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

In the Matter of the Statement of Issues Against: H & H TRUCK DRIVING SCHOOL; HECTOR HERNANDEZ, OWNER, Applicant for Approval to Operate a Non-Accredited Institution Respondent.	Case No. 1002966 OAH No. 2018050811

DECISION AFTER REJECTION

This matter was heard by Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 25, 2018, in Sacramento, California. Elena L. Almanzo, Deputy Attorney General, represented complainant. Respondent Hector Hernandez appeared at the administrative hearing and represented himself and H & H Truck Driving School. Evidence was received and the matter was submitted on July 25, 2018; the administrative law judge issued a proposed decision on August 27, 2018.

On December 6, 2018, the Director of the Department of Consumer Affairs' (Department or DCA) issued a notice rejecting the proposed decision pursuant to Government Code section 11517, subdivision (c)(2)(E). The Director requested briefing from the parties and invited argument. The transcript was ordered, and a deadline for written argument was set after the transcript was available. Both parties timely submitted written argument.

In written argument, Respondent Hernandez reiterates that his former partner created some problems, acknowledges that he was in a very difficult time in his life while the application was pending, and acknowledges that he did not always follow through on his application. He argues, however, that the notice of denial should be retracted. Notably, he does not argue that the application is complete as presented. Respondent's argument included attachments 1 through 7, but only the first appears in the existing record. To the extent that Respondent's attachments were not exhibits at the hearing, those have only been considered as argument.

Complainant argues that the administrative law judge properly found ten causes for denial and that the application was incomplete, and further, because of those findings, the application must be denied as a matter of law. Complainant further argues that, given the three-year delay and prior unsuccessful efforts to complete the application, the application should be denied. Complainant does not argue that there is any misconduct by Respondent, or that there is any reason Respondent cannot immediately file a new application to operate.

The Director, having now considered the written argument, together with the record, including the transcript, hereby makes this Decision.

FACTUAL FINDINGS

1. Dr. Michael Marion, Jr., (complainant) brought the Statement of Issues solely in his official capacity as Chief of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, State of California.

2. On April 23, 2015, the Bureau received an application for Approval to Operate a Non-Accredited Institution from H & H Truck Driving School, Hector Hernandez, owner (Respondent). (Exhibit 3.) Respondent Hector Hernandez certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application by letter on August 7, 2017. The Statement of Issues was filed on April 26, 2018, and Respondent filed a timely request for a hearing.

Respondent's Application

3. The Bureau's Licensing Unit intake staff reviewed the application in less than one week and sent an Intake Review Letter to Respondent on April 29, 2015, informing Respondent that the application was incomplete. (Exhibit 5.) The four-page letter identified specific additional information required to process the application, broken down and cross referenced by 14 sections and subsections in the Bureau's form application. Respondent submitted additional information in an effort to address the incomplete items on September 8, 2015. The Intake Review process appears to be an initial screen for omissions, but not an in-depth, qualitative review of the application.

4. On June 22, 2016, the Bureau sent a deficiency letter to Respondent identifying sections of the application that it deemed incomplete. (Exhibit 7.) The eight-page letter described the "issues" and a citation to the applicable sections of the California Code of Regulations and/or Education Code for each deficiency. It included 42 items that required attention. The Bureau also included two checklists that Bureau staff used to review Respondent's application and attachments and identify gaps. (Exhibits 8 and 9.) The first, the ten-page Enrollment Agreement Checklist, reflects each statutory or regulatory requirement for an enrollment agreement, had been customized to explain the Bureau staff's identified omissions or concerns, and contained a fill-in-the-blank column for the applicant to use to identify the page or location where a revised enrollment agreement fulfilled the

requirement. The second, an eleven-page Catalog Checklist, is a similar form used to identify gaps and facilitate review and compliance with catalog requirements.

5. On August 31, 2016, the Bureau received additional information from Respondent regarding the listed deficiencies. On September 29, 2016, the Bureau received more documents from Respondent. The application was forwarded to an Education Specialist, Ebony Santee, for final review.

6. On January 30, 2017, the Bureau's Education Specialist sent Respondent an updated deficiency letter identifying the sections of the application that were considered incomplete. (Exhibit 13.) Like the June 2016 letter, the detailed, five-page letter listed the incomplete sections of the application and the issue or issues regarding each section, along with citations to applicable law. It included 24 items that required attention, some of which included multiple parts. The Bureau again attached two customized checklists to assist Respondent in understanding the requirements for, and the necessary corrections to, the enrollment agreement and catalog. On February 12, 2017, Respondent sent additional information to the Bureau to respond to the deficiencies. On February 14, 2017, the Bureau's Education Specialist responded that the newly provided information appeared to be incomplete. Respondent provided additional information on February 20, 2017.

7. On February 24, 2017, the Bureau's Education Specialist sent Respondent yet another deficiency letter with a further updated list of issues or items still deemed incomplete. (Exhibit 15.) Like the prior deficiency letters, the five-page letter included a list of issues broken down by application section and included citations to the applicable law or regulation. It included approximately 25 issues, not including sub-parts, that required attention. Again, the Bureau attached two checklists to assist Respondent in understanding the requirements for, and the necessary corrections to, the enrollment agreement and catalog. On March 13, 2017, Respondent submitted additional information as attachments to an email.

8. On March 16, 2017, the Bureau's Education Specialist acknowledged receipt of Respondent's March 13, 2017, submission, and suggested setting a time to go over the February 24, 2017, deficiency letter because the majority of the documents submitted on March 13, 2017, were duplicates of existing documents, and failed to satisfy the application requirements.

9. Respondent Hernandez sent additional documents to the Bureau via email on March 28, 2017, April 4, 2017, April 11, 2017, and May 24, 2017. Many of Respondent's submissions were also prompted by informal notices from Bureau staff indicating that prior submissions were incomplete. For example, on April 4, 2017, Bureau's Education Specialist told Respondent that she had received the updated Catalog, but not the updated Enrollment Agreement. In response, later that day, Respondent Hernandez provided the enrollment agreement with apologies for the omission. On April 10, 2017, Education Specialist asked

whether Respondent had sent the most recent version of the enrollment agreement, because many of the items they discussed changing during a phone conference were still incorrect.

10. As noted above, the Bureau sent Respondent a Notice of Denial of the Application on or about August 7, 2017. The Statement of Issues was filed on April 26, 2018, and Respondent filed a timely request for a hearing.

