

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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

**FIRST INTERIM FEE APPLICATION OF TRUSTEE FOR  
COMPENSATION RELATED TO THE INTERIM DISTRIBUTION  
IN THE DANIEL WEBSTER COLLEGE, INC. BANKRUPTCY CASE**

Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), hereby submits this first interim fee application, pursuant to 11 U.S.C. §§ 326, 330 and 331 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, for allowance of interim compensation for her statutory fee in the amount of \$378,027.77 in connection with the interim distribution in the Daniel Webster College, Inc. bankruptcy case on the following grounds:

**I. JURISDICTION**

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for relief are sections 326, 330 and 331 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**II. BACKGROUND**

4. On September 16, 2016 (the “Petition Date”), ITT Educational Services, Inc. (“ITT”), ESI Service Corp. (“ESI”) and Daniel Webster College, Inc. (“DWC,” and together

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<sup>1</sup> 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].

with ITT and ESI, the “Affiliated Debtors”) filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee in each of the Affiliated Debtors’ bankruptcy cases on the Petition Date pursuant to section 701(a)(1) of the Bankruptcy Code, and thereafter became the case trustee in each of the Affiliated Debtors’ bankruptcy cases following the conclusion of the first meeting of creditors on November 1, 2016, pursuant to section 702(d) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors’ bankruptcy cases to be jointly administered for procedural purposes only.

6. With the exception of the compensation previously awarded by the Court in connection with the Trustee’s duties as the plan administrator for the Affiliated Debtors’ benefit plans, the Trustee has not received any compensation in these jointly administered bankruptcy cases.<sup>2</sup>

7. The Trustee is contemporaneously filing herewith in the DWC bankruptcy case, her *Motion for Authority to Make Interim Distributions to Holders of Allowed Priority Claims and Allowed Unsecured Claims* (the “Interim Distribution Motion”), requesting authority to make interim distributions to holders of allowed priority claims and allowed timely filed general unsecured claims in the DWC bankruptcy case. Pursuant to the Interim Distribution Motion, the Trustee is seeking authority to make interim distributions to creditors in the DWC bankruptcy case in the total amount of \$9,513,426.09, which will result in all allowed priority claimants receiving 100% of their total allowed priority claims (total allowed priority claims are

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<sup>2</sup> The Trustee was previously awarded compensation in these jointly administered bankruptcy cases in the total amount of \$235,125.50 in connection with her duties as the plan administrator for the Affiliated Debtors’ benefit plans. See *Order Granting Final Fee Application of Trustee for Compensation Related to Duties Performed as Plan Administrator* [Doc 3978].

\$13,426.09) and leaving \$9,500,000.00 to be distributed pro rata to claimants holding allowed timely filed general unsecured claims. Attached as Exhibit 1 is the Trustee's Interim Compensation Calculation in connection with the proposed interim distribution in the DWC bankruptcy case.

### **III. RELIEF REQUESTED**

8. The Trustee requests interim allowance of \$378,027.77 as her statutory fee in connection with the interim distribution in the DWC case and directing that such amount shall be paid by the DWC bankruptcy estate to the Trustee.

### **IV. GROUNDS FOR GRANTING RELIEF**

9. Section 331 of the Bankruptcy Code provides for interim compensation of a trustee and incorporates the substantive standards of section 330 of the Bankruptcy Code that govern the Court's award of such compensation. *See* 11 U.S.C. § 331.

10. In addition, "[s]ection 326 of the Code permits a court to award a Chapter 7 trustee 'reasonable compensation under section 330' not to exceed a percentage commission based upon the value of assets distributed in the case." *In re Trask*, No. 09-11698, 2013 Bankr. LEXIS 1418 \*3 (Bankr. D. Me. April 5, 2013).

