

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS RINALDI
Supervising Deputy Attorney General
3 GEOFF WARD
Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2660
6 Facsimile: (213) 897-2804
Email: geoffrey.ward@doj.ca.gov
7 *Attorneys for Complainant*

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 Statement of Issues
Against:

Case No. 1001113

12 **MENTOR LANGUAGE INSTITUTE**
13 **Armando Manjarrez, 50% owner; Maria**
Sally 50% owner
14 **Application for Renewal of Approval to**
Operate and Offer Educational Programs
15 **for Non-Accredited Institutions**

STATEMENT OF ISSUES

16 **School Code 1942371**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On June 13, 2006, the Bureau for Private Postsecondary and Vocational Education
24 issued an Approval to Operate to Respondent Mentor Language Institute, a California corporation
25 co-owned by Armando Manjarrez, who served as its President, and Maria Sally, who served as its

26 ¹ The former Bureau for Private Postsecondary Education and Vocational Education
27 sunsetted on July 2, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education
28 Act of 2009 (AB 48) was signed into law. The Act, which became operative on January 1, 2010,
established the Bureau for Private Postsecondary Education.

1 Vice President. Respondent was assigned School Code 1942371. Respondent's Approval to
2 Operate expired on April 2, 2013.

3 3. On March 27, 2013, the Bureau received Respondent's Application for Renewal of
4 Approval to Operate and Offer Educational Programs for Non-Accredited Institutions.

5 4. On December 10, 2013, the Bureau sent Respondent a letter identifying deficiencies
6 in the Renewal Application.

7 5. On January 13, 2014, the Bureau received a response to the deficiency letter.

8 6. On May 21, 2014, the Bureau sent Respondent a letter identifying deficiencies in the
9 resubmittal.

10 7. On June 12, 2014, the Bureau received a response to the May 21, 2014 deficiency
11 letter.

12 8. On July 22, 2014, the Bureau sent Respondent a letter identifying deficiencies in the
13 second resubmittal.

14 9. On August 25, 2014, Respondent submitted a response to the July 22, 2014
15 deficiency letter.

16 10. The Bureau denied the Application on October 30, 2015.

17 11. Respondent timely appealed on November 6, 2015.

18 JURISDICTION

19 12. This Statement of Issues is brought before the Director of the Department of
20 Consumer Affairs for the Bureau under the authority of the following laws. All section
21 references are to the Education Code unless otherwise indicated.

22 13. Section 94875 authorizes the Bureau to regulate private postsecondary educational
23 institutions under the California Private Postsecondary Education Act of 2009, Education Code
24 sections 94800 through 94950.

25 STATUTES AND REGULATIONS

26 *Standards for Evaluating Applications to Operate and Their Renewal*

27 14. In relevant part, Section 94885 requires the Bureau to adopt certain minimum
28 operating standards for institutions:

1 “(a) The bureau shall adopt by regulation minimum operating standards
for an institution that shall reasonably ensure that all of the following occur:

2 ...

3 (6) The institution is financially sound and capable of fulfilling its
commitments to students.

4 ...

5 (9) The institution is maintained and operated in compliance with this
chapter and all other applicable ordinances and laws.”

6 15. Section 94887 dictates when the Bureau may grant an application to operate:

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

11 16. Section 94891 requires the Bureau to adopt regulations for evaluating renewals of
12 approvals to operate and requires renewal applicants to demonstrate their capacity to meet the
13 minimum operating standards:

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

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

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

19 (2) An institution that has filed an appeal of a denial of a renewal application
20 may continue to operate during the appeal process, but must disclose in a written
statement, approved by the bureau, to all current and prospective students, that the
21 institution’s application for renewal of approval to operate was denied by the
bureau because the bureau determined the application did not satisfy the
22 requirements to operate in California, that the institution is appealing the bureau’s
decision, and that the loss of the appeal may result in the institution’s closure.

23 (3) If the bureau determines that the continued operation of the institution
24 during the appeal process poses a significant risk of harm to students, the bureau
shall make an emergency decision pursuant to its authority provided in Section
25 94938.

26 17. In relevant part, California Code of Regulations, title 5, section 71475 implements
section 94891 by providing requirements for renewal applications:

27 “(b) An institution seeking to renew its Approval to Operate pursuant to
28 section 94891 of the Code shall, prior to its expiration, complete and submit to the
Bureau the "Application for Renewal of Approval to Operate and Offer Educations

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

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

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

13 (kk) An incomplete application filed under this section will render the
14 institution ineligible for renewal."

