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

In the Matter of the Statement of Issues Against: WASHINGTON INSTITUTE FOR GRADUATE STUDIES, Respondent.	Case No. 998997 OAH No. 2014051249

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director, Department of Consumer Affairs, as the Decision in the above-entitled matter.

The Decision shall become effective on OCT 30 2015.

IT IS SO ORDERED this 30th day of September.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the First Amended Statement of Issues Against: WASHINGTON INSTITUTE FOR GRADUATE STUDIES; ROBERT N. HANSON, President and 41% Owner; TERRI B. HANSON, 41% Owner, Respondents.	Case No. 998997 OAH No. 2014051249

PROPOSED DECISION

Beth Faber Jacobs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 20, June 1 and 2, 2015, in San Diego, California.

Marichelle S. Tahimic, Deputy Attorney General, Department of Justice, State of California, represented Complainant, Joanne Wenzel, the Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs, State of California.

Christopher Hill, Attorney at Law, of Kirton McConkie, represented respondents. Respondent Robert N. Hanson was present throughout the hearing.

The record remained open to permit the parties to file written closing argument. Respondents' closing argument was received and marked as Exhibit E; complainant's closing argument was received and marked as Exhibit 18; and respondents' reply brief was received and marked as Exhibit F. Exhibits E, F, and 18 were admitted as argument only. The matter was submitted on June 29, 2015.

SUMMARY

Respondent Washington Institute for Graduate Studies (Washington Institute) is a non-accredited private postsecondary institution that offers masters and doctorate degrees in taxation through long-distance, independent learning programs. Its owners, respondents

Robert and Terri Hanson, are based in Utah. Respondents began offering the programs to California residents in 2008, when there was no regulatory oversight in California. In 2010, following the enactment of the Bureau for Private Postsecondary Education Act, respondents were permitted to continue offering programs to individuals in California provided they requested and obtained approval under the Act. In 2011, respondents submitted an application for approval to the Bureau for Private Postsecondary Education. The bureau identified numerous deficiencies. Over the course of the next four years, respondents resubmitted information and documentation to the bureau in an effort to comply with the bureau's requirements.

A preponderance of the evidence established that respondents have not, to date, satisfied the requirements for approval to operate as a private postsecondary institution in California. Their application remains incomplete. Moreover, respondents have failed to demonstrate that Washington Institute satisfies the minimum operating standards required under California law. It is not in the public interest to approve Washington Institute's application or permit it to continue operating in California, even on a conditional basis. The bureau's denial of Washington Institute's application for approval to operate in California is affirmed.

PROTECTIVE ORDER SEALING DOCUMENTS

Numerous exhibits that contain personal financial information were admitted into evidence. It was not practical to delete the confidential information from these exhibits. To protect privacy and confidential personal information from inappropriate disclosure, a written Amended Protective Order Sealing Confidential Records was issued, admitted as Exhibit 17, and provided to the parties on the record. The Amended Protective Order lists the exhibits and portions of exhibits that are ordered sealed. The order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order, provided that such documents are protected from release to the public.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. On January 6, 2011, the Bureau for Private Postsecondary Education received an "Application for Approval to Operate for an Institution Non Accredited" from respondents Robert N. Hanson and Terri B. Hanson. The application sought approval to operate Washington Institute for Graduate Studies as a private, non-accredited institution offering a master's degree in taxation. Mr. Hanson signed the application and certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

2. On January 4, 2012, the bureau sent respondents[1] a letter advising them of numerous deficiencies in the application. Respondents provided a response, which the bureau received February 12, 2012. The bureau again found the application deficient.

3. On August 23, 2012, respondents submitted additional information to the bureau and requested that a doctor of taxation program be added to their existing application.

4. The bureau denied respondents' application on May 3, 2013. Respondents requested a hearing on the denial.

5. On April 18, 2014, complainant filed a statement of issues against respondents to affirm the bureau's denial of the application. Respondents filed a notice of defense. On July 31, 2014, respondents submitted additional information to the bureau in an effort to cure the deficiencies alleged in the statement of issues. The bureau continued to find the application deficient. On February 24, 2015, complainant filed a first amended statement of issues to deny the application. On April 2, 2015, respondents submitted additional information to the bureau. The bureau concluded that the application was still deficient, and this hearing followed.

Statutory Background

6. For several years, California maintained a Bureau for Private Postsecondary and Vocational Education. On July 1, 2007, it was "sunsetted" by the Legislature and ceased to exist. From July 1, 2007, through December 31, 2009, California had no regulatory oversight over unaccredited private postsecondary institutions operating in the state.

7. In 2008, Washington Institute began to operate in California as a private postsecondary institution offering a master's degree in taxation as a distance-only, independent study program.

8. On October 9, 2008, Washington Institute filed a Statement and Designation by Foreign Corporation with the California Secretary of State. It identified Washington Institute for Graduate Studies, Inc., as a Delaware corporation with a principal place of business in California at an address in San Diego.

9. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009 (SB 48 and "the Act") was signed into law. The Act established the Bureau for Private Postsecondary Education and became operative on January 1, 2010.

10. Under Education Code section 94886, no person shall open, conduct, or do business as a private postsecondary educational institution without obtaining the bureau's approval to operate the institution. "An approval to operate shall be granted only after an

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[1] In this decision, "respondents" refers to Robert Hanson, Terri Hanson, and Washington Institute.

applicant has presented sufficient evidence to the bureau, and the bureau has independently verified . . . that the applicant has the capacity to satisfy the minimum operating standards." If the application does not satisfy those standards, "[t]he bureau shall deny an application for an approval. (Educ. Code, § 94887.)

11. Private postsecondary institutions that started operating in California after July 1, 2007, and before January 1, 2010, were given an opportunity to be "grandfathered in" if they applied for approval by August 2, 2010. Respondents fell into this category.

12. Respondents have been attempting to obtain approval from the bureau to operate Washington Institute since filing their initial application in 2011. The bureau has continued to deny that request.

Charges in the First Amended Statement of Issues

13. The First Amended Statement of Issues (statement of issues) includes eleven causes for denial. They are summarized as follows:

a. First cause for denial – Respondents provided misleading or inaccurate information or failed to include material facts that might reasonably affect the bureau's decision;

b. Second cause for denial – The application failed to include the required contact information and signature from Washington Institute's agent for service of process;

c. Third cause for denial – The application failed to include detailed job duties and responsibilities of each administrative and faculty position and the criteria for evaluating their performance;

d. Fourth cause for denial – Respondents failed to include or correctly set forth the required language in the enrollment agreements;

e. Fifth cause for denial – Respondents failed to provide sufficient information regarding admission requirements, sample syllabi, who developed school's curriculum, and other required information related to instruction and the degrees offered;

f. Sixth cause for denial – Respondents failed to demonstrate the minimum educational requirements for issuance of a graduate degree in taxation; they failed to require a minimum of 30 semester hours for completion of a master's degree and failed to adequately identify the graduation requirements for a doctorate degree;

g. Seventh cause for denial – Respondents failed to provide a current financial statement audited by a CPA;

h. Eighth cause for denial – Respondents failed to demonstrate that the institution's faculty are sufficiently qualified and that the individuals developing the curriculum are sufficiently qualified;

i. Ninth cause for denial – Respondents failed to satisfy the minimum requirements regarding facilities, a library or librarian, records, personnel, and equipment in California;

j. Tenth cause for denial – Respondents failed to include required language in the school catalogues; and

k. Eleventh cause for denial – Respondents failed to include required information on the institution's website.

General Background Information and Evidence

WASHINGTON INSTITUTE

14. Washington Institute is a non-accredited private postsecondary institution that offers graduate degrees in taxation through distance learning programs. According to its most recent doctorate catalog, the "composition of the Graduate Tax Program is 80 % accountants (predominately C.P.A.'s), 10 % lawyers, 5% are Enrolled Agents before the IRS and another 5% from mixed professions." According to the master's degree catalog, "The Master's Degree Program of Washington Institute is available to students through independent study and filmed lectures and students may begin the program at any time of the year." The Doctorate in Taxation program involves a four year program based on students "viewing tax courses online, at the student's leisure" and consists of three phases that include coursework, teaching, and writing a dissertation.

15. The mission statement, which is included in both the master's and doctorate catalogs, states:

> Designed for attorneys, certified public accountants, financial advisors working in the field of taxation, and enrolled agents before the IRS, our mission is to provide a quality distance learning experience that is relevant, convenient and affordable.

16. Washington Institute is not currently licensed, registered, or approved by any state to operate as a private postsecondary institution.

17. The institute's faculty members and administration live and work in Utah, Florida, Nevada, and Canada. None are from California.

18. Washington Institute currently has over 160 enrolled students. Of these, fewer than 10 are from California.

DREW SAETUNE

19. The bureau employs Drew Saetune as a senior education specialist. He worked for the bureau's predecessor, and he has worked for the bureau since its inception over five years ago. Mr. Saetune holds an associate's degree in sociology and a bachelor's degree in business administration. He has become familiar with the regulations that institutions must satisfy before they can be granted approval to operate in California as a private postsecondary institution. Mr. Saetune's duties include reviewing applications for approval and an institution's educational programs to determine if the applying institution meets minimum qualifications and operating standards outlined in the regulations. According to Mr. Saetune, the regulations are there to protect consumers, students, and the public. Approval is not accreditation, but approval is required before an institution can operate in California.

20. Mr. Saetune testified that when he is assigned to review an application for approval, he conducts a thorough initial review. If he concludes that the applicant has complied with all regulatory requirements and is qualified for approval, he recommends that the bureau chief approve the application. Mr. Saetune does not, however, have the authority to make a final decision as to whether an applicant should be granted approval. When he determines that an application is deficient, he typically sends a "deficiency letter" outlining the problems he identified and gives the applicant an opportunity to correct the deficiencies.

