

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

In the Matter of the Application for Change in Educational Objectives of:

**QBICS Career College**, Respondent.

Case No. 31079

OAH No. 2019081023

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above entitled matter.

The Decision shall become effective \_\_\_\_\_.

DATED: \_\_\_\_\_

\_\_\_\_\_  
RYAN MARCROFT

Deputy Director, Legal Affairs

Department of Consumer Affairs

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BUREAU FOR PRIVATE POSTSECONDARY EDUCATION  
DEPARTMENT OF CONSUMER AFFAIRS  
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**In the Matter of the Application for Change in Educational  
Objectives of:**

**QBICS CAREER COLLEGE, Respondent**

**Case No. 31079**

**OAH No. 2019081023**

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, heard this matter on October 25, 2019, in Sacramento, California.

Stanton W. Lee, Deputy Attorney General, represented complainant the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, State of California.

Ehky G. Hernandez, Chief Executive Officer and sole owner, represented respondent QBICS Career College.

Evidence was received, the record was closed, and the matter was submitted for written decision on October 25, 2019.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. On March 21, 2018, Mr. Hernandez signed an Application for Change in Educational Objectives, which the Bureau received two weeks later. The application seeks the Bureau's approval for respondent to offer a computer training curriculum entitled "Habilidades y Tecnicas Esenciales" through "distance education."<sup>1</sup>

2. On May 8, 2018, Lalu "Drew" Saeteune, a Senior Education Specialist in the Bureau's Quality of Education Unit, sent Mr. Hernandez correspondence advising that the Bureau could not approve respondent's application based on an initial review of the documentation submitted. Mr. Saeteune raised the following concerns with the application: 1) the proposed curriculum did not appear to be postsecondary in nature; 2) a proper syllabus outlining the proposed curriculum was not provided; 3) the proposed curriculum's admission requirement that students have a sixth grade education is inconsistent with the curriculum's requirement that applicants have a high school diploma, GED, or the equivalent; 4) a curriculum vitae for the instructor of the proposed curriculum was not provided; 5) Bureau access to respondent's Learning Management System (LMS) was not provided for evaluation; and 6) respondent's proposed method for assessing potential students to determine if the curriculum would be appropriate for them was not provided.

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<sup>1</sup> "Distance education" is the "transmission of instruction to students at a location separate from the institution." (Ed. Code, § 94834.) In other words, the students are in one physical location while the instructor is in another. In this case, respondent proposes to provide instruction over the Internet.

3. On June 5 and 20, 2018, Mr. Hernandez responded to the concerns raised in Mr. Saeteune's correspondence. Specifically, he provided a syllabus, revised admission requirements, instructions on how to access respondent's assessment for prospective students, Bureau access to the LMS, and a copy of his curriculum vitae.

4. On September 6, 2018, Marina O'Connor, the Bureau's Licensing Chief, sent Mr. Hernandez correspondence denying respondent's application. She explained the Bureau determined the application was subject to denial pursuant to California Code of Regulations, title 5, section 71655, subdivisions (b), and (d)(1), because it was incomplete and failed to demonstrate that the proposed curriculum met minimum operating standards pursuant to specific regulations as follows:

a. Cal. Code Regs., tit. 5, § 71715, subd. (d)(1): the first two modules of the proposed curriculum are entitled "Introduction to Computers" and "Introduction to the Internet," and include skills a person needs to already possess in order to take a course over the Internet;

b. Cal. Code Regs., tit. 5, § 71715, subd. (d)(2): the adequacy of respondent's assessment for prospective students could not be determined because Bureau staff could not access the assessment by following Mr. Hernandez's instructions;

c. Cal. Code Regs., tit. 5, § 71715, subd. (d)(3): the syllabus provided did not include information about the minimum computer system requirements, additional required core software, LMS information, faculty and student interaction, and assignment or response times for the curriculum;

d. Cal. Code Regs., tit. 5, § 71715, subd. (d)(4): Bureau staff were able to switch back and forth between different modules of the curriculum and take quizzes for one module before completing the previous module. The LMS did not allow for

faculty and student interaction, and the syllabus did not provide information about such interaction;

e. Cal. Code Regs., tit. 5, § 71720, subd. (b): Mr. Hernandez's curriculum vitae did not identify his qualifications for teaching either the proposed curriculum or by distance education. Mr. Hernandez did not provide any certificates of training indicating his qualifications; and

f. Cal. Code Regs., tit. 5, § 71715: Bureau staff were unable to determine if respondent's LMS was adequate for the proposed curriculum.

Mr. Hernandez filed a timely appeal of the Bureau's denial.

### **Mr. Saeteune's Testimony**

5. Mr. Saeteune has seven years of experience reviewing curricula proposed by vocational schools in California to determine if a particular curriculum meets minimum operating standards. He initially reviewed proposed curricula as an Education Specialist, but has done so for the last two years as a Senior Education Specialist. His review entails ensuring the proposed curricula meets the minimum operating standards outlined in the Education Code and applicable regulations.

6. An application for change in educational objectives is the process through which a vocational school obtains the Bureau's approval to offer a new curriculum. For example, a school that offers a phlebotomy curriculum but wants to offer a nursing assistant curriculum must obtain the Bureau's approval of the newly-proposed curriculum before offering it to prospective students.

7. Mr. Saeteune reviewed respondent's application when the Bureau initially received it, and determined it was incomplete, included false or misleading

information, and indicated respondent did not have the ability to satisfy the minimum operating standards for the proposed curriculum. Therefore, he drafted the May 18, 2019 correspondence notifying Mr. Hernandez of the application's deficiencies, and giving him an opportunity to correct the deficiencies before a recommendation was made to the Bureau that the application be denied.

8. Mr. Hernandez provided additional evidence in response to the May 18, 2019 correspondence and the subsequent letter of denial up to the date of hearing, but deficiencies in the application still remained. At hearing, Mr. Saeteune discussed the following deficiencies with respondent's application:

a. Lack of suitability for distance education. The first two modules of the proposed curriculum include basic, fundamental information about what a computer is and what the Internet is, respectively. But a person must already be versed in the nature of computers and the Internet in order to access the course over the Internet. Additionally, it makes no sense to instruct students on the fundamentals of a computer before instructing them on the fundamentals of the Internet when instruction is provided over the Internet.

b. Evaluation of pre-enrollment assessment of students. A vocational school offering a course through distance education must have a tool for evaluating a prospective student to determine if he has the skills and competency to be successful in a distance education course. Mr. Saeteune completed the assessment twice, scored a "10/10," and was determined to be suitable for the curriculum both times. However, many of the questions asked did not correlate with a prospective student's ability to use a computer or suitability for distance education. The assessment tool also provided no scale for measuring a prospective student's ability. Mr. Saeteune noted

that regardless of the answers he provided, he was determined to be suitable for the proposed curriculum.

c. Syllabus. The syllabus indicates that the proposed curriculum includes a laptop computer, but does not specify whether the computer is included in the cost of the course. Additionally, the syllabus indicates students will receive lifetime access to a Microsoft Office 365 account, but does not identify whether any charges are associated with that account. The syllabus identifies Skype for business application as the manner in which the teacher may communicate with the student, but contains no information about how to download the program or any fees associated with using it.<sup>2</sup>

d. The curriculum vitae and certificates of training Mr. Hernandez submitted did not show he has the necessary training and experience to teach the proposed curriculum or teach by distance education. Additionally, some of the certificates of training were expired, and another was issued by an entity that shares the same address as respondent. Mr. Saeteune questioned the authenticity of that certificate. Additionally, one certificate indicated Mr. Hernandez completed 10 units in Office 365 Applications, but Mr. Saeteune questioned whether Mr. Hernandez actually received that amount of training. Mr. Saeteune explained that one semester unit is the equivalent of 15 hours of instruction, and one quarter unit is the equivalent of 10 hours. He opined that Mr. Hernandez did not have sufficient time to complete that amount of training in the timeframe indicated on the certificate.

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<sup>2</sup> Mr. Saeteune did not discuss the alleged ground for denial pursuant to California Code of Regulations, title 5, section 71715, subdivision (d)(4), based on faculty and student interaction.

e. Learning Management System. Mr. Hernandez initially did not provide any information about respondent's LMS with the application. He provided Mr. Saeteune access to the LMS in response to the September 6, 2018 deficiency notice, but the LMS was written in Spanish when Mr. Saeteune logged in on February 13, 2019, and he could not examine and assess it. Mr. Saeteune was unable to even gain entry to the LMS when he tried again eight months later. As of the date of hearing, the LMS was still written in Spanish.

### **Respondent's Evidence**

9. Mr. Hernandez's presentation of evidence was indeterminate. He introduced documents, but provided little to no discussion or explanation about them, leaving their significance unclear.

10. Mr. Hernandez asserted that the proposed curriculum will not be taught in "real time," but will be taught over the Internet. A prospective student interested in the curriculum makes contact with respondent by telephone, email, or through its website to request enrollment. Respondent will then create an email account for the student to access the LMS. The assessment may be accessed through the LMS, and consists of the prospective student reading a statement about distance education and taking a quiz about using computers, navigating applications, and navigating the Internet. If the student receives a passing score, he will receive a prompt indicating he is a suitable candidate for the proposed curriculum. If he does not receive a passing score, he will receive a prompt indicating he is not a suitable candidate.

11. Mr. Hernandez introduced certificates of completion indicating he received four hours of training in designing and developing online courses and four hours of training in teaching online courses. He has worked as an instructor at four



different colleges, and opined that the only difference between teaching a course over the Internet versus in a classroom is that when instruction is given over the Internet, the students and instructor are not present in the same location. He conceded, however, that students cannot: 1) ask questions and receive an immediate response, or 2) get immediate assistance when struggling with the curriculum over the Internet.

