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

11 In the Matter of the Accusation Against:

Case No. 1001405

12 **DAVID'S ACADEMY OF BEAUTY, INC.**
13 **8652 East Whittier Boulevard**
Pico Rivera, CA 90660

FIRST AMENDED ACCUSATION

14 **Institution Code: 1937111**

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about April 21, 2012, the Bureau for Private Postsecondary Education issued
24 Approval to Operate Institution Number 1937111 to David's Academy of Beauty, Inc.
25 ("Respondent"). On or about September 30, 2016, the approval to operate expired. The approval
26 to operate was in full force and effect at all times relevant to the charges brought herein.

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JURISDICTION

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2 3. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (“Director”) for the Bureau for Private Postsecondary Education, under the authority of
4 the following laws. All section references are to the Education Code unless otherwise indicated.

5 4. Business and Professions Code section 118 provides, in pertinent part:

6 ...

7 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
8 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
9 order of a court of law, or its surrender without the written consent of the board, shall not, during
10 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
11 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
12 provided by law or to enter an order suspending or revoking the license or otherwise taking
13 disciplinary action against the licensee on any such ground.

14 (c) As used in this section, ‘board’ includes an individual who is authorized by any
15 provision of this code to issue, suspend, or revoke a license, and ‘license’ includes ‘certificate,’
16 ‘registration,’ and ‘permit.’”

17 5. Business and Professions Code section 477 states:

18 “As used in this division:

19 (a) ‘Board’ includes ‘bureau,’ ‘commission,’ ‘committee,’ ‘department,’ ‘division,’
20 ‘examining committee,’ ‘program,’ and ‘agency.’

21 (b) ‘License’ includes certificate, registration or other means to engage in a business or
22 profession regulated by this code.”

23 6. Section 94932 of the Education Code states:

24 “The bureau shall determine an institution’s compliance with the requirements of this
25 chapter. The bureau shall have the power to require reports that institutions shall file with the
26 bureau in addition to the annual report, to send staff to an institution’s sites, and to require
27 documents and responses from an institution to monitor compliance. When the bureau has reason
28 to believe that an institution may be out of compliance, it shall conduct an investigation of the

1 institution. If the bureau determines, after completing an investigation, that an institution has
2 violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this
3 article."

4 7. Section 94937 of the Education Code states:

5 (a) As a consequence of an investigation, which may incorporate any materials obtained or
6 produced in connection with a compliance inspection, and upon a finding that an institution has
7 committed a violation, the bureau may place an institution on probation or may suspend or revoke
8 an institution's approval to operate for:

9 (1) Obtaining an approval to operate by fraud.

10 (2) A material violation or repeated violations of this chapter or regulations adopted
11 pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph,
12 "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a
13 contract, and false or misleading claims or advertising, upon which a student reasonably relied in
14 executing an enrollment agreement and that resulted in harm to the student.

15 (b) The bureau shall adopt regulations, within one year of the enactment of this chapter,
16 governing probation and suspension of an approval to operate.

17 (c) The bureau may seek reimbursement pursuant to Section 125.3 of the Business and
18 Professions Code.

19 (d) An institution shall not be required to pay the cost of investigation to more than one
20 agency."

21 STATUTORY PROVISIONS

22 8. Section 94902 states:

23 "(a) A student shall enroll solely by means of executing an enrollment agreement. The
24 enrollment agreement shall be signed by the student and by an authorized employee of the
25 institution.

26 (b) An enrollment agreement is not enforceable unless all of the following requirements are
27 met:

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1 (1) The student has received the institution's catalog and School Performance Fact Sheet
2 prior to signing the enrollment agreement.

3 (2) At the time of the execution of the enrollment agreement, the institution held a valid
4 approval to operate.

5 (3) Prior to the execution of the enrollment agreement, the student and the institution have
6 signed and dated the information required to be disclosed in the Student Performance Fact Sheet
7 pursuant to subdivisions (a) to (d), inclusive, of Section 94910. Each of these items in the Student
8 Performance Fact Sheet shall include a line for the student to initial and shall be initialed and
9 dated by the student.