21. In January 2011, Mr. Saetune was assigned to review respondents' application. The application and its attachments were 145 pages in length.

22. On January 4, 2012, Mr. Saetune sent respondents a "deficiency letter," which identified 23 deficiency categories in the application. The letter advised respondents that the bureau could not grant approval based on the initial review and that once respondents corrected the deficiencies, respondents' "educational programs may be subject to a further in-depth review."

The deficiency letter identified specific sections in the application that the bureau found deficient, the issue (or issues) requiring attention, and the specific regulation in the California Code of Regulations, title 5, that governed the need for correction or additional information. For example, it noted that respondents had failed, in part, to identify a "main campus;" include the agent for service signature and address; attach exemplars of student enrollment agreements; provide required information regarding instruction and degrees offered; include financial statements that had been reviewed by a CPA; show the availability of required library and learning resources information; or include required catalogue language. Mr. Saetune included student enrollment and student catalog checklists for respondents' use. The checklists were tailored to respondents' application and provided a

space for respondents to indicate where, on any revised application, each required element could be found.

23. In an effort to address the deficiencies, Mr. Hanson sent a "revised" application to the bureau on February 17, 2012. Some, but not all, of the previously identified deficiencies were corrected.

24. While Mr. Saetune was evaluating the revised application, Mr. Hanson sent the bureau additional correspondence dated August 10, 2012. Mr. Hanson asked that a doctor of taxation program be added to the existing application.

25. On May 3, 2013, the bureau sent respondents a 12-page Notice of Denial of Application for Approval to Operate. The bureau concluded that that there were still deficiencies in the application, that it remained incomplete, and that respondents did not meet the minimum operating standards for operating a private postsecondary institution in California. The 12-page Notice of Denial listed numerous regulations requiring compliance and outlined several bases for denial.

26. Respondents submitted additional documents on July 31, 2014. Mr. Saetune reviewed them. In his opinion, numerous significant deficiencies remained. In addition, in the course of researching the application documents, he contacted Mr. and Mrs. Hanson's state of residence, Utah, and learned that, in November 2008, Washington Institute had been denied a license to operate as a postsecondary proprietary school in Utah. None of respondents' multiple submissions disclosed this.

27. In April 2015, after complainant filed the first amended statement of issues, respondents, in their continued effort to obtain approval, submitted additional information to the bureau. Mr. Saetune reviewed the information. In his opinion and that of his supervisors, respondents still did not satisfy the regulatory requirements, and the application raised serious questions about respondents' ability to meet the minimum qualifications to operate in California.

ROBERT HANSON

28. Robert Hanson has been President and Chairman of the Board of Washington Institute since 2008. He testified that he and his wife, Terri, own a total of 73 percent interest in Washington Institute.[2] Mr. Hanson oversees all aspects of Washington Institute.

29. Mr. Hanson earned a bachelor's degree in business with an emphasis in finance from North Carolina University in 1996. He received a master's degree in business administration from the University of New Haven. Most of his professional career has been

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[2] No evidence was provided to explain the discrepancy between this testimony and the application, which states that each of them has a 41 percent interest.

spent in the area of charitable fundraising; he worked for United Way, Ohio State University, and some large hospital systems.

30. Mr. Hanson became associated with Washington Institute through his uncle, who founded it in 1976. According to Mr. Hanson, prior to the 1990's, Washington Institute was licensed in Utah to provide a master's in taxation and, for a while, a J.D. degree in connection with the University of Utah. It was geared towards "already-working professionals" who, for personal or professional reasons, could not attend school in a traditional educational setting.

31. In February 2008, some years after his uncle passed away, Mr. Hanson began to manage the institute at the request of his aunt and the board of directors. In October 2008 Mr. Hanson decided to "relocate" the school to California to coordinate with another institution in California that had voiced an interest in purchasing Washington Institute. At the time, California did not regulate private postsecondary institutions. In 2010, he was surprised to learn from a student that the bureau had been created and that he needed to apply for approval to continue operation in California. Wanting to comply with California's laws, Mr. Hanson prepared the application on behalf of Washington Institute, signed it on October 15, 2010, and sent it to the bureau.

32. Mr. Hanson received the deficiency letter about a year later. Within a few weeks, on February 12, 2012, he resubmitted the application with additional information in an effort to meet the bureau's concerns. In August 2012, he asked that a doctoral program be added to the application. In his letter, he indicated that Washington Institute had previously offered a doctoral program and that the program had "not undergone any academic review in the last 10 years and my administration felt the program could be updated and strengthened."

33. After the statement of issues was filed in April 2014, Mr. Hanson requested an administrative hearing. Working with his attorneys, he authorized the submission of Washington Institute's next submission, sent July 31, 2014. He reviewed the first amended statement of issues filed by complainant in February 2015 and authorized Washington Institute's most recent submission in April 2015.

34. Mr. Hanson testified that he provided information to the bureau in good faith and in the belief he was complying with all requirements. He testified that, until he heard Mr. Saetune's testimony, he had not understood some of the bureau's concerns or why certain information that he provided was considered insufficient, inadequate, vague, or included in the wrong place on the application or on other documents submitted.

35. According to Mr. Hanson, Washington Institute does not have a "current term" and does not specify a semester or trimester or particular period for completion of a set of courses. Instead, each program is self-paced, and each student may take a different amount of time to complete it. There are outside limits; a master's degree student has five years in which to complete that program, and a doctoral student must complete that program in four years. Each program "starts" on the date the student is admitted, and it is impossible to

determine, on that date, the precise date the student will complete his or her program. Having heard Mr. Saetune's testimony, Mr. Hanson now understands that the enrollment agreement must have a separate line for inserting the date the student may withdraw and receive a full refund, which will be a date seven days following the enrollment date.

36. Mr. Hanson testified that he is willing to make whatever changes are necessary to the programs in order to operate in California.

37. Terri Hanson was not present and did not testify.

First Cause for Denial

THE ALLEGATION

38. Complainant contended that respondents' application included false or misleading information, and that it failed to include material facts that might reasonably affect the bureau's decision to grant an approval to operate. Complainant alleged that by omitting any reference to Washington Institute's prior denial of a license to operate in Utah, respondents violated the following provisions of the California Code of Regulations, title 5, sections 71100 [submitting an application that fails to include all required information renders it incomplete]; 71130, subdivisions (c)(2) [application must include a statement if any owner has had a license denied on grounds included in Business and Professions Code section 480] and (c)(4) [the owners have stipulated to an administrative order or consent decree]; 71340, subdivision (a) [the application must include information that might reasonably affect the bureau's decision or alter bureau's determination about ability to comply with the Act]; and 71400.5 [an application may be denied if it includes false or misleading information, or the intentional or negligent omission of pertinent information.] The statement of issues also alleged that respondents' omissions violated Education Code section 94897, subdivision (j)(3) [making an untrue or misleading statement related to any required record or document.]

COMPLAINANT'S EVIDENCE

39. On May 2, 2008, Mr. Hanson filed an application to register it as a "postsecondary proprietary school" in Utah. On June 9, 2008, the Utah Division of Consumer Protection issued a Notice of Denial of Postsecondary Proprietary School Application, advising Washington Institute (through Mr. Hanson) that it intended to deny the application on the grounds that the application was incomplete under Utah Code Ann. Section 13-34-113(1)(b)(i), and that denial was "in the public interest." Mr. Hanson requested a hearing to challenge the denial. On October 14, 2008, the day before the hearing, Mr. Hanson's legal counsel, Kirton and McConkie, the same counsel representing respondents in this proceeding, filed a document indicating that Washington Institute was withdrawing its objection to the denial of the registration approval.

40. On November 17, 2008, Utah issued a "Final Order Denying Postsecondary Proprietary School Application." The Order found that Washington Institute had withdrawn its objection and petition for approval, that Washington Institute failed to participate in the proceedings, and that an order denying the application to operate a "Postsecondary Proprietary School" was in the public interest and was "supported by one or more grounds" in the Utah Code. Utah did not merely deny the application; it issued a cease and desist order to prohibit Washington Institute from "advertising a proprietary school, recruiting students for a proprietary school, or operating a proprietary school in Utah until it was registered with the Division." The order showed a proof of service on Mr. Hanson at the Washington Institute business address in Utah.

41. Question 3.1 of the California application requires that any person who owns or controls more than 25 percent of the institution or "who exercised substantial control over the institution's management or policies" be listed as an owner. Mr. Hanson wrote that he was an owner of Washington Institute and had a 41 percent common stock ownership, and that his wife, Terri B. Hanson, had another 41 percent common stock ownership. They listed their address in the state of Utah.

42. Question 3.2 of the application instructed the applicant to attach a statement from any owner (anyone listed in 3.1) who was found to have violated the law of any state "related to untrue or misleading advertising, the solicitation of prospective students for enrollment in an educational service, or the operation of a postsecondary school," who had been denied any license on grounds set forth in Section 480 of the Business and Professions Code[3], stipulated to a judgment or administrative order, or entered into a consent decree.

Mr. Hanson wrote "N/A" next to Question 3.2.

43. Question 24 of the application asked that the applicant include "any material facts, which have not otherwise been disclosed in the application that without inclusion would cause the information in the application to be false, misleading or incomplete or that might reasonably affect the bureau's decision to grant an approval to operate." Respondents left Question 24 blank.

44. Respondents never mentioned the Utah action, and the bureau learned about the Utah denial only through its own investigation.

45. As part of its initial application, respondents submitted a copy of its master's in taxation catalog, which Mr. Hanson testified he wrote. Under "Program Certification," the 2012 catalog stated that "since its inception in 1976, [Washington Institute] has been

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[3] Business and Professions Code, section 480 lists acts that may disqualify an applicant from licensure in California, including conviction of a crime, doing any act involving dishonesty or fraud, or doing an act that if done by a licensee would be grounds for suspension or revocation of the license. (Bus. & Prof. Code, § 480, subd. (a)(1) through (a)(3).)

registered with the Utah State Board of Regents or under the Utah Postsecondary Proprietary School Act." It also stated that in 2002, regulatory oversight of all non-accredited proprietary schools in Utah was transferred to the Utah Department of Commerce, Division of Consumer Protection, and that "[s]ince that time, Washington Institute has successfully registered under the Utah Postsecondary Proprietary School Act."