12. Mr. Hernandez agreed the LMS was still accessible only in Spanish as of the date of hearing, but explained that he had acted as a Spanish/English interpreter so Mr. Saeteune could access and navigate the system prior to hearing. Mr. Hernandez admitted respondent must be authorized by the Bureau to provide instruction in Spanish, yet respondent has not received such authorization.

## **Discussion**

13. Respondent has the burden of proving the proposed curriculum meets the minimum operating standards outlined in the California Code of Regulations. Respondent failed to do so. Mr. Saeteune's explanation of how the proposed curriculum does not meet the minimum operating standards was credible and persuasive. Mr. Hernandez produced little evidence with the application and in response to the May 8, 2018 correspondence to contradict Mr. Saeteune's determinations.

14. Mr. Hernandez's testimony, on the other hand, was not persuasive. He had difficulty answering questions directly and at times provided disjointed testimony. His documents either did not support his testimony or were not adequately discussed or explained. His opinion regarding the purportedly scant difference between teaching in a classroom versus teaching over the Internet demonstrated a fundamental

misunderstanding of teaching in these distinct environments, and established he is not qualified to teach by distance education.

## **LEGAL CONCLUSIONS**

### **Applicable Burden/Standard of Proof**

1. Respondent has the burden of proving the proposed curriculum satisfies the minimum operating standards outlined in California Code of Regulations, title 5, section 71715, and must do so by a preponderance of the evidence. (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476.) This evidentiary standard requires respondent to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, respondent needs to prove it is more likely than not the proposed curriculum satisfies the minimum operating standards. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

### **Applicable Law**

2. No private postsecondary educational institution may conduct business in California without first obtaining the Bureau's approval. (Ed. Code, § 94886.) Once approved, an institution may not "make a substantive change to its approval to operate" without first obtaining the Bureau's approval. (Ed. Code, § 94893.)

3. "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," constitutes a substantive change. (Ed. Code, § 94894, subd. (a).)

4. "The Bureau shall adopt by regulation minimum operating standards for an institution." (Ed. Code, § 94885, subd. (a).) California Code of Regulations, title 5, section 71715, subdivision (d), provides:

Distance education as defined in section 94834 of the Code, does not require the physical presence of students and faculty at the same location but provides for interaction between students and faculty by such means as telecommunication, correspondence, electronic and computer augmented educational services, postal service, and facsimile transmission. In addition to the other requirements of this chapter and the Act, an institution offering distance education shall:

(1) ensure that the educational program offered through distance education is appropriate for delivery through distance education methods;

(2) assess each student, prior to admission, in order to determine whether each student has the skills and competencies to succeed in a distance education environment;

(3) ensure that the materials and programs are current, well organized, designed by faculty competent in distance

education techniques and delivered using readily available, reliable technology;

(4) provide for meaningful interaction with faculty who are qualified to teach using distance education methods . . . .

5. For educational programs not leading to a degree,

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.

(Cal. Code Regs., tit. 5, § 71720, subd. (b)(1).)

### **Cause for Denial**

6. An application to make a substantive change to an approval to operate may be denied if it is incomplete. (Cal. Code Regs., tit. 5, § 71655, subd. (b).) While respondent's initial application package did not include a proper syllabus, Mr. Hernandez's curriculum vitae, access to the LMS, or access to the pre-enrollment assessment, such information was provided in response to Mr. Saeteune's May 8, 2018 correspondence. Therefore, respondent's Application for Change in Educational

Objectives was not "incomplete," and no cause exists to deny the application pursuant to California Code of Regulations, title 5, section 71655, subdivision (b).

7. An application also may be denied for the "failure to establish that the proposed change will meet the institutional operating standards set forth in Chapter 3 of this Division." (Cal. Code Regs., tit. 5, § 71655, subd. (d)(1).) As set forth in Findings 8 through 14, respondent failed to introduce sufficient evidence that the proposed curriculum meets the minimum operating standards outlined in California Code of Regulations, title 5, sections 71715, subdivision (d)(1) through (4), and 71720, subdivision (b)(1). Therefore, cause exists to deny respondent's Application for Change in Educational Objectives pursuant to California Code of Regulations, title 5, section 71655, subdivision (d)(1), as that statute relates to those regulations.

## **Conclusion**

8. Cause exists to deny respondent's Application for Change in Educational Objectives for the reasons explained in Legal Conclusion 7. The fact that respondent proposes to have an unqualified instructor teach a course about what a computer is and the Internet is over the Internet demonstrates why respondent should not be allowed to provide the proposed curriculum. The application should be denied.

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## ORDER

Respondent QBICS Career College's March 21, 2018 Application for Change in Educational Objectives is DENIED.

DATE: November 14, 2019

DocuSigned by:  
*Coren D. Wong*  
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COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings