

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

In the Matter of the Citation Against:

CUTTING EDGE BARBER ACADEMY

425 Maze Blvd.

Modesto, CA 95351

Citation No.: 1920292

Case No. 1005909

Institution Code 47807300

OAH Case No.: 2020110369

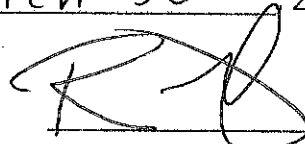
Respondent.

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.

This Decision shall become effective on MAY 06 2021, 2021.

It is so ORDERED March 30 2021.



RYAN MARCROFT
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Citation against:

CUTTING EDGE BARBER ACADEMY, INC., Respondent

Agency Case No. 1005909

OAH No. 2020110369

PROPOSED DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 21, 2021, from Sacramento, California.

Andrew Steinheimer, Deputy Attorney General, represented complainant Dr. Michael Marion, Jr., in his official capacity as Chief of the Bureau for Private Postsecondary Education (Bureau).

Annie Bravo, School Operations, represented respondent Cutting Edge Barber Academy, Inc.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 21, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 7, 2017, the Bureau issued respondent an Institutional and Program Approval (Approval) to offer a non-degree Barbering program. The Approval will expire on September 7, 2022, unless renewed.

2. On April 29, 2020, the Bureau, through Christina Villanueva, acting in her official capacity as the Bureau's Discipline Manager, issued Citation number 1920292 (Citation) to respondent. The Citation alleged respondent failed to file an annual report for the 2018 reporting period in violation of California Education Code section 94934, and California Code of Regulations, title 5, section 74110. The Citation included an administrative fine in the amount of \$5,000, due and payable within 30 days. The Citation further included an order of abatement requiring respondent to submit an annual report for 2018.

3. Respondent timely appealed the Citation on May 8, 2020, requesting an administrative hearing. This hearing followed.

The Bureau's Mission

4. Created by the California Private Postsecondary Education Act of 2009 (Act) (Ed. Code, §§ 94800-94950), the Bureau is the California agency tasked with

overseeing and regulating private postsecondary educational institutions that provide educational services in California. As stated on its website¹:

[The] Bureau is generally responsible for protecting consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions that may lead to loss of students' tuition and related educational funds; establishing and enforcing minimum standards for ethical business practices and the health and safety and fiscal integrity of postsecondary education institutions; and establish and enforcing minimum standards for instructional quality and institutional stability for all students in all types of private postsecondary educational and vocational institutions.

Annual Report Requirement

5. Cassandra Garcia is an analyst employed by the Bureau's Annual Report Unit. At hearing, she explained the information provided in a program's annual report is intended to help any prospective students make an informed decision on whether to attend the institution. Once the annual report is submitted, the Bureau works with the institution to address any deficiencies. After the annual report has been approved, the Bureau finalizes the institutional data and publishes it on its website within 24 hours.

¹ https://bppe.ca.gov/about_us/

6. On June 24, 2019, and again on August 1, 2019, the Bureau issued written notice (Notice) to its approved programs that the "2018 Annual Report submission will begin August 1, 2019, and [is] due no later than December 1, 2019." The Notice further specified what information must be submitted as follows:

1. **2018 Annual Report** – must be submitted through the online portal located on the Bureau's website. Please refer to our 2018 Annual Report icon on the Bureau's homepage for additional instructions www.bppe.ca.gov, available August 1, 2019.
2. **2018 Performance Fact Sheets** – one for each program, documenting the data from years 2017 and 2018. Save/merge into a PDF document, uploaded through the portal under "Institutional Data" tab workflow, #35 of the 2018 Annual Report portal.
3. **2018 Catalog** – Uploaded at #36 through the portal under the "Institutional Data" tab workflow of the 2018 Annual Report portal.
4. **Enrollment Agreement** – uploaded at #37 through the portal in the "Institutional Data" tab workflow of the 2018 Annual Report portal.
5. **Financial statements for 2018** – [complete] set of financials must include all of the following documents: income statement, balance sheet, and cash flow statement (Hard Copy), mailed to the Bureau; however, a school may

substitute reviewed or audited statements in accordance with generally accepted accounting principles (GAAP). Financial statements for the school shall meet the requirements of [title] 5, CCR section 74115.

(Bolding in original.)

The Notice further advised the Annual Report consists of four separate workflows described as follows: (1) an institutional data workflow (main California location); a program data workflow (requiring a separate workflow for each offered program); a branch data workflow (requiring a separate workflow for each offered program); and, a satellite data workflow. A separate program, branch and satellite data workflow was required for each offered program.

7. Additionally, through its website, the Bureau issued an electronic blast (e-blast) encouraging programs to subscribe to the website to stay informed on changes, updates, and due dates.

Violation

8. Respondent received the above Notices and e-blast. However, it did not submit a 2018 Annual Report by December 1, 2019, as required. Respondent submitted partial 2018 data for the first time on May 18, 2020, and submitted the remaining data on August 21, 2020. The Bureau finalized and approved respondent's 2018 Annual Report on January 8, 2021.

Respondent's Evidence

9. Ms. Bravo testified on respondent's behalf. She explained that the institution opened its doors on April 3, 2018. At that time, Demi Maldonado was the

director-in-charge and responsible for all paperwork, including fact sheets, annual reports, etc. Sometime in early 2019, Ms. Maldonado resigned from her position. At that time, respondent "dropped the ball" and did not check the Bureau's portal to see if Ms. Maldonado had finished the 2018 Annual Report. In mid-August 2019, respondent hired Angel Martinez to replace Ms. Maldonado. Immediately, Mr. Martinez alerted respondent that none of the 2018 Annual Report data had been prepared. Thereafter, respondent worked diligently to complete the Annual Report. After it was submitted to the Bureau, Mr. Martinez went on a medical leave.

