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

10
11 In the Matter of the First Amended Statement
of Issues Against:

12 **CALIFORNIA PREPARATORY**
13 **COLLEGE;**
14 **GENE EDELBACH, Owner**

15 Approval to Operate an Institution Non-
Accredited Applicant

16 Respondent.

Case No. 999877

**FIRST AMENDED STATEMENT OF
ISSUES**

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about May 23, 2011, the Bureau for Private Postsecondary Education received
24 an application for Approval to Operate an Institution Non-Accredited from California Preparatory
25 College; Gene Edelbach, owner (Respondent). On or about May 16, 2011, Gene Edelbach
26 certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Bureau denied the application on July 10, 2014.

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APPLICANT'S LICENSE HISTORY

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2 3. On or about May 23, 2011, the Bureau received an "Application for Approval to
3 Operate an Institution Non-Accredited" (application number 23542) from Respondent.

4 4. On November 3, 2011, the Bureau issued a deficiency letter to Respondent. On
5 January 17, 2012, the Bureau received a response to the deficiency letter.

6 5. On January 31, 2012, the Bureau issued a subsequent deficiency letter to Respondent.
7 On July 20, 2012, the Bureau received a response from Respondent.

8 6. On August 2, 2012, the Bureau sent a subsequent deficiency letter to Respondent. On
9 October 12, 2012, the Bureau received a response from Respondent.

10 7. On October 19, 2012, the Bureau sent a subsequent deficiency letter to Respondent.
11 On November 15, 2012, the Bureau received a response from Respondent.

12 8. On December 19, 2012, the Bureau sent a subsequent deficiency letter to Respondent.
13 On February 4, 2013, the Bureau received a response from Respondent.

14 9. On February 14, 2013, the Bureau sent a subsequent deficiency letter to Respondent.
15 On March 14, 2013, the Bureau received a response from Respondent.

16 10. On July 1, 2013, the Bureau completed its application review. On July 17, 2013, the
17 Bureau received a response from Respondent. On August 6, 2013, the Bureau sent Respondent a
18 deficiency letter. On September 23, 2013, the Bureau received a response from Respondent.

19 11. On October 1, 2013, Respondent was given a provisional approval to operate and
20 offer an English as a Second Language (ESL) program from October 1, 2013 through April 2,
21 2014. The institution was to correct remaining deficiencies noted in their provisional approval
22 letter. However, the institution did not maintained compliance with Student Tuition Recovery
23 Fund and Annual Reports.

24 12. On July 10, 2014, the Bureau sent Respondent a "Notice of Denial" letter.

25 13. On August 4, 2014, Respondent sent the Bureau a letter requesting an administrative
26 hearing.

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1 **JURISDICTION**

2 14. This Statement of Issues is brought before the Director of Consumer Affairs
3 (Director) for the Bureau for Private Postsecondary Education, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless otherwise
5 indicated.

6 **STATUTORY PROVISIONS**

7 15. Business and Professions Code section 22 defines the term “board” to include
8 “bureau.”

9 16. Education Code section 94885¹ states:

10 “The bureau shall, by January 1, 2011, adopt by regulation minimum operating standards
11 for an institution that shall reasonably ensure that all of the following occur:

12 “(a) The content of each educational program can achieve its stated objective.

13 “(b) The institution maintains specific written standards for student admissions for each
14 educational program and those standards are related to the particular educational program.

15 “(c) The facilities, instructional equipment, and materials are sufficient to enable students
16 to achieve the educational program's goals.

17 “(d) The institution maintains a withdrawal policy and provides refunds.

18 “(e) The directors, administrators, and faculty are properly qualified.

19 “(f) The institution is financially sound and capable of fulfilling its commitments to
20 students.

21 “(g) That, upon satisfactory completion of an educational program, the institution gives
22 students a document signifying the degree or diploma awarded.

23 “(h) Adequate records and standard transcripts are maintained and are available to
24 students.

25 “(i) The institution is maintained and operated in compliance with this chapter and all
26 other applicable ordinances and laws.

27 ¹ California Private Postsecondary Education Act of 2009, California Education Code
28 sections 94800 et seq.

1 17. Education Code section 94886 states:

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

6 18. Education Code section 94887 states:

7 “An approval to operate shall be granted only after an applicant has presented sufficient
8 evidence to the bureau, and the bureau has independently verified the information provided by the
9 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
10 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application
11 for an approval to operate if the application does not satisfy those standards.”