11. The Trustee is requesting approval of interim compensation in an amount that is within the maximum amount permitted by section 326(a) of the Bankruptcy Code based on total compensable disbursements from the DWC bankruptcy estate as of September 30, 2021, plus the total anticipated interim distribution of \$9,513,426.09. Accordingly, the Trustee's request of interim compensation in the amount of \$378,027.77 is within the maximum amount permitted by section 326(a) of the Bankruptcy Code, and therefore, is presumptively reasonable. *See Hopkins v. Asset Acceptance LLC (In re Salgado-Nava)*, 473 B.R. 911, 921 (9th Cir. BAP 2012) (finding

that a chapter 7 trustee's application for commission that is within the maximum amount permitted by 11 U.S.C. § 326(a) is presumptively reasonable absent extraordinary circumstances).

#### V. NOTICE

12. Pursuant to the *Notice, Case Management and Administrative Procedures* (the "Case Management Procedures") approved by the Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of this motion on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; and (c) the Appearance List.

**NOTICE IS GIVEN**, that pursuant to the Case Management Procedures, any objection to this motion must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** (prevailing Eastern time) on **November 10, 2021**. Parties not represented by an attorney may deliver any written objection to this motion as follows: (a) by U.S. mail, courier, overnight/express mail at Clerk, United States Bankruptcy Court, Re: *In re ITT Educational Services, Inc., et al.*, 116 U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204; or (b) by publicly accessible drop box available at the Indianapolis Division located at the New York Street and Pennsylvania Street entrance.

The objecting party must also serve a copy of the written objection upon the Trustee's counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204 (mtheisen@rubin-levin.net). **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

**NOTICE IS FURTHER GIVEN** that in the event an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on **November 17, 2021** at **1:30 p.m.** (prevailing Eastern Time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204. Interested parties may also participate at the hearing by conference call by calling 1-888-273-3658, passcode 6349352#.

**WHEREFORE**, the Trustee respectfully requests entry of an order: (i) allowing the Trustee interim compensation of \$378,027.77 as her statutory fee in connection with the interim distribution in the DWC case; (ii) directing that such amount shall be paid by the DWC bankruptcy estate to the Trustee; and (iii) granting the Trustee all other just and proper relief.

Respectfully submitted,

By: /s/ Deborah J. Caruso

Deborah J. Caruso

Deborah J. Caruso, Chapter 7 Trustee  
135 N. Pennsylvania Street, Suite 1400  
Indianapolis, Indiana 46204  
Tel: (317) 634-0300  
Fax: (317) 263-9411  
Email: dcaruso@rubin-levin.net

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2021, a copy of the foregoing *First Interim Application of Trustee for Compensation Related to the Interim Distribution in the Daniel Webster College, Inc. Bankruptcy Case* 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  
Richard Allyn rallyn@robinskaplan.com  
Robert N Amkraut ramkraut@foxrothschild.com  
Scott S. Anders scott.anders@jordanramis.com, litparalegal@jordanramis.com  
Reuel D Ash rash@ulmer.com, mure@ulmer.com  
Todd Allan Atkinson todd.atkinson@wbd-us.com  
George Bach george@georgebachlaw.com  
Kay Dee Baird kbaird@kdlegal.com, rhobdy@kdlegal.com;crbpgpleadings@kdlegal.com  
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  
Alex M Beeman alex@beemanlawoffice.com, abeeman@reminger.com  
Thomas M Beeman tom@beemanlawoffice.com  
Richard James Bernard rbernard@foley.com  
Thomas Berndt tberndt@robinskaplan.com, jgerboth@robinskaplan.com  
John J Berry john.berry@dinsmore.com, Christina.Lee@DINSMORE.COM  
Brandon Craig Bickle bbickle@gablelaw.com  
Jill B. Bienstock jillbienstock@hotmail.com  
Michael Blumenthal michael.blumenthal@hklaw.com  
David J. Bodle dbodle@hhclaw.com, layres@hhlaw-in.com  
Robert A. Breidenbach rab@goldsteinpressman.com  
Wendy D Brewer wbrewer@fmdlegal.com, cbellner@fmdlegal.com  
Kayla D. Britton kayla.britton@faegredrinker.com, noticeFRindy@faegrebd.com  
Robert Bernard Bruner bob.bruner@nortonrosefulbright.com

