

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA

In the Matter of the Second Amended
Accusation Against:

PADMA CORPORATION DBA
ROSSTON SCHOOL OF HAIR DESIGN,

Institution Code No. 3600371

Respondent.

Case No. 1000873

OAH No. 2017120064

DECISION AFTER REJECTION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 14, 15, 16, and 17, 2019, in San Diego, California. Marichelle S. Tahimic, Deputy Attorney General, represented complainant Dr. Michael Marion, Jr., Chief, Bureau for Private Postsecondary Education, Department of Consumer Affairs, State of California. James C. Stevens, Attorney at Law, represented respondent Padma Corporation dba Rosston School of Hair Design (respondent). The matter was submitted on January 17, 2019.

On or about May 28, 2019, the Director of the Department of Consumer Affairs (Department or DCA) issued a notice rejecting the administrative law judge's Proposed Decision pursuant to Government Code section 11517, subdivision (c). The Director requested briefing from the parties and invited argument. The Director specifically requested arguments as to whether the Proposed Decision properly analyzed (1) the First Cause for Discipline with respect to the addition of the apprenticeship program without prior approval, (2) the Fourteenth Cause for Discipline regarding the institution's demonstration of faculty qualifications, and (3) the Sixteenth Cause for Discipline regarding the institution's move without prior approval.

The transcript was ordered, and a deadline for written argument was set. Both parties timely submitted written argument.

In written argument following rejection, complainant argued that all aspects of the First, Fourteenth, and Sixteenth Causes for Discipline were proven.

In written argument following rejection, respondent argued that the ALJ correctly analyzed the First, Fourteenth, and Sixteenth Causes for Discipline. Further, respondent argued that the administrative law judge incorrectly analyzed whether respondents' violations resulted in harm to students, and inappropriately required a probationary provision requiring the current owner to divest himself from any ownership interest from the school and resign as its CEO.

The Director, having now considered the written arguments, together with the entire record, including the transcript and exhibits, hereby makes this Decision.

SUMMARY

This case concerns whether respondent, a private postsecondary school offering barbering and related non-degree programs, should retain its approval to operate in California.

Complainant sought to revoke respondent's approval to operate based on allegations that the school engaged in a wide variety of violations of the California Private Postsecondary Education Act of 2009 (the Act). Complainant also sought recovery of investigation and enforcement costs totaling \$44,235.

Respondent presented little evidence to controvert the specific allegations contained in the 18 causes for discipline at issue herein. Instead, respondent's main arguments were that the bureau violated its due process rights by not "working with" the school to resolve the matters of concern to the bureau; that respondent has now taken substantial measures to correct the violations the bureau found; and that the bureau did not prove that any students were actually harmed by its violations, so that neither revocation nor suspension of its approval is authorized under the Act.

Based on the evidence presented, cause exists to impose discipline. The evidence also establishes that students were harmed. In addition, the evidence did not establish a violation of respondent's due process rights with regard to the manner in which the bureau conducted its investigation of the institution or interacted with school administrative and other personnel. Finally, the corrective measures the school took were at best modest and were insufficient to address the fundamental issue the school faced: an owner and chief operating officer who sought to have as little involvement as possible in the operation of the school and to spend as little money as possible toward helping the school operate in an effective manner so as to achieve its educational objectives.

The appropriate level of discipline, after taking into consideration all the facts and circumstances and the bureau's disciplinary guidelines, is revocation, stayed, and a five-year term of probation, with terms and conditions to allow the bureau to closely monitor respondent's operations to assure that the school's students and the public at large are protected. In addition, and because of the concerns articulated above with regard to

respondent's owner and chief executive officer, it is concluded that the protection of the public requires that respondent's owner divest himself of all ownership interest and that he resign as chief executive officer. Respondent shall also be required to pay the bureau \$25,000 for the enforcement costs complainant incurred in this matter, which shall be paid at least one year before the end of the probationary term.

FINDINGS OF FACT

Jurisdictional Matters

1. On August 16, 2017, complainant Leeza Rifredi, Deputy Bureau Chief, Bureau for Private Postsecondary Education, signed the accusation in her official capacity. On July 2, 2018, complainant Dr. Michael Marion, Jr. signed the first amended accusation in his official capacity.

2. On November 5, 2018, complainant Dr. Michael Marion, Jr. signed the Second Amended Accusation in his official capacity.¹ The second amended accusation sought the revocation or suspension of respondent's approval to operate and an order requiring respondent to pay the bureau's reasonable investigation and prosecution costs pursuant to Education Code section 94937, subdivision (c), and Business and Professions Code section 125.3. The second amended accusation contained the following 18 causes for discipline:

- First Cause for Discipline. Change in Educational Objectives Without Prior Bureau Authorization. (Ed. Code, §§ 94893 and 94894, subd. (g); Cal. Code Regs., tit. 5, §§ 70000, subd. (r), and 71650, subd. (a)².) In this cause for discipline, complainant alleged that respondent made a substantive change to its approval and/or changed its educational objectives without obtaining prior bureau authorization. Specifically, complainant alleged that respondent offered instruction in Spanish and respondent advertised and offered a barbering and cosmetology apprenticeship program without prior bureau approval.
- Second Cause for Discipline. Failure to Notify Bureau of Non-Substantive Change. (Cal. Code Regs., tit. 5, § 71660.) In this cause for discipline, complainant alleged that respondent offered a 200-hour barber crossover program when it was only approved to offer a 400-hour barber crossover program. Complainant also alleged that respondent continued to offer a barber crossover

¹ Whenever the word "accusation" is used in this proposed decision from this point forward, the reference is to the second amended accusation unless otherwise specified.

² All further statutory references are to the Education Code unless otherwise stated. All further references to "regulation" are to title 5.

program after respondent removed that program from those approved by the bureau. Complainant also alleged that respondent offered a refresher course for \$300 prior to notifying the bureau of a change to its program offerings.

- Third Cause for Discipline. Failure to Meet Minimum Requirements for Enrollment Agreements. (Ed. Code, §§ 94899.5, subd. (b), 94902, 94906, 94909, 94911; Cal. Code Regs., tit. 5, § 71800.) In this cause for discipline, complainant alleged that respondent's enrollment agreements with a number of specified students³ contained a variety of deficiencies. The alleged deficiencies included that the agreements did not contain program start and completion dates or the dates by which students had to exercise their right to cancel; the name of the specific program in which students enrolled was incorrectly stated; tuition and fees in the enrollment agreements did not correspond to those published in the applicable school catalog; students were charged fees that were not itemized in the agreements; and disclosures concerning transferability of credits were not contained in the agreements. Complainant also alleged that the enrollment agreement form had an incomplete transfer of credits disclosure; that respondent did not provide catalogs and/or student performance fact sheets (SPFSs) to students prior to having them sign enrollment agreements; and that respondent did not provide an enrollment agreement in Spanish although it advertised its barbering program in Spanish.
- Fourth Cause for Discipline. Failure to Comply with General Enrollment Requirements. (Cal. Code Regs., tit. 5, § 71770, subd. (a).) In this cause for discipline, complainant alleged that a number of students who did not meet the school's admissions standards were nonetheless admitted to the school. This allegation was based on a number of deficiencies in students' files, such as the absence of a high school diploma or its equivalency or proof of hours completed at another institution.
- Fifth Cause for Discipline. Failure to Comply with Requirements for School Catalog. (Ed. Code, § 94909, subd. (a); Cal. Code Regs., tit. 5, § 71810.) In this cause for discipline, complainant alleged that respondent did not provide a school catalog to two students and that various editions of the school catalog did not contain certain required information, such as program information, a schedule for total charges, and sufficient information regarding faculty and their qualifications. Certain catalog inaccuracies, such as the correct amount of total charges, were also alleged.
- Sixth Cause for Discipline. Failure to Maintain Required Student and Institutional Records. (Ed. Code, §§ 94900, subd. (b), 94900.5, subds. (a) & (b);

³ Specific students are referenced throughout this proposed decision by their first and last initials only (e.g., E.T.)

Cal. Code Regs., tit., 5, §§ 71920 and 71930.) In this cause for discipline, complainant alleged that student records did not contain required documentation and information, such as documentation that would qualify students for enrollment in the barber crossover program; proof of high school graduation or its equivalency; dates of cancellation or withdrawal by students; academic transcripts; and information regarding placement rates. Complainant also alleged that respondent did not maintain student records in a secure manner.

- Seventh Cause for Discipline. Failure to Maintain a Cancellation and Withdrawal Log. (Cal. Code Regs., tit. 5, §§ 71750, subd. (f), 71920, subd. (b)(1) & (4).) In this cause for discipline, complainant alleged that respondent did not maintain a monthly withdrawal log that included the names, addresses, telephone numbers, and dates of cancellation or withdrawal of all students who cancelled or withdrew during the school year.
- Eighth Cause for Discipline. Failure to Meet Minimum Requirements for the School Performance Fact Sheet (SPFS). (Ed. Code, §§ 94910, subds. (a) - (d), 94912, 94929, subd. (a), 94929.5, 94929.7; Cal. Code Regs., tit. 5, § 74112.) In this cause for discipline, complainant alleged that respondent's annual SPFSs did not contain – or contained inaccurate – information such as license examination passage rates, salary and wage data, and placement rates. Complainant also alleged that in one instance information concerning a specific program offered by the institution (a barber instructor program) was not provided. Other allegations related to such matters as the absence of back-up documentation for the SPFS and the failure to provide students with an SPFS prior to enrollment.
- Ninth Cause for Discipline. Failure to Meet Annual Reporting Requirements. (Ed. Code, §§ 94929, 94934; Cal. Code Regs., tit. 5, §§ 74110, subds. (a), (b) & (d), 74112, subds. (d) - (f).) In this cause for discipline, complainant alleged that some of respondent's annual reports contained numerous deficiencies, e.g., the absence of information for all of the school's academic programs; inaccurate completion rate and license exam passage rates; documentation and maintenance information needed to substantiate performance data; and the failure to provide correct SPFSs, enrollment agreements, or financial statements. Complainant also alleged that respondent made misleading statements and inaccurately reported the total number of students enrolled in a program and the number of diplomas that the school offered.
- Tenth Cause for Discipline. Failure to Comply with Student Tuition Recover Fund (STRF) Requirements. (Cal. Code Regs., tit. 5, §§ 76120, subd. (a), 76130, subds. (b) & (c), 76140, subd. (a).) In this cause for discipline, numerous violations pertaining to the STRF were alleged, e.g., the failure to maintain all records required for STRF reporting; incorrect statement of STRF fee assessments in certain of respondent's school catalogs; and various discrepancies

and missing information relating to student eligibility for STRF, tuition charges, and the collection of STRF payments.

- Eleventh Cause for Discipline. Prohibited Business Practices. (Ed. Code, § 94897.) In this cause for discipline, complainant alleged that respondent made inaccurate and misleading statements in advertisements and other documents pertaining to such matters as the length of time required for completion of the barber crossover program; the total number of clock hours of instruction provided for graduates; and completion rates, job placement rates, license exam passage rates, and salary and wage information. Complainant also alleged that respondent “failed to refrain from directing any individual to report unlawful conduct” to the bureau or other government agencies.
- Twelfth Cause for Discipline. Failure to Meet Minimum Operating Standards – Educational Program. (Cal. Code Regs., tit. 5, § 71710, subds. (a) & (b).) In this cause for discipline, complainant alleged that respondent did not provide instruction in subject areas necessary to meet the educational objectives of the school’s barbering program; did not have a curriculum for the barber/cosmetology apprenticeship program; and did not present subject areas and/or courses in a logically organized manner or sequence to students at different levels of study.
- Thirteenth Cause for Discipline. Failure to Meet Minimum Operating Standards – Instruction. (Cal. Code Regs., tit. 5, § 71715, subds. (a) & (b).) In this cause for discipline, complainant alleged that there was insufficient faculty to support the students and programs offered; there was a lack of organization in classroom time and presentation of curriculum; respondent failed to document that the instruction offered led to the achievement of learning objectives; and respondent failed to have an instructor present while students were engaged in the educational program.
- Fourteenth Cause for Discipline. Failure to Meet Minimum Operating Standards – Faculty. (Cal. Code Regs., tit. 5, § 71720, subd. (b)(1).) In this cause for discipline, complainant alleged that respondent failed to provide documentation that it employs instructors who possess the academic, experiential, and professional qualifications to teach. Complainant then specifically alleged that during a site inspection in September 2018 respondent was unable to provide the faculty files for two of its faculty. Complainant also alleged that respondent lacked a sufficient number of faculty to support its programs, in that, during the September 2018 inspection, students in the barber program and students in the barber crossover program were present in the same classroom for instruction, even though the curricula for these courses of study were not identical; that instructors lacked the ability to support the needs of students; and that instructors

were required to perform administrative tasks while also being the only instructor present for instruction.

- Fifteenth Cause for Discipline. Failure to Meet Minimum Operating Standards – Administration. (Cal. Code Regs., tit. 5, § 71730, subs. (d) & (f).) In this cause for discipline, complainant alleged that respondent’s instructors were also responsible for performing administrative tasks and that respondent was unable to demonstrate that it employed administrative personnel with sufficient expertise.
- Sixteenth Cause for Discipline. Merging Classes, Converting Method of Delivery and Changing Locations. (Ed. Code, § 94898, subs. (a), (b)(2), & (d)(1) - (d)(4).) In this cause for discipline, complainant alleged that respondent merged barbering and barber crossover students in the same classroom, where students were at different levels of study. Complainant also alleged that respondent changed the location of its campus from Moreno Valley to Ontario (over 32 miles away) without the consent of enrolled students and without disclosing the relocation to students prior to enrollment or offering a full refund. Finally, complainant alleged that, although evening classes were added to accommodate students who could not travel to the new location, respondent later cancelled those classes.
- Seventeenth Cause for Discipline. Internal Website Requirements. (Ed. Code, § 94913, subs. (a)(1), (a)(3) & (a)(5).) In this cause for discipline, complainant alleged that respondent failed to maintain an internet website that provided the school’s current school catalog, student brochures offered by the institution, or the school’s most recent annual report.
- Eighteenth Cause for Discipline. Student Tuition Recovery Fund Disclosures. (Cal. Code Regs., tit. 5, § 76215.) In this cause for discipline, complainant alleged that respondent failed to state the required STRF disclosures in the enrollment agreements of six named students.

Respondent’s Approval to Operate

3. Respondent was approved to operate as a private postsecondary institution on June 1, 1981.⁴ At all times from that date to the present, respondent has been approved to

⁴ In 1981, the bureau did not exist. Instead, authority for the oversight and regulation of private postsecondary institutions was vested in a division of the Department of Education. That authority was transferred in 1989 to the Council for Private Postsecondary and Vocational Education and in 1997 to the Bureau for Private Postsecondary and Vocational Education (BPPVE). The legislation that created BPPVE sunsetted on July 1, 2007. On October 11, 2009, the California for Private Postsecondary Education Act of 2009 (Ed. Code, § 94800, et seq.) was signed into law. The Act, which became operative on

offer a 1,500-hour barber program and a 600-hour barber instructor training program. At all times from January 5, 1996, to July 26, 2018, respondent was approved to offer a 400-hour barber crossover program.⁵ At all times since July 26, 2018, respondent has been approved to offer a 1,500-hour barber program in Spanish.

Respondent was most recently reapproved on November 26, 2014.

No evidence of prior disciplinary actions against respondent was presented at hearing.

Since 2010, when they purchased the school, Dr. Bhaskara Reddy V. Munagala (Dr. Reddy) has been respondent's Chief Executive Officer (CEO) and his wife, Padmaja Reddy Munagala (Ms. Reddy) has been the school's Chief Operating Officer (COO).⁶

In January 2018, the institution relocated from Moreno Valley to Ontario, California.

As of the date of the hearing, the school had about 15 to 18 active students.

The Nature of the Evidence

4. Most of the matters relating to the bureau's compliance inspection and enforcement investigation are uncontroverted or otherwise not contested. Similarly, most of the deficiencies alleged in the second amended accusation's eighteen causes for discipline are uncontroverted or otherwise not contested. The findings below concerning these matters are, except as otherwise noted, based on the testimony of bureau Enforcement Analyst Leslie Feist, Board of Barbering and Cosmetology (BBC) Deputy Executive Officer Heather Berg, and former student E.T.; the stipulation of the parties; Ms. Feist's two investigative reports; the declaration of bureau Compliance Inspector Michele Loo; and the student files and other documents of respondent received in evidence at hearing. To the extent any of the matters contained in the factual findings below were controverted or otherwise contested at hearing or are based on evidence other than the foregoing matters, this will be so noted.

January 1, 2010, established the Bureau for Private Postsecondary Education, which has regulated private postsecondary institutions since 2010, the year respondent's current owners purchased the school.

⁵ A barber crossover program is one that that permits cosmetologists to take additional hours of instruction (e.g., 200 or 400) so that they can sit for and pass the Board of Barbering and Cosmetology barbering exam and acquire a barbering license.

⁶ Ms. Reddy is also an instructor at the school.

The Bureau's Compliance Inspection and Enforcement Investigation

COMPLIANCE INSPECTION BY BUREAU COMPLIANCE INSPECTOR MICHELE LOO

5. On February 17, 2015, Ms. Loo conducted an unannounced compliance inspection at respondent's school.⁷ During the visit Ms. Loo performed a visual inspection of the campus; reviewed institutional records, policies, and procedures; and interviewed an instructor and the owner.

With regard to her visual inspection of the facility, Ms. Loo observed that direct classroom instruction was in progress; the facilities and equipment met minimum requirements; and current, necessary health and safety permits were adequately displayed or made available. No violations were detected with regard to these matters.

With regard to her review of institutional records, policies, and procedures, school representatives were unable to provide any back-up documentation to substantiate the student tuition recovery fund (STRF) reports.⁸ Specifically, copies of the STRF assessment reporting form, submitted checks, and the STRF substantiation form were not provided for review. Ms. Loo found material violations and she issued a notice to comply to respondent.⁹

The school catalog and the school's enrollment agreement were reviewed "for conformity with minimum requirements of the Ed. Code and Regulations," and they were found to be in compliance; no violations were detected in that regard.

⁷ Ms. Loo did not testify at hearing. Factual Finding 5 is based on Ms. Loo's declaration, which was offered and received for all purposes pursuant to Government Code section 11514, since complainant complied with the requirements of that section, and respondent did not mail or deliver to complainant a request to cross examine Ms. Loo.

⁸ The STRF exists to relieve or mitigate economic losses suffered by students enrolled at an approved private postsecondary institution who prepaid tuition and who suffered economic loss as a result of school closure or other events specified in the Act. Until January 1, 2015, students enrolling in postsecondary school programs were required to pay a fee to the STRF (e.g., \$0.50 for every \$1,000 of tuition). The fee requirement was discontinued as of January 1, 2015, because the STRF was by that time overfunded.

⁹ The term "material violation" is not formally defined, but is stated in Section 94937, subdivision (a)(2), to include but not be limited to "misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student." In elaboration, regulation 75100 states that the term "includes committing any act that would be grounds for denial under section 480 of the Business and Professions."

Ms. Loo reviewed a sampling of student records. The institution was unable to provide a list of graduate and withdrawn/terminated student files, but it did provide a list of current students. Staff could not locate one particular student file. Student files did not contain SPFS documents or verification of the completion of high school or the equivalent. In addition, one student file indicated “N/A” for STRF collection; a student whose tuition was being paid in full by the Veteran’s Administration was charged STRF fees; and one file contained an enrollment agreement that did not include total charges and signature by school staff. Ms. Loo found materials violations and issued a notice to comply.

Ms. Loo reviewed faculty personnel files. Her review demonstrated that respondent was not maintaining continuing education requirements for its faculty, i.e., the institution was unable to provide to Ms. Loo any documentation relating to continuing education of its faculty. Further, one of the instructor’s resumes did not include the minimum five years of experience required to teach. The Chief Academic Officer did not have a file available for review. Material violations were detected and a notice to comply issued.

Ms. Loo reviewed the institution’s advertisements. These documents were in compliance, and no violations were detected.

Ms. Loo reviewed the school website and found it to be in compliance, and no violations were detected.

Ms. Loo reviewed the school’s SPFSs.¹⁰ The school was unable to provide a copy of these documents. The SPFS on the school’s website included data for 2011-2012, but a current SPFS was not available. The institution was also unable to provide back-up documentation for the SPFSs. Material violations were detected and a notice to comply issued.

ENFORCEMENT INVESTIGATION OF BUREAU ENFORCEMENT ANALYST LESLIE FEIST

6. On July 24, 2015, the bureau’s Complaint Investigations Unit received an enforcement referral from the bureau’s Compliance Unit. An enforcement investigation is more thorough and in-depth than a compliance inspection. For example, a compliance inspection lasts for up to one day, and the attempt is made to address everything within that one-day (eight-hour) period. An enforcement investigation, on the other hand, lasts longer, i.e., as long as is necessary to address all issues. A compliance inspection tends to be “quantitative” (e.g., does the school have in place an attendance policy, does it have a properly-formatted school catalog), whereas an enforcement investigation tends to be “qualitative” (e.g., does the substantive nature of the attendance policy or catalog meet all statutory and regulatory requirements).

¹⁰ An SPFS is a document that approved school are required to publish annually. It must contain such information as completion rates, placement rates for each program, license examination passage rates for program leading to employment for which passage of a state licensing examination is required, and salary or wage data.

On October 25, 2015, the case was assigned to bureau Enforcement Analyst Leslie Feist (Ms. Feist) for investigation. Ms. Feist has held this position for about three and a half years. Ms. Feist has worked on about 300 cases during her tenure with the bureau and has conducted about 150 site visits at schools.

7. On December 2, 2015, Ms. Feist began her investigation by visiting respondent's website to review the school's SPFS. Ms. Feist found that the SPFS available online was from 2011/2012 and that the school catalog listed was from 2013/2014. The school's website also did not include a link to the school's most recent annual report filed with the bureau.

Also on December 2, 2015, Ms. Feist sent a letter to respondent requesting documentation that had not been provided during Ms. Loo's February 2015 visit, including the SPFS for 2014, along with the supporting data; student rosters for 2014 and 2015; copies of STRF assessment forms submitted for 2014, along with supporting data; and a copy of audited financial statements for 2013 and 2014.

On December 21, 2015, Ms. Feist received a letter from Dr. Reddy along with some but not all of the requested documentation. Ms. Feist considered the response deficient in the following respects: back-up documentation for the STRF forms was not submitted; back-up documentation for the SPFS did not include all required information; and the financial statements were not complete. Further, an SPFS sheet for the school's barber instruction program was not provided.¹¹

On February 5, 2016, Ms. Feist reviewed the documentation the school had submitted the previous December. Among other things, Ms. Feist noticed that some of the SPFS back-up documentation related to license exam passage rates had not been recorded.

On February 5, 2016, Ms. Feist sent an email to BBC school analyst Christine Jones requesting respondent's passage information for 2013/2014. On the same date, Ms. Jones sent Ms. Feist an email in reply, attaching the requested information.

8. On February 10, 2016, Ms. Feist conducted an onsite visit at the school. She arrived mid-morning and left "later in the afternoon." There were approximately 20 students on campus when she arrived. They were sitting at stations where services, such as haircuts, were to be provided to customers. A few students were busy with customers; others were on their phones or talking among themselves. There did not appear to be any instructors present. After a few minutes, a student directed Ms. Feist to a back office where Ms. Feist met Luis Barrientos, respondent's Chief Academic Officer and barbering instructor, and Rava Sankar, an office assistant of respondent. Ms. Feist introduced herself and asked to

¹¹ Ms. Feist testified at hearing that an SPFS is to be provided for each program the school is approved by the bureau to offer.

speak to a school administrator. Mr. Barrientos stated that Nancy Bullias, respondent's administrator, had called in sick that day and was unavailable.¹²

Ms. Feist and Mr. Barrientos discussed the operation of the school, and Mr. Barrientos helped Ms. Feist collect student files for review. Mr. Barrientos phoned Dr. Reddy to advise him that Ms. Feist was at the school, and after the call Mr. Barrientos told Ms. Feist that Dr. Reddy was not available to visit the school that day.¹³ At the conclusion of her visit, Ms. Feist left her business card, as was her custom and practice. Dr. Reddy never called her back.

During her visit, Ms. Feist was not able to determine whether any formal instruction was taking place. She did observe a video tutorial that was playing in the classroom area. The video was in English and Spanish, and it concerned haircutting or shaving. Several students were in the classroom area while the video was playing. Ms. Feist observed that instruction was self-directed and that Mr. Barrientos would go from student to student to provide practical demonstration and theoretical instruction. Mr. Barrientos was not using a textbook. While Mr. Barrientos was providing instruction to students at the various stations, Ms. Feist heard him speak to the students at times in English and at times in Spanish.

Mr. Barrientos told Ms. Feist that the school used video tutorials to supplement their teaching and that the tutorials were provided in both English and Spanish, because some students learned more readily in Spanish. Mr. Barrientos told Ms. Feist that classes were not offered in Spanish but that some students communicated more effectively in Spanish, and he translated as needed. He explained he did not give lectures to the students but worked with them one-on-one and would speak to them in whichever language they preferred.