12 19. Education Code section 94893 states:

13 If an institution intends to make a substantive change to its approval to operate, the
14 institution shall receive prior authorization from the bureau. Except as provided in subdivision (a)
15 of Section 94896, if the institution makes the substantive change without prior bureau
16 authorization, the institution's approval to operate may be suspended or revoked.

17 20. Education Code section 94909 states in pertinent part:

18 “(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide
19 a prospective student, either in writing or electronically, with a school catalog containing, at a
20 minimum, all of the following:

21

22 “(5) A description of the programs offered and a description of the instruction provided in
23 each of the courses offered by the institution, the requirements for completion of each program,
24 including required courses, any final tests or examinations, any required internships or
25 externships, and the total number of credit hours, clock hours, or other increments required for
26 completion.

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

3

4 “(15) The following statement:

5 NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND
6 CREDENTIALS EARNED AT OUR INSTITUTION

7 The transferability of credits you earn at (name of institution) is at the
8 complete discretion of an institution to which you may seek to transfer.
9 Acceptance of the (degree, diploma, or certificate) you earn in (name of
10 educational program) is also at the complete discretion of the institution
11 to which you may seek to transfer. If the (credits or degree, diploma, or
12 certificate) that you earn at this institution are not accepted at the
13 institution to which you seek to transfer, you may be required to repeat
14 some or all of your coursework at that institution. For this reason you
15 should make certain that your attendance at this institution will meet
16 your educational goals. This may include contacting an institution to
17 which you may seek to transfer after attending (name of institution) to
18 determine if your (credits or degree, diploma, or certificate) will transfer.”

19 “(16) A statement specifying whether the institution, or any of its degree programs, are
20 accredited by an accrediting agency recognized by the United States Department of Education. If
21 the institution is unaccredited and offers an associate, baccalaureate, master's, or doctoral degree,
22 or is accredited and offers an unaccredited program for an associate, baccalaureate, master's, or
23 doctoral degree, the statement shall disclose the known limitations of the degree program,
24 including, but not limited to, all of the following:

25 (A) Whether a graduate of the degree program will be eligible to sit for the applicable
26 licensure exam in California and other states.

27 (B) A degree program that is unaccredited or a degree from an unaccredited institution is
28 not recognized for some employment positions, including, but not limited to, positions with the
29 State of California.

30 (C) That a student enrolled in an unaccredited institution is not eligible for federal financial
31 aid programs.”

32 21. Education Code section 94911 states in pertinent part:

33 “(i)

1 “1. The following statement: "Prior to signing this enrollment agreement, you must be
2 given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to
3 review prior to signing this agreement. These documents contain important policies and
4 performance data for this institution. This institution is required to have you sign and date the
5 information included in the School Performance Fact Sheet relating to completion rates,
6 placement rates, license examination passage rates, salaries or wages, and the most recent three-
7 year cohort default rate, if applicable, prior to signing this agreement."

8 22. Education Code section 94913 states:

9 “(a) An institution that maintains an Internet Web site shall provide on that Internet Web
10 site all of the following:

11 (1) The school catalog.

12 (2) A School Performance Fact Sheet for each educational program offered by the
13 institution.

14 (3) Student brochures offered by the institution.

15 (4) A link to the bureau's Internet Web site.

16 (5) The institution's most recent annual report submitted to the bureau.

17 (b) An institution shall include information concerning where students may access the
18 bureau's Internet Web site anywhere the institution identifies itself as being approved by the
19 bureau.”

20 23. Education Code section 94916 states:

21 “An institution extending credit or lending money to an individual for institutional and
22 noninstitutional charges for an educational program shall cause any note, instrument, or other
23 evidence of indebtedness taken in connection with that extension of credit or loan to be
24 conspicuously marked on its face in at least 12-point type with the following notice:

25 "NOTICE"

26 "You may assert against the holder of the promissory note you signed in order to finance
27 the cost of the educational program all of the claims and defenses that you could assert against
28 this institution, up to the amount you have already paid under the promissory note."

1 the Code, and any appropriate annual fee as required by Article 1 of Chapter 5 of this Division, to
2 the Bureau.

3 “(c) An application that fails to contain all of the information required by this article shall
4 render it incomplete.”

5 26. California Code of Regulations, title 5, division 7.5, section 71500 states:

6 (a) An institution seeking a change of location as defined in 94823.5 of the Code shall
7 complete the "Change of Location" form (LOC rev. 2/10) to obtain prior authorization. The form
8 shall be submitted at least 60 days prior to the proposed date of the change in location unless an
9 unforeseen and unavoidable circumstance outside the control of the institution requires an earlier
10 change; in which case it shall be submitted no later than 30 days following the change in location.
11 The form shall be submitted to the Bureau along with the appropriate fee as provided in Section
12 94930.5(c) of the Code. It shall be signed by the signatory(ies) required by section 71380 and
13 dated, and each fact stated therein and each attachment thereto shall be declared to be true under
14 penalty of perjury, in the following form:

15 "I declare under penalty of perjury under the laws of the State of California that the
16 foregoing and all attachments are true and correct.

17

18 (Date)

19

20 (Signature)"

21 (b) The application shall establish that the institution can meet the minimum operating
22 standards contained in Chapter 3, and shall include:(1) The name, school code, current and
23 proposed addresses, and telephone and fax numbers of the institution;

24 (2) A description of the proposed physical facilities, including building diagrams or
25 campus maps. The diagram or maps shall identify at a minimum, the locations of classrooms,
26 laboratories, workshops and libraries;

27 (3) A description of any equipment to be used at the proposed facilities that is different
28 from the equipment used at the present facility;

- 1 (4) The date on which the institution intends to offer instruction at the new location;
- 2 (5) The distance between the approved location and the proposed new location;
- 3 (6) The reason for the move;
- 4 (7) A description of the actions taken to notify students, if any, pursuant to section
- 5 94898(d)(1) of the Code, and whether the institution has offered a full refund to students pursuant
- 6 to section 94898(d)(3) of the Code; and
- 7 (8) The name, address, email address, telephone and fax numbers for the institution's
- 8 contact person for the purpose of this application.

9 (c) The Bureau may deem the actions that the institution takes to notify students of the
10 proposed change of location to be sufficient notice for purposes of section 94898(d)(2).

11 (d) An institution that has been granted an approval to operate by means of accreditation
12 shall notify the Bureau of the substantive change within 30 days of that change on the Change of
13 Location form, by providing the information required in sections (b)(1), (b)(8) of this section and
14 shall attach certification from the institution's accreditation agency demonstrating that the
15 substantive change was made in accordance with the institution's accreditation standards, and
16 complies with the Act and this Division.(1) The application for change of location for an
17 institution approved by means of accreditation shall be signed and dated by the signatory(ies)
18 required by section 71390(d), and each fact stated therein and each attachment thereto shall be
19 declared to be true under penalty of perjury, in the following form:

20 "I declare under penalty of perjury under the laws of the State of California that the
21 foregoing and all attachments are true and correct

22

23 (Date)

24

25 (Signature)"

26 27. California Code of Regulations, title 5, division 7.5, section 71700 states:

27 "The Bureau may request that an institution document compliance with the standards set
28 forth in the Act and this Division to obtain and maintain an approval to operate."

1 28. California Code of Regulations, title 5, division 7.5, section 74000, states in pertinent
2 part:

3 “(e) (1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may
4 initiate proceedings to revoke the institution's approval to operate for failure to pay fees.”

5 29. California Code of Regulations, title 5, division 7.5, section 74006, states:

6 (a) An institution's annual fee is due within 30 days of the date on which the institution
7 originally receives its approval to operate and each year thereafter on the anniversary of the date
8 of the original approval.

9 (b) An institution shall pay its annual fee in addition to any other applicable fees.

10 (c) The annual institutional fee is based on the institution's annual revenue. For purposes of
11 this article, annual revenue is annual gross revenue.

12 30. California Code of Regulations, title 5, division 7.5, section 76130, states

13 (a) A qualifying institution shall collect the assessment from each student in an educational
14 program at the time it collects the first payment from or on behalf of the student at or after
15 enrollment. The assessment shall be collected for the entire period of enrollment, regardless of
16 whether the student pays the institutional charges in increments.

17 (b) A qualifying institution shall complete the STRF Assessment Reporting Form (Rev.
18 2/10) and remit it with the STRF assessments collected from students to be received by the
19 Bureau no later than the last day of the month following the close of the quarter as follows:(1)
20 April 30 for the first quarter,

21 (2) July 31 for the second quarter,

22 (3) October 31 for the third quarter, and

23 (4) January 31 for the fourth quarter. If the due date falls on a Saturday, Sunday or State or
24 federal holiday, the due date shall be extended to the next regular business day for the Bureau.

