

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

In the Matter of the Statement of Issues Against:

**DIFAI CITY COLLEGE**

RESPONDENT

Institution No. 1940981

Case No. 1005808

OAH Case No.: 2020120419

Respondent.

**DECISION AND ORDER**

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

This Decision shall become effective on “June 24, 2021.”

It is so ORDERED “May 21, 2021.”

“Original signature on file”

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RYAN MARCROFT  
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION  
DEPARTMENT OF CONSUMER AFFAIRS

**BEFORE THE  
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION  
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**In the Matter of the Statement of Issues Against:**

**DIFAI CITY COLLEGE INSTITUTION NO. 1940981**

**Respondent**

**Case No. 1005808**

**OAH No. 2020120419**

**PROPOSED DECISION**

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on December 30, 2020.

Complainant, Dr. Michael Marion, Jr., Chief, Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs. Was represented by Christina Thomas, Deputy Attorney General. Difai City College, respondent, was represented by Chimezie C. Duruhesie, an administrator of the respondent institution.

Oral and documentary evidence was received. The record was held open until January 11, 2021, for respondent's questions of witness Shakira Rule, presentation of evidence, and closing argument in writing, and until January 25, 2021 for complainant's response.

Respondent submitted no questions for Ms. Rule or evidence, but timely submitted a closing brief, which was marked for identification as Exhibit A. Complainant submitted nothing further. The record was closed and the matter was submitted for decision on January 25, 2021.

## **STATEMENT OF THE CASE**

After inquiries from the Bureau, respondent provided financial information for its most recent fiscal year. It was required to provide financial statements for an additional five months, but has failed to do so. Respondent argues it should not be denied an approval to operate and its lack of compliance should be excused because: (i) respondent has not been out of compliance with regulations since its operations started in 2001; (ii) its current lack of compliance is a minor matter that it tried in good faith to remedy; (iii) respondent is out of compliance with regulations only temporarily; and (iv) respondent would have corrected its lack of compliance but for disruptions caused by an administrator's trip abroad and broader societal disruption as a result of the worldwide COVID-19 pandemic.

## **ISSUES**

Whether it is appropriate to excuse respondent's failure to comply with regulations regarding financial statements based on its record of past compliance, its good faith attempts at compliance, an administrator's unavailability, or unexpected disruption caused by a worldwide pandemic.

## **SUMMARY OF DECISION**

There is no compelling reason to excuse respondent's noncompliance with laws and regulations. Compliance is a simple, straightforward process that respondent

could have planned for more carefully, *even* in the present difficult circumstances caused by a pandemic. Proper financial statements are particularly crucial, as a way for the Bureau to *oversee* institutions for the protection of students from harm in case of an institution's lack of financial means or weakness in its financial ability to provide instruction.

## **FINDINGS OF FACT**

1. In early March 2020, the Bureau denied respondent's application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions. On March 17, 2020, respondent sent the Bureau notice it would appeal the denial.

### **License History**

2. On March 25, 2020, Jason Laughlin, Licensing Analyst for the Bureau, issued on the Bureau's behalf a Certification of Institutional and Program Approvals, Exhibit 2. The certification shows that respondent has had the Bureau's approval to operate since 2001. Its temporary approval was followed by the Institution's full approval, which the Bureau issued on February 16, 2005. The approval expired on September 16, 2019.

### **Respondent's Noncompliance with Laws and Regulations**

3. The Bureau's March 9, 2020 letter to respondent is a Notice of Denial of Application for Renewal of Approval to Operate, Exhibit 3. On page AGO 0182, the Bureau lays out the facts underlying the denial:

In accordance with CEC [California Education Code] §94887,  
an approval to operate shall be granted only after the

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....

**1 Financial Resources and Statements:**

The institution provided financial statements for the year ending in December 31, 2018. This report was not audited or reviewed as required in 5 CCR 71475(e) [that is, California Code of Regulations, title 5, section 71475, subdivision (e)]. The institution failed to provide an additional five months for the fiscal year according to 5 CCR 7411S(d) as requested by the Bureau on August 23, 2019.

(Emphasis in original.)

4. The Bureau employs Shakira Rule as a licensing analyst. Her duties include the review of institutions' applications and renewal applications for approval to operate. Licensing Analyst Rule reviews many issues, such as the classes and programs an institution may offer and the identity of faculty. In the case of respondent, only one of the several deficiencies that Licensing Analyst Rule identified in the July 24, 2019 renewal application remained to be corrected before the Bureau's statement of issues was filed. Respondent's financial statements were insufficient.

5. Respondent has annual gross revenues of less than \$500,000, as shown in financial statements, pages AGO 0041 to AGO 0043 and AGO 0136, Exhibit 3. Under

applicable sections of the California Code of Regulations, quoted below, respondent was required to submit reviewed financial statements that were current. Current financial statements are those covering the most recent completed fiscal year which are submitted no more than eight months after the close of that fiscal year. Respondent failed to provide such current financial statements.

6. In an August 23, 2019 letter, Exhibit 3, pages AGO 0138 to 0139, Licensing Analyst Rule sent notice that, as required by applicable sections of the California Code of Regulations, respondent's "fiscal statements shall also cover no less than five months of the current fiscal year." Respondent had not provided such fiscal statements as of the date of the administrative hearing.

7. Financial information such as that Licensing Analyst Rule requested of respondent allows the Bureau to protect student consumers by overseeing institutions' financial health and ability to provide instruction and services to students.

8. Respondent argued that the deficiency in the financial information it provided should be excused for several reasons, in particular: (i) respondent's past good conduct, including its record of submitting appropriate and timely financial statements in all years except for the present since 2001; and (ii) respondent showed good faith in remedying all but one defect in its current renewal application. Respondent also argued that its current lack of compliance is minor and temporary, due to disruptions caused by an administrator's trip abroad and disruptions by the COVID-19 pandemic.

## **PRINCIPLES OF LAW**

1. All regulations cited are sections of title 5 of the California Code of Regulations. Regulation 74115 provides in pertinent part:

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

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

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

(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.

2. Regulation 71475 states in pertinent part:

(e) The institution shall submit at the time it applies for renewal current financial statements that meet the requirements of section 74115 as follows: (1) for an institution with annual gross revenues of \$500,000 and over, statements shall be audited; (2) for an institution with annual gross revenues less than \$500,000, statements shall be reviewed. [ ] ... [ ]

(kk) An incomplete application filed under this section will render the institution ineligible for renewal.

## **ANALYSIS**

1. There is cause to find respondent ineligible for renewal. Following correspondence with Licensing Analyst Rule, respondent remedied a number of defects in its March 2020 renewal application. But one crucial defect, current financial statements, has not been remedied.

2. The current financial statements that respondent has not submitted as required under Regulation 74115, particularly subdivision (d), are crucial because they allow the Bureau to protect students. It is the Bureau's duty to protect students by preventing an institution whose finances have not been properly ascertained from conduct that could lead to failure to provide instruction.

3. Respondent's arguments present no appropriate basis for excusing its failure to follow regulations and submit current financial statements.

4. Respondent is correct that, before the current proceedings, respondent had not failed to provide current financial statements and its license to operate has

been undisciplined and in good standing for more than 10 years. It also cooperated in good faith with Licensing Analyst Rule. But a good past record and current cooperation in investigation is not enough.

5. Especially in the case of finances, the issue here, past performance is no guarantee or adequate assurance of future financial health and performance. Respondent's failure to provide current financial statements puts students and the public at risk.

6. Respondent's arguments based on practicalities, that an administrator was not available and the world has been struggling with a pandemic, have little merit and are unpersuasive. There was no showing that only one administrator could remedy respondent's failure to provide required information, or that there was no other way for respondent to comply with laws and regulations.

## **CONCLUSIONS OF LAW**

There is no good reason to excuse respondent's failure to comply with regulations regarding financial statements based on a record of past compliance, respondent's good faith attempts at compliance, an administrator's unavailability, or unexpected disruption caused by a worldwide pandemic.

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## ORDER

The application of Difai City College, respondent, for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions, is denied.

DATE: "02/22/2021"

"Original signature on file"

THOMAS Y. LUCERO

Administrative Law Judge

Office of Administrative Hearings