Ms. Feist asked to see student files. Current student files were in a file cabinet, and former student files were stored in cardboard archive boxes located on the floor of the office

¹² The statements of respondent's administrative personnel to Ms. Feist and other state personnel during the course of the bureau's investigation of respondent were received as party admissions pursuant to Evidence Code section 1220. The statements of students were received as administrative hearsay pursuant to Government Code section 11513, subdivision (d) because they explained and supplemented other evidence, including the testimony of Ms. Feist and E.T. and also including the school's student and other records. The statements of Ms. Onix Euceda were also received as party admissions, because though she was primarily a teacher, she also engaged at times in administrative functions in the absence of other administrative personnel on campus. In the event that she might be deemed insufficiently associated with respondent to fall within section 1220, her statements would nonetheless be admissible pursuant to section 11513, subdivision (d).

¹³ Dr. Reddy testified that when Mr. Barrientos or Ms. Bullias phoned him, Dr. Reddy asked whether he needed to be there, and he was told that he did not.

and on top of file cabinets.¹⁴ Mr. Barrientos told her that there were other boxes of student files stored in a storage closet. She was told that there were no additional copies of the files.

During the visit, Mr. Sankar showed Ms. Feist a flyer advertising the school's barber program. One side of the flyer was in English, the other in Spanish.

During the visit, Mr. Barrientos told Ms. Feist that the school did not have Spanish-language school catalogs.

During the visit, Mr. Barrientos told Ms. Feist that the school currently offered a barber instruction training program, but that no students were currently enrolled in the program.

During the visit, Ms. Feist requested but Mr. Sankar was unable to provide her with a current student roster. Ms. Feist also requested a list of all current faculty and faculty files, but Mr. Sankar and Mr. Barrientos were unable to provide these.

During the visit, Ms. Feist reviewed SPFS documentation, the school catalog, the school's enrollment agreement form, and seven student files, chosen at random. Ms. Feist noted numerous deficiencies with regard to these documents, e.g., required information that was missing from the catalog and from the SPFS, missing information from student enrollment agreements, discrepancies within student files, required disclosures that were missing, the improper collection of STRF amounts from students, and the non-existence of a cancellation and withdrawal log for students who had withdrawn.

During the visit, Ms. Feist interviewed two students. The first student, who was enrolled in the barber program, told her that at the time he enrolled, and before he signed an enrollment agreement, he was informed of the school's admission requirements and was given licensing eligibility information. He stated that he was very satisfied with the education he was receiving from the school, and he felt he would be well prepared for the licensing exam. The student stated that he was not provided with an SPFS or a school catalog prior to enrollment. Ms. Feist asked the student about the absence of a high school diploma in his file; the student told her that he was in the process of obtaining a copy of his diploma for the school.

The second student Ms. Feist interviewed was also in the barber program. The student, who was from a foreign country, stated that he did not yet have a valid Social Security Number. The student told Ms. Feist that he did not have a high school diploma but would have one before completing his program. The student, whose primary language is Spanish, told Ms. Feist that Mr. Barrientos provides instruction in both English and Spanish. The student stated that he did not receive or review a school catalog before his enrollment in

¹⁴ Ms. Feist testified at hearing that she believed there was a lock on the office door, but she couldn't recall this with certainty.

the barber program. He also stated that he had never seen an SPFS but that he and school officials discussed completion and placement rates orally during the enrollment process.

One of the student files Ms. Feist reviewed was that of student D.D.¹⁵ Mr. Barrientos told Ms. Feist that D.D. was no longer a student at the school. However, D.D.'s file did not contain any documentation relating to D.D.'s withdrawal, and it did not contain documentation as to whether a refund was due to D.D.

9. On February 25, 2016, Ms. Feist phoned the school and spoke with Ms. Bullias, the school's administrator. Ms. Bullias told Ms. Feist that the school used reports from the BBC to substantiate license exam passage rates that are listed on the SPFS. Ms. Bullias stated that she attempted to obtain placement data from students prior to graduation if they already had a job lined up, but she also encouraged students to call her once they had received their license and were employed. Ms. Bullias stated she did not contact graduates to verify licensure and employment because her hours had been cut and she did not have enough time to do this. Ms. Bullias stated that the school produced transcripts for students when requested. Ms. Bullias stated that there was no second set of records stored on or off site; all student files were on site and stored in cardboard boxes once the student was no longer current.

10. On February 26, 2016, Ms. Feist visited respondent's website to see if the Annual Report data had been updated. Ms. Feist noticed some inaccuracies in the 2013 Annual Report with regard to licensing exam passage rate, i.e., the report indicated that no students had passed, when in fact quite a few had.

11. On February 29, 2016, Ms. Feist visited the school's website and reviewed respondent's 2014 annual report. Ms. Feist noticed some missing information, some inaccuracies, and some discrepancies vis-à-vis the backup documentation.

¹⁵ Exhibits received in evidence that contained the names and other identifying confidential information concerning respondent's students were redacted prior to being offered as evidence.

The identities of respondent's students who were identified during this hearing are subject to a protective order. The protective order provides that no person shall release a transcript or recording of this matter containing confidential witness names or other identifying information to the public. Every court reporter or transcriber shall refer to students whose names were stated during the hearing by the student's first and last initials. The protective order governs the release of confidential documents and information to the public. A reviewing court, parties to this matter, their attorneys, and government agency decision makers or designees under Government Code section 11517 may view the confidential documents and information subject to the protective order provided that such documents and information are protected from release to the public.

12. In her February 16, 2017, report, Ms. Feist recommended that the bureau “take immediate action to compel respondent to cease operations to avoid further and future student harm.”

13. On August 21, 2017, the initial accusation was served on respondent. At no time between the occasion of Ms. Feist’s first onsite investigation in February 2016 and the issuance of the accusation in August 2017 did she contact Dr. Reddy or did Dr. Reddy contact her. As noted earlier, she did leave her business card with school personnel at the time of her visit.

14. In January 2018, respondent moved from Moreno Valley to Ontario.

15. In June 2018, respondent submitted supplemental documents (a “mitigation package”) to the bureau. These included a 2017/2018 school catalog, a number of emails between the school and the bureau and BBC personnel, an enrollment agreement form, lists of students, SPFSs for 2015 and 2016, and annual reports for 2014 and 2016.

16. On June 12, 2018, after reviewing respondent’s mitigation package, Ms. Feist determined that a number of deficiencies had been corrected, but that others remained.

17. In early July 2018, respondent submitted a second mitigation package to the bureau. This documentation included financial records, documents from student files, excerpts from a textbook, and a flyer.

18. On July 3, 2018, after reviewing the second mitigation package, Ms. Feist determined that there now existed “new and additional violations,” which prompted the filing of the first amended accusation two weeks later.

19. On July 18, 2018, the first amended accusation was served on respondent.

20. On July 27, 2018, the bureau received an anonymous complaint regarding respondent. The complaint alleged the school did not have instructors present during school hours, was not providing a quality education, and was not providing refunds to students who withdrew. The complaint was written in very strong terms, e.g., “This school is a fraud school” and was “fleecing innocent students.”

21. On September 21, 2018, Ms. Feist reviewed respondent’s website. The 2016/2017 catalog was posted; this was not the school’s most recent catalog. She found that the catalog advertised a barber crossover course for which the school did not at that time have approval. The catalog also advertised a barber/cosmetology apprenticeship program, which likewise was not an approved program. Ms. Feist reviewed the school’s 2015/2016 SPFSs and detected inconsistencies and inaccuracies in the information provided with

respect both to the barber program and to the crossover program.¹⁶ She also noted the absence of required disclosures in these SPFSs.

22. On September 26 and 27, 2018, Ms. Feist conducted an onsite visit at the school's new location in Ontario, California.

On September 26, 2018, there were about 15 students present on Ms. Feist's arrival. Theory instruction was being provided. Ms. Feist asked to speak with a school administrator and was directed to Vivian Morales, respondent's Admissions Officer.

Ms. Morales told Ms. Feist that she had been working at the school for about nine months and that her duties included answering the phones, speaking to students, filling out enrollment agreements, recording student hours, and performing other administrative activities. Ms. Morales did not have any previous experience managing a school. Her hours were from 9:00 a.m. to 1:00 p.m. Ms. Morales told Ms. Feist that when she was not there, the instructors would handle enrollment, answer the phone, and respond to requests from students relating to administrative matters. Ms. Morales stated she did not have enough time to get everything done during her scheduled hours but that the school's owner did not want her to work more hours.¹⁷

Ms. Morales told Ms. Feist that the school had 38 actively enrolled students at the time. The students attended when they were able to do so and had flexible schedules regarding when they would be at school. They did not always attend during the scheduled school hours. The instructors kept track of what was being taught and what services were being provided.

Ms. Morales told Ms. Feist that some of the students were Spanish speaking, and the instructors were bilingual. The school provided Spanish language textbooks to students who requested them, but no school disclosures were provided in Spanish.

Ms. Morales told Ms. Feist that after the school moved from Moreno Valley to Ontario, several students complained about the new location. As far as Ms. Morales was aware, students were not given the choice of a refund; if they had been, she would have expected some documentation in the students' files. At the time of inspection, the student files did not contain notice about the change in location, nor was there any other written evidence that notice had been provided to students. Evening classes were scheduled for two students who stated they could not make the drive to Ontario during the day. However, the

¹⁶ Though the crossover program was no longer an approved program, the inaccurate information pertained to a time period when respondent offered an approved crossover program.

¹⁷ The two instructors with whom Ms. Feist spoke during her two-day visit (Mr. Barrientos and Onix Euceda) confirmed that at times they had to interrupt their instruction in order to answer the phones, fill out paperwork, and the like.

school's owner did not want to pay the instructor to stay that late, and the evening classes were cancelled. The two students in question stopped attending when the evening classes were canceled. They had not attended since August, but were still considered to be active students.

Ms. Morales told Ms. Feist that students who transferred from Moreno Valley to Ontario did not have all of their hours recorded in the school's current recordkeeping system. The administrator who had worked at the Moreno Valley location erased all data from the system. However, one of the instructors "remembered" the number of hours each student had accumulated at Moreno Valley, and this recollection was used to determine the approximate number of hours each student had attended class.

Ms. Morales told Ms. Feist that the school provided students with a copy of their proof of training documents upon completion of the program and that the school also provided a diploma. The school did not, however, have transcripts for students who had completed their program or withdrawn from the institution.

Ms. Morales told Ms. Feist that she was unfamiliar with SPFS documents and did not provide them to students upon enrollment.

During her visit, Ms. Feist requested a faculty list and a copy of faculty resumes or qualifications, but Ms. Morales was unable to provide a list of current faculty. Ms. Morales was unable to provide a copy of the faculty files for Mr. Barrientos or Ms. Reddy. Ms. Morales was able to provide a resume for Ms. Euceda but not for the school's other two faculty, Mr. Barrientos and Ms. Reddy. Ms. Morales was likewise unable to produce a resume for herself.

Ms. Feist asked Ms. Morales for a copy of the current school catalog, and Ms. Morales provided a copy of the 2016/2017 catalog. When Ms. Feist advised Ms. Morales that this catalog was outdated, Ms. Morales printed out a copy of the current (2018/2019) catalog from her computer. When Ms. Feist asked Ms. Morales which catalog the school was providing to students, Ms. Morales said that she would print out the updated one for new students.¹⁸

¹⁸ This latter statement was contained in Ms. Feist's investigative report. Viewed in isolation, the statement of Ms. Morales that she "would print out the updated one for new students" is ambiguous: it could mean that that was already her standard practice, or it could mean that she would do so in the future. In context, however, the latter seems more likely since Ms. Morales initially gave Ms. Feist a copy of the 2016/2017 catalog, which she had to "find" on the website; she did not print out and give to Ms. Feist the current catalog until after Ms. Feist pointed out to her that the 2016/2017 was not current; and throughout the narrative portion of her report, Ms. Feist used the present tense (not the conditional tense used with a past progressive meaning) to describe the procedures currently used by respondent's staff.

During the visit, Ms. Feist found a copy of an advertisement regarding respondent's apprenticeship program. Among other things, the flyer stated, "Barbering & Cosmetology Apprentice Program available." Ms. Feist found that respondent's website also offered barbering and cosmetology apprenticeship programs. Ms. Morales told Ms. Feist that the school charges \$4,000 for the program, the potential student is responsible to find a licensed barber or cosmetologist to serve as the student's sponsor, and the student attends the school for the 39 hours of required prerequisites. Ms. Morales stated she did not have the curriculum for the program. She referred Ms. Feist to Mr. Barrientos, who told her that he did not have knowledge of this matter.

During her visit, Ms. Feist requested a copy of the school's cancellation/withdrawal log, and Ms. Morales stated the school did not have such a log.

During the visit, Ms. Feist asked to review student files for active, graduated, and withdrawn students. On reviewing these files, Ms. Feist noted that there were students currently enrolled in a crossover program. Ms. Feist asked whether the school was currently enrolling crossover students, and Ms. Morales stated that the school had enrolled a student in a 200-hour crossover program just two weeks earlier.

Ms. Feist also interviewed instructor Onix Euceda, who taught theory. Ms. Euceda told Ms. Feist that she had worked at the school for five or six months, that she initially worked full time, and that more recently the owner cut her hours and she only worked in the morning. Mr. Barrientos took over in the afternoon when Ms. Euceda left for the day. Ms. Euceda did not usually discuss student progress, the subject of the day's lesson, or "what was happening with services" with Mr. Barrientos. Students clocked in when they arrived in the morning and clocked out when they left at the end of the day; the school provided students with a 60-minute lunch break, but students did not clock out during that time.

Ms. Euceda was not able to provide to Ms. Feist a copy of the BBC laws and regulations; she was only able to provide a copy of the school's rules for students.

Ms. Euceda told Ms. Feist that she tried to keep track of what the students were taught, but the school allowed students to start at any time. Ms. Euceda had no way of knowing what material each student had already completed apart from what could be gleaned from chapter tests stored in student files. Ms. Euceda stated that when she started working at the school, she tried to use timecards to track theory hours and practical operations (no one had been using these timecards before her arrival). The owner told her that using timecards to track instruction was not necessary since the school only offered one class, and Ms. Euceda was instructed to stop using them. Ms. Euceda thus did not have a system in place to keep track of student attendance. She stated that she used chapter tests to determine which students had completed which chapters, that these tests were stored in student files, and that Ms. Morales was keeping track of this information.¹⁹

¹⁹ However, Ms. Morales told Ms. Feist that this information was not in the student files, and Ms. Feist did not see such chapter tests when she reviewed those files.

Ms. Euceda told Ms. Feist that the school did not keep track of the operation hours the students completed. Instead, when a student completed a service (e.g., a haircut), this was recorded via the receipt for the payment of the service. The service receipt did not include the student's name and was mainly used as a tracking tool for revenue. Ms. Euceda stated she texted the owner every time a student completed a service.

Ms. Euceda told Ms. Feist, when asked if she followed a class schedule, that she did not have one.

Ms. Feist interviewed a student, "Andy," who was currently enrolled in the barber program. Andy told Ms. Feist that he had been enrolled since February 2018, having heard about the program from his son, who was a licensed barber. Andy stated he did not receive an SPFS when he enrolled, but he did review the school catalog at the time of enrollment. He stated that Ms. Euceda "jumps around in the book when teaching theory to try and help each of the students who are attending since they are all at different points in their program." Ms. Euceda is a very helpful instructor, but she is not at school all day, and Mr. Barrientos does not teach theory. Andy did not have a copy of the BBC's laws and regulations and had not reviewed them. He did not know how many hours he had completed, and the school would not provide him with printouts regarding his progress. He was not familiar with the health and safety course that is a required BBC curriculum component. He stated the school was very disorganized and that he was very concerned about the quality of the education he was receiving. The school did not have sufficient faculty to support the number of enrolled students since an instructor would need to provide one-on-one instruction while the rest of the class sat and read their books. The instructors were also responsible for answering the phones and filling out enrollment paperwork for new students, so that they were unable to focus on teaching.

23. On September 27, 2018, Ms. Feist returned for the second day of her visit to the school. Accompanying her were BBC Executive Officer Kristy Underwood, BBC Deputy Executive Officer Heather Berg, and BBC school analyst Rachel Gayton. The group arrived at around 12:45 p.m.

At the time of the group's arrival, Ms. Feist observed student files stored in banker's boxes on a bookshelf in the Ms. Morales's office. While Ms. Feist was in the office, she overheard Ms. Morales providing information to a caller regarding the apprenticeship program. Ms. Morales told the caller that the caller was responsible for finding a licensed barber or cosmetologist to serve as a sponsor and that respondent would provide supplemental instruction for \$4,000.

At the time of the group's arrival, there were two students performing services on customers without the supervision of an instructor. One of the two students was using a

straight razor to give the customer a shave. As of 1:35 p.m.,²⁰ no instructor had checked on the students who were providing services. There were approximately 10 other students present on the campus. Some were studying their textbooks; others were engaged in conversation with each other. The only instructor present, Ms. Euceda, was eating lunch at the back of the campus.

Ms. Feist interviewed the group of students who were present on campus; the students were not interviewed separately and were not asked to identify themselves. The students collectively told Ms. Feist and the BBC personnel that the school was very disorganized; class time was not utilized to its fullest; instructors were overworked and needed more help; the schedule of class time changed frequently and at the whim of the owner; students frequently had to self-study because the instructor was not available; students, who were all at different points in the program, were provided with the same instruction because there was only one class and one instructor at a time; the owner was “cheap” and would not support what the school needed; and none of the students had a record indicating where they were in the program, i.e., the number of theory and practical hours that remained to be completed.

The students stated they had never seen or been provided with a copy of the 2018 BBC laws and regulations book. Two students stated they were less than a month from completion of the program, and they did not have a record of their completed practical operations.

One student stated he or she was a crossover student.

Ms. Euceda stated she had never seen the BBC health and safety curriculum book, and she was not providing that instruction to the class.

Ms. Feist interviewed Mr. Barrientos. He stated that students came and went frequently, and the instructors did not know when or if they would show up. Mr. Barrientos could not answer a question posed by Ms. Underwood concerning how he kept track of what curriculum had been covered for students who did not attend regularly.

Mr. Barrientos stated he relied on whatever Ms. Euceda had written on the white board to determine what the focus of the class had been for that day, and he then helped students in the subject areas for which they requested help.

Mr. Barrientos stated that he worked in the afternoon and was responsible for answering the phones and filling out paperwork for new students when he was the only instructor on campus. He stated he mentally kept track of which operations students had completed. However, when Ms. Feist noted the school currently had 38 students actively enrolled (Mr. Barrientos was unable to tell Ms. Feist how many students were enrolled),

²⁰ The phrase used in Ms. Feist’s report was, “At 1:35 p.m., no instructor had checked on the students.” In context, Ms. Feist must have meant that at no time *between her arrival and 1:35 p.m.* did any instructor check on the students.

Mr. Barrientos conceded he could not mentally keep track of the progress of each student or the number of operations each performed. Mr. Barrientos stated that it was not possible for him to provide correct instruction to each student since all students were in the same classroom. In particular, a crossover program student was in the same classroom with barber students. Mr. Barrientos stated the school would need to divide crossover students from barber students in order to teach both groups properly, but the school lacked sufficient qualified faculty to do that.

At one point, Ms. Euceda pointed to a student who was present at the school and said that this was a new student (just two weeks into the program) and that the student was in the same class as students who were about to graduate.

24. Dr. Reddy was not present at any time during Ms. Feist's two-day site visit. At some point during the visit, Ms. Morales called and advised Dr. Reddy that Ms. Feist was at the school.

Dr. Reddy testified that at some point either Ms. Morales or Ms. Feist told him that he did not need to be at the school during Ms. Feist's visit.²¹

Ms. Feist testified that the only communication she had with Dr. Reddy during her visit was when Ms. Morales handed the phone to her and Dr. Reddy asked Ms. Feist about an open house the BBC was holding the next day in Glendale. Ms. Feist told respondent that she did not work for the BBC and handed the phone back to Ms. Morales. Ms. Feist testified she never told Dr. Reddy that he did not need to come to the school.

Ms. Feist's testimony that she never told Dr. Reddy he did not need to come to the school is credited over that of Dr. Reddy, to the extent the latter testified that Ms. Feist told him this. Ms. Feist's testimony is credited because it was unambiguous and detailed and because Dr. Reddy testified on a number of occasions during the hearing that he typically asked respondent staff if he needed to be at the school to address a particular issue and that he would go to the school if staff told him he did need to be there.

25. On returning to her office on September 28, 2018, Ms. Feist began to review the copies of student files and other documents she had collected during her visit the preceding two days. Ms. Feist noted a large number of deficiencies in student files, such as documents that were missing, inaccurate, or incompletely filled out. Ms. Feist also noted deficiencies such as missing or incorrect information in school catalogs. Ms. Feist reviewed the school's website and found that respondent was still advertising graduation requirements and curriculum information for the crossover program that the school was no longer approved to offer. Ms. Feist also found erroneous statements in the 2015 and 2016 annual reports.

²¹ Dr. Reddy's testimony was ambiguous with regard to which of the two persons told him this.

26. On November 8, 2018, the second amended accusation was served on respondent. Dr. Reddy testified that he first learned of the continuing (and new) violations resulting from Ms. Feist's September site visit when he received a copy of the second amended accusation.

27. In December 2018, respondent sent another supplemental set of materials to the bureau. These included student records, a cancellation/withdrawal log, correspondence and emails between the school and the BBC, a blank enrollment agreement, a 2018/2019 school catalog, a one-page class schedule, and resumes of respondent's administrators and instructors, among other documents. Ms. Feist determined, based on her review of this submission, that respondent had corrected some of the deficiencies, including a notation in the catalog that instruction could occur in English or Spanish, a change in the language of the school's complaint/grievance procedure,²² and a partial correction of the STRF fund disclosure. On the other hand, Ms. Feist noted other deficiencies that remained or were new, e.g., a reference to how a student could arrange to complete an Ability-to-Benefit Test, when elsewhere the catalog states that the school "does not admit ability-to-benefit students."

PARTICIPATION OF BBC DEPUTY EXECUTIVE OFFICER HEATHER BERG IN MS. FEIST'S ENFORCEMENT INVESTIGATION

28. Heather Berg is a deputy executive officer with the BBC.²³ She has been employed by the board in various capacities since 2006. Ms. Berg oversees the board's regulation of barbers and cosmetologists. Barbers need 1,500 hours of study in order to sit for the barbering license exam. An applicant demonstrates completion of these hours of study by providing a proof of training document prepared by the applicant's school. The school is required to maintain records of the hours a student completes. The board issues approval codes to barber schools. The board's approval is contingent on the granting of approval to the school by the bureau. Barber schools are required to provide training in the law and regulations that the board enforces as well as in health and safety training. The board does not require approval for crossover training, but it does expect schools to comply with requirements of the bureau in this regard.

As noted earlier, Ms. Berg and other BBC personnel accompanied Ms. Feist on the second day of the latter's visit to the school in September 2018. On arrival, Ms. Berg observed a couple of students performing services on members of the public and a couple of students sitting at a table. The students at the table were reading a barbering text book. At some point Ms. Berg and the other BBC representatives were introduced to Ms. Euceda, who

²² The catalog initially said that students "should" first contact school personnel; it now provided that students "may" first contact school personnel.

²³ Ms. Berg testified at hearing and also gave a statement to Ms. Feist, which Ms. Berg testified was accurate. Ms. Berg's testimony was for the most part uncontroverted or otherwise uncontested. All of the factual matters to which she testified are found to be true; all of the opinions she expressed are found to be her true opinions.

was eating her lunch in the back. No other instructors were present at the school at that time. During the two hours that Ms. Berg was at the facility, several other students arrived. Approximately 10 students were present during the course of the visit. No instruction was taking place during the visit. After lunch, Mr. Barrientos arrived.

The students Ms. Berg observed performing services for customers were giving haircuts. No one was on the floor overseeing the students performing these services.

Ms. Berg participated in a collective interview of the students. The students were shown a copy of the BBC's law and regulations booklet, and they stated they had never seen the booklet or been taught from it. Based on the interview of the students, Ms. Berg determined that there was no tracking of their hours or their curriculum. The only documentation was that students clocked in and out each day.

Ms. Berg also participated in an interview of Ms. Euceda, who stated that she was unable to recall what she had taught the students several days or a week before. Ms. Euceda added that the school's owners did not want to pay for paper.

Ms. Berg and her colleagues also participated in a review of approximately six student files. No tracking of curriculum was found in those files.

Ms. Berg observed that there were no administrators present during the visit, though an office person was present, who was doing paperwork and answering phones. This individual left the facility within an hour of Ms. Berg's arrival.

29. Ms. Berg testified that she reached the conclusion that respondent was not providing all required curriculum components to the school, that the school was not tracking any theory or practical operations for students and had no lesson plans that demonstrated the delivery of the educational program, that the school appeared to be deficient in support of administrative functions and did not have sufficient faculty members, and that the school appeared to be falsifying proof of training documents (i.e., certifying that students had completed board required training hours and curriculum when this was not in fact the case). Ms. Berg determined based on these matters that the board would no longer process pending applications from respondent's students applying for board licensure. Later, however, the board reversed itself in this regard, because of its conclusion that it was not the students, but only the school, that was at fault, i.e., that had engaged in fraud.