25 If the due date falls on a Saturday, Sunday, or State or federal holiday, the due date shall be
26 extended to the next regular business day for the Bureau.

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1 (c) The STRF Assessment Reporting Form shall contain the following information:(1)
2 Total number of students who signed enrollment agreements for educational programs during the
3 reporting period; and

4 (2) Total number of students eligible for STRF who signed enrollment agreements for
5 educational programs during the reporting period; and

6 (3) The total number of students who signed their enrollment agreement during the
7 reporting period, were eligible for STRF, and who made their first payment during the reporting
8 period; and

9 (4) The total number of students who signed their enrollment agreement in a previous
10 reporting period, were eligible for STRF, and who made their first payment during the current
11 reporting period; and

12 (5) Total amount of institutional charges after rounding each student's institutional charges
13 to the nearest \$ 1,000, for all eligible STRF students whose STRF assessment was collected in the
14 reporting period; and

15 (6) Current contact telephone number of the person preparing the form; and

16 (7) A declaration dated and signed under penalty of perjury by the person preparing the
17 form that the form and any attachments are true and correct.

18 (d) In the event of a school closure, any collected assessments shall be remitted to the
19 Bureau within seven days following the cessation of instruction.

20 (e) Submission of all prior reports and assessments required by this section is a condition
21 of renewal.

22 31. California Code of Regulations, title 5, division 7.5, section 76210, states in pertinent
23 part:

24 "(a) The Bureau may negotiate with a lender, holder, guarantee agency, or the U.S.
25 Department of Education for the full compromise or write-off of student loan obligations to
26 relieve students of economic loss and, if possible, to reduce the liability of the Fund for the
27 payment of claims."

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1 informed and believes that Respondent may be using the physical address of 1020 E. Washington
2 Street, Colton, California 92324 to conduct business as the institution.

3 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

4 (Failed to Meet Minimum Operating Standards – Student Agreements)

5 35. Respondent's application is subject to denial under Education Code sections 94887,
6 94916 and 94911, subdivision (i)(1) in that the proposed enrollment agreement fails to comply
7 with California law as follows:

8 36. Institution failed to provide the required statement when an institution extending
9 credit or lending money to an individual for institutional and non-institutional charges for an
10 educational program shall cause any note, instrument, or other evidence of indebtedness taken in
11 connection with that extension of credit or loan to be conspicuously marked on its face in at least
12 12-point type.

13 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

14 (Failed to Meet Minimum Operating Standards – Catalog)

15 37. Respondent's application is subject to denial under Education Code sections 94885,
16 94886, 94887 and 94909 subdivisions (a)(5), (9) (15) and (16) and section 94913 and California
17 Code of Regulations, title 5, division 7.5, section 76210 subdivision (a) in that Respondent's
18 application does not satisfy the legally required minimum operating standards for faculty at the
19 facility as described more fully below:

20 38. The institution inserted the description of "degree" rather than "certificate" in the
21 section of the catalog entitled Notice Concerning Transferability of Credits and Credentials
22 Earned at our Institution. The institution is only approved to offer the one ESL certificate
23 program and is not approved to offer any other programs

24 39. The catalog for the Institution contains course descriptions and program information
25 that the institution is not approved for.

26 40. The Institution failed to provide a catalog that contains a schedule of student charges
27 that includes a correct calculation of the Student Tuition Recovery Fund (STRF) fee.

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SIXTH CAUSE FOR DENIAL OF APPLICATION

(Failure to Meet Minimum Operating Standards – Student Tuition Recovery Fund (STRF))

41. Respondent’s application is subject to denial under Education Code sections 94887 and 94934 and California Code of Regulations, title 5, division 7.5, section 74000 subdivision (e)(1), 74006 and 76130 in that Respondent’s application does not satisfy the legally required minimum operating standards for faculty at the facility as described more fully below:

42. The Institution failed to submit quarterly STRF assessment forms to the Bureau commencing with the 4th quarter of 2013 and continuing through the 3rd quarter of 2016.

43. The Institution failed to make annual payments to the Bureau for the Annual Fee and Penalty Fee commencing in October 2013 and continuing through October 2016.


44. The Institution failed to submit their Annual Report to the Bureau for the following years: 2014 and 2013 (incomplete).

PRAYER

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

- 1. Denying the application of California Preparatory College; Gene Edelbach, owner, for a Approval to Operate an Institution Non-Accredited;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 11/18/16


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

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