46. Mr. Hanson repeated this statement (that "since that time" Washington Institute "has successfully registered" to operate in Utah under Utah's Postsecondary Proprietary School Act) in the Washington Institute 2012 doctorate in taxation catalog and Washington Institute's 2015 catalogs for the master's in taxation and doctorate in taxation programs.

RESPONDENTS' EVIDENCE

47. Mr. Hanson testified that he accurately completed Question 3.1. According to Mr. Hanson, neither he nor his wife had reportable actions under section 480; neither has been convicted of a crime, engaged in fraud or dishonesty, or done any act that would be grounds for suspension or revocation of a license. He further contended that Utah did not deny their application for any of those reasons.

Mr. Hanson testified that he did not try to mislead the board. He acknowledged that in 2008 he filed an application for Washington Institute to register as a private postsecondary school in Utah; Utah advised him that it planned to deny the application; and he requested a hearing on the behalf of Washington Institute. He did not believe he needed to report this. As he explained, his attorneys "withdrew his objections" to the denial, and he thought that meant the matter "would simply be dropped" in Utah. Although Mr. and Mrs. Hanson lived (and continue to live) in Utah, he decided not to pursue a license in Utah because he had an "opportunity" to collaborate with another institution in California. That collaboration did not work out. He was not trying to hide information; he did not believe it needed to be included.

THE ARGUMENTS

48. Complainant alleged that the information concerning the Utah license denial was relevant information that should have been included in the application. Complainant argued that Mr. Hanson's withdrawal of his objection to Utah's denial of registration was, in essence, a stipulation to an administrative order denying licensure. Complainant emphasized that the registration denial was the kind of information that respondents should have realized would be important to the bureau and that, in the interest of transparency, it should have been provided. Complainant noted that the failure to disclose was made even more significant by Washington Institute's misrepresentations in its catalogs about being registered in Utah.

Respondents' counsel argued that none of the "parties" in question 3.1 (Mr. or Mrs. Hanson) had "ever been denied any type of license;" and that Washington Institute was denied a license in Utah but not Mr. or Mrs. Hanson. He further argued that even if Mr. Hanson had been denied a license, the denial was based "solely on an incomplete

application" and that "a denial for an incomplete application in another state does not concern the Institute's ability to comply with California's Act." He contended that there was nothing to report regarding section 480, and that respondents did not mislead the bureau in any way.

Respondents' written argument also contended that the bureau took the words from the catalogs out of context, because the catalog also states that in "2008, the school moved its base of operation to California" and that "reading both paragraphs together, it is only logical that once the school moved to California, it discontinued its Utah registration under the Utah Postsecondary Proprietary School Act" and that "[n]othing in the Bulletin is untrue."

EVALUATION RE: FIRST CAUSE FOR DENIAL

49. Complainant did not establish by a preponderance of the evidence that respondents were required to mention the Utah denial or provide any other specific information in response to Question 3.2. The evidence did not establish that Mr. or Mrs. Hanson or Washington Institute had been found to have violated the law of any state related to untrue or misleading advertising, the solicitation of prospective students, or the operation of a postsecondary school. Nor was there evidence that any applicant had been denied a license based on grounds in Business and Professions Code, section 480 (conviction of a substantially related crime or having committed an act involving dishonesty.) Complainant's argument, that Mr. Hanson's withdrawal of his hearing request constituted a stipulation to an administrative order is not persuasive. Mr. Hanson did not stipulate to a license denial; by the very terms of Utah's order, Utah denied the application without Washington Institute's (or Mr. Hanson's) participation. Question 3.2 did not ask if any of the owners had ever been denied a license or if they had been subject to any adverse administrative order. Question 3.2 had a narrow and specific focus of inquiry, and technically, none of the respondents fell within its parameters. In a showing of transparency or good faith, respondents could have mentioned the 2008 Utah denial in response to Question 3.2, but their failure to do so is not grounds for denial of the application because that information did not go to the call of the question.

50. However, a preponderance of the evidence established that respondents should have included information about the 2008 Utah order somewhere in the application, either by including it under section 3.2, or in response to question 24, if it was not otherwise included.

The application and regulations emphasize that all relevant information should be included, particularly information that might reasonably affect the bureau's determination. Mr. Hanson's testimony that he did not know the application was denied was unreasonable and lacked credibility. He was the sole owner of Washington Institute, and Utah served him with the Notice of Denial.

Respondents should have included the information concerning Utah's denial of a registration to Washington Institute. It is the kind of information that a reasonable person should have known might affect the bureau's determination about respondents' ability to

comply with the Act, particularly since, in California, failing to submit a complete application is grounds for denial of approval to operate. Mr. Hanson's failure to include reference to the Utah denial was an omission of pertinent information; whether it was intentional or negligent, the omission violated California Code of Regulations, title 5, sections 71400.5 and 71340.

51. The significance of the omission is increased because of the misinformation respondents included in the catalogs about the school's registration in Utah. Respondents' catalogs, which were required to be submitted with the application, included false and misleading information about its registration in Utah. Despite Utah's 2008 denial of the institute's application to register in Utah and that state's issuance of a cease and desist order, Washington Institute's catalogs repeatedly misstated that the institute had been continuously registered in the state of Utah since 2002. This false and misleading statement is grounds for denial of the license application under California Code of Regulations, title 5, section 71400.5, and Education Code section 94897, subdivision (j)(3).

52. Respondents' written argument, that the bureau has taken the words from the catalogs out of context and that the "only logical" reading is that Washington Institute "discontinued its Utah registration" once it moved to California is troubling, and it is rejected. Regardless of whether Washington Institute "moved its base of operation" to California in 2008, every catalog filed with the bureau from 2011 to as recently as 2015 stated that "since that time [2002], Washington Institute has successfully registered under the Utah Postsecondary Proprietary School Act (Title 13, Chapter 34, Utah Code)." That statement was false.

And, even if Mr. Hanson had not read Utah's final order when Utah issued it in 2008, Mr. Hanson knew that Washington Institute was not registered to operate in Utah. Mr. Hanson's misrepresentation that Washington Institute remained "successfully registered" in Utah reflects poorly on his ability to comply with the minimum operating standards for a private postsecondary institution in California and supports denial of the application.

Second Cause for Denial

THE ALLEGATION

53. Complainant alleged that the application was incomplete and subject to denial because respondents did not include the address of their agent for service in the space provided in the application. Complainant alleged that denial was warranted under California Code of Regulations, title 5, sections 71400 [an application must be complete] and 71135 [the institution shall include the name, address, telephone and fax numbers, email address for service of process in California, and "the agent must confirm the information and acknowledge in writing that he or she is the designated agent for service of process."]

THE EVIDENCE

54. The application, page 3, Question 4, requests specific information regarding the agent for service of process within California, and cross-references California Code of Regulations, section 71135. The question requests the name, address, city, state, email, telephone and fax numbers of the agent for service, and ends with the following sentence, in bold: "I confirm my contact information listed above and acknowledge that I am the designated agent for service of process." The application has a line for a date and the agent's signature.

55. In response to Question 4, Mr. Hanson wrote "See Appendix 6." Appendix 6 was located 60 pages away. It appeared to be a computer-generated document that included some of the requested agent contact information. It did not include an email address or a signature. The bottom of the document stated "the responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions." The document did not mention the application or the bureau.

56. Mr. Saetune testified that the bureau interprets the regulation (section 71135) as requiring all of the information and the signature on the actual application form so it is in one place.

57. The bureau's January 4, 2012, deficiency letter advised respondents that respondents needed to provide the specifically requested agent information and signature on the actual application form. When respondents submitted a revised application on February 12, 2012, Question 4 included some of the contact information and a handwritten note stating: "See Appendix Ia." Still, there was no signature.

58. The bureau's May 3, 2013, denial letter included this issue as a basis for denial and stated that the application was incomplete under section 71100, subdivisions (a) and (c).

59. On June 30, 2014, after the initial statement of issues was filed, respondents submitted a new page 3 of the application. Question 4 included some of the required contact information and a signature but did not include the agent's physical address. Mr. Hanson testified that he did not know the information could not be supplied in an attachment but had to be on the actual application form. In a spread-sheet explanation of the various deficiencies that Mr. Hanson was attempting to cure, Mr. Hanson wrote that he had provided "evidence of our contract with Company Corporation (CC) but no signature," and "Terri to get CC to sign, as needed."

THE ARGUMENTS

60. Respondents' counsel argued that section 71135 required only that the information be "confirmed in writing from the agent," and that the regulation did not require a signature or prohibit the submission of material in attachments. He argued that all of the information was provided if one put the various submissions together.

Complainant argued that the application remained incomplete because all of the information was not included on the application itself.

EVALUATION RE: SECOND CAUSE FOR DENIAL

61. When a school seeks to operate as a private postsecondary institution in California, the bureau must have the necessary information to ensure there is an agent for service in California who has accepted that responsibility and has verified the information provided. Despite several submissions, respondents never fully completed Question 4. Respondents' contention that the sheet of paper attached to the first application, or that the combination of documents submitted thereafter, constituted "confirmation in writing from the agent" is rejected. The initially-filed attachment included a "fine print" disclaimer in language at the bottom, which called the document into question. Respondents' second filing of Question 4, submitted February 2012, included contact information but no signature. When Mr. Hanson submitted additional documents in June 2014, Question 4 included a signature and was partially completed, but no address was listed.

