DEPARTMENT OF CONSUMER AFFIARS

STATE OF CALIFORNIA

In the Matter of the Emergency Decision Against:

UNIVERSITY OF ANTELOPE VALLEY

Appellant.

DECISION

INTRODUCTION

To protect students, prevent misrepresentations to the public, and prevent loss of student and public funds, on February 29, 2024, the Bureau for Private Postsecondary Education (the Bureau) issued an Emergency Decision (Decision) against the University of Antelope Valley (the University), directing it to cease enrolling new students, cease instruction, cease collecting tuition and fees, and cease operating degree programs.

The University timely requested an opportunity to be heard before the Director of the Department of Consumer Affairs, and the matter was heard on March 6, 2024, before the Director's designee, Deputy Director Ryan Marcroft. Interim President Timothy Campagna and Dr. Kristal Andersen appeared on behalf of the University. Chief Executive Officer Roger Hamilton appeared on behalf of Genius Group, the company that owns the University. The Bureau's General Counsel Linh Nguyen and Special Investigator Mathew Wiggins appeared on behalf of the Bureau. At the conclusion of the hearing, the matter was submitted for a final decision.

After considering the evidence and argument submitted by the University and the Bureau, the Decision is AFFIRMED.

FACTUAL AND PROCEDURAL BACKGROUND

I. THE UNIVERSITY'S APPROVAL TO OPERATE EDUCATIONAL PROGRAMS

The University is approved to operate approximately 35 educational programs, including 13 degree-granting programs. Student enrollment at the University declined steadily for years, but the current status of student enrollment in its approved programs is unclear. As of January 31, 2024, the University reported approximately 426 students enrolled in 19 programs, including seven "On-site" certificate programs, two "On-site" degree programs, seven "On-site, Distance" degree programs, and three "Distance" degree programs. (Exhibit 23, pp. 2-3.) Based on a substantive change proposal the University supplied to the Bureau, 219 students were enrolled in "On-site" programs, 188 students in "On-site, Distance" programs, and 19 students in "Distance" only programs. (*Ibid.*) And according to the Bureau, 175 students were enrolled in on-site certificate programs as of February 21, 2023. (Wiggins Decl., p. 11.)

II. THE UNIVERSITY'S FINANCIAL CONDITION DETERIORATED RAPIDLY

In 2023, the United States Department of Education reviewed the University's Title IV student aid programs and found 20 separate areas of noncompliance, including that the school: (1) incorrectly determined the number of clock hours per academic year for four years and overpaid student aid funds; (2) failed to properly apportion charges and determine student credit balances; (3) failed to accurately calculate the amount of funds owed the Title IV program; (4) failed to maintain adequate student account ledgers; (5) failed to timely pay credit balances owed to students; (5) overpaid federal grant funds; and (6) improperly disbursed Title IV funds. (Exhibit 19, pp. 4, 13, 15, 19, 21, 23, & 41.) The University "does not dispute" <u>any</u> of the findings of financial mismanagement. (*Ibid.*)

In June 2023, an audit was completed of the University's 2022 financial statements. (Exhibit 5.) State regulations require institutions that receive federal Title

IV student aid to "meet the composite score requirements of the U.S. Department of Education." (Cal. Code Regs., tit. 5, § 71745, subd. (a)(6).) And pursuant to federal regulations, an institution meets the requirement and is considered "financially responsible" if its "Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5 . . . ." (34 C.F.R. § 668.171(b)(1).)

The University's composite score was .7, within a range that "is not considered financially responsible . . . ." (Exhibit 5, pp. 23, 27.) Thus, the University's auditors concluded that, "[t]he Institution did not meet the requirement set forth by the Federal Regulation for the year ended December 31, 2022 . . . ." (*Id.* at p. 21.)