The Bureau continued working with Respondent to try to complete his application even after complainant issued the Statement of Issues. About two weeks before the hearing, the Bureau met with Respondent and attempted to resolve the incomplete items. A follow-up meeting was scheduled but Respondent Hernandez cancelled because he was unable to attend. The day before the hearing, Respondent Hernandez submitted compliant financial statements to the Bureau.

First Cause for Denial (Organization and Management)

11. Section 5 of the application asked the applicant to include an organizational chart that "shows the governance and administrative structure of the institution and the relationship between faculty and administrative positions." A second subparagraph asks for a job description for each administrative and faculty position. A third subparagraph asks the applicant to identify the chief executive officer (CEO), the chief operating officer (COO) and the chief academic officer (CAO) and to describe their education, experience, and qualifications to perform their respective duties and responsibilities. In the spaces below each subparagraph in which the applicant is to answer whether documents were attached to address the requests, Respondent checked the "no" option.

12. The Bureau's August 29, 2015, Intake Review Letter identifying incomplete items referenced application section 5 and specifically noted the absence of an organization chart, job descriptions for administrative and faculty positions, and identification of the CEO, COO, and CAO with qualifications listed for each.

13. In Respondent's September 8, 2015, submittal, Respondent addressed application section 5 by including an organizational chart with himself as owner at the top and two boxes below for "Part-time Faculty Andrew Hernandez" and "Part-time Administrative Assistant Lupita Hernandez." Respondent described the job responsibilities for each person. More specifically, Respondent noted that he is the sole chief executive of the business and responsible for overseeing all business operations. Respondent noted that his education, experience, and qualifications were outlined in previously submitted documents. Part time faculty member Andrew Hernandez was described as a class A commercial driver with all endorsements and eight years of driving experience. He was to be responsible for teaching students driving skills required to pass Department of Motor Vehicles (DMV) requirements including backing, pre-trip inspections, and air brake tests. He was to work with Respondent to provide driver training. Ms. Lupita Hernandez would handle office work including grading papers and report to Respondent.

14. The Bureau's June 16, 2016, letter acknowledged receipt of the organizational chart but indicated that the organizational chart failed to show the "complete" administrative structure nor include the CEO, COO, and CAO in the chart. No job duties for the COO or CAO were provided. The letter asked for more detail for the CEO's job responsibilities. Finally, the letter stated that the education, experience, and qualifications of the three required executives were not included.

15. In Respondent's August 31, 2016, submittal, Respondent included his resume which included truck driving instruction from 1995 to 2016, part ownership of a truck driving school from 2004 to 2008, followed by sole ownership of the truck driving school from 2010 to 2016. Respondent included a transcript from Delta College showing completion of a criminal justice course in 2005 for three units, completion of Reasonable Suspicion Training for Supervisors DMV/DOT course, 10 hours of transportation continuing education presented by the Transportation Post-Secondary School Association, and membership in the same organization in 2000. Respondent also included the Bureau's Certificate of Authorization for Respondent to serve as a truck driving instructor, completion of a time management workshop in 2000, completion of a California Trucking Association Course in surviving an audit, a certificate commemorating three years on the instructional staff of the Center for Employment Training, and a similar document celebrating four years on the instructional staff of the same entity.

16. The Bureau's January 30, 2017, deficiency letter also included issues pertaining to section 5 of the application. These included that the organizational chart "does not show the organizational structure of the institution," and the chart "needs to graphically represent the relationship between the positions." Respondent was asked to "update and submit a new organization chart." The letter also instructed Respondent to submit job descriptions for the COO and CAO positions and update the job description for the CEO including "clearly defined" job duties and responsibilities.

17. The Bureau's February 24, 2017, deficiency letter, referencing application section 5, noted that the descriptions previously submitted discussed particular staff members that perform duties. Respondent was directed to describe the duties of the job in his next submission, rather than the current individual who holds the title. In Respondent's email attachments submitted thereafter was a copy of the organizational chart and job descriptions originally submitted by Respondent. At the administrative hearing, Education Specialist Ebony Santee, the Bureau employee who ultimately reviewed Respondent's application, explained that Respondent could occupy all three required positions of CEO, COO, and CAO, but the organizational chart must show separate boxes with his name in each. Ms. Santee expressed that Respondent must also provide job descriptions for each position, including the duties and responsibilities for the role. These job descriptions must be general for any person who might hold the title of each respective position in the future. Such job descriptions allow the Bureau to evaluate whether the individual filling the position (in one year or five years) is appropriately qualified.

Second Cause for Denial[1] (Exemplars of Student Agreements)

Subparagraph a: Spanish Version of Enrollment Agreements

18. Section 9 of the application requires that the applicant include exemplars of student agreements, including enrollment agreements. Respondent indicated that such exemplars had been included. The Bureau's June 22, 2016, letter provided Respondent with the Bureau's Enrollment Agreement Checklist, which in turn listed errors or omissions in the enrollment agreement and instructed Respondent to cite the page number where the required information may be found or note that a particular requirement did not apply. Item 1 of the checklist reflects that an institution that recruits in a language other than English must also provide the form in the other language. The Bureau reviewer's note states that Respondent did not provide a Spanish version of the enrollment agreement. The initial application included several documents in Spanish, including the cover of a Driving Manual in Spanish. (Exhibit 3.) Respondent's April 11, 2017, May 24, 2017, and July 24, 2018, versions of its Enrollment Agreement stated, "H&H[] [i]s a [b]i-[l]ingual school, in Spanish and English only." (Exhibits 18 and 19.) Respondent's documents submitted to the Bureau did not include a Spanish version of the Enrollment Agreement. In Respondent's March 28, 2017, email attachments is the school's Catalog for the period January 1, 2015 through December 31, 2015. (Exhibit 17.) On page 6 of the Catalog, under the heading "Entrance Requirements," is this language: "Instruction is available in Spanish. Students needing instruction in Spanish should inquire with the instructor for arrangements."[2] At the administrative hearing, Respondent testified that all instruction at the school was in English.

Subparagraph c: Time Period of Enrollment Agreement and Time Limit to Cancel or Withdraw

19. Respondent submitted multiple revised Enrollment Agreements in response to the Bureau's concerns. Exhibit 18 contains those dated April 11, 2017 and May 24, 2017. The Bureau reviewed the most recent agreement on or about July 24, 2018, immediately prior to the hearing. (Exhibit 19.) Both the May 2017 and July 2018 versions include a statement in bold beneath the signature line for the student which says, "Students have one year from the time they sign the Enrollment Agreement to be complete all DMV test."[3] There are lines to insert the individual student's start and ending dates for the program. The first page of those agreements also say, "Students have one year to complete all written test and driving test. DMV gives students one year from the time of first applying for the "class A" license."[4]

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[1] Complainant dismissed subparagraphs b, e, and g of the Second Cause for Denial of the Application at the administrative hearing.