62. Respondents' argument that the information is not incomplete because all of the required information is on the application form if one puts together information from the different submission is rejected. Question 4 was simple, but respondents never provided a complete response. Moreover, comparing different submissions does not assist respondents; the telephone number listed on the February 2012 partial response to Question 4 was different from the telephone number listed on the partial response to Question 4 submitted in June 2014. The only "written acknowledgment" – the signature - was on the June 2014 submission that failed to include a physical address and listed a telephone number that differed from the telephone number listed on the February 2012 submission that included an address without a signature. Section 71135 requires that the "agent must confirm the information and acknowledge in writing that he or she is the designated agent for service of process." Respondents' argument that nothing in the regulations requires a signature misses the point. Had respondents completely responded to Question 4 on the application – with all the requested contact information and a signature, the regulation would have been satisfied. Respondents did not satisfy the regulation; whether on the application itself or as an attachment.

63. The Second Cause for Denial is sustained.

Third Cause for Denial

THE ALLEGATION

64. Complainant alleged that the application failed to include a sufficiently detailed description of the job duties for each faculty member and administrator. Claiming that the descriptions were too vague, complainant asserted that the inadequate descriptions failed to evidence the school's capacity to meet the minimum operating standards under the Act and violated California Code of Regulations, title 5, sections 71140, subdivision (b) [the

institution shall provide a description of the job duties and responsibilities for each administrative and faculty position] and 71730, subdivision (b) [the institution must set forth duties, responsibilities, and performance evaluation criteria for each administrator in the personnel manual or other writing.]

THE EVIDENCE

65. Washington Institute's January 2011 initial application included a list of administrators and faculty and a document called "Duties of Administration & Faculty." Under "Faculty," the duties were described in three bullet points. They indicated that faculty were responsible to the president, were independent contractors, and had their own tax practices. The positions were divided into teaching faculty and academic advisors and provided the following descriptions of their duties:

> Teaching Faculty. Faculty are contracted to prepare and deliver courses that are video-taped and edited for student consumption. Also teaching faculty prepare review and final examination for each course. Finally, faculty members are responsible to resolve questions and concerns expressed by students.
>
> Academic Advisors. These individuals help identify course topic, qualified instructors, advise on protocol/practices and advise on the direction of the tax industry, as a whole.

66. These bullet points were inadequate to describe the faculty members' duties and responsibilities.

67. The bureau's deficiency letter dated January 4, 2012, cited California Code of Regulations, title 5, section 71140, and instructed respondents to provide a description of the job duties and responsibilities of each faculty member and administrator and identify the CEO, COO, and CAO and describe their education, experience, and qualifications.

68. Respondents' next submission, in February 2012, contained the identical description of faculty duties.

69. When the bureau sent its denial letter dated May 3, 2013, it advised respondents that the information provided was still "too vague" and that it did not include the information required. The letter listed several section numbers from California Code of Regulations, title 5, which were characterized as relating to "organization and management" deficiencies: sections 71140, subdivision (b) [application must include description of job duties and responsibilities of faculty and administrators][4]; 71720, subdivision (a)(3)(E) [faculty duties established by institution]; 71730, subdivision (b) [duties, responsibilities, and

[4] The summary in brackets is provided in this decision to assist the reader. The denial letter listed the regulation section numbers without summarizing text for every number listed.

performance evaluation criteria for each administrator must be listed]; and 71100, subdivisions (a) through (c) [an applicant must submit the completed application form, information and documents required by the Act, and an application that fails to include the required information is incomplete.]

70. Respondents' next submission, filed in July 2014 (after the statement of issues was filed in April 2014), repeated the same generalized descriptions. No performance criteria were included.

71. The first amended statement of issues was filed in February 2015. In April 2015, respondents submitted additional documentation that provided, for the first time, far more detailed information concerning faculty duties and responsibilities. The submission did not include performance criteria.

THE ARGUMENTS

72. Respondents claimed that this issue reflects a miscommunication and that they did not know, until the hearing, that the job descriptions were too vague or that performance evaluation criteria were required or missing. According to respondents' brief, the Institute is willing to supplement this information to satisfy the bureau's concern.

Complainant argued that there was no surprise; that the bureau repeatedly advised respondents that the submissions were too vague, and that the bureau's correspondence and statement of issues referenced the applicable regulations that required submission of job duties and performance evaluation criteria.

EVALUATION RE: THIRD CAUSE FOR DENIAL

73. The bureau made repeated requests for detailed job duties and responsibilities, and repeatedly stated that what was provided was "too vague." Respondents were given adequate notice that more detailed job descriptions were required, and they eventually provided them in 2015, shortly before the hearing.

74. Although the initial deficiency letter did not mention the need for providing performance evaluation criteria, the May 2013 denial letter referenced the regulation number that required the inclusion of performance criteria. Without question, an application process involves review and consideration of numerous regulations, some of which are lengthy and detailed. It might have been helpful for the bureau to have identified this specific deficiency in words (rather than solely by reference to a regulation number), but the bureau was not required to spell out every requirement of every regulation it cited.

75. Respondents were given adequate notice of this deficiency. They did not demonstrate that the school's personnel manual (or other document) includes performance evaluation criteria, as required in California Code of Regulations, title 5, section 71730, subdivision (b). The Third Cause for Denial is sustained.

Fourth Cause for Denial

THE ALLEGATION

76. The fourth cause for denial alleged that respondents' enrollment agreements failed to include or correctly quote language required by numerous regulations. The cause for denial lists ten instances in which the enrollment agreement language allegedly violates the following regulations: California Code of Regulations, title 5, sections 71800, subdivisions (b) and (c) [the enrollment agreement must state the period that it covers and list the program start and completion dates]; (e) and (f) [all charges and fees listed in the regulation must be itemized in the student enrollment agreement]; and 7615, subdivision (a) [specific language needs to be included about the Student Tuition Recovery Fund]. Complainant also alleged that the enrollment agreements violated Education Code section 94911, subdivisions (b)[non-refundable charges must be identified] and (d) [the enrollment agreement must have a "clear and conspicuous statement" that it is legally binding when signed by the student, and section 94911, subdivision (j) [need to include required language for filing complaint to bureau.]

THE EVIDENCE

77. Mr. Saetune testified about many respects in which he found the enrollment agreement lacking. He explained that he tried to identify all the deficiencies before he sent correspondence to respondents, but there were so many deficiencies that sometimes he did not identify them until after respondents submitted their additional documentation, or the deficiency changed following the additional submission. By the time the hearing was held, respondents had cured many of the problems Mr. Saetune identified earlier in the application process, though additional concerns remained.

78. According to Mr. Saetune, the enrollment agreements did not have a discrete period of a term, such as a semester or trimester, and this appeared inconsistent with the regulations. He identified typographical or word errors in some of the language required by statute to be quoted. (For example, in one place the bureau's address was off by one digit; in another, respondents quoted required language incorrectly and used the word "bulletin" instead of "brochure," the specific word in the regulation.) Mr. Saetune testified that certain formats should have been used (such as setting off certain language in a separate paragraph from language in the body of the agreement), but this was not conveyed until the hearing. He testified that blank lines for a student's signature or initials were in the wrong place. Mr. Saetune wrote a letter on behalf of the bureau directing respondents to quote from a regulation, (section 76215, subdivision (a).) It was corrected, but at the hearing he testified that subsection (b) should also have been included. He explained that when respondents used the term "tax program" in the enrollment agreement without specifying whether it applied to the master's or doctorate program, the agreement failed to satisfy the regulations.

THE ARGUMENTS

79. Complainant did not address this cause for denial in its written brief.

Respondents argued that they included all required information and language in the enrollment agreement; that they should not be penalized by using a "term" that is an outside set number of years rather than a semester or trimester because the regulations do not specify the length of the term an institution must use. They argued that the bureau is seeking to expand the requirements of certain provisions that are not suited to a self-paced, distance learning program that does not use semesters or trimesters. They contend that the bureau has focused on minute mistakes that can be easily corrected. They complained that the bureau did not identify all of its concerns until the hearing.

EVALUATION RE: FOURTH CAUSE FOR DENIAL

80. The core of the required language is included in respondents' enrollment agreements. The regulations do not require a specific length of term or the use of semesters or quarters. The enrollment agreements should be modified to include separate blank lines for inserting the start date, the date by which the student must cancel or withdraw in writing in order to obtain a refund, and the specified date for the end of the agreement. Some of the sentences require small corrections or additional language that was not identified until the hearing. To the extent there are deficiencies in the student enrollment agreements based on matters alleged in the fourth cause for denial, they are the kind that can be corrected if respondents are otherwise qualified to operate in California.

81. Charges in the fourth cause for denial were not sufficiently established so as to constitute grounds for denial of respondents' application.

Fifth Cause for Denial

THE ALLEGATION

82. The fifth cause for denial listed several items under a general category complainant called "lack of information concerning the instruction and the degrees offered." At the hearing, some of the specific allegations relating to recently corrected deficiencies were stricken. Complainant continued to contend that respondents did not include information concerning the admissions requirements and faculty expertise, as required under California Code of Regulations, title 5, sections 71200 [admissions requirements and sample syllabi]; and 71715, subdivision (d)(3) [ensure that the materials and programs are current, well organized, and designed by faculty competent in distance education techniques.]

THE EVIDENCE

83. The bureau's January 4, 2012, deficiency letter and its May 3, 2013, denial letter both stated that the regulations required respondents to identify the authors of the

curriculum and that this information had not been provided. Respondents first provided a list of some of the authors of the curriculum in its April 2015 submission, filed shortly before the hearing. During the hearing, Mr. Hanson testified that each faculty member developed his or her own course and that each was peer-reviewed, but he did not describe the peer-review process.

84. Eugene Lillie also testified about this issue. In January 2015, he became dean of the institute for both the master's and doctorate programs. Dean Lilly received his GED after dropping out of tenth grade and joining the Marines. He attended community college and in 1978 obtained an associate's degree in accounting. He attended Strayer University, where he took predominately online courses and received a master's degree in accounting-taxation. He has worked in several accounting firms. He is an enrolled agent with the IRS, but he is not a CPA. For four years, Dean Lilly taught accounting at Esperanza College, a two-year college that offers a hybrid of onsite and distance learning. Dean Lilly became a doctoral student at Washington Institute in 2012. He has not finished his doctorate because he has been "sidetracked by other issues." This is the first time he has ever been employed by a school and the first time he has ever been a dean of students.

85. Dean Lilly testified that he was verifying the quality and standards of the courses, and that he had developed some of the courses. His name, however, was not mentioned in respondents' April 2015 submission.

86. Dean Lilly testified that he has some experience in providing distance learning. There was no evidence provided regarding the competency of other faculty members to provide education through distance-only techniques.

EVALUATION RE: FIFTH CAUSE FOR DENIAL

87. Although it took several years to do so, respondents eventually provided substantial compliance with the requirements of many of the regulations identified in the fifth cause for denial. One significant deficiency remains. California Code of Regulations, title 5, section 71715, subdivision (d)(3), requires that when education is provided through "distance" education, the materials and programs must be current, well organized, and "designed by faculty competent in distance education techniques." Neither respondents' submissions nor testimony from either Mr. Hanson or Dean Lilly addressed the competency of the faculty in "distance education techniques." Respondents are seeking to operate solely as a distance-learning institution. It is critical that the faculty be skilled and competent in this area. There was no evidence as to whether the DVDs Washington Institute used were made before a live student audience, in front of a camera alone, or by anyone with particular competence in distance education techniques. None of the biography snippets of faculty members mentioned experience or expertise in teaching through a distance-only program. Mr. Hanson had no expertise in it. Dean Lilly testified that he has taken courses from an institution that provided on-site and internet instruction and is involved with a distance-learning organization, but his testimony was insufficient to establish that Washington Institute's faculty members are "competent in distance-education techniques."

88. Respondents' failure to demonstrate that Washington Institute's faculty members are competent in distance education techniques constitutes a failure to comply with California Code of Regulations, title 5, section 71715, subdivision (d)(3); established that respondents failed to satisfy the minimum standards for operating in California; and constitutes grounds for denial. The Fifth Cause for Denial is sustained.

Sixth Cause for Denial

THE ALLEGATION

89. The statement of issues alleged that respondents failed to demonstrate that Washington Institute satisfied the minimum educational requirements for awarding graduate degrees in taxation. It alleged that Washington Institute failed to satisfy California Code of Regulations, title 5, section 71865, subdivision (a) [master's degree may be awarded only to a student who has acquired "a minimum of 30 semester credits or its equivalent or one year of study beyond the Bachelor's degree"] and subdivision (b) [doctoral degree "may only be awarded to a student who has completed a prescribed level of study normally requiring a minimum of three academic years of full-time graduate study or the equivalent in part-time study."]

THE EVIDENCE

90. Every master's degree catalog submitted by respondents since 2011 states that "24 semester units" of instruction are required to complete the master's program and receive a master's degree. The regulation requires a minimum of 30 units.

91. Dean Lilly testified that he is familiar with the different methods for determining semester hours. In his opinion, the 24-semester-hour requirement for obtaining a master's degree was determined by using the University of Texas system, as opposed to the Carnegie method of determining semester unit value. According to Dean Lilly, he could recalibrate the semester hours using the Carnegie method, and the result would be at least 32 semester hours. He determined this based on his own experiences and review of the material. He did not speak with other professors at any other institution or speak with individuals on the Distance Education Training Council in making this determination. Making the recalibration will require changes in the master's degree student enrollment agreement and catalog. When asked why he had not yet made the change, he stated that it was because he hadn't "gotten around to it."

92. The doctoral program catalog identifies the graduation requirements for a doctorate in taxation as follows:

> The doctoral program is conferred on candidates who have demonstrated to the satisfaction of the school substantial scholarship, high attainment in a particular field of knowledge, and ability to do independent investigation and present the

> results of such research. The candidate has 48 months to satisfy the general requirements for the program, as specified by the school below, and the specific requirements of each phase and their Mentor. . . .

93. The paragraph is followed by an explanation of three phases: Phase 1 (course work); Phase 2 (teaching); and Phase 3 (research and writing a dissertation.) Thereafter the student must successfully defend his or her dissertation before a panel of experts, and this can be done remotely. Some of the courses are to be taken at other institutions. Some are identical to the courses offered in the master's program. The specific graduation requirements are unclear.

THE ARGUMENTS

94. Respondents conceded that Washington Institute has never required 30 semester units for issuance of a master's degree. They contend that remedying this requires merely a simple change in semester unit calculation and no change in the rigor required for issuance of the degree. In their closing brief, respondents stated that they "will amend their calculations for semester credits after this proceeding concludes."

Complainant argued that Mr. Lillie is insufficiently qualified to determine the correct semester unit value, that revising the values from "24" to "30" is speculative and unsupported, and such a "numeric revision" raises a concern that students will not receive the minimum educational instruction required for a master's in taxation.

EVALUATION RE: SIXTH CAUSE FOR DENIAL

95. To be approved to offer a master's degree in California, Washington Institute must require completion of 30 semester units before awarding the degree. (Cal. Code Regs., tit. 5, § 71865.) To date, Washington Institute has never satisfied this requirement.

96. Insufficient evidence was submitted to establish that the current 24-semester-hour requirement for obtaining a master's degree can be recalibrated and found to be 30 semester hours. It is without question, however, that Washington Institute's graduation requirements do not meet California's minimum standards for the issuance of a master's degree.

97. Despite Washington Institute having been advised of this deficiency repeatedly for several years, it has not been corrected because Dean Lilly "hasn't gotten around to it," and respondents plan to "amend their calculations for semester credits after this proceeding concludes." Respondents' lackadaisical attitude about the issue is unacceptable and further supports denial. The Sixth Cause for Denial is sustained.

Seventh Cause for Denial

THE ALLEGATION

98. Under the applicable regulations, the application must include current financial statements that contain, at a minimum, a balance sheet, income statement, and a cash flow statement. "Audited and reviewed financial statements shall be conducted and prepared in accordance with the generally accepted accounting principles established by the American Institute of Certified Public Accountants by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution." (Cal. Code Regs., tit. 5, § 74115, subd. (b)(1).) Annual financial reports have certain requirements. (Cal. Code Regs., tit. 5, § 74115, subd. (b)(2).) The financial statements must establish that the institution has sufficient assets and financial resources to "[m]aintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year when using generally accepted accounting principles. . . ." (Cal. Code Regs., tit. 5, §§ 71745, subd. (a)(6); 74115, subd. (b)(3).) To be current, the statement must be "completed no sooner than 120 days prior to the time it is submitted to the bureau" and cover "no less than the most recent complete fiscal year." (Cal. Code Regs., tit. 5, § 74115, subd. (d).)

The seventh cause for denial alleged that the application failed to include a current financial statement that was reviewed or audited by a CPA and that showed the required ratio of assets to liabilities of 1.25 to 1.

THE EVIDENCE

99. When respondents first submitted their application, they included a financial statement for the year ending December 31, 2010. The statement showed assets of $34,029; liabilities of $176,867, and an asset to liability ratio of .21 to 1, an unacceptable ratio. In addition, the financial statement was not prepared by a CPA. After the bureau advised respondents about the statement's deficiencies, respondents submitted a CPA's review, dated April 27, 2012, for the December 2010 figures. At that point, the financial report, which still had an insufficient ratio, was not current.

Over the course of the next few years, Washington Institute has submitted tax returns and other documents. In June 2014, respondents submitted financial documents and Washington Institute's 2010 tax return. They were not current, reviewed, or audited by a CPA.

The documents submitted and dated August 29, 2014, showed an improved ratio of .85 to 1, but the ratio still failed to meet level of financial fitness required under the regulations. In addition, the documents had not been prepared by a CPA.

Respondents filed financial documents in April 2105, after the statement of issues and the first amended statement of issues were filed. Those records were not prepared by a CPA.

Also, they are dated "April 7, *2025*." (Italics added.) Mr. Hanson testified that he believes these financials, once confirmed and reviewed, will show a ratio of current assets to current liabilities of "greater than 3.0 to 1."

In their closing brief, respondents conceded that Washington Institute has not satisfied the regulations regarding the submission of financial statements and explained that the "the Institute has not been able to retain a CPA to conduct a review of those financial statements to provide the level of documentation of that status required under the regulation." It requested additional time to obtain the required review and asked that it not be considered a basis for denial.

EVALUATION RE: SEVENTH CAUSE FOR DENIAL

100. Sound financial health is a crucial component of any private postsecondary institution approved to operate in California. Despite several years and repeated opportunities to demonstrate verified financial resources necessary for permission to operate in California, respondents have not yet done so. Respondents' failure to include the required financial information and verification in their application renders it incomplete. (Cal. Code of Regs., tit. 5, § 71100.) Respondents' request for more time to obtain a CPA to review its most recent submission is rejected. The very fact that an institute purporting to offer master's and doctorate degrees in taxation cannot "obtain" a CPA to review and audit its financials is disconcerting and calls into question its ability to satisfy the minimum operating standards required to operate a private postsecondary institution in California. Given respondents' inability to demonstrate financial fitness and accountability, it is against the public interest to permit Washington Institute to continue operating in California, and denial of the application is warranted. The Seventh Cause for Denial is sustained.

