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## **FORM 8-K**

**ITT EDUCATIONAL SERVICES INC - ESI**

**Filed: September 21, 2015 (period: September 18, 2015)**

Report of unscheduled material events or corporate changes.

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 8-K**  
**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d) of the**  
**Securities Exchange Act of 1934**

DATE OF REPORT (Date of earliest event reported): **September 18, 2015**

**ITT EDUCATIONAL SERVICES, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other  
jurisdiction of  
incorporation)

**1-13144**  
(Commission  
File Number)

**36-2061311**  
(IRS Employer  
Identification No.)

**13000 North Meridian Street**  
**Carmel, Indiana 46032-1404**  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(317) 706-9200**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

On September 18, 2015, ITT Educational Services, Inc. (the “Company”) entered into Amendment No. 3 to Financing Agreement (the “Financing Agreement Amendment”) with Cerberus Business Finance, LLC (“Cerberus”), as collateral agent and administrative agent, and the lenders party thereto. The Financing Agreement Amendment provides for an amendment to the Financing Agreement, dated as of December 4, 2014, as amended on December 23, 2014 and March 17, 2015 (the “Financing Agreement”), by and among the Company, the subsidiary guarantors party thereto, Cerberus and the lenders party thereto.

The Financing Agreement Amendment provides for an amendment to the provision requiring the Company to prepay the outstanding principal of the term loans outstanding under the Financing Agreement (the “Loans”) in an amount equal to 100% of the Net Cash Proceeds (as defined in the Financing Agreement) received in connection with any Extraordinary Receipts (as defined in the Financing Agreement), modifying it to include two limited exceptions thereto which provide that:

- the Company is only required to prepay the Loans in an aggregate amount of 66 2/3% of the federal income tax refund that is received by the Company as a result of the Company filing to carry back to a prior year the net taxable operating loss reported on its federal income tax return for the year ended December 31, 2014; and
- the Company is not required to prepay the Loans with cash received from individual tax refunds to the extent that the amount of any such refund is less than \$100,000.

The above summary of the Financing Agreement Amendment is qualified in its entirety by the full text of the Financing Agreement Amendment, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

The Company desired to enter into the Financing Agreement Amendment due to a federal income tax refund that it believes it will receive. The Company reported a net operating loss on its federal income tax return for the year ended December 31, 2014, and it expects to receive a federal income tax refund (the “Refund”) in an estimated amount of approximately \$18.2 million in connection with a claim to carry back its 2014 net operating loss to the tax year ended December 31, 2012, which the Company expects to file before October 1, 2015. Without the Financing Agreement Amendment, the Company believes it would have been required to utilize the full amount of the Refund to prepay the Loans. Alternatively, the Company could have chosen to utilize the net operating loss to offset future tax obligations, which would have resulted in no obligation to prepay the Loans. As a result of the Financing Agreement Amendment, however, the Company will only be required to prepay the Loans in an amount equal to 66 2/3% of the total Refund amount received in connection with the Company’s claim to carry back the 2014 net operating loss to a prior year. In addition, the Financing Agreement Amendment clarifies that cash received related to individual tax refunds that are less than \$100,000 each will not be required to be utilized to prepay the Loans.

As a result of its expectation related to the Refund, the Company expects to prepay approximately \$12.1 million of the Loans upon the receipt of the Refund. The Company believes that it will receive the Refund in the fourth quarter of 2015 or the first quarter of 2016. The income tax effect of the estimated 2014 net operating loss was reflected in the Company’s financial statements as of and for the year ended December 31, 2014. Although the Company expects to receive the Refund as described above, it cannot provide any assurance that it will receive any such Refund, including in the amount or within the time period expected.