[2] At the hearing, the school's July 2018 Catalog was received in evidence and the reference to the availability of Spanish language instruction is still on page 6. (Exhibit 20.)

[3] Grammar is quoted from original text.

[4] Grammar is quoted from original text.

20. The May 2017 and July 2018 Enrollment Agreements each include a paragraph about the "buyer's right to cancel" and, later, the "Student's Right to Cancel and Refund Policy." A full refund is due if the student notifies the administration on or before midnight of the seventh business day after the first day of instruction.[5] Pro rata refunds are payable thereafter depending on the hours of instruction completed. The Enrollment Agreements do not include spaces for Respondent to insert the actual date for cancellation or withdrawal without penalty.

21. Respondent Hernandez testified at hearing that a student obtains initial education for two to four weeks before taking and passing the written test for a DMV permit, after which the student can begin driving and training behind-the-wheel, and that a student can obtain a second permit. He also explained that the enrollment agreement could be used for more than one year, and even for up to three years, if the student needed more time to finish. The enrollment agreement may be used for different courses, one of which is a refresher course that does not require any DMV tests. Ms. Santee testified that Respondent was required to specify the time period during which the enrollment agreement would be valid so that a student would know what to expect in the event of changes down the road. As a document that expresses the legal rights of the students and the school, the document must be clear. For example, a student who does not complete the program within one year, but continues with the program as a student, should know whether the enrollment costs or number of required hours might be renegotiated.

Subparagraph d: Failure to List the Correct Amount for the Student Tuition Recovery Fund Fee

22. The Enrollment Agreement explains that the Student Tuition Recovery Fund was established by the Legislature to protect students against loss from school closings, failure to comply with enrollment agreements, or refusal to pay court judgments. There was no fee imposed on students at the time of Respondent's application. Respondent's Enrollment Agreements included in the list of student costs the language "STRF FEE (IF APPLICABLE): $10.00 (Non Refundable)." Respondent believed that a $10 fee was assessed at one point in time, but Ms. Santee was unaware of there ever having been such a fee. The current STRF fee is zero dollars per one thousand dollars of institutional charges. (Cal. Code Regs., tit. 5, § 76120.)

Subparagraph f: Student's Entitlement to Refund of Monies Not Paid by Federal Student Financial Aid Program Funds

23. The paragraph in the Enrollment Agreement addressing Respondent's refund policy includes that refunds will be paid to the parties who prepaid the student's tuition. If the tuition was paid by one or more third parties, they are entitled to the refund. The Enrollment Agreement does not contain an explicit statement that students receiving partial

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[5] As noted below, Respondent's initial Enrollment Agreement exemplars submitted to the Bureau erroneously recited that the deadline was two days after the first class attended by a student.

payment of tuition by federal student aid programs are entitled to a refund of their own contributions. The May 2017 and July 2018 Enrollment Agreements do not contain "a statement that, if the student has received federal student financial aid funds, the student is entitled to a refund of moneys not paid from federal student financial aid program funds," as required by Education Code section 94911.

Third Cause for Denial (Instruction and Degree Offered)

Subparagraph a: Admission Requirements, Including Minimum Levels of Prior Education, Preparation, or Training

24. The only admission requirement listed in Respondent's Enrollment Agreement[6] is that the student must be at least 18 years old. The school's Catalog includes a paragraph entitled "Admission Requirements," that states that no minimal level of education is required. While there are no educational requirements, there are additional admission requirements. Another paragraph, entitled "Ability to Benefit," requires all applicants to pass the entrance examination with a score equal to or above "published requirements," and explains that exceptions may be granted on an individual basis.

25. In a section identifying "Entrance Requirements," the Catalog explains that "to be accepted for training," applicants must be able to read, write and understand basic English, take an Ability to Benefit Examination "submitted by [a] sponsor," pass the Department of Transportation physical and drug screen, a current driver's license, a social security card, and submit a DMV H-6 printout. This section repeats the requirement that applicants be at least 18. The last paragraph in this section states that students must be proficient in English to be able to understand textbooks and communicate with the instructor, but as noted above, includes that instruction is available in Spanish.

26. The July 2018 Catalog's "Admissions Procedures" section explains that applicants are interviewed to screen applicants for suitability for training, including in the "Tractor/Trailer Operator Program." (Exhibit 20, p. 6.) Further, the July 2018 Catalog (pages 15-16) describe three training programs offered, including a "Truck Driving Class A Driving License" program, a "Truck Driving Refresher Program," and "Truck Driving Listing" program. In another section, the Catalog states, "Approved is the course: Tractor/Trailer Operator Program – 200 Clock Hours." (Exhibit 20, p. 4.) Following the title "Truck Driving Listing", the "PREREQUISITES" include a "clean" DMV printout and a "class C" driver's license. The Catalog does not describe separate admission requirements for the "refresher" course, although that course is only three weeks long, which is five weeks shorter than the "Class A" course. Respondent's admission requirements are confusing and stated inconsistently throughout its application materials.

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[6] As previously noted, Respondent submitted multiple enrollment agreements and catalogs in attempts to resolve concerns as they were raised by the Bureau. Unless otherwise specified, the sample documents referenced here are those in the Bureau's possession at the time of denial, but the same concerns remain in the sample documents submitted in July 2018, immediately prior to hearing.

Subparagraph b: Ability to Benefit Examination

27. As noted above, Respondent's Catalog references an Ability to Benefit Examination and included passage of such an examination administered by a sponsoring program as an admissions requirement.[7]

Subparagraph c: Types and Amount of General Education Required by Enrollees

28. The Catalog indicates that no general education is required before or during the course.

Subparagraph d: Detailed Method of Instruction for the Truck Driving Program

29. Respondent's Catalog includes a description of the truck driving program for a Class A driver's license. Included in the description are the total of 320 clock hours over eight weeks and the expressed goal of training individuals for entry level employment as an over-the-road or short haul truck driver. There is a program outline breaking down the areas of instruction covered, and the hours in each area, but the method of the instruction was not described. Ms. Santee testified that there should be a greater breakdown of the methods of instruction, such as classroom versus hands-on instruction.

Subparagraph e: Detailed Description of Graduation Requirements

30. Respondent's Catalog states that all course work and attendance hours for a program must be completed in their entirety to receive a certificate of completion. Repeating a class is not permitted and students are responsible to make up scheduled course work or attendance hours in consultation with instructors. A Certificate of Completion is awarded for successful completion of the program curriculum and attendance requirements. A standard grading scale is described in the Catalog and students must maintain at least a 70 percent cumulative grade average throughout the program. Under the heading "Graduation Requirements," Respondent states that in order to graduate and receive a certificate of program completion, students must successfully complete all courses and related DMV courses and they must complete the program within the minimum satisfactory attendance requirements.

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[7] While unclear, this requirement seemed to apply to those referred by government employment agencies or other "sponsors." As noted below, under his prior school's approval, Respondent Hernandez taught a large number of students referred by the San Joaquin County WORKNET program, and WORKNET's administrator supported Respondent's application.

Subparagraph f: Statement of Occupations and Job Titles for Which Educational Program is Designed to Prepare Students

31. As noted above, the Respondent's Catalog reflects that the school's purpose is to provide men and women with the knowledge and skills to be professional tractor/trailer drivers, later referring to them as truck drivers. The school seeks to equip students with the skills necessary to become professional entry level over-the-road or short haul truck drivers. The Catalog reflects that one program is a "Truck Driving Class A Driving License"; it is not clear if any of the courses lead to different classes of driver's license.

Fourth Cause for Denial (Educational Program)

Subparagraph a: Number and Qualifications of Faculty

32. Respondent did not include a separate statement of the number of faculty and required qualifications to offer the educational courses as requested in section 13 of the application. This was noted in the Bureau's April 29, 2015, Intake Review Letter. The applicant must describe how many faculty members it would need to teach the classes and what qualifications such faculty must have. In response to this requirement, Respondent need not describe the particular individuals who will do the teaching, but must describe, in general, the number of those faculty and the qualities that would be appropriate for such faculty. Respondent failed to do this.

Respondent Hernandez addressed his qualifications as an instructor as well as his son's qualifications. Those individuals' particular qualifications are not, however, at issue. An application requirement is to describe how many faculty members would be needed to operate the school (even if that is only one) and to create a statement for the position identifying the minimum qualifications that the school would require of any faculty or instructor it would consider for the position (for example, type of DMV license held, number of years of experience, etc.).

Subparagraph b: Description of the Learning, Skills, and Other Competencies to be Acquired Upon Completion of the Educational Program

33. This information is also required by section 13 of the application. Respondent did not include a single document addressing the six areas comprising section 13, the description of the educational program for the truck driver Class A program. The failure to include such information was documented in the Bureau's April 29, 2015, Intake Review Letter. In his response, Respondent addressed section 13 and represented that he had included a document outlining the skills and competencies to be acquired by students completing his truck driver Class A program. Attached to the letter are three documents addressing this issue. The first is the school's Student Competencies Information listing six core competencies with adjacent boxes to indicate the completion of each, the test score and the instructor's certification. The second is a Spanish language form listing the same core competencies and breaking each down into subcategories ranging from four to nine.

Adjacent boxes were designed to indicate if the student had passed, his or her grade, and the date completed. The third document was the English version of the second document. While these documents, considered together, may satisfied the learning competencies for the truck driving program for a Class A DMV license, Respondent did not address the "refresher" course competencies, the Tractor/Trailer Operator Program, or any other proposed course.

Subparagraph c: Submission of Complete Syllabi

34. Section 13 of the application describes the six areas for which the Bureau requires supporting documentation. Following this list is a note that states that the applicant may be requested to provide copies of the required curriculum or syllabi. The Bureau's April 29, 2015, Intake Review Letter, while noting the absence of documentation addressing the six areas in section 13, did not request copies of the Respondent's course curriculum or syllabus. The Bureau's June 22, 2016, deficiency letter also only included the six specified areas of section 13 of the application. The Bureau's January 30, 2017, deficiency letter added this language to the list of the six areas of section 13: "**Additionally**, please submit a copy of all course syllabi." (Bold in original). A February 24, 2017, deficiency letter made the same request. In an apparent effort to satisfy the Bureau's request, Respondent amended the Enrollment Agreement to add what he described as a "Class A Syllabus," a "Class B Syllabus," and a "Refresh[er] Course Syllabus." (Exhibit 19, p. 6-7.) The first two syllabi appear to be identical and simply describe the preparation for the DMV's general knowledge test and taking that test, preparation for the DMV's Air Brake test and taking it, preparing for the DMV's Combination Test and taking it and moving to Part 2. Part 2 involves studying and mastering the pre-trip and air brake and learning to drive; study and mastering backing up, alley dock, parallel parking, and off sides. The last task is taking the DMV commercial truck driving test. The refresher course essentially excludes Part 1 of the basic course.

Sixth Cause for Denial (Failure to Provide a Description for the Facility Located at 5317 W. Grant Line Road)[8]

35. Section 17 of the application requires a description of facilities and equipment available for students at the main, branch and satellite locations of the institution. Respondent described trailers used by the school and did not include any documentation of facilities leased. The Bureau's Intake Review Letter noted the absence of a description of facilities used by the school and requested that Respondent provide them. In his September 8, 2015, response, Respondent identified the main location as his home for which he has a business license to operate the school. The home includes a classroom and other school related facilities. Respondent explained that he had access to a yard at 5317 W. Grant Line Road in Banta, California, for students to practice driving under instruction. He had an arrangement with the owner to use the property in exchange for Respondent hauling loads for him. In the Bureau's June 22, 2017, Deficiency Letter, Respondent was asked to provide a

[8] Complainant dismissed the Fifth Cause for Denial of the Application at the administrative hearing.

description of the W. Grant Line property and to provide written evidence that the property had been secured for use by Respondent in accordance with his arrangement with the owner. Respondent submitted a letter written by the owner of the property confirming his arrangement with Respondent along with proof of insurance coverage for the pallet recycling business the owner operates there. Respondent has not provided a diagram of this property to the Bureau.

