Bureau for Private Postsecondary Education
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APPEAL OF CITATION INFORMAL CONFERENCE DECISION: CITATION AFFIRMED

5/13/2014

Wrymoo Railroad Historical and Educational Society
Modoc Railroad Academy, Corporation, Owner
Attn: Suzanne Berdall, Board of Directors Member
David Rangel, Board of Directors Member
Richard Smith, Board of Directors Member
7100 Natomas Road
Pleasant Grove, California 95668

Date of Issuance	Citation Number	Institution Code
May 13, 2014	1314004	2500021

On April 15, 2014, an informal telephone conference was held in the matter of Citation: Assessment of Fine and Order of Abatement No. 1314004 against Wrymoo Railroad Historical and Educational Society, owner of Modoc Railroad Academy, Corporation. Attendees were Joanne Wenzel, Bureau Chief; Kurt Heppler, DCA Legal Counsel; David Rangel, Board of Directors Member for Modoc Railroad Academy; and Thomas Walker, Attorney for Modoc Railroad Academy.

Pursuant to Business and Professions Code, §125.9; California Education Code, §94936; and Title 5 of the California Code of Regulations, §75020 and §75040, the Bureau for Private Postsecondary Education (Bureau) renders the following decision
: relative to your appeal of the Citation No. 1314004.

It is the decision of the Bureau Chief that on May 8, 2014 Citation No. 1314004 is affirmed for the following reason(s):

- No new substantive facts were presented at the conference.

VIOLATIONS

#	The California Education Code (CEC) and the California Code of Regulations (CCR). Below you will find the code section(s) of law you are charged with violating.
1.	**Violation:** CEC §94897(k) – Prohibited Business Practices *"An institution shall not do any of the following:* *(k) Willfully falsify, destroy, or conceal any document of record while that document of record is required to be maintained by this chapter."*

	Upon withdrawal from the institution, the institution destroys all student records. After former student, M.D. withdrew from the institution's Conductor Program, the institution destroyed student records. **Order of Abatement:** 1. An institution shall not destroy any document of record while that document of record is required to be maintained. **Assessment of Fine:** The fine for this violation is **$5,000.00**.
2.	**Violation:** CEC §94920(b) – Mandatory Cancellation, Withdrawal, and Refund Policies *"An institution that does not participate in the federal student financial aid programs shall do all of the following:* *(b) Institutions shall refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed two hundred fifty dollars ($250), if notice of cancellation is made through attendance at the first class session, or the seventh class day after enrollment, whichever is later."* **Violation:** CCR §71750(a) – Withdrawals and Refunds. *"(a) Every institution shall make refunds that are no less than the refunds required under the Act and this Division."* The institution failed to refund 100 percent of the institutional charges paid, not including the deposit or application fee not to exceed $250.00, to former student, M.D., who withdrew from the Conductor Program within seven days from the first class. The institution refunded the student a partial refund. However, as of date, the institution has not refunded the student, the total remaining refund due, in the amount of $3,259.00. **Order of Abatement:** 1. The institution shall pay former student, M.D. the remaining total refund due, in the amount of $3,259.00. 2. The institution shall submit to the Bureau proof of payment, of the remaining balance of $3,259.00 paid to M.D. **Assessment of Fine:** The fine for this violation is **$5,000.00**.
3.	**Violation:** CEC §94920(e) – Mandatory Cancellation, Withdrawal, and Refund Policies *"An institution that does not participate in the federal student financial aid programs shall do all of the following:* *(e) The institution shall pay or credit refunds within 45 days of a student's cancellation or withdrawal."*

