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8	Attorneys for Complainant
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 Case No. 999531
13	Against:
14	ACCELERATED TECHNICAL TRAINING INSTITUTE; GENE KELLY, FIRST AMENDED STATEMENT OF
15	50% Owner; and PAULA KELLY, 50% ISSUES Owner
16	Application for Approval to Operate an Institution Non-Accredited Applicant
17	Respondent.
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20	Complainant alleges:
21	PARTIES
22	1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
23	capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
24	Consumer Affairs.
25	2. On or about March 15, 2012, the Bureau for Private Postsecondary Education
26	(Bureau) received an Application for Approval to Operate an Institution Non-Accredited
27	(application number 24574) from Accelerated Technical Training Institute; Gene Kelly, 50%
28	1
	First Amended Statement of Issue
	In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al

1	Owner; and Paula Kelly, 50% Owner (Respondent). On or about September 14, 2012, the Bureau
2	issued a deficiency letter to Respondent explaining the deficiencies in its application.
3	3. On or about June 21, 2013, the Bureau issued to Respondent an additional letter
4	explaining the deficiencies in its application. On or about November 25, 2013, the Bureau
5	received an addendum to the Application from Respondent. On or about January 15, 2014, the
6	Bureau issued to Respondent a Notice of Denial of Application for Approval to Operate. On or
7	about March 10, 2014, Respondent sent the Bureau a letter requesting an administrative hearing.
8	JURISDICTION
9	4. This Statement of Issues is brought before the Director of the Department of
10	Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
11	authority of the following laws. All section references are to the Education Code unless
12	otherwise indicated.
13	STATUTORY & REGULATORY PROVISIONS <sup>1</sup>
14	5. Code section 94834 states:
15	"Distance education' means transmission of instruction to students at a location separate
16	from the institution."
17	6. Code section 94838 states:
18	"Educational program approval' means authorization by the bureau, another government
19	agency of this state, or a federal government agency, to provide educational programs, and is an
20	element of an approval to operate."
21	7. Code section 94887 states:
22	"An approval to operate shall be granted only after an applicant has presented sufficient
23	evidence to the bureau, and the bureau has independently verified the information provided by the
24	applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
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27 28	<sup>1</sup> The California Private Postsecondary Education Act of 2009 was recently amended, effective January 1, 2015. <i>See</i> Senate Bill No. 1247. This Statement of Issues is based on the pre-amendment version of the Act.
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	FIRST AMENDED STATEMENT OF ISSUES In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al.

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1	has the capacity to satisfy the minimum operating standards. The bureau shall deny an
2	application for an approval to operate if the application does not satisfy those standards."
3	8. Code section 94897 states, in part:
4	"An institution shall not do any of the following:
5	
6	"(i) Use a name in any manner improperly implying any of the following:
7	"(1) The institution is affiliated with any government agency, public or private corporation,
8	agency, or association if it is not, in fact, thus affiliated.
9	" • • • •
10	9. Code of Regulations, title 5, section 71250 states:
11	"The Form Application 94886 shall include a statement that the institution has contracted
12	with sufficient duly qualified faculty members who meet the qualifications of section 71720."
13	10. Code of Regulations, title 5, section 71475, subdivision (e) states:
14	"(e) The institution shall submit at the time it applies for renewal current financial
15	statements that meet the requirements of section 74115 as follows: (1) for an institution with
16	annual gross revenues of \$500,000 and over, statements shall be audited; (2) for an institution
17	with annual gross revenues less than \$500,000, statements shall be reviewed."
18	11. Code of Regulations, title 5, section 71700 states:
19	"The Bureau may request that an institution document compliance with the standards set
20	forth in the Act and this Division to obtain and maintain an approval to operate."
21	12. Code of Regulations, title 5, section 71710 states, in part:
22	"In order to meet its mission and objectives, the educational program defined in section
23	94837 of the Code shall be comprised of a curriculum that includes:
24	۶ <i>۰</i>
25	"(c) course or module materials that are designed or organized by duly qualified faculty.
26	For each course or module, each student shall be provided with a syllabus or course outline that
27	contains:
28	"(1) a short, descriptive title of the educational program;
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	FIRST AMENDED STATEMENT OF ISSUES In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al.

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1	"(2) a statement of educational objectives;
2	"(3) length of the educational program;
3	"(4) sequence and frequency of lessons or class sessions;
4	"(5) complete citations of textbooks and other required written materials;
5	"(6) sequential and detailed outline of subject matter to be addressed or a list of skills to be
6	learned and how those skills are to be measured;
7	"(7) instructional mode or methods.
8	»» • • • •
9	13. Code of Regulations, title 5, section 71715, subdivision (d) states, in part:
10	"(d) Distance education as defined in section 94834 of the Code, does not require the
11	physical presence of students and faculty at the same location but provides for interaction
12	between students and faculty by such means as telecommunication, correspondence, electronic
13	and computer augmented educational services, postal service, and facsimile transmission. In
14	addition to the other requirements of this chapter and the Act, an institution offering distance
15	education shall:
16	"(1) ensure that the educational program offered through distance education is appropriate
17	for delivery through distance education methods;
18	"···
19	"(3) ensure that the materials and programs are current, well organized, designed by faculty
20	competent in distance education techniques and delivered using readily available, reliable
21	technology;
22	(4) provide for meaningful interaction with faculty who are qualified to teach using
23	distance education methods;
24	••••
25	"(6) timely complete student evaluations of learning outcomes by duly qualified faculty,
26	which are appropriate for use with the distance education methods used, and evaluated by duly
27	qualified faculty.
28	
	4 First Amended Statement of Issue:

1	14. Code of Regulations, title 5, section 71720, subdivision (b) states, in part:
2	"(b) Instructors in an Educational Program Not Leading to a Degree.
3	"(1) An institution shall employ instructors who possess the academic, experiential and
4	professional qualifications to teach, including a minimum of three years of experience, education
5	and training in current practices of the subject area they are teaching. If an instructor does not
6	possess the required three years of experience, education and training in the subject area they are
7	teaching, the institution shall document the qualifications the instructor possesses that are
8	equivalent to the minimum qualifications.
9	"(2) Each instructor shall maintain their knowledge by completing continuing education
10	courses in his or her subject area, classroom management or other courses related to teaching.
11	, , , , , , , , , , , , , , , , , , ,
12	15. Code of Regulations, title 5, section 71745, subdivision (a) states:
13	"(a) The institution shall document that it has at all times sufficient assets and financial
14	resources to do all of the following:
15	"(1) Provide all of the educational programs that the institution represented it would
16	provide.
17	"(2) Ensure that all students admitted to its educational programs have a reasonable
18	opportunity to complete the programs and obtain their degrees or diplomas.
19	"(3) Maintain the minimum standards required by the Act and this chapter.
20	"(4) Pay timely refunds as required by Article 13 of the Act.
21	"(5) Pay all operating expenses due within 30 days.
22	"(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
23	end of the most recent fiscal year when using generally accepted accounting principles, or for an
24	institution participating in Title IV of the federal Higher Education Act of 1965, meet the
25	composite score requirements of the U.S. Department of Education. For the purposes of this
26	section, current assets does not include: intangible assets, including goodwill, going concern
27	value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
28	returnable deposits, or state or federal grant or loan funds that are not the property of the 5

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FIRST AMENDED STATEMENT OF ISSUES In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al.

1	institution but are held for future disbursement for the benefit of students. Unearned tuition shall
2	be accounted for in accordance with general accepted accounting principles."
3	16. Code of Regulations, title 5, section 71810, subdivision (b) states, in part:
4	"(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
5	all of the following:
6	"
7	"(6) The institution's policies and practices regarding any form of financial aid, including
8	all consumer information which the institution is required to disclose to the student under any
9	state or federal financial aid program;
10	"····
11	"(15) Policies on the retention of student records.
12	17. Code of Regulations, title 5, section 74115 states, in part:
13	"(a) This section applies to every set of financial statements required to be prepared or filed
14	by the Act or by this chapter.
15	"(b) A set of financial statements shall contain, at a minimum, a balance sheet, an income
16	statement, and a cash flow statement, and the preparation of financial statements, shall comply
17	with all of the following:
18	"(1) Audited and reviewed financial statements shall be conducted and prepared in
19	accordance with the generally accepted accounting principles established by the American
20	Institute of Certified Public Accountants by an independent certified public accountant who is not
21	an employee, officer, or corporate director or member of the governing board of the institution.
22	"(2) Financial statements prepared on an annual basis as required by section 74110(b) shall
23	be prepared in accordance with the generally accepted accounting principles established by the
24	American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual
25	financial statements as required under generally accepted accounting principles for nonprofit
26	organizations.
27	(3) The financial statements shall establish that the institution meets the requirements for
28	financial resources required by Section 71745.
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FIRST AMENDED STATEMENT OF ISSUES In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al.

1	(4) If an audit performed to determine compliance with any federal or state student
2	financial aid program reveals any failure to comply with the requirements of the program and the
3	noncompliance creates any liability or potential liability for the institution, the financial
4	statements shall reflect the liability or potential liability.
5	(5) Any audits shall demonstrate that the accountant obtained an understanding of the
6	institution's internal financial control structure, assessed any risks, and has reported any material
7	deficiencies in the internal controls.
8	
9	"(d) 'Current' with respect to financial statements means completed no sooner than 120
10	days prior to the time it is submitted to the Bureau, and covering no less than the most recent
11	complete fiscal year. If more than 8 months will have elapsed between the close of the most
12	recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no
13	less than five months of that current fiscal year."
14	CAUSES FOR DENIAL OF APPLICATION
15	FIRST CAUSE FOR DENIAL OF APPLICATION (Instruction and Degrees Offered)
16	(Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71710, subd. (c))
17	18. Respondent's application is subject to denial because it fails to demonstrate that the
18	course syllabi submitted by the Respondent are designed or organized by duly qualified faculty.
19	(Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71710, subd. (c)). In particular, Respondent
20	submitted course syllabi for Certified Multi-Trade Technician (CMTT) Level I and II developed
21	and designed mostly by the National Center for Construction Education and Research (NCCER)
22	and Respondent's faculty members. Respondent failed to submit evidence that NCCER and
23	Respondent's faculty are duly qualified to develop the CMTT curriculum. Respondent has
24	therefore failed to provide evidence that it has the capacity to meet the minimum operating
25	standards.
25 26	standards. /////
26	
26 27	

1	<u>SECOND CAUSE FOR DENIAL OF APPLICATION</u> (Duly Qualified Faculty) (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, §§ 71250 and 71720, subds. (b)(1) and (b)(2))
3	19. Respondent's application is subject to denial because it fails to include the requisite
4	information regarding its faculty. Respondent has therefore failed to provide evidence that it has
5	the capacity to meet the minimum operating standards. In particular:
6	a. Respondent failed to provide a list of duly qualified faculty to teach CMTT
7	Level I and II. Instead, Respondent stated that the faculty will "be retained contingent upon
8	approval by the Bureau for Private Postsecondary Education." (Cal. Educ. Code § 94887; Cal.
9	Code Regs., title 5, §§ 71250 and 71720, subds. (b)(1) and (b)(2)).
10	b. The Bureau was unable to determine from Respondent's application if the
11	faculty (Trade Professionals) that may be actually employed by Respondent met the minimum
12	qualification for "duly qualified faculty" because Respondent failed to submit resumes, CMTT or
13	NCCER certificates, transcripts for continuing education courses and degrees for the following
14	faculty members listed in Respondent's catalog: G.B. (Plumbing), W.W. (Locksmith), M.C.
15	(Electrical), R.R. (Welding), and D.H. (Machining). <sup>2</sup> (Cal. Educ. Code § 94887; Cal. Code
16	Regs., title 5, § 71720, subds. (b)(1) and (b)(2)).
17	c. The Bureau was unable to determine if the faculty (Trade Professionals) listed
18	by Respondent in its application are actually employed by Respondent. Respondent failed to
19	submit contract agreements for the following faculty members listed in Respondent's catalog:
20	G.B. (Plumbing), W.W. (Locksmith), M.C. (Electrical), R.R. (Welding), and D.H. (Machining).
21	(Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71250).
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27	<sup>2</sup> In the interests of privacy, proposed faculty members' initials, rather than full names, have been used. These individuals' full names were included in the Notice of Denial of Application for Approval to Operate.
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	FIRST AMENDED STATEMENT OF ISSUES In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al.

1	THIRD CAUSE FOR DENIAL OF APPLICATION (Catalog)
2	(Cal. Educ. Code § 94887; Cal. Code Regs., title 5, §§ 71810, subds. (b)(6) and (b)(15))
3	20. Respondent's application is subject to denial because it fails to include the requisite
4	information in its proposed catalog. Respondent has therefore failed to provide evidence that it
5	has the capacity to meet the minimum operating standards. In particular:
6	a. Respondent's proposed catalog does not contain the institution's policies and
7	practices, including required disclosures regarding any form of financial aid program. (Cal. Educ.
8	Code § 94887; Cal. Code Regs., title 5, § 71810, subd. (b)(6)).
9	b. The policy on retention of student records, on page 59 of Respondent's
10	proposed catalog, is not in compliance with Education Code section 94900. Respondent's
11	proposed catalog states that "transcripts will be maintained permanently," but failed to add that
12	student's certificates will also be maintained permanently. (Cal. Educ. Code § 94887; Cal. Code
13	Regs., title 5, § 71810, subd. (b)(15)).
14	FOURTH CAUSE FOR DENIAL OF APPLICATION
15	(Distance Education) (Cal Educ. Code §§ 94834 and 94887;
16	Cal. Code Regs., title 5, § 71715, subds. (d)(1), (3), (4), and (6))
17	21. Respondent's application is subject to denial because it fails to include evidence that
18	its educational program CMTT Level I complies with legal requirements. (Cal Educ. Code §§
19	94834 and 94887; Cal. Code Regs., title 5, § 71715, subds. (d)(1), (3), (4), and (6)). Respondent
20	has therefore failed to provide evidence that it has the capacity to meet the minimum operating
21	standards. In particular:
22	a. On page seven (7) of Respondent's proposed catalog, Respondent disclosed that
23	"the videos in this course are to be used for developing trade knowledge prior to learning and/or
24	practicing hands-on application." But Respondent proposes to issue a certificate certifying that a
25	student "has successfully completed a comprehensive program of study in the following seven (7)
26	trades plus Core Curriculum: Plumbing, Locksmithing, Carpentry, Masonry, Electrical, Welding
27	and Machining." According to the disclosure, the videos do not deliver or provide the hands-on
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	9 First Amended Statement of Issues
	In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al.

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practice necessary for application. (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71715, 2 subd. (d)(1)).

b. The Bureau was unable to determine if faculty (Trade Professionals) that may 3 be actually employed by Respondent meet the minimum qualification as "duly qualified faculty" 4 5 competent in distance education techniques and able to use readily available, reliable technology. Respondent failed to submit resumes (which contain faculty experience teaching and developing 6 7 distance education), CMTT or NCCER certificates, transcripts for continuing education courses and degrees. (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71715, subd. (d)(3)). 8

9 c. Respondent's distance education does not provide computer augmented services for students and faculty to have meaningful interactions. In response to Code of 10 Regulations, title 5, section 71715, subdivision (d)(4), Respondent submitted the definition 11 developed by an accrediting agency, Distance Education and Training Council (DETC). 12 Respondent implied that, since DETC's definition does not have a requirement of "providing 13 14 meaningful interaction," it is not necessary for Respondent to implement such a component. (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71715, subd. (d)(4)). 15

d. The assessments of Respondent's video programs (student testing) are 16 insufficient to evaluate learning outcomes. For example, "Testing and Certificate Requirements" 17 as referenced in Respondent's catalog at page 35, states "When you complete the video 18 19 instruction in the Welding Course, you will take an online examination to test your knowledge. Also, for each of the assigned chapters in your Welding textbook, you may optionally complete 20 an end-of-chapter quiz. Quizzes are optional study tools to support passing your final exam. 21 Exams are online, not timed, and are open book, open video. Once started, an online exam may 22 be suspended but must be completed within 60 days. When you pass your final exam with a 23 score of 80% or higher, you will receive a Welding Theory Certificate." Such testing is 24 insufficient to evaluate students' learning outcomes. In addition, Respondent's proposed 25 programs require practical application, but its institution does not offer practical training. (Cal. 26 Educ. Code § 94887; Cal. Code Regs., title 5, § 71715, subd. (d)(6)). 27

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2	FIFTH CAUSE FOR DENIAL OF APPLICATION (Financial Resources – Assets To Liabilities Ratio)
3	(Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71700; 71745, subd. (a)(6); and 74115, subd. (b)(3))
4	22. Respondent's application is subject to denial because it fails to document that
5	Respondent has sufficient assets and financial resources to maintain a ratio of current assets to
6	current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year. (Educ. Code
7	§ 94887, and Cal. Code Regs., title 5, §§ 71700; 71745, subd. (a)(6); and 74115, subd. (b)(3)). In
8	particular, Respondent most recent financial statements state a ratio of current assets to current
9	liabilities of 1.11 to 1.
10	SIXTH CAUSE FOR DENIAL OF APPLICATION
11	(Financial Resources – Cash Flow Statement) (Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71700 and 74115, subd. (b))
12	23. Respondent's application is subject to denial because the financial statements
13	included with the application do not contain a cash flow statement, as required by Code of
14	Regulations, title 5, section 74115, subdivision (b). (Educ. Code § 94887; Cal. Code Regs., title
15	5, §§ 71700 and 74115, subd. (b)).
16	
17	SEVENTH CAUSE FOR DENIAL OF APPLICATION (Audited Financial Statements)
18	(Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71475, subd. (e); 71700; and 74115, subd. (b)(3))
19	24. Respondent's application is subject to denial because it does not include audited
20	financial statements. (Educ. Code § 94887; Cal. Code Regs., title 5, §§ 71475, subd. (e); 71700;
21	and 74115, subd. (b)(3)). In particular, according to its financial statements, Respondent's gross
22	revenue is well over \$500,000 per year. Accordingly, pursuant to Code of Regulations, title 5,
23	section 71475, subdivision (e), Respondent was required to provide audited financial statements
24	with its application. But the financial statements Respondent offered for the period ending
25	December 31, 2011 were reviewed. The financial statements Respondent offered for the period
26	ending December 31, 2012 were neither audited nor reviewed.
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	FIRST AMENDED STATEMENT OF ISSUES In the Matter of the Statement of Issues Against Accelerated Tech. Training Inst. et al.

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<ul> <li>(Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71700, 71745, subd. (a)(5), and 74115, subd. (b)(3))</li> <li>25. Respondent's application is subject to denial because it fails to document that pondent is able to pay all operating expenses due within 30 days, as required by Code of ulations, title 5, section 71745, subdivision (a)(5). (Educ. Code § 94887; Cal. Code Regs., 5, §§ 71700, 71745, subd. (a)(5), and 74115, subd. (b)(3)). In particular, the list of accounts ed in Respondent's income statements are too summary to determine whether Respondent is to pay all operating expenses due within 30 days.</li> <li><u>NINTH CAUSE FOR DENIAL OF APPLICATION</u> (Prohibited Practice) (Educ. Code § 94897, subd. (i)(1))</li> <li>26. Respondent's application is subject to denial because Respondent's catalog states or lies an affiliation with a government agency, agency, or association when none exists. (Educ. le § 94897, subd. (i)(1)). In particular, the "Financial Aid" section of Respondent's catalog ls, in part: "This School accepts students through third-party authorizing agents of the State npensation Insurance Fund, Workforce Investment Act (WIA) and Title 38, Chapter 31. If the lent has received federal student financial aid funds, the student is entitled to a refund of</li> </ul>
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ls, in part: "This School accepts students through third-party authorizing agents of the State npensation Insurance Fund, Workforce Investment Act (WIA) and Title 38, Chapter 31. If the
npensation Insurance Fund, Workforce Investment Act (WIA) and Title 38, Chapter 31. If the
lent has received federal student financial aid funds, the student is entitled to a refund of
tent has received rederar student mancial and funds, the student is children to a refund of
neys not paid from federal student financial aid program funds." This statement is not true as
ould require Respondent to obtain approval from government entities only after the Bureau
ed Respondent approval to operate.

1	PRAYER	
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleg	ed,
3	and that following the hearing the Bureau for Private Postsecondary Education issue a decision	n:
4	1. Denying the Application for Approval to Operate an Institution Non-Accredited of	of
5	Accelerated Technical Training Institute; Gene Kelly, 50% Owner; and Paula Kelly, 50% Ow	ner;
6	and	
7	2. Taking such other and further action as deemed necessary and proper.	
8	DATED: 8/21/13 ch QQ	
9	JOANNE WENZEL	
10	Chief Bureau for Private Postsecondary Education	
11	Department of Consumer Affairs State of California	
12	Complainant	
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	13 First Amended Statement of I	- <u></u>