Seventh Cause for Denial (Failure to Provide Description of Library or Other Learning Resources)

36. Section 18 of the application asks for a description of library holdings, services, and other learning resources, including policies and procedures for supplying them to students who do not receive classroom instruction. It also requires an explanation of how the library and other learning resources are sufficient to support the instructional needs of students. If such materials do not exist, the applicant is to describe how and when students can access a library and other learning resources. Respondent checked a box indicating that a document was attached in response to the question. Respondent attached a copy of the cover page from the "Federal Motor Carrier Safety Regulations Handbook," published by the United States Department of Transportation, Federal Motor Carrier Safety Administration. He also attached copies of documents visually describing components of commercial trucks. The Bureau's Intake Review Letter stated that Respondent had not attached any documents in response to this section of the application. Respondent's September 8, 2015, letter stated that he had attached a document "on learning resources made available to all of [his] students." Respondent identified his texts as the same federal safety regulations handbook with 68 test questions previously designated as a text by Respondent, a 35-chapter text entitled "Bumper to Bumper," and the "TRUCKING-Tractor-Trailer Driver Handbook/Workbook," published by the Professional Truck Driver Institute. The Bureau's June 22, 2016, Deficiency Letter acknowledged receipt of the book covers, but noted the lack of a description of the library and other resources, along with policy and procedures for accessing the resources. In an email dated March 13, 2017, Respondent referenced section 18 of the application and added "See page 7 Text books." This is part of an exhibit containing emails between the parties and there are no attachments. Thus, it is not possible to ascertain what additional information was sent by Respondent to the Bureau to satisfy section 18. Respondent failed to explain how the resources available are sufficient to support the instructional needs of students.

Eighth Cause for Denial (Omission of Required Information or Incorrect Information in the School Catalog)[9]

Subparagraph a: Incorrect Bureau Name

37. A prior agency that regulated private postsecondary institutions was called the "Bureau for Private Postsecondary and Vocational Education." Respondent incorrectly referenced the prior Bureau in the portion of the Catalog entitled "Disclosures," although he referenced the correct name of the Bureau in language that followed the erroneous designation. He also used the incorrect title in the portion of the Catalog addressing refunds.

Subparagraph c: Transferability of credits and credentials

38. In the second sentence of the paragraph addressing transferability of credits and credentials earned at Respondent's school, Respondent stated, "Acceptance of any degree, diploma or certificate you earn at this institution is also at the complete discretion of the institution at which you seek to transfer." Bureau asserts that this statement is inadequate, and does not match the specific language required by section 94909, subdivision (a)(15).

Subparagraph d: Statement Pertaining to Visas

39. If the school admits students from other countries, the catalog must state whether visa services are provided or whether the school will vouch for the student's status, and any associated charges. At the time of denial, the school's Catalog statement with regard to visas was unclear. The July 2018 version of the school's Catalog, does not address visas.

Subparagraph e: English Proficiency Level and Documentation Required

40. The Catalog, on page 6, states that English language proficiency is required of students to be able to understand textbooks and communicate with instructors. The entrance requirements on the same page include the ability to read, write and understand basic English. There is nothing else stated regarding documentation required to establish a specified level of proficiency such as possession of a high school diploma, a General Education Diploma or performance on an Ability-to-Benefit examination. The Bureau representative testified that the Catalog must describe the level of proficiency required and the kind of documents required to establish proficiency. The Catalog does not address those requirements.

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[9] Complainant dismissed subparagraphs b and k of the Eighth Cause for Denial of the Application at the administrative hearing.

Subparagraph f: Programs Offered by Respondent's School

41. The July 2018 Catalog includes a heading: "Programs Offered," which generally describes a single program to provide students with marketable job skills and knowledge to operate any tractor trailer. (Exhibit 20, p. 14.) The section entitled "Program Listing," refers to a single "Truck Driving" Program, and states that the sections that follow outline "individual clock hours, program weeks, program sessions, daily attendance hours and days." (Exhibit 20, p. 14.) The section of the Catalog entitled "Tuition Schedule," describes two courses. The first is Truck Driving Class A Driving License, an eight-week, 320-hour course. The next is Truck Driving Refresher Program, a three-week, 120-hour course. Thereafter, the first course is described in more detail including the course prerequisites and a course outline breaking the course into five components and listing the total hours for each component and the subject areas covered. Although the Catalog's tuition schedule is limited to two courses, the Catalog references a third program, a 200-hour "Tractor/Trailer Operator Program." (Exhibit 20, p. 4.) In addition, the July 2018 Enrollment Agreement includes a brief "syllabus" for each of three courses, described as a "Class A" course, a "Class B" course, and a "refresher" course. Despite the two types of tuition, and three syllabi, the focus of Enrollment Agreement seems to reflect only the Class A course and tuition.

Subparagraph g: Specific Requirements for Licensure by the DMV

42. The Catalog informs potential students that the goal of the program is to provide men and women with the skills and knowledge to become professional truck drivers, "[a]s long as all written and verbal tests are passed by [*sic*] the Department of Motor Vehicles." The Purpose and Philosophy section also states that students will be given the necessary defensive driving techniques, skills and knowledge to meet the stringent requirements of the National Commercial Driver's License Examination. The goal, according to the Catalog, is to prepare students to become professional entry level truck drivers. The DMV requirements to obtain a commercial truck driver license are not detailed.

Subparagraph h: Schedule of Total Charges

43. The Catalog lists the costs relating to the Truck Class A Driving License including tuition, the cost of the "Bumper to Bumper" book, a fee for physical and drug screening, the cost for a DMV printout, and the fee for a DMV permit. The total cost is $4,995. The Truck Driver Refresher Program lists costs for tuition, physical and drug screening, a DMV printout, and a DMV permit for a total cost of $2,551. The Bureau representative testified that the Catalog failed to describe the costs a student must pay on enrollment.

Subparagraph i: Language Regarding Deadline for Student's Right to Cancel

44. The Catalog must contain a statement that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first

class session, or the seventh day after enrollment, whichever is later. The July 2018 Catalog contains provisions regarding the student's right to cancel and refunds. One statement reads: "A student has the right to cancel the enrollment agreement for a program of instruction until midnight of the Seventh business day following the day the student attends the first course for the program of instruction." The Catalog also states, "If a student withdrawals [sic] from a program of instruction after the Second day, right-to-cancel period lapsed; the institution will remit a refund in accordance with the refund formula ..." The second statement creates ambiguity about when the student may cancel, and whether the refund within seven days of enrollment will be a full refund.

Subparagraph j: Qualifications for Instructor Andrew Steven Hernandez

45. The Catalog's listing of administration personnel includes a reference to Respondent's son Andrew within a paragraph describing him as the "Yard Instructor." After listing the duties for the position, Respondent's son is identified only as "Andrew," without a last name. His qualifications were appropriately listed.

Subparagraph l: Job Classifications for Each Program Using the United States Department of Labor Standard Occupational Classification Codes

46. There is no mention of such classification codes in the Catalog.

Ninth Cause for Denial (Record Keeping)

47. Section 22 of the Application asks the applicant to describe how records required to be kept will be organized and maintained, the types of documents in student files, how the records are stored, and whether academic and financial records are kept in separate files. Respondent indicated that he had submitted a document answering these inquiries. The Bureau's June 22, 2017, deficiency letter included section 22 omissions, acknowledging that Respondent had provided two student files, but without a description of how the files will be organized and maintained, the types of documents in the student files, how they will be stored, and whether academic and financial files will be separate. In an email dated March 13, 2017, Respondent stated that the student files are stored in a locked cabinet to which only management has access. Students may access their files by making the request to do so to management. The student files are kept for seven years and then destroyed.