10 (c) A student shall receive a copy of the signed enrollment agreement, in writing or
11 electronically, regardless of whether total charges are paid by the student.”

12 9. Section 94896 states:

13 “(a) An institution that has been granted an approval to operate by means of accreditation
14 shall only make a substantive change in accordance with the institution's accreditation standards.

15 (b) The institution shall notify the bureau of the substantive change on a form provided by
16 the bureau.”

17 10. Section 94897 states:

18 “An institution shall not do any of the following:

19 ...

20 (j) In any manner make an untrue or misleading change in, or untrue or misleading
21 statement related to, a test score, grade or record of grades, attendance record, record indicating
22 student completion, placement, employment, salaries, or financial information, including any of
23 the following:

24 ...”

25 (3) Any other record or document required by this chapter or by the bureau.”

26 11. Section 94906 states:

27 “(a) An enrollment agreement shall be written in language that is easily understood. If
28 English is not the student's primary language, and the student is unable to understand the terms

1 and conditions of the enrollment agreement, the student shall have the right to obtain a clear
2 explanation of the terms and conditions and all cancellation and refund policies in his or her
3 primary language.

4 (b) If the recruitment leading to enrollment was conducted in a language other than English,
5 the enrollment agreement, disclosures, and statements shall be in that language.”

6 **REGULATORY PROVISIONS**

7 12. California Code of Regulations, Title 5, section 71720, subdivision (b)(1), states:

8 “(b) Instructors in an Educational Program Not Leading to a Degree.

9 (1) An institution shall employ instructors who possess the academic, experiential and
10 professional qualifications to teach, including a minimum of three years of experience, education
11 and training in current practices of the subject area they are teaching. If an instructor does not
12 possess the required three years of experience, education and training in the subject area they are
13 teaching, the institution shall document the qualifications the instructor possesses that are
14 equivalent to the minimum qualifications.”

15 13. California Code of Regulations, Title 5, section 71650, subdivision (d), states:

16 “(d) An institution that has been granted an approval to operate by means of accreditation
17 shall notify the Bureau of the substantive change within 30 days of that change on the Change in
18 Educational Objectives form, by providing the information required by (c)(1) and (c)(10), and
19 shall attach certification from the institution's accreditation agency demonstrating that the
20 substantive change was made in accordance with the institution's accreditation standards, and
21 complies with the Act and this Division.”

22 14. California Code of Regulations, Title 5, section 71745, subdivisions (a)(1), (a)(2),
23 (a)(3) and (a)(5), state:

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

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

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

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

2 ...

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

4 15. California Code of Regulations, Title 5, section 71920, provides in pertinent part:

5 “(a) The institution shall maintain a file for each student who enrolls in the institution
6 whether or not the student completes the educational service.

7 (b) In addition to the requirements of section 94900, the file shall contain all of the
8 following pertinent student records:

9 (1) Written records and transcripts of any formal education or training, testing, or
10 experience that are relevant to the student's qualifications for admission to the institution or the
11 institution's award of credit or acceptance of transfer credits including the following:

12 (A) Verification of high school completion or equivalency or other documentation
13 establishing the student's ability to do college level work, such as successful completion of an
14 ability-to-benefit test;

15 ...

16 (3) Copies of all documents signed by the student, including contracts, instruments of
17 indebtedness, and documents relating to financial aid;

18 ...”

19 16. California Code of Regulations, Title 5, section 74112, subdivision (m), states:

20 “(m) Documentation supporting all data reported shall be maintained electronically by the
21 institution for at least five years from the last time the data was included in either an Annual
22 Report or a Performance Fact Sheet and shall be provided to the Bureau upon request; the data for
23 each program shall include at a minimum:

24 (1) the list of job classifications determined to be considered gainful employment for the
25 educational program;

26 (2) student name(s), address, phone number, email address, program completed, program
27 start date, scheduled completion date, and actual completion date;

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1 (3) graduate's place of employment and position, date employment began, date employment
2 ended, if applicable, actual salary, hours per week, and the date employment was verified;

3 (4) for each employer from which employment or salary information was obtained, the
4 employer name(s) address and general phone number, the contact person at the employer and the
5 contact's phone number and email address, and all written communication with employer
6 verifying student's employment or salary;

7 (5) for students who become self-employed, all documentation necessary to demonstrate
8 self-employment;

9 (6) a description of all attempts to contact each student or employer;

10 (7) any and all documentation used to provide data regarding license examinations and
11 examination results;

12 (8) for each student determined to be unavailable for graduation or unavailable for
13 employment, the identity of the student, the type of unavailability, the dates of unavailability, and
14 the documentation of the unavailability; and

15 (9) the name, email address, phone number, and position or title of the institution's
16 representative who was primarily responsible for obtaining the students' completion, placement,
17 licensing, and salary and wage data, the date that the information was gathered, and copies of
18 notes, letters or emails through which the information was requested and gathered."

19 **COST RECOVERY**

20 17. Code section 94937, subdivision (c), authorizes the Bureau to seek reimbursement
21 under Business and Professions Code section 125.3. Code section 94937, subdivision (d),
22 provides that an institution shall not be required to pay more than one agency's investigation
23 costs.

24 18. Business and Professions Code section 125.3 provides, in pertinent part, that the
25 Bureau may request the administrative law judge to direct a licentiate found to have committed a
26 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
27 investigation and enforcement of the case.

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1 Respondent had approval from its accreditor to provide instruction in a language other than
2 English.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Sufficient Financial Resources)**

5 24. Respondent is subject to disciplinary action under section 94937, for violating
6 California Code of Regulations, Title 5, section 71745, subdivisions (a)(1), (a)(2), (a)(3) and
7 (a)(5). The circumstances are as follows:

8 25. On or about May 24, 2016, the Bureau received a copy of Respondent's Financial
9 Statement dated December 31, 2015. A Bureau investigator reviewed Respondent's Financial
10 Statement and determined that Respondent failed the "Thirty Day Operating Expense Test."
11 Respondent had only \$12,815.00 in cash or assets converted to cash in seven days, yet
12 Respondent's monthly operating expenses amounted to \$64,470.33.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Student Records)**

15 26. Respondent is subject to disciplinary action under section 94937, for violating section
16 94902 and California Code of Regulations, Title 5, section 71920, subdivision (b)(3). The
17 circumstances are as follows:

18 27. On or about May 24, 2016, a Bureau investigator reviewed certain student files on site
19 at Respondent institution and determined that copies of School Performance Fact Sheets were not
20 maintained in all student files. Specifically, no School Performance Fact Sheets were contained
21 in the files for students J.T.G., D.C., or J.R. In addition, student S.W. received a School
22 Performance Fact Sheet for the Cosmetology Program, yet he was enrolled in the Massage
23 Therapy Program as indicated in his Enrollment Agreement.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Failure to Provide Back-Up Documentation Supporting Annual Data Reported)**

26 28. Respondent is subject to disciplinary action under section 94937, for violating
27 California Code of Regulations, Title 5, section 74112, subdivision (m). The circumstances are as
28 follows:

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Provide Enrollment Agreement in Appropriate Language)

33. Respondent is subject to disciplinary action under section 94937, for violating section 94906 The circumstances are as follows:

34. On or about November 10, 2015, a Bureau investigator conducted a field investigation at Respondent's institution and found that Respondent had enrolled students whose primary language was not English. The Bureau's investigator observed student surveys being conducted by a Bureau Compliance Inspector in the Massage Therapy class and observed students using their phones to translate the document and then providing the information to other students. The Bureau's investigator concluded that the majority of the class did not speak, read or understand English and therefore, were recruited in languages other than English. The Bureau investigator's review of Respondent's documents revealed that Respondent's Enrollment Agreement and required disclosures were provided in English only. Further, one of Respondent's administrators admitted to the Bureau's investigator that Respondent does not provide written translation for students who do not speak English as their primary language and that Respondent's staff participated in recruitment activities by translating the terms of the Enrollment Agreement and required disclosures to prospective students in languages other than English.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Approval to Operate Institution Code 1937111, issued to David's Academy of Beauty, Inc.;
2. Ordering Respondent to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/13/17



JOANNE WENZEL
Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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