



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

**In the Matter of the Accusation Against:**

**COMPUTER INSTITUTE OF TECHNOLOGY; RENE AGUERO,**

**Institution Code: 1936171.**

**Respondent.**

**Case No. 1006223**

**OAH No. 2022020620**

**PROPOSED DECISION**

Nana Chin, Administrative Law Judge (AU), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 28, and December 5 through 7, 2022.

Complainant Deborah Cochrane, Chief of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, was represented by Michael Yi and Artin DerOhanian, Deputies Attorney General.

Respondent Computer Institute of Technology (Respondent) was represented by Kevin Kay, Esq. and James Cunningham, Esq., Ecoff Campaign Tilles & Kay, LLP.

During the hearing, documentary and evidence and testimony, including that of Respondent's Institution Representative, Rene C. Aguero, was received. During his testimony, Mr. Aguero invoked his Fifth Amendment right against self-incrimination. At the conclusion of hearing, Respondent requested permission to submit briefing about the legal implications of Mr. Aguero's invocation his Fifth Amendment privilege during the hearing. The AU granted Respondent's request and left the record open until December 23, 2022 for submission of additional briefing. Complainant was provided until December 31, 2022 to provide a response. Respondent submitted briefing on December 27, 2022. The brief was marked as Exhibit R78. Complainant did not object to the untimely submission and Exhibit R78 was lodged with the record.

The record was thereafter closed and matter submitted for decision on December 30, 2022.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. On February 6, 1998, the Bureau issued Respondent Approval to Operate Institution Code 1936171 (CIT). On August 4, 2010, the Bureau received Respondent's renewal application to operate CIT at 11631 Victory Blvd, Ste 12 205, North Hollywood, CA 91606. The Bureau approved Respondent's application on April 4, 2012.

2. On February 2, 2013, Respondent notified the Bureau of the change of its location to 6444 Bellingham Avenue, Ste 201 and 202, North Hollywood, California 91605 (Bellingham location). On April 10, 2017, the Bureau received Respondent's Renewal for Approval to Operate and Offer Educational Programs for Non-Accredited Institution Application (Renewal Application). The Renewal Application indicated that

Respondent was individually owned, sole proprietorship and that Mr. Agüero had 100 percent ownership of Respondent. On June 28, 2018, the Bureau received a revised Renewal Application, reporting Respondent was a Limited Liability Corporation (LLC) as of October 2017. (Exh. 5, pp. A82-A83.)

3. On August 4, 2010, the Bureau received Respondent's Application for Addition of a Separate Branch (Branch Application) to operate a branch at 132 North Chicago Street, Los Angeles, California 90033. The Bureau issued Respondent Approval to operate Institution Code 72482287 (CIT-Branch 1) on April 18, 2012. On August 27, 2012, the Bureau approved a change of location for CIT-Branch 1 to 4126 East Gage Avenue, Bell, California 90201. (Exh. 5, p. A82.)

4. On October 24, 2011, the Bureau received a Branch Application to operate a branch at 13601 Whittier Blvd, Whittier, California 90605. The Bureau issued Respondent approval to operate Institution Code 78788747 (CIT-Branch 2) on April 18, 2012. On March 23, 2013, the Bureau approved a change of location for CIT-Branch 2 to 6501 Foothill Blvd, Ste 204, Tujunga, California 91042. On November 6, 2017, the Bureau received notification from Respondent that CIT-Branch 2 closed. (Exh. 5, pp. A82-A83.)

5. Pursuant to the Disciplinary Order described at Factual Findings 8 and 9 below, Respondent is currently limited to operating at one campus location, the Bellingham location. (Exh. 5, p. A72.) Respondent is approved to provide 17 in-person non-degree programs. (Exh. 2.)

6. Complainant, acting in her official capacity as the Chief of the Bureau, filed an Accusation seeking to revoke Respondent's Approval to Operate CIT based on allegations Respondent: (1) engaged in prohibited business practices by falsifying

enrollment agreements {Bus. & Prof, § 94897, subd. (k)}; (2) failed to reimburse voucher funds (Bus. & Prof, § 94920, sub. (e)); (3) failed to comply with general enrollment requirements (Bus. & Prof, § 94902, subd. (a)); (4) collected tuition for students who did not attend CIT and failed to refund payments (Bus. & Prof, § 94899.5, subd. (e)); and (5) violated the Bureau's rules and regulations in the operation of CIT (Bus. & Prof, § 74112, subd. (m), 94912, 94902, subds (b)(1) & (b)(3), and 71920, subd. (b)(1)(A).}

7. Respondent timely filed a Notice of Defense and this hearing ensued.

### **Prior Disciplinary Action**

8. On December 31, 2020, in a disciplinary action entitled, *In the Matter of the Accusation Against Computer Institute of Technology, Rene Agüero*, Case Number 1004198, OAH Case Number 2019120155, the Bureau issued a Decision and Order, effective February 6, 2021, adopting a Stipulated Settlement and Disciplinary Order (2019 Order). Pursuant to the 2019 Order, the Bureau revoked Respondent's Approval to Operate CIT. The revocation was stayed and Respondent was placed on probation for five years with specified terms and conditions until February 2026.