	Violation: CCR §71750(e) – Withdrawals and Refunds *"(e) An institution shall refund any credit balance on the student's account within 45 days after the date of the student's completion of, or withdrawal from, the educational program in which the student was enrolled. For purposes of this subdivision and section 94919(d) of the Code, "day" means calendar day."* The institution failed to refund former student, M.D., who withdrew from the Conductor Program, the total refund amount due within 45 days of withdrawal. The institution provided a partial refund to the student within 45 days of withdrawal. As of date, the institution has not refunded the student, the remaining total refund due, in the amount of $3,259.00. **Order of Abatement:** 1. The institution shall pay former student, M.D., the remaining total refund due, in the amount of $3,259.00. 2. The institution shall submit to the Bureau proof of payment, of the remaining balance of $3,259.00 paid to M.D. **Assessment of Fine:** The fine for this violation is **$5,000.00**.
4.	**Violation:** CEC §94926(a-d) – Procedures Prior to Closing, Teach-Outs *"At least 30 days prior to closing, the institution shall notify the bureau in writing of its intention to close. The notice shall be accompanied by a closure plan, which shall include, but not necessarily be limited to, all of the following:* *(a) A plan for providing teach-outs of educational programs, including any agreements with any other postsecondary educational institutions to provide teach-outs.* *(b) If no teach-out plan is contemplated, or for students who do not wish to participate in a teach-out, arrangements for making refunds within 45 days from the date of closure, or for institutions that participate in federal student financial aid programs arrangements for making refunds and returning federal student financial aid program funds.* *(c) If the institution is a participant in federal student financial aid programs, it shall provide students information concerning these programs and institutional closures.* *(d) A plan for the disposition of student records."* **Violation:** CCR § 76240(a)(1-4)(A,B)(5)(6)(b)(1-2) – Required Notices and Teach-Out Plan *"All institutions, including those exempt from Bureau regulation pursuant to the Code, shall do the following prior to closing:* *(a) At least 30 days prior to closing, the institution shall notify the Bureau in writing of its intention to close and provide a closure plan. The closure plan shall include:* *(1) The exact date and reason for the closure.* *(2) The last date of instruction for each educational service or program.* *(3) A list of students who were enrolled at any time during the 60 days prior to closure.* *(4) If any student will not be provided complete educational services or the educational program, the institution shall provide:* *(A) A plan for providing teach-outs or transfers, including the details of any agreements with other*

institutions.
(B) If no teach-out is contemplated, or for students who do not wish to participate in a teach-out, arrangements for making refunds within 45 days from the date of closure, or for institutions that participate in federal student financial aid programs arrangements for making refunds and returning federal student financial aid program funds.
(5) A plan for the disposition of student records.
(6) A plan to notify students of their rights and options under the Act and this chapter.
(b) The institution shall notify the students of the following:
(1) If the institution is a participant in federal student financial aid programs, it shall provide students information concerning those programs and institutional closures.
(2) If any student will not be provided complete educational services or the educational program, information regarding the Student Tuition Recovery Fund and the Bureau's physical and Internet addresses."

On July 2, 2012 the Bureau received a letter regarding 2012 Annual Reports, wherein the institution mentioned that the program is expected to close operations in California on December 31, 2012. The institution has closed operations in the state of California. The institution failed to submit a closure plan pursuant to the requirements described in the above mentioned code sections, at least 30 days prior to closing.

Order of Abatement:

1. The institution shall submit a closure plan consisting of the following requirements:

    - The exact date and reason for the closure.
    - The last date of instruction for each educational service or program.
    - A list of students who were enrolled at any time during the 60 days prior to closure.
    - If any student will not be provided complete educational services or the educational program, the institution shall provide:
        - A plan for providing teach-outs or transfers of educational programs, including the details of any agreements with other postsecondary educational institutions to provide teach-outs or transfers.
        - If no teach-out is contemplated, or for students who do not wish to participate in a teach-out, arrangements for making refunds within 45 days from the date of closure.
    - A plan for the disposition of student records.
    - A plan to notify students of their rights and options under the Act and this chapter.
    - The institution shall notify the students of the following:
        - If any student will not be provided complete educational services or the educational program, information regarding the Student Tuition Recovery Fund and the Bureau's physical and Internet addresses.

Assessment of Fine:
The fine for this violation is **$2,550.00**.

