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7

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

11 In the Matter of the Statement of Issues  
Against:

Case No. 1001078

12 **INTERCULTURAL INSTITUTE OF**  
13 **CALIFORNIA, a Non-Profit Corporation**  
14 **1362 POST STREET**  
**SAN FRANCISCO CA 94109**

**STATEMENT OF ISSUES**

15 **School Code No. 3801931**

16 Respondent.

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 June 24, 2004 the former Bureau for Private Postsecondary and  
24 Vocational Education<sup>1</sup> issued a full approval to operate to the Intercultural Institute Of California  
25 (Respondent), a Non-Profit Corporation, (School Code No. 3801931):

26 <sup>1</sup> The former Bureau for Private Postsecondary and Vocational Education sunsetted on  
27 July 1, 2007. On October 11, 2009, the Private Postsecondary Education Act of 2009 (AB 48)  
28 was signed into law. The Act, which became operative on January 1, 2010, established the  
Bureau for Private Postsecondary Education.

1 3. Respondent's approval to operate expired on May 20, 2011 and has not been  
2 renewed.

3 3. On or about May 16, 2011, the Bureau for Private Postsecondary Education received  
4 a renewal application for its approval to operate from Respondent. The members of Respondent's  
5 Board of Directors each certified under penalty of perjury to the truthfulness of all statements,  
6 answers, and representations in the application. The Bureau denied the application on September  
7 15, 2015.

### 8 JURISDICTION

9 4. This Statement of Issues is brought before the Director of the Department of  
10 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the  
11 authority of the following laws.

12 5. Section 118, subdivision (b) of the Business and Professions Code provides that the  
13 suspension, expiration, surrender, or cancellation of a license shall not deprive the Director of  
14 jurisdiction to proceed with a disciplinary action during the period within which the license may  
15 be renewed, restored, reissued, or reinstated.

### 16 STATUTORY PROVISIONS

17 6. California Education Code Section 94891 states:

18 "(a) The bureau shall adopt by regulation the process and procedures whereby an institution  
19 may obtain a renewal of an approval to operate.

20 "(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its  
21 continued capacity to meet the minimum operating standards.

22 "(c)(1) An institution that is denied renewal of an approval to operate may file an appeal in  
23 accordance with the procedures established by the bureau pursuant to Section 94888.

24 "(2) An institution that has filed an appeal of a denial of a renewal application may continue  
25 to operate during the appeal process, but must disclose in a written statement, approved by the  
26 bureau, to all current and prospective students, that the institution's application for renewal of  
27 approval to operate was denied by the bureau because the bureau determined the application did  
28

1 not satisfy the requirements to operate in California, that the institution is appealing the bureau's  
2 decision, and that the loss of the appeal may result in the institution's closure.

3 “(3) If the bureau determines that the continued operation of the institution during the  
4 appeal process poses a significant risk of harm to students, the bureau shall make an emergency  
5 decision pursuant to its authority provided in Section 94938.”

### 6 REGULATORY PROVISIONS

7 7. California Code of Regulations Title 5, section 74112, subsection (d), states:

8 “(d) Completion Rates. Reporting of completion rates for an institution's Annual Report  
9 and Performance Fact Sheet shall include, for each educational program, the number of students  
10 who began program as defined in subdivision (b), the number of students available for  
11 graduation, number of graduates, and completion rate(s). An optional column may be added to  
12 include completion rate data for students completing within 101-150% of the published program  
13 length. For an institution reporting completion data pursuant to section 94929(b) of the Code,  
14 completion data shall be separately reported for each program. The Performance Fact Sheet shall  
15 disclose, if true, that the completion data is being reported for students completing within 150%  
16 of the published program length, and that data is not being separately reported for students  
17 completing the program within 100% of the published program length.

18 “Completion rates shall be included in the Performance Fact Sheet in a format  
19 substantially similar to the chart below, including the footnoted information below (dates,  
20 numbers, and other data shown are for example only):

21 “Completion Rates (includes data for the two calendar years prior to reporting)

22 **Name of Educational Program (Program Length)**

23

	<i>Number of</i>	<i>Students</i>			
<i>Calendar Year</i>	<i>Students Who</i>	<i>Available for</i>	<i>Completion</i>		
	<i>Began Program</i> <sup>1</sup>	<i>Graduation</i> <sup>2</sup>	<i>Graduates</i> <sup>3</sup>	<i>Rate</i> <sup>4</sup>	
26 20XX	100	98	70	71%	
27 20XY	80	80	55	69%	

28

1 Students Completing After Published Program Length - 150% Completion Rate  
*Name of Educational Program* (Program Length)

2		<i>Number of</i>	<i>Students</i>		<i>150%</i>
3	<i>Calendar Students Who</i>	<i>Began Program<sup>1</sup></i>	<i>Available for 150%<sup>2</sup></i>	<i>Graduates<sup>5</sup></i>	<i>Completion</i>
4	<i>Year</i>				<i>Rate<sup>6</sup></i>
5	20XX	100	98	25	26%
6	20XY	80	80	23	29%

7  
 8 <sup>1</sup> “Number of Students Who Began Program” is the number of students who began the program  
 9 who are scheduled to complete the program within the reporting calendar year.