Separately, on August 22, 2023, the University's accreditor, the Western Association of Schools and Colleges (WASC), placed the University on probation status because of "serious issues of noncompliance" with WASC financial accrediting standards. (Exhibit 1, p. 2.) In short, the University "experienced significant financial problems," with operating expenses exceeding revenue, and in being overly dependent on "substantial infusions of cash" from Genius Group, which itself faced "serious financial problems . . . ." (*Ibid.*)

Four months later, on December 12, 2023, the Department of Education determined the University failed to meet standards of financial responsibility and, consequently, it restricted the University's access to federal funds by transferring it to a restrictive federal student aid reimbursement process called "Heightened Cash Monitoring 2" (HCM2). (Exhibit 7, p. 1.) Under HCM2, the University must first expend its own funds to federally eligible students, and only "[w]hen the institution has demonstrated that it has expended these funds in accordance with Title IV requirements, the Department will reimburse the institution . . . ." (Exhibit 7, p. 3.) According to the University's audited financial statements, approximately 80% of the University's revenue was comprised of federal student aid funds. (Exhibit 5, p. 22.)

The next month, on January 23, 2024, the California Student Aid Commission followed suit, and it similarly restricted the University's access to state grant funds. It designated the University an "At-Risk Program" based on findings of relating to the 2021-2022 award year. (Exhibit 13, p. 1.) Then, less than a month later, and based on "the severity of the findings" stemming from the 2022-2023 award year and the fall of 2023, the Student Aid Commission placed the University on "Halt Pay" status, meaning that it "is ineligible to receive Cal Grant funds, nor can it make any payment adjustments . . . ." (Exhibit 14, p. 1.) On February 20, 2024, the Student Aid Commission directed the University to return $65,083 in funds. (Exhibit 15, p. 1.)

III. THE UNIVERSITY ABRUPTLY VACATED ITS CAMPUS LAST WEEK

In a dispute over the University's failure to pay rent for at least three months, on February 23, 2024, the University entered into two Unlawful Detainer Stipulated Judgments in which it agreed to vacate its campus facilities by no later than March 4, 2024. The University testified at hearing that it vacated the campus by the prescribed deadline.

According to the University's audited financial statements, the University was required to make campus rental payments in the aggregate amount of $97,000 per month, and the University testified at hearing that it made those monthly rental payments for approximately one year, until November 2023, when it stopped making payments. (Exhibit 5, p. 15 ["the Institution is required to make monthly rents of $65,500 and $31,500, respectively"].) Mr. Hamilton, however, testified that the University did not owe any unpaid rent and that civil litigation over the rent dispute is ongoing. In all events, it is undisputed that the University did not make a rental payment for the months of November and December, 2023, or January, 2024, and it is reasonable to infer that the University's potential liability for unpaid rent is nearly $300,000 for those three months.

IV. THE UNIVERSITY IS NOW EFFECTIVELY INSOLVENT, CANNOT PAY ITS BILLS, AND IT FACES UNCERTAIN AND MOUNTING LIABILITIES

a. The University Lacks A Reliable And Predictable Revenue Stream.

"[T]he University has no cash flow right now," according to its Interim President. And as of February 29, 2024, the Department of Education discontinued its access to Title IV funds.

b. The University Failed To Make Payroll.

Due to the cascade of financial failures, the University did not fulfil payroll last month, and it is doubtful that it will make payroll in the future. The Interim Financial Officer emailed staff on February 15, 2024, that "live checks covering 25% of your wages will be available in Accounting after 2pm. The remaining 75% of your wages will be issued in the form of shares. I will send each of you a letter asking that you tell us if you'd like to keep the shares or if you authorize the Genius Group broker to sell your shares and turn those shares into cash . . . ." (Exhibit 9a.) Mr. Hamilton explained during the hearing that the University only had sufficient cash on hand to pay 25% of the employee payroll, and "Genius Group was not in a position to be providing cash funding . . . ."