15
16 Regulations Governing Institutions' Financial Statements

17 18. California Code of Regulations Title 5 section 74115 sets general requirements for
18 institutions' financial statements:

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

21 (b) A set of financial statements shall contain, at a minimum, a balance
22 sheet, an income statement, and a cash flow statement, and the preparation of
23 financial statements, shall comply with all of the following:

24 (1) Audited and reviewed financial statements shall be conducted and
25 prepared in accordance with the generally accepted accounting principles established
26 by the American Institute of Certified Public Accountants by an independent certified
27 public accountant who is not an employee, officer, or corporate director or member of
28 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 established by the American Institute of Certified Public
Accountants. Nonprofit institutions shall provide annual financial statements as
required under generally accepted accounting principles for nonprofit organizations.

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

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

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

...

(d) "Current" with respect to financial statements means completed no

1 sooner than 120 days prior to the time it is submitted to the Bureau, and covering no
2 less than the most recent complete fiscal year. If more than 8 months will have
3 elapsed between the close of the most recent complete fiscal year and the time it is
4 submitted, the fiscal statements shall also cover no less than five months of that
5 current fiscal year.

6 19. In relevant part, California Code of Regulations, title 5, section 71745 sets specific
7 requirements for institution's assets and financial resources:

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

10 (1) Provide all of the educational programs that the institution represented it
11 would provide.

12 (2) Ensure that all students admitted to its educational programs have a
13 reasonable opportunity to complete the programs and obtain their degrees or
14 diplomas.

15 (3) Maintain the minimum standards required by the Act and this chapter.

16 (4) Pay timely refunds as required by Article 13 of the Act.

17 (5) Pay all operating expenses due within 30 days.

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

19 *Statutes and Regulations Governing School Performance Fact Sheets*

20 20. In relevant part, Section 94902 requires that students be provided with School
21 Performance Fact Sheets prior to enrollment:

22 (a) A student shall enroll solely by means of executing an enrollment
23 agreement. The enrollment agreement shall be signed by the student and by an
24 authorized employee of the institution.

25 (b) An enrollment agreement is not enforceable unless all of the following
26 requirements are met:

27 (1) The student has received the institution's catalog and School
28 Performance Fact Sheet prior to signing the enrollment agreement.

(2) At the time of the execution of the enrollment agreement, the
institution held a valid approval to operate.

(3) Prior to the execution of the enrollment agreement, the student and the
institution have signed and dated the information required to be disclosed in the
Student Performance Fact Sheet pursuant to subdivisions (a) to (d), inclusive, of
Section 94910. Each of these items in the Student Performance Fact Sheet shall

1 include a line for the student to initial and shall be initialed and dated by the student.

2 (c) A student shall receive a copy of the signed enrollment agreement, in
3 writing or electronically, regardless of whether total charges are paid by the student.

4 21. In relevant part, Section 94910 requires School Performance Fact Sheets to calculate
5 student completion rates:

6 "Except as provided in subdivision (d) of Section 94909 and Section
7 94910.5, prior to enrollment, an institution shall provide a prospective student with a
8 School Performance Fact Sheet containing, at a minimum, the following information,
9 as it relates to the educational program:

10 (a) Completion rates, as calculated pursuant to Article 16 (commencing
11 with Section 94928).

12 22. In relevant part, section 94928 defines terms used in calculating completion rates:

13 As used in this article, the following terms have the following meanings:

14 (a) "Cohort population" means the number of students that began a program
15 on a cohort start date.

16 (b) "Cohort start date" means the first class day after the cancellation period
17 during which a cohort of students attends class for a specific program.

18 (c) "On-time graduates" means the number of students who complete a
19 program within 100 percent of the published program length. An institution may
20 separately state completion information for students completing the program within
21 150 percent of the original contracted time, but that information may not replace
22 completion information for students completing within the original scheduled time.
23 Completion information shall be separately stated for each campus or branch of the
24 institution.

25 ...

26 (g) "Students available for graduation" means the cohort population minus
27 the number of students unavailable for graduation.

28 (h) "Students unavailable for graduation" means students who have died,
been incarcerated, or called to active military duty.

