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

11
12 In the Matter of the Statement of Issues
Against:

Case No. 1001802

13 **AMERICAN STATES UNIVERSITY**
14 **CORPORATION**

STATEMENT OF ISSUES

15
16 **Approval to Operate an Institution Non-**
Accredited Applicant

17 Respondent.

18 Institution Code: 76587299
19

20 Complainant alleges:

21 **PARTIES**

22 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
24 Consumer Affairs.

25 2. In or around 2004, the former Bureau for Private Postsecondary Education received
26 an application for an Approval to Operate Application from American States University
27 Corporation (Respondent). On or about December 15, 2004, a temporary approval to operate was
28 granted from the former Bureau for Private Postsecondary Education.

1 On January 1, 2010, the Private Postsecondary Education Act (current Act) became
2 effective, and Respondent's application was deemed "pending." Respondent was required to
3 comply with the current Act and to complete his application for approval to operate within six
4 months of the new application becoming available.

5 3. On or about February 15, 2013, the Bureau requested documentation from the
6 Respondent. On or about April 16, 2013, the Bureau received a response and documentation
7 from Respondent. On or about April 11, 2016, the Bureau issued to Respondent a Notice of
8 Denial of Application for Approval to Operate. On or about May 24, 2016, Respondent sent the
9 Bureau a letter requesting an administrative hearing.

10 JURISDICTION

11 4. This Statement of Issues is brought before the Director of the Department of
12 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
13 authority of the following laws. All section references are to the Education Code unless
14 otherwise indicated.

15 5. The former Bureau for Private Postsecondary and Vocational Education sunsetted on
16 July 1, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009
17 (SB 48 and hereinafter, "the Act") was signed into law. The Act, which became operative on
18 January 1, 2010, established the Bureau for Private Postsecondary Education (hereinafter
19 "Bureau").

20 6. Education Code Section 94886 states:

21 Except as exempted in Article 4 (commencing with section 94874) or in compliance with
22 the transition provisions in Article 2 (commencing with Section 94802), a person shall not open,
23 conduct, or do business as a private postsecondary educational institution in this state without
24 obtaining an approval to operate under this chapter.

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1 7. Education Code section 94887 states:

2 An approval to operate shall be granted only after an applicant has presented sufficient
3 evidence to the bureau, and the bureau has independently verified the information provided by the
4 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
5 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application
6 for an approval to operate if the application does not satisfy those standards.

7 **STATUTORY AND REGULATORY PROVISIONS¹**

8 8. Section 94893 of the Education Code states:

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

13 9. Section 94930.5 of the Education Code states, in pertinent part:

14 An institution shall remit to the bureau for deposit in the Private Postsecondary Education
15 Administration Fund the following fees, in accordance with the following schedule:

16

17 (d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c),
18 inclusive, each institution that is approved to operation pursuant to this chapter shall remit...the
19 following:

20 (A) An annual institutional fee, in an amount equal to three-quarters of 1 percent of
21 the institution’s annual revenues derived from students in California, but not exceeding a total of
22 twenty-five thousand dollars (\$25,000) annually.

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27 ¹ The California Private Postsecondary Education Act of 2009 was amended effective
28 January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the pre-
amendment version of the Act.

1 10. Section 94934 of the Education Code states:

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

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

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

8 (3) The degree levels and diplomas offered.

9 (4) The Student Performance Fact Sheet, as required pursuant to Section 94910.

10 (5) The school catalog, as required pursuant to Section 94909.

11 (6) The total charges for each educational program by period of attendance.

12 (7) A statement indicating whether the institution is, or is not, current in remitting Student
13 Tuition Recovery Fund assessments.

14 (8) A statement indicating whether an accrediting agency has taken any final disciplinary
15 action against the institution.

16 (9) Additional information deemed by the bureau to be reasonably required to ascertain
17 compliance with this chapter.

18 (b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method of
19 delivery.

20 11. Title 5, CCR, section 71700 states:

21 The Bureau may request that an institution document compliance with the standards set
22 forth in the Act and this Division to obtain and maintain an approval to operate.

23 12. Title 5, CCR, section 71500 states:

24 (a) An institution seeking a change of location as defined in 94823.5 of the Code shall
25 complete the "Change of Location" form (LOC rev. 2/10) to obtain prior authorization. The form
26 shall be submitted at least 60 days prior to the proposed date of the change in location unless an
27 unforeseen and unavoidable circumstance outside the control of the institution requires an earlier
28 change; in which case it shall be submitted no later than 30 days following the change in location.

1 The form shall be submitted to the Bureau along with the appropriate fee as provided in Section
2 94930.5(c) of the Code. It shall be signed by the signatory(ies) required by section 71380 and
3 dated, and each fact stated therein and each attachment thereto shall be declared to be true under
4 penalty of perjury, in the following form:

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

7
8 _____
(Date)

_____ (Signature)"

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10 (b) The applicant shall establish that the institution can meet the minimum operating
11 standards contained in Chapter 3, and shall include:

12 (1) The name, school code, current and proposed addresses, and telephone and fax
13 numbers of the institution;

14 (2) A description of the proposed physical facilities, including building diagrams or
15 campus maps. The diagram or maps shall identify at a minimum, the locations of classrooms,
16 laboratories, workshops, and libraries;

17 (3) A description of any equipment to be used at the proposed facilities that is
18 different from the equipment used at the present facility;

19 (4) The date on which the institution intends to offer instruction at the new location;

20 (5) The distance between the approved location and the proposed new location;

21 (6) The reason for the move;

22 (7) A description of the actions taken to notify students, if any, pursuant to section
23 94898(d)(1) of the Code, and whether the institution has offered a full refund to students pursuant
24 to section 94898(d)(3) of the Code; and

25 (8) The name, address, email address, telephone and fax numbers for the institution's
26 contact person for the purposes of this application,

27 (c) The Bureau may deem the actions that the institution takes to notify students of the
28 proposed change of location to be sufficient notice for purposes of section 94898(d)(2).

1 (d) An institution that has been granted an approval to operate by means of accreditation
2 shall notify the Bureau of the substantive change within 30 days of that change on the Change of
3 Location form, by providing the information required in sections (b)(1), (b)(8) of this section and
4 shall attach certification from the institution's accreditation agency demonstrating that the
5 substantive change was made in accordance with the institution's accreditation standards, and
6 complies with the Act and this Division.

7 (1) The application for change of location for an institution approved by means of
8 accreditation shall be signed and dated by the signatory(ies) required by section 71390(d), and
9 each fact stated therein and each attachment thereto shall be declared to be true under penalty of
10 perjury, in the following form:

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

13 _____
14 (Date)

(Signature)"

15 13. Title 5, CCR, section 74006 states:

16 (a) An institution's annual fee is due within 30 days of the date on which the institution
17 originally receives its approval to operate and each year thereafter on the anniversary of the date
18 of the original approval.

19 (b) An institution shall pay its annual fee in addition to any other applicable fees.

20 (c) The annual institutional fee is based on the institution's annual revenue. For purposes of
21 this article, annual revenue is annual gross revenue.

22 14. Title 5, CCR, section 76120 states:

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

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1 (b) Unless a student has a separate agreement to repay the third party, a student whose
2 costs are paid to the institution by a third-party payer shall not pay the STRF assessment to the
3 qualifying institution.

4 (c) Except when an institution provides a 100% refund pursuant to section 94919(d) or
5 section 94920(b) of the Code, the assessment is non-refundable.

6 15. Title 5, CCR, section 76130 states:

7 (a) A qualifying institution shall collect the assessment from each student in an educational
8 program at the time it collects the first payment from or on behalf of the student at or after
9 enrollment. The assessment shall be collected for the entire period of enrollment, regardless of
10 whether the student pays the institutional charges in increments.

11 (b) A qualifying institution shall complete the STRF Assessment Reporting Form
12 (Rev. 2/10) and remit it with the STRF assessments collected from students to be received by the
13 Bureau no later than the last day of the month following the close of the quarter as follows:

14 (1) April 30 for the first quarter,

15 (2) July 31 for the second quarter,

16 (3) October 31 for the third quarter, and

17 (4) January 31 for the fourth quarter. If the due date falls on a Saturday, Sunday, or
18 State or federal holiday, the due date shall be extended to the next regular business day for the
19 Bureau.

20 (c) The STRF Assessment Reporting Form shall contain the following information:

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

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

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

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

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

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

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

10 (d) In the event of a school closure, any collected assessments shall be remitted to the
11 Bureau within seven days following the cessation of instruction.

12 (e) Submission of all prior reports and assessments required by this section is a condition of
13 renewal.

14 16. Title 5, CCR, section 74110 states, in pertinent part:

15 (a) The annual report required by Section 94934 of the Code shall include the information
16 required by section 94934 for all educational programs offered in the prior calendar year.

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

25 (c) An institution shall file its annual report by September 1st. The Bureau may extend the
26 period for filing if the institution demonstrates evidence of substantial need but in no case longer
27 than 60 days. The institution shall not change the date of its filing its annual report because of a
28 change in the fiscal year without the Bureau's approval.

1 (d) The annual report shall be electronically filed by submitting the information required by
2 section 94934 of the Code via the Bureau's website, electronically attaching, as directed, the
3 School Performance Fact Sheet and the school catalog. An institution without the capability to
4 submit the information electronically shall inform the Bureau not less than 45 days prior to the
5 date the information is required by subdivision (c), and receive direction or alternative means of
6 submission.

7 **FACTS**

8 17. On or about December 15, 2004, the former Bureau issued a Temporary Approval
9 to Operate to American States University (ASU). On June 30, 2007, the former Bureau was
10 sunsetted. At the time of the former Bureau's sunset, ASU had not obtained full approval to
11 operate. From July 1, 2007 to January 1, 2010, ASU continued to operate as there was no
12 regulatory oversight of private postsecondary institutions.

13 18. On or about January 1, 2010, the Act² became effective and the Bureau began
14 operations. While the Bureau reviewed ASU's application, ASU was allowed to continue
15 operating. The Act does not include a designation of "temporary approval," and ASU had not
16 been granted a full approval to operate prior to the sunset of the former Bureau. Respondent's
17 application to the former Bureau was deemed "pending" pursuant to CEC § 94809. Respondent
18 was allowed to continue operating, but was required to comply with the Act and to update the
19 information on its application within six months of the new application becoming available.

20 19. On or about October 7, 2010, the Bureau received an Application for Addition of a
21 Separate Branch (Application No. 23608) from Respondent. The Bureau approves an institution
22 as a whole. The addition of a separate branch could not be acted upon until the main branch
23 received full approval to operate.

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27 ² The Bureau for Private Postsecondary Education Act of 2009 (SB 48 and hereinafter,
28 "the Act") was signed into law. The Act, which became operative on January 1, 2010,
established the Bureau for Private Postsecondary Education.

1 20. On or about February 15, 2013, the Bureau sent a letter to Respondent requesting a
2 copy of its current School Catalog, School Performance Fact Sheet, Enrollment Agreement,
3 payments for all outstanding fees for the Student Tuition Recovery Fund, and the Annual Fee.

4 21. On or about April 16, 2013, the Bureau received a School Catalog, Enrollment
5 Agreement, and School Performance Fact Sheet from "American Central Education, Inc.," dba
6 American States University.

7 22. On or about April 11, 2016, the Bureau issued to Respondent a Notice of Denial of
8 Application for Approval to Operate. Having denied ASU full approval to operate, the Bureau
9 denied all pending applications for ASU, which included two applications for Change of Business
10 Organization/Control/Ownership, and one application for Addition of a Separate Branch.

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(Failure to Obtain Bureau Approval for Change of Location)**

13 23. Respondent's application is subject to denial under title 5, CCR, section 71500 and
14 Education Code section 94893, in that Respondent failed to comply with the Bureau's statutes
15 and regulations when ASU changed location without Bureau approval. The Bureau has attempted
16 to make contact with ASU at the location of record. ASU is not located at this address and there
17 was no forwarding address available. The Bureau has attempted to telephone ASU at the
18 telephone number of record, which belongs to a termite extermination company.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Failure to Pay the Student Tuition Recovery Fund (STRF) Fees and Annual Fee)**

21 24. Respondent's application is subject to denial under title 5, CCR, sections 74006,
22 76120, and 76130, and Education Code section 94930.5(d)(1)(A), in that Respondent failed to
23 comply with the Bureau's statutes and regulations in that ASU has failed to submit and pay the
24 following:

25 a. Student Tuition Recovery Fund (STRF) fees for: 2012-4th Quarter; 2013-1st, 2nd, 3rd
26 and 4th Quarters; and 2014-1st, 2nd, 3rd and 4th Quarters; and

27 b. Annual Fee for 2015.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Failure to Submit Annual Reports)

25. Respondent's application is subject to denial under title 5, CCR, section 74110 and Education Code section 94934, in that Respondent failed to comply with the Bureau's statutes and regulations in that ASU has failed to submit the Annual Reports for the years of 2012, 2013, and 2014.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Denying the application of American States University Corporation for an approval to operate; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/9/16



JOANNE WENZEL
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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