

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

In the Matter of the Citation Against:

**APPEAR MEDIA, INC., Owner,**

**BRENTWOOD UNIVERSITY, Respondent.**

Citation No. 1819073

OAH No. 2019080491

**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 July 10, 2020.

DATED: May 29, 2020

“Original Signature on File”

RYAN MARCROFT

Deputy Director, Legal Affairs

Department of Consumer Affairs

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

**In the Matter of Citation Against:**

**APPEAR MEDIA, INC., Owner BRENTWOOD UNIVERSITY,  
Respondent**

**Citation No. 1819073**

**OAH No. 2019080491**

**PROPOSED DECISION**

Russel T. Little, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 13, 2019, in San Diego, California.

Shannon M. Brubaker, Deputy Attorney General, Department of Justice, represented complainant Christina Villanueva, Discipline Manager, Bureau of Private Postsecondary Education, Department of Consumer Affairs, State of California (bureau).

Marc Pakbaz was present on behalf of respondent.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 13, 2020.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On August 11, 2016, the bureau granted respondent approval to operate Brentwood University as a non-accredited institution.

2. On January 8, 2019, complainant issued to respondent citation: order of abatement number 1819073, listing one violation as follows:

The institution failed to pay its annual fee for the calendar years 2017 and 2018, for its California campus, in violation of California Education Code, subdivision (d)(1)(A). In addition to seeking payment of the annual fees, the citation also assessed a late payment penalty fee of 35 percent on the amount owing. The citation did not impose an administrative fine.

3. Respondent timely appealed the citation. This hearing ensued.

### **Testimony of Michael Ojeda**

4. Michael Ojeda testified at the hearing. The following is a summary of his testimony.

5. Mr. Ojeda is a Staff Services Analyst for the bureau. He has worked for the bureau for the past ten years. Mr. Ojeda currently works in the annual report unit. His responsibilities include reviewing annual reports submitted by each institution; determining the annual fee; and, monitoring annual fee payments.

Mr. Ojeda reviewed bureau's records and determined respondent's main campus was located at 15415 Alton Parkway, #450, Irvine, California. He concluded that respondent is a California institution required to pay an annual fee.

Each institution and each branch of the institution is required to pay an annual fee. The billing date is determined by the institution's approval month. The annual fee is equal to a percentage of the institution's annual gross revenue. Beginning January 1, 2017, an institution's annual fee equaled .45 percent of the annual gross revenue derived from students in California, but not less than \$2,500 or more than \$60,000.

Bureau's form invoice for annual fee includes a fillable calculator to determine the amount of the fee. The institution inserts its annual gross revenue, which is the income from California students over the fiscal year, and applies the multiplier of .0045 to calculate the annual fee. The invoice also notes a minimum \$2,500 and a maximum \$60,000 for the annual fee.

In response to bureau's yearly invoice, each institution must submit its calculation for the annual fee owing for that year and pay the fee.

If the annual fee payment is not received within 30 days or the due date, the institution incurs a 25 percent penalty fee and if the payment is not received within 90 days of the due date, the institution incurs a 35 percent penalty fee.

Respondent's annual fee is due August 1st each year. On July 3, 2017, bureau notified respondent by letter that its 2017 annual fee was due on August 1, 2017. On September 15, 2017, bureau notified respondent by letter that its 2017 annual fee had not been received and the annual fee would be 90-days delinquent on October 30, 2017.

Mr. Ojeda reviewed respondent's 2016 annual report in determining its 2017 annual fee would be the minimum of \$2,500. Respondent did not pay the 2017 annual fee of \$2,500 or the late payment penalty fee.

On July 17, 2018, bureau notified respondent by letter that its 2018 annual fee of \$2,500 was due on August 1, 2018. On September 17, 2018, bureau notified respondent by letter that its 2018 annual fee had not been received and the annual fee would be 90-days delinquent on October 30, 2018.

Mr. Ojeda reviewed respondent's 2017 annual report in determining its 2018 annual fee would be the minimum of \$2,500. Respondent did not pay the 2018 annual fee of \$2,500 or the late payment penalty fee.

On July 13, 2018, bureau received a partial payment of \$284.87 from respondent. Respondent calculated its annual gross revenue derived from its California students and applied the .0045 multiplier. The resulting amount equaled \$284.87. Respondent did not pay the required minimum of \$2,500.

### **Testimony of Marc Pakbaz**

6. Marc Pakbaz testified at the hearing. The following is a summary of his testimony.

7. Mr. Pakbaz is the owner of respondent. On December 18, 2015, he signed respondent's application for approval to operate as a non-accredited institution (application). He submitted the application to bureau on December 21, 2015. On the application, Mr. Pakbaz is listed as respondent's contact person, owner and agent for service of process.

The application listed the "Physical Address of Main Campus:" at 8 Whatney #103, Irvine, CA 92618. On March 17, 2016, Mr. Pakbaz notified bureau by letter that the location of the main campus had changed to 15615 Alton Parkway #450, Irvine California. He assured bureau that documents, catalog and the enrollment agreement had been revised to reflect the change in campus location.

