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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA

11
12 In the Matter of the First Amended Statement
of Issues Against:

Case No. 998688

13
14 **EL PORTAL COLLEGE, ROSE PADILLA**
51% OWNER, JOHN HAUGE, 49%
15 **OWNER**

FIRST AMENDED

STATEMENT OF ISSUES

16 **Institution Code No. 24179339**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about November 30, 2011, the Bureau received an Application for Approval to
25 Operate El Portal College, a non-accredited institution (Application #24171), from Rose Padilla,
26 51% owner, and John Hauge, 49% owner (hereinafter "Respondent"). On March 20, 2012, the
27 Bureau granted Respondent a six month Provisional Approval to Operate a Non-Accredited
28 Institution with a requirement that Respondent submit a financial statement in compliance with

1 the Bureau's regulations prior to September 20, 2012. The Provisional Approval to Operate
2 expired on September 20, 2012.

3 3. On or about December 19, 2012, the Bureau denied Application #24171 for an
4 Approval to Operate a Non-Accredited Institution.

5 JURISDICTION

6 4. This Statement of Issues is brought before the Director of the Department of
7 Consumer Affairs (Director) for the Bureau.

8 5. Education Code Section 94886 states:

9 Except as exempted in Article 4 (commencing with section 94874) or in
10 compliance with the transition provisions in Article 2 (commencing with
11 Section 94802), a person shall not open, conduct, or do business as a private
postsecondary educational institution in this state without obtaining an approval
to operate under this chapter.

12 6. Education Code Section 94887 states:

13 An approval to operate shall be granted only after an applicant has presented
14 sufficient evidence to the bureau, and the bureau has independently verified the
15 information provided by the applicant through site visits or other methods
16 deemed appropriate by the bureau, that 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.

17 7. Title 5, California Code of Regulations (hereinafter "CCR"), section 71100 states:

18 (a) An applicant seeking approval to operate pursuant to Section 94886 of the
19 Code, other than Approval to Operate by Accreditation pursuant to Section
20 94890(a)(1) of the Code, shall complete the "Application for Approval to
Operate for an Institution Not Accredited," Form Application 94886 (rev. 2/10).
An applicant seeking approval to operate by accreditation pursuant to Section
21 94890(a)(1) of the Code shall comply with section 71390.

22 (b) An applicant shall submit the completed form, the information or
documentation required by this Article, the appropriate application fee as
23 provided in Section 94930.5(a)(1) of the Code, and any appropriate annual fee
as required by Article 1 of Chapter 5 of this Division, to the Bureau.

24 (c) An application that fails to contain all of the information required by this
25 article shall render it incomplete.

26 8. Title 5, CCR, section 71745 states:

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

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

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

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

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

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

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

14 ...
15 (c) An institution shall provide to the Bureau its most current financial
statements upon request.

16 9. Title 5, CCR, section 71240 states:

17 (a) The Form Application 94886 shall contain a statement that the institution
18 has and can maintain the financial resources required pursuant to section 71745.

19 (b) The institution shall submit current, reviewed financial statements at the
20 time it applies for approval to operate. Each set of financial statements shall
comply with Section 74115 of this chapter.

21 10. Title 5, CCR, section 74115 states:

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

24 (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
25 statements, shall comply with all of the following:

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

1 ...
2 (3) The financial statements shall establish that the institution meets the
3 requirements for financial resources required by Section 71745.

4 ...
5 (5) Any audits shall demonstrate that the accountant obtained an
6 understanding of the institution's internal financial control structure,
7 assessed any risks, and has reported any material deficiencies in the
8 internal controls.

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FIRST CAUSE FOR DENIAL OF APPLICATION

(Failure to Provide Compliant Financial Statement)

11. Respondent's application is subject to denial under Education Code section 94887 and title 5, CCR, section 71100, in conjunction with title 5, CCR, sections 71240, 71745 and 74115, subdivision (b)(1), in that Respondent failed to provide a financial statement in compliance with the Bureau's regulations. The circumstances are as follows.

12. On or about November 30, 2011, the Bureau received Respondent's Application for Approval to Operate a Non-Accredited Institution (Application #24171). On January 26, 2012, Bureau staff discussed with Respondent deficiencies in Application #24171, including deficiencies in the financial statements submitted with the Application.

13. On March 20, 2012, the Bureau advised Respondent that a Provisional Approval to Operate was granted effective March 20, 2012 through September 20, 2012, with a requirement that financial statements in compliance with title 5, CCR, section 71745 be submitted to the Bureau before September 20, 2012. Upon receipt of the compliant financial statements, the Bureau would issue a full approval to operate. However, Respondent was advised that if compliant financial statements were not submitted by September, 20, 2012, then the Provisional Approval to Operate would be revoked and Respondent would need to start the application process again.

14. On September 12, 2012, Respondent's Campus Manager sent a "Profit and Loss" statement to the Bureau via e-mail. On September 13, 2012, Bureau staff sent Respondent an e-mail advising that the "Profit and Loss" statement did not satisfy the Bureau's requirement for

1 financial statements. Bureau staff attached the regulations regarding compliant financial
2 statements.

3 15. On September 28, 2012, Respondent requested a two-month extension to submit
4 financial statements. On October 8, 2012, the Bureau granted Respondent an extension until
5 November 20, 2012.

6 16. On November 23, 2012, the Bureau received an e-mail from D.T., a CPA, attaching
7 reviewed, but not audited, financial statements for the year ending 2011, using an income tax
8 basis of accounting.

9 17. On December 19, 2012, the Bureau denied Respondent's Application #24171 because
10 the reviewed financial statements submitted used an income tax basis. Such financial statements
11 are not in compliance with the requirement for audited and reviewed financial statements
12 conducted and prepared in accordance with the generally accepted accounting principles
13 ("GAAP") established by the American Institute of Certified Public Accountants.

14 18. On February 5, 2013, the Bureau received another review of Respondent's financial
15 statements for the year ending 2011. The financial statement received by the Bureau continues to
16 be deficient in that there is insufficient information in the financial statements to determine
17 whether Respondent has the ability to pay all operating expenses in thirty days. At the end of the
18 2011 year, there was \$8,541 of cash available to pay for expenses. However, Respondent's
19 annual expenses were in excess of \$160,000, requiring over \$13,000 of cash over the next twelve
20 months. There was no information provided about when teaching services are provided or when
21 funds would be available from the federal, state and county governments to pay for Respondent's
22 expenses.

23 PRAYER


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

27 1. Denying the application of Rose Padilla and John Hauge, owners, El Portal College,
28 for an Approval to Operate a Non-Accredited Institution; and,

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2. Taking such other and further action as deemed necessary and proper.

DATED: 6/27/13


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

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