5.	**Violation:** CEC §94927.5(a)(1) & (b) – Provision of Records to Bureau Prior to Closing *"(a) Prior to closing, an institution shall provide the bureau with the following:* *(1) Pertinent student records, including transcripts, as determined by the bureau, pursuant to regulations adopted by the bureau.* *(b) Subdivision (a) applies to all private postsecondary institutions, including institutions that are otherwise exempt from this chapter pursuant to Article 4 (commencing with Section 94874)."* Prior to closing, the institution did not provide the Bureau with pertinent student records, including transcripts. **Order of Abatement:** 1. The institution shall provide the Bureau with pertinent student records, including transcripts, as determined by the Bureau, pursuant to the regulations adopted by the Bureau or comply with CCR §71930(f). **Assessment of Fine:** The fine for this violation is **$5,000.00**.
6.	**Violation:** CCR §71930(a) – Maintenance of Records *"(a) An institution shall maintain all records required by the Act and this chapter. The records shall be maintained in this state."* *The institution does not maintain all records required by the Act and this chapter in the state of California.* **Violation:** CCR §71930(b)(1) – Maintenance of Records *"(b)(1) In addition to permanently retaining a transcript as required by section 94900(b) of the Code, the institution shall maintain for a period of 5 years the pertinent student records described in Section 71920 from the student's date of completion or withdrawal."* The institution destroys all student records, upon withdrawal from the institution, which included a former student, M.D., who withdrew from the Conductor Program. The institution does not permanently retain transcripts or pertinent student records described in CCR §71920, for a period of 5 years. **Violation:** CCR §71930(f) – Maintenance of Records *"(f) If an institution closes, the institution and its owners are jointly and severally responsible to arrange at their expense for the storage and safekeeping in California of all records required to be maintained by the Act and this chapter for as long as those records must be maintained. The repository of the records shall make these records immediately available for inspection and copying, without charge except as allowed under subdivision (c)(4) of this section, during normal business hours by any entity authorized by law to inspect and copy records."* The institution and its owners failed to arrange for the storage and safekeeping of all records

required to be maintained by the Act and this chapter for as long as those records must be maintained, in the state of California.

Order of Abatement:

1. The institution shall retain transcripts permanently and pertinent student records described in CCR §71920, for a period of 5 years in the state of California.

2. The institution shall provide the Bureau with the location of where the required records are kept and the contact information of the person who has immediate access to those records or comply with CEC §94927.5(a)(1) & (b).

Assessment of Fine:
The fine for this violation is **$5,000.00**.

TOTAL ADMINISTRATIVE FINE DUE: $27,550.00

ORDER OF ABATEMENT
The Bureau orders that you comply with the orders described in the 'Violation Code Sections' of this document and submit evidence of compliance within 30 days from the date of this decision.

PENALTY – ASSESSMENT OF A FINE
Payment of the administrative fine is due within 30 days from the date of this decision. Please complete the Payment of Fine form. Payment must be made to the Bureau by check, or money order. Please include the citation number on the payment of the fine assessment. Payment of the administrative fine shall not constitute an admission of the violation(s) charged and shall be represented as satisfactory resolution of the matter for purposes of public disclosure. Payments may be mailed to:

Renee Campos, Discipline Citation Program
Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400
Sacramento, CA 95833

APPEAL OF CITATION
You *do not* have the right to request another Informal Conference to appeal this affirmed Citation. You *do*, however, have the right to appeal this affirmed Citation through an Administrative Hearing, *only if* you initially requested one within 30 days from the issuance date of the original citation. A hearing before an Administrative Law Judge will be scheduled and you will be notified of the hearing date. The hearing will be held pursuant to Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If you did not initially request an Administrative Hearing within 30 days from when the original citation was issued, you can no longer request one.

If you do not wish to appeal this affirmed Citation you must withdraw your initial request for an Administrative Hearing, if one was made. Please complete and mail the enclosed Withdrawal – Request for Administrative Hearing within **30 Days** of the date of this decision.

EFFECTIVE DATE OF CITATION AND FINE ASSESSMENT

This affirmed Citation is effective as of May 13, 2014. The order of abatement and payment are due by **June 12, 2014.**

Failure to abate the violation or to pay the administrative fine within the time allowed is grounds for denial of an application for an approval to operate or discipline. The Bureau will promptly take all appropriate action to enforce the Affirmed Citation and recover the civil penalties prescribed therein or found to be due after a hearing.

CONTACT INFORMATION

If you have any questions regarding this decision or desire further information, please contact Renee Campos, Enforcement Analyst, at (916) 431-6940 or at Renee.Campos@dca.ca.gov

[JOANNE WENZEL]
[BUREAU CHIEF]

May 13, 2014
[Date]

Enclosures

- Payment of Fine – Waiver of Appeal Rights
- Withdrawal – Request for Administrative Hearing
- Notice of Appeal
- Statement of Rights
- Copy of Citation Order Number 1314004