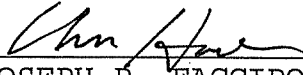


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Approved:


JOSEPH P. FACCIPONTI
CHRISTOPHER B. HARWOOD
Assistant United States Attorneys

Before: HONORABLE DEBRA FREEMAN
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA,	:	<u>SEALED COMPLAINT</u>
-v.-	:	Violations of
	:	18 U.S.C. §§ 371, 1001,
ARLETTE HERNANDEZ,	:	& 2
Defendant.	:	COUNTIES OF OFFENSE:
	:	NEW YORK & THE BRONX

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SOUTHERN DISTRICT OF NEW YORK, ss.:

BERNARDO STABILE, being duly sworn, deposes and says that he is a Special Agent with the United States Department of Education ("USDOE"), and charges:

COUNT ONE
(Conspiracy to Make False Statements)

1. From in or about 2011, up to and including in or about 2012, in the Southern District of New York and elsewhere, ARLETTE HERNANDEZ, the defendant, together with others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to violate Title 18, United States Code, Section 1001(a)(1)-(3).

2. It was a part and an object of the conspiracy that ARLETTE HERNANDEZ, the defendant, and others known and unknown, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit, the United States Department of Education, willfully and knowingly, would and did falsify, conceal, and cover up by a trick, scheme, and device a material fact, and make materially false, fictitious, and fraudulent statements and representations, and make and use a false writing and document knowing the same to

contain a materially false, fictitious, and fraudulent statement and entry, to wit, HERNANDEZ, while employed by a tutoring company that provided tutoring services pursuant to a federal tutoring program in New York, New York (the "Tutoring Company"), conspired with others to falsify attendance records, including by executing false certifications on daily student attendance sheets, to make it appear that more students had received after-school tutoring at public schools in the Bronx, New York, than had in fact received such tutoring, enabling the Tutoring Company to bill for and obtain more federal funds for its after-school tutoring program than it was entitled to receive, in violation of Title 18, United States Code, Section 1001.

Overt Acts

3. In furtherance of the conspiracy, and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. From in or about 2011 through in or about 2012, ARLETTE HERNANDEZ, the defendant, forged student signatures on daily student attendance sheets for the Tutoring Company's after-school tutoring classes at public schools in the Bronx, New York, to make it appear that more students had attended the classes than had, in fact, attended.

b. From in or about 2011 through in or about 2012, HERNANDEZ instructed others employed by the Tutoring Company to forge student signatures on daily student attendance sheets for the Tutoring Company's after-school tutoring classes at public schools in the Bronx, New York, to make it appear that more students had attended the classes than had, in fact, attended.

c. From in or about 2011 through in or about 2012, HERNANDEZ signed daily student attendance sheets, falsely certifying that after-school tutoring had been provided to all of the students whose purported signatures appeared on the sheets, even though she knew that tutoring had not been provided to many of those students.

d. From in or about 2011 through in or about 2012, HERNANDEZ caused to be delivered to the Tutoring Company's offices in New York, New York, daily student attendance sheets that falsely showed that more students had received after-school

tutoring at the Tutoring Company's after-school tutoring classes than had, in fact, received such tutoring.

(Title 18, United States Code, Section 371.)

COUNT TWO
(False Statements)

4. From in or about 2011, up to and including in or about 2012, in the Southern District of New York and elsewhere, ARLETTE HERNANDEZ, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit, the United States Department of Education, willfully and knowingly, falsified, concealed, and covered up by a trick, scheme, and device a material fact, and made materially false, fictitious, and fraudulent statements and representations, and made and used a false writing and document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry, to wit, HERNANDEZ, while employed by the Tutoring Company, falsified attendance records, including by executing false certifications on daily student attendance sheets, to make it appear that more students had received after-school tutoring at public schools in the Bronx, New York, than had in fact received such tutoring, enabling the Tutoring Company to bill for and obtain more federal funds for its after-school tutoring program than it was entitled to receive.

(Title 18, United States Code, Sections 1001(a)(1)-(3) & 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

5. I have been a Special Agent with the USDOE for approximately nine years and have been involved personally in the investigation of this matter. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including interviews I have conducted, my examination of reports and records, and my conversations with law enforcement officers and other individuals. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of the investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, unless noted otherwise.