30. Ms. Berg testified that there are two parts to the barber licensing examination - a written portion and a practical portion. She testified that the cosmetology licensing examination is similarly structured. She testified that the passing rate for the written portion of the BBC barber licensing examination for respondent's students was 53 percent in 2015, substantially lower than average. In 2016, the passing rate for respondent's students was 38 percent for the written test, also substantially lower than average. However, the passing rates for respondent's students for the practical portion of the 2015 and 2016 exams, 81 percent and 80 percent, were good. Likewise, the passing rate for respondent's students in 2013 and

2014 was good with respect to both written and practical portions of the exam, 83 percent for both portions of the exam in 2013 and 72 percent and 80 percent, respectively, in 2014.

No testimony or documentary evidence was offered as to the passing rate of respondent's students in 2017 and 2018.

Ms. Berg testified that when a student fails an exam, the student may retake the exam but must pay an additional fee of \$75.²⁴

Testimony of E.T.

31. E.T. testified that he was a barber student at respondent's school from February 2016 to February 2017.²⁵ He paid about \$5,900 for his program. He learned about the school from a friend.

E.T. testified that at the time he enrolled in the program, it was Mr. Barrientos who helped him to fill out the enrollment materials. E.T. did not receive a school catalog. He did not recall receiving any documents other than the enrollment agreement. He was not given an SPFS. Mr. Barrientos did ask him if he had a high school diploma, and E.T. provided one to him. When E.T. graduated from the program, he did not receive a transcript of the work he had completed or a certificate stating that he had completed the program.

E.T. testified that Mr. Barrientos and another individual taught his classes. The textbook they used was Milady's *Standard Professional Barbering*.²⁶ When E.T. entered the program, the class was in chapter 3 or 4. Later, when new students joined the program, they were taught the same chapter that the rest of the class was being taught at that time. In other words, if chapter 13 was being taught on a day when new students entered the program, the new students would be taught from chapter 13 along with students, like E.T., who had already been in the program for a period of time.

E.T. testified that there was no schedule that specified which chapter would be taught on a given day. If E.T. missed a class period, he would follow up with the instructor to find out what he had missed.

E.T. testified that he passed the practical component of the BBC licensing exam on the first try, but he failed the written component twice before he passed on his third attempt. BBC's records confirmed E.T.'s testimony. (Exhibit 67.) E.T. first took the examination on

²⁴ The fee for taking the exam the first time is \$125.

²⁵ E.T.'s testimony was for the most part uncontroverted or otherwise uncontested. All of the factual matters to which he testified are found to be true; all of the opinions he expressed are found to be his true opinions.

²⁶ Milady is a standard textbook used in barber training courses.

February 7, 2017; his third (successful) examination was on April 17, 2017, and BBC issued his license the next day.

E.T. testified that the BBC's Act and Regulations book was not used in his courses.

E.T. testified that he currently works as a barber in Temecula.

32. When asked whether he believed he had received a proper education at the school, E.T. testified, "Yea, it was good." He added that "to an extent" the school prepared him to become a licensed barber. He felt the instruction seemed unorganized and was not strict enough, i.e., students could come and go as they wished, and there was no set schedule as to what was going to be taught. He enrolled at respondent's school because of the price, and he felt he got good value.

Statement of Student N.P.

33. An unidentified student, N.P., sent an email to Mr. Barrientos on August 23, 2018. The email stated:

My name is [N.P.] and I signed up a week ago with Vivian before she quit. She said I would have all of my things when I started on Tuesday and it's now Thursday with no books or gear. My schedule has changed 3 times and everything is extremely unorganized. I moved out here from Hawaii with my family to go to school here. New students shouldn't have to start on chapter 10, I came here to start a career and learn from the very beginning. It seems to me as though things are changing and no one knows what's going on. Unfortunately I don't have enough time to wait for everything to get situated on the schools [*sic*] end, so on my third day of school I'm asking for my money back. Luis deducted my hours and registration and came up with a return of \$1,777. The owner Redy [*sic*] personally called me and said I can pick up my check from Luis tomorrow Friday the 24th of August 2018. Thank you Luis for your time, will you please call me in the morning and let me know what time to pick it up.

Findings with Regard to the Eighteen Causes for Discipline

A. RESPONDENT'S ALLEGED MAKING OF SUBSTANTIVE CHANGES AND CHANGING ITS EDUCATIONAL OBJECTIVES WITHOUT PRIOR BUREAU AUTHORIZATION (FIRST CAUSE FOR DISCIPLINE)

34. The evidence established the alleged violations as follows:

a. Respondent violated Sections 94893 and 94894, subdivision (g), and regulation sections 70000, subdivision (r), and 71650, subdivision (a), by providing instruction in Spanish without obtaining prior bureau approval. In so doing, respondent made a substantive change to its approval and changed its educational objectives with obtaining prior bureau approval.

On July 26, 2018, respondent received bureau approval to offer a 1,500-hour barber program in Spanish, and Dr. Reddy testified that (at least prior to that date) instruction was never provided in Spanish. Further, respondent did not formally offer courses taught in Spanish. However, the evidence established that in fact, and as early as 2016, respondent did provide instruction in Spanish without obtaining prior bureau approval. Though it could perhaps be argued that mere incidental remarks in Spanish would not constitute “instruction,” it is clear that what took place at the school was far more than merely incidental remarks. For example, in 2016 and as a regular feature of its course of instruction, respondent used videos that presented instruction in both English and Spanish to supplement the instruction provided by teachers. Further, instructors, who were bilingual, spoke Spanish to students whenever it was deemed that the student(s) in question could more readily communicate in that language or whenever Spanish was the student’s preferred language. Spanish-language textbooks were available for students who requested them. Flyers advertising the school’s program were also produced in both English and Spanish.

b. Respondent violated Sections 94893 and 94894, subdivisions (a) and (g), and regulation²⁷ section 71650, subdivision (a), by advertising and offering barber and cosmetology apprenticeship programs without obtaining prior bureau approval. Respondent’s addition of a cosmetology program and addition of barbering and cosmetology apprenticeship programs constituted substantive changes to its approval, as a change of educational objectives and a significant change in the method of instructional delivery.

A) *Overview of Relevant Law*

Section 94893 requires prior bureau approval for an institution’s substantive changes to its approval to operate and authorizes revocation for failure to obtain such prior approval. If an institution seeks a substantive change in its educational objectives, it must complete the form required by regulation section 71650, subdivision (a).

Section 94894, subdivision (a), defines one type of substantive change to the approval to operate that requires prior bureau approval: “[a] change in educational objectives, including an addition of a new diploma or degree educational program unrelated to the approved educational programs offered by the institution.” The educational program’s “objectives” are “the goals and methods by which the institution fulfills its mission and transforms it into measurable student learning outcomes for each educational program.”

²⁷ Regulation section 70000, subdivision (r), was also alleged in the First Cause for Discipline. That section defines “objectives,” and appears to have been included to clarify the allegation.

(Cal. Code Regs., tit. 5, § 70000, subd. (r).) Thus, a new educational program unrelated to an approved program, and a new educational program taught through a new or different “method,” each constitute changes to the educational objectives that, in turn, constitute a substantive change to the approval to operate.

Separately, Section 94894, subdivision (g), specifies that “[a] significant change in the method of instructional delivery” requires a prior approval pursuant to Section 94893.

The practice of barbering and the practice of cosmetology differ, and each practice has a separate license. (Bus. & Prof. Code, §§ 7316, 7317, 7321, 7321.5.) In general, when either practice occurs in an establishment, BBC must license the establishment. (Bus. & Prof. Code, §§ 7317, 7346-7353.4.)

Aspiring barbers and cosmetologists can qualify to take the barbering or cosmetology examinations in multiple ways. Commonly, a person may complete a barbering school program to qualify to sit for the barber examination. (Bus. & Prof. Code, § 7321.5, subd. (d).) A barbering program requires at least “1,500 hours of practical training and technical instruction in the practice of barbering as defined in [Business and Professions Code] Section 7316.” (Bus. & Prof. Code, §§ 7362, 7362.2, 7362.5, subd. (a).) A person may similarly complete a cosmetology school program to qualify to take the cosmetologist examination. (Bus. & Prof. Code, § 7321, subd. (d).) The program must include at least 1,600 hours of training and instruction in the practice of cosmetology. (Bus. & Prof. Code, §§ 7362, 7362.1, & 7362.5, subd. (b).) BBC requires certain equipment and curriculum for each program. (Cal. Code Regs., tit. 16, § 940, *et seq.*)

Alternately, a person may qualify as an apprentice. (Bus. & Prof. Code §§ 7321, subd. (d)(5), 7321.5, subd. (d)(2).) An apprentice is a person “who is licensed by [BBC] to engage in learning or acquiring a knowledge of barbering, cosmetology, skin care, nail care, or electrology, in a licensed establishment under the supervision of a licensee approved by [BBC].” (Bus. & Prof. Code, § 7332.) Before a person may obtain a BBC license as an apprentice, the person must take at least 39 hours of pre-apprentice “instruction in the laws and regulations of [BBC], basic patron protection and sanitation and disinfection procedures.” (Cal. Code Regs., tit. 16, § 917.) Apprenticeships consist of an “on-the-job training component and a classroom component of related training.” (Cal. Code Regs., tit. 16, § 915, subd. (a).) Separate provisions of BBC law regulate apprenticeship programs in either barbering or cosmetology. (Bus. & Prof. Code, §§ 7332-7336; Cal. Code Regs., tit. 16, § 913, *et seq.*)

Unlike a barbering school program, a barbering apprenticeship requires, within a two-year period, 3,200 on-the-job hours practicing barbering in a licensed establishment and 216 hours of instruction in a classroom. (Bus. & Prof. Code, §§ 7332-7336; Cal. Code Regs., tit. 16, §§ 915, 916, 917.) A cosmetology apprentice must complete the same number of on-the-job hours practicing cosmetology, but 220 hours of instruction in a classroom. (Bus. & Prof. Code, §§ 7332-7336; Cal. Code Regs., tit. 16, §§ 915, 916, 917.) The subjects covered

in the apprenticeship classroom requirements differ between the barbering and cosmetology instruction. (Cal. Code of Regs., tit. 16, § 915, subds. (b) and (c).)

B) *Application of Law to Respondent's Apprenticeship Programs*

Respondent's addition of a cosmetology apprenticeship program created a substantive change to the school's approval to operate that required prior approval. The additional program changed an educational objective by adding a new, unrelated program. (Ed. Code, § 94894, subd. (a); Cal. Code Regs., tit. 5, § 71650.) In addition, the changed method of instructional delivery for the barbering program was also a change in the educational objectives that required prior bureau approval. Finally, the new method of instruction constituted a substantive change pursuant to Section 94894, subdivision (g), which required advance approval.

On September 12, 2017, the California Department of Industrial Relations' Division of Apprenticeship Standards approved respondent to operate an apprenticeship program "for the occupations of Barber and Cosmetologist" (Exhibit C.) Respondent advertised and offered a "Barbering & Cosmetology Apprentice Program" and "Barber/cosmetology Apprenticeship programs" on flyers and on its website. (Exhibits 36, 42.) Respondent's staff was heard on the telephone describing Respondent's \$4,000 apprenticeship program. Respondent was previously approved to offer a barbering program, and a crossover program to train licensed cosmetologists to become barbers.

Respondent was never approved to provide a cosmetology program. As explained above, a cosmetology apprenticeship program trains someone to be a cosmetologist, a license distinct from a barbering license. Respondent's offer of an apprenticeship program *in cosmetology* is not "related to" the previously approved *barbering* programs respondent offered. (Ed. Code, § 94984, subd. (a); Cal. Code Regs., tit. 5, §§ 71650, 71660.) Consequently, the addition of a cosmetology apprenticeship program constitutes a substantive change in respondent's approval.

Separately, respondent's addition of either a barbering or cosmetology apprenticeship program constitutes "a change in educational objectives" because the "methods by which the institution fulfills its mission" to educate and train students occurs in a completely different manner. (Ed. Code, § 94984, subd. (a); Cal. Code Regs., tit. 5, § 70000.) As described above, the laws governing barbering and cosmetology require different methods of instructional delivery for an apprenticeship program in barbering or cosmetology. Individuals obtain 39 hours of instruction prior to obtaining a license as an apprentice, and then, as apprentices, they work for over 3,000 hours under the supervision of a licensee in their chosen field (barbering or cosmetology) within a licensed establishment, which experience is supplemented with additional classroom education. The method of education is fundamentally different in an apprentice program compared to a traditional school program.

Likewise, the addition of the apprentice programs created “[a] significant change in the method of instructional delivery” that requires prior bureau approval. (Ed. Code, §§ 94893, 94894, subd. (g); Cal. Code Regs., tit. 5, § 71600.) As explained above, a 1,500-hour school-based program taught by instructors is not the same as 3,200 hours of on-the-job training in a salon with a practicing barber, supplemented by 216 hours of classroom training. Accordingly, the addition of a new program with an alternate instructional method is a substantive change.

Respondent incorrectly suggests that its offering the apprenticeship program did not require bureau approval. An institution may be exempt from approval as “a bona fide organization, association, or council” that provides a “preapprenticeship” training program. (Ed. Code, § 94874, subd. (b)(2).) But respondent’s institution is not exempt. First, respondent is an institution, not a bona fide organization, association, or council. Second, respondent did not offer just a “preapprenticeship” training program. It offered an apprenticeship program. As such, respondent is not exempt from bureau approval.

B. RESPONDENT’S ALLEGED FAILURE TO NOTIFY THE BUREAU OF NON-SUBSTANTIVE CHANGES (SECOND CAUSE FOR DISCIPLINE)

35. As noted above, at all times until July 26, 2018, respondent was approved to operate a 400-hour barber crossover program.

On February 7, 2018, Dr. Reddy sent an email to the BBC’s Christine Jones in which, in essence, he inquired whether respondent’s 400-hour barber crossover program could be reduced to 200 hours. On the same day, Ms. Jones responded to Dr. Reddy’s email and stated:

Because the crossover course curriculums [*sic*] California Code of Regulations sections 950.8 and 950.9 were repealed on July 1, 2015, the crossover course curriculums no longer require Board approval. A school will need to be approved to offer the full courses in order to offer any “crossover” hours, and the school will be responsible for making sure the students are getting the required hours and operations to qualify for an examination, and a school can always require over and above the Board’s minimum requirements.

Dr. Reddy’s understanding based on this response was that no *bureau* approval was needed for the crossover program. However, Ms. Jones was not a bureau employee or representative, and Ms. Jones did not state that bureau approval was unnecessary. Dr. Reddy’s understanding was incorrect, unreasonable, and does not affect the necessity that respondent comply with the statutory and regulatory provisions at issue in this matter.

Further, on July 13, 2018, Kathleen Rainey, bureau senior education specialist, Quality of Education Unit, sent a letter to Dr. Reddy that stated:

Your institution is approved to offer a 400 hour Barber Crossover program. This email is to inform you that Barber Crossover course curriculums were repealed in 2015 by the BBC; therefore, the BBC no longer approves or allows crossover programs/courses. Instead, if a student wants to complete just the courses that are available in the “crossover” program, they must enroll in the full Barbering program, and the institution would then transfer in the completed courses and have the students only take the remaining courses that were previously in the crossover program.

The Bureau requires written notification to discontinue the Barber Crossover program. Please provide a letter or email requesting the Barber Crossover program be discontinued. Please confirm that you understand that students would be required to enroll in the full program but would only need to take the courses needed to complete the program and that the Institution’s Barber Crossover program will need to be discontinued.

Please email or mail a revised school catalog that does not include the Barber Crossover program. The school’s website will also need to be updated with the removal of the Barber Crossover program.

Please let me know if you have any questions.

Based on this letter Dr. Reddy (correctly) understood that the 400-hour crossover course was no longer approved and that students would have to enroll in the barber program.

On July 26, 2018, at respondent’s request, the school’s crossover program was removed from its approved programs. Dr. Reddy testified that the school did not continue to advertise the crossover program after that date. However, as of September 2018, the barber crossover program was still referenced in the school’s catalog.

36. The evidence established and failed to establish the alleged violations in the second cause for discipline as follows:

a. Respondent violated regulation section 71660 by offering a 200-hour barber crossover program when it was only approved to offer a 400-hour barber crossover program. That respondent offered a 200-hour crossover course is based on the reference to such a course in its 2015/2016 and 2016/2017 school catalogs and the active enrollment agreements respondent had with a number of students with regard to such a course. In

addition, respondent did not notify the bureau that it was adding a related 200-hour program within 30 days of changing the number of hours.

b. Respondent violated regulation section 71660 by continuing to offer a barber crossover course after respondent removed its barber crossover program from its list of approved programs on July 26, 2018. In this regard, as of September 21, 2018, respondent continued to advertise and offer the barber crossover program. This is evidenced by the fact that the school's 2016/2017 catalog, which references the crossover program, was the only school catalog posted on the school's website on September 21, 2018.²⁸

c. Respondent violated regulation section 71660 by *advertising* a Refresher Course for \$300, which included five hours of instruction and required a separate application process. Reference to and information about this course is found in the enrollment agreements of a substantial number of respondent's students. Such a course of study was not among respondent's approved programs.

Respondent did not violate regulation section 71660 by *offering* a Refresher Course. The only evidence offered in this regard is a reference to such a program in a form found in a number of student files. The evidence does not establish that any students were actually enrolled in such a course of study or that actual classes were offered.

C. RESPONDENT'S ALLEGED FAILURE TO MEET MINIMUM REQUIREMENTS FOR ENROLLMENT AGREEMENTS (THIRD CAUSE FOR DISCIPLINE)

37. The evidence established and failed to establish the alleged violations as follows:

a. Respondent violated regulation section 71800, subdivision (b), in connection with M.T.'s enrollment agreement because the agreement did not identify the start date or the completion date of the enrollment agreement period.

Respondent did not violate regulation section 71800, subdivision (b), in connection with the enrollment agreement of W.S. While the enrollment agreement indicates an enrollment agreement period start date of July 15, 2015, and an enrollment agreement period completion date of September 15, 2015, and while her Barber Application for Examination and Initial Licensure Fee form indicates that W.S. started her training on July 15, 2018, and ended her training on November 20, 2018, these facts do not establish a violation of regulation section 71800, subdivision (b), which simply refers to the "period covered by the enrollment agreement."

²⁸ The school's 2018/2019 catalog makes only one reference to a barber crossover program, in the "Admission Policy and Procedure" section of the catalog, but not in the "Programs" or "Tuition and Fees" sections of the catalog or anywhere else. This single reference was insufficient to constitute the "offering" of such a course.

b. Respondent violated regulation section 71800, subdivision (c), in connection with the enrollment agreements of W.S. and M.T. because the agreements did not contain the program start and scheduled completion dates.

c. Respondent violated regulation section 71800, subdivision (d), in connection with the enrollment agreements of M.F., E.D., L.B., E.M., N.P., M.T., A.P., and L.C. because these agreements did not contain the date by which the students in question had to exercise their right to cancel. Respondent did not violate regulation section 71800, subdivision (d) in connection with the enrollment agreement of T.C., because that agreement did contain the date by which the student in question had to exercise his right to cancel.

d. Respondent violated regulation section 71800, subdivision (e), in connection with the enrollment agreement of E.D., because the agreement did not contain any itemized charges.

e. Respondent violated section 94902, subdivisions (b)(1) and (b)(3), because respondent did not provide catalogs or SPFSs to students before having them sign enrollment agreements. Student E.T. testified that he did not receive either of these documents at the time of enrollment. Ms. Feist testified that at least two other students told her the same thing. Further, none of the student files offered at hearing contained signed SPFS forms documenting their receipt of an SPFS. Moreover, Ms. Morales, whose duties included the enrollment of students, told Ms. Feist in September 2018 that she was unfamiliar with the SPFS and did not provide them to students on enrollment.

f. Respondent did not violate Section 94902, subdivision (a), in connection with the enrollment agreement of E.D., because the agreement *was* signed by an institution representative, i.e., Luis Barrientos.

g. Respondent did not violate Section 94906, subdivision (b), by failing to provide an enrollment agreement or disclosure in Spanish despite advertising in Spanish, because the evidence did not establish that any specific student who was recruited in Spanish signed an enrollment agreement in a language other than Spanish.

h. Respondent did not violate Section 94909, subdivision (a)(15), on the basis of an incomplete “transfer of credits” disclosure in respondent’s enrollment agreement, because section 94909 addresses the requirements of a school catalog, not an enrollment agreement.

i. Respondent violated Section 94911, subdivision (a), in connection with the enrollment agreements of M.F. and E.D., because the agreements incorrectly stated the program name as “barbering,” when the number of hours required to complete the program (200 or 400) indicates that the program was not “barbering” (a 1,500-hour program) but instead a crossover program. Respondent violated Section 94911, subdivision (a), in connection with the enrollment agreement of W.S., because the agreement did not have the name of the program listed. Respondent violated Section 94911, subdivision (a), in

connection with the enrollment agreements of M.T. and R.C., because the agreement failed to identify the number of hours to complete the program. With regard more specifically to R.C., the number of hours listed (265) does not correspond to any of respondent's programs, and it is thus an incorrect number.

j. Respondent violated Section 94911, subdivision (b), and regulation section 71800, subdivision (e), in connection with the tuition and fees listed in the enrollment agreements of E.M., N.P., A.T., J.G., and T.C. because the tuition and fees listed in those agreements did not match those published in the applicable school catalog or specified in other documents contained in the students' files. More specifically in this regard, the tuition and fees charged in the enrollment agreements of E.M., A.T., J.G., and T.C. did not match the tuition and fees specified in respondent's 2017/2018 catalog; the tuition and fees charged in the enrollment agreement of T.C. did not specify a \$200 mandatory fee for students who re-enroll, though such a fee was specified in a separate document found in T.C.'s student file, albeit not in respondent's 2017/2018 catalog; the tuition and fees charged in the enrollment agreement of N.P. did not match the tuition and fees specified in respondent's 2018/2019 catalog. In this regard, that certain information must be included in an enrollment agreement implies a requirement that the information provided is accurate and correct.

k. Respondent violated regulation section 71800, subdivision (e)(12), in connection with the enrollment agreements of N.P., M.T., A.G., D.M., A.T., and L.C. because fees were charged to these students that were not itemized in the enrollment agreements. The fees in question were specified in separate documents contained in these students' files and were identified as a service fee, a collection fee, and a fee for exceeding the length of the contracted completion date. Not all of these fees were contained in every one of these students' files.

l. Respondent violated Section 94911, subdivision (c), in connection with the enrollment agreements of N.P., D.M., A.T., L.C., and T.C. because those agreements did not accurately identify the charges for a period of attendance.

m. Respondent did not violate Section 94909, subdivision (a)(15), in connection with the enrollment agreements of E.M., M.T., D.M., R.C., A.T., L.C. J.G., and T.C. because Section 94909 addresses the requirements of a school catalog, not an enrollment agreement.

n. Respondent violated Section 94899.5, subdivision (b), in connection with the enrollment agreements of A.T., J.G., and T.C. because those agreements were for a program that was more than four months in length (the barber program), and the agreements provided that the full cost of the program was to be paid at the time of enrollment.

o. Respondent violated Section 94911, subdivision (e), and regulation section 71800, subdivision (a), in connection with the enrollment agreements of T.C. and A.T. Even though those agreements bore respondent's address (in Ontario) at the top of the

enrollment form, the form lists the school's former address (in Moreno Valley) as the address to which any notice of cancellation was to be sent.

p. Respondent violated Section 94911, subdivision (a), in connection with the enrollment agreements of A.T., J.G., and T.C. because those agreements contained a "Graduation Requirements" disclosure stating that the barber crossover program required 400 hours of instruction. In contrast, respondent's 2017/2018 catalog advertised a 200-hour crossover program.

D. RESPONDENT'S ALLEGED FAILURE TO COMPLY WITH GENERAL ENROLLMENT REQUIREMENTS (FOURTH CAUSE FOR DISCIPLINE)

38. The evidence established and failed to establish the alleged violations as follows:

a. Respondent violated regulation section 71770, subdivision (a), in connection with the enrollment of M.F. because M.F.'s student file did not contain a document showing admission qualifications for the program, such as a transcript showing previous education, a proof of training document, or an active cosmetologist license.

b. Respondent violated regulation section 71770, subdivision (a), in connection with the enrollment of D.M. because D.M.'s student file did not contain a copy of a high school diploma or its equivalency or proof of an examination meeting the requirements of Education Code section 94904. Though the student file contained a high school transcript, that transcript reflected that D.M. did not finish high school.

Respondent did not violate regulation section 71770, subdivision (a), in connection with the enrollment of A.P. because A.P. appears to have been enrolled in a crossover program (notwithstanding that A.P.'s program is designated as a barber program), because the number of hours (200), the length of time to complete the program (two months), and the amount of tuition (\$1,400), are all consistent with a crossover program and are all inconsistent with a barber program. Accordingly, respondent's admission requirements for the barber program did not apply to A.P., and submission of a high school diploma or its equivalent was not required.

c. Respondent violated regulation section 71770, subdivision (a), in connection with the enrollment of L.C. because L.C.'s file did not contain, as required by respondent's 2017/2018 catalog, either an official transcript from L.C.'s prior school or a proof of training document from that school.

E. RESPONDENT'S FAILURE TO COMPLY WITH REQUIREMENTS FOR SCHOOL CATALOG (FIFTH CAUSE FOR DISCIPLINE)

39. The evidence established and failed to establish the alleged violations as follows:

a. Respondent violated Section 94909, subdivision (a), in connection with E.T. because E.T. was not provided a catalog prior to signing the enrollment agreement. E.T. so testified and his testimony was uncontroverted.

