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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 Case No. 999520
13	Against:
14	ADVANCE ENGLISH ACADEMY, ZACHARY B. CAPTAIN, OWNER STATEMENT OF ISSUES
15	Institution Code No. 44933240 Satellite School Code No. 78865090
16	Respondent.
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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.
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1	3. On or about August 15, 2013, Respondent emailed the Bureau asking for additional
2	time to submit documentation in support of its application. On or about September 23, 2013,
3	Respondent sent the Bureau a written response to its July 15, 2013 deficiency letter, which
4	included additional and supplemental documents in support of Respondent's application.
5	4. On or about September 25, 2013, the Bureau issued a second deficiency letter. On or
6	about October 28, 2013, Respondent sent the Bureau a written response to the second deficiency
7	letter, including additional and supplemental documents in support of Respondent's application.
8	This response included a statement from Zachary B. Captain, dated October 7, 2013, certifying
9	under penalty of perjury the truthfulness of all statements, answers, and representations in the
10	application.
11	5. On or about February 20, 2014, the Bureau issued Respondent a formal Notice of
12	Denial of Application for Renewal of Approval to Operate an Institution Non-Accredited.
13	JURISDICTION
14	6. This Statement of Issues is brought before the Director of the Department of
15	Consumer Affairs ("Director") for the Bureau for Private Postsecondary Education, under the
16	authority of the following laws. All section references are to the Education Code unless
17	otherwise indicated.
18	STATUTORY PROVISIONS
19	7. Section 94886 of the Code states:
20	"Except as exempted in Article 4 (commencing with Section 94874) or in compliance with
21	the transition provisions in Article 2 (commencing with Section 94802), a person shall not open,
22	conduct, or do business as a private postsecondary educational institution in this state without
23	obtaining an approval to operate under this chapter."
24	8. Section 94887 of the Code states:
25	"An approval to operate shall be granted only after an applicant has presented sufficient
26	evidence to the bureau, and the bureau has independently verified the information provided by the
27	applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
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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	³⁵
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
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1	total charges for the entire educational program, and the total charges the student is obligated to
2	pay upon enrollment.
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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:
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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	3 3 1 1 1 1
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.'
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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	'" CAUSES FOR DENIAL OF APPLICATION
12	FIRST CAUSE FOR DENIAL OF APPLICATION
13	(Noncompliance with Minimum Operating Standards; Financial Resources) (Educ. Code §§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700;
14	71745, subd. (a)(6); and 74115, subd. (b)(3))
15	18. Respondent's application is subject to denial because it fails to document that
16	Respondent has sufficient assets and financial resources to maintain a ratio of current assets to
17	current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year. (Educ. Code
18	§§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700; 71745, subd. (a)(6); and
19	74115, subd. (b)(3)).
20	19. In particular, Respondent submitted an application indicating its ratio of current assets
21	to current liabilities is 0.66. This ratio of current assets to current liabilities is below that required
22	by applicable statutes and California regulations.
23	SECOND CAUSE FOR DENIAL OF APPLICATION (Noncompliance with Minimum Operating Standards; Access to School Catalog)
24	(Educ. Code §§ 94887; 94891, subd. (b); and 94909, subd. (a))
25	20. Respondent's application is subject to denial because it fails to comply with
26	California law requiring a method for prospective students to access school catalogs. (Educ.
27	Code §§ 94887; 94891, subd. (b); and 94909, subd. (a)).
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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.
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6 7	<u>THIRD CAUSE FOR DENIAL OF APPLICATION</u> (Noncompliance with Minimum Operating Standards; Content of School Catalog, Complaint Provision) (Educ. Code §§ 94887; 94891, subd. (b); 94908; and 94909, subd. (a)(3)(C))
8	 22. Respondent's application is subject to denial because the content of Respondent's
	proposed school catalog fails to comply with California law. (Educ. Code §§ 94887; 94891,
9	
10	subd. (b); 94908; and 94909, subd. (a)(3)(C)).
11	23. In particular, Section 94909, subdivision (a)(3)(C) of the Code requires that the
12	student catalog contain the following statement:
13	"A student or any member of the public may file a complaint about this institution with the
14	Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by
15	completing a complaint form, which can be obtained on the bureau's Internet Web site (Internet
16	Web site address)."
17	24. Section 94908 of the Code requires that this statement be "printed in at least the same
18	size font as the majority of the text in [that document]." In Respondent's proposed catalog,
19	however, the website address is in a significantly smaller font size.
20	FOURTH CAUSE FOR DENIAL OF APPLICATION
21	(Noncompliance with Minimum Operating Standards; Content of School Catalog, "Non-Residential" Provision)
22	(Educ. Code §§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700 and 71810, subd. (b)(13)(C))
23	25. Respondent's application is subject to denial because the content of Respondent's
24	proposed school catalog fails to comply with California law. (Educ. Code §§ 94887 and 94891,
25	subd. (b), and Cal. Code Regs., title 5, §§ 71700 and 71810, subd. (b)(13)(C)).
26	26. In particular, California Code of Regulations, title 5, section 71810, subdivision
27	(b)(13)(C) requires that, "if the institution has no responsibility to find or assist a student in
28	finding housing, the catalog contain a clear and conspicuous statement so indicating" The
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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) (Educ. Code §§ 94887; 94891, subd. (b); and 94911, subd. (c))
6	27. Respondent's application is subject to denial because the proposed enrollment
7	agreement fails to comply with California law. (Educ. Code §§ 94887; 94891, subd. (b); and
8	94911, subd. (c)).
9	28. In particular, Section 94911, subdivision (c) requires that an enrollment agreement
10	contain, in underlined capital letters, on the same page as the student signature block, the
11	following information: the total charges for the current period of attendance, the estimated total
12	charges for the entire educational program, and the total charges the student is obligated to pay
13	upon enrollment. Respondent's proposed enrollment agreement contains this information on a
14	page other than the page containing the student signature block.
15	SIXTH CAUSE FOR DENIAL OF APPLICATION
16 17	(Noncompliance with Minimum Operating Standards; Content of Enrollment Agreement) (Educ. Code §§ 94887 and 94891, subd. (b), and Cal. Code Regs., title 5, §§ 71700 and 76215, subds. (a) and (b))
17	29. Respondent's application is subject to denial because the proposed enrollment
10	agreement fails to comply with California law. (Educ. Code §§ 94887 and 94891, subd. (b), and
20	Cal. Code Regs., title 5, §§ 71700 and 76215, subds. (a) and (b)).
20	30. In particular, Respondent's proposed enrollment agreement contains language similar
22	to but different from that specifically required in California Code of Regulations, title 5, section
22	76125, subdivisions (a) and (b). Respondent's proposed enrollment agreement reads in relevant
24	part: "You may be eligible for STRF if you are a California resident or are enrolled in a
25	residency program, prepaid tuition, paid STRF assessment" California law requires that this
26	statement read: "You may be eligible for STRF if you are a California resident or are enrolled in
27	a residency program, prepaid tuition, paid <u>the</u> STRF assessment " (Cal. Code Regs., title 5, §
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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 <u>this</u> Division" (Cal.
6	Code Regs., title 5, § 76215, subd. (b)) (emphasis on word missing from Respondent's proposed
7	agreement).
8	<u>PRAYER</u>
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.
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16	DATED: 61614
17	JOANNE WENZEL Chief
18	Bureau for Private Postsecondary Education Department of Consumer Affairs
19	State of California Complainant
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