BACKGROUND

The Supplemental Educational Services Program

6. Based on my training, experience, familiarity with this investigation, and records maintained by the USDOE and the New York City Department of Education ("NYCDOE"), I know the following:

a. At all times relevant to this Complaint, the USDOE distributed federal funds to States, including New York State, to improve the academic achievement of disadvantaged students, commonly known as "Title I funds." In New York State, Title I funds were distributed by the USDOE to the New York State Education Department, which in turn allocated the funds to local educational agencies, including the NYCDOE.

b. At all times relevant to this Complaint, local educational agencies, including the NYCDOE, were required to use the Title I funds allocated to them to pay for, among other things, Supplemental Educational Services ("SES"). SES included, among other things, after-school tutoring and other remedial and supplemental academic enrichment services.

c. At all times relevant to this Complaint, the NYCDOE entered into contracts with private entities and organizations to provide SES tutoring to students in New York City public schools. Students in New York City public schools were eligible to receive SES tutoring if they met certain criteria, such as attending a school that was in its second year of being identified as needing improvement or restructuring. SES providers provided tutoring to eligible students either in group classes or through individual tutoring sessions.

d. At all times relevant to this Complaint, the NYCDOE paid SES providers — exclusively with Title I funds — for each student they tutored. SES providers were required to submit monthly bills to the NYCDOE for payment and to maintain certain records of students who received tutoring. Among the records that SES providers were required to maintain were student sign-in sheets for each day's SES classes ("daily student attendance sheets"). The daily student attendance sheets were used to calculate the amount of Title I funds that SES providers would be paid for providing SES tutoring.

e. At all times relevant to this Complaint, the NYCDOE required SES providers to have each student who attended an SES class sign a daily student attendance sheet. The NYCDOE also required that both the tutor for each SES class and a supervisor from the SES provider sign each daily student attendance sheet in a section titled "Instructor & Supervisor Certification." The following language was pre-printed on each daily student attendance sheet immediately above where the tutor and the supervisor were required to sign: "I hereby certify that I have provided supplemental educational services to the above named students on the date indicated herein. I understand that when completed and filed, this form becomes a record of the Department of Education and that any material misrepresentation may subject me to criminal, civil, and/or administrative action."

Relevant Persons and Entities

7. Based on my familiarity with the investigation and my review of records maintained by the NYCDOE, I know the following:

a. The Tutoring Company is a corporation headquartered in California. At all times relevant to this Complaint, the Tutoring Company provided SES tutoring at New York City public schools pursuant to contracts with the NYCDOE, and maintained an office in New York, New York, to manage its SES business in the New York City area.

b. During the 2011/2012 academic year, the Tutoring Company's New York City SES division received approximately \$9.5 million in Title I funds for tutoring in New York City, including more than \$600,000 in Title I funds for purportedly providing SES tutoring at three public schools in the Bronx, New York ("School-1," "School-2," and "School-3") for which ARLETTE HERNANDEZ, the defendant, supervised the Tutoring Company's SES program.

c. At all times relevant to this Complaint, the Tutoring Company maintained a hierarchy of positions within its New York City SES division:

i. Employees with the title "Site Manager" were assigned to oversee the Tutoring Company's SES program in one or more schools, supervising other employees, known as "Site Aides," who were also assigned to those schools. Among other

things, Site Managers were responsible for signing the "Instructor & Supervisor Certification" on the daily student attendance sheets, and thus certifying the accuracy of the reported attendance for the Tutoring Company's SES classes at each school.

ii. Employees with the title "Director" supervised the Site Managers. The Directors reported to an Executive Director, who was the head of the Tutoring Company's New York City SES program.

The Defendant

8. Based on my familiarity with the investigation, I know that, during the 2011/2012 academic year, ARLETTE HERNANDEZ, the defendant, was employed by the Tutoring Company as a Site Manager, and was responsible for managing the Tutoring Company's SES tutoring program at School-1, School-2, and School-3.

OFFENSE CONDUCT

Overview of the Scheme

9. As detailed below, during the 2011/2012 academic year, ARLETTE HERNANDEZ, the defendant, participated in a conspiracy to submit false attendance records claiming that the Tutoring Company had provided SES tutoring to students when, in fact, no SES tutoring had been provided, thereby enabling the Tutoring Company to obtain Title I funds to which it was not entitled.

10. In particular, as detailed below, employees of the Tutoring Company's New York City SES division, including ARLETTE HERNANDEZ, the defendant, routinely falsified documents, including daily student attendance sheets, to make it appear that the Tutoring Company had provided SES tutoring to students who had not, in fact, received such tutoring. The falsified daily student attendance sheets were used by the Tutoring Company to bill the NYCDOE for SES tutoring, resulting in the NYCDOE paying in excess of \$1 million in Title I funds to the Tutoring Company for SES tutoring that had not been provided.

