

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

**In the Matter of the Citation against:
DEEP CREEK CONSTRUCTION SCHOOL,
CHRISTOPHER CASEY, OWNER
Respondent.**

Citation No. 1920275

OAH No. 2020100690

DECISION AFTER REJECTION OF PROPOSED DECISION

This matter comes before the Director of the Department of Consumer Affairs (Director) for a decision after rejection of the proposed decision of the Administrative Law Judge.

Julie Cabos Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 8, 2021.

Christina Villanueva (Complainant) was represented by Mario Cuahutle, Deputy Attorney General. Deep Creek Construction School (Deep Creek) was represented by its owner, Christopher Casey (Respondent).

Testimony and documents were received in evidence. The record closed and the matter was submitted for a proposed decision on February 8, 2021.

The Administrative Law Judge issued a proposed decision on March 3, 2021, and on May 21, 2021, the Director rejected the proposed decision. The transcript was ordered and received on June 21, 2021, the parties were notified of the availability of the transcript, and they were given an opportunity to submit written argument.

Having reviewed the entire record, including the transcript of the hearing, and having read and considered the written argument received, the Director hereby renders the following decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 19, 2000, the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, issued full approval for Deep Creek to operate. That approval is scheduled to expire July 12, 2023.
2. On April 1, 2020, citation number 1920275 (Citation) was issued to Deep Creek by Complainant while acting in her official capacity as Discipline Manager of the Bureau.
3. Respondent appealed the Citation and an administrative hearing ensued.
4. The Administrative Law Judge issued a proposed decision, which the Director rejected in due course. The Director has jurisdiction to decide this matter.

February 25, 2020, Inspection

5. Bureau Compliance Inspector Byron Bond drafted a detailed eight-page report of an unannounced compliance inspection he conducted at Deep Creek on February 25, 2020. At the administrative hearing, the inspection report was admitted into evidence, and Inspector Bond testified in conformity with his report. According to

the Administrative Law Judge, his demeanor during testimony was nervous but forthcoming, and he was a credible witness.

6. Respondent also testified at the administrative hearing. According to the Administrative Law Judge, his demeanor was respectful and steadfast, although at times he became agitated. Overall, he presented as a credible witness.

7. The testimony of Inspector Bond and Respondent, along with documentary evidence admitted at hearing, established the following facts regarding what transpired during the February 25, 2020, inspection.

8. On the morning of February 25, 2020, Inspector Bond arrived at Deep Creek to conduct an unannounced inspection. He did not see anyone on the premises, and the door was locked. Inspector Bond called Respondent to inform him of the unannounced inspection. Respondent told Inspector Bond he was about one hour away from Deep Creek and would be available at 11:00 a.m. Inspector Bond told Respondent he would meet Respondent at Deep Creek at 11:00 a.m.

9. A little past 11:00 a.m., Inspector Bond met with Respondent at Deep Creek. As Inspector Bond was exiting his vehicle, an American-Terrier Pit Bull ran over to sniff his leg. The dog was not aggressive, but as the Pit Bull sniffed Inspector Bond, Respondent approached and stated, "as you can see, we don't like the government around here." Respondent then took Inspector Bond inside to conduct the inspection.

10. Once inside the facility, Respondent led Inspector Bond to a work area for the day. To begin the inspection, Inspector Bond gave Respondent an Unannounced Compliance Inspection and Arrival Checklist with instructions for gathering requested items. Respondent said he needed at least an hour to explain the school's program

before retrieving any documents. During that hour, Respondent made comments about how much he hated Inspector Bond and the Bureau. He said, “I hate you,” and “you are part of the blood sucking government that is here to get money and not help the students.” Respondent paused to ask if Inspector Bond had any questions, and Inspector Bond asked Respondent if he would like to continue with the inspection. Respondent stated, “you have a fucking job to do, that’s why you are here.”

11. Respondent then asked if Inspector Bond was there to address any student complaints made to the Bureau. Inspector Bond informed Respondent he was not there to address any complaints, but rather to conduct a compliance inspection. Respondent replied, “I really do not give a shit why you are here, to be honest.” Respondent also became physically agitated—he moved in his chair, his face became red and he frowned at the inspector.