29 23. In relevant part, California Code of Regulations, title 5, section 74112 details how the
30 data in School Performance Facts sheets must be calculated and presented:

31 (a) Format. The format for the Performance Fact Sheet shall be in at least
32 12 pt. type, in an easily readable font, with 1.15 line spacing. The Performance Fact
33 Sheet shall contain all and only the information required or specifically permitted by
34 section 94910 of the Code or this chapter.

35 (b) In addition to the definitions contained in section 94928 of the Code:

36 (1) "Number of Students Who Began Program" means the number of
37 students who began a program who are scheduled to complete the program within
38 100% of the published program length within the reporting calendar year, and
includes all the students who remained enrolled after their cancellation period.

(2) "Number of Graduates" means the number of students who completed

1 the program within 100% of the published program length within the reporting
2 calendar year.

3 (3) "Graduates Employed in the Field" means those graduates who meet
4 the definition of section 94928(e) of the Code, who have reported their employment
5 to the institution.

6 (c) Reporting periods:

7 (1) An Annual Report shall include data for all educational programs as
8 defined in section 94837 of the Code for the previous one calendar year.

9 (2) A Performance Fact Sheet shall be current and available not later than
10 August 1st, and shall report data for the previous two calendar years based upon the
11 "number of students who began program" or the "number of graduates," as defined in
12 subdivision (b), for each reported calendar year.

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

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

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

Name of Educational Program (Program Length)				
Calendar Year	Number of Students Who Began Program ¹	Students Available for Graduation	Graduates ³	Completion Rate ⁴
20XX	100	98	70	71%
20XY	80	80	55	69%

29 Students Completing After Published Program Length - 150%
30 Completion Rate

31 Name of Educational Program (Program Length)

Calendar Year	Number of Students Who Began Program ¹	Students Available for Graduation	150% ⁵ Graduates	150% ⁶ Completion Rate
20XX	100	98	25	26%
20XY	80	80	23	29%

¹ "Number of Students Who Began Program" is the number of students who began the program who are scheduled to complete the program within the reporting calendar year.

² "Students available for graduation" is the number of students who began program minus the number of "Students unavailable for graduation," which means those students who have died, been incarcerated, or called to active military duty.

³ "Graduates" is the number of students who completed the program within 100% of the published program length.

⁴ "Completion Rate" is the number of Graduates divided by the Number of Students Available for Graduation.

⁵ "150% Graduates" is the number of students who completed the program within 101-150% of the published program length.

⁶ "150% Completion Rate" is the number of students who completed the program in the reported calendar year within 101-150% of the published program length divided by the Number of Students Available for Graduation in the published program length period."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Failure to Provide Proper Financial Statements)

24. Respondent's application for renewal of approval to operate failed to include financial statements that met the statutory and regulatory requirements, subjecting its application to denial under Section 94885 for failing to operate the institution in compliance with the California Private Postsecondary Education Act of 2009, under Section 94887 for failing to present sufficient evidence to the Bureau that Respondent had the capacity to satisfy the minimum operating standards, under Section 94891 for failing to demonstrate its continued capacity to meet the minimum operating standards, and under California Code of Regulations, title 5, section 71475 subdivision (kk) for submitting an incomplete renewal application.

25. Complainant realleges paragraphs 3 through 11.

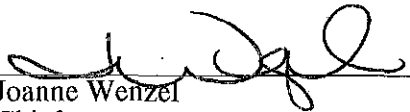
1 Respondent's School Performance Fact Sheets for its Business Communications Program had
2 conflicting information about student completion rates. One table indicated that 10 students
3 began the program in 2012 and 43 students began in 2013. But another table indicated that 47
4 students began the program in 2012 and 116 students began in 2013.

5 **PRAYER**

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

- 9 1. Denying the application of Mentor Language Institute and its owners Armando
10 Manjarrez (50% owner) and Maria Sally (50% owner) for a Renewal of Approval to Operate and
11 Offer Educational Programs for Non-Accredited Institutions; and
12 2. Taking such other and further action as deemed necessary and proper.

13
14
15 DATED: 4/27/16


16 Joanne Wenzel
17 Chief
18 Bureau for Private Postsecondary Education
19 Department of Consumer Affairs
20 State of California
21 Complainant

22
23
24
25
26
27
28
LA2015603987
52008643.docx