Jason R Burke jburke@bbrlawpc.com, kellis@bbrlawpc.com  
Erin Busch ebusch@nebraska.edu  
John Cannizzaro john.cannizzaro@icemiller.com, julia.yankula@icemiller.com  
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;csprague@rubin-levin.net;atty\_dcaruso@bluestylus.com  
Deborah J. Caruso trustecarusos@rubin-levin.net,  
DJC@trustesolutions.net;cdjc11@trustesolutions.net  
Joshua W. Casselman jcasselman@rubin-levin.net, angie@rubin-levin.net;atty\_jcasselman@bluestylus.com  
Ben T. Caughey ben.caughey@merchocaughey.com  
Sonia A. Chae chaes@sec.gov  
John Andrew Chanin jchanin@lindquist.com, srummery@lindquist.com  
Courtney Elaine Chilcote courtney@ckhattorneys.com,  
ckh@ckhattorneys.com;tracy@ckhattorneys.com  
Dale C Christensen christensen@sewkis.com  
Eboney Delane Cobb ecobb@pbfcm.com  
Tiffany Cobb tscobb@vorys.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, darlene.greenley@atg.in.gov  
J Russell Cunningham rcunningham@dnlc.net, reaster@dnlc.net  
Erica Dausch edausch@babstcalland.com  
Melissa J. DeGroff mdegroff@kgrlaw.com, cresler@kgrlaw.com  
Dustin R. DeNeal dustin.deneal@faegredrinker.com,  
noticeFRindy@faegredrinker.com;faegrebddocket@faegredrinker.com  
Laura A DuVall Laura.Duvall@usdoj.gov, Catherine.henderson@usdoj.gov  
Annette England annette.england@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  
Scott Patrick Fisher sfisher@drewrysimmons.com, lgarrison@DSVlaw.com  
John David Folds dfolds@bakerdonelson.com, sparson@bakerdonelson.com  
Jennifer N Fountain jfountain@iislaw.com, sfilippini@iislaw.com  
Sarah Lynn Fowler sfowler@ofattorneys.com,  
deidre@ofattorneys.com,ellen@ofattorneys.com  
Lauren Freeman lauren.freeman@doj.ca.gov  
Robert W. Fuller rfuller@rbh.com,  
shaupt@robinsonbradshaw.com,docketing@robinsonbradshaw.com

Carlos Galliani carlos@thelidjfirm.com  
Jonathan William Garlough jgarlough@foley.com, mstockl@foley.com;mdlee@foley.com  
Lisa Giandomenico lgiandomenico@nmag.gov  
Lea Pauley Goff lea.goff@skofirm.com, emily.keith@skofirm.com  
John C Goodchild john.goodchild@morganlewis.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  
Richard Grayson Grant rgrant@rgglaw.com, grantecf@gmail.com  
Alan Mark Grochal agrochal@tydingslaw.com  
Elizabeth N. Hahn ehahn@rubin-levin.net, mralph@rubin-levin.net  
Gregory Forrest Hahn ghahn@boselaw.com, jmcneeley@boselaw.com  
Julian Ari Hammond jhammond@hammondlawpc.com, ppecherskaya@hammondlawpc.com  
Wallace M Handler whandler@swappc.com, kkloock@swappc.com  
William J. Hanlon whanlon@seymourfarth.com  
Adam Craig Harris adam.harris@srz.com  
Jeffrey M. Hawkinson jhawkinson@pcslegal.com, danderson@pcslegal.com  
Michael J. Hebenstreit mhebenstreit@lewiskappes.com,  
ktierney@lewiskappes.com;pkerr@lewiskappes.com  
Amanda Marie Hendren amanda@indianalawgroup.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 rhirsh@lowenstein.com  
John C. Hoard johnh@rubin-levin.net, jkrichbaum@rubin-  
levin.net;atty\_jch@trustesolutions.com;sturpin@rubin-levin.net  
Curt Derek Hochbein chochbein@rubin-levin.net, kelly.paberzs@mbcblaw.com  
Jeffrey A Hokanson jeff.hokanson@icemiller.com,  
bgnotices@icemiller.com,david.young@icemiller.com  
Steven Howard Holinstat sholinstat@proskauer.com  
Diana Hooley diana.hooley@state.ma.us  
Thomas Ross Hooper hooper@sewkis.com  
George Wade Hopper ghopper@cohenandmalad.com, klandeck@cohenandmalad.com  
Andrew E. Houha bkecfnotices@johnsonblumberg.com  
Andrew W. Hull awhull@hooverhullturner.com, fgipson@hooverhullturner.com  
James C Jacobsen jjacobsen@nmag.gov, eheltman@nmag.gov  
Christine K. Jacobson cjacobson@jacobsonhile.com,  
5412@notices.nextchapterbk.com,9992889420@filings.docketbird.com  
Jay Jaffe jay.jaffe@faegredrinker.com, noticeFRindy@faegrebd.com  
David Januszewski djanuszewski@cahill.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, rmclintic@rbelaw.com;baguado@rbelaw.com  
David J. Jurkiewicz DJurkiewicz@boselaw.com,  
mwakefield@boselaw.com;rmurphy@boselaw.com;dlingenfelter@boselaw.com

Aaron Kappler akappler@tokn.com  
Timothy Q. Karcher tkarcher@proskauer.com  
Steven Joseph Kasyjanski sjk-yount-atty@ameritech.net, skasyjan@gmail.com  
Alan Katz akatz@lockelord.com  
Richard B. Kaufman richardkfmn@gmail.com  
Carly Kessler ckessler@robinskaplan.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  
Jackson Taylor Kirklin taylor.kirklin@usdoj.gov, melanie.crouch@usdoj.gov  
James A. Knauer jak@kgrlaw.com, tjf@kgrlaw.com  
Kevin Dale Koons kkoons@kgrlaw.com, cjh@kgrlaw.com  
Harris J. Koroglu hkoroglu@shutts.com, fsantelices@shutts.com  
Lawrence Joel Kotler ljkotler@duanemorris.com  
Robert R Kracht rrk@mccarthylebit.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  
Darryl S Laddin bkrfilings@agg.com  
Michael J. Langlois mlanglois@shouselanglois.com, rshouse@shouselanglois.com  
Vilda Samuel Laurin slaurin@boselaw.com  
Jordan A Lavinsky jlavinsky@hansonbridgett.com  
Todd Evan Leatherman todd.leatherman@ky.gov  
David S Lefere dlefer@mikameyers.com, jfortney@mikameyers.com  
Anthony Darrell Lehman alehman@hlpwlaw.com  
Martha R. Lehman mlehman@salawus.com,  
marthalehman87@gmail.com;ispells@salawus.com;lengle@salawus.com  
Gary H Leibowitz gleibowitz@coleschotz.com,  
pratkowiak@coleschotz.com;gleibowitz@coleschotz.com  
Donald D Levenhagen dlevenhagen@landmanbeatty.com  
Elizabeth Marie Little elizabeth.little@faegredrinker.com, noticeFRindy@faegredrinker.com  
Edward J LoBello elobello@msek.com  
Melinda Hoover MacAnally Melinda.MacAnally@atg.in.gov,  
Carrie.Spann@atg.in.gov;Kenyatta.Peerman@atg.in.gov  
John A. Majors jam@morganandpottinger.com, majormajors44@yahoo.com  
Steven A. Malcoun dsmith@mayallaw.com  
John Marshall JMarshall@JMPartnersLLC.com  
Jonathan Marshall jmarshall@choate.com  
Thomas Marvin Martin tmmartin@lewisricekc.com  
Jeff J. Marwil jmarwil@proskauer.com  
Charles Edward Massey mbracken@nkylawyers.com, cedmassey@nkylawyers.com  
Ann Wilkinson Matthews amatthews@ncdoj.gov  
Rachel Jaffe Mauceri rmauceri@rc.com  
Sarah Thomas Mayhew sarah.t.mayhew@usdoj.gov, northern.taxcivil@usdoj.gov



