle@salawus.com
Gary H Leibowitz gleibowitz@coleschotz.com,
jdonaghy@coleschotz.com;pratkowiak@coleschotz.com
Donald D Levenhagen dlevenhagen@landmanbeatty.com
Elizabeth Marie Little elizabeth.little@faegrebd.com
Melinda Hoover MacAnally Melinda.MacAnally@atg.in.gov,
Carrie.Spann@atg.in.gov;Kenyatta.Peerman@atg.in.gov
Christopher John Madaio Cmadaio@oag.state.md.us
John A. Majors jam@morganandpottinger.com, majormajors44@yahoo.com
Steven A. Malcoun dsmith@mayallaw.com
Jonathan Marshall jmarshall@choate.com
Thomas Marvin Martin tmmartin@lewisricekc.com
Jeff J. Marwil jmarwil@proskauer.com,
npetrov@proskauer.com;pyoung@proskauer.com;jwebb@proskauer.com
Richard J Mason rmason@mcguirewoods.com
Patrick Francis Mastrian Patrick.mastrian@ogletreedeakins.com,
dayna.kistler@ogletreedeakins.com
Ann Wilkinson Matthews amatthews@ncdoj.gov
Rachel Jaffe Mauceri rachel.mauceri@morganlewis.com
Michael K. McCrory mmccrory@btlaw.com, bankruptcyindy@btlaw.com
Maureen Elin McOwen molly.mcowen@cfpb.gov
Harley K Means hkm@kgrlaw.com, kmw@kgrlaw.com;cjs@kgrlaw.com;tjf@kgrlaw.com
Toby
Merrill tomerrill@law.harvard.edu,jjimenez@law.harvard.edu,thoffman@law.harvard.edu
Robert W. Miller rmiller@manierherod.com

Thomas E Mixdorf thomas.mixdorf@icemiller.com, carla.persons@icemiller.com
Evgeny Grigori Mogilevsky eugene@egmlegal.com, jolynn@egmlegal.com
James P Moloy jmoloy@boselaw.com,
dlingenfelter@boselaw.com;mwakefield@boselaw.com
Ronald J. Moore Ronald.Moore@usdoj.gov
Hal F Morris hal.morris@oag.texas.gov
Michael David Morris michael.morris@ago.mo.gov
Kevin Alonzo Morrissey kmorrissey@lewis-kappes.com, soliver@lewis-
kappes.com;leckert@lewis-kappes.com;kwilliams@lewis-kappes.com
Whitney L Mosby wmosby@bgdlegal.com, floyd@bgdlegal.com;smays@bgdlegal.com
C Daniel Motsinger cmotsinger@kdlegal.com,
cmotsinger@kdlegal.com;crbpgpleadings@kdlegal.com;shammersley@kdlegal.com
Lee Duck Moylan lmoylan@klehr.com, acollazo@klehr.com
Abraham Murphy murphy@abrahammurphy.com
Justin Scott Murray jmurray@atg.state.il.us
Alissa M. Nann anann@foley.com, DHeffer@foley.com
Henry Seiji Newman hsnewman@dglaw.com
Kevin M. Newman knewman@menterlaw.com, kmnbk@menterlaw.com
Cassandra A. Nielsen cnielsen@rubin-levin.net, atty_cnielsen@bluestylus.com,lking@rubin-
levin.net
Ryan Charles Nixon rcnixon@lamarcalawgroup.com
Kathryn Elizabeth Olivier kathryn.olivier@usdoj.gov,
denise.woody@usdoj.gov;kristie.baker@usdoj.gov
Gregory Ostendorf gostendorf@scopelitis.com, agregory@scopelitis.com
Pamela A. Paige ppaige@plunkettcooney.com, amiller@plunkettcooney.com
Danielle Ann Pham danielle.pham@usdoj.gov
Zachary David Price zach@indianalawgroup.com
Jack A Raisner jar@outtengolden.com
Jonathan Hjalmer Reischl jonathan.reischl@cfpb.gov
James Leigh Richmond James.Richmond@fldoe.org
Melissa M. Root mroot@jenner.com
David A. Rosenthal darlaw@nlci.com
James E Rossow jim@rubin-levin.net, ATTY_JER@trustesolutions.com;robin@rubin-
levin.net;lisa@rubin-levin.net
Rene Sara Roupinian rsr@outtengolden.com,
jxh@outtengolden.com;kdeleon@outtengolden.com;rmasubuchi@outtengolden.com;rfisher@ou-
ttengolden.com;gl@outtengolden.com
Victoria Fay Roytenberg vroyttemberg@law.harvard.edu, jjimenez@law.harvard.edu
Steven Eric Runyan ser@kgrlaw.com
Craig Damon Rust craig.rust@doj.ca.gov, Lindsay.Bensen@doj.ca.gov
Karl T Ryan kryan@ryanesq.com, lindsey@ryanesq.com
Joseph Michael Sanders jsanders@atg.state.il.us
Thomas C Scherer tscherer@bgdlegal.com, floyd@bgdlegal.com
James R. Schrier jrs@rtslawfirm.com, lrobison@rtslawfirm.com;jlandes@rtslawfirm.com
Ronald James Schutz rschutz@robinskaplan.com
H. Jeffrey Schwartz jschwartz@robinskaplan.com