9. As part of the Stipulated Settlement and Disciplinary Order, Respondent admitted to failing to supervise its agents, allowing the following violations to occur: (1) Respondent underreported the gross revenues for the 2014, 2015, 2016, and 2017 fiscal years and failed to remit the proper licensing fees to the Bureau; (2) Respondent failed to submit an Application for Change in Ownership, Control or Business Authorization Form to seek approval for substantive changes, by failing to notify the Bureau that CIT Branch 1 and CIT Branch 2 were operating as LLCs and were requesting and receiving payments under a unique tax identification number; (3)

Respondent underreported the Workforce Innovation Opportunity Act funds received in its 2015 and 2016 Annual Reports to the Bureau; and (4) Respondent submitted false and misleading documents in its Branch Applications for Approval to operate OT Branch 1 and CIT Branch 2 stating Mr. Aguero was the sole owner of Respondent when Respondent was operating as an LLC.

### **Supplemental Job Displacement Voucher**

10. Unless an employer makes an offer of regular modified or alternative work, an injured worker who has suffered permanent partial disability is entitled to a "supplemental job displacement benefit." {Lab. Code, § 4658.7, subd. (b).} A supplemental job displacement benefit is a voucher that can be used to pay for tuition, fees, books, or other expenses required by the school for retraining or skill enhancement at state-approved or state-accredited schools. (Lab. Code, § 4658.7, subds. (d) & (e).)

### **Student 1**

11. Student 1, identified in the Accusation as J.B., was issued an \$8,000 supplemental job displacement voucher (voucher) by Sedgwick Glendale Insurance Company (Sedgwick Glendale). Vocational Rehabilitation (VR) counselor Anise Duran worked with Student 1 to find a suitable VR program, including contacting Respondent about possibly enrolling him there.

12. On February 4, 2020, Respondent sent Sedgwick Glendale: ( ) an invoice for \$5,000; (2) an electronically signed enrollment agreement dated January 23, 2020, indicating that Student 1 had enrolled in a 12-month Office Software program scheduled to take place beginning February 4, 2020 and ending February 4, 2021; and

(3) a signed Supplemental Displacement Training Nontransferable Training Voucher Form (VR Form).

13. Sedgwick Glendale issued Respondent a payment of \$5,000 from Student 1's voucher funds. Student 1, however, did not attend CIT and enrolled in an Essential Technical Skill (ETS) program offered at a different school. Due to Sedgwick Glendale's \$5,000 voucher payment, Student 1 *did* not have sufficient funds available to pay for the ETS program.

14. When Respondent failed to refund the \$5,000 payment to Sedgwick Glendale, Student 1 filed a complaint with the Bureau on June 3, 2020, alleging Respondent falsified his enrollment forms, cashed his voucher funds even though he did not attend CIT and refused to return his voucher funds to Sedgwick Glendale. (Exh. 7.)

15. Department of Public Health Special Investigator Susan M. Sadler (Investigator Sadler) was assigned to investigate Student 1's complaint. During the investigation, Investigator Sadler obtained documents and spoke with witnesses including, Student 1, a representative from Sedgwick Glendale and Mr. Aguero. During the investigation, Mr. Aguero admitted receiving and cashing a voucher check for Student 1, though Student 1 did not attend CIT. Mr. Aguero also told Investigator Sadler he sent Sedgwick Glendale a \$5,000 refund check on May 11, 2021.

16. As Student 1 did not testify at the hearing, the statements made in the complaint and to Bureau representatives regarding the falsification of his enrollment forms are hearsay and were not given any evidentiary weight as they did not supplement or explain direct evidence in the record. (See Gov. Code, § 11513.)

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## **Student 2**

17. Student 2, identified in the Accusation as G.P., is an injured worker who was issued a voucher of \$6,000 by the State Compensation Insurance Fund (State Fund) on April 11, 2019.

18. VR Counselor Sarvia Lopez worked with Student 2 to find a suitable VR program. After being shown various programs, Student 2 decided to enroll in Respondent's phlebotomy program and signed its enrollment agreement. Student 2 was not aware, at the time he enrolled, that Respondent's phlebotomy program being offered at the Bellingham location.

19. On a date not established by the record, Respondent sent State Fund: (1) an electronically signed enrollment agreement dated July 10, 2019, indicating that Student 2 was enrolling in an Office Software program, which had a tuition fee of \$6,000; and (2) a signed VR Form.

20. Student 2 testified at the hearing. Though the enrollment agreement Respondent submitted to State Fund indicated Student 2 was enrolling in an Office Software program and not a phlebotomy program, Student 2 could not recall what information had been on the enrollment agreement he signed at VR counselor Lopez's office and did not know if the enrollment agreement Respondent submitted to State Fund was a different agreement.

21. State Fund issued Respondent a payment of \$6,000 from Student 2's voucher funds. Student 2, however, did not attend CIT. Though Student 2 contacted Respondent on multiple occasions to begin the phlebotomy program, he was unable to ascertain when the program would begin. On January 28, 2020, Student Z finally reached Mr. Aguero who confirmed that State Fund had paid his tuition and fees. Mr.

Aguero, however, advised Student 2 that the phlebotomy program would not be possible since Student 2 was in San Diego and CIT was in North Hollywood. Student 2 cancelled his enrollment and Mr. Aguero offered to refund Student 2 the amount of the tuition. Student 2 directed Mr. Aguero to send the refund to State Fund instead.

22. Following the call, VR Counselor Lopez drafted a letter on Student No. 2's behalf memorializing the conversation, which was sent to Mr. Aguero on February 7, 2020. Respondent, however, failed to refund State Fund Student 2's voucher funds.

23. After Respondent failed to refund State Fund his voucher funds, Student 2 filed a complaint with the Bureau on February 9, 2021. (Exh. 13.)

24. Investigator Sadler was also assigned to investigate Student 2's complaint. During the investigation, Investigator Sadler obtained documents and spoke with witnesses including, Student 2, representatives from State Fund and Mr. Aguero.

25. On March 5, 2021, Investigator Sadler conducted a phone interview with Mr. Aguero. During the call, Mr. Aguero stated he recalled Student 2 and though the program had been canceled, he acknowledged he failed to reimburse State Fund. Mr. Aguero stated he would prepare and send State Fund a check. The same day, Mr. Aguero emailed Investigator Sadler a copy of a check he purportedly mailed to State Fund. State Fund, however, did not receive the check.

26. On April 5, 2021, Investigator Sadler again contacted Mr. Aguero who stated he had reviewed his bank statement and the refund check had been cashed by State Fund. Mr. Aguero then emailed Investigator a copy of the cashed check with a hand signed endorsement and was posted on April 2, 2021, from JB Morgan Chase & Company.

27. Investigator Sadler conducted a visit to CIT on May 11, 2021, with Bureau Compliance Inspector Michelle Loo. During the visit, Investigator Sadler requested Student 2's file. Mr. Aguero provided her with an incomplete enrollment agreement that did not have school official signatures, a voucher form, and the February 7, 2020 letter from Student 2 requesting cancellation of educational services and requesting his voucher reimbursement. Mr. Aguero also showed Investigator Sadler a copy of the reimbursement check he purportedly sent State Fund, reimbursing Student 2's voucher funds on his personal laptop.

28. Investigator Sadler spoke with State Fund Claims Adjuster Jennifer Almanza and State Fund Special Investigator Hannah Ross. Both representatives confirmed the check had not been received by State Fund and that State Fund does not use a handwritten signature to endorse checks.

29. During the hearing, State Fund Claims Adjuster Almanza testified that State Fund had still received a refund of Student 2's voucher funds and that State Fund used a stamp to endorse checks in 2021.

### **Student 3**

30. Student 3, identified in the Accusation as J.L., was issued a voucher of \$6,000 by State Fund on February 25, 2019. Jenny Villegas, a VR Counselor with Friends for Injured Workers, assisted Student 3 in enrolling in CIT.

31. On March 13, 2019, Respondent sent State Fund: (1) an invoice for \$6,000; (2) an electronically signed enrollment agreement dated March 8, 2019, indicating that Student 3 enrolling in a 12-month Office Software program scheduled from March 11, 2019 until March 11, 2020; and (3) signed VR Form.

32. State Fund issued Respondent a payment of \$6,000 from Student 3's voucher funds on April 23, 2019, which was cashed on April 26, 2019. Student 3, however, did not attend CIT.

33. On December 10, 2019, Student 3 sent a letter to Respondent, cancelling his enrollment agreement and requesting Respondent send a full refund of the voucher to State Fund. Despite Student 3's cancellation, Respondent did not send State Fund a refund of Student 3's voucher funds.

#### **Student 4**

34. Student 4, identified in the Accusation as V.G, was issued a voucher of \$10,000 by State Fund. Student 4 was not called to testify and his statements were admitted solely for the purpose of supplementing or explaining other evidence in the record.

35. After receiving his VR voucher, Student 4 looked for an electrical school near his home but, as he was unable to locate one, he has not enrolled in, or attended any school with his VR voucher.

