

United States Senate
Washington, DC 20510-1304

June 4, 2015

Kevin M. Modany
Chief Executive Officer
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032

Dear Mr. Modany:

I am writing in response to your letter of May 29, which sought to respond to my May 28 letter to Mr. Feichtner.

Your letter states that “no one is more concerned about our students than we are.” Unfortunately, your actions simply belie that claim. My original letter asked you to cease enforcement of any mandatory arbitration clauses, class-action bans, and other contractual roadblocks that you use to prevent your students from bringing claims against ITT Tech before a court of law and to remove any such provisions from future enrollment documents. In response, you called the request “unfair.” What seems unfair to me is ITT Tech’s continued insistence on denying its students the day in court which ITT Tech claims it deserves for itself.

It is one thing when arbitration clauses make arbitration available as an option students can choose to resolve a dispute. But ITT Tech’s arbitration clause does not give students a choice. Rather, ITT Tech has buried in the fine print of its enrollment agreement a mandatory pre-dispute arbitration clause that forces students to resolve all disputes that might arise in a secret, binding proceeding where the deck is stacked against them. Juries are not allowed, students may not join together with any other students to raise common claims, and legal rules and precedents need not be followed. When students seek redress for harm, they deserve the right to a fair hearing in an appropriate forum of their choice – and if your students want to choose the American court system, ITT Tech should stop standing in the way.

Congress has already passed laws restricting mandatory arbitration clauses in many consumer and commercial transactions, but has not yet prohibited these clauses in student enrollment documents. That is why I have introduced the Court Legal Access and Student Support Act with Representative Maxine Waters and other colleagues. This bill would prohibit any institution of higher education that receives Title IV funds from employing ITT Tech’s current tactic of mandating arbitration or using other litigation roadblocks to avoid accountability to its students in court. I will continue to work in Congress to enact this bill, but ITT Tech does not need to wait for a law preventing these tactics to do the right thing by its students and eliminate their use now.

You claim that “the use of arbitration clauses is a common practice throughout much of higher education.” This claim does not appear to be supported by evidence. I have queried higher education organizations such as the Association of Public and Land-Grant Universities, Association of Community College Trustees, American Association of Collegiate Registrars and Admissions Officers, and the National Association of Independent Colleges and Universities, and each reports that mandatory arbitration is rarely, if ever, used in enrollment documents by nonprofit institutions of higher education. However, mandatory arbitration clauses and class action bans in enrollment documents are quite common in the for-profit college industry. When it comes to avoiding accountability to students, the for-profit college industry and ITT Tech show uncommon leadership.

You also claim that “The success of our investment in our students is reflected in our student outcomes.” But on the very day you wrote to me touting your graduate placement rates, ITT Tech filed its Fiscal Year 2014 Annual Report – late, according to Securities and Exchange Commission (SEC) regulations – which showed many of your institutions and programs fall short of graduate placement rates and other standards set by the Accrediting Council of Independent Colleges and Schools (ACICS), your accrediting agency.

When student achievement measures such as student retention rates, graduate placement rates, and licensure examination pass rates are “below ACICS standards, the ACICS will require the institution to add an improvement plan that applies to either a program and/or a campus (an “Improvement Plan”) within its Campus Effectiveness Plan (“CEP”) and/or its Institutional Effectiveness Plan.” As such, according to your Annual Report:

- 69 ITT Tech locations are subject to a campus Improvement Plan and Student Achievement Monitoring with respect to the locations’ Student Retention Rates
- 25 ITT Tech locations are subject to a campus Improvement Plan and Student Achievement Monitoring with respect to the locations’ Graduate Placement Rates
- 19 ITT Tech locations are subject to a campus Improvement Plan and Student Achievement Monitoring and need to raise their Student Retention Rate to at least 60% by November 1, 2015, or ACICS may withdraw those locations’ inclusion in the institution’s grant of accreditation
- four ITT Tech locations are subject to a campus Improvement Plan and Student Achievement Monitoring and need to raise their Graduate Placement Rates to at least 60% by November 1, 2015, or the ACICS may withdraw those locations’ inclusion in the institution’s grant of accreditation
- a total of 149 program offerings at 94 ITT Tech locations are subject to a program Improvement Plan with respect to the Student Retention Rates of those program offerings
- a total of 85 program offerings at 62 ITT Tech locations are subject to a program Improvement Plan with respect to the Graduate Placement Rates of those program offerings
- a total of eight program offerings at eight ITT Tech locations are subject to a program Improvement Plan with respect to the Licensure Examination Pass Rates of those program offerings
- a total of 250 program offerings at 103 ITT Tech locations are subject to a campus Improvement Plan and Student Achievement Monitoring and need to raise their Student

Retention Rates to at least 60% by November 1, 2015, or the ACICS may withdraw its authorization of those program offerings

- a total of 94 program offerings at 62 ITT Tech locations are subject to a campus Improvement Plan and Student Achievement Monitoring and need to raise their Graduate Placement Rates to at least 60% by November 1, 2015, or the ACICS may withdraw its authorization of those program offerings
- a total of 14 program offerings at 14 ITT Tech locations are subject to a campus Improvement Plan and Student Achievement Monitoring and need to raise their Licensure Examination Pass Rates to at least 60% by November 1, 2015, or the ACICS may withdraw its authorization of those program offerings

In addition, you made misleading comparisons in your letter between ITT Tech and community colleges. Community colleges are a quality bargain for students compared to for-profit colleges like ITT Tech. In 2012-13, average total tuition and fees at community college amounted to \$2,792. At ITT Tech it was \$18,048. You cited a three-year Cohort Default Rates of 19 percent for ITT Tech and 21 percent for community colleges. Cohort Default Rates are easily manipulated and provide only a three-year snapshot of an institution's borrowers. A more meaningful measure multiplies an institution's default rate by its borrowing rate to show the chance of any given student defaulting after they leave that institution. Only one in five students at community colleges took out federal loans to pay for their education, compared to four in five students at ITT Tech. According to The Institute of College Access and Success, that means students at ITT Tech are four times more likely to default as their counterparts at community colleges.

Finally, your letter invited me to visit an ITT Tech campus. I must decline at this time. I do not wish anyone to mistake my visit for an endorsement of ITT Tech's well-documented poor performance and shameful policies related to court access for students or the company's treatment of its students as outlined in the numerous lawsuits against you personally and the company.

Sincerely,



Richard J. Durbin
United States Senator

Cc: Arne Duncan, Secretary of Education
Ted Mitchell, Undersecretary of Education