Eighth Cause for Denial

THE ALLEGATION

101. Complainant alleged that respondents failed to establish that the faculty meet the qualifications required in the regulations, including regulation section 71710, subdivisions (c) [course materials must be designed or organized by "duly qualified faculty"] and (f) [the educational program learning outcomes must be evaluated by duly qualified faculty]; section 71715, subdivision (d)(3) [when institution offers distance learning, institution must ensure that materials and programs are current, "designed by faculty competent in distance education techniques and delivered using readily available, reliable technology"]; and 71720, subdivision (a)(4)(B) [the faculty must have sufficient expertise to support the awarding of degrees, including requirement that "[t]he degree, professional license, or credential possessed by the person shall be at least equivalent to the level of instruction being taught or evaluated.] Education Code section 94909, subdivision (a)(7), requires that the school's catalog provide information concerning the faculty and their qualifications.

THE EVIDENCE

102. Both the master's and doctorate catalogs list faculty members and state that a faculty member is considered to have "appropriate academic and professional qualifications" if the member holds a master's degree or higher in the area or business field of the faculty member's instructional responsibilities, or a master's degree plus 18 graduate hours in the faculty member's area of instruction, plus professional experience. The same faculty members are listed in both catalogs. Not all hold doctorates or a JD.

103. Dean Lilly testified that he is in the process of evaluating all faculty members. To determine if Washington Institute faculty members are experts in their fields, he has reviewed each faculty member's CV and web site. He has listened to their lectures. He did not contact any professional organizations to see if current faculty members were in good standing, did not ask colleagues if they considered a particular faculty member an expert in the field, and used no particular criteria for the number of years the individual must have practiced in the field before he considered the person an expert. He checked to see if the faculty member had written in the field, but did not interview any of the faculty or review their transcripts. He has also written some of the course outlines for the master's program.

104. During his testimony, Dean Lilly was asked about some of the individuals listed as adjunct professors. He stated that some of those listed were "not really faculty members." When asked why this was the case, he stated that he had not prepared the catalog and could not explain why they were included. Dean Lilly plans to focus his attention on obtaining accreditation. He has never been involved in school licensing issues before and has not consulted with other institutions about obtaining accreditation.

THE ARGUMENTS

105. Respondents argued that they have demonstrated the competence of their faculty and that Washington Institute would make sure that doctoral students did not take courses from faculty members who did not hold appropriate doctorate degrees. They contend that the regulations do not require the submission of a curriculum vitae (CV) to establish qualifications. Respondents have offered to modify the doctoral instructional program if necessary.

Complainant argued that respondents failed to demonstrate sufficient faculty expertise, particularly in the doctoral program. Complaint asserted that the thumbnail summaries are insufficient for the bureau's assessment of expertise and that a formal CV is necessary to enable the bureau to better review the qualifications of each faculty member.

EVALUATION RE: EIGHTH CAUSE FOR DENIAL

106. Washington Institute has complied with the requirement in Education Code section 94909, subdivision (a)(7), that it provide "information regarding the faculty and their

qualifications" to the bureau. The statute does not require the information be provided to the bureau in the form of a CV.

107. That said, the thumbnail paragraphs about each faculty member's qualifications do not establish that each faculty member is sufficiently qualified.

108. Respondents failed to demonstrate that the Washington Institute materials are designed by faculty "competent in distance education techniques."

109. Several of the individuals listed in the Washington Institute doctoral catalog as doctoral program faculty members (James Blaylock, Kulwant Boora, Robert Burdette, and Richard Edmunds) fail to possess a "degree, professional license, or credential" equivalent to the level of instruction being taught or evaluated. The doctorate program fails to meet the minimum qualifications because not each member of the doctoral program faculty holds a doctorate or its equivalent in the field.

110. It was also problematic that Dean Lilly, who is listed in the catalogs as dean of both the master's and doctorate programs and as a faculty member in the doctorate program, does not hold a doctorate. He testified that he is charged with ensuring the expertise of the faculty, and he is in the midst of obtaining his doctorate from this very institution. Dean Lilly lacks the qualifications to assess and evaluate the expertise of faculty in the doctoral program. In addition, his objectivity in assessing the qualifications of faculty members is inherently called into question given his dual status as a current student and the institution's dean.

111. The Eighth Cause for Denial is sustained.

Ninth Cause for Denial

THE ALLEGATION

112. Complainant contended that respondents' facilities, records, and equipment were deficient. The statement of issues alleged that the application failed to include a description of the institution's facilities and equipment, including building diagrams or campus maps that identify the location of classrooms, laboratories, workshops and libraries, as required by California Code of Regulations, title 5, section 71260, subdivisions (a) and (c) and section 71735(a); that student records were not kept in California as required by section 71930, subdivision (a), and Education Code section 94900.5; that the institution did not have personnel scheduled to be present during normal business hours as required by section 71930, subdivision (c)(3); and that there was no description of the library or how students would access the library if the institution did not have its own library, as required in sections 71270 and 71740.

THE APPLICABLE REGULATIONS

113. California Code of Regulations, title 5, section 71260, provides in part:

> (a) For each program offered, the . . . Application . . . . shall contain a description of the facilities and equipment which is available for students at the main, branch and satellite locations of the institution.
>
> [¶] . . . [¶]
>
> (c) The description of the physical facilities shall include building diagrams or campus maps to assist the Bureau in locating these facilities. The diagrams or maps shall identify the location of classrooms, laboratories, workshops, and libraries.

114. "An institution shall have sufficient facilities and necessary equipment to support the achievement of the educational objectives of all of the courses and educational programs in which students are enrolled. . . ." (Cal. Code Regs., tit. 5, § 71735, subd. (a).)

115. Under Education Code section 94900.5 and California Code of Regulations, title 5, section 71930, subdivision (a), all records "shall be maintained" at the institution's principal place of business in California. Records may be stored on computer disk "or any other method of record storage," if "[t]he institution has personnel scheduled to be present at all times during normal business hours who know how to operate the devices and can explain the operation of the devices to any person authorized by the Act to inspect and copy records. . . ." (Cal. Code Regs., tit. 5, § 71930, subd. (c)(3).)

116. As a degree granting institution, Washington Institute "shall make available for student use a library *and* other learning resources." (Cal. Code Regs., tit. 5, § 71740, subd. (a) (Italics added).) The institution must describe the "onsite library and other learning resources, if any. . . ." (Cal. Code Regs., tit. 5, § 71740, subd. (b).) If an institution depends "on library and other learning resources primarily on other institutions' collections and resources not in its possession," it is required to do all of the following:

> (1) Describe those library and other learning resources, in the application and catalog.
>
> (2) Provide students and faculty with access to the regular services of a professional librarian or information specialist experienced in the electronic retrieval of information, who shall provide support for faculty in curriculum matters and actively serve as a resource guide for both graduate and undergraduate students.

(3) Assure that students have access to the library collections and resources of another institution, organization, or library.

(4) Document compliance with paragraphs (1), (2), and (3).

THE EVIDENCE

117. The two programs offered by Washington Institute – a master's in taxation and a doctorate in taxation – are solely distance-learning programs. Washington Institute provides instruction through DVDs and online resources. It does not have a campus or any facilities in California, but it does maintain a "virtual office" in California.

118. Washington Institute signed a "Virtual Office Agreement" with a company called Regus to use a "virtual address" in La Jolla, California and to have a local telephone number answered. Respondents pay a fee of $216 per month for this service. In the contract with Regus, Washington Institute is identified as a "client," not a tenant or lessee. Paragraph 1 is titled: Product Definition. It states:

> 1.1. Mailbox Plus: Entitles the Client to receive mail at the Regus Center specified in this Agreement ("designated Center.") This client may use the address of the designated Center for business correspondence subject to exception in certain locations. The Client is not permitted to use the address of the designated Center as their registered office address unless permitted by law.
>
> 1.2. Telephone Answering: Entitles the Client to a local telephone number determined by Regus in the designated Center, personalized call answering service during normal business hours, and after hours and weekend voicemail access.
>
> 1.3. Virtual Office and Virtual Office Plus: Includes all services detailed in sections 1.1 and 1.2. In addition the Client is entitled to receive faxes at the designated Center. Due to postal requirements, in the United States only, the Virtual Office Product provides 2 days of private office usage per month at the designated Center. . . .

119. Although Mr. Hanson testified that he leases property in La Jolla for Washington Institute, the Virtual Office Agreement is not a lease agreement.

120. Mr. Hanson testified that Washington Institute's "virtual office" is the only "facility" that Washington Institute maintains in California. The "virtual office" is a "shared space," and none is dedicated to Washington Institute. The school does not teach any

courses at the location, and there are no administrators or faculty members located at the "virtual office" or any other place in California. There are no Washington Institute personnel at the virtual office to provide student services. According to Mr. Hanson, most students (current and prospective) contact Washington Institute via email. Washington Institute maintains some, but not all, of its records on a CD, which Mr. Hanson has provided to Regus to give to the receptionist who answers the phone at the Regus location[5]. Mr. Hanson has authorized Regus to allow the receptionist to convey certain information from the CD to a caller. A student, however, cannot get a copy of his or her records from the "virtual office space" in California, and the receptionist is not able to answer questions about how the school works or whether certain course work is transferable. Mr. Hanson did not know the name of the receptionist, as there is a weekly turnover for the position. To Mr. Hanson's knowledge, no student has ever gone to the "facility" to ask questions about the school. When a student calls the "local" San Diego number to reach the school in California, the receptionist transfers the call to Mr. Hanson in Utah. Callers are not told their call is being transferred to another state. The caller can also leave a message, and Mr. Hanson or another person outside of California will return the call.

121. The person who answers the local phone number through the "Virtual Office Agreement" is employed by Regus and, under the Virtual Office Agreement, may not be employed by Washington Institute during the term of the contract. No Washington Institute personnel are physically present at the California location.

122. Washington Institute's assets include computers, course DVD's and videos, and cameras for recording courses, all of which are located in Utah.

123. Based on the most recent 2015 submission of documents to the bureau, the authors of the curriculum (the DVDs) live in Utah, Nevada, Florida, and Canada. Dean Lilly resides in and works from New Jersey.