10. Ms. Bravo explained that, as a new institution, respondent had a learning curve regarding annual reports and compliance with the Bureau. Once it realized its error, respondent worked diligently to submit the required data to the Bureau. Since receiving the Citation, respondent has had a turnover of directors. Respondent has learned from its mistake, is now aware of the annual report requirements and due dates, and does not anticipate committing a similar violation in the future.

Analysis

11. The Bureau established the violations giving rise to the Citation. Respondent did not dispute the factual allegations, but asserted the error was not intentional but rather the result of a lack of due diligence and the learning curve of a new institution. Respondent submitted its completed 2018 Annual Report, and the Bureau approved and finalized it, prior to the Citation being issued. Therefore, the only question remaining is whether the \$5,000 fine is justified or should be reduced.

12. The Bureau, in its discretion, classifies violations of the Act according to the nature of the violation. (Cal. Code Regs., tit. 5, § 75030.) "Class A" is the most serious (fine range of \$2,501 to \$5,000). "Class D" is the least serious (fine range of \$50

to \$500). In assessing a fine, the Bureau considers multiple factors including: the nature and seriousness of the violation; the persistence of the violation; the good faith of the institution; the history of previous violations; the purposes of the Act; and the potential harm to students. (Educ. Code, § 94936, subd. (b)(2).)

13. Here, the Bureau determined respondent's failure to submit the 2018 Annual Report on time was a Class A violation, and assessed the maximum fine of \$5,000. Respondent's violation was serious. Although respondent may have suffered some growing pains after opening in April 2018, it admittedly was aware of its obligation to file the 2018 Annual Report in or around August 2019, when newly-hired Mr. Martinez raised the issue. Nonetheless, respondent did not file any data for its 2018 Annual Report by the December 1, 2019 deadline. Rather, it submitted partial data more than five months after the deadline; and the remaining data almost nine months after the due date. The delay resulted in actual or potential harm to students who did not have the data accessible to them to make an informed decision whether to enroll in the institution.

14. In mitigation, the Citation included only one violation and respondent has no history of previous violations or discipline. There was no evidence that respondent committed the same violation again, or that recurrence is likely. When all the evidence is considered, the administrative fine should be reduced to \$2,501, the minimum fine allowed for a Class A violation. Because respondent has since submitted to the Bureau a completed 2018 Annual Report, which the Bureau approved and finalized, the order of abatement is moot.

LEGAL CONCLUSIONS

1. In citation cases, complainant has the burden of proving the allegations by a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985.) Once the party bearing the burden of proof has made a prima facie case, the burden shifts to respondent, who has the burden of proof of any affirmative defenses. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156.)

Relevant Law

2. The Bureau is authorized to issue citations containing orders of abatement and/or administrative fines against an approved private, postsecondary institution that has committed a violation of the Act or its regulations. (Ed. Code, § 94936; Cal. Code Regs., tit. 5, § 75020.)

3. California Education Code section 94934 requires all Bureau-approved schools to submit an Annual Report by July 1st of each year, or another date designated by the Bureau. The report must include the following information: (1) the total number of students enrolled by level of degree or for a diploma; (2) the number of degrees, by level, and diplomas awarded; (3) the degree levels and diplomas offered; (4) the School Performance Fact Sheet, as required pursuant to section 94910; (5) the school catalog, as required pursuant to section 94909; (6) the total charges for each educational program by period of attendance; (7) a statement indicating whether the institution is, or is not, current in remitting Student Tuition Recovery Fund assessments; (8) a statement indicating whether an accrediting agency has taken any final disciplinary action against the institution; and, (9) additional information deemed by the Bureau to be reasonably required to ascertain compliance with this chapter.

4. Additionally, California Code of Regulations, title 5, section 74110, subdivision (d), requires that the annual report include: (1) information regarding institutional branch campuses; (2) information regarding satellite locations; (3) name of institutional accreditors for each branch and satellite campus, and for each such campus at which any programs have programmatic accreditation, the names of the programmatic accreditor for each such program, and effective dates for each programmatic accreditation, if applicable; (4) information regarding participation in state and federal student loan and grant programs, including the total amount of funding received from each source for those students enrolled in an approved California school regardless of their state of residency; (5) information regarding participation in other public funding programs, including the amount of funding received from each public funding source; and, (6) the total percentage of institutional income that comes from any public funding sources.

Cause for Citation

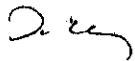
5. As set forth in Factual Findings 5 through 8, respondent failed to submit to the Bureau its 2018 Annual Report by December 1, 2019, as required by Education Code section 94934 and California Code of Regulations, title 5, section 74110. Therefore, cause exists to issue the Citation pursuant to Education Code section 94936 and California Code of Regulations, title 5, section 75020.

6. Based on the Factual Findings as a whole, and specifically, Factual Findings 12 through 14, modifying the administrative fine to \$2,501 is appropriate and respondent shall be ordered to pay this amount. Because respondent has already submitted its 2018 Annual Report, which the Bureau approved and finalized, the order of abatement is moot.

ORDER

Citation No. 1920292, issued to respondent Cutting Edge Barber Academy, Inc., is MODIFIED as follows: the \$5,000 administrative fine is reduced to \$2,501. Respondent is ordered to pay this amount within 30 days of the effective date of this order, or pursuant to a payment plan approved by the Bureau.

DATE: February 8, 2021



TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings