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

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

Case No. 1002666

13 **THE BROTHERS & SISTERS**
14 **BARBERCOSMO ACADEMY**

STATEMENT OF ISSUES

15 **Application for Approval to Operate an**
16 **Accredited Institution**

17 Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Dr. Michael Marion, Jr. ("Complainant") brings this Statement of Issues solely in his
21 official capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
22 Consumer Affairs.

23 2. On or about December 23, 2016, the Bureau for Private Postsecondary Education
24 ("Bureau") received an Application for Approval to Operate an Accredited Institution from
25 Respondent The Brothers & Sisters BarberCosmo Academy ("Respondent"). The Bureau denied
26 the application on April 12, 2017. On May 11, 2017, Respondent submitted to the Bureau a
27 request for administrative hearing as well as further documents in support of its application.

28 ////

JURISDICTION

1
2 3. This Statement of Issues is brought before the Director of the Department of
3 Consumer Affairs (“Director”) for the Bureau, under the authority of the following laws. All
4 section references are to the Education Code unless otherwise indicated.

5 4. **Section 94885, subdivision (a)** provides, in part:

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

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

9 ...

10 “(3) The facilities, instructional equipment, and materials are sufficient to enable students to
11 achieve the educational program’s goals.

12 ...

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

15 ...

16 “(9) The institution is maintained and operated in compliance with this chapter and all other
17 applicable ordinances and laws.”

18 5. **Section 94886** provides:

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

23 6. **Section 94887** provides:

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

STATUTORY AND REGULATORY PROVISIONS

7. Section 94909, subdivision (a) provides, in part:

“(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

“(1) The name, address, telephone number, and, if applicable, Internet Web site address of the institution.

...

“(3) The following statements:

“(A) ‘Any questions a student may have regarding this catalog that have not been satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax numbers).’

“(B) ‘As a prospective student, you are encouraged to review this catalog prior to signing an enrollment agreement. You are also encouraged to review the School Performance Fact Sheet, which must be provided to you prior to signing an enrollment agreement.’

...

“(7) Information regarding the faculty and their qualifications.

“(8) A detailed description of institutional policies in the following areas:

“(A) Admissions policies, including the institution's policies regarding the acceptance of credits earned at other institutions or through challenge examinations and achievement tests, admissions requirements for ability-to-benefit students, and a list describing any transfer or articulation agreements between the institution and any other college or university that provides for the transfer of credits earned in the program of instruction. If the institution has not entered into an articulation or transfer agreement with any other college or university, the institution shall disclose that fact.

“(B) Cancellation, withdrawal, and refund policies, including an explanation that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid

1 through attendance at the first class session, or the seventh day after enrollment, whichever is
2 later. The text shall also include a description of the procedures that a student is required to
3 follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund
4 consistent with the requirements of Article 13 (commencing with Section 94919).

5 ...

6 “(9) The schedule of total charges for a period of attendance and an estimated schedule of
7 total charges for the entire educational program.

8 “(10) A statement reporting whether the institution participates in federal and state financial
9 aid programs, and if so, all consumer information that is required to be disclosed to the student
10 pursuant to the applicable federal and state financial aid programs.

11 “(12) A statement specifying whether the institution has a pending petition in bankruptcy, is
12 operating as a debtor in possession, has filed a petition within the preceding five years, or has had
13 a petition in bankruptcy filed against it within the preceding five years that resulted in
14 reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Sec. 1101 et
15 seq.).

16 ...

17 “(15) The following statement:

18 ‘NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS
19 EARNED AT OUR INSTITUTION

20 The transferability of credits you earn at (name of institution) is at the complete discretion
21 of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or
22 certificate) you earn in (name of educational program) is also at the complete discretion of the
23 institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that
24 you earn at this institution are not accepted at the institution to which you seek to transfer, you
25 may be required to repeat some or all of your coursework at that institution. For this reason you
26 should make certain that your attendance at this institution will meet your educational goals. This

27 ////

1 may include contacting an institution to which you may seek to transfer after attending (name of
2 institution) to determine if your (credits or degree, diploma, or certificate) will transfer.'

3"

4 8. **Section 94911** provides, in part:

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

6 "(a) The name of the institution and the name of the educational program, including the
7 total number of credit hours, clock hours, or other increment required to complete the educational
8 program.

9 . . .

10 "(e)(1) A disclosure with a clear and conspicuous caption, 'STUDENT'S RIGHT TO
11 CANCEL,' under which it is explained that the student has the right to cancel the enrollment
12 agreement and obtain a refund of charges paid through attendance at the first class session, or the
13 seventh day after enrollment, whichever is later.

14 . . .

15 "(h) The transferability disclosure that is required to be included in the school catalog, as
16 specified in paragraph (15) of subdivision (a) of Section 94909.

17 "(i)(1) The following statement: 'Prior to signing this enrollment agreement, you must be
18 given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to
19 review prior to signing this agreement. These documents contain important policies and
20 performance data for this institution. This institution is required to have you sign and date the
21 information included in the School Performance Fact Sheet relating to completion rates,
22 placement rates, license examination passage rates, salaries or wages, and the most recent three-
23 year cohort default rate, if applicable, prior to signing this agreement.'

24 "(2) Immediately following the statement required by paragraph (1), a line for the student to
25 initial, including the following statement: 'I certify that I have received the catalog, School
26 Performance Fact Sheet, and information regarding completion rates, placement rates, license
27 examination passage rates, salary or wage information, and the most recent three-year cohort
28

1 default rate, if applicable, included in the School Performance Fact sheet, and have signed,
2 initialed, and dated the information provided in the School Performance Fact Sheet.'

3 ...

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

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

8 9. Section 94913 provides:

9 "(a) An institution that maintains an Internet Web site shall provide on that Internet Web
10 site all of the following:

11 "(1) The school catalog.

12 "(2) A School Performance Fact Sheet for each educational program offered by the
13 institution.

14 "(3) Student brochures offered by the institution.

15 "(4) A link to the bureau's Internet Web site.

16 "(5) The institution's most recent annual report submitted to the bureau.

17 "(b) An institution shall include information concerning where students may access the
18 bureau's Internet Web site anywhere the institution identifies itself as being approved by the
19 bureau."

20 10. Section 94920, subdivision (d) provides:

21 "An institution that does not participate in the federal student financial aid programs shall
22 do all of the following:

23 ...

24 "(d) The institution shall have a refund policy for the return of unearned institutional
25 charges if the student cancels an enrollment agreement or withdraws during a period of
26 attendance. The refund policy for students who have completed 60 percent or less of the period of
27 attendance shall be a pro rata refund.

28"

1 11. **Section 94927** provides:

2 “An institution shall be considered in default of the enrollment agreement when an
3 educational program is discontinued or canceled or the institution closes prior to completion of
4 the educational program. When an institution is in default, student institutional charges may be
5 refunded on a pro rata basis if the bureau determines that the school has made provision for
6 students enrolled at the time of default to complete a comparable educational program at another
7 institution at no additional charge to the students beyond the amount of the total charges in the
8 original enrollment agreement. If the institution does not make that provision, a total refund of all
9 institutional charges shall be made to students.”

10 12. **Section 94934** provides:

11 “(a) As part of the compliance program, an institution shall submit an annual report to the
12 bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year,
13 or another date designated by the bureau, and it shall include the following information for
14 educational programs offered in the reporting period:

15 “(1) The total number of students enrolled by level of degree or for a diploma.

16 “(2) The number of degrees, by level, and diplomas awarded.

17 “(3) The degree levels and diplomas offered.

18 “(4) The Student Performance Fact Sheet, as required pursuant to Section 94910.

19 “(5) The school catalog, as required pursuant to Section 94909.

20 “(6) The total charges for each educational program by period of attendance.

21 “(7) A statement indicating whether the institution is, or is not, current in remitting Student
22 Tuition Recovery Fund assessments.

23 “(8) A statement indicating whether an accrediting agency has taken any final disciplinary
24 action against the institution.

25 “(9) Additional information deemed by the bureau to be reasonably required to ascertain
26 compliance with this chapter.

27 “(b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method
28 of delivery.”

1 13. **California Code of Regulations, title 5, section 71390, subdivision (b)** provides:

2 “(b) An applicant shall submit to the Bureau the form required by subdivision (a) of this
3 section, a certified copy of its current verification of accreditation granted by its accrediting
4 agency, and the appropriate application fee, as provided in Section 94930.5(a)(3) of the Code.”

5 14. **California Code of Regulations, title 5, section 71720, subdivision (b)** provides, in
6 part:

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

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

14 ”

15 15. **California Code of Regulations, title 5, section 71745, subdivision (a)** provides:

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

18 “(1) Provide all of the educational programs that the institution represented it would
19 provide:

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

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

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

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

25 “(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
26 end of the most recent fiscal year when using generally accepted accounting principles, or for an
27 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
28 composite score requirements of the U.S. Department of Education. For the purposes of this

1 section, current assets does not include: intangible assets, including goodwill, going concern
2 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
3 returnable deposits, or state or federal grant or loan funds that are not the property of the
4 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
5 be accounted for in accordance with general accepted accounting principles.”

6 **16. California Code of Regulations, title 5, section 71750, subdivision (c)** provides, in
7 part:

8 “(c) A pro rata refund pursuant to section 94919(c) or 94920(d) or 94927 of the Code shall
9 be no less than the total amount owed by the student for the portion of the educational program
10 provided subtracted from the amount paid by the student, calculated as follows:

11 ...

12 “(3) Except as provided herein, all amounts that the student has paid shall be subject to
13 refund unless the enrollment agreement and the refund policy outlined in the catalog specify
14 amounts paid for an application fee or deposit not more than \$250.00, books, supplies, or
15 equipment, and specify whether and under what circumstances those amounts are non-refundable.
16 Except when an institution provides a 100% refund pursuant to section 94919(d) or section
17 94920(b) of the Code, any assessment paid pursuant to section 94923 of the Code is non-
18 refundable.

19 ...”

20 **17. California Code of Regulations, title 5, section 71770, subdivision (c)** provides:

21 “(c) If credit for prior experiential learning is to be granted, the policy for granting such
22 credit shall be included in the institution's catalog.

23 “(1) An institution may grant credit to a student for prior experiential learning only if:

24 “(A) The prior learning is equivalent to a college or university level of learning;

25 “(B) The learning experience demonstrates a balance between theory and practice and;

26 “(C) The credit awarded for the prior learning experience directly relates to the student's
27 degree program and is applied in satisfaction of some of the degree requirements.

28

1 “(2) Each college or university level learning experience for which credit is sought shall be
2 documented by the student in writing.

3 “(3) Each college or university level learning experience shall be evaluated by faculty
4 qualified in that specific subject area who shall ascertain (1) to what college or university level
5 learning the student's prior experience is equivalent and (2) how many credits toward a degree
6 may be granted for that experience.

7 “(4) The faculty evaluating the prior learning shall prepare a written report indicating all of
8 the following:

9 “(A) The documents in the student's record on which the faculty member relied in
10 determining the nature of the student's prior experience;

11 “(B) The bases for determining that the prior experience (i) is equivalent to college or
12 university level learning and (ii) demonstrates a balance between theory and practice; and

13 “(C) The bases for determining (i) to what college or university level the experience is
14 equivalent and (ii) the proper number of credits to be awarded toward the degree for that
15 experience.

16 “(5)(A) The institution shall designate at least one administrator to be responsible for the
17 review of faculty determinations regarding the award of credit for prior experiential learning.

18 “(B) The administrator shall document the institution's periodic review of faculty
19 evaluations to assure that the faculty written evaluations and awards of credit comply with this
20 section and the institution's policies and are consistent.

21 “(6) The amount of credit awarded for prior experiential learning shall not be related to the
22 amount charged the student for the assessment process.

23 “(7)(A) Of the first 60 semester credits awarded a student in an undergraduate program, no
24 more than 15 semester credits may be awarded for prior experiential learning.

25 “(B) Of the second 60 semester units (i.e., credits 61 to 120) awarded a student in an
26 undergraduate program, no more than 15 semester credits may be awarded for prior experiential
27 learning.

28

1 “(C) Of the first 30 semester credits awarded a student in a graduate program, no more than
2 6 semester credits may be awarded for prior experiential learning.

3 “(D) Of the second 30 semester credits (i.e., credits 31 to 60) awarded a student in a
4 graduate program, no more than 3 semester credits may be awarded for prior experiential
5 learning.

6 “(E) No credit for experiential learning may be awarded after a student has obtained 60
7 semester credits in a graduate program.”

8 18. **California Code of Regulations, title 5, section 71800** provides, in part:

9 “In addition to the requirements of section 94911 of the Code, an institution shall provide to
10 each student an enrollment agreement that contains at the least the following information:

11 “(a) The name and address of the institution and the addresses where instruction will be
12 provided.

13 ...

14 “(c) Program start date and scheduled completion date.

15 “(d) Date by which the student must exercise his or her right to cancel or withdraw, and the
16 refund policy, including any alternative method of calculation if approved by the Bureau pursuant
17 to section 94921 of the Code.

18 “(e) Itemization of all institutional charges and fees including, as applicable:

19 ...

20 “(11) Student Tuition Recovery Fund fee (non-refundable);

21 “(12) any other institutional charge or fee.

22 “(f) Charges paid to an entity other than an institution that is specifically required for
23 participation in the educational program.”

24 19. **California Code of Regulations, title 5, section 71810** provides, in part:

25 “(a) Each institution shall provide a catalog pursuant to section 94909 of the Code, which
26 shall be updated annually. Annual updates may be made by the use of supplements or inserts
27 accompanying the catalog. If changes in educational programs, educational services, procedures,
28 or policies required to be included in the catalog by statute or regulation are implemented before

1 the issuance of the annually updated catalog, those changes shall be reflected at the time they are
2 made in supplements or inserts accompanying the catalog.

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

5 ...

6 “(4) Language proficiency information, including: (A) the level of English language
7 proficiency required of students and the kind of documentation of proficiency, such as the Test of
8 English as a Foreign Language (TOEFL), that will be accepted; and (B) whether English
9 language services, including instruction such as ESL, are provided and, if so, the nature of the
10 service and its cost;

11 ...

12 “(6) The institution's policies and practices regarding any form of financial aid, including
13 all consumer information which the institution is required to disclose to the student under any
14 state or federal financial aid program;

15 “(7) The institution's policies and procedures for the award of credit for prior experiential
16 learning, including assessment policies and procedures, provisions for appeal, and all charges that
17 a student may be required to pay;

18 ...

19 “(9) A description of the facilities and of the types of equipment and materials that will be
20 used for instruction;

21 “(10) A description of library and other learning resources and the procedures for student
22 access to those resources;

23 ...

24 “(13) Housing information including all of the following:

25 ...

26 “(B) The availability of housing located reasonably near the institution's facilities and an
27 estimation of the approximate cost or range of cost of the housing; and

28”

1 20. **California Code of Regulations, title 5, section 74000** provides:

2 “(a) An institution shall pay the fees established by Article 17 of the Act. A failure to
3 include a fee with an application or other request renders the application or request incomplete.

4 “(b) All fees lawfully collected are non-refundable.

5 “(c) A fee that is not paid timely is subject to penalty as set forth in section 94931 of the
6 Code.

7 “(d) The Bureau shall deny a renewal of an approval to operate if the institution fails to
8 submit at the time it files its application for renewal of an approval to operate: all unpaid fees;
9 penalty fees; penalties; orders for reimbursement of costs and expenses; and assessments for, and
10 reimbursement of all payments made to students from, the Student Tuition Recovery Fund.