11. In particular, during the 2011/2012 academic year, ARLETTE HERNANDEZ, the defendant, falsified attendance records for the Tutoring Company's SES classes at School-1,

School-2 and/or School-3 by, among other things, the following: (i) forging student signatures on daily attendance sheets to make it appear that more students had attended the Tutoring Company's SES classes than had actually attended; (ii) instructing Site Aides to forge student signatures on daily attendance sheets to reflect that more students had attended the SES classes than had actually attended; and (iii) signing daily student attendance sheets in the section titled "Instructor & Supervisor Certification" - thereby certifying that SES tutoring had been provided to all of the students whose purported signatures appeared on the sheets - even though she knew that SES tutoring had not been provided to many of the students listed on the sheets she signed.

Site Manager-1

12. On several occasions, I have interviewed another individual who was employed by the Tutoring Company as a Site Manager ("Site Manager-1").¹ Site Manager-1 stated the following, in substance and in part, during my interviews with him/her:

a. Site Manager-1 was employed by the Tutoring Company as a Site Manager during the 2010/2011 and 2011/2012 academic years. Site Manager-1 was assigned to manage the Tutoring Company's SES program in multiple public schools in New York, New York, including a school in the Bronx, New York ("School-4"), and a school in Manhattan, New York ("School-5").

b. Site Manager-1 was pressured by others at the Tutoring Company to report high attendance at his/her schools, including by being threatened with having his/her hours (and thus his/her pay) lowered if s/he reported low attendance.

c. During the 2010/2011 and 2011/2012 academic years, Site Manager-1 routinely forged student signatures on daily student attendance sheets for the Tutoring Company's SES

¹ Site Manager-1 has pleaded guilty to charges of conspiring to make false statements and making false statements in the U.S. District Court for the Southern District of New York. Site Manager-1 has provided information to the Government with the hope of receiving a reduced sentence. The information Site Manager-1 has provided has been shown to be reliable and is corroborated by other evidence.

classes at School-4 and School-5, to make it appear that more students had attended the SES classes at those schools than had in fact attended.

d. On at least two occasions during the 2011/2012 academic year, Site Manager-1 observed ARLETTE HERNANDEZ, the defendant, forging student signatures on daily student attendance sheets while Site Manager-1 and Hernandez were in the Tutoring Company's office in New York, New York.

Site Aide-1

13. On several occasions, I have interviewed another individual who was employed by the Tutoring Company as both a Site Aide and a Site Manager ("Site Aide-1").² Site Aide-1 stated the following, in substance and in part, during my interviews with him/her:

a. Site Aide-1 was employed by the Tutoring Company as a Site Aide during the 2010/2011 academic year, and as both a Site Aide and a Site Manager during the 2011/2012 academic year. During the 2011/2012 academic year, Site Aide-1 worked as a Site Aide at some schools, including School-1, and as a Site Manager at other schools. At School-1, Site Aide-1 reported directly to ARLETTE HERNANDEZ, the defendant, who was the Site Manager responsible for managing the Tutoring Company's SES program at that school.

b. During the 2011/2012 academic year, HERNANDEZ instructed Site Aide-1 to forge student signatures on daily student attendance sheets. In response, Site Aide-1 forged student signatures on daily student attendance sheets for School-1, thus making it appear that more students had attended SES classes at School-1 than had in fact attended.

Director-1

14. On several occasions, I have interviewed another individual who was employed by the Tutoring Company as a

² Site Aide-1 has provided information to the Government with the hope of receiving leniency. The information Site Aide-1 has provided has been shown to be reliable and is corroborated by other evidence.

Director ("Director-1").³ Director-1 stated the following, in substance and in part, during my interviews with him/her:

a. Director-1 was employed by the Tutoring Company as a Director during the 2011/2012 academic year. Director-1 was assigned to oversee the Tutoring Company's SES program at one school in Manhattan, New York ("School-6").

b. During the 2011/2012 academic year, Director-1 pressured the Site Manager for School-6 to report higher attendance at School-6, and understood that, in response, the Site Manager forged student signatures on daily student attendance sheets for School-6.⁴

c. On one occasion during the 2011/2012 academic year, Director-1 observed ARLETTE HERNANDEZ, the defendant, forging student signatures on daily student attendance sheets while HERNANDEZ was with two other Site Managers in the Tutoring Company's office in New York, New York.

d. On another occasion during the 2011/2012 academic year, while Director-1 and HERNANDEZ were in the Tutoring Company's office in New York, New York, Director-1 observed HERNANDEZ with a completed daily student attendance sheet for a tutoring session that had not yet taken place. Director-1 observed that the completed daily student attendance sheet was for a future date and had already been signed by students.

³ Director-1 has pleaded guilty to charges of federal program fraud, conspiring to defraud a federal program, and making false statements in U.S. District Court for the Southern District of New York. Director-1 has provided information to the Government with the hope of receiving a reduced sentence. The information Director-1 has provided has been shown to be reliable and is corroborated by other evidence.

⁴ The Site Manager for School-6 during the 2011/2012 academic year was Site Aide-1. Site Aide-1 has admitted to forging student signatures on daily student attendance sheets at School-6.

The Defendant's Statements to USDOE Agents

15. On or about April 26, 2013, I conducted a voluntary, non-custodial interview of ARLETTE HERNANDEZ, the defendant. During that interview, HERNANDEZ stated the following, in substance and in part:

a. HERNANDEZ was employed by the Tutoring Company as a Site Manager during the 2011/2012 academic year, and was assigned to manage the Tutoring Company's SES classes at School-1, School-2, and School-3.

b. During the 2011/2012 academic year, HERNANDEZ forged student signatures on daily student attendance sheets for the Tutoring Company's SES classes, to make it appear that more students had attended the SES classes than had in fact attended.

c. During the 2011/2012 academic year, HERNANDEZ instructed the Site Aides assigned to School-2 and School-3 to forge student signatures on daily student attendance sheets, to make it appear that more students had attended the SES classes at those schools than had in fact attended.

d. On several occasions during the 2011/2012 academic year, shortly before the start of tutoring classes, HERNANDEZ reported to her Director that more students had shown up for the tutoring classes than were actually present, knowing that she would forge student signatures, or direct Site Aides to forge student signatures, to make up the difference.⁵

Attendance Records

16. Based on my review of data and other information obtained from the NYCDOE and the Tutoring Company, I know the following:

a. During the 2011/2012 academic year, the NYCDOE periodically sent officials to visit some of the schools at which SES tutoring was supposed to be taking place. Such

⁵ On or about April 27, 2013, the day following the interview, HERNANDEZ called me by phone. During the phone conversation, HERNANDEZ claimed, in substance and in part, that she had been untruthful when, during the April 26th interview, she told me that she had been forging student signatures.

visits occurred after school, during the time when SES tutoring was scheduled to take place. School-2 was one of the schools that the NYCDOE visited during the 2011/2012 academic year.

b. The NYCDOE visited School-2 on two dates during the 2011/2012 academic year: December 22, 2011 and January 30, 2012. For those dates, the Tutoring Company billed the NYCDOE for 76 students and 72 students, respectively. For each of the other 26 dates from December 2011 through January 2012 for which the Tutoring Company billed the NYCDOE for after-school tutoring at School-2, the Tutoring Company billed for no fewer than 83 students, and for as many as 107 students.

c. Moreover, for 21 of the 28 dates from December 2011 through January 2012 for which the Tutoring Company billed the NYCDOE for after-school tutoring at School-2, the Tutoring Company billed for at least one student who was absent from school for the full school day on the date of the alleged after-school tutoring session, and for as many as seven such students.

d. The Tutoring Company based its above-referenced billings on the number of student signatures that appeared on the daily student attendance sheets for School-2. HERNANDEZ signed each of those daily student attendance sheets.

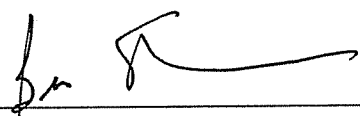
e. The below chart reflects the daily student attendance figures that HERNANDEZ reported, and for which the Tutoring Company billed, for School-2 for each tutoring session from December 2011 through January 2012. In addition, for each such tutoring session, the chart identifies the number of students who were absent from school for the full school day, but who were reported as having attended after-school tutoring at School-2. The two days on which NYCDOE officials visited School-2 during the 2011/2012 academic year are highlighted in gray.

Tutoring Date	Number of Students Reported as Having Attended	Number of Students Reported as Having Attended Who Were Absent from School
12/5	83	0
12/6	92	0
12/7	94	0
12/8	96	0

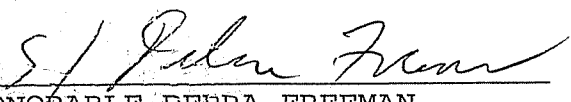
12/12	98	0
12/13	102	7
12/14	107	1
12/15	97	1
12/19	96	3
12/20	103	4
12/21	97	1
12/22	76	0
1/3	96	5
1/4	96	3
1/5	97	5
1/9	97	7
1/10	98	1
1/11	100	3
1/12	90	5
1/17	89	1
1/18	94	1
1/19	90	1
1/23	94	3
1/24	85	2
1/25	93	2
1/26	95	1
1/30	72	0
1/31	86	2

WHEREFORE, deponent prays that a warrant issue for the arrest of ARLETTE HERNANDEZ, the defendant, and that she be imprisoned or bailed, as the case may be.

FEB 28 2014


 BERNARDO STABILE
 Special Agent
 U.S. Department of Education

Sworn to before me this
28 day of February, 2014


 HONORABLE DEBRA FREEMAN
 UNITED STATES MAGISTRATE JUDGE
 SOUTHERN DISTRICT OF NEW YORK