As of February 26, 2024, the University's former Associate Director of Financial Aid had not received her full pay and the Interim President reported to the Bureau that "[p]ayroll challenges continue. We have had about 84% of employees accept Genius shares in lieu of cash for the last pay day. . . . Genius expects to repeat this procedure in future payroll periods. It has caused frustration for some employees. Some employees are still disputing this option." (Exhibits 20, p. 1, 22, p. 2.)

At hearing, the University's Interim President stated that future payroll funding would need to be provided by Genius Group, not the University, and Mr. Hamilton assured that Genius Group would "fund[] payroll needs through the liquidation of shares throughout the process." But he also acknowledged that for former employees, "there are amounts that are and will be due to them," and for those who do not elect to receive shares in lieu of cash, they were not paid their full wages, or even an equivalent amount in sales of Genius Group shares. Mr. Hamilton also noted that Genius Group is attempting to raise additional funding, but he provided no additional details, and in all events, there is no plan for the University to pay employees from its funds. The University's Interim President also acknowledged that the University does not have an estimate for the future cost of payroll "because staff resignations or terminations or reductions in labor have not been finalized."

c. The University Owes Student Credit Balance Refunds.

Federal regulations typically require institutions to disburse federal student aid credit balances to students within 14 days of either the date the balance occurred or the first day of class. (34 C.F.R. § 668.164(h).) As discussed, the Department of Education in 2023 identified the University's failure to timely pay credit balance refunds to students as among the school's 20 separate financial failings, a finding the University did not dispute: "[w]e regret our failure to consistently pay credit balance disbursements on a timely basis." (Exhibit 19, p. 21.) On December 13, 2023, the University supplied the Bureau with a spreadsheet showing 396 students maintained credit balances with the University, many of them far exceeding 14 days. (Exhibit 6.)

On February 9, 2024, the University reported in its response to the Department of Education that it "believe[d] this issue has now been resolved," and that it was "diligently following the requirements for credit balance disbursements . . . ." (Exhibit 19, p. 21.) The University also reported, "[a]ll credit balances for students were reviewed, and checks were prepared for students and/or parents, if applicable." (*Id.* at p. 13.)

But that same day, the University's former Bursar received student refund checks and was instructed not to disburse them to students: "we did recently let our state accreditors and the DOE know that we gave over 100,000 dollars in refunds to students. The day I received the checks (Friday 2/9) I was told to not let the students pick them up until Monday," February 12. (Exhibit 11, p. 1; see also, Exhibit 20, p. 1.) The Bursar was later instructed not to distribute the checks at all. (*Ibid.*) The University's former Associate Director of Financial Aid reported that the University "was hoping that Genius [Group] would be able to provide the funding for student checks by the end of the week," but "[a]fter finding out on 2/15/24 that there will be no further funding from Genius Group the checks given to [the Bursar] had been taken back the following day." (Exhibit 20, p.1; see also, Exhibits 9, 11, & 12a ["The money has not come in therefore they [the student checks] cannot be released"].)

At hearing, the University acknowledged that "there are refunds that are due dating back several years . . .," but that any funding for such refunds would need to be provided by Genius Group. Mr. Hamilton testified that Genius Group would pay for refunds owed to students after completing an audit.

d. <u>The University Shuddered Its Athletics Program Abruptly.</u>

The University also abruptly ceased funding its athletic programs on February 23, 2024. (Exhibit 22, p. 2.)

e. <u>The University Lacks Administrative Staff Necessary To Effectively Operate A Viable Financial Aid Program.</u>

In addition to financial mismanagement, on August 22, 2023, WASC identified the University's lack of a stable board and senior leadership as a reason to place the University on academic probation:

> Senior leadership and the board of [the University] have experienced significant disruption, turnover, and ongoing unfilled positions including chief financial officer, board chair, and board vice chair. Thus, [the University] has not provided

evidence that it has the leadership, organizational structures, and decision-making processes that can sustain institutional capacity and educational effectiveness. (Exhibit 1, p. 2.)