Respondent did not violate Section 94909, subdivision (a), in connection with M.M. because no evidence was presented at hearing that M.M. was not provided with a catalog prior to signing the enrollment agreement.

Respondent did not violate regulation section 71810, subdivision (a), in connection with E.T. or M.M. because regulation section 71780, subdivision (a), does not specify that catalogs are to be provided to students prior to signing the enrollment agreement.

b. Respondent violated Section 94909, subdivision (a)(5), in connection with its 2015/2016 catalog because that catalog did not contain information concerning the school's barber instruction program offered by respondent. Ms. Feist testified in this regard that Mr. Barrientos told her during her February 2016 site visit that the school offered such a program, though no students were enrolled in the program at that time.

Respondent violated Section 94909, subdivision (a)(5), in connection with its 2018/2019 catalog because the catalog contained conflicting information concerning the length of respondent's barbering program (39.5 weeks vs. 36 weeks²⁹) and respondent's crossover program (200 hours of study vs. 340 hours). Respondent violated section 94909, subdivision (a)(5), in connection with its 2017/2018 catalog because the catalog contained conflicting information concerning the length of respondent's crossover program (200 hours of study vs. 340 hours).

c. Respondent violated Section 94909, subdivision (a)(9), because respondent's 2015/2016 catalog did not contain a schedule for total charges for a period of attendance and an estimated schedule of total charges for the entire educational program.

d. Respondent violated Section 94909, subdivision (a)(5), because respondent's 2018/2019 catalog did not contain information regarding the barber/cosmetology apprenticeship program that the school offered and advertised that year. During her site visit in September 2018, Ms. Feist saw flyers on site that advertised the program. Among other things, the flyer stated, "Barbering & Cosmetology Apprentice Program available." In addition, during her visit Ms. Feist heard Ms. Morales provide information about the apprenticeship program to a prospective student over the telephone. This program was not identified in the catalog.

e. Respondent did not violate Section 94909, subdivision (a)(7), with regard to the faculty qualifications set forth in the school's 2018/2019 catalog, because the catalog does set forth such qualifications. Though Ms. Feist testified that the qualifications

²⁹ The 36-week period was stated to be the "Expected Time Frame 100%."

set forth therein were not sufficient, subdivision (a)(7), specifies only that “information regarding the faculty and their qualifications” be provided. It cannot affirmatively be found that the qualifications provided did not meet that general requirement.

f. Respondent violated Section 94909, subdivision (a)(9), because respondent’s 2018/2019 catalog does not set forth the correct amount in total charges, in that the school is charging total charges of \$6,500 but the 2018/2019 catalog states total charges of \$5,950.

F. RESPONDENT’S FAILURE TO MAINTAIN REQUIRED STUDENT AND INSTITUTIONAL RECORDS (SIXTH CAUSE FOR DISCIPLINE)

40. The evidence established and failed to establish the alleged violations as follows:

a. Respondent violated regulation section 71920, subdivision (b)(1), by not maintaining records of previous education that would qualify a student for enrollment in the barber crossover program. The evidence in support of this finding includes the files of E.D. and W.S., crossover program students with respect to whom the required documentation was not included in their files.

b. Respondent violated regulation section 71920, subdivision (b)(1)(A), by not maintaining proof of high school graduation or its equivalency for its enrolled students. The evidence in support of this finding includes the files of M.F., M.M., D.D., L.B., E.T., E.D., and W.S., with respect to whom the required documentation was not included in their files.

c. Respondent violated regulation section 71920, subdivision (b)(4), by not maintaining records of the dates of cancellation or withdrawal by students, including paperwork showing funds received and possible refund that would be required. For example, the student file for E.M., a graduated student, did not contain documentation of the dates of attendance, withdrawal, or completion. Respondent was only able to provide proof of 817.24 hours of E.M.’s attendance.

d. Respondent violated Section 94900, subdivision (b), and sections 71920, subdivision (b)(5)(A), and 71930, subdivision (b)(1), by not maintaining transcripts for students who had graduated from the institution. The evidence that supports this finding includes the testimony of E.T. that he did not receive a transcript upon completion of the program (nor was there one in his student file); documentation in the file of E.M. that he had completed the program, but the absence of a transcript in his file; and the statement of Ms. Morales to Ms. Feist that the school did not have transcripts for students who had completed the program. Further, none of the student files offered as evidence at the hearing contained a transcript of course work completed at the respondent’s school.

e. Respondent violated Section 94900.5, subdivision (c), and regulation section 71930, subdivision (a), by failing to maintain information regarding placement rates in its annual reports and SPFS documents. This finding is based on findings contained below with regard to the eighth and ninth causes for discipline (Finding 42, paragraphs d, j, and l, and Finding 43, paragraphs a, d, and k).

f. Respondent violated regulation section 71930, subdivision (d), by failing to maintain student files in a manner that was secure from damage or loss and by failing to maintain a second set of records at a different location than the first set. Some student files were kept in cardboard banker's boxes in the school office and a storage room. Ms. Bullias told Ms. Feist that back-up copies of student files did not exist.

g. Respondent violated Section 94900.5, subdivision (b), and regulation section 71930, subdivisions (a) and (e), on February 10, 2016, and/or September 26, 2018, by being unable to provide copies of its faculty list, faculty files, financial statements, and respondent's current SPFS, which are records required to be maintained under the Act and made immediately available to the bureau during normal business hours.

h. Respondent violated Section 94900, subdivision (b), because respondent's files for E.D. and W.S. did not contain graduation certificates or transcripts showing the courses taken or grades earned by the students.

i. Respondent violated regulation section 79120, subdivision (b)(1)(A), because respondent's file for L.C. did not contain proof of hours completed at a different school that were applied towards the completion of the program at respondent's school, which would have demonstrated that the student was qualified for admission to the program.

j. Respondent violated Section 94900.5, subdivision (a), because in 2018 it offered a barber/cosmetology apprenticeship program, but it did not maintain a record of the curriculum for that program. The evidence that respondent offered such a program in 2018 is based on the following: During her site visit in September 2018, Ms. Feist saw a flyer on site that advertised the school. Among other things, the flyer stated, "Barbering & Cosmetology Apprentice Program available." In addition, during her visit Ms. Feist heard Ms. Morales provide information about the apprenticeship program to a prospective student over the telephone. When Ms. Feist asked Ms. Morales if she could provide a copy of the curriculum, Ms. Morales could not provide one. Ms. Morales referred Ms. Feist to Mr. Barrientos, who told Ms. Feist that he did not know about this matter.

k. Respondent violated regulation section 71920, subdivision (b)(10), in connection with N.P. because respondent's file for N.P. did not contain a document specifying the amount of refund given to N.P. that included the method of calculating the refund.

G. RESPONDENT'S ALLEGED FAILURE TO MAINTAIN A CANCELLATION AND WITHDRAWAL LOG (SEVENTH CAUSE FOR DISCIPLINE)

41. The evidence established that respondent violated regulation sections 71750, subdivision (f), and 71920, subdivision (b), because it failed to maintain a cancellation and withdrawal log, kept on a monthly basis, which included the names, addresses, telephone numbers, and dates of cancellation or withdrawal of all students who had cancelled the enrollment agreement with, or withdrawn from, the school during the calendar year. During her site visit of September 2018, Ms. Feist asked Ms. Morales to see the school's cancellation/withdrawal log, and Ms. Morales stated the school did not have such a log.

H. RESPONDENT'S ALLEGED FAILURE TO MEET MINIMUM REQUIREMENTS FOR SCHOOL PERFORMANCE FACT SHEETS (EIGHTH CAUSE FOR DISCIPLINE)

42. The evidence established and failed to establish the alleged violations as follows:

a. Respondent violated Sections 94910, subdivisions (a) through (d), and 94929.5, subdivision (a), and regulation section 74112, subdivision (e)(1) [formerly 74112, subd. (c)(1)], because the 2014 SPFS did not include information for the Barber Instructor Training program, although the program was still being offered during that time period.

b. Respondent violated Section 94929.5, subdivision (a)(2), and regulation section 74112, subdivision (e)(2) [formerly 74112, subd. (c)(2)] because its 2014 SPFS did not include data for the previous two calendar years.

c. Respondent violated Section 94910, subdivision (c), because the license examination passage rate in the 2014 SPFS and the 2015/2016 Barber SPFS and Barber/Crossover SPFS did not match the results reported by the BBC for the exams. The SPFS indicated a passage rate of 99 percent, whereas documentation from the BBC indicated passage rates of 80 percent (practical) and 72 percent (written). Accordingly, respondent did not report license examination passage rates calculated pursuant to Article 16 of the Act. In this regard, that certain information must be included in an SPFS implies a requirement that the information provided is accurate and correct.

d. Respondent violated Section 94910, subdivision (b), and regulation section 74112, subdivision (i) [formerly subdivision (e)], by not including placement rate information.

e. Respondent violated regulation section 74112, subdivision (m) [formerly subdivision (h)], by not maintaining backup documentation for its 2014 SPFS that met the requirements of that subdivision. The SPFS backup documentation did not include exam passage information, place of employment, position, salary, hours, a description of all attempts to contact each student, as well as the name, email address, phone number, and position or title of the institution's representative who was primarily responsible for

obtaining students' completion, placement, licensing, and salary and wage data. The documentation also did not include the date the information was gathered, and copies of notes, emails, or letters through which the information was gathered.

f. Respondent violated Section 94910, subdivisions (a) through (d), because the backup documentation for the 2013/2014 SPFS did not match the data reported in the 2013/2014 SPFS.

g. Respondent violated Sections 94902, 94910, and 94912 by enrolling students without first providing them a SPFS.

h. Respondent violated Section 94929.7 by not documenting and maintaining all of the information necessary to substantiate the performance data reported in its 2014 SPFS.

i. Respondent violated Section 94910, subdivision (a), and regulation section 74112, subdivision (h) [formerly subdivision (e)(4)], as follows:

A) The 2015/2016 barber program SPFS table indicated a 100 percent completion for students who were eligible to graduate, but respondent erroneously calculated the on-time completion rate and reported a 68 percent completion rate for 2015 and 86 percent for 2016, which was an untrue statement.

B) Similarly, the 2015/2016 barber crossover SPFS did not accurately report completion rates. Respondent erroneously calculated the on-time completion and reported 50 percent completion for students who were eligible to graduate for 2016, when three of these students eligible for graduation reportedly graduated.

j. Respondent violated Sections 94910, subdivision (b), and 94929.5, subdivision (a), and 74112, subdivision (i), because the 2015/2016 barber SPFS did not accurately report job placement rates, as follows:

A) The table of job placement rates listed zero graduates employed in the field for 2015 and 2016, but the table of "Gainfully Employed" listed between three and 37 graduates employed in the field.

B) The table of part-time versus full-time employment stated that in 2015 there were 20 graduates employed part time and 17 graduates employed full time, but it stated the total graduates employed in the field was 17. The table stated that in 2016 six graduates were employed part time and three graduates were employed full time, for a total of three graduates.

C) The table of single position versus concurrent aggregated position stated that in 2015, 20 graduates were employed part time and 17 graduates were employed in concurrent aggregated positions, but it stated the total graduates employed in the

field was 17. The table stated that in 2016 six graduates were employed part time and three graduates were employed in concurrent aggregated positions, but it stated there was a total of three graduates employed in the field.

D) The table of self-employed/freelance stated that in 2015, there were 20 graduates reporting as self-employed, but it stated there was a total of 17 graduates employed in the field. The table for 2016 stated six graduates reported being in self-employed positions, but stated there was a total of three graduates employed in the field.

E) The table of institutional employment stated that in 2015, 20 graduates were employed by the institution, but it stated there was a total of 17 graduates employed in the field. The table for 2016 listed six graduates were employed by the institution, but stated there was a total of three graduates employed in the field.

1.³⁰ Respondent violated Sections 94910, subdivision (b), and 94929.5, subdivision (a)(1), and regulation section 74112, subdivision (i), because the 2015/2016 barber crossover SPFS did not accurately report job placement rates, as follows:

A) The table of job placement rates listed zero graduates employed in the field for 2015 and 2016, but the table of “Gainfully Employed” listed between three and 37 graduates employed in the field. However, only 26 students were enrolled in the program in 2015 and 2016.

B) The table of part-time versus full-time employment stated that in 2015 there were 20 graduates employed part time and 17 graduates employed full time, but it stated the total graduates employed in the field was 17. The table stated that in 2016 six graduates were employed part time and three graduates were employed full time, for a total of three graduates.

C) The table of single position versus concurrent aggregated position stated that in 2015, 20 graduates were employed part time and 17 graduates were employed in concurrent aggregated positions, but it stated the total graduates employed in the field was 17. The table stated that in 2016 six graduates were employed part time and three graduates were employed in concurrent aggregated positions, but it stated there was a total of three graduates employed in the field.

D) The table of self-employed/freelance stated that in 2015 there were 20 graduates reporting as self-employed, but it stated there was a total of 17 graduates employed in the field. The table for 2016 stated six graduates reported being in self-employed positions, but stated there was a total of three graduates employed in the field.

³⁰ Paragraph 69 of the second amended accusation, which sets forth the allegations of the eighteen cause for discipline, does not contain a subparagraph k.

E) The table of institutional employment stated that in 2015, 20 graduates were employed by the institution, but it stated there was a total of 17 graduates employed in the field. The table for 2016 listed six graduates were employed by the institution, but stated there was a total of three graduates employed in the field.

m. Respondent violated Sections 94910, subdivision (c), and 94929.5, subdivision (a)(2), and regulation section 74112, subdivision (j) [formerly subdivision (e)(2)], because the 2015/2016 license exam passage rates table was blank and did not include any information about graduates who took the license examination. However, a report from the BBC shows that respondent had 92 tests taken in 2015 and 109 tests taken in 2016.

n. Respondent violated Sections 94910, subdivision (c), and 94929.5, subdivision (a)(2), and regulation section 74112, subdivision (j), because the 2015/2016 barber crossover SPFS did not accurately report license examination passage rates, as follows:

A) The 2015/2016 license exam passage rates table did not include any dates for reporting.

B) The 2015/2016 license exam passage rates table stated that there were 20 graduates in the reporting calendar year, which was inconsistent with the completion rates table, which reported 17 total graduates for the reporting calendar year.

C) The 2015/2016 license exam passage rates table stated there were six graduates in the next reporting calendar year, which was inconsistent with the completion rates table, which reported three total graduates for that reporting calendar year.

D) The 2015/2016 license exam passage rates table stated that in the first report year, presumably 2015, 17 graduates took and passed the exam for a 100 percent passage rate. A report from BBC showed that respondent had 92 written tests taken in 2015 and that 49 of them failed, which is a total passage rate of 47 percent.³¹

E) The 2015/2016 license exam passage rates table stated that in the second reporting year, presumably 2016, three graduates took and passed the exam for a 100 percent passage rate. A report from BBC showed that respondent had 109 written tests taken in 2016 and that 68 of them failed, for a passage rate of 38 percent.

o. Respondent violated Sections 94910, subdivision (d), and 94929.5, subdivision (a)(3), and regulation section 74112, subdivisions (e)(2) and (k) [formerly subdivision (g)], as follows:

³¹ The parties stipulated that 49 of 92 students failed, “which is a total passage rate of 53%.” In fact, the numbers indicated yield a *failure* rate of 53 percent and thus a passage rate of 47 percent.

A) Respondent failed to report any salary and wage information for the two reporting calendar years in the barber and barber crossover SPFS, and respondent did not state that it could not collect the information from graduates employed in the field. Respondent represented it had between three and 37 graduates according to the job placement sections.

p. Respondent violated Section 94929, subdivision (a), and 94929.5 subdivision (a)(1) through (a)(3), and regulation section 74112, subdivision (e)(1) by reporting it offered three programs in its 2015 annual report, but it only provided completion rates, job placement rates, license exam passage rates, and salary and wage information for one program. Respondent failed to provide information about the barber crossover (400 hour) program and the barber instruction (600 hour) program for the 2015 reporting year.

q. Respondent violated regulation section 74112, subdivision (d)(3)(A)(i), by failing to identify the United States Department of Labor's Standard Occupational Classification codes for the programs for which respondent identified it prepared its graduates in its catalog and in its employment positions list.

r. Respondent violated regulation section 74112, subdivision (f), by inaccurately reporting the cost of the barber and barber crossover programs, in that the 2015/2016 SPFS listed that the cost of each program in 2016 was \$5,950. However, \$5,950 was the cost for the 1,500-hour barber program. The cost for the barber crossover program as reported in the school catalog and 2016 annual report was \$1,500.

s. Respondent violated regulation section 74112, subdivision (n), because the 2015/2016 barber and barber crossover SPFSs did not include the required disclosure regarding the "STUDENT'S RIGHT TO CANCEL" on a separate document.

43. In a March 2, 2018, email, Natasha Ford, an analyst in the bureau's Annual Report Unit, told Dr. Reddy, "I have reviewed the SPFS and they are in the correct format. You can now post them to the site. Please note that you may be contacted for any deficiencies found during a more detailed review."

The foregoing email does not affect the findings with regard to the eighth cause for discipline. Ms. Feist credibly explained during her testimony that the annual report unit does not review SPFS for accuracy, and it does not review back-up documentation. Instead, that unit looks at the formatting of the SPFS, to ensure that the documents look the way they should, are formatted correctly, and include every piece of data that must be reported.

I. RESPONDENT'S ALLEGED FAILURE TO MEET ANNUAL REPORTING REQUIREMENTS (NINTH CAUSE FOR DISCIPLINE)

44. The evidence established and failed to establish the alleged violations as follows:

a. Respondent violated Section 94934, subdivision (a), and regulation section 74110, subdivision (a), because respondent's 2014 annual report did not include information for all of the educational programs offered in the prior calendar year.

b. Respondent violated Section 94929.5, subdivision (a), and regulation section 74112, subdivision (f), because respondent's 2014 annual report contained data that did not match the SPFS or SPFS backup documentation.

c. Respondent violated Section 94929, subdivision (a), and regulation section 74112, subdivision (d), by not accurately reporting the completion rate in its 2014 annual report.

d. Respondent violated Section 94929.5, subdivision (a), and regulation section 74112, subdivision (f), by not accurately reporting placement and license examination passage rates in its 2013 and 2014 annual reports. The numbers reported in the 2014 annual report did not match the numbers reported in the 2014 SPFS.

e. Respondent violated Section 94929.5, subdivision (a)(2), and regulation section 74112, subdivision (e), by not accurately reporting the license exam passage rates in its 2013 annual report.

f. Respondent violated Section 94929.7 by not documenting and maintaining all of the information necessary to substantiate the performance data reported in its 2013 and 2014 annual reports.

g. Respondent violated regulation section 74110, subdivision (b), because the financial statements included with respondent's 2013 and 2014 annual reports did not contain balance sheets, which are required under regulation section 74115.

h. Respondent violated Section 94934, subdivision (a)(1), by making a misleading statement and inaccurately reporting the total number of students enrolled in a diploma or certificate program at the institution, as follows:

A) Respondent's 2015 annual report stated that 87 students were enrolled in the school, but it stated there were only 54 students in a diploma or certificate program. Respondent only offered diploma or certificate programs.

B) Respondent's 2016 annual report stated that 87 students were enrolled in the school, but stated there were zero students enrolled in a diploma or certificate program at the school. Respondent only offered diploma or certificate programs.

i. Respondent violated Section 94934, subdivision (a)(3), by inaccurately reporting the number of degree levels and diplomas it offered. Respondent's 2016 annual report stated the school did not offer any diploma or certificate programs, when in 2016

respondent was approved to offer three diploma programs: barber (1,500 hours), barber crossover (400 hours), and barber instruction (600 hours). This did not constitute a misleading statement because it appears that the inaccurate information arose from an inadvertent mistake, and the term “misleading” implies a higher level of culpability than a preponderance of the evidence establishes.

j. Respondent violated Section 94934, subdivision (a)(4), and regulation section 74110, subdivisions (b) and (d), by failing to provide the correct 2015 SPFSs, enrollment agreement, or financial statements as part of its annual report.

k. Respondent violated regulation section 74110 by failing to provide the required information in its 2015 annual report. Its 2015 annual report stated that it offered three programs, but only provided completion rates, job placement rates, license exam passage rates, and salary and wage information for one program. In addition, respondent failed to provide information for the reporting year for its barber crossover (400 hour) program and its barber instruction (600 hour) course.

J. RESPONDENT’S ALLEGED FAILURE TO COMPLY WITH STUDENT TUITION RECOVERY FUND REQUIREMENTS (TENTH CAUSE FOR DISCIPLINE)

45. The evidence established and failed to establish the alleged violations as follows:

a. Respondent did not violate regulation sections 76120, 76130, subdivisions (b) and (c), or 76140, subdivision (a), even though its 2015/2016 catalog listed the incorrect amount for STRF charges. This is because none of the cited regulatory provisions address the accuracy of STRF information contained in a school catalog.

b. Respondent violated regulation section 76120 by charging students D.D., L.B., W.S., A.T., J.G., and T.C. STRF fees, even though they were enrolled after January 1, 2015, and were therefore required to pay “\$0.00 per \$1,000 of tuition.”

c. Respondent violated regulation section 76130, subdivision (b), by not submitting the STRF fees assessed to students D.D., L.B., and W.S. to the bureau.

d. Respondent violated regulation section 76140, subdivision (a), by not maintaining all records required for STRF reporting, including student identification number, courses and course cost, amount of STRF collected, quarter in which STRF assessment was submitted to the bureau, third party payer identifying information, total institutional charges, and total institutional charges paid.

e. Respondent did not violate regulation sections 76120, 76130, subdivisions (b) and (c), or 76140, subdivision (a), even though its 2017/2018 catalog listed the incorrect amount for STRF charges. This is because none of the cited regulatory provisions address the accuracy of STRF information contained in a school catalog.

f. Respondent did not violate regulation sections 76120, 76130, subdivisions (b) and (c), or 76140, subdivision (a), even though its 2017/2018 catalog listed the incorrect amount for STRF charges. This is because none of the cited regulatory provisions address the accuracy of STRF information contained in a school catalog.

g. Respondent violated regulation section 76130, subdivision (b), by providing its third quarter STRF assessment reporting form with other documents in June 2018, but failed to timely submit the form to the bureau.

h. Respondent violated regulation section 76130, subdivisions (b)(3) and (c)(5), because its 2018 first quarter STRF assessment reporting form contained the following:

A) Respondent reported in Line D that there were 14 students who signed enrollment agreements in prior reporting periods and from whom the students' first STRF payments were collected. However, previous reporting forms did not account for any such students, a violation of regulation section 76130, subdivision (b)(3). More specifically, respondent did not submit third quarter STRF reporting forms for 2016 and 2017, though respondent did submit such forms for 2014 and 2015.

B) Respondent failed to report the tuition charges, rounded to the nearest \$1,000 for each student, as \$99,700, a violation of regulation section 76130, subdivision (c)(5).

i. Respondent violated regulation section 76130, subdivisions (b)(3) and (c)(5), because its 2017 fourth quarter STRF assessment reporting form contained the following:

A) Respondent reported in Line D that there were 13 students who signed enrollment agreements in prior reporting periods and from whom the students' first STRF payments were collected. However, previous reporting forms did not account for any such students, a violation of regulation section 76130, subdivision (b)(3). More specifically, respondent did not submit third quarter STRF reporting forms for 2016 and 2017, though respondent did submit such forms for 2014 and 2015.

B) Respondent failed to report the tuition charges, rounded to the nearest \$1,000 for each student, as \$56,600, a violation regulation section 76130, subdivision (c)(5).

j. Respondent violated regulation sections 76120, subdivision (a), and 76130, subdivisions (b)(3) and (c)(5), because its 2017 second quarter STRF assessment reporting form contained the following:

A) Respondent reported that zero of the 21 students were eligible for STRF. However, all enrolled students residing in California or enrolled in a residency

program are eligible for STRF. In so doing, respondent violated regulation section 76120, subdivision (a).

B) Respondent reported in Line D that there were 13 students who signed enrollment agreements in prior reporting periods and from whom the students' first STRF payments were collected. However, previous reporting forms did not account for any such students, a violation of regulation section 76130, subdivision (b)(3). More specifically, respondent did not submit third quarter STRF reporting forms for 2017 and 2016, though respondent did submit such forms for 2014 and 2015.

C) Respondent failed to report the tuition charges, rounded to the nearest \$1,000 for each student, as \$84,900, a violation regulation section 76130, subdivision (c)(5).

k. Respondent violated regulation sections 76120, subdivision (a), and 76130, subdivisions (b)(3) and (c)(5), because its 2017 first quarter STRF assessment reporting form contained the following:

A) Respondent reported that zero of the 13 students were eligible for STRF. However, all enrolled students residing in California or enrolled in a residency program are eligible for STRF. In so doing, respondent violated regulation section 76120, subdivision (a).

B) Respondent reported in Line D that there were 13 students who signed enrollment agreements in prior reporting periods and from whom the students' first STRF payments were collected. However, previous reporting forms did not account for any such students, a violation of regulation section 76130, subdivision (b)(3). More specifically, respondent did not submit third quarter STRF reporting forms for 2017 and 2016, though respondent did submit such forms for 2014 and 2015.