Michael K. McCrory mmccrory@btlaw.com, bankruptcyindy@btlaw.com  
Maureen Elin McOwen molly.mcowen@cfpb.gov  
Harley K Means hkm@kgrlaw.com,  
kwhigham@kgrlaw.com;cjs@kgrlaw.com;tfroelich@kgrlaw.com  
Toby Merrill toby.merrill@ed.gov, ppsl@law.harvard.edu  
Robert W. Miller rmiller@manierherod.com  
Sherry Millman smillman@stroock.com  
Jason Milstone jason.milstone@cmsenergy.com  
Thomas E Mixdorf thomas.mixdorf@icemiller.com, brandy.matney@icemiller.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 whitney.mosby@dentons.com,  
faith.wolfe@dentons.com;nancy.branham@dentons.com  
C Daniel Motsinger cmotsinger@kdlegal.com,  
cmotsinger@kdlegal.com;rhobdy@kdlegal.com;crbpgpleadings@kdlegal.com  
Lee Duck Moylan lmoylan@klehr.com, acollazo@klehr.com  
Joseph L. Mulvey joseph@mulveyllc.com, linda@mulveyllc.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@barclaydamon.com  
Cassandra A. Nielsen cnielsen@rubin-levin.net,  
atty\_cnielsen@bluestylus.com,mralph@rubin-levin.net;lking@rubin-levin.net  
Ryan Charles Nixon rcnixon@lamarcalawgroup.com  
Isaac Nutovic inutovic@nutovic.com  
Michael O'Donnell mike.odonnell@nortonrosefulbright.com  
Gregory Ostendorf gostendorf@scopelitis.com, agregory@scopelitis.com  
Weston Erick Overturf wes@ofattorneys.com,  
deidre@ofattorneys.com;ellen@ofattorneys.com  
Pamela A. Paige ppaige@plunkettcooney.com, amiller@plunkettcooney.com  
Kenneth Pasquale kpasquale@stroock.com  
Eric Pendergraft ependergraft@slp.law, dwoodall@slp.law;bss@slp.law  
Danielle Ann Pham danielle.pham@usdoj.gov  
Anthony Pirraglia anthony.pirraglia@hklaw.com  
Jack A Raisner jar@raisnerroupinian.com, rrlp@ecf.courtdrive.com  
Jonathan Hjalmer Reischl jonathan.reischl@cfpb.gov  
Michael Rella mrella@mmlawus.com  
Caroline Ellona Richardson caroline@paganelligroup.com,  
robin@paganelligroup.com;buffy@paganelligroup.com  
James Leigh Richmond James.Richmond@fldoe.org