**Item 8.01 Other Events.**

The Company announced that it has received a Civil Investigative Demand (“CID”) from the U.S. Department of Justice (“DOJ”). The CID provides that the purpose of the investigation is “to determine whether there is or has been a violation of [the False Claims Act]” and is “focused on whether [the Company] knowingly submitted false statements in violation of the Department of Education’s Program Participation Agreement regulations.” The CID contains requests for production of documents and answers to interrogatories which the Company believes are principally related to the Company’s compliance with the U.S. Department of Education’s compensation regulations. The Company believes that its practices with respect to compensation matters are in compliance with applicable laws and regulations, and is cooperating with the DOJ in responding to the CID.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits:

The following exhibits are being filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment No. 3 to Financing Agreement, dated as of September 18, 2015, by and among ITT Educational Services, Inc., the subsidiary guarantors party thereto, Cerberus Business Finance, LLC, as administrative agent and collateral agent, and the lenders party thereto

*Except for the historical information contained herein, the matters discussed in this document are forward-looking statements within the meaning of the Private Securities Litigation Reform Act. Forward-looking statements are made based on the current expectations and beliefs of the company’s management concerning future developments and their potential effect on the company. The company cannot assure you that future developments affecting the company will be those anticipated by its management. These forward-looking statements involve a number of risks and uncertainties. Among the factors that could cause actual results to differ materially are the following: the failure of the company to receive the expected tax refund described in this document, including in the amount or within the time period expected; the impact of the company’s late filings with the U.S. Securities and Exchange Commission (“SEC”); the impact of adverse actions by the U.S. Department of Education (“ED”) related to the action by the SEC against the company and the company’s failure to submit its 2013 audited financial statements and 2013 compliance audits with the ED by the due date; the impact of the consolidation of variable interest entities on the company and the regulations, requirements and obligations that it is subject to; the inability to obtain any required amendments or waivers of noncompliance with covenants under the company’s financing agreement; the company’s inability to remediate material weaknesses, or the discovery of additional material weaknesses, in the company’s internal control over financial reporting; the company’s exposure under its guarantees related to private student loan programs; the outcome of litigation, investigations and claims against the company; the effects of the cross-default provisions in the company’s financing agreement; changes in federal and state governmental laws and regulations with respect to education and accreditation standards, or the interpretation or enforcement of those laws and regulations, including, but not limited to, the level of government funding for, and the company’s eligibility to participate in, student financial aid programs utilized by the company’s students; business conditions in the postsecondary education industry and in the general economy; the company’s failure to comply with the extensive education laws and regulations and accreditation standards that it is subject to; effects of any change in ownership of the company resulting in a change in control of the company, including, but not limited to, the consequences of such changes on the accreditation and federal and state regulation of its campuses; the company’s ability to implement its growth strategies; the company’s ability to retain or attract qualified employees to execute its business and growth strategies; the company’s failure to maintain or renew required federal or state authorizations or accreditations of its campuses or programs of study; receptivity of students and employers to the company’s existing program offerings and new curricula; the company’s ability to repay moneys it has borrowed; the company’s ability to collect internally funded financing from its students; and other risks and uncertainties detailed from time to time in the company’s filings with the SEC. The company undertakes no obligation to update or revise any forward-looking information, whether as a result of new information, future developments or otherwise.*

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: September 21, 2015

ITT Educational Services, Inc.

By: /s/ Ryan L. Roney  
Name: Ryan L. Roney  
Title: Executive Vice President, Chief

Administrative and Legal Officer and Secretary

## INDEX TO EXHIBITS

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
10.1	Amendment No. 3 to Financing Agreement, dated as of September 18, 2015, by and among ITT Educational Services, Inc., the subsidiary guarantors party thereto, Cerberus Business Finance, LLC, as administrative agent and collateral agent, and the lenders party thereto

**AMENDMENT NO. 3  
TO FINANCING AGREEMENT**

**AMENDMENT NO. 3 TO FINANCING AGREEMENT**, dated as of September 18, 2015 (this "Amendment"), to the Financing Agreement, dated as of December 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among ITT Educational Services, Inc. (the "Parent" or the "Borrower"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a "Guarantor" and collectively, the "Guarantors"), the lenders from time to time party thereto (each a "Lender" and collectively, the "Lenders"), Cerberus Business Finance, LLC ("Cerberus"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

**WHEREAS**, the Loan Parties have requested that the Agents and the Lenders amend certain terms and conditions of the Financing Agreement; and

**WHEREAS**, the Agents and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. Amendments.

(a) New Definitions. Section 1.01 of the Financing Agreement is hereby amended by adding the following definitions, in appropriate alphabetical order:

"Amendment No. 3" means Amendment No. 3 to Financing Agreement, dated as of September 18, 2015, by and among the Loan Parties, the Agents and the Lenders."

"Amendment No. 3 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 3."