11 “(e)(1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may
12 initiate proceedings to revoke the institution's approval to operate for failure to pay fees.

13 “(2) Any proceeding to revoke an institution's approval to operate is subject to the
14 provisions of Chapter 5 of the Administrative Procedures Act. If a hearing is requested, it shall be
15 limited to the issues of whether any fee or penalty was owed and, if so, whether the fee or penalty
16 were paid when originally due.

17 “(3) The procedure specified in this subdivision is cumulative to any other right or remedy
18 the Bureau may invoke against an institution which fails to pay its annual fee or a penalty fee
19 when originally due. Nothing in this subdivision restricts the Bureau's authority to bring other
20 administrative or judicial action against an institution that fails to pay its fees when due.

21 “(4) An institution whose approval to operate was revoked because of nonpayment of an
22 annual fee or penalty fee may seek to obtain approval to operate only by filing an application for
23 a new approval to operate.”

24 /////

25 /////

26 /////

27 /////

28 /////

1 21. **California Code of Regulations, title 5, section 74006, subdivisions (a) and (b)**
2 provide:

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

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

7 22. **California Code of Regulations, title 5, section 74110** provides:

8 “(a) The annual report required by Section 94934 of the Code shall include the information
9 required by sections 94929.5 and 94934 for all educational programs offered in the prior calendar
10 year, and all of the following for the prior calendar year:

11 “(1) Information regarding institutional branch campuses, including addresses and
12 programs offered at each campus, if applicable;

13 “(2) Information regarding satellite locations, including addresses and with which
14 campus(es) the satellite location is affiliated, if applicable;

15 “(3) Name of institutional accreditors for each branch and satellite campus, and for each
16 such campus at which any programs have programmatic accreditation, the names of the
17 programmatic accreditor for each such program, and effective dates for each programmatic
18 accreditation, if applicable;

19 “(4) Information regarding participation in state and federal student loan and grant
20 programs, including the total amount of funding received from each source for those students
21 enrolled in an approved California school regardless of their state of residency;

22 “(5) Information regarding participation in other public funding programs, including the
23 amount of funding received from each public funding source; for purposes of this section, public
24 funding is any financial aid paid on behalf of students or directly to an institution from any public
25 source, such as the Workforce Investment Act, any veterans' financial aid programs pursuant to
26 Section 21.4253 of Title 38 of the Code of Federal Regulations or any other financial aid program
27 that is intended to help students pay education-related expenses, including tuition, fees, room and
28 board, and supplies for education; and

1 “(6) The total percentage of institutional income that comes from any public funding
2 sources.

3 “(b) In addition to the information required by section 94934 and this section provided
4 under penalty of perjury, the institution shall have annual financial statements prepared for the
5 institution's prior fiscal year and signed under penalty of perjury, and shall submit a hard copy
6 under separate cover of such statements in conjunction with its annual report. The form, content
7 and mode of preparation of financial statements shall comply with Section 74115 of this Division.
8 The Bureau may request that the institution immediately make available for inspection to a
9 representative of the Bureau, these financial statements at the offices of the institution.

10 “(c) An institution shall file its annual report by December 1st. The Bureau may extend the
11 period for filing if the institution demonstrates evidence of substantial need but in no case longer
12 than 60 days. The institution shall not change the date of its filing its annual report because of a
13 change in the fiscal year without the Bureau's approval.

14 “(d) The annual report shall be electronically filed by submitting the information required
15 by section 94934 of the Code and this section via the online form provided on the Bureau's
16 website, electronically attaching, as directed, the School Performance Fact Sheet, the enrollment
17 agreement, and the school catalog.”

18 **23. California Code of Regulations, title 5, section 74115** provides, in part:

19 “(a) This section applies to every set of financial statements required to be prepared or filed
20 by the Act or by this chapter.