John M. Rogers johnr@rubin-levin.net, jkrichbaum@rubin-levin.net;atty\_rogers@bluestylus.com;mralf@rubin-levin.net;lking@rubin-levin.net  
Melissa M. Root mroot@jenner.com, wwilliams@jenner.com  
David A. Rosenthal darlaw@nlci.com  
James E Rossow jim@rubin-levin.net, mralf@rubin-levin.net;ATTY\_JER@trustesolutions.com  
Rene Sara Roupinian rsr@raisnerroupinian.com, warnlawyers@raisnerroupinian.com;jenny--hoxha--5459@ecf.pacerpro.com;rrllp@ecf.courtdrive.com  
Victoria Fay Roytenberg vroytenberg@law.harvard.edu, eschmidt@law.harvard.edu  
Steven Eric Runyan ser@kgrlaw.com  
Karl T Ryan info@ryanesq.com, kryan@ryanesq.com  
Joseph Michael Sanders jsanders@atg.state.il.us  
Thomas C Scherer thomas.scherer@dentons.com, faith.wolfe@dentons.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@foxrothschild.com, vmagda@foxrothschild.com  
Mary Alexandra Shipley ashiple@mcguirewoods.com  
William Shotzbarger wshotzbarger@duanemorris.com  
Randall R Shouse rshouse@shouselanglois.com, mlanglois@shouselanglois.com  
William E Smith wsmith@k-glaw.com, cshaughnessy@k-glaw.com  
Lauren C. Sorrell lsorrell@kdlegal.com,  
ayeskie@kdlegal.com;swaddell@kdlegal.com;cmotsinger@kdlegal.com;shammersley@kdlegal.com  
Berry Dan Spears berrydspears616@gmail.com  
Catherine L. Steege csteeg@jenner.com,  
mhinds@jenner.com;thooker@jenner.com;aswingle@jenner.com  
LaChelle D Stepp lstepp@steppjaffe.com, lastepp@yahoo.com  
Jason V Stitt jstitt@kmlaw.com  
Sharon Stolte sstolte@sandbergphoenix.com  
Jesse Ellsworth Summers esummers@burr.com, sguest@burr.com  
Matthew G. Summers summersm@ballardspahr.com, lanoc@ballardspahr.com  
Jonathan David Sundheimer jsundheimer@btlaw.com  
Nathan L Swehla nswehla@graydon.law  
Nancy K. Swift nswift@buchalter.com, cbohnsack@buchalter.com  
Andrew W.J. Tarr atarr@robinsonbradshaw.com,  
jrobey@robinsonbradshaw.com,docketing@robinsonbradshaw.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,  
atty\_mtheisen@bluestylus.com;mralf@rubin-levin.net;csprague@rubin-levin.net  
Jessica L Titler jt@chimicles.com  
David Tocco dtocco@vorys.com, mdwalkuski@vorys.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  
Christopher Turner christopher.turner@lw.com, DClitServ@lw.com  
Michael Tye michael.tye@usdoj.gov  
U.S. Trustee ustpreion10.in.ecf@usdoj.gov  
Lauren Valkenaar lvalkenaar@chasnoffstribling.com  
Sally E Veghte sveghte@klehr.com, acollazo@klehr.com  
Rachel Claire Verbeke rverbeke@stroblpc.com  
Aimee Vidaurri aimee.vidaurri@nortonrosefulbright.com  
Amy L VonDielingen amy.vondielingen@woodenlawyers.com  
Amy E Vulpio vulpioa@whiteandwilliams.com  
Carolyn Graff Wade Carolyn.G.Wade@doj.state.or.us  
Christopher D Wagner cwagner@hooverhullturner.com  
Louis Hanner Watson louis@watsonnorris.com  
Jeffrey R. Waxman jwaxman@morrisjames.com,  
jdawson@morrisjames.com;wweller@morrisjames.com  
Philip A. Whistler philip.whistler@icemiller.com, holly.minnis@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  
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 14, 2021, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *First Interim Application of Trustee for Compensation Related to the Interim Distribution in the Daniel Webster College, Inc. Bankruptcy Case* was emailed to the following:

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: Jason Borntreger at jason.borntreger@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

*/s/ Deborah J. Caruso*

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Deborah J. Caruso

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**EXHIBIT 1**

**[Trustee's Interim Compensation Calculation]**

Debtor: Daniel Webster College, Inc.

Case No. 16-07209-JMC-7A

**Computation of Compensation**

Total Disbursements Other than to Debtor are: \$11,825,925.65<sup>1</sup>

Therefore, pursuant to 11 U.S.C. § 326, compensation is: \$380,716.09

Receipts	\$11,825,925.65	25% of first 5,000	\$1,250.00
Less	-5,000.00	(\$1,250.00 Max)	
Balance	\$11,820,925.65	10% of next 45,000	\$4,500.00
Less	-45,000.00	(\$4,500.00 Max)	
Balance	\$11,775,925.65	5% of next 950,000	\$47,500.00
Less	-950,000.00	(\$47,500.00 Max)	
Balance	\$10,825,925.65	3% of balance	\$324,777.77

**TOTAL COMPENSATION REQUESTED \$378,027.77**

**Expenses**

None.

**CERTIFICATION OF CHAPTER 7 TRUSTEE**

I hereby certify, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and requests the United States Trustee to approve this report and accounts and requests the Court to provide for notice and opportunity for a hearing under 11 U.S.C. §§ 330(a), 331, 502(b) and 503(b) and to thereafter award interim compensation or reimbursement of expenses and to make interim allowance for the purposes of distribution to claims, administrative expenses, and other payments stated in this report and account.

Date: October 14, 2021

/s/ Deborah J. Caruso, Trustee  
 Deborah J. Caruso  
 Chapter 7 Trustee for the Bankruptcy Estate  
 of Daniel Webster College, Inc.

<sup>1</sup> This amount reflects the total compensable disbursements as of September 30, 2021, plus the anticipated interim distribution of \$9,513,426.09.