Similarly, on December 12, 2023, the Department of Education identified the University's lack of "administrative capability" as a reason to restrict the school's access to federal student aid funds. (Exhibit 7, p. 1.) And within the last two months alone, the University's Financial Aid Director, Associate Director, Representative, and Bursar resigned their positions. (Wiggins Decl., p. 8, ¶ 8.e.) The school's vocational nursing program director also resigned. (*Ibid.*) At hearing, the Interim President stated the University has only one financial advisor. "All other finance people in the organization except our interim Chief Financial Officer have resigned." And the resignations are affecting the University's ability to operate. The Interim President reported that its ability to implement the restrictive HCM2 process "is delayed until we get the database back up as we were not able to locate paper files . . . due to staff resignations." (Exhibit 22, p. 2.)

V. THE UNIVERSITY NONETHELESS PROPOSES TO CONTINUE OPERATING AND ADMINISTERING STUDENT AND PUBLIC FUNDS

The University testified at hearing that it ceased enrolling new students, and that the University's Board of Trustees decided to close the school. But despite the Bureau's Decision, and the multitude of financial failings, it proposes to continue offering classes. It proposes to continue offering "on-site" certificate classes virtually, with the massage therapy, paramedic, and EMT classes using "extern sites" for on-site skills training. Degree programs took a one week "administrative break," and the University proposes to shorten the second semester term for these students and resume their instruction.

The University proposed to continue teaching 122 students through the end of the semester: 98 students in its "On-site" certificate programs, and 24 students in the degree programs, 19 of which are completing an online "capstone" course and unspecified other courses. There is no evidence indicating the Bureau received notification of a change of location for instructional training, nor did the University demonstrate that WASC approved such a change for the degree-granting programs, nor was it established that such a change in instruction is appropriate. The University testified at hearing that WASC conditionally granted it an extension of its probationary accreditation through May 31, 2024, but it could not specify what those conditions were, or whether the University was capable of satisfying them. The University surmised, however, that WASC would approve any change in location if the University satisfied the accreditation conditions.

As discussed, Genius Group offered to continue liquidating shares of the company to sell to employees in lieu of paying their wages, but it is unclear whether employees would agree to such an arrangement, as not all employees have done so. Moreover, Mr. Hamilton acknowledged there is no concrete budget for the proposal, but he estimated it would "be somewhere in the region" of approximately $200,000 to implement, an amount he claimed Genius Group could afford. But he also predicted that University expenses would be satisfied by payments from students, student aid funds, and, to the extent those sources were insufficient, contributions from Genius Group.

VI. THE BUREAU'S EMERGENCY DECISION AND OPPORTUNITY TO BE HEARD

On February 29, 2024, the Bureau issued an Emergency Decision and ordered the University to cease enrolling new students, cease instruction, cease collecting tuition and fees, and cease operating its degree programs. The Bureau determined that the institution posed an immediate danger to the public health, safety, and welfare, requiring immediate action to protect students, prevent misrepresentations to the public, and prevent the loss of student and public funds. The Bureau's decision, in summary, was based on three grounds: (1) the University is not financially sound; (2) the University lacks sufficient administrative staff; and (3) the University lacks adequate facilities.

At the University's timely request, a hearing in this matter was held on March 6, 2024. As indicated, representatives of the Bureau and the University appeared and offered testimony, and the matter was taken under submission.

LEGAL STANDARDS

I. Emergency Decisions

An emergency decision may be issued if there is an immediate danger to the public health, safety, or welfare that requires immediate action to protect students, prevent misrepresentation to the public, or prevent the loss of public funds or moneys paid by students. (Ed. Code, § 94938; Cal. Code Regs., tit. 5, § 75150, subd. (b).) Activities that warrant the Bureau's emergency intervention include substantial failures to meet institutional minimum operating standards. (Cal. Code Regs., tit. 5, § 75150, subd. (b).)