12. Despite Respondent’s aggressive, profanity-laced comments, Inspector Bond conducted much of the inspection. This entailed a review of several categories of documents including: student records (mandatory minimum requirements such as admission qualifications, properly executed enrollment agreements, disclosures, copies of warnings to students, copies of complaints received from students, contact information, transcripts, records showing minimum requirements met for graduation, and accurate and timely refunds); faculty records; Chief Academic Officer records; student performance fact sheets; and student tuition recovery fund records. Inspector Bond found no violations during his review of the records.

13. Inspector Bond also conducted a visual inspection of the site, and he noted, “[t]he institution’s facilities and equipment appeared to meet minimum

requirements.” (Exhibit 3, p. AGO027.) Inspector Bond reviewed Deep Creek’s self-monitoring procedures and found no violations. He also reviewed Deep Creek’s advertisements and found no violations.

14. Inspector Bond noted an area of deficiency on the school’s website. Education Code section 94913 requires an institution that maintains a website to provide on the site the “institution’s most recent annual report submitted to the bureau.” Inspector Bond noted Deep Creek’s website was missing the most recent annual report for 2018. During the February 25, 2020, inspection, Inspector Bond asked Respondent to show him the website’s location of Deep Creek’s 2018 annual report. In his inspection report, Inspector Bond documented their exchange as follows:

[Respondent] began looking on the school’s website, however, he could not find the annual report link for 2018. He stated that his wife was working with the [Bureau’s] Annual Report Unit (ARU) to implement the school’s most recent annual report for 2018. [Respondent] stated that they have been trying to contact ARU to try and get some assistance in making the corrections to the 2017 reports that were categorized as being incorrect. However, they have not be[en] able to gain the assistance that they sought to make the changes as needed to the 2017 reports. Also, he stated that he told ARU that his information was correct, and he needed access to upload the 2018 report. [Respondent] stated, “Once I give them a call up there, you hear all the pretty voices, yet they don’t help me at all.” He stated that he knew the name of the ARU representative that was not allowing him [to] upload his data. However, he stated that he did not want to tell me the name because he said that “you are in the

same family as those folks, all out to be in control of everything”. I informed [Respondent] that the minor violation will be implemented on a Notice to Comply (NTC). [Respondent] asked me to explain the procedures of an NTC. After I explained to [Respondent] regarding the NTC, he became irate and stated, “why don’t you go tell your ‘sister,’ to stop sucking the entire football line of cocks and help me file my fucking annual report.” I tried to digress to the situation and informed [Respondent] of the importance of implementing the Annual Reports for the students. Also, I informed him that the minor violation, will be explained as a talking point to inform him of the importance of maintaining minimum requirements for the school’s website. He stated that he understood and would inform his wife to contact ARU as soon as possible to upload the Annual Reports. The minor violation was not implemented on an NTC due to the level of aggression that was being displayed by [Respondent].

(Exhibit 3, pp. AGO027-AGO028, emphasis supplied.)

15. Following the NTC conversation noted above, Inspector Bond’s inspection report noted:

I conducted an exit interview with [Respondent]. I informed him that the exiting interview concluded the compliance inspection. I thanked him for providing me with the documents as requested. [Respondent] stated, “It doesn’t matter that you reviewed the documents, you’re not here to be a blessing to the students.” He also stated that he operates his school solely for those citizens and veterans who can’t find jobs such as individuals like myself that work for the government. He uttered again, “I really hate you, and all that you do.” I thanked him once

again while gathering my stuff to leave the office[.] [H]is last statement was, “get the fuck out of my office”. I left the premises immediately. I informed the Bureau’s Enforcement Chief . . . moments later.

(Exhibit 3, p. AGO029.)

16. Inspector Bond indicated that he was intimidated and threatened by Respondent’s increasingly aggressive behavior, and that he refrained from issuing an NTC due to Respondent’s “level of aggression” (Exhibit 3, p. AGO028) and fear of “elevat[ing] any kind of negative response” (Bond’s testimony). According to Inspector Bond, in order to issue an NTC, he must obtain the owner’s digital signature on the NTC as displayed on an electronic tablet. The signor indicates whether the owner agrees, disagrees, or refuses to sign. After Inspector Bond explained that Deep Creek’s website was out of compliance, and that he would issue an NTC to Deep Creek, Respondent became irate and made obscene statements to Inspector Bond. Even though Inspector Bond was required to perform an inspection and issue an NTC for the minor violation he observed, he instead defused the situation by refraining from issuing the NTC and treating the matter as “a talking point,” out of fear that Respondent would become more enraged and aggressive toward him if he issued the NTC.

17. Inspector Bond’s fear of Respondent’s increasingly aggressive behavior was reasonable. Inspector Bond is a military veteran who conducted approximately one hundred inspections for the Bureau. He testified that he never previously encountered the type of aggressive behavior that Respondent exhibited during a routine school inspection. Inspector Bond was greeted at the inspection site by Respondent—a man he did not otherwise know—and a Pit Bull, told “we don’t like the government around

here” as he was sniffed by the dog, and told that Respondent “hate[d]” him. Inspector Bond testified that from the beginning of the inspection, he was in “a defensive mode, because I realized I’m there by myself, he’s there by himself, [and] I don’t know who’s there on this site” “I don’t want this to get out of control,” he said, and he also noted that Respondent negatively “messed with [him] this whole time, and [he] didn’t appreciate that.” Inspector Bond even observed Respondent become physically agitated during the inspection, shortly before Respondent became “irate” and obscene toward Inspector Bond for suggesting that he would issue an NTC.

18. Inspector Bond reported that he did not issue an NTC and that the matter was being referred for a citation for interfering with the inspection:

At the conclusion of [the] Deep Creek Construction School unannounced compliance inspection, zero minor violations remained outstanding. No Notice to Comply was issued. An Enforcement Referral was submitted for aggressive behavior that was displayed by [Respondent] during the onsite inspection.

(Exhibit 4, p. AGO030.) At hearing, Inspector Bond testified that the minor violation he observed remained outstanding at the time of the hearing, a year after the inspection.

Citation and Fine

19. On April 1, 2020, Complainant issued the Citation for violations of Education Code sections 94932.5, subdivision (a) (requiring the Bureau to conduct compliance inspections), and 94935, subdivision (a) (requiring Bureau staff’s issuance of an NTC for minor violations). The Citation notes, “[o]n February 25, 2020, a [NTC] was not issued to [Respondent] due to his interference with the inspection process and his inappropriate behavior. The Bureau is mandated to perform announced and

unannounced inspections of each institution; however, [Respondent's] behavior impeded the inspector from completing all phases of the inspection.” (Exhibit 1, p. AGO004.) The Citation imposes a fine of \$5,000.

20. The factual background in the Citation states:

On February 25, 2020, Bureau staff conducted an unannounced Compliance inspection at the Institution. The inspector identified a minor website violation during the inspection; however, the inspector was unable to issue a required [NTC] due to the escalating anger displayed by [Respondent]. [Respondent] subjected the inspector to hostile and abusive comments during the inspection process, resulting in [Respondent] demanding the inspector leave his office. The inspector was unable to complete all phases of the inspection due to the interference of [Respondent] as outlined below. During the inspection [Respondent] made the following statements to the inspector to voice his displeasure with the Bureau and the Bureau requirements.

- “As you can see, we don’t like the government around here.”
- “I hate you, you are part of the bloodsucking government that is here to get money and not help the students.”
- “You have a fucking job to do, that is why you are here.”
- “I really don’t give a shit why you are here to be honest.”
- “Why don’t you go tell your ‘sister’ to stop sucking the entire football line of cocks and help me file my fucking annual report.”
- “Get the fuck out of my office.”

(Exhibit 1, p. AGO003.)

21. As reflected in the foregoing Factual Findings, the evidence established that Respondent “impeded the inspector from completing all phases of the inspection,” and “[t]he inspector was unable to complete all phases of the inspection due to the interference of [Respondent]” Additionally, the evidence established the allegations in the Citation that “a [NTC] was not issued to [Respondent] due to his interference with the inspection process” and that “the inspector was unable to issue a required [NTC] due to the escalating anger displayed by [Respondent].”

22. Respondent showed little contrition at the administrative hearing. He acknowledged that he “release[d] a lot of anger” toward Inspector Bond, but he also questioned Inspector Bond’s mental acuity and comprehension, and he accused Inspector Bond of fabricating evidence. In his written argument before the Director dated July 15, 2021, Respondent accused Inspector Bond of lying and committing perjury, without basis. At hearing, Respondent admitted he is emotional, “can be angry at times,” and tends to “swear a little bit.” He claimed that, if Inspector Bond had tried to issue the NTC, he would not have stopped him. He also maintained that he complied with the inspection, and he disclaimed responsibility for preventing Inspector Bond from issuing an NTC.

23. Respondent acknowledged he does not like the Bureau, and he does not like “being messed around by the government.” Respondent asserted that he received the Citation for disliking the Bureau and for expressing his opinion about it. Respondent is free to express his views about the Bureau, but he is not free to intimidate and threaten its inspectors and prevent them from carrying out the Bureau’s required functions.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 125.9, subdivision (a), Education Code sections 94932 and 94936, and California Code of Regulations, title 5, section 75020, the Bureau may issue citations containing orders of abatement and administrative fines for violations of any applicable law.

2. Specifically, Education Code section 94932 provides, in pertinent part, “[i]f the bureau determines, after completing a compliance inspection or investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article.” Similarly, Education Code section 94936, subdivision (a) provides, in pertinent part, “upon a finding that the institution has committed a violation of this chapter or that the institution has failed to comply with a notice to comply pursuant to Section 94935, the bureau shall issue a citation to an institution for violation of this chapter, or regulations adopted pursuant to this chapter.”

3. In this citation proceeding, Complainant bears the burden of proving the cited violations by a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 994.)

4. In this case, the Citation alleges Respondent violated Education Code sections 94932.5, subdivision (a), and 94935, subdivision (a).

5. Education Code section 94932.5, subdivision (a), provides, “[a]s part of its compliance program, the bureau shall perform announced and unannounced inspections of institutions at least every five years.” (Emphasis supplied.)

6. Education Code section 94935, subdivisions (a) and (f), provide:

(a) Bureau staff who, during an inspection of an institution, detect a violation of this chapter, or regulations adopted pursuant to this chapter, that is a minor violation as determined by the bureau, pursuant to regulations adopted by January 1, 2011, shall issue a notice to comply before leaving the institution.

[¶] . . . [¶]

(f) A notice to comply shall be the only means the bureau shall use to cite a minor violation discovered during an inspection. (Emphasis supplied.)

7. Education Code sections 94932.5, subdivision (a), and 94935, subdivision (a), specify mandatory actions that the Bureau must take: “the bureau shall perform . . . unannounced inspections,” and when the circumstances warrant, the Bureau “shall issue a notice to comply before leaving the institution.” These provisions do not expressly prescribe or proscribe acts by institutions, but an institution’s interference or prevention of the Bureau’s mandatory duties constitutes a violation of the chapter for which the Bureau may issue a citation to an institution. Indeed, the Bureau is charged with interpreting and determining compliance with the law. (Ed. Code, §§ 94875 & 94932.) It would be anomalous to conclude, on one hand, that an institution’s failure to comply with a notice to comply is a citable offense under Education Code section 94936, but on the other hand, find that an institution that improperly prevents the Bureau from issuing a mandatory notice to comply could not be cited for a violation—especially here, where the Bureau’s failure to issue a notice to comply for the minor violation during the February 25, 2020, inspection has perpetuated it. Even a year later, the violation was not corrected.

8. By reason of the foregoing Factual Findings and Legal Conclusions, cause exists to affirm Citation number 1920275. A preponderance of the evidence demonstrates that Respondent improperly prevented the Bureau from carrying out its mandatory duties to perform an unannounced inspection and issue a notice to comply before leaving the institution. Consequently, Respondent's conduct constitutes a violation Education Code sections 94932.5, subdivision (a), and 94935, subdivision (a).

9. Where a citation includes an administrative fine, the fine shall be not less than \$50 nor more than \$5,000 per violation. (Cal. Code Regs., tit. 5, § 75030.) Here, the Bureau applied the maximum \$5,000 fine, which is typically reserved for institutions that committed one or more prior serious violations. (*Ibid.*) Respondent's conduct was serious, but he also complied with many of the inspector's requests during the inspection, and this is the institution's first violation. These circumstances merit a reduction in the penalty to an order of abatement.

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ORDER

Citation number 1920275, issued to Respondent, Deep Creek Construction School, is sustained. The penalty is modified to reduce the fine assessment to \$0. Respondent is ordered to abate his misconduct and discontinue preventing the Bureau from performing its mandatory duties, as discussed above.

This Decision shall become effective on "September 30, 2021" .

IT IS SO ORDERED this "25" day of August , 2021.

 "Original Signature on File"

RYAN MARCROFT
Deputy Director
Legal Affairs Division
Department of Consumer Affairs