Tenth Cause for Denial (Self-Monitoring Requirements)

48. Section 23 of the application sections addresses self-monitoring to ensure that the school is operated and maintained in compliance with applicable law. The Bureau's June 22, 2016, deficiency letter recited that Respondent had not provided a description of the procedures to be used to ensure compliance. Respondent's response included a paragraph entitled "Self Monitoring Procedures." The statement deals with student access to their records and a blackboard charting of the student's progress day-by-day. This statement reflects Respondent's apparent confusion regarding the self-monitoring requirement.

Mitigatory Findings

49. Respondent has approximately 40 years of truck driving experience, working for 5 different companies. He also has many years of experience as a truck driving instructor. From 1995 until 2001, he taught truck driving for the Center for Employment Training in Sacramento, a non-profit job training program. From 2002 until 2004, he was employed as a truck driving instructor by California Human Development, another job training program. From in or about 2004 to in or about 2008, he was a partner with Consuelo Soto and together they functioned as C&H Truck Driving School, a private postsecondary school licensed by the Bureau. In or about 2008, Ms. Soto filed personal bankruptcy and the partnership was dissolved. Respondent continued to operate the business on his own as H&H Truck Driving School. Ms. Soto had been the person with whom the Bureau communicated regarding the truck driving school, and Respondent was surprised to learn that the school's license was to expire in 2011. Respondent delayed filing a renewal application in part because Ms. Soto had spent the business' reserves and Respondent's daughter was stricken with cancer from which she died within two years. Also, the Bureau contacted Ms. Soto to see if the license would be renewed and she falsely represented that the business had closed. These circumstances necessitated the filing of a new application which led to the denial which is at issue in this proceeding.

50. Before his prior approval expired, Respondent provided truck driver training for many years to students referred by the San Joaquin County WORKNET employment program. Approximately 70 percent of his students came from these referrals and there was a special compensation rate fixed by the parties. The other students were private students. One hundred percent of Respondent's WORKNET students were hired and retained as commercial truck drivers. Respondent is permitted to continue to provide truck driver training without the school being approved by the Bureau, so long as he does not charge more than $2,500. This does not allow him to teach his preferred students from the WORKNET program with a fixed tuition of approximately $4,000.

LEGAL CONCLUSIONS

First Cause for Denial of Application

1. Education Code section 94887[10] reads:

> An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards. The bureau shall deny

[10] All statutory references are to the California Education Code unless otherwise stated.

an application for an approval to operate if the application does not satisfy those standards.

2. California Code of Regulations, title 5, section 71140 reads:

(a) The institution shall include in its Form Application 94886 an organization chart that shows the governance and administrative structure of the institution and the relationship between faculty and administrative positions.

(b) The institution shall provide a description of the job duties and responsibilities of each administrative and faculty position.

(c) The institution shall identify the chief executive officer, chief operating officer, and chief academic officer and describe their education, experience, and qualifications to perform their duties and responsibilities.

3. California Code of Regulations, title 5, section 71730, reads:

(a) Each institution shall have a chief executive officer, a chief operating officer and chief academic officer. One person may serve more than one function.

(b) The duties, responsibilities, and performance evaluation criteria for each administrator shall be set forth in a personnel manual or other writing maintained by the institution.

(c) An institution with one or more branch locations shall establish written institutional policies, consistent with subdivision (d), regarding the division and sharing of administrative responsibilities between the central administration at the main location and the administration at the branch locations.

(d) The administrative staffing at each branch location shall reflect the purposes, size, and educational operations at that location and at any satellite location for which the branch has administrative responsibilities.

(e) The chief academic officer shall possess a degree or equivalent acceptable experience at least equal to the highest qualifications required of the institution's faculty. Chief academic officers employed on the date of implementation of these regulations, who do not meet the qualifications for their

positions, shall have three years to earn the necessary degrees or experience to qualify them for their position.

(f) The institution shall employ administrative personnel who have the expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs.

(g) The institution shall not employ or continue to employ any administrative personnel who were adjudicated in a judicial or administrative proceeding as having violated any provision of the Act or this chapter or as having committed any act that would constitute grounds for the denial of a license under Section 480 of the Business and Professions Code.

4. Respondent's application is subject to denial pursuant to section 94887 in conjunction with California Code of Regulations, title 5, section 71140, in that Respondent failed to identify the positions of chief executive officer, chief operating officer, and chief academic officer, describe their respective job duties and responsibilities, and the qualifications of the office holders.

Second Cause for Denial

Subparagraph a: Spanish Version of Enrollment Agreement

5. Section 94906, subdivision (b), requires that "if a school's recruitment leading to enrollment was conducted in a language other than English," the enrollment agreement shall be in that language.

6. While Respondent's Catalog references the availability of Spanish language instruction at the school, and that the school is bi-lingual, the catalog itself was not in Spanish. If the Catalog were made available to potential students in Spanish, an enrollment agreement would also have to be available in Spanish. Respondent testified that all instruction was conducted in English and that students were required to be proficient in English.

Subparagraph c: Time Periods for Enrollment Agreement and Deadline to Cancel or Withdraw

7. California Code of Regulations, title 5, section 71800, subdivisions (b), (d) and (e), read:

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

[¶] . . . [¶]

(b) Period covered by the enrollment agreement.

[¶] . . . [¶]

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

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

(1) tuition;
(2) registration fee (non-refundable);
(3) equipment;
(4) lab supplies or kits;
(5) Textbooks, or other learning media;
(6) uniforms or other special protective clothing;
(7) in-resident housing;
(8) tutoring;
(9) assessment fees for transfer of credits;
(10) fees to transfer credits;
(11) Student Tuition Recovery Fund fee (non-refundable);
(12) any other institutional charge or fee.

8. As noted in the Factual Findings, the Enrollment Agreement does not reflect the period covered by the agreement.

9. As noted in the Factual Findings, Respondent did not include a space in the Enrollment Agreement to insert the date on which an enrolling student must cancel or withdraw to obtain a full refund.