Courtney Michelle Scott cscott1@dor.in.gov
Joseph E Shickich jshickich@riddellwilliams.com, ctracy@riddellwilliams.com
William E Smith wsmith@k-glaw.com, clipke@k-glaw.com
Lauren C. Sorrell lsorrell@kdlegal.com, ayeskie@kdlegal.com;swaddell@kdlegal.com
Catherine L. Steege csteege@jenner.com, mhinds@jenner.com;thooker@jenner.com
Jesse Ellsworth Summers esummers@burr.com, sguest@burr.com
Jonathan David Sundheimer jsundheimer@btlaw.com
Nancy K. Swift nswift@buchalter.com, cbohnsack@buchalter.com
Eric Jay Taube eric.taube@wallerlaw.com,
annmarie.jezisek@wallerlaw.com;sherri.savala@wallerlaw.com
Meredith R. Theisen mtheisen@rubin-levin.net, dwright@rubin-levin.net;mcruser@rubin-levin.net
Meredith R. Theisen mtheisen@rubin-levin.net, lisa@rubin-levin.net;atty_mtheisen@bluestylus.com;mralph@rubin-levin.net
Jessica L Titler jt@chimicles.com
Todd Christian Toral todd.toral@dlapiper.com, todd-toral-9280@ecf.pacerpro.com
Ronald M. Tucker rtucker@simon.com, cmartin@simon.com,bankruptcy@simon.com
U.S. Trustee ustpregion10.in.ecf@usdoj.gov
Michael Ungar MUngar@mwe.com
Sally E Veghte sveghte@klehr.com, acollazo@klehr.com
Rachel Claire Verbeke rverbeke@stroblpc.com
Amy L VonDielingen avondielingen@woodmclaw.com
Carolyn Graff Wade Carolyn.G.Wade@doj.state.or.us
Louis Hanner Watson louis@watsonnorris.com
Jeffrey R. Waxman jwaxman@morrisjames.com,
jdawson@morrisjames.com;wweller@morrisjames.com
Christine M.H. Wellons christine.wellons@maryland.gov
Philip A. Whistler philip.whistler@icemiller.com, carla.persons@icemiller.com
Bradley Winston bwinston@winstonlaw.com, lwheaton@winstonlaw.com
Brandon Michael Wise bwise@prwlegal.com
Cathleen Dianne Wyatt cwyatt@fbtlaw.com, tacton@fbtlaw.com
Joseph Yar jyar@nmag.gov, eheltman@nmag.gov
James T Young james@rubin-levin.net, lking@rubin-levin.net;atty_young@bluestylus.com
James E. Zoccola jzoccola@lewis-kappes.com

I further certify that on October 20, 2017, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Notice of Filing of Trustee's Subpoena Requiring Thompson Coburn LLP to Produce Documents* was emailed to the following:

Arlington ISD/Richardson ISD: Eboney Cobb at ecobb@pbfc.com
CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com
SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com
Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com
Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com
Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com
Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com

Taxing Authority for Harris County, Texas: John P. Dillman at houston_bankruptcy@lgbs.com
Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com
Synchrony Bank: Recovery Management Systems Corporation at claims@recoverycorp.com
Bexar County: Don Stecker at sanantonio.bankruptcy@publicans.com
SWRE Deal V Building, LLC: Nancy K. Swift at nswift@buchalter.com
TN Dept. of Revenue: Michael Willey at michael.willey@ag.tn.gov
Florida Department of Education: Benman D. Szeto at benman.szeto@fldoe.org
Last Second Media, Inc.: T. Todd Egland at tegland@beldenblaine.com
Hung Duong: Kevin Schwin at kevin@schwinlaw.com
Travis County: Kay D. Brock at kay.brock@traviscountytexas.gov
Able Building Maintenance: Scott D. Fink at bronationalecf@weltman.com
Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

I further certify that on October 20, 2017, pursuant to Section IV.C.3(b)(ii) of the Case Management Procedures, a copy of the foregoing *Notice of Filing of Trustee's Subpoena Requiring Thompson Coburn LLP to Produce Documents* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

Thompson Coburn LLP
c/o Bill Bay and Jeff Fink
One US Bank Plaza
St. Louis, MO 63101-1693

/s/ Deborah J. Caruso
Deborah J. Caruso

Exhibit 1

[Subpoena]

UNITED STATES BANKRUPTCY COURT

Southern District of Indiana
Indianapolis Division

In re: ITT Educational Services, et al.

Case No. 16-07207-JMC-7A

Debtors.

Chapter 7

SUBPOENA FOR RULE 2004 EXAMINATION

To: Thompson Coburn LLP, c/o Bill Bay and Jeff Fink, One US Bank Plaza, St. Louis, MO 63101-1693.

Production: You, or your representatives, must produce all documents, electronically stored information, or objects identified in the attached document requests as **Schedule A**. The documents shall be produced on the date and at the place set forth below.

<u>PLACE</u>	<u>DATE AND TIME</u>
Robins Kaplan LLP 399 Park Avenue, Suite 3600 New York, NY 10022	November 6, 2017, or such other date and place as may be mutually agreed.

The following provisions of Fed. R. Civ. P. 45, made applicable in this case by Fed. R. Bankr. P. 9016, are attached: Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

[Remainder of Page Intentionally Left Blank]

Dated: October 20, 2017
Indianapolis, Indiana

The names, addresses, telephone numbers, and email addresses of the attorneys representing the Trustee, who issues or requests this subpoena, are:

H. Jeffrey Schwartz (admitted *pro hac vice*)
ROBINS KAPLAN LLP
399 Park Avenue, Suite 3600
New York, NY 10022
Telephone: (212) 980-7429
Facsimile: (212) 980-7499

Deborah J. Caruso (Atty. No. 4273-49)
John C. Hoard (Atty. No. 8024-49)
James E. Rossow Jr. (Atty. No. 21063-29)
Meredith R. Theisen (Atty. No. 28804-49)
RUBIN & LEVIN, P.C.
135 N. Pennsylvania Street, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 634-0300
Facsimile: (317) 263-9411

–and–

Ronald James Schutz (admitted *pro hac vice*)
Michael Anthony Collyard (admitted *pro hac vice*)
ROBINS KAPLAN LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 349-8500
Facsimile: (612) 349-8500

General Co-counsel and Litigation Co-counsel to the Trustee

Litigation Co-counsel to the Trustee

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

Schedule A

[Document Requests]

Definitions

The following Definitions are applicable to each of these Requests for Production (“Requests”) and are deemed to be incorporated therein:

1. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.
2. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
3. The term “communication” means any actual, attempted, or intended transmittal of information by any method. A Request for communications includes, without limitation, correspondence, telexes, telecopies, SMS/text messages, Instant Messages (IMs), electronic mail, all attachments and enclosures thereto, computer tapes, discs, telephone tape recordings, recordings of any other type in any medium of written or oral communications, phone logs, message logs, and notes and memoranda of, or referring or relating to, written or oral communications.
4. The terms “concerning,” “reflecting,” “evidencing,” “discussing,” “pertaining to” and “constituting” are used, for purposes of these Requests, as equivalent terms, each including the other, or having any logical or factual connection with the matter discussed.
5. The use of the singular form of any word includes the plural and vice versa.
6. The term “document” means any written, recorded or graphic or other recorded matter in which information is fixed or stored, wherever located, including on or in the cloud,

other third-party servers or services, flash drives, optical media, hard drives, other computerized or electro-mechanical storage devices, email accounts (whether stored locally or internet based), paper, cards, tapes, films, videos, instant messages, smart phone messages, other SMS messages, photographs, cell phones, smart phones, calendars, diaries, date books, voice messages, or in any other place and in any other medium that is capable of storing information.

7. The terms “including,” “include” or “includes” mean including, but not limited to.

8. The term “person” is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

9. “Relating to” means reflecting, describing, evidencing, constituting, containing, alluding to, germane to, mentioning, analyzing, setting forth, summarizing, characterizing, contradicting, incorporating, affecting, including or otherwise pertaining—either directly or indirectly--to the subject matter of the inquiry.

10. “You” or “your” means Thompson Coburn LLP, and shall include anyone acting on behalf of those parties, over whom the parties have control, or which is, or may be subrogated to the parties’ interests, including, without limitation, any officer, agent, employee, attorney, investigator, independent adjusting company, or other Person or entity.

11. “ITT” or “debtor” means ITT Educational Services, Inc., ESI Service Corp., and Daniel Webster College, Inc. and each and all of its officers, directors, employees, representatives, agents, assigns, attorneys and all other Persons acting or purporting to act on its behalf.

12. “Board” means ITT’s Board of Directors.

Instructions

13. You are required to furnish all responsive documents that are in Your possession, custody or control, or available to You, including Documents in the possession of Your agents, accountants, auditors, assigns, attorneys, or any other person acting on Your behalf or otherwise subject to Your control, regardless of whether those Documents are in personal or company files.

14. You must make a diligent search of Your records and of other papers and materials in Your possession or available to Your representatives, as identified above. If you cannot obtain the documents requested, You must explain in Your response the circumstances and what has been and is being done to obtain the Documents.

15. In the event that a Document called for by these Requests has been transferred to a Person over whom You claim You lack control, identify (i) the Document by date, author(s), recipient(s), subject matter and context; (ii) the date and the circumstances surrounding the transfer; (iii) the reason(s) for the transfer; (iv) the person(s) or entity(ies) to whom the Document was transferred; (v) the present location of such Document; (vi) any request You have made for the return of either the original Document or a copy thereof to Your possession; and (vii) the date and manner in which You can or may obtain the return of each such Document.

16. In the event that a Document called for by these Requests has been destroyed, lost, discarded, or otherwise disposed of, such Document is to be identified as completely as possible, including, without limitation, the following information: (i) author(s); (ii) recipients; (iii) sender(s); (iv) subject matter; (v) date prepared or received; (vi) date of disposal; (vii) manner of disposal; (viii) reason for disposal; (ix) person(s) authorizing the disposal; (x) person(s) having knowledge of the disposal; and (xi) person(s) disposing of the Document.

17. With respect to those Documents withheld by reason of a claim of privilege, work product, or other ground of non-production, a list is to be furnished at the time that the Documents are produced, which list shall identify (i) each Document withheld, (ii) the privilege claimed (*e.g.*, attorney-client privilege or confidential), (iii) the nature of the Document (*e.g.*, letter, memorandum, etc.), (iv) the date and author of such Document, (v) the names of all persons to whom such Document was directed or by whom received, (vi) the sender of such Document, (vii) any indicated or blind copies, (viii) the subject matter, (ix) the number of pages, (x) the Document production requests to which such Document relates, and (xi) the name of the present custodian. If a portion of an otherwise-responsive Document contains information subject to a claim of privilege, those portions of the Document subject to the claim of privilege shall be redacted from the Document, the rest of the Document shall be produced, and the redacted portion should be listed on the above log.

18. With respect to any Documents stored in a computer database, including electronic mail, You must provide a copy of the computer or electronic tape, disc, or other electronic medium on which the Document is stored, including all backups and archives of such computer database. To the extent these Documents also exist in hard copy, You must provide those as well.

19. All Documents are to be produced in their entirety, without abbreviation or expurgation, including both front and back thereof and all attachments or other matters affixed thereto. If any portion of any Document is responsive to any Request, the entire Document must be produced.

20. You are required to produce or make available for inspection the original Documents. Any non-identical copy (*e.g.*, with handwritten notations) or draft of a Document is a separate Document and must be produced. All Documents are to be produced as they are kept in the ordinary course of business.

21. Each paragraph and subparagraph hereof and the definitions herein are to be construed independently, and not by or with reference to any other paragraph or subparagraph or definition herein for purposes of limiting the scope of any particular Request or the subject matter thereof.

22. If any of these Requests cannot be satisfied in full, You are to produce Documents to the extent possible, specifying the reason(s) for Your inability to produce further documents, and stating what knowledge, information, or belief You have concerning the unproduced portion.

23. The following Requests are to be regarded as continuing in nature, so that further more complete and supplemental responses must be served immediately if You obtain further, more complete or new information or Documents prior to the final disposition of this matter.

Document Requests

REQUEST FOR PRODUCTION NO. 1:

All Documents and Communications related to Your representation of the Debtors, dated between July 1, 2015 and December 31, 2016, including but not limited to, all emails, letters, text messages, presentations, formal or informal memoranda, books, records, reports, data files, and notes.

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