

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

In the Matter of the Citation Against:

CINTA AVEDA INSTITUTE

305 Kearny Street

San Francisco, CA 94108

Citation No.: 1920243

Institution Code No. 87449475

OAH Case No.: 2021030592

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 _____ "November 17" _____, 2021.

It is so ORDERED _____ "October 5" _____, 2021.

"Original Signature on File"

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

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

In the Matter of the Citation Against:

CINTA AVEDA INSTITUTE,

Institution Code No. 87449475

Respondent.

Citation No. 1920243

OAH No. 2021030592

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on August 24, 2021, by videoconference.

Deputy Attorney General Aspasia Papavassiliou represented the Bureau for Private Postsecondary Education, Department of Consumer Affairs.

Respondent Cinta Aveda Institute was represented by Cinta Gibbons, its owner.

The record closed and the matter was submitted for decision on August 24, 2021.

FACTUAL FINDINGS

1. Respondent Cinta Aveda Institute, located in San Francisco, is a private postsecondary education institution approved by the Bureau of Private Postsecondary Education (BPPE or Bureau). It holds Institution Code 87449475.

2. On July 25, 2019, BPPE compliance inspector Gema Fider performed an unannounced inspection of respondent's facilities in San Francisco. In preparation for her inspection, Fider reviewed records and was aware of prior compliance issues, including issues that arose in 2014 regarding the requirement that the school maintain all student records at its main campus and not at any satellite locations.

3. Fider identified two major compliance issues that she discovered during the inspection: 1) student records were maintained in filing cabinets at respondent's satellite location, a building two doors (approximately 100 feet) away from the main campus location; and 2) respondent provided incomplete documentation when requested to provide supporting backup documentation for the School Performance Fact Sheet related to its 2016 Annual Report.

4. Based on Fider's findings, the Bureau issued Citation No. 1920243 to respondent on March 4, 2020, alleging two violations. Violation 1 alleged that student records were stored at a satellite location, in violation of California Code of Regulations, title 5, section 71717, subdivision (b). The citation imposed a \$5,000 fine and an order of abatement for this violation. Violation 2 alleged that respondent failed to provide adequate backup documentation to the Bureau upon request, in violation of California Code of Regulations, title 5, section 74112, subdivision (m). The citation imposed a \$5,000 fine and an order of abatement for this violation .

5. Respondent requested an informal conference, which was held on May 29, 2020, with Bureau Enforcement Chief Beth Danielson. At the informal conference, respondent presented evidence that it had provided the complete backup documentation to the Bureau subsequent to the unannounced inspection. Respondent also explained to Danielson that student records had been temporarily moved back to the satellite location after its main campus building had been damaged by flooding . Respondent explained that at the time of the inspection, it had already begun the process of migrating student records into electronic storage.

6. After the informal conference, Danielson affirmed the citation violations, but modified the fine for Violation 2 from \$5,000 to \$500 because she felt the violation had been adequately abated. Danielson did not reduce the fine for Violation 1.

7. Respondent does not dispute the violations, but asks for leniency. Owner Cinta Gibbons related that the main campus building was flooded in late 2018 and the lower level was unusable for a year. Respondent has been in protracted insurance negotiations which are still pending and lacked resources to repair the damage. Gibbons added that the school takes the Bureau's regulations seriously and is not willfully disobeying them. Respondent has now moved all documents, including student records, to electronic storage. Gibbons stated that there might be some student files still located at the satellite location, but that they would be files that have already been migrated to electronic storage and are merely awaiting destruction.

8. At hearing, Danielson explained her decision not to reduce the fine for Violation 1. She noted that she was empathetic with the challenges the school faced due to the flood, but that the flooding had occurred more than six months before the unannounced inspection, and at that time, the main campus building was up and running for other purposes. In addition, there had been previous issues involving the

storage of student records at the satellite location, which in her view also justified the fine amount.

LEGAL CONCLUSIONS

1. Education Code section 94936 authorizes BPPE to issue citations against institutions that violate its regulations. The burden of proof is on BPPE and the standard of proof is a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 991-93.)

2. California Code of Regulations, title 5, section 71717, subdivision (b), provides that institutions may not maintain permanent student records at satellite locations. At the time of the July 25, 2019, inspection, student records were being stored at the nearby satellite location. Cause for citation was established in light of the matters set forth in Finding 3.

3. California Code of Regulations, title 5, section 74112, subdivision (m), provides that institutions must maintain certain documentation supporting reported data for a period of five years, and must provide this documentation to the Bureau upon request. Respondent provided incomplete documentation when requested at the July 25, 2019, inspection. Cause for citation was established in light of the matters set forth in Finding 3.

4. Education Code section 94936, subdivision (b), authorizes BPPE to impose, in connection to citations, an order of abatement and an administrative fine not to exceed \$5,000 for each violation. In determining the appropriate fine, the Bureau must consider the nature and seriousness of the violation, the persistence of

the violation, the good faith of the institution, the history of previous violations, the purposes of the Private Postsecondary Act, and potential harm to students.

5. Considering these factors, the imposition of the maximum \$5,000 for Violation 1, maintaining student records in a satellite location, is excessive. Although similar issues arose in 2014, respondent demonstrated that it was acting in good faith and not willfully disregarding the law at the time of the 2019 inspection. Respondent credibly explained the challenges it faced in the aftermath of serious flooding to its main campus. Respondent is now maintaining all records electronically and any files remaining at the satellite location will be destroyed. A reduction of the fine to \$2,500 is appropriate. The \$500 fine imposed for Violation 2 is appropriate and should be affirmed.

ORDER

Citation No. 1920243 issued to respondent Cinta Aveda Institute is affirmed, as modified to reduce the citation fine for Violation 1 to \$2,500. The total citation fine of \$3,000 is due within 30 days from the effective date of this order.

DATE: 09/10/2021

“Original Signature on File”

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

N

.

M