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7  
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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28    ///

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 94885<sup>1</sup> 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 <sup>1</sup> 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.

27           .....

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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 24. Education Code section 94934 states:

2 (a) As part of the compliance program, an institution shall submit an annual report to the  
3 bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year,  
4 or another date designated by the bureau, and it shall include the following information for  
5 educational programs offered in the reporting period:(1) The total number of students enrolled by  
6 level of degree or for a diploma.

7 (2) The number of degrees, by level, and diplomas awarded.

8 (3) The degree levels and diplomas offered.

9 (4) The Student Performance Fact Sheet, as required pursuant to Section 94910.

10 (5) The school catalog, as required pursuant to Section 94909.

11 (6) The total charges for each educational program by period of attendance.

12 (7) A statement indicating whether the institution is, or is not, current in remitting Student  
13 Tuition Recovery Fund assessments.

14 (8) A statement indicating whether an accrediting agency has taken any final disciplinary  
15 action against the institution.

16 (9) Additional information deemed by the bureau to be reasonably required to ascertain  
17 compliance with this chapter.

18 (b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method  
19 of delivery.

### 20 REGULATORY PROVISIONS

21 25. California Code of Regulations, title 5, division 7.5, section 71100 states:

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

27 "(b) An applicant shall submit the completed form, the information or documentation,  
28 required by this Article, the appropriate application fee as provided in Section 94930.5(a)(1) of

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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**FIRST CAUSE FOR DENIAL OF APPLICATION**

(Operating Without Bureau Approval)

32. Respondent's application is subject to denial under Education Code sections 94886, in that without obtaining prior approval to operate, Respondent is conducting business as a private postsecondary educational institution in the state of California by offering postsecondary educational courses, including, but not limited to: Associate of Science Degree in Health Science, Associate of Science Degree in Business Administration, Associate of Arts Degree in General Studies and Communication, Western Healthcare Practices and English as a Second Language<sup>2</sup>.

**SECOND CAUSE FOR DENIAL OF APPLICATION**

(Advertising and Offering Courses Without Bureau Approval)

33. Respondent's application is subject to denial under Education Code sections 94893, in that Respondent made a substantive change to its approval to operate where it advertised and offered postsecondary educational courses, including, but not limited to: Associate of Science Degree in Health Science, Associate of Science Degree in Business Administration, Associate of Arts Degree in General Studies and Communication, Western Healthcare Practices and English as a Second Language.

**THIRD CAUSE FOR DENIAL OF APPLICATION**

(Failed to Obtain Approval for Change of Location)

34. Respondent's application is subject to denial under Education Code section 94887, where Respondent failed to comply with California Code of Regulations, title 5, division 7.5, section 71500 by obtaining authorization from the Bureau before changing the location of the institution. Respondent's application designated the physical and mailing address of record for the institution as: 1030 Nevada Street, Suite 106, Redlands, California 92374. The Bureau is

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<sup>2</sup> Respondent received a provisional approval on or about September 30, 2013 to offer a non-degree program of English as a Second Language; however said approval expired on April 2, 2014.

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 4<sup>th</sup> quarter of 2013 and continuing through the 3<sup>rd</sup> 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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