C) Respondent failed to report the tuition charges, rounded to the nearest \$1,000 for each student, as \$110,200, a violation regulation section 76130, subdivision (c)(5).

l. Respondent violated sections 76120, subdivision (a), and 76130, subdivisions (b)(3) and (c)(5), because its 2017 fourth quarter STRF assessment reporting form contained the following:

A) Respondent reported that zero of the 13 students were eligible for STRF. However, all enrolled students residing in California or enrolled in a residency program are eligible for STRF. In so doing, respondent violated regulation section 76120, subdivision (a).

B) Respondent reported in Line D that there were 27 students who signed enrollment agreements in prior reporting periods and from whom the students' first

STRF payments were collected. However, previous reporting forms did not account for any such students, a violation of regulation section 76130, subdivision (b)(3). More specifically, respondent did not submit third quarter STRF reporting forms for 2016 and 2017, though respondent did submit such forms for 2014 and 2015.

C) Respondent failed to report the tuition charges, rounded to the nearest \$1,000 for each student, as \$165,600, a violation regulation section 76130, subdivision (c)(5).

m. Respondent violated regulation section 76130, subdivision (c)(5), because its 2016 second quarter STRF assessment reporting form reported the tuition charges as \$102,700, instead of rounding to the nearest \$1,000 for each student.

n. Respondent violated regulation section 76130, subdivision (c)(5), because its 2016 first quarter STRF assessment reporting form reported the tuition charges as \$199,450, instead of rounding to the nearest \$1,000 for each student.

o. Respondent did not violate regulation section 76130, subdivision (b)(3), even though its 2015 third quarter STRF assessment reporting form reported in Line D that there were 12 students who signed enrollment agreements in prior reporting periods and from whom the students' first STRF payments were collected and even though previous reporting forms did not account for any such students. These facts are insufficient to establish a violation of the cited provision.

p. Respondent violated regulation section 76130, subdivision (c)(5), because its 2015 second quarter STRF assessment reporting form reported the tuition charges as \$59,400, instead of rounding to the nearest \$1,000 for each student.

q. Respondent violated regulation section 76130, subdivision (c)(5), because its 2015 first quarter STRF assessment reporting form reported the tuition charges as \$116,850, instead of rounding to the nearest \$1,000 for each student.

K. RESPONDENT'S ALLEGED ENGAGEMENT IN PROHIBITED BUSINESS PRACTICES
(ELEVENTH CAUSE FOR DISCIPLINE)

46. The evidence established and failed to establish the alleged violations as follows:

a. Respondent made or did not make inaccurate and misleading statements in advertisements and/or documents required by the bureau as follows:

A) Respondent violated Section 94897, subdivision (c), by advertising an inaccurate length of time for the barber crossover program. This finding is based on the fact that respondent's 2017/2018 catalog contained conflicting information concerning the length of respondent's crossover course (200 hours of study vs. 340 hours).

Respondent also violated Section 94897, subdivision (j), in this regard, because, by advertising an inaccurate length of time for the barber crossover program, respondent made an “untrue or misleading” statement.

B) Respondent violated Section 94897, subdivision (j)(3), by making false or misleading³² statements in connection with the total number of clock hours of instruction provided for graduates because respondent included lunch hours as educational time. This finding is based on time cards for L.C., which repeatedly and consistently reflected 12-hour educational days (e.g., 8:30 a.m. to 8:30 p.m.), which were counted as 12-hour days, without any adjustment in the total hours credited to the student for lunch or other breaks. This finding is also based on the statement of Ms. Euceda to Ms. Feist that students clocked in when they arrived in the morning and clocked out when they left at the end of the day, that the school provided students with a 60-minute lunch break, and that students did not clock out during that time.

C) Respondent violated Section 94897, subdivision (j)(3), by making false or misleading statements in the information reported on the 2015/2016 SPFS regarding the barber program, such as the completion rates, job placement rates, license exam passage rates, and salary and wage information. This finding is based on the findings made in connection with the eighth cause for discipline, discussed above.

D) Respondent violated Section 94897, subdivision (j)(3), by making false or misleading statements in the information reported on the 2015 annual report regarding the number of students enrolled in a program, on time graduates, job placement rates, and license exam passage rates. This finding is based on the findings made in connection with the ninth cause for discipline, discussed above.

E) Respondent violated Section 94897, subdivision (j)(3), by making false or misleading statements in the information reported on the 2016 annual report regarding the number of students enrolled in a diploma or certificate program, the types of programs respondent offered, the number of students available for graduation from the barber and barber crossover programs, the total number of graduates employed in the field for the barber and barber crossover programs, or the license exam passage rates for the barber and barber crossover programs. This finding is based on the findings made in connection with the ninth cause for discipline, discussed above.

F) Respondent did not violate Section 94897, subdivision (j)(3), regarding the language in which instruction would be provided in connection with the statement in the 2018/2019 school catalog that “instruction was provided only in English

³² The findings here that respondent made “untrue or misleading” statements are based on inaccuracies arising from respondent’s very poor recordkeeping. The evidence did not establish that respondent *intentionally* sought to mislead any student or the bureau. While the word “mislead” generally connotes an intention to deceive, it is not, strictly speaking, so limited, and can connote the unintentional transmission of untrue information.

when respondent has approval to offer their Barber program in both English and Spanish.” This is because the 2018/2019 catalog was dated June 1, 2018 to June 30, 2019, and respondent was not approved to offer its barber program in Spanish until July 26, 2018.

b. Respondent violated Section 94897, subdivision (m), in that the school’s “student complaint/grievance procedure” set forth in its 2018/2019 catalog stated, “Students seeking to resolve problems or complaints should first contact the instructor in charge and then the administration.” There followed detailed instructions about what steps within the school hierarchy were to be taken. Though at the end of this section of the catalog a statement was made that “[a] student or any member of the public may file a complaint about this institution with the Bureau for Private Postsecondary Education” by phone or via the internet, with the phone number and web address provided, the overall thrust of the student complaint/grievance procedure remained at best somewhat ambiguous. It was not made clear, for example, that a student was permitted to contact the bureau *without* first going through the school’s grievance procedure.³³

L. RESPONDENT’S ALLEGED FAILURE TO MEET MINIMUM OPERATING STANDARDS WITH REGARD TO EDUCATIONAL PROGRAMS (TWELFTH CAUSE FOR DISCIPLINE)

47. The evidence establishes and fails to establish the alleged violations as follows:

a. Respondent violated regulation section 71710, subdivisions (a) and (b), by not providing instruction in subject areas that were necessary to meet the educational objectives of the barber program in that respondent was not providing instruction on the BBC’s laws and regulations or from the BBC’s health and safety course and handbook, which are required curriculum for the barber program. This finding is established by the matters uncovered during Ms. Feist’s investigation, including Ms. Euceda’s inability to provide a copy of these documents to Ms. Feist and the statement of Andy and other students that they had never seen or been given them. Respondent offered no evidence that these documents were in fact provided and taught to students. This finding is also based on the uncontroverted testimony of Ms. Berg that instruction in these documents was required by the BBC.

b. Respondent violated regulation section 71710, subdivisions (a) and (b), by not having a curriculum for a barber/cosmetology apprenticeship program, though such a program was offered to the public. That such a program was offered to the public was established by its advertisement in a school catalog, on the school’s website, and in a flyer available at the school, and it is likewise established by the description of the program by Ms. Morales to Ms. Feist and to a prospective student over the phone. The first time respondent provided to the bureau an apprenticeship program curriculum was in December 2018, after the second amended accusation had been filed. At no time during the

³³ As noted earlier, respondent more recently amended this portion of the catalog.

enforcement investigation of the school did respondent or any of its administrators, personnel, or other representatives assert that such a curriculum existed.

c. Respondent violated regulation section 71710, subdivision (b), by not presenting subject areas and/or courses in a logically organized manner or sequence to students in that students in different levels of study were in the same class with the same instructor at one time such that certain subject areas were repeated for the newer students and some subjects were more advanced for these students. This finding is based on the testimony of E.T. and on the statements of Ms. Euceda, Mr. Barrientos, Andy and (collectively) other students to Ms. Feist.

M. RESPONDENT’S ALLEGED FAILURE TO MEET MINIMUM OPERATING STANDARDS WITH REGARD TO INSTRUCTION (THIRTEENTH CAUSE FOR DISCIPLINE)

48 The evidence established that respondent violated regulation section 71715, subdivision (b), because there has been insufficient faculty to support the students and programs being offered; there has been a lack of organization in classroom time and presentation of curriculum; respondent failed to document that the instruction offered leads to the achievement of the learning objectives of the course in that respondent has failed to record the progress of students in the educational program; and respondent has failed to have an instructor present while students were engaged in the educational process. This finding is supported by the statements of Ms. Morales, Ms. Euceda, Mr. Barrientos, student Andy, and other students collectively to Ms. Feist during her visit to the school in September 2018. However, respondent did not violate regulation section 71715, subdivision (a), in this regard because the evidence did not establish that instruction was not the central focus of the resources of the institution.

N. RESPONDENT’S ALLEGED FAILURE TO MEET MINIMUM OPERATING STANDARDS WITH REGARD TO FACULTY (FOURTEENTH CAUSE FOR DISCIPLINE)

49. The evidence established and failed to establish the alleged violations as follows:

a. Respondent violated regulation section 71720, subdivision (b)(1), by failing to demonstrate that Mr. Barrientos and Ms. Reddy were qualified faculty members. Subdivision (b)(1) requires that instructors have “a minimum of three years of experience, education and training in current practices of the subject area they are teaching,” and the resumes of Mr. Barrientos and Ms. Reddy did not reflect such experience, education, and training. The bureau can require institutions to document compliance with standards and respondent failed to do so. Accordingly, the evidence established this violation.

b. Respondent did not violate regulation section 71720, subdivision (b)(1), by failing to have a sufficient number of faculty to support its educational programs, since that is a matter not addressed by subdivision (b)(1).

O. RESPONDENT'S ALLEGED FAILURE TO MEET MINIMUM OPERATING STANDARDS WITH REGARD TO ADMINISTRATION (FIFTEENTH CAUSE FOR DISCIPLINE)

50. The evidence establishes and fails to establish the alleged violations as follows:

a. Respondent violated regulation section 71730, subdivision (d), because its instructors were also responsible for performing administrative tasks while they were the only instructors available for students. This finding is based on the statements of Ms. Morales, Mr. Barrientos, Ms. Euceda, and Andy and (collectively) other students. Subdivision (d) is also supported by the enormous number of deficiencies with regard to enrollment agreements, catalogs, annual reports, SPFSs, and the other matters described above, which established that the school's administrative staffing did not reflect the school's purposes, size, and educational operations. Subdivision (d) is also supported by the statement by Ms. Morales to Ms. Feist that she (Ms. Morales) did not have enough time to get everything done and that Dr. Reddy did not want her to work more hours. However, respondent did not violate regulation section 71730, subdivision (f), with regard to these matters because that subdivision addresses the expertise of administrative staff, not the sufficiency of the number of such staff.

b. Respondent did not violate regulation section 71730, subdivisions (d) or (f), by failing to demonstrate that it employed administrative personnel with sufficient expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational program. Subdivision (d) does not address the expertise of administrative staff. With regard to subdivision (f), one inference that could be drawn from the enormous number of deficiencies documented in the record is that in fact administrative staff lacked the necessary expertise. However, another equally-reasonable inference is that these deficiencies were essentially a function of an insufficient number of staff and the unwillingness of respondent's owner to employ sufficient staff and put into place sufficient procedures so as to provide the administrative support the school needed. As an example of this latter point, Ms. Euceda told Ms. Feist that Dr. Reddy did not permit her to use timecards to keep track of student theory hours and practical operations.

P. THE ALLEGED MERGING OF CLASSES, CONVERTING METHOD OF DELIVERY AND CHANGING LOCATIONS (SIXTEENTH CAUSE FOR DISCIPLINE)

51. The evidence establishes and failed to establish the alleged violations as follows:

a. Respondent violated Section 94898, subdivision (a), by merging barber and barber crossover students in the same classroom, where the students were at different levels of study. This finding is based on the testimony of E.T. and the statements of Ms. Euceda, Mr. Barrientos, Andy and (collectively) other students. However, respondent did not violate Section 94898, subdivisions (b)(2) and (d), in this regard because those provisions pertain to changes in school location.

b. Respondent violated Section 94898, subdivision (d), by changing its location from Moreno Valley to Ontario without the prior consent of enrolled students, without disclosing this fact to students prior to enrollment, or offering the opportunity to receive a full refund. Subdivision (d) is violated if an institution relocates without complying with one of the four contingencies specified in the subdivision. One of those four contingencies is that the institution apply for and receive approval from the bureau to change location after providing notice to students. The school did not provide prior notice to its students. At hearing, respondent produced a flyer that said, in part, “Wow what a way to end a year and start a new one with Rosston College new location in Ontario off Holt Blvd. ...” The first time respondent provided this flyer to the bureau was in December 2018, after the second amended accusation had been filed. At no time during the enforcement investigation of the school did respondent or any of its administrators, personnel, or other representatives assert that the flyer or written notice to students existed.

While the bureau may have subsequently modified its records to reflect the school’s new location, that does not mean the school satisfied the requirements of subdivision (d). The bureau’s acknowledgement of respondent’s move in its records does not absolve respondent of the violation. The allegation is sufficiently plead to explain the charge of moving the school over 32 miles without compliance with subdivision (d). Subdivisions (a) and (b)(2) do not address changes in the location of a school.

c. Respondent also violated Section 94898, subdivision (b)(2), by ceasing to offer evening classes to students who could not travel to the new Ontario location during the day. After the move to Ontario, respondent added the evening classes to accommodate students who could not reach the new location; yet it then cancelled them without providing the accommodated students a means to complete their education.

Q. ALLEGED VIOLATIONS RELATING TO RESPONDENT’S WEBSITE (SEVENTEENTH CAUSE FOR DISCIPLINE)

52. The evidence established that respondent violated Section 94913, subdivision (a)(1), (a)(3), and (a)(5), by failing to maintain an internet website that provided the school’s current school catalog, student brochures offered by the institution, or the most recent annual report submitted to the bureau. This finding is based on the reviews of respondent’s website by Ms. Feist.

R. ALLEGED VIOLATIONS RELATING TO STRF DISCLOSURES (EIGHTEENTH CAUSE FOR DISCIPLINE)

53. The evidence established that respondent violated regulation section 76215 by failing to state the required disclosures regarding the STRF in the enrollment agreements of N.P., M.T., A.T., L.C., J.G., and T.C. and in the 2018/2019 school catalog. Though the enrollment agreements provide STRF disclosures, they do not provide the disclosures prescribed by regulation section 76215. This is also the case with regard to the 2018/2019 school catalog.

Respondent's Mitigation and Rehabilitation Evidence

54. Sonia Ceja was hired by respondent in October 2018 as the school's chief administrator. Among other things, she is responsible for student enrollment and the maintenance of school records, including student files. On October 25, 2018, Ms. Ceja attended a half-day bureau compliance workshop, and she has read the written materials provided by the bureau on that occasion from cover to cover.

In December 2018, Ms. Ceja earned a bachelor's degree in health administration from California State University (CSU) Northridge. Before working at respondent's school, Ms. Ceja served as an office assistant for Blue Point Electric, Inc., a lighting company, and as a community affairs intern at Children's Hospital Los Angeles.

Ms. Ceja testified that she has not reviewed the law and regulations applicable to private postsecondary schools apart from what was presented at the workshop. She believes that the basic requirements applicable to such schools are "not rocket science."

Ms. Ceja testified that she always provides prospective students with a catalog and SPFS at the time of enrollment. She goes through the enrollment agreement with the student and has the student initial it. She fills out all the information required in the agreement.

Ms. Ceja testified that she, with assistance from Dr. Steven Stumpf and Mr. Rod Zalunardo,³⁴ amended the enrollment agreement so that it would conform to bureau requirements. She also worked on the catalog, to make sure that there were no discrepancies between the contents of the catalog and the enrollment agreement form.

Ms. Ceja testified that she is tasked with ensuring that student files contain required information and documentation, such as transcripts, diplomas, Social Security Numbers, hours completed, disclosures, and the like. She is also tasked with ensuring that employee files are complete, e.g., that they contain documentation of qualifications including resumes and that performance evaluations are implemented. She performs student counseling and

³⁴ Dr. Stumpf is presently respondent's chief academic officer. He was hired by respondent at about the same time that Ms. Ceja was hired, though he served previously as a consultant. Mr. Zalunardo has also served as a consultant.

monitors student academic progress. She is responsible for ensuring the school adheres to all “regulatory compliance issues.” Files are kept in file cabinets, and the school is in the process of uploading files to the cloud.

Ms. Ceja testified that she is in the process of creating withdrawal and cancellation logs. She is also in the process of drafting the SPFS. As of the date of the hearing, she had been working on this latter project for about a week and expected to complete it within one more week. She is also in the process of completing the annual report. She has corrected the “misprint” in the enrollment agreement concerning the STRF, so that it now reads, “zero.” She has created a refund calculation worksheet. She has revised the entire student contract, i.e., not only the enrollment agreement, but also ancillary documents such as disclosures and waiver forms. She has created a time card template. She has created a student hours excel sheet. She created a class schedule. She is working on a faculty evaluation form. She has updated the school’s website, most recently in December 2018.

Ms. Ceja testified that the crossover program has been discontinued.

Ms. Ceja testified that an instructor is always present during school hours.

Ms. Ceja testified that no students have complained to her about the school’s barbering program.

55. Steven Stumpf, Ed.D., has been respondent’s chief academic officer (CAO) since October 2018. In that capacity, he is responsible for the academic integrity of the school’s programs, quality control of educational curriculum materials, continuity, and follow through. Prior to that, from August 2018, Dr. Stumpf was working with respondent on a consulting basis, to determine the nature of the bureau’s complaints against the school.

Dr. Stumpf received his Doctorate in Education from UCLA. Research methods and evaluation is his specialty. In addition to serving full-time as respondent’s CAO, he is also employed as a part-time lecturer at CSU Northridge. From 2005 to 2008, he was the provost and director of doctoral programs at the Emperor’s College of Traditional Oriental Medicine, an institution that is regulated by the bureau. Before that he served for two-and-a-half years as CEO of Advanced TeleDiagnosis, a business involved in telemedicine and teletechnology as applied to the health care field. From 1986 to 2003, he served in numerous and varied capacities at the University of Southern California (USC), including Director of Research in several departments, senior research associate and director of operations at USC’s Advanced BioTelecommunications & BioInformatics Center, Vice Provost of the Undergraduate Studies Undergraduate Council, and Assistant Professor of Clinical Family Medicine. In addition to the foregoing appointments, Dr. Stumpf has provided consulting services since 2003, such as grant writing, grant management, and project management, generally within the health care industry.

Dr. Stumpf refers to himself as a “health professions educator.”

Dr. Stumpf attended a bureau compliance workshop in October 2018.

Dr. Stumpf testified that he was once retained by the Department of Consumer Affairs to prepare a report concerning schools at risk vis-à-vis the STRF due to the unexpected closure of institutions within the bureau's purview. The study examined which schools in which sectors were most likely to fail due to fraudulent practices.

Dr. Stumpf testified about the measures he has taken to ensure that respondent's compliance problems will not recur. In this regard, he has worked with Ms. Ceja, whom he recruited. Their goal, which they have started to achieve, is to implement systems that are common for other schools, to ensure adherence to all applicable standards. For example, a checklist has been developed which, when filled out, will show that each student record meets all statutory and regulatory requirements. He is also working to develop a cancellation/withdrawal log³⁵ that is consistent, routine, and easily accessed, and that meets accepted standards. He is also involved in preparing the SPFS sheets; this is in the planning stage. He is also working with Ms. Ceja with regard to the preparation of annual reports. Dr. Stumpf is not involved in issues pertaining to the STRF, because the school does not participate in student loan programs.

Dr. Stumpf testified that respondent is addressing the concern about the merging of classes by developing a cohort strategy, which would place into one group students who come into the program at approximately the same time. All students in a cohort would be tracked together as they move through the curriculum. The cohort strategy has not yet been implemented, however. Dr. Stumpf did not know whether new students were still being permitted to enter the program at any time. He emphasized the school has protocols and a model, but that the school is waiting for the outcome of the present proceeding before implementing them.

Dr. Stumpf testified that he did not know whether the school currently has a registrar, though he planned to have one in the future. He did not know who the school's chief operating officer is, but he "guessed" that it was Dr. Reddy.

Dr. Stumpf testified that he is working full time at respondent's school. He has visited the school about three times, for about four hours on each occasion. He has, however, spent hundreds of hours reviewing documents and records. He supervises the school primarily through Ms. Ceja and Ms. Reddy.

Dr. Stumpf testified that he believes the school can achieve compliance and that the school is not a threat to its students. Dr. Stumpf believes that even if all of the allegations in

³⁵ The documentation respondent submitted to the bureau in December 2018 contained a one-page document bearing the heading "CANCELLATION/WITHDRAWAL LOG," followed by the names and other information concerning nine students. This document provides some support that respondent is in fact in the process of compiling such a log.

the second amended accusation were true, the school would still have been meeting minimum operational standards at that time and would not have been a threat to students at that time.

56. Dr. Reddy grew up in India. English is not his first language. He is highly educated and has four advanced degrees, including a doctoral degree in microbiology and infection control.

In 2009, after spending a number of years in academic and private industrial settings, Dr. Reddy was hired by Kaiser Permanente in Los Angeles as an epidemiologist in the area of infection control. He and his wife purchased the Rosston school the following year. Dr. Reddy's wife is a licensed cosmetologist, and Dr. Reddy wished to provide his wife with an opportunity to work in a postsecondary school setting. Dr. Reddy works full time at Kaiser, though he works from home and is able to leave his work to go out to the school if the need arises. Dr. Reddy's wife is employed full time at the school.

Dr. Reddy testified that in early 2014, during the school's most recent reapproval process, Dr. Reddy hired Kim Rust to help get the school through the reapproval process. Ms. Rust revised the school catalog and the SPFS, among many other activities. Since 2010, when he purchased the school, Dr. Reddy continued to use the forms (e.g., enrollment agreements) that were used by the previous owner.

Dr. Reddy testified that he hired Dr. Stumpf and Mr. Zolanardo in order to help him address the bureau's concerns.

Dr. Reddy testified that he understood the bureau found problems at the school. His intention has always been to attempt to comply with the bureau's rules and regulations, "more than 100%." The way he attempted to achieve compliance was to hire the right staff, most recently Dr. Stumpf, Ms. Ceja, and Mr. Zolanardo. He hired Ms. Ceja because of her intelligence and her knowledge of English.

Dr. Reddy testified that he is now present at the school almost every day, and his wife is there every day. In 2018, he was at the school "quite often." In 2016, he went to the school when he was needed. His testimony as to how he determined that he was needed at the school was somewhat vague. It appears that for the most part he considered himself to be needed if a school administrator or teacher told him that there was a problem and that he was needed to address it.

Dr. Reddy testified that respondent never intentionally misled students.

Dr. Reddy testified that he was making a commitment to the bureau to take steps to try to bring the school into compliance. He felt that mistakes were made because of staff that he trusted. He felt that part of the problem was the bureau's lack of communication with him when it found violations. Dr. Reddy stated that his school is the most inexpensive one of its kind in the country. He did not feel that he had done anything wrong.

Dr. Reddy testified that he understands the responsibilities of a CEO to include ensuring the school is functioning properly, that there are no problems, and that the education provided is what it should be. He has attempted to read the law and regulations applicable to the bureau but at times does not understand them and has asked the people working with him to explain them to him. He has never attended a compliance workshop, but he would do so “if it was needed.”

Dr. Reddy testified that the school does not currently collect STRF fees from its students. The school stopped collecting such fees as soon as the bureau advised them that such fees should not be collected. He acknowledged that the school did not update the catalog in this regard.

Dr. Reddy testified that he never failed to make a refund to a student who asked for one. The school never overcharged a student, to his knowledge, and never misled a student. The school never failed to provide its students with the education they had paid for.

CONCLUSIONS OF LAW

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 583; Evid. Code, § 500.)
2. The burden is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)
3. Evidence Code section 115 states that “[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.” Respondent contended, on the basis of *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, that the clear and convincing standard of proof is applicable. In elaboration, respondent argued that just as protection of the public was the critical interest to be served in *Ettinger*, so it is with regard to the bureau. However, virtually all licensing disciplinary cases are premised on the interest of protecting the public, but the courts have consistently drawn a distinction between professional licenses, to which the clear and convincing standard of proof applies, and nonprofessional occupational licenses, to which the preponderance of the evidence standard applies. (*James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1105; *Lone Star Sec. & Video, Inc. v. Bureau of Sec. and Inv. Services* (2012) 209 Cal.App.4th 445, 452.) While it is true that an approval to operate a private postsecondary institution, is not, strictly speaking, either a professional license or a nonprofessional occupational license, it remains the case pursuant to Evidence Code section 115 that absent an exception in law, the preponderance of the evidence standard applies. Absent any legal authority that any other standard of proof applies, the preponderance of the evidence standard

of proof applies in this proceeding. Nonetheless, the complainant established each violation by clear and convincing evidence.

4. “‘Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.]” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) “The sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Ibid.* at 324-325, italics in original.) “If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it. [Citation].” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

The Bureau’s Duty to Protect the Public

5. The main purpose of an administrative disciplinary proceeding is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger, supra*, 135 Cal.App.3d at 856.) It is far more desirable to impose discipline before a licensee harms anyone than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

6. Education Code section 94801, subdivision (b),³⁶ explains the need to regulate private postsecondary schools to protect students and the public:

Private postsecondary schools can complement the public education system and help develop a trained workforce to meet the demands of California businesses and the economy; however, concerns about the value of degrees and diplomas issued by private postsecondary schools, and the lack of protections for private postsecondary school students and consumers of those schools’ services, have highlighted the need for strong state-level oversight of private postsecondary schools.

7. Education Code section 94875 provides that the bureau “shall regulate private postsecondary educational institutions through the powers granted, and duties imposed, by this chapter. In exercising its powers, and performing its duties, the protection of the public shall be the bureau’s highest priority. If protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

³⁶ A substantial number of the Education Code and/or title 10 provisions have been amended or changed over the past several years. None of these amendments or changes involve substantive revisions that would affect the validity of any of the factual findings or legal conclusions made in this proposed decision, and neither party argued to the contrary. Accordingly, for the sake of convenience, only the current version of the statutory and regulator provisions at issue in this proceeding are cited.

The Bureau's Authority to Impose Discipline

8. Education Code section 94885 states in part:
 - (a) The bureau shall adopt by regulation minimum operating standards for an institution that shall reasonably ensure that all of the following occur:
 - (1) The content of each educational program can achieve its stated objective.
 - (2) The institution maintains specific written standards for student admissions for each educational program and those standards are related to the particular educational program.
 - (3) The facilities, instructional equipment, and materials are sufficient to enable students to achieve the educational program's goals.
 - (4) The institution maintains a withdrawal policy and provides refunds.
 - (5) The directors, administrators, and faculty are properly qualified.
 - [¶] . . . [¶]
 - (7) That, upon satisfactory completion of an educational program, the institution gives students a document signifying the degree or diploma awarded.
 - (8) Adequate records and standard transcripts are maintained and are available to students.
 - (9) The institution is maintained and operated in compliance with this chapter and all other applicable ordinances and laws.
9. Education Code section 94932 states:

The bureau shall determine an institution's compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution's sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason

to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing a compliance inspection or investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article.

10. Education Code section 94932.5 states:

(a) As part of its compliance program, the bureau shall perform announced and unannounced inspections of institutions at least every five years.

(b) On or before January 1, 2017, the bureau shall adopt regulations setting forth policies and practices to ensure that student protections are the highest priority of inspections and that inspections are conducted based on risk and potential harm to students. The regulations shall also set forth policies and practices for providing notice to students enrolled at an institution of the results of each inspection of the institution.

11. Education Code section 94937 states in part:

(a) As a consequence of an investigation, which may incorporate any materials obtained or produced in connection with a compliance inspection, and upon a finding that an institution has committed a violation, the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for:

(1) Obtaining an approval to operate by fraud.

(2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

(b) The bureau shall adopt regulations, within one year of the enactment of this chapter, governing probation and suspension of an approval to operate.

12. Education Code section 94933 states:

The bureau shall provide an institution with the opportunity to remedy noncompliance, impose fines, place the institution on probation, or suspend or revoke the institution's approval to operate, in accordance with this article, as it deems appropriate based on the severity of an institution's violations of this chapter, and the harm caused to students.

13. Education Code section 94933.5 states:

As much as is practicable, the bureau shall seek to resolve instances of noncompliance, including the use of alternative dispute resolution procedures in Article 5 (commencing with Section 11420.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

14. California Code of Regulations, title 5, section 75100 states:

(a) The Bureau may suspend, revoke or place on probation with terms and conditions an approval to operate.

(b) "Material violation" as used in section 94937 of the Code includes committing any act that would be grounds for denial under section 480 of the Business and Professions Code.

(c) The proceedings under this section shall be conducted in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, as requested by the institution.

Statutory Authority Regarding Alleged Violations

15. Education Code section 94893 states:

If an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau. Except as provided in subdivision (a) of Section 94896, if the institution makes the substantive change without prior bureau authorization, the institution's approval to operate may be suspended or revoked.

16. Education Code section 94894 states in part:

The following changes to an approval to operate are considered substantive changes and require prior authorization:

(a) A change in educational objectives, including an addition of a new diploma or a degree educational program unrelated to the approved educational programs offered by the institution.

[¶] . . . [¶]

(g) A significant change in the method of instructional delivery.

17. Education Code section 94897 states in part:

An institution shall not do any of the following:

[¶] . . . [¶]

(c) Advertise concerning job availability, degree of skill, or length of time required to learn a trade or skill unless the information is accurate and not misleading.

[¶] . . . [¶]

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(1) A financial report filed with the bureau.

(2) Information or records relating to the student's eligibility for student financial aid at the institution.

(3) Any other record or document required by this chapter or by the bureau.

[¶] . . . [¶]

(m) Direct any individual to perform an act that violates this chapter, to refrain from reporting unlawful conduct to the bureau or another government agency, or to engage in any

unfair act to persuade a student not to complain to the bureau or another government agency.

18. Education Code section 94898 states in part:

(a) An institution shall not merge classes unless all of the students have received the same amount of instruction. This subdivision does not prevent the placement of students, who are enrolled in different educational programs, in the same class if that class is part of each of the educational programs and the placement in a merged class will not impair the students' learning of the subject matter of the class.

(b) After a student has enrolled in an educational program, the institution shall not do either of the following:

(1) Make any unscheduled suspension of any class unless caused by circumstances beyond the institution's control.

[¶] . . . [¶]

(2) Change the day or time during the period of attendance in which any class is offered to a day when the student is not scheduled to attend the institution or to a time that is outside of the range of time that the student is scheduled to attend the institution on the day for which the change is proposed unless at least 90 percent of the students who are enrolled consent to the change and the institution offers full refunds to the students who do not consent to the change. For the purpose of this paragraph, "range of time" means the period beginning with the time at which the student's first scheduled class session for the day is set to start and ending with the time the student's last scheduled class session for that day is set to finish.

[¶] . . . [¶]

(d) An institution shall not move the location of class instruction more than 25 miles from the location of instruction at the time of enrollment unless any of the following occur:

(1) The institution discloses in writing to each student before enrollment in the educational program that the location of instruction will change after the educational program begins and the address of the new location.

(2) The institution applies for, and the bureau grants, approval to change the location. The bureau shall grant the application within 60 days if the bureau, after notice to affected students and an opportunity for them to be heard as prescribed by the bureau, concludes that the change in location would not be unfair or unduly burdensome to students. The bureau may grant approval to change the location subject to reasonable conditions, such as requiring the institution to provide transportation, transportation costs, or refunds to adversely affected students.

(3) The institution offers a full refund to students enrolled in the educational program who do not voluntarily consent to the change.

(4) An unforeseeable and unavoidable circumstance outside of the control of the institution requires the change in the location of instruction.

19. Education Code section 94899.5 states in part:

(b) For those programs designed to be four months or longer, an institution shall not require more than one term or four months of advance payment of tuition at a time. When 50 percent of the program has been offered, the institution may require full payment.

20. Education Code section 94900 states in part:

(b) An institution shall maintain, for each student granted a degree or certificate by that institution, permanent records of all of the following:

(1) The degree or certificate granted and the date on which that degree or certificate was granted.

(2) The courses and units on which the certificate or degree was based.

(3) The grades earned by the student in each of those courses.

21. Education Code section 94900.5 states:

An institution shall maintain, for a period of not less than five years, at its principal place of business in this state, complete and accurate records of all of the following information:

(a) The educational programs offered by the institution and the curriculum for each.

(b) The names and addresses of the members of the institution's faculty and records of the educational qualifications of each member of the faculty.

(c) Any other records required to be maintained by this chapter, including, but not limited to, records maintained pursuant to Article 16 (commencing with Section 94928).

22. Education Code section 94902 states:

(a) A student shall enroll solely by means of executing an enrollment agreement. The enrollment agreement shall be signed by the student and by an authorized employee of the institution.

(b) An enrollment agreement is not enforceable unless all of the following requirements are met:

(1) The student has received the institution's catalog and School Performance Fact Sheet prior to signing the enrollment agreement.

(2) At the time of the execution of the enrollment agreement, the institution held a valid approval to operate.

(3) Prior to the execution of the enrollment agreement, the student and the institution have signed and dated the information required to be disclosed in the Student Performance Fact Sheet pursuant to subdivisions (a) to (d), inclusive, of Section 94910. Each of these items in the Student Performance Fact Sheet shall include a line for the student to initial and shall be initialed and dated by the student.

(c) A student shall receive a copy of the signed enrollment agreement, in writing or electronically, regardless of whether total charges are paid by the student.

23. Education Code section 94904 states:

(a) Except as provided in subdivision (c), before an ability-to-benefit student may execute an enrollment agreement, the

institution shall have the student take an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.). The student shall not enroll unless the student achieves a score, as specified by the United States Department of Education, demonstrating that the student may benefit from the education and training being offered.

(b) If the United States Department of Education does not have a list of relevant examinations that pertain to the intended occupational training, the bureau may publish its own list of acceptable examinations and required passing scores.

(c) The bureau shall, on or before July 1, 2016, review the list of examinations prescribed by the United States Department of Education. If the bureau determines there is no examination on the list appropriate for ability-to-benefit students with limited English proficiency, the bureau shall approve an alternative examination for these students. When approving the alternative examination, the bureau may consider the Comprehensive Adult Student Assessment System examination.

24. Education Code section 94906 states:

(a) An enrollment agreement shall be written in language that is easily understood. If English is not the student's primary language, and the student is unable to understand the terms and conditions of the enrollment agreement, the student shall have the right to obtain a clear explanation of the terms and conditions and all cancellation and refund policies in his or her primary language.

(b) If the recruitment leading to enrollment was conducted in a language other than English, the enrollment agreement, disclosures, and statements shall be in that language.

25. Education Code section 94909 states in part:

(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

[¶] . . . [¶]

(5) A description of the programs offered and a description of the instruction provided in each of the courses offered by the institution, the requirements for completion of each program, including required courses, any final tests or examinations, any required internships or externships, and the total number of credit hours, clock hours, or other increments required for completion.

[¶] . . . [¶]

(7) Information regarding the faculty and their qualifications.

[¶] . . . [¶]

(9) The schedule of total charges for a period of attendance and an estimated schedule of total charges for the entire educational program.

[¶] . . . [¶]

(15) The following statement:

“NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR INSTITUTION

The transferability of credits you earn at (name of institution) is at the complete discretion of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or certificate) you earn in (name of educational program) is also at the complete discretion of the institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that you earn at this institution are not accepted at the institution to which you seek to transfer, you may be required to repeat some or all of your coursework at that institution. For this reason you should make certain that your attendance at this institution will meet your educational goals. This may include contacting an institution to which you may seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma, or certificate) will transfer.”

26. Education Code section 94910 states in part:

Except as provided in subdivision (d) of Section 94909 and Section 94910.5, prior to enrollment, an institution shall provide

a prospective student with a School Performance Fact Sheet containing, at a minimum, the following information, as it relates to the educational program:

(a) Completion rates, as calculated pursuant to Article 16 (commencing with Section 94928).

(b) Placement rates for each educational program, as calculated pursuant to Article 16 (commencing with Section 94928), if the educational program is designed to lead to, or the institution makes any express or implied claim related to preparing students for, a recognized career, occupation, vocation, job, or job title.

(c) License examination passage rates for programs leading to employment for which passage of a state licensing examination is required, as calculated pursuant to Article 16 (commencing with Section 94928).

(d) Salary or wage information, as calculated pursuant to Article 16 (commencing with Section 94928).

27. Education Code section 94911 states in part:

An enrollment agreement shall include, at a minimum, all of the following:

(a) The name of the institution and the name of the educational program, including the total number of credit hours, clock hours, or other increment required to complete the educational program.

(b) A schedule of total charges, including a list of any charges that are nonrefundable and the student's obligations to the Student Tuition Recovery Fund, clearly identified as nonrefundable charges.

(c) In underlined capital letters on the same page of the enrollment agreement in which the student's signature is required, the total charges for the current period of attendance, the estimated total charges for the entire educational program, and the total charges the student is obligated to pay upon enrollment.

[¶] . . . [¶]

(e)(1) A disclosure with a clear and conspicuous caption, “STUDENT'S RIGHT TO CANCEL,” under which it is explained that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later.

(2) The disclosure shall contain the institution's refund policy and a statement that, if the student has received federal student financial aid funds, the student is entitled to a refund of moneys not paid from federal student financial aid program funds.

(3) The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund.

28. Education Code section 94912 states:

Prior to the execution of an enrollment agreement, the information required to be disclosed pursuant to subdivisions (a) to (d), inclusive, of Section 94910 shall be signed and dated by the institution and the student. Each of these items shall also be initialed and dated by the student.

29. Education Code section 94913 states in part:

(a) An institution that maintains an Internet Web site shall provide on that Internet Web site all of the following:

(1) The school catalog.

[¶] . . . [¶]

(3) Student brochures offered by the institution.

[¶] . . . [¶]

(5) The institution's most recent annual report submitted to the bureau.

30. Education Code section 94929 states in part:

(a) An institution shall annually report to the bureau, as part of the annual report, and publish in its School Performance Fact

Sheet, the completion rate for each program. Except as provided in subdivision (b), the completion rate shall be calculated by dividing the number of on-time graduates by the number of students available for graduation.

31. Education Code section 94929.5 states in part:

(a) An institution shall annually report to the bureau, as part of the annual report, and shall publish in its School Performance Fact Sheet, all of the following:

(1) The job placement rate, calculated by dividing the number of graduates employed in the field by the number of graduates available for employment for each program that is either (1) designed, or advertised, to lead to a particular career, or (2) advertised or promoted with any claim regarding job placement.

(2) The license examination passage rates for the immediately preceding two years for programs leading to employment for which passage of a state licensing examination is required, calculated by dividing the number of graduates who pass the examination by the number of graduates who take the licensing examination the first time that the examination is available after completion of the educational program. The institution shall use state agency licensing data to calculate license examination passage rates. If those data are unavailable, the institution shall calculate the license examination passage rate in a manner consistent with regulations adopted by the bureau.

(3) Salary and wage information, consisting of the total number of graduates employed in the field and the annual wages or salaries of those graduates stated in increments of five thousand dollars (\$5,000).

(4) If applicable, the most recent official three-year cohort default rate reported by the United States Department of Education for the institution and the percentage of enrolled students receiving federal student loans.

(b) Nothing in this section shall limit the bureau's authority to collect information from an institution to comply with this section and ensure, by regulation and other lawful means, that the information required by this section, and the manner in which it is collected and reported, is all of the following:

- (1) Useful to students.
- (2) Useful to policymakers.
- (3) Based upon the most credible and verifiable data available.
- (4) Does not impose undue compliance burdens on an institution.

32. Education Code section 94929.7 states:

(a) The information used to substantiate the rates and information calculated pursuant to Sections 94929 and 94929.5 shall do both of the following:

(1) Be documented and maintained by the institution for five years from the date of the publication of the rates and information.

(2) Be retained in an electronic format and made available to the bureau upon request.

(b) An institution shall provide a list of employment positions used to determine the number of graduates employed in the field for purposes of calculating job placement rates pursuant to this article.

(c) The bureau shall identify the specific information that an institution is required to document and maintain to substantiate rates and information pursuant to this section.

33. Education Code section 94934 states in part:

(a) As part of the compliance program, an institution shall submit an annual report to the bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year, or another date designated by the bureau, and it shall include the following information for educational programs offered in the reporting period:

(1) The total number of students enrolled by level of degree or for a diploma.

(2) The number of degrees, by level, and diplomas awarded.

- (3) The degree levels and diplomas offered.
 - (4) The School Performance Fact Sheet, as required pursuant to Section 94910.
 - (5) The school catalog, as required pursuant to Section 94909.
 - (6) The total charges for each educational program by period of attendance.
 - (7) A statement indicating whether the institution is, or is not, current in remitting Student Tuition Recovery Fund assessments.
 - (8) A statement indicating whether an accrediting agency has taken any final disciplinary action against the institution.
 - (9) Additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter.
- (b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method of delivery.

Regulatory Authority Regarding Alleged Violations

- 34. California Code of Regulations, title 5, section 70000 states in part:
 - (r) "Objectives" are the goals and methods by which the institution fulfills its mission and transforms it into measurable student learning outcomes for each educational program.
- 35. California Code of Regulations, title 5, section 71650 states in part:
 - (a) An institution seeking to change its educational objectives shall complete the "Change in Educational Objectives" form (OBJ rev. 2/10) to obtain prior authorization. The form shall be submitted to the Bureau along with the appropriate fee as provided in Section 94930.5(c) of the Code. For an institution approved under section 94885 of the Code it shall be signed and dated by the signatory(ies) required by regulation section 71380, and for an institution approved under section 94890 of the Code it shall be signed and dated by the signatory(ies) required by regulation section 71390, and each fact stated therein and each attachment thereto shall be declared to be true under penalty of perjury, in the following form:

“I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

(Date)

(Signature)”

36. California Code of Regulations, title 5, section 71660 states:

An institution shall notify the Bureau of a non-substantive change including: change of location of less than 10 miles; addition of a program related to the approved programs offered by the institution; addition of a new branch five miles or less from the main or branch campus; addition of a satellite; and change of mailing address. All such notifications shall be made within 30 days of the change and sent to the Bureau, in writing, to the address listed in regulation section 70020.

37. California Code of Regulations, title 5, section 71710 states in part:

In order to meet its mission and objectives, the educational program defined in section 94837 of the Code shall be comprised of a curriculum that includes:

(a) those subject areas that are necessary for a student to achieve the educational objectives of the educational program in which the student is enrolled;

(b) subject areas and courses or modules that are presented in a logically organized manner or sequence to students;

38. California Code of Regulations, title 5, section 71715 states in part:

(a) Instruction shall be the central focus of the resources and services of the institution.

(b) The institution shall document that the instruction offered leads to the achievement of the learning objectives of each course.

39. California Code of Regulations, title 5, section 71720 states in part:

(b) Instructors in an Educational Program Not Leading to a Degree.

(1) An institution shall employ instructors who possess the academic, experiential and professional qualifications to teach, including a minimum of three years of experience, education and training in current practices of the subject area they are teaching. If an instructor does not possess the required three years of experience, education and training in the subject area they are teaching, the institution shall document the qualifications the instructor possesses that are equivalent to the minimum qualifications.

40. California Code of Regulations, title 5, section 71730 states in part:

(d) The administrative staffing at each branch location shall reflect the purposes, size, and educational operations at that location and at any satellite location for which the branch has administrative responsibilities.

[¶] . . . [¶]

(f) The institution shall employ administrative personnel who have the expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs.

41. California Code of Regulations, title 5, section 71750 states in part:

(f) The institution shall maintain a cancellation and withdrawal log, kept current on a monthly basis, which shall include the names, addresses, telephone numbers, and dates of cancellations or withdrawal of all students who have cancelled the enrollment agreement with, or withdrawn from, the institution during the calendar year.

42. California Code of Regulations, title 5, section 71770 states in part:

(a) The institution shall establish specific written standards for student admissions for each educational program. These standards shall be related to the particular educational program. An institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable

prospect of completing the program. In addition to any specific standards for an educational program, the admissions standards must specify as applicable that:

(1) Each student admitted to an undergraduate degree program, or a diploma program, shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the relevant examination as required by section 94904 of the Code.

(2) Each student admitted into a post-baccalaureate degree program shall possess a bachelor's degree or its equivalent. If a graduate program leads to a profession or an occupation requiring state licensure and the licensing agency does not require that a member of the profession or occupation possess a Bachelor's degree or its equivalent, this subdivision does not apply.

43. California Code of Regulations, title 5, section 71800 states in part:

In addition to the requirements of section 94911 of the Code, an institution shall provide to each student an enrollment agreement that contains at the least the following information:

(a) The name and address of the institution and the addresses where instruction will be provided.

(b) Period covered by the enrollment agreement.

(c) Program start date and scheduled completion date.

(d) Date by which the student must exercise his or her right to cancel or withdraw, and the refund policy, including any alternative method of calculation if approved by the Bureau pursuant to section 94921 of the Code.

(e) Itemization of all institutional charges and fees including, as applicable:

(1) tuition;

(2) registration fee (non-refundable);

(3) equipment;

- (4) lab supplies or kits;
- (5) Textbooks, or other learning media;
- (6) uniforms or other special protective clothing;
- (7) in-resident housing;
- (8) tutoring;
- (9) assessment fees for transfer of credits;
- (10) fees to transfer credits;
- (11) Student Tuition Recovery Fund fee (non-refundable);
- (12) any other institutional charge or fee.

44. California Code of Regulations, title 5, section 71810 states in part:

(a) Each institution shall provide a catalog pursuant to section 94909 of the Code, which shall be updated annually. Annual updates may be made by the use of supplements or inserts accompanying the catalog. If changes in educational programs, educational services, procedures, or policies required to be included in the catalog by statute or regulation are implemented before the issuance of the annually updated catalog, those changes shall be reflected at the time they are made in supplements or inserts accompanying the catalog.

45. California Code of Regulations, title 5, section 71920 states in part:

(b) In addition to the requirements of section 94900, the file shall contain all of the following pertinent student records:

(1) Written records and transcripts of any formal education or training, testing, or experience that are relevant to the student's qualifications for admission to the institution or the institution's award of credit or acceptance of transfer credits including the following:

(A) Verification of high school completion or equivalency or other documentation establishing the student's ability to do college level work, such as successful completion of an ability-to-benefit test;

(B) Records documenting units of credit earned at other institutions that have been accepted and applied by the institution as transfer credits toward the student's completion of an educational program;

(C) Grades or findings from any examination of academic ability or educational achievement used for admission or college placement purposes;

(D) All of the documents evidencing a student's prior experiential learning upon which the institution and the faculty base the award of any credit;

[¶] . . . [¶]

(4) Records of the dates of enrollment and, if applicable, withdrawal from the institution, leaves of absence, and graduation; and

(5) In addition to the requirements of section 94900(b) of the Code, a transcript showing all of the following:

(A) The courses or other educational programs that were completed, or were attempted but not completed, and the dates of completion or withdrawal;

(B) Credit awarded for prior experiential learning, including the course title for which credit was awarded and the amount of credit;

(C) Credit for courses earned at other institutions;

(D) Credit based on any examination of academic ability or educational achievement used for admission or college placement purposes;

(E) The name, address, website address, and telephone number of the institution.

[¶] . . . [¶]

(10) A document specifying the amount of a refund, including the amount refunded for tuition and the amount for other itemized charges, the method of calculating the refund, the date

the refund was made, and the name and address of the person or entity to which the refund was sent;

46. California Code of Regulations, title 5, section 71930 states in part:

(a) An institution shall maintain all records required by the Act and this chapter. The records shall be maintained in this state.

(b)(1) In addition to permanently retaining a transcript as required by section 94900(b) of the Code, the institution shall maintain for a period of 5 years the pertinent student records described in Regulation section 71920 from the student's date of completion or withdrawal.

[¶] . . . [¶]

(d) The institution shall maintain a second set of all academic and financial records required by the Act and this chapter at a different location unless the original records, including records stored pursuant to subdivision (b) of this section, are maintained in a manner secure from damage or loss. An acceptable manner of storage under this subsection would include fire resistant cabinets.

(e) All records that the institution is required to maintain by the Act or this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the Bureau and any entity authorized to conduct investigations.

47. California Code of Regulations, title 5, section 74110 states in part:

(a) The annual report required by Section 94934 of the Code shall include the information required by sections 94929.5 and 94934 for all educational programs offered in the prior calendar year, and all of the following for the prior calendar year:

(1) Information regarding institutional branch campuses, including addresses and programs offered at each campus, if applicable;

(2) Information regarding satellite locations, including addresses and with which campus(es) the satellite location is affiliated, if applicable;

(3) Name of institutional accreditors for each branch and satellite campus, and for each such campus at which any programs have programmatic accreditation, the names of the programmatic accreditor for each such program, and effective dates for each programmatic accreditation, if applicable;

(4) Information regarding participation in state and federal student loan and grant programs, including the total amount of funding received from each source for those students enrolled in an approved California school regardless of their state of residency;

(5) Information regarding participation in other public funding programs, including the amount of funding received from each public funding source; for purposes of this section, public funding is any financial aid paid on behalf of students or directly to an institution from any public source, such as the Workforce Investment Act, any veterans' financial aid programs pursuant to Section 21.4253 of Title 38 of the Code of Federal Regulations or any other financial aid program that is intended to help students pay education-related expenses, including tuition, fees, room and board, and supplies for education; and

(6) The total percentage of institutional income that comes from any public funding sources.

(b) In addition to the information required by section 94934 and this section provided under penalty of perjury, the institution shall have annual financial statements prepared for the institution's prior fiscal year and signed under penalty of perjury, and shall submit a hard copy under separate cover of such statements in conjunction with its annual report. The form, content and mode of preparation of financial statements shall comply with Regulation section 74115 of this Division. The Bureau may request that the institution immediately make available for inspection to a representative of the Bureau, these financial statements at the offices of the institution.

[¶] . . . [¶]

(d) The annual report shall be electronically filed by submitting the information required by section 94934 of the Code and this section via the online form provided on the Bureau's website, electronically attaching, as directed, the School Performance Fact Sheet, the enrollment agreement, and the school catalog.