Subparagraph d: Incorrect Information Regarding Student's Contribution to Student Tuition Recovery Fund

10. Respondent incorrectly listed a $10 non-refundable fee for the Student Tuition Recovery Fund.

Subparagraph f: Student's Entitlement to Refunds

11. Section 94911, subdivision (e)(2), reads:

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

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

(2) The disclosure shall contain the institution's refund policy and a statement that, if the student has received federal student financial aid funds, the student is entitled to a refund of moneys not paid from federal student financial aid program funds.

12. The Enrollment Agreement does not contain the required statement that, if the student received financial aid funds, the student is entitled to a refund of moneys not paid from federal student financial aid program funds.

Third Cause for Denial

13. California Code of Regulations, title 5, section 71210, subdivision (c), reads:

(a) The institution shall identify and describe the educational program it offers, or proposes to offer. If the educational program is a degree program, the institution shall identify the full title which it will place on each degree awarded.

(b) In addition to the general title, such as 'Bachelor of Arts' or 'Master of Science,' each degree title shall include the name of a specific major field of learning involved.

(c) In addition, the institution shall list the following for each educational program offered:

(1) The admissions requirements, including minimum levels of prior education, preparation, or training;

(2) If applicable, information regarding the ability-to-benefit examination as required by section 94904 of the Code;

(3) The types and amount of general education required;

(4) The title of the educational programs and other components of instruction offered, including a description of the level of the

courses (e.g., below college level, undergraduate level, graduate level);

(5) The method of instruction;

(6) The graduation requirements; and

(7) Whether the educational program is designed to fit or prepare students for employment in any occupation. If so, the Form Application 94886 shall identify each occupation and job title to which the institution represents the educational program will lead.

Subparagraph a: Minimum levels of prior education, preparation or training

14. As reflected in the Factual Findings, the Enrollment Agreement and Catalog, fail to accurately and consistently reflect the "admissions requirements, including minimum levels of prior education, preparation, or training."

Subparagraph b: Information Regarding Ability-to-Benefit Program

15. While the evidence was far from clear regarding this topic, including the occasions on which Ability-to-Benefit examinations are typically administered, Respondent's Catalog references such examinations when administered by sponsoring programs. It appears from Respondent's testimony and other evidence, that students referred by San Joaquin's WORKNET program who did not possess a high school diploma or equivalency were screened by the agency using an Ability-to-Benefit accepted examination. Thus, Respondent's materials satisfied this requirement.

Subparagraph c: General Education Required

16. No general education is required for any offered educational program, as indicated in the materials Respondent submitted with its application.

Subparagraph d: Methods of Instruction

17. Respondent provided a fairly detailed description of the course components and broke them down by information and skills to be acquired. While the course description clearly implies that students will spend time in a classroom setting, driving under the direction of an instructor and other activities, the application lacks descriptions of the instructional methods.

Subparagraph e: Detailed Description of Graduation Requirements

18. Respondent satisfied this requirement by submitting to the Bureau the course components described above and the requirements that students pass each area and complete the specified hours for each area.

Subparagraph f: Identification of Job Titles and Occupations for Which Program Prepares Students

19. Respondent satisfied this requirement by the inclusion in his materials that students will be equipped with the knowledge and skills to be "professional entry level truck drivers."

Fourth Cause for Denial

20. California Code of Regulations, title 5, section 71220, subdivisions (c) and (e), read:

> For each educational program that the institution offers or proposes to offer, the Form Application 94886 shall contain a statement that the educational program meets the requirements of section 71710, as well as the following:
>
> (c) A description of the number and qualifications of the faculty needed to teach the educational program.
>
> [¶] . . . [¶]
>
> (e) A description of the learning, skills, and other competencies to be acquired by students who complete the educational program.

Subparagraph a: Number and Qualifications of Faculty

21. As indicated in the Factual Findings, Respondent failed to provide general statements about how many faculty members are needed to teach classes, and what qualifications faculty members require.

Subparagraph b: Description of the Learning, Skills, and Other Competencies to be Acquired

22. Respondent satisfied this requirement for one of its programs but failed to do so for the other programs offered.

Subparagraph c: Failure to Submit Complete Course Syllabi

23. California Code of Regulations, title 5, section 71710, subdivision (c), reads:

> In order to meet its mission and objectives, the educational program defined in section 94837 of the Code shall be comprised of a curriculum that includes:
>
> (c) course or module materials that are designed or organized by duly qualified faculty. For each course or module, each student shall be provided with a syllabus or course outline that contains:
>
> (1) a short, descriptive title of the educational program;
> (2) a statement of educational objectives;
> (3) length of the educational program;
> (4) sequence and frequency of lessons or class sessions;
> (5) complete citations of textbooks and other required written materials;
> (6) sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured;
> (7) instructional mode or methods.

24. Respondent identified some of the required elements of the student syllabus or outline required to be provided to students, such as textbooks, the length of the program, and a sequential and detailed outline of subject matter. However, he has never provided the Bureau with a single document, however titled, that the school will provide to each student that includes all the elements described in regulation 71710.

Sixth Cause for Denial: 5317 W. Grant Line Rd. Facility

25. California Code of Regulations, title 5, section 71260, subdivisions (a) and (c), read:

> (a) For each program offered, the Form Application 94886 shall contain a description of the facilities and the equipment which is available for use by 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.

26. Respondent described this property as a driver training area for his students and the letter submitted by the owner identifies the business there as a pallet recycling center. Respondent should have included a diagram, as he did for his main location, showing the portions of the facilities, such as roads on which students drove trucks or backed trailers, to satisfy these requirements.

Seventh Cause for Denial: Description of Library and Other Learning Resources

27. California Code of Regulations, title 5, section 71270 reads:

> The Form Application 94886 shall include a description of library holdings, services, and other learning resources, including policies and procedures for supplying them to students who do not receive classroom instruction. The description need not consist of a list of each holding. The description shall include an explanation of how the library and other learning resources are sufficient to support the instructional needs of students and, if no facilities exist at the institution, how and when students may obtain access to a library and other learning resources as required by the curriculum.

28. The Bureau alleges that Respondent failed to provide a description of the library or other learning resources. Respondent provided a list of the texts that he provides his students.

Eighth Cause for Denial (Catalog)[11]

29. Section 94909 reads, in pertinent part:

> (a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:
>
> (1) The name, address, telephone number, and, if applicable, Internet Web site address of the institution.
>
> (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.
> [¶] . . . [¶]

[11] Complainant dismissed subparagraph (b) of the Eighth Cause for Denial at hearing.

(5) A description of the programs offered and a description of the instruction provided in each of the courses offered by the institution, the requirements for completion of each program, including required courses, any final tests or examinations, any required internships or externships, and 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.