The Bureau may order temporary, interim relief in the form of the following:

(1) Cease or limit enrollment of new students;
(2) Cease part or all instruction for some or all programs;
(3) Cease collection of tuition or fees for some or all programs; and,
(4) Suspend approval to operate or offer degree programs.

(Cal. Code. Regs., tit. 5, § 75150, subd. (c).)

Institutions subject to an emergency decision may request an opportunity to be heard before the Director of the Department of Consumer Affairs or her designee. (Cal. Code. Regs., tit. 5, § 75150, subd. (f).)

II. MINIMUM INSTITUTIONAL OPERATING STANDARDS AND PROGRAM CHANGES

a. *Institutions Must Be Financially Stable.*

The Bureau adopted minimum operating standards for institutions, and an institution must demonstrate to the Bureau that it can satisfy the standards. (Ed. Code, §§ 94885, 94887, 94890 & 94891; Cal. Code Regs., tit. 5, § 71700.)

Minimum operating standards are designed to ensure that "[t]he institution is financially sound and capable of fulfilling its commitments to students," and is otherwise lawfully operated. (Ed. Code, § 94885, subds. (a)(6) & (9).) To satisfy minimum financial stability standards, institutions must "at all times" have sufficient assets and financial resources to do all of the following:

> (1) Provide all of the educational programs that the institution represented it would provide.
>
> (2) Ensure that all students admitted to its educational programs have a reasonable opportunity to complete the programs and obtain their degrees or diplomas.
>
> (3) Maintain the minimum standards required by the Act and this chapter.
>
> (4) Pay timely refunds as required by Article 13 of the Act.
>
> (5) Pay all operating expenses due within 30 days.
>
> (6) . . . [F]or an institution participating in Title IV of the federal Higher Education Act of 1965, meet the composite score requirements of the U.S. Department of Education. (Cal. Code Regs., tit. 5, § 71745, subd. (a).)

Regarding refunds, in particular, Education Code section 94919 provides that an institution participating in federal student financial aid programs complies with Article 13 of the Act by complying with applicable federal regulations. And federal regulations require institutions to pay a credit balance "directly to the student or parent as soon as possible, but no later than . . . Fourteen (14) days after the balance occurred if the credit balance occurred after the first day of class . . ." or "Fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class . . . ." (34 C.F.R. § 668.164(h).)

b. *<u>Institutions Must Maintain Adequate Facilities.</u>*

Minimum operating standards also ensure institutional facilities are sufficient to enable students to achieve an educational program's goals. (Ed. Code, § 94885, subd. (a)(3).) "An institution shall have sufficient facilities and necessary equipment to support the achievement of the educational objectives of <u>all</u> of the courses and educational programs in which students are enrolled." (Cal. Code Regs, tit. 5, § 71735, subd. (a), emphasis added.) In addition, an institution's facilities, "including heating and cooling, ventilation, lighting, classrooms, laboratories, and campus environs, shall be well-maintained." (*Id.* at subd. (b).)

c. *<u>Institutions Must Maintain Adequate Administrative Staff.</u>*

State minimum operating standards also ensure that directors, administrators, and faculty are properly qualified. (Ed. Code, § 94885, subd. (a)(5).) Thus, an institution must employ administrative personnel with expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs. (Cal. Code Regs., tit. 5, § 71730, subd. (f).)

d. *<u>Institutions Must Not Make Misleading Financial Statements To Regulators.</u>*

Institutions must not make false or misleading statements relating to student financial information: "[a]n institution shall not . . . [i]n any manner make an . . . untrue or misleading statement related to . . . financial information, including . . . [i]nformation or records relating to the student's eligibility for student financial aid at the institution." (Ed. Code, § 94897, subd. (j).)

e. <u>Accredited Institutions Must Not Make Substantive Program Changes Without Adequately Notifying The Bureau.</u>

Substantive changes to an approved program typically require the Bureau's prior approval: "[i]f an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau." (Ed. Code, § 94893.) "[I]f the institution makes the substantive change without prior bureau authorization, the institution's approval to operate may be suspended or revoked." (*Ibid.*) Even institutions granted approval by means of accreditation "shall only make a substantive change in accordance with the institution's accreditation standards." (Ed. Code, § 94896, subd. (a).)

Substantive changes include, "[a] change of location" and "[a] significant change in the method of instructional delivery." (Ed. Code, § 94894, subds. (e) & (g).) For location changes, an institution granted approval to operate by means of accreditation must notify the Bureau of the change with information that includes the proposed new address, and the institution "shall attach certification from the institution's accreditation agency demonstrating that the substantive change was made in accordance with the institution's accreditation standards . . . ." (Cal. Code Regs., tit. 5, § 71500, subds. (b)(2), (d).)

A significant change in the method of instructional delivery is "any change that alters the way students interact with faculty or access significant equipment," and institutions approved by accreditation that make such changes must "attach certification from the institution's accreditation agency demonstrating that the substantive change was made in accordance with the institution's accreditation standards . . . ." (Cal. Code Regs., tit. 5, § 71600, subd. (c).)

On August 22, 2023, WASC notified the University that "any new sites . . . must be approved through the substantive change process." (Exhibit 1, p. 1.)

Additionally, institutions may not change the method of instructional delivery when a student enrolls in an educational program conducted at a specific site: "[i]f an institution enrolls a student in an educational program that is conducted at a specific site at the time of enrollment, the institution shall not convert the educational program to another method of delivery, such as by means of distance education." (Ed. Code, § 94898, subd. (c).)

DISCUSSION

The Bureau's Decision is proper because there is an immediate danger to the public health, safety, and welfare that requires immediate action to protect students, prevent misrepresentation to the public, and prevent the loss of student and public funds. The evidence amply demonstrates that the Bureau's immediate intervention is appropriate due to the University's substantial failures to meet institutional minimum operating standards, especially financial stability standards. In light of the pervasive nature of the violations, permitting the University to continue operating pending the outcome of a full administrative adjudication of the issues would pose an unnecessary risk to the public health, safety, and welfare.

I. THE EMERGENCY DECISION IS APPROPRIATE TO PROTECT STUDENTS, PREVENT MISREPRESENTATIONS TO THE PUBLIC, AND PREVENT THE LOSS OF STUDENT AND PUBLIC FUNDS BECAUSE THE UNIVERSITY SUBSTANTIALLY FAILED TO MEET MINIMUM INSTITUTIONAL OPERATING STANDARDS

a. The University Does Not Satisfy Any Of The Six Separate Indicators Of Financial Stability.

The University substantially failed to meet minimum operating standards with respect to its financial instability, and it should not continue administering student and public funds. Indeed, the institution failed to maintain every one of the six separate indicators of financial health that demonstrate an institution is financially sound and capable of fulfilling its commitments to students. (Ed. Code, § 94885, subd. (a)(6); Cal. Code Regs., tit. 5, § 71745, subd. (a).)

The University does not have the assets or resources to "[p]rovide <u>all</u> of the educational programs that the institution represented it would provide." (Cal. Code Regs., tit. 5, § 71745, subd. (a)(1), emphasis added.) As discussed, the University vacated its campus facilities as of March 4, 2024, and it lacks the facilities to sustain <u>any</u> of its on-site programs. It "has no cash flow right now," nor any reliable and predictable source of revenue.

The University cannot "[e]nsure that all students admitted to its educational programs have a reasonable opportunity to complete the programs and obtain their degrees or diplomas." (Cal. Code Regs., tit. 5, § 71745, subd. (a)(2).) Indeed, the University already announced its closure, it has no dedicated facilities for its on-site programs, and it is far from clear that it is capable of making payroll to pay employees to continue delivering programs.

The University cannot "[m]aintain the minimum standards required by the Act and this chapter." (Cal. Code Regs., tit. 5, § 71745, subd. (a)(3).) To the contrary, it fails to satisfy minimum financial responsibility, facilities, and staffing standards. (See e.g., Cal. Code Regs., tit. 5, §§ 71730, 71735, 71745.)

The University did not and cannot "[p]ay timely refunds as required by Article 13 of the Act." (Cal. Code Regs., tit. 5, § 71745, subd. (a)(4).) As discussed, the Department of Education identified the University's failure to pay timely refunds as one of the school's 20 separate financial failings, a finding the University did not dispute. (Exhibit 19, p. 21.) It did not pay refunds within 14 days, and in some instances, has not paid refunds years after they were due, as the University acknowledged at hearing: "there are refunds that are due dating back several years . . . ."

Equally troubling, the University submitted inaccurate and misleading financial information to the Department of Education about its payment of student refunds. (Ed. Code, § 94897, subd. (j).) The same day it informed the Department of Education that "[a]ll credit balances for students were reviewed, and checks were prepared for students and/or parents," it directed the Bursar to not distribute checks, because "[t]he money has not come in therefore they cannot be released." (Exhibits 11, 12a & 19, p. 13.)

The University did not and cannot "[p]ay all operating expenses due within 30 days." (Cal. Code Regs., tit. 5, § 71745, subd. (a)(5).) It failed to make payroll last month and has no available cash on hand to make payroll in the future, it stopped making rent payments on its facilities, and it failed to issue refund checks to students.

And last, the University did not "meet the composite score requirements of the U.S. Department of Education." (Cal. Code Regs., tit. 5, § 71745, subd. (a)(6).) The University's audited financial statements reflected a composite score far below that required to be considered "financially responsible," and its auditors found that "[t]he Institution did not meet the requirement set forth by the Federal Regulation for the year ended December 31, 2022 . . . ." (Exhibit 5, p. 21.)

In sum, by every measure, the University is not financially sound and capable of fulfilling its commitments to students, and it should no longer be in a position to administer student or public funds. (Ed. Code, § 94885, subd. (a)(6).)

b. *The University Does Not Have The Facilities Needed To Provide All Of Its Educational Programs.*

Minimum institutional operating standards also require institutions to maintain adequate facilities: "An institution shall have sufficient facilities and necessary equipment to support the achievement of the educational objectives of all of the courses and educational programs in which students are enrolled." (Cal. Code Regs, tit. 5, § 71735, subd. (a), emphasis added.) Its facilities must also be well maintained. (*Id.* at subd. (b).)

Here, despite offering multiple on-site degree and certificate programs, the University vacated its campus facilities as of March 4, 2024, and it has no plan for permanent classroom facilities. At hearing, the University's Interim President testified that it secured "administrative space," but he provided no other concrete details about instructional facilities. Accordingly, the University substantially failed to satisfy minimum standards for maintaining adequate facilities for its programs.

Moreover, the University did not properly notify the Bureau of any relocation, or that WASC approved a relocation. As discussed, accredited institutions may only make substantive changes in location in accordance with accreditation standards. (Ed. Code, § 94896, subd. (a).) And here, WASC notified the University that "any new sites . . . must be approved through the substantive change process." (Exhibit 1, p. 1.) The University surmised at hearing that WASC would likely permit a change in location for any degree students if the school satisfied multiple conditions for maintaining its accreditation on probation, but there is no evidence in the record suggesting that WASC has approved any substantive change. Nor did the University supply the Bureau with a proposed new address, or a certification from WASC that such change would be acceptable, as required. (Cal. Code Regs., tit. 5, § 71500, subds. (b)(2), (d).)

c. <u>*The University Does Not Have The Staff Necessary To Administer Financial Aid Programs And Effectively Operate The University.*</u>

As discussed, institutions must have the administrative staff necessary to operate an institution. (Cal. Code Regs, tit. 5, § 71730, subd. (f).) But on December 12, 2023, the Department of Education identified the University's lack of "administrative capability" as a reason to restrict access to federal student aid funds. (Exhibit 7, p. 1.) And apart from an <u>interim</u> Financial Officer, the University has only one financial advisor because four financial aid staff resigned within the last two months, and the lack of appropriate staff is hindering the University's ability to comply with federal funding restrictions. (Wiggins Decl., p. 8, ¶ 8.e.; Exhibit 22, p. 2.) Thus, the evidence sufficiently demonstrates that the University lacks the personnel necessary to ensure the operation of the educational programs, and that its continued operation would pose a risk to students who attend an institution that cannot properly administer their funds and public funds.

II. The University Should Not Continue Operating Educational Programs And Administering Student and Public Funds

The Legislature enacted the Private Postsecondary Education Act of 2009 to address “the lack of protections for private postsecondary school students and consumers of those schools’ services . . . .” (Ed. Code, § 94801.) Its substantive provisions are designed to provide “[m]eaningful student protections,” “an appropriate level of oversight,” and to prevent “harm to students and the deception of the public . . . .” (*Ibid.*) The Bureau is the entity entrusted to protect the public, including students, from failing private postsecondary educational institutions like the University. (Ed. Code, § 94875.)

The University appears sincere in its desire to continue educating students—and administering their funds and public funds—through the end of the semester, but the Bureau opposed the University’s proposal. And the Bureau’s opposition is reasonable under the circumstances.

The University’s proposal lacks firm details. There is no budget. “[T]he University has no cash flow right now,” no access to Title IV funding, and it lacks a reliable source of revenue. Although Mr. Hamilton estimated that the proposal would roughly cost $200,000, and he assured that Genius Group could pay those costs, there is no basis to assume that represents the actual amount of expenditures that will be incurred, and indeed, there is the prospect the University owes $300,000 in potential rent liability, $65,083 in funds to the Student Aid Commission, unspecified outstanding payroll amounts, and student refunds. And there is evidence that Genius Group’s funding has not been reliable in the past, nor is there assurance that any employees would be willing to work for shares in Genius Group instead of their wages. Last, the University has a lengthy history of financial mismanagement, and it should no longer be in a position to administer public and student funds.

Moreover, the University testified at hearing that WASC conditionally granted it a short-term extension of its probationary accreditation, but it could not specify what those conditions were, or whether the University was capable of satisfying them. And it is not appropriate to simply transition students from on-site to entirely online programs. Indeed, "[i]f an institution enrolls a student in an educational program that is conducted at a specific site at the time of enrollment, the institution shall not convert the educational program to another method of delivery, such as by means of distance education. (Ed. Code, § 94898, subd. (c).) And here, the Bureau submitted evidence that numerous students enrolled in "on ground" degree programs with no hybrid or distance education elements. (Wiggins Decl., p. 10, ¶ 9.b.) Thus, a transition to an entirely online program would not be appropriate for the students.

In light of the highly speculative and uncertain nature of the proposal and the University's history of financial mismanagement, the Bureau's rejection of the proposal is entirely reasonable.

CONCLUSION

In light of the numerous and substantial failures to meet institutional minimum operating standards, the Bureau's emergency decision dated February 29, 2024, is appropriate. The Bureau identified other potential violations of the Private Postsecondary Education Act of 2009 that similarly evince and overall failure to comply with institutional standards, and which might be appropriate for purposes of ultimate disciplinary action, but are not considered here for purposes of the propriety of the Bureau's emergency decision.

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DECISION

The Bureau's Emergency Decision and order is AFFIRMED.

The Emergency Decision shall take effect March 15, 2024.

DATED March 8, 2024

RYAN MARCROFT
Deputy Director
Legal Affairs Division
Department of Consumer Affairs