10 <sup>2</sup> “Students available for graduation” is the number of students who began program minus the  
 11 number of “Students unavailable for graduation,” which means those students who have died,  
 12 been incarcerated, or called to active military duty.

13 <sup>3</sup> “Graduates” is the number of students who completed the program within 100% of the  
 14 published program length.

15 <sup>4</sup> “Completion Rate” is the number of Graduates divided by the Number of Students Available for  
 16 Graduation.

17 <sup>5</sup> “150% Graduates” is the number of students who completed the program within 101-150% of  
 18 the published program length.

19 <sup>6</sup> “150% Completion Rate” is the number of students who completed the program in the reported  
 20 calendar year within 101-150% of the published program length divided by the Number of  
 21 Students Available for Graduation in the published program length period.

22 8. California Code of Regulations Title 5, section **74115** states:

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

25 “(b) A set of financial statements shall contain, at a minimum, a balance sheet, an income  
 26 statement, and a cash flow statement, and the preparation of financial statements, shall comply  
 27 with all of the following:  
 28

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

5           “(2) Financial statements prepared on an annual basis as required by section 74110(b) shall  
6 be prepared in accordance with the generally accepted accounting principles established by the  
7 American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual  
8 financial statements as required under generally accepted accounting principles for nonprofit  
9 organizations.

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

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

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

19           ...

20           “(d) “Current” with respect to financial statements means completed no sooner than 120  
21 days prior to the time it is submitted to the Bureau, and covering no less than the most recent  
22 complete fiscal year. If more than 8 months will have elapsed between the close of the most  
23 recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no  
24 less than five months of that current fiscal year.

25           9. California Code of Regulations Title 5, section **71475** states:

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

1 “(b) An institution seeking to renew its Approval to Operate pursuant to section 94891 of  
2 the Code shall, prior to its expiration, complete and submit to the Bureau the “Application for  
3 Renewal of Approval to Operate and Offer Educations Programs for Non-Accredited  
4 Institutions,” Form Application 94891 (rev. 2/10).

5 ...

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

10 ...

11 10. California Code of Regulations Title 5, section **71745** states:

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

14 ...

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

24 ...”

25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

26 (Financial Resources and Statements)

27 11. Respondent's application is subject to denial under California Education Code Section  
28 94891 in conjunction with California Code of Regulations, Title 5, section 74115, subsections

1 (b)and (d); California Code of Regulations, Title 5, section 71475(e), and California Code of  
2 Regulations, Title 5, section 71745, subsection (a)(6), in that the financial statements submitted  
3 by Respondent did not meet the requirements of the regulations as follows:

4 a. Respondent submitted financial statements for 2010 with its May 16, 2011 renewal  
5 application. The financial statements that were submitted were not reviewed or audited as  
6 required.

7 b. Respondent also submitted reviewed financial statements for the year ended June 30,  
8 2011 on July 30, 2012. The submitted financial statements were reviewed and not audited. The  
9 submitted financial statements show a gross annual revenue of greater than \$500,000, which  
10 requires the submission of audited financial statements. The submitted financial statements were  
11 not "current". "Current" with respect to financial statements means completed no sooner than 120  
12 days prior to the time it is submitted to the Bureau, and covering no less than the most recent  
13 complete fiscal year. Also, if more than 8 months will have elapsed between the close of the  
14 most recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover  
15 no less than five months of that current fiscal year. The financial statements were submitted did  
16 not cover the most recent complete fiscal year at the time of submission, which would have been  
17 the year ended June 30, 2012.

18 c. Respondent submitted reviewed financial statements for the year ended June 30,  
19 2014, on December 3, 2014. The submitted financial statements were reviewed and not audited.  
20 The submitted financial statements show a gross annual revenue of greater than \$500,000, which  
21 requires the submission of audited financial statements. The submitted financial statements do  
22 not show a compliant ratio of current assets to current liabilities of 1.25 to 1.00 or greater. The  
23 financial statements list a ratio of current assets to current liabilities of 0.55 to 1.00 and do not  
24 meet the required ratio of 1.25 to 1.00.

25 **SECOND CAUSE FOR DENIAL OF APPLICATION**

26 (School Performance Fact Sheet)

27 12. Respondent's application is subject to denial under California Education Code Section  
28 94891 in conjunction with California Code of Regulations, Title 5, section 74112, subsection (d)

1 in that Respondent did not provide a Student Performance Fact Sheet (SPFS) that complied with  
2 the requirements for a SPFS. Respondent submitted its SPFS for 2012 and 2013 but the SPFS did  
3 not contain the required data regarding its completion rates. The SPFS lists all data as "N/A",  
4 stating that "no cohort completion rate can be calculated" due to its open enrollment system. The  
5 SPFS must contain the required data with regards to its completion rates.

6 **PRAYER**

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

- 10 1. Denying the Application for Renewal of Approval to Operate and Offer Educational  
11 Programs for Non-Accredited Institutions submitted by the Intercultural Institute of California  
12 2. Taking such other and further action as deemed necessary and proper.

13  
14 DATED: 3/22/16



15 JOANNE WENZEL  
16 Chief  
17 Bureau for Private Postsecondary Education  
18 Department of Consumer Affairs  
19 State of California  
20 *Complainant*

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