(7) Information regarding the faculty and their qualifications.

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

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

(B) Cancellation, withdrawal, and refund policies, including an explanation that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later. The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund consistent with the requirements of Article 13 (commencing with Section 94919).

(C) Probation and dismissal policies.

(D) Attendance policies.

(E) Leave-of-absence policies.

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

[¶] . . . [¶]

(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.'

30. California Code of Regulations, title 5, section 71810, subdivision (b)(3) and (4), read:

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

(3) If the institution admits students from other countries, whether visa services are provided or whether the institution will vouch for student status, and any associated charges;

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

31. California Code of Regulations, title 5, section 74112, subdivision (d)(1) through (3)(A)(i), reads:

> (d) In addition to the definitions contained in section 94928 of the Code:
>
> (1) "Number of Students Who Began the Program" means the number of students who began a program who were scheduled to complete the program within 100% of the published program length within the reporting calendar year, and excludes all students who cancelled during the cancellation period.
>
> (2) "Number of On-time Graduates" means the number of students who completed the program within 100% of the published program length within the reporting calendar year.
>
> (3) "Gainfully Employed" means:
>
> (A)(i) The graduate is employed in a job classification under the United States Department of Labor's Standard Occupational Classification codes, using the Detailed Occupation (six-digit) level, for which the institution has identified in its catalog and in its employment positions list required by section 94910(f)(2) of the Code that the program prepares its graduates;

Subparagraph a: Approval to Operate Statement Using Bureau's Prior Name

32. Respondent's use of the prior Bureau's name rendered the required statement of approval of the school by the Bureau an ineffective disclosure of information required to be disclosed in the Catalog.

Subdivision c: Incorrect Statement Regarding Transferability of Credits and Credentials

33. Respondent's application failed to include the statement required by Section 94909, subdivision (a)(15).

Subparagraph d: Statement Regarding Visas

34. Respondent did not convey to the Bureau that it accepts students from other countries, so no statement regarding visa assistance was required to be placed in the Catalog. Any confusion would also be alleviated by the statement that foreign students are not accepted.

Subparagraph e: English Proficiency

35. Respondent's statement that English proficiency is required so that students can understand textbooks and can communicate with instructor satisfies the requirement regarding the level required. Documents submitted by Respondent to the Bureau suggested that Respondent used rudimentary tests to confirm English proficiency for at least some students, and thus should have indicated that in the Catalog. If students without at least a high school diploma, GED, or evidence of having passed an Ability-to-Benefit examination administered by a referring agency are required by Respondent to establish English proficiency by some other means, Respondent should indicate that in its application.

Subparagraph f: Programs Offered

36. The most recent version of the Catalog, described in the Factual Finding relating to this allegation, included the elements required for the Truck Driving Class A Driving License program, but failed to provide detailed information for other courses. Respondent's application is unclear about the number and description of courses it proposes to offer.

Subparagraph g: Requirements for DMV Licensure

37. Respondent's stated goal for students is to obtain a Class A commercial truck driving license from the DMV. This required Respondent to include the DMV's requirements for licensure in the Catalog which Respondent did not do. Respondent's Catalog lacks the DMV's requirements for obtaining a commercial truck driver license.

Subparagraph h: Schedule of Total Charges

38. There were inconsistencies in documents submitted to the Bureau regarding total costs to students. The July 2018 Catalog states the school's tuition and related costs for the Class A truck driver training class and the refresher course. The application lacked charges for other programs described.

Subparagraph i: Inconsistent Statements Regarding Student's Right to Cancel

39. As noted in the Factual Findings, Respondent's Catalog does not satisfy the requirements of Section 94909, subdivision (a)(8)(B), and California Code of Regulations, title 5, section 71750.

Subparagraph j: Failure to Include Full Name in Listing of Faculty Members

40. Respondent failed to add "Andrew's" last name in the application.

Subparagraph l: Job Classifications for Which School Prepares Students

41. The regulation cited by the Bureau defines "gainfully employed" in the context of data reporting requirements relating to the performance of a school. It does not require a school to list federal job classifications for which the school prepares students in the application, Enrollment Agreement, or Catalog.

Ninth Cause for Denial (Record Keeping)

42. California Code of Regulations, title 5, section 71310, subdivision (a), reads:

> (a) The Form Application 94886 shall contain a description of how records required by Article 9 of the Act or this chapter are or will be organized and maintained, the types of documents contained in student files, how the records are stored, and whether academic and financial records are maintained in separate files. The description shall include a statement of the institution's procedures for security and safekeeping of records.

43. Apart from describing the locked cabinet in which student files are maintained and supplying the Bureau with two student file samples, Respondent has not described how student files are organized and maintained.

Tenth Cause for Denial (Self-Monitoring Procedures)

44. California Code of Regulations, title 5, sections 71320 and 71760, require applicants to provide a description of the procedures used by the institution to assure that it is maintained and operated in compliance with applicable law.

45. As Factual Finding 38 regarding this allegation reflects, Respondent did not comprehend the meaning of "self-monitoring procedures." Respondent failed to describe how the school would ensure ongoing compliance with its own policies and procedures and compliance with laws (for example, annual review of the Enrollment Agreement and Catalog to ensure compliance with the most recent legal requirements).

Disposition

46. The circumstances that led to the Bureau's denial of Respondent's application were unfortunate. For approximately three years, Respondent and the Bureau earnestly attempted to satisfy the many requirements for licensing his truck driving school. As noted in the mitigation findings, Respondent is an experienced commercial truck driver with many years of successfully teaching others his trade. A combination of events led to his having to file a new application for his school rather than complete the less onerous process of renewing his license.

47. The requirements imposed on Respondent and other regulated private postsecondary educational institutions are most certainly designed to provide full disclosure to students and to ensure the continued viability of such institutions. Moreover, the Bureau is correct in its assertion that the responsibility of satisfying the requirements for licensure falls upon the applicant. (§ 94887.)

48. Section 94887 provides that the Bureau may grant an approval to operate only after an applicant has presented sufficient evidence, and the Bureau has confirmed, the applicant has the capacity to satisfy the minimum operating standards. The Bureau "shall deny an application for an approval to operate" if the application does not satisfy those standards. (§ 94887.) This conclusion does not, however, prevent Respondent from immediately filing a new application.

ORDER

The application of H&H Truck Driving School, Hector Hernandez, owner, for Approval to Operate a Non-Accredited Institution is denied based on the current incompleteness of his application.

The Decision shall become effective MAY 24 2019.

DATED: April 24, 2019

RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs