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

11
12 In the Matter of the Statement of Issues
Against:

Case No. 999520

13
14 **ADVANCE ENGLISH ACADEMY,**
ZACHARY B. CAPTAIN, OWNER

STATEMENT OF ISSUES

15 **Institution Code No. 44933240**
16 **Satellite School Code No. 78865090**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about January 10, 2012, the Bureau for Private Postsecondary Education
25 (Bureau) received an Application for Renewal of Approval to Operate an Institution Non-
26 Accredited from Advance English Academy, Zachary B. Captain, Owner (Respondent). On or
27 about July 15, 2013, the Bureau issued Respondent a letter explaining the deficiencies in its
28 application.

1 has the capacity to satisfy the minimum operating standards. The bureau shall deny an
2 application for an approval to operate if the application does not satisfy those standards.”

3 9. Section 94891(b) of the Code states:

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

6 10. Section 94908 of the Code states:

7 “Any information or statement required by this article to be included in the catalog, School
8 Performance Fact Sheet, or enrollment agreement shall be printed in at least the same size font as
9 the majority of the text in that document.”

10 11. Section 94909, subdivision (a) of the Code states in relevant part:

11 “(a) Prior to enrollment, an institution shall provide a prospective student, either in writing
12 or electronically, with a school catalog containing, at a minimum, all of the following:”

13 (3) The following statements:

14 . . .

15 (B) “As a prospective student, you are encouraged to review this catalog prior to signing an
16 enrollment agreement. You are also encouraged to review the School Performance Fact Sheet,
17 which must be provided to you prior to signing an enrollment agreement.”

18 (C) “A student or any member of the public may file a complaint about this institution with
19 the Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by
20 completing a complaint form, which can be obtained on the bureau's Internet Web site (Internet
21 Web site address).”

22”

23 12. Section 94911, subdivision (c) of the Code states in relevant part:

24 “An enrollment agreement shall include, at a minimum, all of the following:

25 . . .

26 (c) In underlined capital letters on the same page of the enrollment agreement in which the
27 student’s signature is required, the total charges for the current period of attendance, the estimated
28

1 total charges for the entire educational program, and the total charges the student is obligated to
2 pay upon enrollment.

3”

4 REGULATORY PROVISIONS

5 13. California Code of Regulations, title 5, section 71700 states:

6 “The Bureau may request that an institution document compliance with the standards set
7 forth in the Act and this Division to obtain and maintain an approval to operate.”

8 14. California Code of Regulations, title 5, section 71745, subdivision (a)(6) states in
9 relevant part:

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

12 . . .

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

22 15. California Code of Regulations, title 5, section 71810 states in relevant part:

23 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
24 all of the following:

25 . . .

26 (13) Housing information including all of the following:

27 . . .

28

1 (C) If the institution has no responsibility to find or assist a student in finding housing, a
2 clear and conspicuous statement so indicating. A statement that the program is 'non- residential'
3 does not satisfy this subparagraph.

4”

5 16. California Code of Regulations, title 5, section 74115, subdivision (b) states in
6 relevant part:

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

10 ...

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

13”

14 17. California Code of Regulations, title 5, section 76215 states in relevant part:

15 “(a) A qualifying institution shall include the following statement on both its enrollment
16 agreement for an educational program and its current schedule of student charges:

17 ‘You must pay the state-imposed assessment for the Student Tuition Recovery Fund
18 (STRF) if all of the following applies to you:

19 1. You are a student in an educational program, who is a California resident, or are enrolled
20 in a residency program, and prepay all or part of your tuition either by cash, guaranteed student
21 loans, or personal loans, and

22 2. Your total charges are not paid by any third-party payer such as an employer,
23 government program or other payer unless you have a separate agreement to repay the third party.

24 You are not eligible for protection from the STRF and you are not required to pay the STRF
25 assessment, if either of the following applies:

26 1. You are not a California resident, or are not enrolled in a residency program, or

27 2. Your total charges are paid by a third party, such as an employer, government program or
28 other payer, and you have no separate agreement to repay the third party.’

1 (b) In addition to the statement described under subdivision (a) of this section, a qualifying
2 institution shall include the following statement on its current schedule of student charges:

3 ‘...’

4 You may be eligible for STRF if you are a California resident or are enrolled in a residency
5 program, prepaid tuition, paid the STRF assessment, and suffered an economic loss as a result of
6 any of the following:

7 ...

8 4. There was a material failure to comply with the Act or this Division within 30 days
9 before the school closed or, if the material failure began earlier than 30 days prior to closure, the
10 period determined by the Bureau.

11”

12 CAUSES FOR DENIAL OF APPLICATION

13 FIRST CAUSE FOR DENIAL OF APPLICATION

14 (Noncompliance with Minimum Operating Standards; Financial Resources)
(Educ. Code §§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700;
15 71745, subd. (a)(6); and 74115, subd. (b)(3))

16 18. Respondent’s application is subject to denial because it fails to document that
17 Respondent has sufficient assets and financial resources to maintain a ratio of current assets to
18 current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year. (Educ. Code
19 §§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700; 71745, subd. (a)(6); and
20 74115, subd. (b)(3)).

21 19. In particular, Respondent submitted an application indicating its ratio of current assets
22 to current liabilities is 0.66. This ratio of current assets to current liabilities is below that required
23 by applicable statutes and California regulations.

24 SECOND CAUSE FOR DENIAL OF APPLICATION

25 (Noncompliance with Minimum Operating Standards; Access to School Catalog)
(Educ. Code §§ 94887; 94891, subd. (b); and 94909, subd. (a))

26 20. Respondent’s application is subject to denial because it fails to comply with
27 California law requiring a method for prospective students to access school catalogs. (Educ.
28 Code §§ 94887; 94891, subd. (b); and 94909, subd. (a)).

1 21. In particular, Section 94909, subdivision (a) of the Code requires that “[p]rior to
2 enrollment, an institution shall provide a prospective student, either in writing or electronically,
3 with a school catalog” Respondent’s application does not propose any method by which
4 prospective students may obtain the school catalog.

5
6 THIRD CAUSE FOR DENIAL OF APPLICATION
7 (Noncompliance with Minimum Operating Standards; Content of School Catalog,
8 Complaint Provision)
9 (Educ. Code §§ 94887; 94891, subd. (b); 94908; and 94909, subd. (a)(3)(C))

10 22. Respondent’s application is subject to denial because the content of Respondent’s
11 proposed school catalog fails to comply with California law. (Educ. Code §§ 94887; 94891,
12 subd. (b); 94908; and 94909, subd. (a)(3)(C)).

13 23. In particular, Section 94909, subdivision (a)(3)(C) of the Code requires that the
14 student catalog contain the following statement:

15 “A student or any member of the public may file a complaint about this institution with the
16 Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by
17 completing a complaint form, which can be obtained on the bureau’s Internet Web site (Internet
18 Web site address).”

19 24. Section 94908 of the Code requires that this statement be “printed in at least the same
20 size font as the majority of the text in [that document].” In Respondent’s proposed catalog,
21 however, the website address is in a significantly smaller font size.

22 FOURTH CAUSE FOR DENIAL OF APPLICATION
23 (Noncompliance with Minimum Operating Standards; Content of School Catalog,
24 “Non-Residential” Provision)
25 (Educ. Code §§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700 and 71810,
26 subd. (b)(13)(C))

27 25. Respondent’s application is subject to denial because the content of Respondent’s
28 proposed school catalog fails to comply with California law. (Educ. Code §§ 94887 and 94891,
subd. (b), and Cal. Code Regs., title 5, §§ 71700 and 71810, subd. (b)(13)(C)).

 26. In particular, California Code of Regulations, title 5, section 71810, subdivision
(b)(13)(C) requires that, “if the institution has no responsibility to find or assist a student in
finding housing, the catalog contain a clear and conspicuous statement so indicating....” The

1 statement in Respondent's proposed catalog indicating that the institution is "non-residential" is
2 not clear and conspicuous, and Respondent did not make this statement conspicuous using bold,
3 capitalized, or underlined font.

4 FIFTH CAUSE FOR DENIAL OF APPLICATION

5 (Noncompliance with Minimum Operating Standards; Format of Enrollment Agreement)
6 (Educ. Code §§ 94887; 94891, subd. (b); and 94911, subd. (c))

7 27. Respondent's application is subject to denial because the proposed enrollment
8 agreement fails to comply with California law. (Educ. Code §§ 94887; 94891, subd. (b); and
9 94911, subd. (c)).

10 28. In particular, Section 94911, subdivision (c) requires that an enrollment agreement
11 contain, in underlined capital letters, on the same page as the student signature block, the
12 following information: the total charges for the current period of attendance, the estimated total
13 charges for the entire educational program, and the total charges the student is obligated to pay
14 upon enrollment. Respondent's proposed enrollment agreement contains this information on a
15 page other than the page containing the student signature block.

16 SIXTH CAUSE FOR DENIAL OF APPLICATION

17 (Noncompliance with Minimum Operating Standards; Content of Enrollment Agreement)
18 (Educ. Code §§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700 and
19 76215, subds. (a) and (b))

20 29. Respondent's application is subject to denial because the proposed enrollment
21 agreement fails to comply with California law. (Educ. Code §§ 94887 and 94891, subd. (b), and
22 Cal. Code Regs., title 5, §§ 71700 and 76215, subds. (a) and (b)).

23 30. In particular, Respondent's proposed enrollment agreement contains language similar
24 to but different from that specifically required in California Code of Regulations, title 5, section
25 76125, subdivisions (a) and (b). Respondent's proposed enrollment agreement reads in relevant
26 part: "You may be eligible for STRF if you are a California resident or are enrolled in a
27 residency program, prepaid tuition, paid STRF assessment . . ." California law requires that this
28 statement read: "You may be eligible for STRF if you are a California resident or are enrolled in
a residency program, prepaid tuition, paid the STRF assessment . . ." (Cal. Code Regs., title 5, §

1 76215, subd. (b)) (emphasis on word missing from Respondent's proposed enrollment
2 agreement).

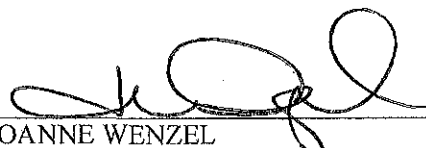
3 31. Respondent's proposed enrollment agreement also reads in relevant part: "There was
4 a material failure to comply with the Act or the Division" California law requires that this
5 statement read: "There was a material failure to comply with the Act or this Division" (Cal.
6 Code Regs., title 5, § 76215, subd. (b)) (emphasis on word missing from Respondent's proposed
7 agreement).

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Bureau for Private Postsecondary Education, Department of
11 Consumer Affairs, issue a decision:

- 12 1. Denying the application of Advance English Academy, Zachary B. Captain, Owner
13 for Renewal of Approval to Operate an Institution Non-Accredited; and
14 2. Taking such other and further action as the Director deems necessary and proper.

15
16
17 DATED: 6/16/14


18 JOANNE WENZEL
19 Chief
20 Bureau for Private Postsecondary Education
21 Department of Consumer Affairs
22 State of California
23 Complainant

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