Respondent is an online university. It does not provide an in-classroom education. The campus address listed with the bureau consists of respondent's business office. Most of its students reside out of California and no student comes to its business offices for classes. Mr. Pakbaz concluded that online institutions that have no real campus are not required to pay an annual fee. He believes bureau has not considered the future of education being institutions without a campus. No evidence indicated that Mr. Pakbaz had ever expressed that position to the bureau.

Mr. Pakbaz acknowledged that respondent's website offers on-campus classes. He claimed that on-campus classes are not part of the current curriculum.

Mr. Pakbaz was upset at having received a citation and believed the annual fees demanded were excessive. There were no minimum annual fees in 2016 when respondent received its approval to operate from bureau. He operates respondent to make a profit. Mr. Pakbaz believes his investment would no longer be a sound business decision should he be required to pay the minimum annual fee of \$2,500.

## LEGAL CONCLUSIONS

1. The bureau operates pursuant to the California Private Postsecondary Education Act of 2009 (Act) (Ed. Code, § 94800, et seq.) and its regulations (Cal. Code Regs., tit. 5, § 71100, et seq.).<sup>1</sup>

### **Burden and Standard of Proof**

2. The burden of proof is on complainant. Because the citations at issue in this disciplinary matter cannot result in an order that suspends, limits, or revokes respondent's registration or licenses, the preponderance of the evidence standard applies. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that a fact finder is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

### **Authority to Issue Citations**

3. Education Code, section 94936 provides 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

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<sup>1</sup> All future references to "regulation" are to California Code of Regulations, Title

finding that the institution has committed a violation of this chapter or that the institution has failed to comply with a notice to comply pursuant to Section 94935; the bureau shall issue a citation to an institution for violation of this chapter, or regulations adopted pursuant to this chapter.

(b) The citation may contain any of the following:

(1) An order of abatement that may require an institution to demonstrate how future compliance with this chapter or regulations adopted pursuant to this chapter will be accomplished.

4. Regulation 75020, subdivision (a), authorizes the bureau to issue citations to approved private, postsecondary institutions that have committed any acts or omissions in violation of the Act or any regulation adopted pursuant thereto.

### **Relevant Statutes and Regulations**

5. Education Code, section 94930.5 provides in part:

Subject to Section 94930, an institution shall remit to the bureau for deposit in the Private Postsecondary Education Administration Fund the following fees, in accordance with the following schedule:

[1] . . . [1]

(d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c), inclusive, each institution that is



approved to operate pursuant to this chapter shall remit both of the following:

(A) An annual fee for each campus designated by the institution as a main campus location in California, in an amount equal to 0.45 percent of the campus' total gross revenue derived from students in California, but not to be less than two thousand five hundred dollars (\$2,500) and not to exceed sixty thousand dollars (\$60,000).

(B) An annual campus fee for each branch of the institution in an amount equal to 0.45 percent of the branch's total gross revenue derived from students in California, but not to be less than two thousand five hundred dollars (\$2,500) and not to exceed sixty thousand dollars (\$60,000). . . .

.7. Regulation 74006 provides:

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

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

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

## **Cause Exists to Affirm the Citation**

8. A preponderance of evidence established a violation of Education Code section 94930.5, subdivision (d)(1)(A), and Regulation 74006. Respondent's application and subsequent letters from its owner to the bureau designate its main campus location in Irvine, California. Respondent offers online or on-campus programs on its website. Although Mr. Pakbaz argued that respondent does not have a traditional campus, respondent clearly offers its facilities to students. Respondent is required to pay the minimum annual fee of \$2,500 for 2017 and 2018. Respondent shall be given credit for the partial payment of \$284.87.

The late payment penalty fee of 35 percent is excessive. Respondent maintained a good faith belief that because it generated no income from California students in 2016 and very little in 2017, no annual fee would be required for 2017. It also made a good-faith partial payment in 2018 towards its 2018 annual fee.

The minimum annual fee requirement of \$2,500 annual fee became effective January 1, 2017, which was shortly before respondent's 2017 annual fee became due. In this instance, no late payment penalty fee is appropriate for 2017. A 10 percent late payment penalty fee of \$250 is appropriate for 2018.

## **Order of Abatement**

9. Under Education Code, section 94936, subdivision (b)(1), the bureau is authorized to issue an order of abatement that may require an institution to demonstrate how future compliance with the Act or regulations will be accomplished. The order of abatement contained in the citation, that respondent pay the 2017 and 2018 annual fees and late payment penalty fee as modified, is reasonable.

## ORDER

Citation No. 1819073 issued to Appeal Media Inc., Owner Brentwood University is affirmed as modified. Respondent is ordered to pay the annual fee of \$2,500 for calendar year 2017 and \$2,500 for calendar year 2018, with a credit of \$284.87 for payment received, and a late payment penalty fee of \$250 within 30 days of the effective date of this decision.

Respondent must submit evidence of compliance with the order of abatement listed in the citation as modified herein within 30 days of the effective date of this decision.

DATE: February 10, 2020

DocuSigned by:  
*Russel T. Little*  
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RUSSEL T. LITTLE

Administrative Law Judge

Office of Administrative Hearings