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

12
13 In the Matter of the Statement of Issues
Against:

14 **DIFAI CITY COLLEGE**

15 **Application for Renewal of Approval to**
16 **Operate and Offer Educational Programs**
17 **for Non-Accredited Institutions**

18 **Institution No. 1940981**

19 Respondent.

Case No. 1005808

STATEMENT OF ISSUES

20
21 **PARTIES**

22 1. Dr. Michael Marion, Jr. (Complainant) brings this Statement of Issues solely in his
23 official capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
24 Consumer Affairs.

25 2. On or about July 24, 2019, the Bureau for Private Postsecondary Education (Bureau)
26 received an Application for Renewal of Approval to Operate and Offer Educational Programs for
27 Non-Accredited Institutions from Difai City College (Respondent). On or about July 10, 2019
28 Chimezie Duruhesie, certified under penalty of perjury to the truthfulness of all statements,

1 answers, and representations in the application. The Bureau denied the application on March 9,
2 2020.

3 **JURISDICTION**

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

8 **STATUTORY PROVISIONS**

9 4. Section 94932 of the Education Code states:

10 The bureau shall determine an institution's compliance with the requirements of
11 this chapter. The bureau shall have the power to require reports that institutions shall
12 file with the bureau in addition to the annual report, to send staff to an institution's
13 sites, and to require documents and responses from an institution to monitor
14 compliance. When the bureau has reason to believe that an institution may be out of
15 compliance, it shall conduct an investigation of the institution. If the bureau
16 determines, after completing an investigation, that an institution has violated any
17 applicable law or regulation, the bureau shall take appropriate action pursuant to this
18 article.

15 **REGULATORY PROVISIONS**

16 5. California Code of Regulations, title 5, section 71475 states:

17 (a) Unless renewed, an approval to operate shall expire at 12 midnight on the last day
18 of the institution's term of approval to operate as granted pursuant to section 94802 or
19 section 94889 of the Code.

20 (b) An institution seeking to renew its Approval to Operate pursuant to section 94891
21 of the Code shall, prior to its expiration, complete and submit to the Bureau the
22 "Application for Renewal of Approval to Operate and Offer Educational Programs for
23 Non-Accredited Institutions," Form Application 94891 (rev. 2/10).

24 (c) The application for renewal of approval to operate and offer educational programs
25 for non-accredited institutions shall include all of the following:

26 (1) The name, institution/school code and website address of the institution.

27 (2) The physical address of the institution's primary administrative location in
28 California.

(3) The mailing address, identified either by physical address or by post office box
number, telephone number and fax number of the institution.

1 (4) The physical address, phone number and fax number of each campus and branch
2 at which the educational programs will be offered, including the identification of the
institution's main location and branch locations.

3 (5) The name, address, email address, telephone number, and fax number of an
4 individual who will function as the institution's contact person for the purposes of the
application.

5 (6) The form of business organization of the institution (e.g., sole proprietorship,
6 general or limited partnership, for-profit corporation, nonprofit corporation, or
7 Limited Liability Corporation). If the institution is incorporated, the institution shall
also identify the state within which the institution is incorporated and the date of
incorporation, and provide copies of the articles of incorporation and bylaws.

8 (7) The name, title, address, email address, telephone number, nature of interest and
9 percentage of ownership of each person, as defined in section 94855 of the Code, who
owns or controls 25% or more of the stock or an interest in the institution and, to the
10 extent applicable, each general partner, officer, corporate director, member of the
11 board of directors, and any other person who exercises substantial control over the
institution's management or policies. For the purpose of this paragraph, a person
12 exercises "substantial control over the institution's management or policies" if the
person has the authority to cause the institution to expend money or incur debt in the
13 amount of five thousand dollars (\$5,000) or more in any year.

14 (A) For each address required, the institution shall provide a physical home address,
15 and may request that the address, email address, and telephone number, of each
person described in paragraph (7) be maintained as personal information.

16 (B) The federal employer identification number for partnerships or the social security
17 number for individual owners identified in the application pursuant to section
71130(a)(1).

18 (d) In addition to the form required in (b), the institution shall submit all information
19 required by section 71100(b), and the appropriate renewal fee as provided in Sections
94930.5(b)(1) and 94930.5(b)(2) of the Code, as applicable, to the Bureau. Except for
20 the financial statements required by subdivision (e) of this section and the statement
21 required in subdivision (f) of this section, if the information required in order to
renew its approval to operate is substantially similar to the information submitted by
22 the institution in its last renewal application, or initial application if it is the first
renewal, the institution may state that there are no substantial changes.

23 (e) The institution shall submit at the time it applies for renewal current financial
24 statements that meet the requirements of section 74115 as follows: (1) for an
25 institution with annual gross revenues of \$500,000 and over, statements shall be
audited; (2) for an institution with annual gross revenues less than \$500,000,
26 statements shall be reviewed.

27 (f) The renewal application shall include a statement from any person identified in
28 subdivision (h)(1) of this section who -

1 (1) Was found in any judicial or administrative proceeding to have violated the Act or
2 the law of any other state related to untrue or misleading advertising, the solicitation
3 of prospective students for enrollment in an educational service, or the operation of a
4 postsecondary school;

5 (2) Was denied any type of license on grounds set forth in Section 480 of the
6 Business and Professions Code;

7 (3) Was adjudicated as responsible for the closure of an institution in which there
8 were unpaid liabilities to the state or federal government or any uncompensated
9 pecuniary losses suffered by students;

10 (4) Has stipulated to a judgment or administrative order or entered a consent decree
11 involving any of the matters described in this section.

12 (5) Was convicted of any misdemeanor or felony as provided in Section 480(a)(1) of
13 the Business and Professions Code;

14 (g) The institution shall furnish in the application an explanation of any legal action
15 pending against the institution or ownership or any of the institution's owners,
16 officers, corporate directors, administrators, or instructors by any federal, state, or
17 local law enforcement agency involving alleged acts of fraud, dishonesty, financial
18 mismanagement, unpaid liabilities to any governmental agency or claims for
19 pecuniary loss suffered by any student.

20 (h) The institution shall include in its application the name, title, physical address,
21 telephone number, fax number, and e-mail address for the agent for service of process
22 in California as required by section 94943.5 of the Code. The agent shall be at an
23 address other than the address of the institution or any branch. The agent must
24 confirm the information and acknowledge in writing that he or she is the designated
25 agent for service of process. The information shall be kept current pursuant to section
26 74190.

27 (i) The institution shall include in its application an organization chart that shows the
28 governance and administrative structure of the institution and the relationship
between faculty and administrative positions. If there have been no substantive
changes since the last submission of an organizational chart, the institution may so
state and is not required to submit documentation.

(j) The institution shall provide in the application a description of the job duties and
responsibilities of each administrative and faculty position. If there have been no
substantive changes since the last submission, the institution may so state and is not
required to submit documentation.

(k) The institution shall identify in the application the chief executive officer, chief
operating officer, and chief academic officer and describe their education, experience,
and qualifications to perform their duties and responsibilities. If there have been no
substantive changes since the last submission, the institution may so state and is not
required to submit documentation.

1 (l) If the institution has a governing board, the application shall include the name,
2 work address, email address, and telephone number of each member of the governing
3 board. If there have been no substantive changes since the last submission, the
4 institution may so state and is not required to submit documentation.

5 (m) The application shall contain the name, work address, email address, fax number
6 and telephone number of the person with whom the Bureau will correspond and
7 conduct legal transactions on behalf of the institution. If there have been no
8 substantive changes since the last submission, the institution may so state and is not
9 required to submit documentation.

10 (n) The institution shall describe in the application, in detail its mission and
11 objectives. If there have been no substantive changes since the last submission, the
12 institution may so state and is not required to submit documentation.

13 (o) The institution shall include, with its application, exemplars of all student
14 enrollment agreements and instruments of indebtedness.

15 (p) If an institution receives financial aid because its students qualify for it under any
16 state or federal financial aid program, the application shall include a statement of its
17 policies, practices, and disclosures regarding financial aid. If there have been no
18 substantive changes since the last submission, the institution may so state and is not
19 required to submit documentation.

20 (q) The institution shall include in its application copies of advertising and other
21 statements disseminated to the public in any manner by the institution or its
22 representatives that concern, describe, or represent each of the following:

23 (1) The institution.

24 (2) Each educational program offered by the institution.

25 (3) If advertising is broadcast by television or radio, the application shall also include
26 a copy of the script.

27 (r) The institution shall identify and describe, in the application, the educational
28 program it offers, or proposes to offer. If the educational program is a degree
program, the institution shall identify the full title which it will place on each degree
awarded. If there have been no substantive changes since the last submission, the
institution may so state and is not required to submit documentation.

(s) The application shall include, in addition to the general title, such as “Bachelor of
Arts” or “Master of Science”, the name of a specific major field of learning involved.
If there have been no substantive changes since the last submission, the institution
may so state and is not required to submit documentation.

(t) In addition, the institution shall list in the application, the following for each
educational program offered unless there have been no substantive changes since the
last submission. If there have been no substantive changes made the institution may
so state and is not required to provide documentation.

- 1 (1) The admissions requirements, including minimum levels of prior education,
preparation, or training;
- 2 (2) If applicable, information regarding the ability-to-benefit examination as required
3 by section 94904 of the Code.
- 4 (3) The types and amount of general education required;
- 5 (4) The title of the educational programs and other components of instruction offered,
6 including a description of the level of the courses (e.g., below college level,
undergraduate level, graduate level);
- 7 (5) The mode of instruction;
- 8 (6) The graduation requirements.
- 9 (7) Whether the educational program is designed to fit or prepare students for
10 employment in any occupation. If so, the application shall identify each occupation
and job title to which the institution represents the educational program will lead.
- 11 (u) For each educational program that the institution offers or proposes to offer, the
12 application shall contain a statement that the educational program meets the
13 requirements of section 71710, as well as the following unless there have been no
14 substantive changes since the last submission. If there have been no substantive
changes made the institution may so state and is not required to provide
15 documentation:
 - 16 (1) A description of the educational program.
 - 17 (2) A description of the equipment to be used during the educational program.
 - 18 (3) A description of the number and qualifications of the faculty needed to teach the
educational program.
 - 19 (4) A projection, and the bases for the projection, of the number of students that the
20 institution plans to enroll in the educational program during each of the three years
following the date the application was submitted.
 - 21 (5) A description of the learning, skills, and other competencies to be acquired by
22 students who complete the educational program.
 - 23 (6) If licensure is a goal of an educational program, a copy of the approval from the
24 appropriate licensing agency. A copy of the intent to approve conditioned solely upon
institutional approval from the Bureau will also meet this requirement.
 - 25 (7) Upon request, the institution shall provide to the Bureau copies of the curriculum
26 or syllabi required pursuant to section 71710.
- 27 (v) If the institution offers an educational program, or a portion of it, in a language
28 other than English, the application shall contain a description of all of the following

1 for each educational program or portion thereof unless there have been no substantive
2 changes since the last submission. If there have been no substantive changes made the
institution may so state and is not required to provide documentation.

3 (1) The language in which each educational program will be offered.

4 (2) A statement that the institution has contracted with sufficient duly qualified
5 faculty who will teach each language group of students.

6 (3) The language of the textbooks and other written materials to be used by each
language group of students.

7 (w)(1) The application shall contain a statement that the institution has and can
8 maintain the financial resources required pursuant to section 71745.

9 (2) The institution shall submit current, audited financial statements at the time it
10 applies for approval to operate. Each set of financial statements shall comply with
Section 74115 of this chapter.

11 (x) The application shall include a statement that the institution has contracted with
12 sufficient duly qualified faculty members who meet the qualifications of section
13 71720 unless there have been no substantive changes since the last submission. If
there have been no substantive changes made the institution may so state and is not
required to provide documentation.

14 (y)(1) For each program offered, the application shall contain a description of the
15 facilities and the equipment which is available for use by students at the main, branch,
16 and satellite locations of the institution unless there have been no substantive changes
17 since the last submission. If there have been no substantive changes made the
institution may so state and is not required to provide documentation.

18 (2) For facilities that are leased or rented, the application shall contain the name and
19 address of the lessor or landlord, together with a copy of any use, lease, or rental
20 agreements for the facilities unless there have been no substantive changes since the
last submission. If there have been no substantive changes made the institution may
so state and is not required to provide documentation.

21 (3) The application shall include, in addition to the description of the physical
22 facilities, building diagrams or campus maps to assist the Bureau in locating these
23 facilities. The diagrams or maps shall identify the location of classrooms,
laboratories, workshops, and libraries unless there have been no substantive changes
24 since the last submission. If there have been no substantive changes made the
institution may so state and is not required to provide documentation.

25 (4) The description in the application shall include specifications of significant
26 equipment that demonstrate that the equipment meets the standards prescribed by the
Code and this chapter and is sufficient to enable students to achieve the educational
27 objectives of each education program unless there have been no substantive changes
28 since the last submission. If there have been no substantive changes made the
institution may so state and is not required to provide documentation.

1 (5) For each item of significant equipment, the description in the application shall
2 indicate whether the equipment is owned, leased, rented, or licensed for short- or
3 long-term, or owned by another and loaned to be used without charge unless there
4 have been no substantive changes since the last submission. If there have been no
5 substantive changes made the institution may so state and is not required to provide
6 documentation.

7 (6) The application shall contain a list of all permits, certifications, or other evidence
8 of inspections or authorizations to operate required by the jurisdictions within which
9 the institution operates that the institution has obtained, and/or an explanation as to
10 why those permits, certifications, or inspections have not yet been obtained unless
11 there have been no substantive changes since the last submission. If there have been
12 no substantive changes made the institution may so state and is not required to
13 provide documentation.

14 (z) The application shall include a description of library holdings, services, and other
15 learning resources, including policies and procedures for supplying them to students
16 who do not receive classroom instruction. The description need not consist of a list of
17 each holding. The description shall include an explanation of how the library and
18 other learning resources are sufficient to support the instructional needs of students
19 and, if no facilities exist at the institution, how and when students may obtain access
20 to a library and other learning resources as required by the curriculum unless there
21 have been no substantive changes since the last submission. If there have been no
22 substantive changes made the institution may so state and is not required to provide
23 documentation.

24 (aa) If an institution represents to the public, in any manner, that it offers job
25 placement assistance, the application shall include a description of the job placement
26 assistance that it provides unless there have been no substantive changes since the last
27 submission. If there have been no substantive changes made the institution may so
28 state and is not required to provide documentation.

(bb) The application shall include a copy of the institution's catalog, in published or
proposed-to-be-published form. The catalog shall meet the requirements of the Act
and of section 71810.

(cc) The institution shall submit with the application, a copy of the document that is
awarded to a graduating student upon successful completion of each educational
program unless there have been no substantive changes since the last submission. If
there have been no substantive changes made the institution may so state and is not
required to provide documentation.

(dd)(1) The application shall contain a description of how records required by Article
9 of the Act or this chapter are or will be organized and maintained, the types of
documents contained in student files, how the records are stored, and whether
academic and financial records are maintained in separate files. The description shall
include a statement of the institution's procedures for security and safekeeping of
records unless there have been no substantive changes since the last submission. If

1 there have been no substantive changes made the institution may so state and is not
2 required to provide documentation.

3 (2) The description in the application shall include the name, physical address, email
4 address, and telephone number of the custodian of records, and the physical addresses
5 and telephone numbers of the offices or buildings where the records will be
6 maintained unless there have been no substantive changes since the last submission.
7 If there have been no substantive changes made the institution may so state and is not
8 required to provide documentation.

9 (ee) The application shall contain a description of the procedures used by the
10 institution to assure that it is maintained and operated in compliance with the Act and
11 this Division.

12 (ff)(1) The institution shall include in the application any material facts as defined by
13 section 71340, which have not otherwise been disclosed in the application that might
14 reasonably affect the Bureau's decision to grant an approval to operate. In this
15 context, a fact would be "material" if it would change the Bureau's decision
16 concerning the institution's ability to comply with any applicable provisions of the
17 Act.

18 (2) The institution may also include in the application any other facts which the
19 institution would like the Bureau to consider in deciding whether to grant an approval
20 to operate.

21 (3) For the purposes of this section, a fact is "material" if, without its inclusion into
22 the application, the information contained in the application would be false,
23 misleading, or incomplete.

24 (gg) The institution demonstrates its continued capacity to meet the minimum
25 operating standards by submitting the renewal application signed and dated, and each
26 fact stated therein and each attachment thereto declared to be true under penalty of
27 perjury, as follows:

28 (1) Signatories:

(A) Each owner of the institution, or

(B) If the institution is incorporated, the chief executive officer of the corporation and
each person who owns or controls 25 percent or more of the stock or interest in the
institution, or

(C) Each member of the governing body of a nonprofit corporation.

(2) The declaration shall be in the following form:

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

_____	_____
(Date)	(Signature)''

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- (hh) In addition to the fees required by subdivision (d) of this section:
- (1) An application for renewal that is received by the Bureau more than 30 days after the expiration of the approval to operate shall be submitted with the 25 percent late payment penalty fee required by section 94931(a) of the Code.
 - (2) An application for renewal that is received by the Bureau more than 90 days after the expiration of the approval to operate shall be submitted with the 35 percent late payment penalty fee required by section 94931(b) of the Code.
 - (ii) Provided that a complete renewal application is received by the Bureau prior to the expiration of the approval, a valid approval to operate shall continue until the Bureau has acted upon the renewal application.
 - (jj) An approval to operate that has expired may be renewed at any time within 6 months after its expiration on filing of an application for renewal and, as a condition precedent to renewal, payment of all accrued and unpaid renewal fees, late payment penalty fees prescribed in subdivision (e) of this section, and any other fees that would have been due in order to renew timely. After an approval to operate has expired for more than 6 months, the approval is automatically cancelled and the institution must submit a complete application pursuant to section 71100, meet all current requirements, and pay all fees that would have been due in order to timely renew, in order to apply for approval.
 - (kk) An incomplete application filed under this section will render the institution ineligible for renewal.

6. California Code of Regulations, title 5, section 74115 states:
- (a) This section applies to every set of financial statements required to be prepared or filed by the Act or by this chapter.
 - (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 statements, shall comply with all of the following:
 - (1) Audited and reviewed financial statements shall be conducted and prepared in accordance with the generally accepted accounting principles established by the American Institute of Certified Public Accountants by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution.
 - (2) Financial statements prepared on an annual basis as required by section 74110(b) shall be prepared in accordance with the generally accepted accounting principles

1 established by the American Institute of Certified Public Accountants. Nonprofit
2 institutions shall provide annual financial statements as required under generally
3 accepted accounting principles for nonprofit organizations.

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

6 (4) If an audit performed to determine compliance with any federal or state student
7 financial aid program reveals any failure to comply with the requirements of the
8 program and the noncompliance creates any liability or potential liability for the
9 institution, the financial statements shall reflect the liability or potential liability.

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

13 (c) Work papers for the financial statements shall be retained for five years from the
14 date of the statements and shall be made available to the Bureau upon request.

15 (d) "Current" with respect to financial statements means completed no sooner than
16 120 days prior to the time it is submitted to the Bureau, and covering no less than the
17 most recent complete fiscal year. If more than 8 months will have elapsed between
18 the close of the most recent complete fiscal year and the time it is submitted, the
19 fiscal statements shall also cover no less than five months of that current fiscal year.

20 **CAUSE FOR DENIAL OF APPLICATION**

21 (Failure to Submit Current Financial Statements)

22 7. Respondent's application is subject to denial because its Financial Statements failed to
23 comply with the law on the following grounds:

24 a. Respondent failed to submit Financial Statements that were audited or
25 reviewed. (Cal. Code Regs., tit. 5 § 71475, subd. (e) and 74115 subd. (b)(1).).

26 b. Respondent failed to provide an additional five months for the fiscal year as
27 requested by the Bureau. (Cal. Code Regs., tit. 5 § 74115, subd. (d).).

28 c. Respondent failed to provide current financial statements for its most recent
complete fiscal year. (Cal. Code Regs., tit. 5 § 71475, subd. (kk).).

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PRAYER

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

1. Denying the application of Difai City College for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions; and
2. Taking such other and further action as deemed necessary and proper.

DATED: “5/29/2020”

“Original signature on file”
DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary
Education
Department of Consumer Affairs
State of California
Complainant

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