48. California Code of Regulations, title 5, section 74112 is attached to this Proposed Decision as Appendix A.

49. California Code of Regulations, title 5, section 76120 states:³⁷

(a) Each qualifying institution shall collect an assessment of zero dollars (\$0) per one thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars, from each student in an educational program who is a California resident or is enrolled in a residency program. For institutional charges of one thousand dollars (\$1,000) or less, the assessment is zero dollars (\$0).

50. California Code of Regulations, title 5, section 76130, states in part:

(b) A qualifying institution shall complete the STRF Assessment report and remit it with the STRF assessments collected from students to be received by the Bureau no later than the last day of the month following the close of the quarter as follows:

- (1) April 30 for the first quarter,
- (2) July 31 for the second quarter,
- (3) October 31 for the third quarter, and
- (4) January 31 for the fourth quarter.

If the due date falls on a Saturday, Sunday, or State or federal holiday, the due date shall be extended to the next regular business day for the Bureau.

(c) The STRF Assessment report shall contain the following information:

- (1) Total number of students who signed enrollment agreements for educational programs during the reporting period; and

³⁷ The STRF amount was reduced to zero effective January 1, 2015. From January 1, 2013 through December 31, 2014, the STRF amount was \$0.50 per \$1,000 of institutional charges.

(2) Total number of students eligible for STRF who signed enrollment agreements for educational programs during the reporting period; and

(3) The total number of students who signed their enrollment agreement during the reporting period, were eligible for STRF, and who made their first payment during the reporting period; and

(4) The total number of students who signed their enrollment agreement in a previous reporting period, were eligible for STRF, and who made their first payment during the current reporting period; and

(5) Total amount of institutional charges after rounding each student's institutional charges to the nearest \$1,000, for all eligible STRF students whose STRF assessment was collected in the reporting period; and

(6) Current contact telephone number of the person preparing the form; and

(7) A declaration dated and signed under penalty of perjury by the person preparing the form that the form and any attachments are true and correct.

51. California Code of Regulations, title 5, section 76140, states in part:

(a) A qualifying institution shall collect and maintain records of student information to substantiate the data reported on the STRF Assessment Reporting Form and records of the students' eligibility under the Fund. Such records shall include the following for each student:

(1) Student identification number,

(2) First and last names,

(3) Email address,

(4) Local or mailing address,

(5) Address at the time of enrollment,

(6) Home address,

- (7) Date enrollment agreement signed,
- (8) Courses and course costs,
- (9) Amount of STRF assessment collected,
- (10) Quarter in which the STRF assessment was remitted to the Bureau,
- (11) Third-party payer identifying information,
- (12) Total institutional charges charged, and
- (13) Total institutional charges paid.

52. California Code of Regulations, title 5, section 76215, states in part:

(a) A qualifying institution shall include the following statement on both its enrollment agreement and school catalog:

“The State of California established the Student Tuition Recovery Fund (STRF) to relieve or mitigate economic loss suffered by a student in an educational program at a qualifying institution, who is or was a California resident while enrolled, or was enrolled in a residency program, if the student enrolled in the institution, prepaid tuition, and suffered an economic loss. Unless relieved of the obligation to do so, you must pay the state-imposed assessment for the STRF, or it must be paid on your behalf, if you are a student in an educational program, who is a California resident, or are enrolled in a residency program, and prepay all or part of your tuition.

You are not eligible for protection from the STRF and you are not required to pay the STRF assessment, if you are not a California resident, or are not enrolled in a residency program.”

(b) In addition to the statement required under subdivision (a) of this section, a qualifying institution shall include the following statement in its school catalog:

“It is important that you keep copies of your enrollment agreement, financial aid documents, receipts, or any other information that documents the amount paid to the school. Questions regarding the STRF may be directed to the Bureau for

Private Postsecondary Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 431-6959 or (888) 370-7589.

To be eligible for STRF, you must be a California resident or enrolled in a residency program, prepaid tuition, paid or deemed to have paid the STRF assessment, and suffered an economic loss as a result of any of the following:

1. The institution, a location of the institution, or an educational program offered by the institution was closed or discontinued, and you did not choose to participate in a teach-out plan approved by the Bureau or did not complete a chosen teach-out plan approved by the Bureau.

2. You were enrolled at an institution or a location of the institution within the 120-day period before the closure of the institution or location of the institution, or were enrolled in an educational program within the 120-day period before the program was discontinued.

3. You were enrolled at an institution or a location of the institution more than 120 days before the closure of the institution or location of the institution, in an educational program offered by the institution as to which the Bureau determined there was a significant decline in the quality or value of the program more than 120 days before closure.

4. The institution has been ordered to pay a refund by the Bureau but has failed to do so.

5. The institution has failed to pay or reimburse loan proceeds under a federal student loan program as required by law, or has failed to pay or reimburse proceeds received by the institution in excess of tuition and other costs.

6. You have been awarded restitution, a refund, or other monetary award by an arbitrator or court, based on a violation of this chapter by an institution or representative of an institution, but have been unable to collect the award from the institution.

7. You sought legal counsel that resulted in the cancellation of one or more of your student loans and have an invoice for services rendered and evidence of the cancellation of the student loan or loans.

To qualify for STRF reimbursement, the application must be received within four (4) years from the date of the action or event that made the student eligible for recovery from STRF.

A student whose loan is revived by a loan holder or debt collector after a period of noncollection may, at any time, file a written application for recovery from STRF for the debt that would have otherwise been eligible for recovery. If it has been

more than four (4) years since the action or event that made the student eligible, the student must have filed a written application for recovery within the original four (4) year period, unless the period has been extended by another act of law.

[""]”

Licensee Responsibility for Conduct of Employees, Agents, and Advisors

53. A licensee who elects to operate its business through employees is responsible to the licensing authority for the conduct of its employees. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal3d 347, 360; *Kirby v. Alcoholic Bev. Etc. Appeals Bd.* (1973) 33 Cal.App.3d 732, 737.) This rule is consistent with the law governing principal-agent liability contained in Civil Code section 2330 that “[a]n agent represents his principal for all purposes within the scope of his actual or ostensible authority. . . .” It is also consistent with the doctrine of respondeat superior codified in Civil Code section 2338, which provides that “a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business. . . .”

Respondent’s Defenses

54. Respondent asserts that the bureau violated its due process rights in essence by not communicating and working with the school to help it come into compliance, by not making greater efforts to settle or otherwise this matter, and instead by simply continuing to conduct inspections and investigations and issuing additional accusations containing additional allegations.

This defense is based in part on *United States ex rel. Accardi v. Shaughnessy* (1954) 347 U.S. 499, which involved a deportation proceeding under the Immigration Act of 1917. Petitioner admitted he was deportable and asserted that the denial of his application for suspension of deportation by the Board of Immigration Appeals was prejudged through the inclusion of petitioner’s name on a list of “unsavory characters” issued by the Attorney General, which made it impossible for him to receive fair consideration. The Court held that the Board violated existing regulations by failing to exercise its discretion with regard to the deportation of petitioner; instead it simply accepted that the Attorney General wanted him deported. In so doing, the Board denied petitioner due process.

Shaughnessy has no bearing on the present matter. Respondent did not establish that the bureau’s investigation of this matter violated its regulations or that the bureau failed to exercise its discretion or otherwise acted in such a way as to infringe on respondent’s due process rights.

Respondent also relies on Sections 94933 and 94933.5. Section 94933 states:

The bureau shall provide an institution with the opportunity to remedy noncompliance, impose fines, place the institution on probation, or suspend or revoke the institution's approval to operate, in accordance with this article, as it deems appropriate based on the severity of an institution's violations of this chapter, and the harm caused to students.

Properly understood, this section merely states that the bureau shall take whatever action “it deems appropriate,” from (one end of the spectrum) simply providing an institution an opportunity to remedy noncompliance to (the other end of the spectrum) revoking the institution’s approval to operate. What action to take in a given case is thus left up to the bureau in the exercise of its sound discretion.

Section 94933.5 states:

As much as is practicable, the bureau shall seek to resolve instances of noncompliance, including the use of alternative dispute resolution procedures in Article 5 (commencing with Section 11420.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Respondent not only appears to assert that this provision effectively creates a due process right on the part of an institution against which the actions (or inaction) of the bureau vis-à-vis the school is to be measured, but respondent also suggests the bureau’s willingness or unwillingness to settle a case, or perhaps even to offer certain settlement terms, is subject to review. Neither this section nor the Act as a whole provides a basis for respondent’s interpretation.³⁸ Certainly, too, there is nothing inherently suspect or improper with regard to the manner in which the bureau’s inspection and investigatory personnel handled this matter, and no evidence of improper motive, bias, or discriminatory enforcement was adduced at hearing. That the bureau took a substantial period of time investigating and evaluating what action to take with regard to respondent does not by itself imply any impropriety. One could in fact just as easily have inferred impropriety had the bureau made an immediate, snap decision in this matter. It should also not be overlooked that respondent took a substantial period of time in responding to the bureau’s concerns as well. In particular, the original accusation was issued in August 2017, but respondent did not submit a mitigation package until June 2018, about a month before the then scheduled hearing date.

55. Respondent initially also raised estoppel and laches as affirmative defenses. It presented no evidence in support of either of these defenses at hearing, and respondent’s counsel did not assert either in his closing argument. It is inferred that these defenses have

³⁸ Even if this section could reasonably be construed as requiring the bureau in every case to use alternative dispute resolution procedures, the bureau did in fact do so, by participating in a mandatory settlement conference in this matter.

been effectively withdrawn. Even if that is not the case, however, the elements of neither of these defenses have been established here.

Estoppel is an equitable doctrine that is centuries old. It seeks to prevent a person or entity from profiting from their own wrongdoing. “The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted.” (*California School Employees Assn. v. Jefferson Elementary School District* (1975) 45 Cal.App.3d 683, 692 [internal quotations and emphasis omitted].) In determining whether or not estoppel shall be applied to a given situation, the burden of establishing that all of the requirements have been met is upon the party asserting the estoppel. The defense of estoppel requires: (1) the party to be estopped must be apprised of the facts; (2) must intend their conduct will be acted upon; (3) that the other party must be ignorant of the true facts; and (4) the other party must have relied upon the conduct to her injury.” (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399; *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

A successful laches defense requires the establishment of two elements: An unreasonable delay in bringing the action, and resulting prejudice to the responding party. (*Mt. San Antonio Community College District v. Public Employment Relations Board* (1989) 210 Cal.App.3d 178; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, review denied.)

The evidence presented at hearing does not remotely suggest, much less does it establish, the applicability of either of these equitable doctrines to the present matter.

Disciplinary Guidelines, Mitigation and Rehabilitation

56. California Code of Regulations, title 5, section 75500 states:

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Bureau shall comply with the “Disciplinary Guidelines” [August 2010], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Bureau in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; discipline history; evidentiary issues.

57. The bureau’s Disciplinary Guidelines, effective December 2010, (guidelines) provides under the “General Considerations” heading:

The Bureau requests that a Proposed Decision following an administrative hearing include the following:

- a. Specific code sections violated and their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if a representative is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Bureau requests that the disciplinary order include terms within the recommended guidelines for that offense unless reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

58. The guidelines provide recommendations for maximum and minimum discipline for specific categories of violations. For all categories, the maximum recommended discipline is revocation. The minimum recommended discipline for the violations found in this matter are as follows:³⁹

- For violation of Education Code section 94893, revocation, stayed, and three years' probation, with standard terms 1 through 15 and optional conditions 23, 26, 27, and 28;
- For violation of Education Code section 94897, revocation, stayed, and five years' probation, with standard terms 1 through 15 and optional conditions 21, 25, 26, 27, and 28;
- For violation of Education Code section 94898, revocation, stayed, and three years' probation, with standard terms 1 through 15 and optional conditions 21, 25, 26, 27, and 28;
- For violation of Education Code section 94899.5, revocation, stayed, and three years' probation, with standard terms 1 through 15 and optional condition 21 and 25 through 28;
- For violation of Education Code sections 94900 or 94900.5, revocation, stayed, and three years' probation, with standard terms 1 through 15 and optional conditions 18 and 20;

³⁹ The guidelines do not specify levels of discipline with respect to a number of the statutory and regulatory violations found in this matter.

- For violation of Education Code section 94902 through 94912, revocation, stayed, and five years' probation, with standard terms 1 through 15 and optional condition 18;
- For violation of Education Code section 94929, 94929.5, and 94929.7, revocation, stayed, and five years' probation, with standard terms 1 through 15 and optional conditions 18, 21, and 25;
- For violation of California Code of Regulations, title 5, sections 71700 through 71930, revocation, stayed, and three years' probation, with standard terms 1 through 15.

59. The guidelines also list the following “Factors to be Considered” when determining whether revocation, suspension, or probation should be imposed:

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, student or the general public.
3. Prior record of discipline.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.

10. Whether or not the respondent cooperated with the Bureau's investigation, other law enforcement or regulatory agencies, and/or the injured parties.

11. Recognition by respondent of its wrongdoing and demonstration of corrective action to prevent recurrence.

60. California Code of Regulations, title 5, section 75070 states:

In determining whether any of the grounds for denial set forth in Section 480 of the Business and Professions Code exist, the Bureau shall consider evidence of rehabilitation and present eligibility for any approval issued by the Bureau, including all of the following factors:

(a) The nature and severity of the acts or crimes under consideration as grounds for denial;

(b) Evidence of any acts committed after the acts or crimes under consideration as grounds for denial that also could be considered grounds for denial;

(c) The time that has elapsed since commission of the acts or crimes described in subdivisions (a) and (b);

(d) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant;

(e) Evidence of any rehabilitation submitted by the applicant;

(f) Total criminal record;

(g) Evidence, if any, of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

61. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) "While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . ." (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.)

62. “The evidentiary significance of an applicant’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct.” (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Evaluation of Appropriate Discipline

63. The legislature has recognized the need for strict state oversight of private postsecondary education to protect the value of degrees such private postsecondary institutions issue. Schools, such as respondent, must properly train their employees, manage their businesses, and maintain their students’ records to assure compliance with the statutory and regulatory requirements applicable to their approvals to operate in California. If they fail to do so, the value and integrity of the degrees they issue are impaired, all to the detriment of their students and the public.

64. As found above, respondent’s violations of the Act are voluminous and wide in scope. Respondent contends, however, that the violations are “ministerial” and that complainant has failed to demonstrate harm to students, so that pursuant to section 94937, subdivision (a)⁴⁰ neither revocation nor suspension may be imposed.⁴¹ Respondent’s main

⁴⁰ Section 94937, subdivision (a), also permits revocation and suspension in the event approval is obtained by fraud (not at issue here) or in the event of a “material” violation of the Act. With regard to this latter basis for revocation or suspension, none of respondent’s violations are “material” within the meaning of section 94937, subdivision (a)(2), or regulation 75100, subdivision (b). To elaborate, it has not been established that any of respondent’s violations involve “misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement” pursuant to subdivision (a)(2); a criminal conviction or “an act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another” pursuant to regulation section 75100 and Business and Professions Code section 480 referenced therein; or an act of similar significance or culpability.

⁴¹ An issue actually arises as to whether even mere probation may be imposed absent “harm to students.” Respondent’s counsel conceded at hearing that it could. Section 94937 is in fact ambiguous in this regard, as it is unclear whether the phrase “may place . . . on probation” in the opening sentence of subdivision (a) is or is not to be viewed, along with “may suspend or revoke,” as a modifying antecedent of paragraphs (1) and (2) of the subdivision. Respondent’s interpretation raises a difficult question, since probation by its very nature connotes stayed revocation and thus recognizes the possibility of revocation in the future in the event of a probation violation. But if harm to students (or one of the other matters identified in subdivision (a)) is *not* required for the imposition of probation, but it *is* required for revocation, then there would be little point in placing an institution on probation, because probation violations, no matter how many or how often repeated, could under this interpretation never lead to revocation if harm to students was not established. Since harm to

argument in support of this contention is that complainant failed to show actual reliance by any specific student on any actions of respondent that caused harm to that student.

Respondent's understanding of "harm to students" as that term is used in section 94937 is quite narrow, not supported by the language of the section, and ultimately inconsistent with the primary purpose (public protection) of the Act. In the first place, the section indicates harm "to students," not harm to "a student" (singular) much less to specific students. "Harm to students" likewise does not specify detrimental reliance by a particular student on an institution's wrongful conduct.⁴² Further, the concept of harm must be viewed as consistent with the Act's highest purpose of student and public protection as articulated in Sections 94875 and 94932.5.

In fact, respondent's violations are inherently harmful to students in a number of ways. As an example, permitting the enrollment of prospective students who have not met the institution's minimum requirements results in students entering the program unprepared to undertake the rigorous course of study that barbering should involve. Enrollment agreements that require students to spend more hours of study than their program requires are also harmed, as are students who are granted a diploma but have not been accorded the full number of hours of study that they paid for. Further, the inadequate number of administrative and teaching staff available to assist and instruct students also necessarily causes them harm in terms of a substandard education. The same is true of the merging of the barber and the crossover programs and the presence of students at different stages of study, from newly entering to nearly graduating, in the same classroom, without any systematic means or process in place of keeping track as to what components of the program each student has completed: these conditions at the school all necessarily result in a substandard educational experience for the school's students. The school's inability, due to its recordkeeping deficiencies, to provide a meaningful and accurate transcript to students likewise constitutes harm. Overcharging students with regard to STRF and other fees also constitutes harm. That students may or may not be aware of the harm they have suffered at a given moment in time is not the issue. As an example, one would be hard pressed to argue that a patient has not been harmed by virtue of his physician performing an unnecessary surgical procedure on the sole basis that the patient was not aware that the procedure was in fact unnecessary.

Respondent also contends that the bureau's failure to make an emergency decision to protect students pursuant to Section 94938 demonstrates the bureau "is not motivated by concerns about student harm." Aside from the fact that the bureau's "motivation" is not properly at issue in this proceeding, respondent's argument essentially leads to the

students has been established in this matter, however, this interpretative issue need not be resolved. No reported cases have interpreted Section 94937.

⁴² In contrast, and as just noted, a "material violation" explicitly includes one involving fraudulent or misleading conduct "upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student."

conclusion that an emergency decision is a condition precedent to suspending or revoking a school's approval. Such a concept certainly finds no support in the language of the statute itself and would be inconsistent with somewhat analogous provisions such as Government Code section 11529 and Business and Professions Code section 494, which provide for interim suspension orders against licensees in certain circumstances, but which do not require the application for or grant of such an order before the agency may seek revocation of the license.

Ultimately, the education and training that respondent's students have received falls far short of the minimum standards to which the Act requires all postsecondary vocational schools to adhere. Unquestionably, the evidence established that respondent's students suffered harm.⁴³

There is also evidence of harm to a specific student, E.T. It is reasonable to infer that the school's substandard educational programs resulted in low examination pass rates, contributed to E.T's failed examinations, and delayed his licensure, causing him harm in terms of exam fees, lost time, and lost employment opportunities.

Separately, respondent violated Section 94893, which requires the bureau's prior approval before a substantive change is made. Revocation is appropriate under Section 94893 even without a showing of student harm.

Accordingly, respondent is subject to any level of discipline that is necessary to protect the public, up to and including suspension or revocation.

65. Pursuant to the bureau's disciplinary guidelines, the level of discipline for all of the violations found here ranges from three to five years of probation on the one hand and revocation on the other. Where along this broad spectrum is the proper level of discipline for respondent to be found? The answer to this question must take into account both the disciplinary guidelines and the principle that the protection of the public (including students) is the bureau's highest priority. It must also, however, be recalled that the purpose of an administrative disciplinary proceeding is not to punish the licensee. It thus seems necessary to limit the level of discipline to that which is in fact needed to further that priority.

Applying these principles to the present case, and as noted earlier, the record establishes a large volume and a wide variety of violations, and these violations have caused substantial harm to all of the students who attended respondent's school during the time period covered by this matter. However, respondent has not been subject to any prior disciplinary action. Further, it has not been established that any of the violations at issue in this proceeding involved fraud or an intentional misleading of students or the public.

⁴³ Dr. Reddy testified in defense that his school is the most inexpensive in the nation. That may or may not be the case, but it hardly excuses the volume and scope of the deficiencies found in this proceeding, and one suspects that respondent would not have been entirely comfortable advertising its school along the lines of "inexpensive but substandard."

Instead, most if not all stemmed from very poor recordkeeping, very sloppy drafting of school documents, and a patent lack of concern about adhering to statutory and regulatory standards. This does not seem to have been primarily a function of the teachers and administrators working at the school, but is instead the largely inevitable result of an owner and CEO, who wanted to have as little involvement in running the school as possible and who wanted to spend as little money as possible to hire sufficient staff and to have in place needed processes and procedures.

Dr. Reddy implicitly put the blame on former staff on whom he claimed to rely for not doing their jobs properly. Consistent with that contention, Dr. Reddy has hired new staff whom he claims are going to bring respondent into compliance. Dr. Reddy's choice of new staff, however, itself raises questions.

Ms. Ceja is barely out of college, and in fact was hired by respondent two months before she graduated. She has no experience in the barber industry and no experience operating or administering a school or its programs. By virtue of her comment that meeting the basic operating requirements of a private postsecondary school is not "rocket science," she also demonstrated a lack of appreciation for the challenges of operating such an institution.⁴⁴

In contrast to Ms. Ceja, Dr. Stumpf does have experience in administrative positions both at major academic institutions (USC) as well as a private postsecondary school (Empire's College of Traditional Oriental Medicine). On the other hand, though he claims to be working full-time for respondent, he has spent very little time at the school, and he holds a part-time job at CSU Northridge. His testimony reflected a lack of familiarity with the school and, in particular, a troubling lack of appreciation as to how far the school will need to go to be brought into compliance with the minimum operating standards prescribed by the Act. This latter point is exemplified in Dr. Stumpf's testimony that even if all of the allegations in the second amended accusation were true, the school as it was operated during the time period at issue in the second amended accusation would still have met minimum operating requirements and was not a threat to its students.

While Ms. Ceja and Dr. Stumpf both testified that measures have been and are being put in place to address the school's shortcomings, changes that have already taken place appear overall to be modest; most of those changes are still in the planning stage and have yet to be effectuated. Indeed, Dr. Stumpf made the astonishing admission that respondent was holding off on implementing major changes until the result of the administrative proceeding is known. How does that help respondent's current students?

Ultimately, the evidence all points back to Dr. Reddy. He testified at hearing that he wants to bring the school into compliance. While it is possible that he believes this to be the

⁴⁴ Ms. Ceja's view is in sharp contrast to that of respondent's counsel, who characterized the "legislative and regulatory framework for private postsecondary schools" as "enormous and complex."

case, the record establishes that any such desire is limited by his unwillingness to be more involved than he is and to spend more money than he is willing to spend. Ultimately, his full-time job at Kaiser, 50 miles away, is his main professional focus, and he is either unable or unwilling to devote the time necessary as respondent's CEO or the finances necessary, as respondent's owner. Accordingly, the protection of the public requires that he divest himself ownership of the school and that he resign as CEO.

Recovery of Costs of Investigation and Prosecution

66. Complainant sought recovery of investigation and enforcement costs totaling \$40,092.15.

The Deputy Attorney General who prosecuted the case provided a declaration signed on January 11, 2019, the last business day before the commencement of this hearing, regarding prosecution costs of \$34,512.50 incurred up through January 11, 2019, plus an additional six estimated hours that "were or will be incurred and billed" before the hearing, amounting to \$1,020, for a total of \$35,532.50. Attached to her declaration was a document entitled "Master Time Activity by Professional Type," which identified the tasks performed, the time spent on each task, the persons who performed each task, and the hourly rates charged for the \$34,512.50 incurred up through January 11, 2019. The Deputy Attorney General did not explain the basis for the estimated additional six hours that "were or would be billed" before the commencement of the hearing, and those additional costs were thus speculative. The request for prosecution costs through January 11, 2019, in the amount of \$35,532.50 complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), to prove the prosecution costs sought. The request for the estimated additional six hours of costs did not however comply with California Code of Regulations, title 1, section 1042, subdivision (b)(3), which states: "When agency presents an estimate of actual costs incurred, its Declaration shall explain the reason actual cost information is not available." Accordingly, the reasonable prosecution costs amount to \$34,512.50.

Complainant also submitted a document titled "Certification of Costs of Investigation," executed by the bureau's enforcement chief. The declaration stated that the costs were for "investigation of complaints," "researching school history, accreditation and program requirements," "contacting and interviewing complainants, students, faculty and witnesses," "preparation of correspondence, reports, and/or declarations," and "collecting, organizing and evaluating documents and evidence." The costs were listed as having been performed by "Associate Government Program Analyst" and calculated by the number of hours worked per fiscal year multiplied by the hourly rate of \$31.83. The certification listed the totals by fiscal year of \$2,689.64 for 2015/2016; \$636.60 for 2016/2017; and \$1,233.41 for 2018/2019; and totaled \$4,559.65. The certification did not specify the hours spent on specific tasks as required by California Code of Regulations, title 1, section 1042, subdivision (b)(1). Therefore, the investigation costs are not recoverable.

Respondent did not present any evidence or argument regarding its ability to pay costs.