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

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

28

1 “(2) Financial statements prepared on an annual basis as required by section 74110(b) shall
2 be prepared in accordance with the generally accepted accounting principles established by the
3 American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual
4 financial statements as required under generally accepted accounting principles for nonprofit
5 organizations.

6 “(3) The financial statements shall establish that the institution meets the requirements for
7 financial resources required by Section 71745.

8 “(4) If an audit performed to determine compliance with any federal or state student
9 financial aid program reveals any failure to comply with the requirements of the program and the
10 noncompliance creates any liability or potential liability for the institution, the financial
11 statements shall reflect the liability or potential liability.

12 “(5) Any audits shall demonstrate that the accountant obtained an understanding of the
13 institution's internal financial control structure, assessed any risks, and has reported any material
14 deficiencies in the internal controls.

15 ...

16 “(d) ‘Current’ with respect to financial statements means completed no sooner than 120
17 days prior to the time it is submitted to the Bureau, and covering no less than the most recent
18 complete fiscal year. If more than 8 months will have elapsed between the close of the most
19 recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no
20 less than five months of that current fiscal year.”

21 24. **California Code of Regulations, title 5, section 76120** provides:

22 “(a) Each qualifying institution shall collect an assessment of zero dollars (\$0) per one
23 thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars, from
24 each student in an educational program who is a California resident or is enrolled in a residency
25 program. For institutional charges of one thousand dollars (\$1,000) or less, the assessment is zero
26 dollars (\$0).”

27 ////

28 ////

1
2 FIRST CAUSE FOR DENIAL OF APPLICATION

(Incomplete Application)

3 (Educ. Code §§ 94887 and 94934; and
4 Cal. Code Regs, title 5, § 71390, subd. (b); 74000; 74006, subds. (a) and (b); and 74110)

5 25. Respondent's application is subject to denial because it fails to demonstrate that
6 Respondent has the capacity to satisfy minimum operating standards. ((Educ. Code §§ 94887 and
7 94934; and Cal. Code Regs, title 5, § 71390, subd. (b); 74000; 74006, subds. (a) and (b); and
8 74110). In particular:

9 a. Respondent failed to submit with its application a certified copy of its current
10 verification of accreditation. (Cal. Code Regs, title 5, § 71390, subd. (b)).

11 b. Respondent failed to submit Student Tuition Recovery Fund ("STRF")
12 reporting forms for the second, third, and fourth quarter of 2016 and the fourth quarter of 2013.
13 (Cal. Code Regs, title 5, § 74000).

14 c. Respondent failed to submit the Annual Fee for 2011 and 2015. (Cal. Code
15 Regs, title 5, § 74006, subds. (a) and (b)).

16 d. Respondent failed to submit completed Annual Reports for 2014 and 2015.
17 (Educ. Code § 94934 and Cal. Code Regs, title 5, § 74110).

18 SECOND CAUSE FOR DENIAL OF APPLICATION

(Enrollment Agreement)

19 (Cal. Educ. Code § 94887; 94911, subds. (a), (e)(1), (h), (i)(1), (i)(2), and (k);
20 and 94920, subd. (d); and Cal. Code Regs, title 5, §§ 71750, subd. (c)(3); 71800, subds. (a), (c),
21 (d), (e)(11), (e)(12), and (f); and 76120)

22 26. Respondent's application is subject to denial because Respondent failed to submit an
23 enrollment agreement that complies with minimum requirements. (Cal. Educ. Code § 94887;
24 94911, subds. (a), (e)(1), (h), (i)(1), (i)(2), and (k); and 94920, subd. (d); and Cal. Code Regs, title
25 5, §§ 71750, subd. (c)(3); 71800, subds. (a), (c), (d), (e)(11), (e)(12), and (f); and 76120). In
26 particular:

27 a. Respondent's enrollment agreement inconsistently refers to its institution as
28 "The Brothers & Sisters BarberCosmo Academy," "BBC," "BCA," and "BarberCosmo
Academy." (Educ. Code § 94911, subd. (a) and Cal. Code Regs, title 5, § 71800, subd. (a)).