36. On a date not established by the record, Student 4 contacted Tony Herrera, Executive Director of One Work Comp. State Fund had apparently paid an entity identified as "CIT Nursing College" \$9,000 of his voucher funds and requested assistance in obtaining reimbursement.

37. Director Herrera contacted an individual identified as "Doten," whom Director Herrera believed to be a joint owner of Respondent, and explained to him that Respondent had cashed Student 4's voucher even though Student 4 had not attended CIT. Doten subsequently reimbursed State Fund \$4,500, half the amount of

voucher. Director Herrera contacted Doten again and requested the other half of the voucher amount. When Director Herrera later contacted State Fund, he was advised that Doten had refunded the additional \$4,500 but the check had been declined.

## **Student 5**

38. Student 5, identified in the Accusation as G.S. was issued a voucher by the Hartford Financial Services Group, Inc./Western Workers' Compensation Claim Center (the **Hartford**).

39. On a date not established by the record, the Hartford received an enrollment agreement and contract dated March 23, 2018, between the "Computer Institute of Technology" located at 4130 East Gage Avenue in California for "Computer Software Training" for \$3,900.

40. On April 17, 2018, the Hartford sent Respondent \$3,900. (Exh. 30.) On April 19, 2019, Student 5 sent Mr. Aguero a letter dated April 19, 2019, noting that Hartford had "erroneously issued payment" to Respondent, which had been intended for "CIT Bell." (Exh. 31, p. A175.) Student 5 stated he was cancelling his enrollment with "CIT Bell" and requested that Respondent refund Hartford his voucher funds.

41. When Respondent did not refund the Hartford, Student 5 contacted Director Herrera for assistance in obtaining a reimbursement of his voucher.

## **Herrera Complaint**

42. On July 10, 2020, Director Herrera filed a complaint with the Bureau on behalf of Student 3, Student 4 and Student 5 (Herrera Complaint).

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43. Investigator Sadler was assigned to investigate the Herrera Complaint. During the investigation, Investigator Sadler obtained documents and spoke with witnesses including, Director Herrera, Student 3, Student 4, Student 5, representatives from State Fund and the Hartford/Western Workers' Compensation Claims Center, and Mr. Aguero.

44. During the May 11, 2022, site visit, Mr. Aguero admitted Student 3 had not attended CIT and provided Investigator Sadler with a copy of a refund check dated January 14, 2020, which he claimed he sent State Fund. The purported refund check bore a handwritten endorsement and posted on January 29, 2020 from JP Morgan Chase & Company. State Fund Claims Adjuster Binda Gupta testified at the hearing and stated while State Fund issued voucher funds to Respondent on behalf of Student 3, its records do not reflect receiving a refund of those funds.

45. Mr. Aguero did not recognize either Student 4 or Student 5 as students or prospective students of CIT. Mr. Aguero also maintained enrollment forms for Student 4 and Student 5 were not the type of forms used by Respondent. Mr. Aguero did note that Doten, who Mr. Aguero described as a former CIT employee, had used Respondent's school name and tax identification number to create false CIT campuses. Mr. Aguero, however, did not provide any explanation as to why Respondent accepted payments for Student 5 or why it failed to refund the payments to the Hartford.

46. Based on the forgoing, Complainant failed to establish that Respondent or its agents were involved in, or aware of Student 4's enrollment in "CIT Nursing College" or Student S's enrollment in "CIT Bell."

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## Student 6

47. Student 6, identified in the Accusation as J.D., was issued a \$6,000 voucher by Midwest Insurance Company (Midwest}. Student 6 was not called to testify, and his statements were admitted solely for the purpose of supplementing or explaining other evidence in the record.

48. Around October 2018, Student 6 contacted Mr. Aguero about attending CIT. Mr. Aguero informed Student 6 he would send him a computer and a class schedule.

49. On October 2, 2018, Midwest sent Student 6's voucher funds of \$6,000 to Respondent.

50. Respondent arranged for Student 6 to receive a computer, which Student 6 found unusable. Over a period of six months, Student 6 maintained he repeatedly attempted to contact Mr. Aguero about the computer and class schedule but Mr. Aguero did not respond.

51. On October 22, 2018, Student 6 withdrew from CIT. Midwest subsequently requested Respondent refund the payment it made on behalf of Student 6. On October 29, 2018, Midwest Claims Handler Mary Ann Wyatt spoke with Mr. Aguero who confirmed Student 6 cancelled his enrollment and agreed to issue Midwest a refund of \$5,150 (the \$6,000 less the cost of the computer).

52. MIC Claims handler Wyatt attempted to obtain the status of the refund check on November 12, 2018, November 19, 2018, and December 3, 2018.

53. On December 11, 2018, Respondent sent the Midwest a refund check for \$5,150. The check had been written on a closed account and the check was declined.

Subsequent efforts by Midwest to recoup its payment to Respondent were not successful.

54. On July 3, 2020, Midwest filed a complaint with the Bureau on behalf of Student 6.

55. Investigator Sadler was assigned to investigate Student 6's Complaint. During the investigation, Investigator Sadler obtained documents and spoke with witnesses including, Student 6, representatives from Midwest and Mr. Aguero.

56. During the May 11, 2022 site visit, Mr. Aguero stated Student 6 had not attended CIT and he therefore did not have a student file for him, Mr. Aguero did provide Investigator Sadler of the June 19, 2020 letter from Midwest, informing him that the refund check he sent to MIC dated December 11, 2018 was returned by their bank due to the check being written on a closed account. Mr. Aguero admitted he failed to respond to Midwest and send a refund check at that time and provided Investigator Sadler with a copy of a refund check he purportedly sent to Midwest on April 21, 2021, in the amount of \$5,150.

## **Student 7**

57. Student 7, identified in the Accusation as O.S., is an injured worker who was issued a voucher for \$6,000 by Sedgwick Claims Management Services, Inc. (Sedgwick Claims) on October 24, 2019.

58. In April 2020, Student 7 contacted Respondent and spoke with a woman, otherwise unidentified by the record, about either its phlebotomy or nursing program. Student 7 subsequently notified Sedgwick Claims Adjuster Stephanie Graham that he was interested in attending CIT.

59. On a date not established by the record, Respondent sent Sedgwick Claims: (1) an electronically signed enrollment agreement dated November 13, 2019, indicating that Student 7 was requesting to enroll in a 12 month Office Software program, which cost \$5,500 (tuition \$5,475, registration \$75.00) and scheduled from November 18, 2019 until November 18, 2020; and (2) a signed VR Form.

60. Soon after, Student 7 repeatedly tried contacting Respondent to obtain either the enrollment documents or the program start date. Each time he called, no one answered the telephone and he was unable to leave a message.

61. On September 28, 2021, Student 7 sent Respondent a letter addressed to Mr. Aguero requesting a refund the \$4,500 tuition fee. The following day, Student 7 filed a complaint with the Bureau.

62. Investigator Sadler was assigned to investigate Student 7's Complaint. During the investigation, Investigator Sadler obtained documents and spoke with witnesses including, Student 7, representatives from Sedgwick Claims, and Mr. Aguero.

63. Mr. Aguero told Investigator Sadler that Student 7 had completed all the enrollment documents and planned on starting the program in a month or two but repeatedly postponed his start date "for personal reasons." Mr. Aguero also maintained Student 7 did not confirm his intentions to enroll at CIT until late September 2021 but when, on October 6, 2021, Student 7 changed his mind yet again and disenrolled from the program, Mr. Aguero agreed to refund the payment Sedgwick Claims made on Student 7's behalf.

64. In reviewing enrollment agreement that Mr. Aguero provided for Student 7, Investigator Sadler noted the following information missing: (1) the date by which the student must exercise their right to cancel or withdraw; (2) the Student Tuition

Recovery Fund fee charges are not displayed; (3) the School Performance Facts Sheet was not included; (4) the enrollment agreement failed to have school administration and officials signatures on page 2, and (5) page 6 of the enrollment agreement was missing.

65. On October 12, 2021, Sedgwick Claims Adjuster Graham confirmed Sedgwick had received the refund check from Mr. Aguero.

66. As Student 7 did not testify at the hearing, the statements made in the complaint and to Bureau representatives regarding the falsification of his enrollment forms are hearsay and were not given any evidentiary weight as they did not supplement or explain direct evidence in the record. (See Gov. Code, § 11513.).

## **Bureau Inspection**

67. On May 11, 2021, Bureau Compliance Inspector Michelle Loo accompanied Investigator Sadler, and conducted an inspection of CIT. When they first arrived, the doors to both CIT's suites were locked. They knocked but no one responded. Investigator Sadler then contacted Mr. Aguero by phone and advised him that they were at the Bellingham location to conduct an inspection. Shortly thereafter, school staff opened the door and led them inside to large classroom where they waited for Mr. Aguero.

68. Inspector Loo met with Mr. Aguero and provided him with an inspection checklist and deficiency letter. Inspector Loo also requested to see documents required to be maintained by postsecondary education institution, including the School Performance Fact Sheets (SPFS).

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69. During the inspection, Inspector Loo observed multiple material deficiencies which were documented in the Enforcement Referral to Discipline Unit:

CCR 74112, subd. (m): Respondent's student files did not contain copies of the signed SPFS. When asked by Inspector Loo if students were provided a SPFS to sign and date prior to signing the enrollment agreement, Mr. Aguero said he directs students to the website. At the time of the inspection, the website had the 2015-2016 SPFS posted online and did not have SPFS's for 2018-2019.

CCR 71920, subd. (b)(1)(A): Respondent's student files did not contain verification of high school completion or other documentation establishing the student's ability to do college level work. When asked by Inspector Loo if he had copies of high school diplomas or equivalent, Mr. Aguero stated the students did not have high school diplomas and they all took an Ability-to-Benefit (ATS) for admissions. The ATB tests, however, were not in the student files and Mr. Aguero was unable to provide any documentation showing the students successfully took and passed an ATB test demonstrating the students had the ability to do college level work prior to admission.

Education Code section 9409: Respondent's student files did not contain a copy of the results from the ATB tests the students took for admission. When asked where the copies of the results were, Mr. Aguero provided Inspector Loo with two binders of unscored scantrons from 2015-2016 and 2020-2021. Mr. Aguero did not know where the scantrons from 2017-2019 were or where the scores for the scantrons were. The binders also contained a list of students on the Mail In Test Score sheets with the name of a proctor and signature. There was no indication the test sheets were mailed to Combined English Language Skills Assessment (CELSA) for scoring. In addition, two students had blank sheets but still appeared on the school's STRF's back

up document for enrollment in the first quarter and the binders did not include mail in cover sheets for any of the students that took the ATB test in 2021.

70. The Bureau issues a Notice to Comply for minor violations which are not resolved during the inspection. Inspector Loo issued a Notice to Comply citing Respondent for the following:

CCR 71920: Respondent's faculty file did not include documentation of continuing education courses for instructors. In addition, the institution did not have a policy in place requiring their instructors to maintain their knowledge by completing continuing education courses.

Education Code section 94913: Respondent's website failed to include a current catalog, **current** SPFS's and the most recent annual report submitted to the Bureau.

CCR 76215: Respondent's Student Tuition Recovery Fund back-up data failed to include some of the information required to be maintained on order to substantiate what was reported on the STRF Quarterly Assessment Reporting Form.

## **Respondent's Evidence**

71. Gabriela Garza has worked for Respondent since 2018. Ms. Garza began as the office biller and is now listed as Respondent's registrar. Ms. Garza stated Respondent only has one campus and testified as to her job duties.

72. Ms. Garza's testimony did not indicate the existence of any unusual circumstances which resulted in the delays in returning the VR funds to students who did not attend CIT. Her testimony also failed to establish that Respondent had made any changes to its operations to prevent any future violations from recurring.

## Costs

73. Pursuant to Business and Professions Code section 125.3 and in support of Complainant's cost award request, Complainant submitted a Certification of Prosecution Costs in the amount of \$53,493.75, and a Certification of Costs of Investigation of \$2,974.27. These charges are properly supported and are reasonable considering the complexity of this matter.

74. Respondent did not present any evidence of its inability to pay the Bureau's costs.

## LEGAL CONCLUSIONS

### Standard and Burden of Proof

1. Absent a statute to the contrary, the burden of proof in administrative disciplinary proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) Thus, as the charging party, burden of proof is on Complainant.

2. The standard of proof in license disciplinary proceedings depends on whether the license in question is a professional license, for which substantial education and training is required. If so, the standard of proof is clear and convincing evidence; if not, the standard is a preponderance of the evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

3. Unlike applicants for professional licensees, who are required to have several hours of training and pass a rigorous state administered examination, applicants for an establishment license have no educational or training requirements.

(See *Mann v. Dept of Motor Vehicles*(1999) 76 Cal.App.4th 312,319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) An applicant for Approval to Operate for a Non-Accredited Institution need only show that the applicant has the capacity to satisfy the minimum operating standards. (Ed. Code,§ 94887; Cal. Code Regs., tit. 5, § 75500) Therefore, to impose discipline on Respondent's Approval to Operate, Complainant need only prove cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917; Evid. Code, §115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC*(2009) 171 Cal.App.4th 1549, 1567.)

## **Applicable Law**

4. This matter is governed by the California Private Postsecondary Education Act of 2009 (Act), set forth at Education Code section 94800 et seq., and the implementing regulations set forth at California Code of Regulations, title 5, (CCR) section 75010 et seq. The Bureau is the state agency responsible for regulating private postsecondary educational institutions in accordance with the Act.

5. A "private postsecondary educational institution" is "a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge." (Ed. Code,§ 94858.) "Postsecondary education" is "a formal institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education . . . , including programs whose purpose is academic, vocational, or continuing professional education." (Ed. Code, § 94857.)

6. The Bureau may place an institution on probation or may suspend or revoke an institution's approval to operate as a "consequence of an investigation, which may incorporate any materials obtained or produced in connection with a compliance inspection, and upon a finding that an institution has committed a violation." Cause for disciplinary action may arise from "a material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, 'material violation' includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an Enrollment Agreement and that resulted in harm to the student." (Ed. Code, § 94937, subd. (a)(2.))

