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

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

Case No. 1001630

13 **PILOT TRUCKING SCHOOL, RODRIGO**
14 **MARTINEZ, OWNER**

STATEMENT OF ISSUES

15 **Renewal of Approval to Operate and Offer**
16 **Educational Programs for Non-Accredited**
17 **Institutions**

School Code: 3604291

Respondent.

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about May 29, 2012, the Bureau for Private Postsecondary Education received
25 an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-
26 Accredited Institutions from Pilot Trucking School with Rodrigo Martinez as owner
27 (Respondent). On or about May 23, 2012, Rodrigo Martinez certified under penalty of perjury to

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1 the truthfulness of all statements, answers, and representations in the application. The Bureau
2 denied the application on March 4, 2016.

3 **JURISDICTION**

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

8 **STATUTORY PROVISIONS**

9 4. Section 94891 of the Education Code states in pertinent part:

10 "(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its
11 continued capacity to meet the minimum operating standards."

12 5. Section 94910 of the Education Code states:

13 Except as provided in subdivision (d) of section 94909 and section 94910.5, prior to
14 enrollment, an institution shall provide a prospective student with a School Performance Fact
15 Sheet containing, at a minimum, the following information, as it relates to the educational
16 program:

17 "(f) All of the following:

18 . . .

19 "(2) A statement informing the reader of where he or she may obtain from the institution a
20 list of the employment positions determined to be within the field for which a student received
21 education and training for the calculation of job placement rates as required by subdivision (b).

22 "(3) A statement informing the reader of where he or she may obtain from the institution a
23 list of the objective sources of information used to substantiate the salary disclosure as required
24 by subdivision (d).

25 "(g) The following statements:

26 "(1) "This fact sheet is filed with the Bureau for Private Postsecondary Education.
27 Regardless of any information you may have relating to completion rates, placement rates,

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1 starting salaries, or license exam passage rates, this fact sheet contains the information as
2 calculated pursuant to state law."

3 "(2) "Any questions a student may have regarding this fact sheet that have not been
4 satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary
5 Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and
6 fax numbers).""

7 6. Section 94911 of the Education Code states in pertinent part:

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

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10 "(k) The following statement above the space for the student's signature:

11 "I understand that this is a legally binding contract. My signature below certifies that I have
12 read, understood, and agreed to my rights and responsibilities, and that the institution's
13 cancellation and refund policies have been clearly explained to me."

14 7. Business and Professions Code of 22 defines the term "board" to include "bureau."

15 8. Education Code section 94885¹ states:

16 (a) The bureau shall adopt by regulation minimum operating standards for an institution
17 that shall reasonably ensure that all of the following occur:

18 (1) The content of each educational program can achieve its stated objective.

19 (2) The institution maintains specific written standards for student admissions for each
20 educational program and those standards are related to the particular educational program.

21 (3) The facilities, instructional equipment, and materials are sufficient to enable students to
22 achieve the educational program's goals.

23 (4) The institution maintains a withdrawal policy and provides refunds.

24 (5) The directors, administrators, and faculty are properly qualified.

25 (6) The institution is financially sound and capable of fulfilling its commitments to
26 students.

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28 ¹ California Private Postsecondary Education Act of 2009, Ed. Code §§ 94800 et seq.

1 (7) That, upon satisfactory completion of an educational program, the institution gives
2 students a document signifying the degree or diploma awarded.

3 (8) Adequate records and standard transcripts are maintained and are available to students.

4 (9) The institution is maintained and operated in compliance with this chapter and all other
5 applicable ordinances and laws.

6 (b) Except as provided in Section 94855.1, an institution offering a degree must satisfy one
7 of the following requirements:

8 (i) Accreditation by an accrediting agency recognized by the United States Department of
9 Education, with the scope of that accreditation covering the offering of at least one degree
10 program by the institution.

11 (ii) An accreditation plan, approved by the bureau, for the institution to become fully
12 accredited within five years of the bureau's issuance of a provisional approval to operate to the
13 institution. The provisional approval to operate to an unaccredited degree-offering institution
14 shall be in compliance with Section 94885.5.

15 9. Education Code Section 94886 states:

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

20 10. Education Code Section 94887 states:

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

26 REGULATORY PROVISIONS

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

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

3 12. Title 5, CCR, section 71475 states in pertinent part:

4 "(e) The institution shall submit at the time it applies for renewal current financial
5 statements that meet the requirements of section 74115 as follows: (1) for an institution with
6 annual gross revenues of \$ 500,000 and over, statements shall be audited; (2) for an institution
7 with annual gross revenues less than \$ 500,000, statements shall be reviewed."

