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

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12 In the Matter of the Statement of Issues
Against:

Case No. 1000017

13
14 **CONSULTING ADVANTAGE, INC., dba**
TDA EDUCATIONAL SYSTEMS, INC.,
15 **formerly TRUCK DRIVING ACADEMY**

STATEMENT OF ISSUES

16 **Applicant for Renewal of Approval to**
Operate and Offer Educational Programs
17 **for Non-Accredited Institutions**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about December 29, 2010, the Bureau for Private Postsecondary Education
25 received an Application for Renewal of Approval to Operate and Offer Educational Programs for
26 Non-Accredited Institutions from Consulting Advantage, Inc., dba TDA Educational Systems,
27 Inc., formerly Truck Driving Academy (Respondent). On or about December 29, 2010, Manuel
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1 Sequeira and Charles J. Grant, Chief Executive Officers, certified under penalty of perjury to the
2 truthfulness of all statements, answers, and representations in the application. The Bureau denied
3 the application on August 22, 2014.

4 **STATUTORY PROVISIONS**

5 3. This Statement of Issues is brought before the Director of the Department of
6 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
7 authority of the following laws. All section references are to the Education Code unless
8 otherwise indicated.

9 4. Section 94891 of the Code states, in pertinent part:

10 “(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its
11 continued capacity to meet the minimum operating standards.”

12 5. Section 94904¹ of the Code states, in pertinent part:

13 “(a) Before an ability-to-benefit student may execute an enrollment agreement, the
14 institution shall have the student take an independently administered examination from the list of
15 examinations prescribed as of July 1, 2012, by the United States Department of Education
16 pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et
17 seq.). The student shall not enroll unless the student achieves a score, as specified by the United
18 States Department of Education, demonstrating that the student may benefit from the education
19 and training being offered.

20 (b) If the United States Department of Education does not have a list of relevant
21 examinations that pertain to the intended occupational training, the bureau may publish its own
22 list of acceptable examinations and required passing scores.”

23 6. Section 94909² of the Code states, in pertinent part:

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

27 ...

28 (2) Except as specified in Article 2 (commencing with Section 94802), a statement
that the institution is a private institution and that it is approved to operate by the bureau.

¹ This section has been revised, effective January 1, 2015. The excerpted text was not
materially changed by the revisions.

² Same as footnote 1.

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...

(5) A description of ... the total number of credit hours, clock hours, or other increments required for completion.

(6) If the educational program is designed to lead to positions in a profession, occupation, trade, or career field requiring licensure in this state, a notice to that effect and a list of the requirements for eligibility for licensure.

...

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

(A) Admissions policies, including ... admissions requirements for ability-to-benefit students....

...

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

...

(15) The following statement:

“NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR INSTITUTION

The transferability of credits you earn at (name of institution) is at the complete discretion of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or certificate) you earn in (name of educational program) is also at the complete discretion of the institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that you earn at this institution are not accepted at the institution to which you seek to transfer, you may be required to repeat some or all of your coursework at that institution. For this reason you should make certain that your attendance at this institution will meet your educational goals. This may include contacting an institution to which you may seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma, or certificate) will transfer.”

(16) A statement specifying whether the institution, or any of its degree programs, are accredited by an accrediting agency recognized by the United States Department of Education. ...”

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7. Section 94911 of the Code states, in pertinent part:

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

...

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

...”

8. Section 94916 of the Code states:

“An institution extending credit or lending money to an individual for institutional and noninstitutional charges for an educational program shall cause any note, instrument, or other evidence of indebtedness taken in connection with that extension of credit or loan to be conspicuously marked on its face in at least 12-point type with the following notice:

‘NOTICE’

“You may assert against the holder of the promissory note you signed in order to finance the cost of the educational program all of the claims and defenses that you could assert against this institution, up to the amount you have already paid under the promissory note.”

9. Section 94918 of the Code states:

“In making consumer loans to students, an institution shall also comply with the requirements of the Federal Truth in Lending Act pursuant to Title 15 of the United States Code.”

10. Section 94929 of the Code states:

“(a) An institution shall annually report to the bureau, as part of the annual report, and publish in its School Performance Fact Sheet, the completion rate for each program. Except as provided in subdivision (b), the completion rate shall be calculated by dividing the number of graduates by the number of students available for graduation.

(b) In lieu of calculating graduation data pursuant to subdivision (a), an institution may report graduation data reported to, and calculated by, the Integrated Postsecondary Education Data System of the United States Department of Education.”

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REGULATIONS

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2 11. Title 5 of the California Code of Regulations, section 71475, (5 CCR § 71475), states,
3 in pertinent part:

4 “(e) The institution shall submit at the time it applies for renewal current financial
5 statements that meet the requirements of section 74115 as follows:

6 (1) for an institution with annual gross revenues of \$500,000 and over, statements
7 shall be audited;

8 (2) for an institution with annual gross revenues less than \$500,000, statements shall
9 be reviewed.”

10 12. 5 CCR § 71700 states, in pertinent part:

11 “The Bureau may request that an institution document compliance with the standards set
12 forth in the Act and this Division to obtain and maintain an approval to operate.”

13 13. 5 CCR § 71745 states, in pertinent part:

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

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

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

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

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

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

23 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at
24 the end of the most recent fiscal year when using generally accepted accounting principles,
25 or for an institution participating in Title IV of the federal Higher Education Act of 1965,
26 meet the composite score requirements of the U.S. Department of Education. For the
27 purposes of this section, current assets does not include: intangible assets, including
28 goodwill, going concern value, organization expense, startup costs, long-term prepayment
of deferred charges, and non-returnable deposits, or state or federal grant or loan funds that
are not the property of the institution but are held for future disbursement for the benefit of
students. Unearned tuition shall be accounted for in accordance with general accepted
accounting principles.

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...

(c) An institution shall provide to the Bureau its most current financial statements upon request.”

14. 5 CCR § 71770 states, in pertinent part:

“(a) The institution shall establish specific written standards for student admissions for each educational program. These standards shall be related to the particular educational program. An institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the program. In addition to any specific standards for an educational program, the admissions standards must specify as applicable that:

(1) Each student admitted to an undergraduate degree program, or a diploma program, shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the relevant examination as required by section 94904 of the Code.”

15. 5 CCR § 71810 states, in pertinent part:

“(a) Each institution shall provide a catalog pursuant to section 94909 of the Code, which shall be updated annually. ...

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

...

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

...”

16. 5 CCR § 74112 states, in pertinent part:

“...

(d) Completion Rates. Reporting of completion rates for an institution's Annual Report and Performance Fact Sheet shall include, for each educational program, the number of students who began program as defined in subdivision (b), the number of students available for graduation, number of graduates, and completion rate(s). ...

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1 (e) Placement Rates.

2 (1) Any placement data required by sections 94910(b) and 94929.5(a) of the Code shall be
3 reported for the number of students who began the program as defined in subdivision (b)
4 for each reported calendar year.

4 ...”

5 17. 5 CCR § 74115 states, in pertinent part:

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

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

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

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

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

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

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

(c) Work papers for the financial statements shall be retained for five years from the date
of the statements and shall be made available to the Bureau upon request.

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

1 **CAUSE FOR DENIAL OF APPLICATION**

2 (Failure to demonstrate continued capacity to satisfy minimum operating standards)

3 18. Respondent's application for renewal of approval to operate is subject to denial under
4 section 94891(b) of the California Education Code in that Respondent did not present sufficient
5 evidence to the Bureau that Respondent has the continued capacity to satisfy the minimum
6 operating standards.

7 19. Respondent's "Application for Renewal of Approval to Operate and Offer
8 Educational Programs for Non-Accredited Institutions" was received on December 29, 2010, with
9 the application fee. The Bureau issued a deficiency letter on February 8, 2012. No response was
10 received to that letter. The Bureau issued a second deficiency letter on September 20, 2012. On
11 October 1, 2012, the Bureau received a response from Respondent that did not address the
12 deficiencies with the original application. On August 16, 2013, the Bureau sent another
13 deficiency letter to Respondent. On October 1, 2013, the Bureau received a partial response from
14 Respondent but many deficiencies were still not addressed and current financial information was
15 still not included. On June 26, 2014, and on July 3, 2014, the Bureau received additional
16 documents from Respondent with non-substantive changes.

17 20. On August 22, 2014, the Bureau sent Respondent a "Notice of Denial" letter stating
18 that the application is subject to denial for the following reasons:

19 a. The institution failed to submit at the time of application for renewal, or at any
20 time thereafter, current financial statements that meet the requirements of 5 CCR § 74115,
21 in violation of 5 CCR § 71745(e).

22 b. The institution failed to include the complete transferability disclosure that is
23 required to be included in the school catalog, in violation of Code sections 94909(a)(15)
24 and 94911(h).

25 c. The institution failed to include the required notice regarding financial
26 programs in the enrollment agreement, in violation of Code sections 94916 and 94918.

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1 d. The institution failed to submit financial statements as described in 5 CCR §
2 74115(b)(1) and (d), which meant that the Bureau could not verify financial resources, in
3 violation of 5 CCR §§ 71475(e), 71745(a) and 71745(c).

4 e. The institution failed to list in its catalog that it is a private institution, in
5 violation of Code section 94909(a)(2).

6 f. The institution failed to list the procedures in its catalog for students to access
7 the library and other learning resources, in violation of 5 CCR § 71810(b)(10).

8 g. The institution failed to list in its catalog an approved examination for ability-
9 to-benefit students in its admission requirements, in violation of Code sections 94904 and
10 94909(a)(8)(A), and 5 CCR § 71770(a)(1).

11 h. The institution failed to list clearly the number of hours required for graduation
12 in its catalog, in violation of Code section 94909(a)(5).

13 i. The institution failed to include information in its catalog the Department of
14 Motor Vehicles' testing requirements, in violation of Code section 94909(a)(6).

15 j. The institution failed to include information in its catalog regarding institutional
16 accreditation, in violation of Code section 94909(a)(16).

17 k. The institution failed to include clear information in its catalog regarding
18 whether the institution participates in federal and state financial aid programs, in violation
19 of Code section 94909(a)(10).

20 l. The institution failed to include a School Performance Fact Sheet (SPFS) with
21 information consistent with the SPFS on the institution's website or with correctly
22 calculated completion rates and placement rates, in violation of Code section 94929 and
23 5 CCR § 74112.

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PRAYER

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

1. Denying the application of Consulting Advantage, Inc., dba TDA Educational Systems, Inc., fka Truck Driving Academy, for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions;
2. Taking such other and further action as deemed necessary and proper.

DATED: 4-7-15



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

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