1 b. Respondent's enrollment agreement includes a specific required transferability
2 disclosure, but the name on that disclosure is listed as "BBC" rather than "the Brothers & Sisters
3 BarberCosmo Academy." In addition, this statement does not include a space for reference to
4 what specific program the student is enrolled in. (Educ. Code § 94911, subd. (h)).

5 c. Respondent's enrollment agreement fails to include verbatim the statements
6 required by Section 94911, subdivision (i). (Educ. Code § 94911, subd. (i)(1) and (i)(2)).

7 d. Respondent's enrollment agreement fails to include verbatim the statement
8 required by Section 94911, subdivision (k). (Educ. Code § 94911, subd. (k)).

9 e. Respondent's enrollment agreement includes a non-compliant pro-rata refund
10 policy. (Educ. Code § 94920, subd. (d)).

11 f. Respondent's enrollment agreement does not include the program start date.
12 (Cal. Code Regs, title 5, § 71800, subd. (c)).

13 g. Respondent's enrollment agreement does not include the date by which
14 students must exercise their right to cancel. (Cal. Code Regs, title 5, § 71800, subd. (d)).

15 h. Respondent's enrollment agreement does not include an itemization of all
16 institutional fees. In addition, Respondent's enrollment agreement contains references to
17 additional fees for students that are not included in the itemization of institutional fees. (Cal.
18 Code Regs, title 5, §§ 71750, subd. (c)(3) and 71800, subd. (e)(12)).

19 i. Respondent's enrollment agreement does not state charges for the state board
20 exam. (Cal. Code Regs, title 5, § 71800, subd. (f)).

21 j. Respondent's enrollment agreement fails to state the correct amount for the
22 Student Tuition Recovery Fund. (Cal. Code Regs, title 5, §§ 71800, subd. (e)(11) and 76120).

23 k. Respondent's enrollment agreement fails to state a compliant cancellation policy
24 in that the cancellation policy in Respondent's enrollment agreement fails to indicate that students
25 may attend through attendance of the first class. (Educ. Code § 94911, subd. (e)(1)).

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THIRD CAUSE FOR DENIAL OF APPLICATION
(Faculty)

(Educ. Code § 94887 and Cal. Code Regs, title 5, § 71720, subd. (b)(1))

27. Respondent's application is subject to denial because Respondent failed to submit a current list of faculty confirming that Respondent employs qualified instructors. (Educ. Code § 94887 and Cal. Code Regs, title 5, § 71720, subd. (b)(1)).

FOURTH CAUSE FOR DENIAL OF APPLICATION
(Financial Resources)

(Educ. Code § 94887; and Cal. Code Regs, title 5, §§ 71745, subds. (a)(1-6) and 74115, subds. (a), (b)(1-5), and (d))

28. Respondent's application is subject to denial because the audited financial statements Respondent submitted with its application demonstrates it lacks the financial resources necessary to have the capacity to satisfy minimum operating standards. (Educ. Code § 94887; and Cal. Code Regs, title 5, § 71745, subds. (a)(1-6)).

FIFTH CAUSE FOR DENIAL OF APPLICATION
(Catalog)

(Educ. Code §§ 94887; 94909, subds. (a)(1), (a)(3)(A), (a)(3)(B), (a)(7), (a)(8)(A), (a)(8)(B), (a)(9), (a)(10), (a)(12), and (a)(15); 94920, subd. (d); and Cal. Code Regs, title 5, §§ 71770, subd. (c); 71810, subd. (b)(4), (b)(6), (b)(7), (b)(9), (b)(10), and (b)(13)(B))

29. Respondent's application is subject to denial because it failed to offer a student catalog that satisfies minimum standards. (Educ. Code §§ 94887; 94909, subds. (a)(1), (a)(3)(A), (a)(3)(B), (a)(7), (a)(8)(A), (a)(8)(B), (a)(9), (a)(10), (a)(12), and (a)(15); 94920, subd. (d); and Cal. Code Regs, title 5, §§ 71770, subd. (c); 71810, subd. (b)(4), (b)(6), (b)(7), (b)(9), (b)(10), and (b)(13)(B)). In particular:

a. Respondent's catalog fails to include information about faculty qualifications and does not include any information about Respondent's "substitute instructors." (Educ. Code § 94909, subd. (a)(7)).

b. Respondent's catalog fails to contain a detailed description of admission requirements for ability-to-benefit students as the catalog does not include the specific Department of Education-approved ability-to-benefit test and score that will be accepted for admission. (Educ. Code § 94909, subd. (a)(8)(A)).