8 13. Title 5, CCR, section 74112 states in pertinent part:

9 "(d) Completion Rates. Reporting of completion rates for an institution's Annual Report
10 and Performance Fact Sheet shall include, for each educational program, the number of students
11 who began program as defined in subdivision (b), the number of students available for
12 graduation, number of graduates, and completion rate(s). An optional column may be added to
13 include completion rate data for students completing within 101-150% of the published program
14 length. For an institution reporting completion data pursuant to section 94929(b) of the Code,
15 completion data shall be separately reported for each program. The Performance Fact Sheet shall
16 disclose, if true, that the completion data is being reported for students completing within 150%
17 of the published program length, and that data is not being separately reported for students
18 completing the program within 100% of the published program length.

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

22 Completion Rates (includes data for the two calendar years prior to reporting)

23 Number of Students

24 Calendar Students Who Available for Completion

25 Year Began Program1 Graduation2 Graduates3 Rate4

26 20XX 100 98 70 71%

27 20XY 80 80 55 69%

28 Students Completing After Published Program Length -- 150% Completion Rate

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Name of Educational Program (Program Length)

Calendar Year	Number of Students Who Began Program ¹	Students Available for Graduation ²	150% Graduates ⁵	Completion Rate ⁶
20XX	100	98	25	26%
20XY	80	80	23	29%

20XX	100	98	25	26%
20XY	80	80	23	29%

1 "Number of Students Who Began Program" is the number of students who began the program who are scheduled to complete the program within the reporting calendar year.

2 "Students available for graduation" is the number of students who began program minus the number of "Students unavailable for graduation," which means those students who have died, been incarcerated, or called to active military duty.

3 "Graduates" is the number of students who completed the program within 100% of the published program length.

4 "Completion Rate" is the number of Graduates divided by the Number of Students Available for Graduation.

5 "150% Graduates" is the number of students who completed the program within 101-150% of the published program length.

6 "150% Completion Rate" is the number of students who completed the program in the reported calendar year within 101-150% of the published program length divided by the Number of Students Available for Graduation in the published program length period.

(e) Placement Rates.

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(2) Placement is measured six months from the graduation date of each student. Reporting of placement rates shall include for each educational program: the number of students who began

1 the program, the number of graduates as defined in subdivision (b), graduates available for
2 employment, graduates employed in the field and placement rate(s).

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

12 Reporting of license examination passage rates for the Annual Report and the Performance
13 Fact Sheet shall include, for each educational program: the number of students completing the
14 program within 150% of published program length in the reported year, the number of
15 documented graduates who passed the first examination, number of documented graduates who
16 failed the first examination, the number of graduates for whom data is not available. An optional
17 column may be added to separately report licensing examination data for students who take and
18 pass the exam after failing initially. The Annual Report shall also include a description of the
19 processes for attempting to contact those students.

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

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

25 (g) Salary and Wage Information.

26 All Salary and Wage Information shall be reported to the Bureau pursuant to section
27 94929.5(c) of the Code and, if required by section 94910(d) of the Code, shall be
28 included in the Performance Fact Sheet, for each educational program, in a format
substantially similar to the chart below, including the footnoted information (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)

*Annual Salary and Wages Reported by Graduates
Employed in the Field³*

Calendar Year	Available for Employment ¹	Employed in the Field ²					Students Not Reporting Salary
		\$15,000.00 - \$20,000.00	\$20,001.00 - \$25,000.00	\$25,001.00 - \$30,000.00	\$30,001.00 - \$35,000.00	\$35,000.00 - Reporting	
20XX	100	70	5	40	6	3	16
20XY	80	55	5	7	3	5	35

¹ "Graduates available for employment" means the number of graduates minus the number of graduates unavailable for employment. Graduates unavailable for employment means 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.

² "Graduates employed in the field" means graduates who are gainfully employed within six months of graduation in a position for which the skills obtained through the education and training provided by the institution are required or provided a significant advantage to the graduate in obtaining the position.

³ Salary is as reported by the student. Not all graduates reported salary...."

14. Title 5, CCR, section 74115 states in pertinent part:

(b) A set of financial statements shall contain, at a minimum, a balance sheet, an income statement, and a cash flow statement, and the preparation of financial statements, shall comply with all of the following:

(1) Audited and reviewed financial statements shall be conducted and prepared in accordance with the generally accepted accounting principles established by the American Institute of Certified Public Accountants by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution.

15. Title 5, CCR, section 71745 states:

1 “(a) The institution shall document that it has at all times sufficient assets and financial
2 resources to do all of the following:

3 (1) Provide all of the educational programs that the institution represented it would
4 provide.

5 (2) Ensure that all students admitted to its educational programs have a reasonable
6 opportunity to complete the programs and obtain their degrees or diplomas.

7 (3) Maintain the minimum standards required by the Act and this chapter.

8 (4) Pay timely refunds as required by Article 13 of the Act.

9 (5) Pay all operating expenses due within 30 days.

10 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
11 end of the most recent fiscal year when using generally accepted accounting principles, or for an
12 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
13 composite score requirements of the U.S. Department of Education. For the purposes of this
14 section, current assets does not include: intangible assets, including goodwill, going concern
15 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
16 returnable deposits, or state or federal grant or loan funds that are not the property of the
17 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
18 be accounted for in accordance with general accepted accounting principles.

19 (b) At an institution's request, the Bureau may consider the financial resources of a parent
20 company if the parent company, as defined by section 94853 of the Code, meets and maintains all
21 of the following provisions:

22 (1) consents in writing to be sued in California;

23 (2) consents in writing to be subject to the jurisdiction of the Bureau with respect to the
24 institution's regulation under the Act and this Chapter;

25 (3) designates and maintains an agent for service of process, consistent with section 74190;

26 (4) agrees in writing to pay any refund, claim, penalty, or judgment that the institution is
27 obligated to pay; and

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1 (5) files financial reports, maintains financial records, and consents in writing to permit the
2 inspection and copying of financial records to the same extent as is required of the institution.

3 (c) An institution shall provide to the Bureau its most current financial statements upon
4 request.”

5 16. Title 5, CCR, section 71810 states in pertinent part:

6 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
7 all of the following:

8 (13) Housing information including all of the following:

9 (B) The availability of housing located reasonably near the institution's facilities and an
10 estimation of the approximate cost or range of cost of the housing”

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 (Failed to Meet Minimum Operating Standards - Exemplars of Student Agreements)

13 17. Respondent's application is subject to denial under Education Code section 94911(k)
14 in that Respondent failed to provide a compliant Student Enrollment Agreement that contained
15 the required statement, above the space for the student's signature, that states: "I understand that
16 this is a legally binding contract. My signature below certifies that I have read, understood, and
17 agreed to my rights and responsibilities, and that the institution's cancellation and refund policies
18 have been clearly explained to me."

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 (Failed to Meet Minimum Operating Standards - Financial Resources and Statements)

21 18. Respondent's application is subject to denial under Education Code section 94887 in
22 conjunction with CCR title 5, sections 71475 subdivision (e), 74115 subdivision (b)(1) and 71745
23 in that Respondent failed to provide compliant financial statements for the periods ending
24 December 31, 2014 and May 31, 2015, as required.

25 **THIRD CAUSE FOR DENIAL OF APPLICATION**

26 (Failed to Meet Minimum Operating Standards - Catalog)

27 19. Respondent's application is subject to denial under Education Code section 94887 in
28 conjunction with CCR title 5, section 71810 subdivision (b)(13)(B) in that Respondent's catalog

1 did not include information regarding the availability of housing located reasonably near the
2 institution's facilities and an estimation of the approximate cost or range of cost of the housing.

3 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

4 (Failed to Meet Minimum Operating Standards -School Performance Fact Sheet)

5 20. Respondent's application is subject to denial under Education Code sections 94887
6 and 94910 subdivisions (f)(2)(f)(3), (g)(1)(g)(2) and CCR title 5, section 74112 subdivision
7 (d),(e)(2),(f),(g) in that the School Performance Fact sheet failed to contain the required
8 information as follows:

9 21. The School Performance Fact Sheet did not provide the completion rates for each of
10 the educational programs separately.

11 22. The School Performance Fact Sheet did not provide the placements rates for each of the
12 educational programs separately.

13 23. The School Performance Fact Sheet did not provide the license examination passage rates for
14 each of the educational programs separately.

15 24. The School Performance Fact Sheet did not provide the Salary and Wage information for
16 each of the educational programs separately. Additionally, the Wage and Salary information was not
17 provided for each of the two calendar years separately.

18 25. The School Performance Fact Sheet did not contain a statement informing the reader where
19 he or she may obtain from the institution a list of the employment positions determined to be within the
20 field for which a student received education and training for the calculation of job placement rates.

21 26. The School Performance Fact Sheet did not contain a statement informing the reader of
22 where he or she may obtain from the institution a list of the objective sources of information used to
23 substantiate the salary disclosure.

24 27. The School Performance Fact Sheet did not contain the required statement: "This fact sheet is
25 filed with the Bureau for Private Postsecondary Education. Regardless of any information you may have
26 relating to completion rates, placement rates, starting salaries, or license exam passage rates, this fact sheet
27 contains the information as calculated pursuant to state law."
28