(b) Mandatory Prepayment. Section 2.05(c)(iv) of the Financing Agreement is hereby amended in its entirety to read as follows:

"(iv) Upon the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith; provided that, notwithstanding the foregoing, with respect to the net taxable operating loss reported by the Borrower on its Fiscal Year ending December 31, 2014 federal income tax return (the "2014 Federal Net Operating Loss"), the Borrower shall only be required to prepay the Loans in accordance with Section 2.05(d) in an aggregate amount of 66 2/3% of the federal income tax refund that is received by the Loan Parties as a result of a filing to carry back the 2014 Federal Net Operating Loss; provided further that, notwithstanding anything to the contrary in this Agreement, the Borrower shall not be required to prepay any Loans with Extraordinary Receipts constituting individual tax refunds to the extent that the amount of any such refund is less than \$100,000."

3. Conditions to Effectiveness. This Amendment shall become effective only upon satisfaction in full, in a manner satisfactory to the Agents, of the following conditions precedent (the first date upon which all such conditions shall have been satisfied being hereinafter referred to as the "Amendment Effective Date"):

(a) Representations and Warranties. The representations and warranties contained Article VI of the Financing Agreement and in each other Loan Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Amendment Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date).

(b) No Default; Event of Default. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(c) Delivery of Documents. The Collateral Agent shall have received on or before the Amendment Effective Date this Amendment, duly executed by the Loan Parties, each Agent and each Lender.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to "the Financing Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Collateral Agent, for the benefit of the Agents and the Lenders, or to grant to the Collateral Agent, for the benefit of the Agents and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties' obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Agents or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by any Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against any Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Agents and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Agents and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Agents and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of any Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a "Loan Document" under the Financing Agreement.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

*[Remainder of page intentionally left blank.]*

page hereof. IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first

BORROWER:

ITT EDUCATIONAL SERVICES, INC.

By: /s/ Rocco F. Tarasi, III  
Name: Rocco F. Tarasi, III  
Title: EVP & CFO

GUARANTORS:

ESI SERVICE CORP.

By: /s/ Rocco F. Tarasi, III  
Name: Rocco F. Tarasi, III  
Title: VP & Treasurer

DANIEL WEBSTER COLLEGE, INC.

By: /s/ Angela K. Knowlton  
Name: Angela K. Knowlton  
Title: VP & Treasurer

DOC ID - 23530308.3

Amendment No. 3

COLLATERAL AGENT:

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CERBERUS BUSINESS FINANCE, LLC

By: /s/ Kevin P. Genda  
Name: Kevin P. Genda  
Title: Vice Chairman

ADMINISTRATIVE AGENT:

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CERBERUS BUSINESS FINANCE, LLC

By: /s/ Kevin P. Genda  
Name: Kevin P. Genda  
Title: Vice Chairman

DOC ID - 23530308.3

Amendment No. 3

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LENDERS:

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CERBERUS KRS LEVERED LLC

By: /s/ Kevin P. Genda  
Name: Kevin P. Genda  
Title: Vice President

CERBERUS ICQ LEVERED LLC

By: /s/ Kevin P. Genda  
Name: Kevin P. Genda  
Title: Vice President

CERBERUS ASRS FUNDING LLC

By: /s/ Kevin P. Genda  
Name: Kevin P. Genda  
Title: Vice President

CERBERUS ICQ LEVERED LOAN OPPORTUNITIES FUND, L.P.

By: Cerberus ICQ Levered Opportunities GP, LLC  
Its: General Partner

/s/ Kevin P. Genda  
Name: Kevin P. Genda  
Title: Senior Managing Director

DOC ID - 23530308.3

Amendment No. 3

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LENDERS:

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CERBERUS KRS LEVERED LOAN  
OPPORTUNITIES FUND, L.P.

By: Cerberus KRS Levered Opportunities GP, LLC  
Its: General Partner

/s/ Kevin P. Genda

Name: Kevin P. Genda

Title: Senior Managing Director

CERBERUS N-1 FUNDING LLC

/s/ Kevin P. Genda

Name: Kevin P. Genda

Title: Vice President

CERBERUS ONSHORE LEVERED II LLC

/s/ Kevin P. Genda

Name: Kevin P. Genda

Title: Vice President

DOC ID - 23530308.3

Amendment No. 3