1 c. Respondent's catalog fails to include a list of total charges for the period of
2 attendance that matches the costs included in the enrollment agreement. (Educ. Code § 94909,
3 subd. (a)(9)).

4 d. Respondent's catalog fails to include a statement specifying whether it has a
5 pending petition in bankruptcy, is operating as a debtor in possession, has filed a petition within
6 the preceding five years, or has had a petition in bankruptcy filed against it within the preceding
7 five years that resulted in reorganization under Chapter 11 of the United States Bankruptcy Code.
8 (Educ. Code § 94909, subd. (a)(12)).

9 e. Respondent's catalog fails to contain the "NOTICE CONCERNING
10 TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR
11 INSTITUTION." (Educ. Code § 94909, subd. (a)(15)).

12 f. Respondent's catalog includes a non-compliant pro-rata refund policy. (Educ.
13 Code § 94920, subd. (d)).

14 g. Respondent's catalog fails to include policies and practices regarding any form
15 of financial aid. (Educ. Code § 94909, subd. (a)(10) and Cal. Code Regs, title 5, § 71810, subd.
16 (b)(6)).

17 h. Respondent's catalog fails to address the availability of housing located
18 reasonably near the institution's facilities and an estimation of the approximate cost or range of
19 cost of the housing. (Cal. Code Regs, title 5, § 71810, subd. (b)(13)(B)).

20 i. Respondent's catalog inconsistently refers to its institution using three different
21 names. (Educ. Code § 94909, subd. (a)(1)).

22 j. Respondent's catalog fails to include verbatim the statement required by
23 Section 94909, subdivision (a)(3)(B). (Educ. Code § 94909, subd. (a)(3)(B)).

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1 k. Respondent's catalog fails to list all equipment and materials students need for
2 instruction, and indicates that students may need to obtain additional equipment and/or materials
3 without listing that additional equipment and/or materials. (Cal. Code Regs, title 5, § 71810,
4 subd. (b)(9)).

5 l. Respondent's catalog references a public library "next to the Institution" that
6 students may use, but does not indicate if the institution offers any other learning resources or the
7 procedures for students to access the library or other resources. (Cal. Code Regs, title 5, § 71810,
8 subd. (b)(10)).

9 m. Respondent's catalog fails to include the statement required by Section 94909,
10 subdivision (a)(3)(A) verbatim with applicable inserts. (Educ. Code § 94909, subd. (a)(3)(A)).

11 n. Respondent's catalog does not include the institution's policies and procedures
12 for the award of credit for prior experiential learning, including assessment policies and
13 procedures, provisions for appeal, and all charges that a student may be required to pay. (Cal.
14 Code Regs, title 5, §§ 71770, subd. (c) and 71810, subd. (b)(7)).

15 o. Respondent's catalog does not include information related to language
16 proficiency, including the level of English language proficiency required of the students and the
17 kind of documentation of proficiency that will be accepted. (Cal. Code Regs, title 5, § 71810,
18 subd. (b)(4)).

19 p. Respondent's enrollment agreement fails to state a compliant cancelation policy
20 in that the cancelation policy in Respondent's enrollment agreement fails to indicate that students
21 may attend through attendance of the first class. (Educ. Code § 94909, subd. (a)(8)(B)).

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PRAYER

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

1. Denying Respondent's Application for Approval to Operate an Accredited Institution;
- and
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/17


DR. MICHAEL MARION, JR.
Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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