

ITT EDUCATIONAL SERVICES INC

Form 8-K

January 22, 2009

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): **January 19, 2009**

**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)

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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))

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

The following information is provided pursuant to Sub-item (e) of Item 5.02:

(e) On January 19, 2009, the Compensation Committee of the Registrant's Board of Directors approved the 2009 Executive Bonus Parameters (the "2009 Executive Bonus Parameters") for participation by the Registrant's executives. Bonuses payable to participants will be paid in cash and based on a formula that takes into account the Registrant's ability to achieve specified targets in 2009 in each of four performance categories, each weighted equally:

- The Registrant's diluted earnings per share in 2009.
  
- The percentage increase in total student enrollment at the Registrant's institutes as of December 31, 2009 compared to the total student enrollment at the Registrant's institutes as of December 31, 2008.
  
- The Registrant's Free Cash Flow in 2009. Free Cash Flow is defined as the Registrant's net cash flows from operating activities, less:
  - capital expenditures, net (excluding facility purchases); and
  - any change in restricted cash.
  
- The percentage of Employable Graduates (as defined below) from the Registrant's institutes' programs of study in the third and fourth calendar quarters of 2008 and first and second calendar quarters of 2009 who either obtain employment by December 31, 2009, or are already employed, in positions that require the direct or indirect use of skills taught in their programs of study. Employable Graduates include all of the graduates from the Registrant's institutes, except for those graduates who:
  - have been admitted into other programs of study at postsecondary educational institutions that are scheduled to begin within one academic year following their graduation;
  - possessed visas that did not permit them to work in the United States following their graduation;
  - were personally suffering from a health condition that prevented them from working;
  - were actively engaged in U.S. military service; or

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- moved out of the Continental United States with a spouse or parent who was actively engaged in U.S. military service.

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The 2009 Executive Bonus Parameters establish for each participant a standard bonus target percentage of annualized base salary as of December 31, 2009, ranging from 10% to 100%, with the percentage depending on the participant's position. The following table sets forth the standard bonus target percentage of annualized base salary as of December 31, 2009 for each of the Registrant's named executive officers under the 2009 Executive Bonus Parameters. The named executive officers are those executive officers of the Registrant who will be included as such in the Proxy Statement for the Registrant's 2009 Annual Meeting of Shareholders.

<b><u>Named Executive Officer</u></b>	<b>2009 Standard Bonus Target <u>Percentage of Annualized Base Salary</u></b>
Kevin M. Modany	100%
Daniel M. Fitzpatrick	65%
Clark D. Elwood	65%
Eugene W. Feichtner	60%
Glenn E. Tanner	60%

The maximum bonus percentage under the 2009 Executive Bonus Parameters ranges from 25% to 200% of the standard bonus target percentage of annualized base salary as of December 31, 2009 and is based on the weighted average performance points associated with the actual results achieved with respect to each performance category. To determine the weighted average performance points, the sum of the performance points associated with the actual performance in the four performance categories will be divided by four. The following table sets forth the maximum bonus percentage associated with each range of weighted average performance points under the 2009 Executive Bonus Parameters.

<b><u>Weighted Average Performance Points</u></b>	<b>Maximum Bonus <u>Percentage</u></b>
4.76 – 5.00	200.0%
4.51 – 4.75	187.5%
4.26 – 4.50	175.0%
4.01 – 4.25	162.5%
3.76 – 4.00	150.0%
3.51 – 3.75	137.5%
3.26 – 3.50	125.0%
3.01 – 3.25	112.5%
2.76 – 3.00	100.0%
2.51 – 2.75	87.5%
2.26 – 2.50	75.0%
2.01 – 2.25	62.5%
1.76 – 2.00	50.0%
1.51 – 1.75	41.7%
1.26 – 1.50	33.3%
1.01 – 1.25	25.0%

The annual bonus parameters are typically based on the Registrant's primary financial and operating goals for the ensuing year. While the bonus parameters reflect the Registrant's financial and operating goals, as opposed to the individual executive's performance goals, achievement of the



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Registrant's financial and operating goals depends on, and is affected by, each executive's performance with respect to his or her individual goals. The Compensation Committee of the Registrant's Board of Directors may, in its sole discretion, modify the bonus parameters at any time prior to the payment of the annual bonus awards under the parameters. A participant's annual bonus award may be more or less than the participant's potential award as calculated under the formula. A participant's actual annual bonus award is based on a discretionary assessment of the participant's individual performance and contribution toward achieving the specified targets in the four performance categories that is made by the Compensation Committee upon the recommendation of the Registrant's Chief Executive Officer, except for the Chief Executive Officer's annual bonus award, which is made by the Committee without a recommendation from the Chief Executive Officer. The total amount available for the payment of bonuses for each year is capped at an amount equal to the cumulative sum of the products of each participant's bonus percentage multiplied by each participant's annualized base salary as of the end of the year.

On January 19, 2009, the Compensation Committee of the Registrant's Board of Directors approved the payment of a 2008 annual bonus award in cash to each of the Registrant's named executive officers, as follows:

<u>Named Executive Officer</u>	<u>2008 Annual Bonus Amount</u>
Kevin M. Modany	\$1,181,250
Daniel M. Fitzpatrick	\$299,250
Clark D. Elwood	\$269,500
Eugene W. Feichtner	\$235,813
Glenn E. Tanner	\$145,688

On January 19, 2009, the Compensation Committee of the Registrant's Board of Directors authorized a salary increase for the Registrant's named executive officers effective March 30, 2009. The following table sets forth the 2009 base salary information for each of the Registrant's named executive officers as of March 30, 2009.

<u>Named Executive Officer</u>	<u>2009 Salary</u>
Kevin M. Modany	\$725,000
Daniel M. Fitzpatrick	\$305,000
Clark D. Elwood	\$300,000
Eugene W. Feichtner	\$275,000
Glenn E. Tanner	\$230,000

On January 19, 2009, the Compensation Committee of the Registrant's Board of Directors also approved the following executive perquisites in 2009 for the Registrant's named executive officers:

- for Mr. Modany, the use of a company car;
- for Mr. Modany, an allowance to be used for tax return preparation and financial planning of up to 2% of annualized base salary as of March 30, 2009;





- for Messrs. Fitzpatrick, Elwood, Feichtner and Tanner, an allowance to be used for tax return preparation and financial planning of up to 1% of annualized base salary as of March 30, 2009; and
  
- for each of the Named Executive Officers:
  
- tickets to sporting, theater and other events;
  
- enhanced disability benefits; and
  
- an annual physical examination.

The aggregate incremental cost to the Registrant in 2009 for providing all of the 2009 perquisites described above is not expected to exceed \$125,000.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

On January 19, 2009, the Registrant's Board of Directors approved and adopted amended and restated By-laws of the Registrant, effective on that date. The amendments amend Article II, Section 2 and Article II, Section 6 of the By-laws to change the voting standard for the election of directors of the Registrant from a plurality to a majority of the votes cast in uncontested elections. A majority of the votes cast means that the number of shares voted "for" a director's election exceeds the number of shares voted "against" that director's election. Abstentions and broker non-votes will not be considered as votes cast in the election of a director. In contested elections, where the number of nominees for director exceeds the number of directors to be elected as of the date that is 14 days in advance of the date that the Registrant files its definitive proxy statement with the U.S. Securities and Exchange Commission, the voting standard will continue to be a plurality of the shares represented in person or by proxy at the meeting and entitled to vote on the election of directors.

The By-laws, as amended, also provide that if any nominee for director who is an incumbent director is not elected in an election that is determined by the affirmative vote of a majority of the votes cast, then that director is expected to tender his or her resignation to the Registrant's Board of Directors, subject to acceptance by the Board of Directors. The Registrant's Board of Directors will act on the tendered resignation and publicly disclose its decision regarding the tendered resignation within 90 days from the date of the certification of the election results. In making its decision regarding the tendered resignation, the Registrant's Board of Directors may consider any factors or other information that it considers appropriate and relevant. If a director's resignation is not accepted by the Registrant's Board of Directors, the director will continue to serve until the end of the term of his or her class and until his or her successor is duly elected, or his or her earlier resignation or removal. If a director's resignation is accepted by the Board of Directors, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board may fill the resulting vacancy or decrease the size of the Board pursuant to the provisions of the Registrant's Amended and Restated Certificate of Incorporation or the By-laws.

The full text of the Registrant's By-laws, as amended and restated, is being filed as Exhibit 3.2 to this Form 8-K and is incorporated herein by reference.



**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: January 22, 2009

ITT Educational Services, Inc.

By: /s/ Christine G. Long

Name: Christine G. Long

Title: Vice President, Assistant General  
Counsel and Assistant Secretary

**INDEX TO EXHIBITS**

**Exhibit No.**

**Description**

3.2

Restated By-laws, as Amended to Date

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