124. The student enrollment contract includes a provision that, if there is a dispute about the payment of tuition or any rights or responsibilities under the contract, the student agrees to binding arbitration with an arbitrator appointed by Washington Institute. The student enrollment agreement specifically permits the arbitrator to choose to use procedural rules "of the courts of the state of Utah."

125. According to the 2015 doctoral degree catalog, tuition covers access to "either DVDs, or the learning management system (LMS). There are additional fees for "texts."

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[5] The institution must maintain a file for each enrolled student. (Cal. Code Regs., tit. 5, § 71920, subd. (a).) That file must include all the information required in Education Code section 94900 and all transcripts of education, training, and experience; personal information (age, gender, ethnicity if provided); contracts and instruments of indebtedness; courses completed; dissertations, theses, and student projects; student complaints; and other information. (Cal. Code Regs., tit. 5, § 71920, subd. (b).) This file must be maintained in California. (Ed. Code, § 94900.5; Cal. Code Regs., tit. 5, § 71930, subd. (a).)

According to the master's catalog, tuition does not include texts and "[e]very student should have an up-to-date copy of the Internal Revenue Code. Books may be purchased at local colleges, retail bookstores, directly from the publishers or over the internet." Neither catalog mentions a library, a librarian, or an experienced resource specialist to assist a student or faculty member in assessing educational resources.

126. Washington Institute does not have a library or provide one for student use. Mr. Hanson testified that many students use an on-line tax library offered for a $299 fee by Thompson Reuters (the RIA Checkpoint Learning Library), but he considered this "optional." As he explained it, "like any other institution, we don't force students to go to a library."

127. Mr. Saetune testified that from the bureau's perspective, even if an institution is 100 percent distance-learning, it must still have some kind of campus or facility under the institution's control. Typically, institutions have a building or place where the administration, job placement, library or learning resources, and student support are offered. You "need a person actually there," he said, and having a distance-learning program does not create an exception to the regulations.

THE ARGUMENTS

128. Complainant asserts that respondents' deficiencies in failing to maintain a facility (including library), records, and equipment in California violate the applicable regulations and warrant denial of approval to operate in California. Complainant also argued that respondents failed to demonstrate that the Regus "receptionist" or person having access to Washington Institute's CD satisfied confidentiality rules.

Respondents contend that the bureau is unfairly trying to preclude Washington Institute from obtaining approval. Respondents contend that the disk Mr. Hanson provides to Regus did not violate student confidentiality under federal law. Respondents contend the bureau is improperly requiring Washington Institute to have a campus, which they believe is not required by the regulations. They contend the Virtual Office Agreement constitutes a sufficient "physical presence" under the Education Code and that they satisfied the regulations applicable to a distance-education program.

EVALUATION RE NINTH CAUSE FOR DENIAL

129. The Education Code, section 94858, requires respondents to have a physical presence in California. The regulations describe some of the ways that physical presence must be manifest. Respondents have not satisfied the requirements. Although the regulations do not require private postsecondary educational institutions to have a location that is called a "campus," they do require that the institution have facilities, equipment and personnel available to students at a "main, branch, or satellite" location during regular business hours. Respondents argue that the bureau's reliance on the "physical presence" requirement shows the bureau is seeking to "foreclose" all distance-only learning programs.

The argument is rejected. The regulations explain that distance education is permitted and that the Act "does not require the physical presence of students and faculty at the same location" (section 71715, subdivision (d).) But nothing prevents a distance-learning institution from satisfying California's regulations. An actual and meaningful physical presence is required.

130. Washington Institute does not maintain a physical presence in California within the meaning of the Act. There are no facilities, no library, and no librarian to assist faculty or students. Even as a distance-learning institution offering courses solely by DVD, respondents must provide a library or provide students or faculty with access to the regular services of a professional librarian experienced in the electronic retrieval of information to assist faculty and students. Respondents had the burden of establishing that they satisfy this requirement. Mr. Hanson's statement that Washington Institute does not "force" students to use a library misses the mark. Respondents purport to offer a master's and doctorate degrees in tax, arguably sophisticated educational degrees that involve rigor and research. The suggestion that a library is not needed and using an on-line resource is "optional" is inconsistent with the requirement that each private postsecondary institution authorized to operate in California have a library or other resource center sufficient to meet the needs of the students, and, when it is not offered onsite, to have a full time librarian or experienced information specialist "who shall provide support for faculty in curriculum matters and actively serve as a resource guide" for students. Respondents did not satisfy this requirement.

131. Washington Institute pays $216 each month for a person to answer the phone at the Virtual Office address, but it is not permitted to use private office space at the "virtual" address except for two days a month. The person answering calls to the phone number that Regus has assigned to Washington Institute is not an employee of, nor an independent contractor with, Washington Institute. He or she is employed by Regus, the management company for the property, and serves several "clients" as part of the Virtual Office Agreement.

132. If a student or member of the public calls the local California number, he or she is referred to Mr. Hanson in Utah. No faculty or member of the administration is at the California "virtual office." In fact, none live or work in California.

133. All hard copies of student files, including transcripts, certifications, diplomas, and enrollment agreements are maintained in Utah. None are in California. However, according to Mr. Hanson, everything is being digitized, and until that occurs, he provides a disk to Regus with some of the student information that the receptionist (a Regus employee) can provide to the student if the student calls the local office. Maintaining a partial student file in California violates Education Code section 94900.5 and California Code of Regulations, title 5, section 71920, subdivision (b).

134. In respondents' written brief, respondents also contend that they may provide, under federal law, a CD to Regus for the receptionist's use, and cite 34 CFR § 99.31,

subdivision (a)(1)(i)(B) in support. The argument is not supported by the language quoted, which states, in part: "a contractor, consultant, volunteer, or other party to whom a school or institution has outsourced institutional services or functions may also be considered a 'school official' provided that they are performing an institutional service or function for which the agency would otherwise use employees and *is under the direct control of the agency or institution with respect to the use and maintenance of education records.*" (34 CFR § 99.31, subd. (a)(1)(i)(B) (Italics added.).) Regus' employees are not under the direct control of respondents in any fashion. In addition to failing to maintain the required records in California, respondents do not adequately or appropriately protect confidential student information when they give Regus a CD containing confidential student information. Moreover, periodically providing a CD with some student information does not constitute compliance with the requirement that all records be maintained in California.

135. The fact that Washington Institute has no administrators or faculty members in California and that it reserves the right to have financial disputes resolved using procedures in "the courts of the state of Utah" also shows that Washington Institute has not moved its base of operations to California (as it represents in its catalogs). Respondents have a "virtual" presence in California, not a physical one. Respondents failed to establish that Washington Institute has adequate facilities and equipment in California, that it maintains its records in California, that it has satisfied the library requirements, or that it has the required physical presence necessary for approval to operate as a private postsecondary institution in California.

136. The Ninth Cause for Denial is sustained.

Tenth Cause for Denial

THE ALLEGATION

137. Complainant alleged that the institute's catalog failed to include information required under Education Code section 94909 and the regulation regarding the content of the catalog (section 71810), and as a result, the application was incomplete. The tenth cause for denial alleged 12 ways in which the catalog failed to include required information.

THE EVIDENCE

138. The bureau identified catalog deficiencies in its January 2012 deficiency letter, its May 2013 letter denying the application, the initial statement of issues filed April 2014, and the first amended statement of issues filed in February 2015. Over the course of four years, respondents sent in various modifications to the catalogs in an effort to satisfactorily complete their application. Respondents' most recent submission was filed April 2, 2015.

139. Mr. Saetune testified that, with the most recent submissions, most, but not all, of the bureau's concerns regarding the catalog information had been addressed or agreed to be corrected by respondents.

140. A few allegations remain. Complainant alleged that the catalogs failed to provide the "address or addresses where class sessions will be held," as required by Education Code section 94904, subdivision (a) (4). The catalogs, however, repeatedly emphasizes the "distance learning" nature of the programs offered and clearly states that all courses will be "delivered by DVD." It is found that this requirement has been sufficiently satisfied.

141. Complainant alleged that the catalogs failed to include the specific beginning and ending dates covered by each catalog, as required by the regulation in section 71810, subdivision (b)(1). Respondents should have corrected the omission earlier, but it is now corrected. The first page of each course catalog submitted in 2015 states "Course Catalog Pertaining to the period January 1 – December 31, 2015. This allegation was not established as grounds for denial.

142. The statement of issues alleged that the catalogs failed to include the statement required under Education Code section 94909, subdivision (a)(12), regarding any bankruptcy history in the past five years. Respondents' 2015 submission to the bureau included a copy of the master's and doctorate catalogs that included the required information. Respondents should have corrected the omission earlier, but it is now corrected. This allegation was not established as grounds for denial.

143. Complainant alleged that the catalogs failed to include the required description of the facilities, types of equipment and materials used for instruction, and description of the library and other learning resources, in violation of sections 71810, subdivision (b)(9) [the catalog must describe the facilities and types of equipment and materials that will be used for instruction] and subdivision (b)(10) [the catalog must include a description of library and other learning resources and the procedures for student access to those resources.]

144. The catalogs include the following language:

> Our courses, many exceeding 30 hours of lecture, coursework, case studies and exams provide powerful learning. Rather than alter your schedule to fit a rigid traditional university class, all of our courses are pre-recorded so you can pursue your studies when and where it makes sense for you. . . .
>
> [¶] . . . [¶]
>
> This institute does not require domestic and/or international students to attend a campus in any course. Courses are viewed in the comfort of the student's home or work, at a time of day that works best for the student. . . . All programs of study are considered distance learning.
>
> [¶] . . . [¶]

> Because of the school's legacy of distance learning, the school does not require . . . students to attend a campus for any course. . . . Washington Institute for Graduate Studies does not own or operate dormitories or any other kind of student housing. . . .

The master's catalog includes the following information:

> The courses below are required to be completed in the following order: . . . Beyond the core courses, all courses are electives . . . . Each student must complete 24 semester units to graduate. The website includes the most current course listing and description for CPE, CLE and Semester Unit credits, as well as the suggested text for each course. Some courses have handouts and/or outlines, which may also be accessed on the website. . . .
>
> The cost associated with texts is not included in the tuition. Every student should have an up-to-date copy of the Internal Revenue Code. Books may be purchased at local colleges, retail bookstores, directly from the publishers, or over the internet. . .

145. Neither catalog mentions a library. Mr. Hanson testified that there is a library service to which some students chose to subscribe, and may do so for a fee. This is not discussed in the catalog.

146. In their brief, respondents argued that all the required information had been included in the catalogs, and they cited to several exhibits, including materials not included in the catalogs. Respondents' brief addressed leave-of-absence policies, an issue that complainant indicated during the hearing was no longer an issue.

EVALUATION RE: TENTH CAUSE FOR DENIAL

147. Respondents have substantially complied with the catalog requirements. The catalogs should be clarified to state that the institute does not have a library, provide information concerning a librarian and identify the availability of purchasing access to a library service. These current deficiencies in the catalogs are found to be minor ones that can be corrected if respondents are otherwise qualified for approval in the future. A preponderance of the evidence did not establish that this deficiency rendered the application incomplete or that it constitutes grounds for denial.

Eleventh Cause for Denial

THE ALLEGATION

148. Education Code section 94913, subdivision (a), requires that an institution maintain an Internet Website with (1) the school catalog; (2) a School Performance Fact Sheet for each educational program offered by the institution; (3) student brochures offered by the institution; (4) a link to the bureau's Internet Web site; and (5) the institution's most recent annual report submitted to the bureau. The eleventh cause for denial alleged that the school's website did not contain the required information.

THE EVIDENCE

149. During the hearing, complainant's counsel used Mr. Saetune's laptop computer and asked Mr. Hanson to go through the institution's website to show where each of the required elements could be found. Mr. Hanson explained that there was no student brochure other than the student catalog, which was on the site. The website included the first four required items, but not the annual report. Mr. Hanson testified that it was his understanding that only licensed institutions needed to include the report, and Washington Institute had not yet been approved by the bureau.

EVALUATION RE: ELEVENTH CAUSE FOR DENIAL

150. Complainant did not establish that respondents were required, prior to licensure, to have an annual report on the website. Neither the deficiency letter, notice of denial, nor the statement of issues identified a need for respondents to have created or included an annual report for posting on the website. This cause for denial is not sustained.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that the applicant is qualified to hold the license. In order to prevail, respondents must demonstrate by a preponderance of the evidence that they are qualified for approval to operate a private, non-accredited, postsecondary educational institution. (Evid. Code, §§ 115, 500.)

2. A preponderance of the evidence establishes that the existence of a factual matter is more likely than not. As one court explained:

> "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on

> either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

General Provisions

3. Under Education Code section 94886, no person shall open, conduct, or do business as a private postsecondary educational institution without obtaining the bureau's approval to operate the institution.

4. "An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified . . . that the applicant has the capacity to satisfy the minimum operating standards." If the application does not satisfy those standards, "[t]he bureau shall deny an application for an approval. (Educ. Code § 94887.)

5. The regulations related to applying for approval to operate a private postsecondary institution are found in California Code of Regulations, title 5, Division 7.5.

6. An applicant seeking approval to operate a private postsecondary institution that is not accredited "shall complete the 'Application for Approval to Operate for an Institution Not Accredited,' Form Application 94886. (Cal. Code Regs., tit. 5, § 71100, subd. (a).) A failure to contain all of the information required under the regulation "shall render [an application] incomplete." (Cal. Code Regs., tit. 5, § 71100, subd. (c).)

7. California Code of Regulations, title 5, section 71715, addresses the importance of instruction. Under section (a), instruction shall be the central focus of the resources and services of the institution. The provision also addresses the differences between direct instruction and distance education:

> [¶] . . . .[¶]
>
> (c) Direct instruction requires the physical presence of one or more students and one or more faculty members at the same location. Direct instruction includes instruction presented in a classroom, seminar, workshop, lecture, colloquium, laboratory, tutorial, or other physical learning settings consistent with the mission, purposes, and objectives of the institution.
>
> (d) Distance education as defined in section 94834 of the Code, does not require the physical presence of students and faculty at the same location but provides for interaction between students and faculty by such means as telecommunication, correspondence, electronic and computer augmented educational services, postal service, and facsimile transmission.

In addition to the other requirements of this chapter and the Act, an institution offering distance education shall:

(1) ensure that the educational program offered through distance education is appropriate for delivery through distance education methods;

(2) assess each student, prior to admission, in order to determine whether each student has the skills and competencies to succeed in a distance education environment;

(3) ensure that the materials and programs are current, well organized, designed by faculty competent in distance education techniques and delivered using readily available, reliable technology;

(4) provide for meaningful interaction with faculty who are qualified to teach using distance education methods;

[¶] . . . [¶]

Cause Exists to Deny the Application

8. Cause exists to deny the application on the grounds that it was incomplete, in violation of Education Code section 71100, as established in the First, Second, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Causes for Denial.

9. Cause exists to deny the application on the grounds that respondents failed to demonstrate the capacity to satisfy the minimum operating standards, under Education Code section 94887, as established in the First, Second, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Causes for Denial.

Not All Causes for Denial Were Sustained

10. Cause did not exist to deny the application based on the Fourth, Tenth, and Eleventh causes for denial. These causes for denial were not sustained.

Determining the Appropriate Resolution

11. For several years, respondents have been allowed to operate in California because they began operation in this state when there was no regulatory oversight, and the Act permitted their continued operation throughout the application process. That process is

now done. Respondents had the burden of demonstrating that they provided a complete application and that they are currently capable of meeting the minimum standards to operate a private postsecondary institution in California. They did not do so.

Respondents contend that the bureau relied on heightened requirements that were not included in the Act or regulations and not fairly communicated to respondents; they contend that it is unfair to deny the application when so many of the problems were first identified during the hearing.

Although bureau representatives outlined the vast majority of deficiencies in their correspondence to respondents, not every deficiency was spelled out in words. Sometimes only the regulation section number was mentioned. Sometimes part of a regulation section was mentioned. There were a few instances where the bureau could have done a better job in explaining the deficiency in its correspondence. That said, none of the few instances where the specific deficiency was first identified during the hearing has been used in this decision as a basis for denial of approval.

Respondents argued that the bureau has "expanded" the requirements in the Act and applicable regulations. In support, respondents claim that the regulations require a physical presence, and not a physical campus, and that its personnel in California do not need to be employees. Although a physical campus is not required, a meaningful physical presence for student support is. The totality of respondents' connection with California is so negligible that it is, for all practical purposes, nonexistent. Fewer than ten out of 160 students live in California. No faculty members or administrators reside or work in California. Respondents neither own, lease, nor rent property in California, and no student services are offered here. Records are not maintained in California; a CD with some student information is periodically sent to a virtual office to be handled by a person over whom Washington Institute has no control, and who has no fiduciary duty to the students. Washington Institute's financial statements show all assets as being in Utah. The enrollment agreement provides that, in the event of a financial dispute between a student and Washington Institute, Washington Institute will appoint an arbitrator for binding arbitration and the arbitrator may choose to use procedures "from the courts in the state of Utah." Respondents do not have a physical presence within the meaning and spirit of the Act and its regulations.

Contrary to respondents' arguments, the fact that Washington Institute offers solely a "distance education" does not mean the regulations cease to apply to its activities. Overwhelming evidence supports sustaining complainant's denial of approval. Respondents failed to mention the 2008 Utah application denial when they should have included it in the application. Despite being denied a registration to operate in Utah and being subject to a cease and desist order, Washington Institute's catalog misrepresented to students and the public that it has been successfully registered in Utah for years. Washington Institute's finances have never been properly verified to the bureau. Washington Institute does not maintain a physical presence in California as required by the regulations. All of the records are required to be maintained in California, but only a few, on a disk, are. Those records have been provided to an individual who is not employed by nor controlled by Washington

Institute. There is no library, librarian, or individual charged with ensuring access to resources, as required by the regulations. No faculty or administrators are in California. Washington Institute awards master's degrees with completion of 24 semester unit hours, even though the regulations identify a 30 semester hour requirement. Doctoral courses are not always taught by an individual who holds a doctorate. And this is not a complete list of the deficiencies.

Respondents requested that their application be granted with an opportunity to perfect their application after approval is granted. If respondents' application had a few minor deficiencies, or if respondents had never been given an opportunity to correct the deficiencies in their application, this might have been appropriate. But neither situation exists. Respondents have had years to perfect their application. Despite numerous submissions over the past four years, and even after complainant filed the statement of issues, respondents' application continued to have multiple, significant deficiencies. Respondents have not demonstrated financial fitness or accountability. Instead, respondents demonstrated that they are not currently capable of satisfying the minimum operating standards required for approval to operate a private postsecondary institution in California. It is not in the public interest to permit this institution to operate in California until it meets the minimum qualifications for doing so.

Nothing prevents Washington Institute from seeking approval to operate in another state, or from reapplying for approval to operate in California when it can satisfy the minimum requirements for operating in this state.

At this time, however, it is not in the public interest to approve respondents' application to operate in California. The application is denied.

ORDER

The application filed by Washington Institute for Graduate Studies to operate as a private postsecondary institution in California is denied.

Within ten days of service of this Decision and Order, Washington Institute for Graduate Studies shall cease operating as a private postsecondary institution in California and may not resume operation in California unless and until it is approved to do so by the Bureau for Private Postsecondary Education.

DATED: July 29, 2015

BETH FABER JACOBS
Administrative Law Judge
Office of Administrative Hearings