67. Education Code section 94937, subdivision (c), provides that the “bureau may seek reimbursement pursuant to Section 125.3 of the Business and Professions Code.” Business and Professions Code section 125.3 provides, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

68. California Code of Regulations, title 1, section 1042, subdivision (b), provides, in part:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

69. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court dealt with the issue of cost recovery and noted that because a licensee with limited financial resources might forego a hearing for fear that a board might erroneously sustain the charges and order the licensee to reimburse costs, discretion must be used to ensure that a licensee with a meritorious claim is not deterred from exercising his or her right to a hearing. (*Id.* at p. 44.) The Court determined that five factors should be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes similar to Business and Professions Code section 125.3: Whether the licensee was successful at hearing in having charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

70. After taking the *Zuckerman* factors into consideration, the amount of the reasonable enforcement costs incurred of \$36,135, shall be reduced to take into account the portions of the several causes for discipline that were not proven, in particular those alleging that respondent misled students. Further reduction is appropriate in connection with respondent's willingness to stipulate to many of the allegations of the second amended accusation, as that fact informs a determination as to respondent's good faith belief in the merits of its position and whether respondent has raised a colorable challenge to the proposed discipline. Based on these considerations, respondent shall pay complainant's prosecution costs in the amount of \$25,000, which shall be paid in full at least one year before the end of the probationary term.

Ultimate Conclusions

71. Based on the foregoing findings of fact and conclusions of law:
- a. Cause exists to discipline respondent with regard to the first cause for discipline.
 - b. Cause exists to discipline respondent with regard to the second cause for discipline.

- c. Cause exists to discipline respondent with regard to the third cause for discipline.
- d. Cause exists to discipline respondent with regard to the fourth cause for discipline.
- e. Cause exists to discipline respondent with regard to the fifth cause for discipline.
- f. Cause exists to discipline respondent with regard to the sixth cause for discipline.
- g. Cause exists to discipline respondent with regard to the seventh cause for discipline.
- h. Cause exists to discipline respondent with regard to the eighth cause for discipline.
- i. Cause exists to discipline respondent with regard to the ninth cause for discipline.
- j. Cause exists to discipline respondent with regard to the tenth cause for discipline.
- k. Cause exists to discipline respondent with regard to the eleventh cause for discipline.
- l. Cause exists to discipline respondent with regard to the twelfth cause for discipline.
- m. Cause exists to discipline respondent with regard to the thirteenth cause for discipline.
- n. Cause exists to discipline respondent with regard to the fourteenth cause for discipline.
- o. Cause exists to discipline respondent with regard to the fifteenth cause for discipline.
- p. Cause exists to discipline respondent with regard to the sixteenth cause for discipline.
- q. Cause exists to discipline respondent with regard to the seventeenth cause for discipline.

r. Cause exists to discipline respondent with regard to the eighteenth cause for discipline.

ORDER

IT IS HEREBY ORDERED that the Approval to Operate issued to respondent Padma Corporation dba Rosston School of Hair Design is revoked. However, the revocation is stayed, and respondent is placed on probation for five years on the following conditions:⁴⁵

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or in any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations governing the operation of a private postsecondary educational institution in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the bureau within five (5) days of discovery.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an Accusation and/or Petition to Revoke Probation.

2. Compliance with Probation and Quarterly Reporting

Respondent shall fully comply with the terms and conditions of probation established and shall cooperate with representatives of the bureau in its monitoring and investigation of respondent's compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the bureau on a Quarterly Report of Compliance form obtained from the bureau.

3. Personal Appearances

Upon reasonable notice by the bureau, respondent shall report to and make personal appearances at times and locations as the bureau may direct.

⁴⁵ Optional conditions 26 through 28 are not appropriate in this matter, given that closing the institution is not required for the protection of students and the public.

4. Notification of Address and Telephone Number Change(s)

Respondent shall notify the bureau, in writing, within five (5) days of a change of name, title, physical home address, email address, or telephone number of each person, as defined in Section 94855 of the Code, who owns or controls 25 percent or more of the stock or an interest in or of the institution and, to the extent applicable, each general partner, officer, corporate director, corporate member or any other person who exercises substantial control over the institution's management or policies.

5. Notification to Prospective Students

When currently soliciting or enrolling (or re-enrolling) a student for any program, respondent shall provide notification of this action to each current or prospective student prior to accepting their enrollment, and to those students who were enrolled at the time of the conduct that is the subject of this action as directed by the bureau. This notification shall include a copy of the Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

6. Student Roster

Within 15 days of the effective date of this Decision, and with the Quarterly Reports thereafter, respondent shall provide to the bureau the names, addresses, phone numbers, email addresses, and the programs in which they are or were enrolled, of all persons who are currently or were students of the institution within 60 days prior to the effective date of the Decision, and those students who were enrolled at the time of the conduct that is the subject of this action.

7. Instruction Requirements and Limitations

During probation, respondent shall provide approved instruction in the State of California. If respondent is not providing instruction, the period of probation shall be tolled during that time.

8. Record Storage

Within 5 days of the effective date of this Decision, respondent shall provide the bureau with the location of the repository for all records as they are required to be maintained pursuant to California Code of Regulations, title 5, section 71930.

9. Maintenance of Current and Active Approval to Operate

Respondent shall, at all times while on probation, maintain a current and active approval to operate with the bureau including any period during which approval is suspended or probation is tolled.

10. Comply with Citations

Respondent shall comply with all final orders resulting from citations issued by the bureau.

11. Cost Recovery Requirements

Respondent shall pay to the bureau its costs of investigation and enforcement in the amount of \$25,000 no later than one year before the termination of probation. Such costs shall be payable to the bureau and are to be paid regardless of whether the probation is tolled. Failure to pay such costs shall be considered a violation of probation.

Except as provided above, the bureau shall not renew or reinstate the approval to operate of any respondent who has failed to pay all the costs as directed in a Decision.

12. Violation of Probation

If respondent violates probation in any respect, the bureau, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an Accusation or a Petition to Revoke Probation is filed against respondent during probation, the bureau shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended, and respondent shall comply with all probation conditions, until the matter is final.

13. Future Approvals to Operate

If respondent subsequently obtains other approvals to operate during the course of this probationary order, this Decision shall remain in full force and effect until the probationary period is successfully terminated. Future approvals shall not be granted, however, unless respondent is currently in compliance with all of the terms and conditions of probation.

14. Comply with All Accreditation Standards

As applicable, respondent shall comply with all standards set by its accreditor in order to maintain its accreditation. Respondent shall submit to the bureau, in writing, a full detailed account of any and all actions taken by any accrediting agency against respondent regarding any institution operated by respondent, including an order to show cause, or conditions or restrictions placed on accreditation, within five (5) days of occurrence.

15. Records Maintenance

With 45 days of the effective date of this Decision, respondent shall provide for and secure a second set of all academic and financial records as required by California Code of Regulations, title 5, section 71930, and provide to the bureau the location of these records, and access to them upon request.

16. Amending School/Student Performance Fact Sheet

Within 30 days of the effective date of this decision, respondent shall amend its School/Student Performance Fact Sheet to reflect accurate information as required by section 94910 of the Code and the regulations promulgated thereunder, and provide the amended Fact Sheet to the bureau for prior approval. Respondent shall also provide to the bureau upon request verifiable documentation supporting the information contained on the Fact Sheet. Within 45 days of the effective date of this decision, respondent shall provide the amended Fact Sheet as required by the California Private Postsecondary Education Act of 2009, as well as to all current and prospective students who received the prior Fact Sheet. The amended School/Student Performance Fact Sheet shall contain a paragraph at the top containing the following disclosure:

“This amended School/Student Performance Fact Sheet replaces the Fact Sheet previously provided by this institution dated [date], which contained incorrect information, and is being provided pursuant to a Decision and Order of the Department of Consumer Affairs. For more information, you may contact the [contact name] at the Bureau for Private Postsecondary Education at [phone number].”

17. Cease Enrollment

Respondent shall cease enrollment of new students in all educational programs for a period of 60 days beginning on the effective date of the Decision.

18. Replace Owner or Person in Control

Within 60 days of the effective date of this Decision, respondent shall no longer permit Dr. Bhaskara Reddy V. Munagala to have any ownership interest in or control over the stock or other interest in the assets of the institution during the term of probation or to serve as an officer of the institution during the term of probation. Further, within the same 60-day period, respondent shall be required to submit for the bureau’s approval a new proposed chief executive officer. The bureau shall not unreasonably withhold approval of a proposed new chief executive officer.

//

//

//

//

19. Completion of Probation

Upon successful completion of probation, respondent's approval to operate will be fully restored.

This Decision shall become effective on October 31, 2019.

IT IS SO ORDERED September 30, 2019.

Signature on File

RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs

APPENDIX A

§ 74112. Uniform Data - Annual Report, Performance Fact Sheet.

5 CA ADC § 74112

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations

Title 5. Education

Division 7.5. Private Postsecondary Education

Chapter 4. Institutions - General Provisions

Article 2. Reports

5 CCR § 74112

§ 74112. Uniform Data - Annual Report, Performance Fact Sheet.

(a) Format. The format for the Performance Fact Sheet shall be in at least 12 pt. type, in an easily readable font, with 1.15 line spacing and all titles and column headings shall be in bold 14 pt. type, which shall also identify the program for which the Performance Fact Sheet pertains. The Performance Fact Sheet shall contain all and only the information required or specifically permitted by sections 94910 and 94929.5 of the Code or this chapter. A separate Performance Fact Sheet shall be prepared for each program.

(b) An institution offering educational programs that are too new to provide the required two years of data shall include the date the program began as well as the statement required by section 94910(e) of the Code. The Performance Fact Sheet shall also disclose the estimated date of availability for two full years of data for those programs.

(c) Institutions approved under section 94874.8 of the Code, which do not include all required information per section 94874.8(a)(4), shall include on the Performance Fact Sheet the date of approval to operate and when the required data will be available.

(d) In addition to the definitions contained in section 94928 of the Code:

(1) “Number of Students Who Began the Program” means the number of students who began a program who were scheduled to complete the program within 100% of the published program length within the reporting calendar year, and excludes all students who cancelled during the cancellation period.

(2) “Number of On-time Graduates” means the number of students who completed the program within 100% of the published program length within the reporting calendar year.

(3) “Gainfully Employed” means:

(A)(i) The graduate is employed in a job classification under the United States Department of Labor's Standard Occupational Classification codes, using the Detailed

Occupation (six-digit) level, for which the institution has identified in its catalog and in its employment positions list required by section 94910(f)(2) of the Code that the program prepares its graduates; and

(ii) The graduate is employed in a single position or concurrent aggregated positions totaling at least 30 hours per week for 5 weeks (35 calendar days), or totaling at least 20 hours per week for 5 weeks (35 calendar days) with a statement signed by the graduate stating that he or she chose to seek part-time employment rather than fulltime employment after graduation; or

(B) The graduate is employed by the same employer that employed the graduate before enrollment, and any of the following conditions are met:

(i) the graduate is employed in an occupation with a different Detailed Occupation (six-digit) level Standard Occupational Classification code than applies to the position in which the graduate was employed before enrollment; or

(ii) the employer or the graduate provides a statement to the effect that the employment after graduation was the result of a promotion with increased pay, due at least in part to graduation from the program; or

(iii) the employer or the graduate provides a statement to the effect that the degree or the completed program was required as a condition of continued employment; or

(C) The graduate is self-employed or working freelance as reasonably evidenced by, but not limited to, a business license, fictitious business name statement, advertising (other than business cards), website, or business receipts or other evidence of income from business; or an attestation signed by the graduate of self-employment or freelance work and dated after graduation.

(e) Reporting periods:

(1) An Annual Report shall include data for all educational programs as defined in section 94837 of the Code for the previous one calendar year.

(2) A Performance Fact Sheet shall be current and available not later than December 1st, and shall report data for the previous two calendar years based upon the “number of students who began the program,” as defined in subdivision (d)(1) of this section and were scheduled to graduate in the reported year(s).

(f) Total Charges. The institution's Annual Report and Performance Fact Sheet shall include the total charges for a student to complete the program within 100% of the program length. The institution must include the disclosure that there may be additional charges if the program is not completed on-time.

Total charges shall be disclosed in the Performance Fact Sheet in a format substantially similar to the format listed below (dates and numbers are for example only):

Cost of Educational Program:

Total Charges for the program for students completing on-time in 20XX: \$50,000.

Total Charges may be higher for students that do not complete on-time.

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

(g) Student Loan/Debt Information.

(1) If the institution participates in federal financial aid programs, the institution shall include loan information in the institution's Annual Report and on the Performance Fact Sheet. The loan information shall include:

(A) The most recent three year cohort default rate, as reported by the United States Department of Education;

(B) The percentage of enrolled students receiving federal student loans;

(C) The average amount of federal student loan debt of those graduates who have federal student loan debt in the reporting year; and

(D) The percentage of graduates with federal student loans, as calculated by the institution.

Loan information shall be included in the Performance Fact Sheet in a format substantially similar to the format listed below (dates and numbers are for example only):

Federal Student Loan Debt at (Name of Institution)

| | |
|---|------------------|
| Percentage of students who defaulted on their federal student loans at this school: | 28% ¹ |
| Percentage of students enrolled in 20XX who took out federal student loans to pay for this program: | 43% |
| Percentage of graduates in 20XX who took out federal student loans to pay for this program: | 65% |
| Average federal student loan debt of 20XX graduates who took out federal student loans at this institution: | \$26,000 |

¹ The percentage of students who defaulted on their federal student loans is called the Cohort Default Rate (CDR). It shows the percentage of this school's students who were more than

270 days (about 9 months) behind on their federal student loans within three years of when the first payment was due. This is the most recent CDR reported by the U.S. Department of Education.

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

(2) Institutions that do not participate in federal financial aid programs shall include one of two statements in the Performance Fact Sheet in a format substantially similar to the following:

Students at (name of institution) are not eligible for federal student loans. The U.S. Department of Education has determined that this institution does not meet the criteria that would allow its students to participate in federal student aid programs.

or

(Name of Institution) is eligible, but chooses not to participate in federal student aid programs. So students here do not have federal student loans.

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

(h) Completion Rates. Reporting of completion rates for an institution's Annual Report and Performance Fact Sheet shall include, for each educational program, the number of students who began the program as defined in subdivision (d)(1) of this section, the number of students available for graduation, number of on-time graduates, and completion rate(s). An optional table may be added to include completion rate data for students completing within 150% of the published program length. For an institution reporting completion data pursuant to section 94929(b) of the Code, completion data shall be separately reported for each program and the Performance Fact Sheet shall disclose, if true, that the completion data is being reported for students completing within 150% of the published program length, and that data is not being separately reported for students completing the program within 100% of the published program length. Programs that are more than one year in length which are reporting 150% Completion Rate will provide four calendar years of data.

Completion rates shall be included in the Performance Fact Sheet in a format substantially similar to the chart below (dates, numbers, and other data shown are for example only):

On-time Completion Rates (Graduation Rates) (includes data for the two calendar years prior to reporting)

Name of Educational Program (Program Length)

| <i>Calendar Year</i> | <i>Number of Students Who Began the Program</i> | <i>Students Available for Graduation</i> | <i>Number of On-time Graduates</i> | <i>On-time Completion Rate</i> |
|----------------------|---|--|------------------------------------|--------------------------------|
| 20XX | 100 | 98 | 70 | 71% |
| 20XY | 80 | 80 | 55 | 69% |

Students Completing Within 150% of the Published Program Length

Name of Educational Program (Program Length)

| <i>Calendar Year</i> | <i>Number of Students Who Began the Program</i> | <i>Students Available for Graduation</i> | <i>150% Graduates</i> | <i>150% Completion Rate</i> |
|----------------------|---|--|-----------------------|-----------------------------|
| 20XX | 100 | 98 | 95 | 97% |
| 20XY | 80 | 80 | 78 | 98% |
| *20XZ | 90 | 90 | 87 | 97% |
| *20YA | 87 | 85 | 74 | 87% |

*Included only if program is more than one year in length

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

(i) Job Placement Rates.

(1) Any placement data required by sections 94910(b) and 94929.5(a) of the Code shall be reported for the number of students who began the program as defined in subdivision (d)(1) of this section for each reported calendar year.

(2) Placement is measured six months from the graduation date of each student. For programs that require passage of a licensing examination, placement shall be measured six months after the announcement of the examination results for the first examination available after a student completes an applicable educational program. Reporting of placement rates shall include for each educational program: the number of students who began the program, the number of graduates as defined in section 94842 of the Code, the graduates available for employment, graduates employed in the field and job placement rate(s).

(3) If the institution makes any claim related to preparing students for a job or regarding job placement, the list required by section 94910(f)(2) of the Code shall identify the employment positions by using the Detailed Occupation or six-digit level of the Standard Occupational Classification codes.

(4) Placement rate shall be calculated as follows: the number of graduates employed in the field as defined in section 94928(e)(1) of the Code in conjunction with regulation section 74112(d)(3) divided by the number of graduates available for employment as defined in section 94928(d) of the Code.

Job Placement rates and related disclosures shall be included in the Performance Fact Sheet in a format substantially similar to the charts below, (dates, numbers, and other data shown are for example only):

Job Placement Rates (includes data for the two calendar years prior to reporting)

Name of Educational Program (Program Length)

| <i>Calendar Year</i> | <i>Number of Students Who Began the Program</i> | <i>Number of Graduates Available for Employment</i> | <i>Graduates Employed in the Field</i> | <i>Placement Rate %</i> |
|----------------------|---|---|--|-------------------------|
| 20XX | 100 | 70 | 55 | 79% |
| 20XY | 80 | 55 | 20 | 36% |

Gainful Employment Categories (includes data for the two calendar years prior to reporting)

Name of Educational Program (Program Length)

Part Time vs. Full Time Employment

Single Position vs. Concurrent Aggregated Positions

Self-Employed/Freelance Positions

Institutional Employment

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

(5) The following self-employment/freelance worker disclosure shall be initialed by students entering any programs in which the majority of graduates who obtain jobs obtain in this type of work:

This program may result in freelance or self-employment.

- The work available to graduates of this program is usually for freelance or self-employment.
- This type of work may not be consistent.
- The period of employment can range from one day to weeks to several months.
- Hours worked in a day or week may be more or less than the traditional 8 hour work day to 40 hour work week.
- You can expect to spend unpaid time expanding your networks, advertising, promoting your services, or honing your skills.
- Once graduates begin to work freelance or are self-employed, they will be asked to provide documentation that they are employed as such so that they may be counted as placed for our job placement records.
- Students initialing this disclosure understand that either a majority or all of this school's graduates are employed in this manner and understand what comprises that work style.

Student's Initials: _____ Date: _____

Only initial after you have had sufficient time to read and understand the information.

(j) License Examination Passage Rates. If license examination passage rates are not available from the appropriate state agency, an institution shall collect the information directly from its graduates. If an institution demonstrates that, after reasonable efforts, it is unable to obtain the examination passage information from its graduates, the institution shall report the number of students it could not contact and note in a font the same size as the majority of the data on the Performance Fact Sheet, "License examination passage data is not available from the state agency administering the examination. We were unable to collect data from [enter the number] graduates."

Reporting of license examination passage rates for the Annual Report and the Performance Fact Sheet shall include, for each educational program: the number of graduates in the reported year, the number of documented graduates who passed the first available examination, number of documented graduates who failed the first available examination, the number of graduates for whom data is not available. An optional column may be added to separately report licensing examination data for graduates who take and pass the exam after failing initially. The Annual Report shall also include a description of the processes for attempting to contact those students.

For licensing examinations that are not continuously administered, license examination passage rates shall be included in the Performance Fact Sheet in a format substantially similar to the chart below, (dates, numbers, and other data shown are for example only):

License Examination Passage Rates (includes data for the two calendar years prior to reporting)

Name of Educational Program (Program Length)

License examination passage data is not available from the state agency administering the examination. We were unable to collect data from 32 graduates.

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

For licensing examinations that are continuously administered, license examination passage rates shall be included in the Performance Fact Sheet in a format substantially similar to the chart below (dates, numbers, and other data shown are for example only):

License Examination Passage Rates (includes data for the two calendar years prior to reporting)

Name of Educational Program (Program Length)

| <i>Calendar Year</i> | <i>Number of Graduates in Calendar Year</i> | <i>Number of Graduates Taking Exam</i> | <i>Number Who Passed First Available Exam</i> | <i>Number Who Failed First Available Exam</i> | <i>Passage Rate</i> |
|----------------------|---|--|---|---|---------------------|
| 20XX | 95 | 80 | 40 | 40 | 50% |
| 20XY | 109 | 100 | 75 | 25 | 75% |

License examination passage data is not available from the state agency administering the examination. We were unable to collect data from 10 graduates.

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

(k) Salary and Wage Information.

All Salary and Wage Information shall be reported to the Bureau pursuant to sections 94910(d) and 94929.5(a)(3) of the Code and shall be included in the Performance Fact Sheet, for each educational program, in a format substantially similar to the chart below (dates, numbers, salaries, and other data shown are for example only).

Salary and Wage Information (includes data for the two calendar years prior to reporting)

Name of Educational Program (Program Length)

| <i>Annual Salary and Wages Reported for Graduates Employed in the Field</i> | | | | | | | |
|---|---|--|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------------------|
| <i>Calendar Year</i> | <i>Graduates Available for Employment</i> | <i>Graduates Employed in the Field</i> | <i>\$15,000- \$20,000</i> | <i>\$20,001- \$25,000</i> | <i>\$25,001- \$30,000</i> | <i>\$30,001- \$35,000</i> | <i>No Salary Information Reported</i> |
| 20XX | 100 | 70 | 5 | 40 | 6 | 3 | 16 |
| 20XY | 80 | 55 | 5 | 7 | 3 | 5 | 35 |

A list of sources used to substantiate salary disclosures is available from the school. (Insert how student can obtain this information.)

Student's Initials: _____ Date: _____

Initial only after you have had sufficient time to read and understand the information.

(l) Definitions. Definitions for all terms contained on the Performance Fact Sheet shall be included as part of the Performance Fact Sheet, in the same format as required in subdivision (a).

The following are the definitions for the Performance Fact Sheet:

“Number of Students Who Began the Program” means the number of students who began a program who were scheduled to complete the program within 100% of the published program length within the reporting calendar year and excludes all students who cancelled during the cancellation period.

“Students Available for Graduation” is the number of students who began the program minus the number of students who have died, been incarcerated, or been called to active military duty.

“Number of On-time Graduates” is the number of students who completed the program within 100% of the published program length within the reporting calendar year.

“On-time Completion Rate” is the number of on-time graduates divided by the number of students available for graduation.

“150% Graduates” is the number of students who completed the program within 150% of the program length (includes on-time graduates).

“150% Completion Rate” is the number of students who completed the program in the reported calendar year within 150% of the published program length, including on-time graduates, divided by the number of students available for graduation.

“Graduates Available for Employment” means the number of graduates minus the number of graduates unavailable for employment.

“Graduates Unavailable for Employment” means the graduates who, after graduation, die, become incarcerated, are called to active military duty, are international students that leave the United States or do not have a visa allowing employment in the United States, or are continuing their education in an accredited or bureau-approved postsecondary institution.

“Graduates Employed in the Field” means graduates who beginning within six months after a student completes the applicable educational program are gainfully employed, whose employment has been reported, and for whom the institution has documented verification of employment. For occupations for which the state requires passing an examination, the six-month period begins after the announcement of the examination results for the first examination available after a student completes an applicable educational program.

“Placement Rate Employed in the Field” is calculated by dividing the number of graduates gainfully employed in the field by the number of graduates available for employment.

“Number of Graduates Taking Exam” is the number of graduates who took the first available exam in the reported calendar year.

“First Available Exam Date” is the date for the first available exam after a student completed a program.

“Passage Rate” is calculated by dividing the number of graduates who passed the exam by the number of graduates who took the reported licensing exam.

“Number Who Passed First Available Exam” is the number of graduates who took and passed the first available licensing exam after completing the program.

“Salary” is as reported by graduate or graduate's employer.

“No Salary Information Reported” is the number of graduates for whom, after making reasonable attempts, the school was not able to obtain salary information.

(m) Documentation supporting all data reported shall be maintained electronically by the institution for at least five years from the last time the data was included in either an Annual Report or a Performance Fact Sheet and shall be provided to the Bureau upon request; the data for each program shall include at a minimum:

- (1) the list of job classifications determined to be considered gainful employment for the educational program;
- (2) student name(s), address, phone number, email address, program completed, program start date, scheduled completion date, and actual completion date;
- (3) graduate's place of employment and position, date employment began, date employment ended, if applicable, actual salary, hours per week, and the date employment was verified;
- (4) for each employer from which employment or salary information was obtained, the employer name(s) address and general phone number, the contact person at the employer and the contact's phone number and email address, and all written communication with employer verifying student's employment or salary;
- (5) for students who become self-employed, all documentation necessary to demonstrate self-employment;
- (6) a description of all attempts to contact each student or employer;
- (7) any and all documentation used to provide data regarding license examinations and examination results;

(8) for each student determined to be unavailable for graduation or unavailable for employment, the identity of the student, the type of unavailability, the dates of unavailability, and the documentation of the unavailability; and

(9) the name, email address, phone number, and position or title of the institution's representative who was primarily responsible for obtaining the students' completion, placement, licensing, and salary and wage data, the date that the information was gathered, and copies of notes, letters or emails through which the information was requested and gathered.

(n) The institution shall provide on a separate document along with the Performance Fact Sheet the same cancellation disclosure as that which is required to be included with the enrollment agreement by Section 94911(e)(1) of the Code. The separate document shall be substantially the same size as the Performance Fact Sheet and shall be captioned “STUDENT'S RIGHT TO CANCEL” using bold 14 pt. type.