7. CCR section 71920 states that "(a) The institution shall maintain a file for each student who enrolls in the institution whether or not the student completes the educational service. [1f] (b) In addition to the requirements of section 94900, the file shall contain all of the following pertinent student records: [n] (1) Written records and transcripts of any formal education or training, testing, or experience that are relevant to the student's qualifications for admission to the institution or the institution's award of credit or acceptance of transfer credits including the following: (A) Verification of high school completion or equivalency or other documentation establishing the student's ability to do college level work, such as successful completion of an ability-to-benefit test. ... "

8. CCR section 74112, subdivision (m) states:

Documentation supporting all data reported shall be maintained electronically by the institution for at least five years from the last time the data was included in either an

Annual Report or a Performance Fact Sheet and shall be provided to the Bureau upon request; the data for each program shall include at a minimum:

(1) the list of job classifications determined to be considered gainful employment for the educational program;

(2) student name(s), address, phone number, email address, program completed, program start date, scheduled completion date, and actual completion date;

(3) graduate's place of employment and position, date employment began, date employment ended, if applicable, actual salary, hours per week, and the date employment was verified;

(4) for each employer from which employment or salary information was obtained, the employer name(s), address and general phone number, the contact person at the employer and the contact's phone number and email address, and all written communication with employer verifying student's employment or salary;

(5) for students who become self-employed, all documentation necessary to demonstrate self-employment;

(6) a description of all attempts to contact each student or employer;

(7) any and all documentation used to provide data regarding license examinations and examination results;

(8) for each student determined to be unavailable for graduation or unavailable for employment, the identity of the student, the type of unavailability, the dates of unavailability, and the documentation of the unavailability; and

(9) the name, email address, phone number, and position or title of the institution's representative who was primarily responsible for obtaining the students' completion, placement, licensing, and salary and wage data, the date that the information was gathered, and copies of notes, letters or emails through which the information was requested and gathered.

9. Education Code section 94902 provides: "(a) A student shall enroll solely by means of executing an enrollment agreement. The enrollment agreement shall be signed by the student and by an authorized employee of the institution. [ff] An enrollment agreement is not enforceable unless all of the following requirements are met: [ff] (1) The student has received the institution's catalog and School Performance Fact Sheet prior to signing the enrollment agreement. [U]... [U] (3) Prior to the execution of the enrollment agreement, the student and the institution have signed and dated the information required to be disclosed in the Student Performance Fact Sheet pursuant to subdivisions (a) to (d), inclusive, of Section 94910. Each of these items in the Student Performance Fact Sheet shall include a line for the student to initial and shall be initialed and dated by the student."

10. Education Code section 94912 states: "Prior to the execution of an enrollment agreement, the information required to be disclosed pursuant to subdivisions (a) to (d), inclusive, of Section 94910 shall be signed and dated by the institution and the student. Each of these items shall also be initialed and dated by the student."

11. Education Code section 94910 states:

Except as provided in subdivision (d) of Section 94909 and Section 94910.5, prior to enrollment, an institution shall provide a prospective student with a School Performance Fact Sheet containing, at a minimum, the following information, as it relates to the educational program:

(a) Completion rates, as calculated pursuant to Article 16 (commencing with Section 94928).

(b) Placement rates for each educational program, as calculated pursuant to Article 16 (commencing with Section 94928), if the educational program is designed to lead to, or the institution makes any express or implied claim related to preparing students for, a recognized career, occupation, vocation, job, or job title.

(c) License examination passage rates for programs leading to employment for which passage of a state licensing examination is required, as calculated pursuant to Article 16 (commencing with Section 94928).

(d) Salary or wage information, as calculated pursuant to Article 16 (commencing with Section 94928).

12. Education Code section 94920 states that "An institution that does not participate in the federal student financial aid programs shall do all of the following: [11] ... [11] (b) Institutions shall refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed two hundred fifty dollars (\$250), if notice of cancellation is made through attendance at the first class session, or the seventh day after enrollment, whichever is later. [ ] ... (11) (e) The institution shall pay or credit refunds within 45 days of a student's cancellation or withdrawal."

### **Cause for Discipline**

13. Complainant failed to establish, by a preponderance of the evidence, that Respondent is subject to disciplinary action under Education Code section 94937, for violating Education Code section 94897, subdivision (k), for falsifying enrollment agreements for Student 1, Student 2, Student 3, Student 4, Student 5 and Student 7, as set forth in Factual Findings 16, 20, 30-33, 46 and 66.

14. Cause exists under Education Code section 94937, for violating Education Code section 94920, subdivision (e), in that Respondent failed to refund Student 2's voucher funds within 45 days of Student 2's cancellation or withdrawal as set forth in Factual Findings 21-29.

15. Cause exists under Education Code section 94937, for violating education Code section 94902, subdivision (a), in that Respondent's authorized employee failed to sign Student 2's enrollment agreement, as set forth in Factual Finding 27.

16. Cause exists under Education Code section 94937, for violating requirements for enrollment agreements (Ed. Code, § 94912); for failing to ensure students are provided with CIT's SPFS before signing the enrollment agreement (Ed. Code, § 94902, subd. (b)(1)); for failing to ensure students and a CIT representative have signed and dated the SPFS (Ed. Code, §, subd. {b}(3)); failing to maintain documentation of all reported data (CCR§, 74112, subd. (m)); and failing to maintain a student file that includes verification of a high school completion or ATB test (CCR§, 71920, subd. (b)(1)(A)) as set for the in Factual Findings 68-70. {Education Code section 94904, cited to as grounds for disciplinary action in the Accusation, was repealed effective January 1, 2022.)

### **Level of Discipline**

17. The Bureau has adopted Disciplinary Guidelines to be used when determining the appropriate discipline for violations. (Cal. Code Regs., tit. 5, § 75500.) The Disciplinary Guidelines provide that for violations of Education Code sections 94920 and CCR 71920, subdivision (b)(1)(A), the maximum recommended discipline is revocation, and the minimum recommended discipline is stayed revocation and three years' probation. The Disciplinary Guidelines provide further that the maximum recommended discipline for material violations under Education Code sections 94902, 94912, is revocation, and the minimum recommended discipline is stayed revocation and five years' probation.

18. The Bureau's Disciplinary Guidelines set forth the following factors to be considered when deciding whether an approval to operate should be revoked or suspended, or an institution should be placed on probation:

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1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, student or the general public.
3. Prior record of discipline, citations, or notices to comply.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Bureau's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of its wrongdoing and demonstration of corrective action to prevent recurrence.

19. The current allegations are serious and are recent, students were not provided with all the necessary information before they enrolled. Respondent then failed to reimburse students who cancelled their enrollment for extended periods of time, without any explanation, thereby preventing students from using those funds to

obtain training at other schools. Further, Respondent is on probation for failing to supervise its agents which resulted in providing Bureau false or misleading information on multiple occasions. Respondent further failed to present any evidence that any corrective actions have been put in place to prevent such incidents from recurring.

20. When Complainant called Mr. Aguero to testify regarding the charges, he declined to answer any question other than his name, invoking his Fifth Amendment right against self-incrimination. Respondent's counsel argued that a negative inference cannot be drawn from Respondent's refusal to testify. However, this is not a criminal proceeding. Nothing in the Fifth Amendment "forbid[s] adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: The Fifth Amendment does not preclude the inference where the privilege is claimed by a party to a civil cause." (See *Baxter v. Palmigiano* (1976) 425 U.S. 308,310 [where a prison inmate refused to testify in a disciplinary hearing and the judge was allowed to make an adverse inference regarding the silence].)

21. Contrary to Respondent's assertion, California law permits the trier of fact to "consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case." (Evid. Code, § 413.) Thus, a negative inference can be drawn from Mr. Aguero's refusal to testify. Nonetheless, a negative inference was not drawn in this matter.

22. Instead, once the Bureau established cause to revoke, the burden shifted to Respondent to establish any mitigating circumstances for the violation or rehabilitation evidence. Respondent failed to submit any evidence, either through Mr. Aguero's testimony, testimony of Respondent's other staff, as to why these violations occurred. No evidence, either in the form of testimony or documents were presented

to indicate Respondent had taken any action to prevent future violations from reoccurring. Based on the forgoing, the evidence is insufficient to show that public protection does not require revocation of Respondent's Approval to Operate CIT.

## Costs

23. Complainant requests an award of investigative and enforcement costs. (Ed. Code, § 94937, subd. (c).) "Except as otherwise provided by law, in any order issued in **resolution of a** disciplinary proceeding before any board within the [Department of Consumer Affairs], upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (Bus. & Prof., § 125.3, subd. (a).)

24. In evaluating a request for costs, the administrative law judge must consider whether Complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed"; (2) had a "subjective good faith belief in the merits of his or her position"; (3) raised a "colorable challenge" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [quoting *California Teachers Ass'n. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

25. Respondent did not present any evidence of financial inability to pay the Bureau's costs nor did the hearing process result in a reduction in the severity of the discipline imposed from the maximum discipline requested in the Accusation.

Accordingly, Respondent shall pay the costs of investigation and prosecution in the amount of \$56,468.02.

## ORDER

1. Approval to Operate Institution Code 1936371 issued to Respondent Computer Institute of Technology is revoked.

2. Within 30 days after the effective date of this decision, Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$56,468.02. Respondent may pay these costs in a payment plan approved by the Bureau.

DATE: **01/31/2023**

“Original Signature on File”

**Nana** Chin (J n 31, 202315: PST)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings