

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
12 Against:
13 **BAY AREA VIDEO COALITION**
14 **2727 Mariposa Street, 2nd Floor**
San Francisco, CA 94110
15 **School Code No. 3806101**
16 **Institution Code No. 3806101**
17 Respondent.

Case No. 999859
STATEMENT OF ISSUES

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 (Bureau), Department of
23 Consumer Affairs.

24 2. On the following dates, the Bureau issued an approval to operate the following
25 programs to Bay Area Video Coalition (Respondent).

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Approved Program Name	Approval Date
Beginning Avid Certification Program	6/17/1999
Beginning Digital Post Production Certification Program	6/17/1999
Beginning Multimedia Certification Program	6/17/1999
Beginning Video Production Certification Program	6/17/1999
Intermediate Avid Certification Program	6/17/1999
Intermediate Digital Post Production Certification Program	6/17/1999
Intermediate Multimedia Certification Program	6/17/1999
Intermediate Video Production Certification Program	6/17/1999
Media link – Web Development	1/15/2002
Video Core	8/6/2002
Video Editing	8/6/2002
Video Graphic	8/6/2002
Video Production	8/6/2002
Web Core	8/6/2002
Web Design	8/6/2002
Web Streaming	8/6/2002

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

4. On or about October 12, 2011, the Bureau received an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions from Respondent. On or about October 5, 2011, Marc Vogl, Respondent's Executive Director, certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

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1 5. On or about July 26, 2012, the Bureau sent a letter to Respondent that set forth
2 numerous deficiencies in Respondent's renewal application. Respondent did not respond to the
3 Bureau's July 26, 2012 letter.

4 6. On or about August 21, 2012, the Bureau sent Respondent a second deficiency letter.
5 Respondent did not respond to the Bureau's August 21, 2012 letter.

6 7. On or about April 14, 2014, the Bureau sent Respondent a third deficiency letter. On
7 or about April 15, 2014, Respondent sent the Bureau a letter in response to the Bureau's
8 deficiency letter of April 14, 2014. Respondent included with its letter numerous documents,
9 including audited financial statements for the fiscal years ending December 31, 2010, December
10 31, 2011, and December 31, 2012. Respondent did not submit audited financial statements for
11 the fiscal year ending December 31, 2013.

12 8. The Bureau denied Respondent's renewal application on or about July 9, 2014.

13 **JURISDICTION**

14 9. This Statement of Issues is brought before the Director of the Department of
15 Consumer Affairs (Director) for the Bureau under the authority of the following laws. All section
16 references are to the Education Code¹ unless otherwise indicated.

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

21 **STATUTORY PROVISIONS**

22 11. Education Code section 94909 provides, in pertinent part:

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

25 ...

26 _____
27 ¹ Effective January 1, 2015, in accordance with SB1247, the California Private
28 Postsecondary Education Act of 2009 was amended. Because the conduct at issue in this case
 occurred before January 1, 2015, however, all citations are to the previous version of the
 California Private Postsecondary Education Act of 2009 that was in effect in 2014.

1 “(15) The following statement:

2 “NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS
3 EARNED AT OUR INSTITUTION

4 “The transferability of credits you earn at (name of institution) is at the complete discretion
5 of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or
6 certificate) you earn in (name of educational program) is also at the complete discretion of the
7 institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate)
8 that you earn at this institution are not accepted at the institution to which you seek to transfer,
9 you may be required to repeat some or all of your coursework at that institution. For this reason
10 you should make certain that your attendance at this institution will meet your educational goals.
11 This may include contacting an institution to which you may seek to transfer after attending
12 (name of institution) to determine if your (credits or degree, diploma or certificate) will transfer.”

13 12. Education Code section 94911 provides, in pertinent part:

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

15 ...

16 “(b) A schedule of total charges, including a list of any charges that are nonrefundable and
17 the student’s obligations to the Student Tuition Recovery Fund, clearly identified as
18 nonrefundable charges.

19 “(c) In underlined capital letters on the same page of the enrollment agreement in which the
20 student’s signature is required, the total charges for the current period of attendance, the estimated
21 total charges for the entire educational program, and the total charges the student is obligated to
22 pay upon enrollment.

23 “(d) A clear and conspicuous statement that the enrollment agreement is legally binding
24 when signed by the student and accepted by the institution.

25 “(e)(1) A disclosure with a clear and conspicuous caption, ‘STUDENT’S RIGHT TO
26 CANCEL,’ under which it is explained that the student has the right to cancel the enrollment
27 agreement and obtain a refund of charges paid through attendance at the first class session, or the
28 seventh day after enrollment, whichever is later.

1 “(2) The disclosure shall contain the institution’s refund policy and a statement that, if the
2 student has received federal student financial aid funds, the student is entitled to a refund of
3 moneys not paid from federal student financial aid program funds.

4 “(3) The text shall also include a description of the procedures that a student is required to
5 follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund.

6 “(f) A statement specifying that, if the student obtains a loan to pay for an educational
7 program, the student will have the responsibility to repay the full amount of the loan plus interest,
8 less the amount of any refund.

9 “(g) A statement specifying that, if the student is eligible for a loan guaranteed by the
10 federal or state government and the student defaults on the loan, both of the following may occur:

11 “(1) The federal or state government or a loan guarantee agency may take action against the
12 student, including applying any income tax refund to which the person is entitled to reduce the
13 balance owed on the loan.

14 “(2) The student may not be eligible for any other federal student financial aid at another
15 institution or other government assistance until the loan is repaid.

16 “(h) The transferability disclosure that is required to be included in the school catalog, as
17 specified in paragraph (15) of subdivision (a) of Section 94909.

18 “(i)(1) The following statement: ‘Prior to signing this enrollment agreement, you must be
19 given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to
20 review prior to signing this agreement. These documents contain important policies and
21 performance data for this institution. This institution is required to have you sign and date the
22 information included in the School Performance Fact Sheet relating to completion rates,
23 placement rates, license examination passage rates, salaries or wages, and the most recent three-
24 year cohort default rate, if applicable, prior to signing this agreement.’

25 “(2) Immediately following the statement required by paragraph (1), a line for the student to
26 initial, including the following statement: ‘I certify that I have received the catalog, School
27 Performance Fact Sheet, and information regarding completion rates, placement rates, license
28 examination passage rates, salary or wage information, and the most recent three-year cohort

1 default rate, if applicable, included in the School Performance Fact sheet, and have signed,
2 initialed, and dated the information provided in the School Performance Fact Sheet.’

3 “(j) The following statements:

4 ...

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

9 ...”

10 REGULATORY PROVISIONS

11 13. California Code of Regulations, title 5, section 71475 provides, in pertinent part

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

16 ...

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

21 ...

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

26 “(k) The institution shall identify in the application the chief executive officer, chief
27 operating officer, and chief academic officer and describe their education, experience, and
28 qualifications to perform their duties and responsibilities. If there have been no substantive

1 changes since the last submission, the institution may so state and is not required to submit
2 documentation.

3 . . .

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

6 . . .

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

10 . . .

11 “(bb) The application shall include a copy of the institution’s catalog, in published or
12 proposed-to-be-published form. The catalog shall meet the requirements of the Act and of section
13 71810.

14 . . .”

15 14. California Code of Regulations, title 5, section 71800 provides, in pertinent part:

16 “In addition to the requirements of section 94911 of the Code, an institution shall provide to
17 each student an enrollment agreement that contains at the least the following information:

18 . . .

19 “(c) Program start date and scheduled completion date.

20 “(d) Date by which the student must exercise his or her right to cancel or withdraw, and the
21 refund policy, including any alternative method of calculation if approved by the Bureau pursuant
22 to section 94921 of the Code.

23 “(e) Itemization of all institutional charges and fees including, as applicable:

24 . . .

25 “(2) registration fee (non-refundable);

26 . . .

27 “(11) Student Tuition Recovery Fund fee (non-refundable);

28 . . .”

1 15. California Code of Regulations, title 5, section 76215 provides, in pertinent part:

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

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

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

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

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

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

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

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

18 ‘The State of California created the Student Tuition Recovery Fund (STRF) to relieve or
19 mitigate economic losses suffered by students in educational programs who are California
20 residents, or are enrolled in a residency programs attending certain schools regulated by the
21 Bureau for Private Postsecondary and Vocational Education.

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

25 1. The school closed before the course of instruction was completed.

26 2. The school’s failure to pay refunds or charges on behalf of a student to a third party for
27 license fees or any other purpose, or to provide equipment or materials for which a charge was
28 collected within 180 days before the closure of the school.

1 3. The school's failure to pay or reimburse loan proceeds under a federally guaranteed
2 student loan program as required by law or to pay or reimburse proceeds received by the school
3 prior to closure in excess of tuition and other costs.

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

7 5. An inability after diligent efforts to prosecute, prove, and collect on a judgment against
8 the institution for a violation of the Act.'

9 ..."

10 16. California Code of Regulations, title 5, section 74115 provides, in pertinent part:

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

13 ...

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

19 **FIRST CAUSE FOR DENIAL OF APPLICATION**

20 **(Failure to Provide Catalog)**

21 17. Respondent's renewal application is subject to denial under California Code of
22 Regulations, title 5, section 71475, subdivision (bb), in that Respondent failed to submit with its
23 renewal application a catalog that meets the requirements of the Private Postsecondary Education
24 Act of 2009 and California Code of Regulations, title 5, section 71810.

25 **SECOND CAUSE FOR DENIAL OF APPLICATION**

26 **(Failure to Identify Chief Operating Officer and Chief Academic Officer)**

27 18. Respondent's renewal application is subject to denial under California Code of
28 Regulations, title 5, section 71475, subdivision (k), in that Respondent's renewal application does

1 not identify Respondent's chief operating officer or chief academic officer or describe their
2 education, experience, and qualifications to perform their duties and responsibilities.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Failure to Provide a Description of Job Duties and Responsibilities of Administrative and**
5 **Faculty Positions)**

6 19. Respondent's renewal application is subject to denial under California Code of
7 Regulations, title 5, section 71475, subdivision (j), in that Respondent failed to provide in its
8 renewal application a description of the job duties and responsibilities of each administrative and
9 faculty position.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

11 **(Failure to Provide Enrollment Agreement that Complies with Statutory and Regulatory**
12 **Requirements)**

13 20. Respondent's renewal application is subject to denial under California Code of
14 Regulations, title 5, sections 71475, subdivision (o) and 71800, and/or Education Code section
15 94911, in that the enrollment agreement Respondent submitted with its renewal application does
16 not contain the following required information:

17 a. The enrollment agreement does not contain the start date or scheduled completion
18 date of Respondent's educational programs. (Cal. Code Regs., tit. 5, § 71800, subd. (c).)

19 b. The enrollment agreement does not contain the date by which students must exercise
20 their right to cancel or withdraw from Respondent's educational programs. (Cal. Code Regs., tit.
21 5, § 71800, subd. (d).)

22 c. The enrollment agreement does not contain an itemization of the registration fee or
23 the Student Tuition Recovery Fund fee. (Cal. Code Regs., tit. 5, § 71800, subds. (e)(2) and
24 (e)(11).)

25 d. The enrollment agreement does not include a schedule of total charges, including a
26 list of any charges that are nonrefundable and the student's obligations to the Student Tuition
27 Recovery Fund, clearly identified as nonrefundable charges. (Educ. Code, § 94911, subd. (b).)

28 ///

1 e. The enrollment agreement does not contain in underlined capital letters on the same
2 page of the enrollment agreement in which the student's signature is required the total charges for
3 the current period of attendance, the estimated total charges for the entire educational program,
4 and the total charges the student is obligated to pay upon enrollment. (Educ. Code, § 94911,
5 subd. (c).)

6 f. The enrollment agreement does not contain the statements set forth in California
7 Code of Regulations, title 5, section 76215, subdivisions (a) and (b) regarding the Student Tuition
8 Recovery Fund.

9 g. The enrollment agreement does not contain the disclosure information set forth in
10 Education Code section 94911, subdivisions (e)(1), (e)(2), and (e)(3).

11 h. The enrollment agreement does not contain a statement specifying that if a student
12 obtains a loan to pay for an educational program, the student will have the responsibility to repay
13 the full amount of the loan plus interest, less the amount of any refund. (Educ. Code, § 94911,
14 subd. (f).)

15 i. The enrollment agreement does not contain a statement specifying that if the student
16 is eligible for a loan guaranteed by the federal or state government and the student defaults on the
17 loan, both of the following may occur: (1) the federal or state government or a loan guarantee
18 agency may take action against the student, including applying any income tax refund to which
19 the person is entitled to reduce the balance owed on the loan; and (2) the student may not be
20 eligible for any other federal student financial aid at another institution or other government
21 assistance until the loan is repaid. (Educ. Code, § 94911, subds. (g)(1), (g)(2).)

22 j. The enrollment agreement does not contain the transferability disclosure that is
23 required to be included in the school catalog, as specified in Education Code section 94909,
24 subdivision (a)(15). (Educ. Code, § 94911, subd. (h).)

25 k. The enrollment agreement does not contain the following statement: "A student or
26 any member of the public may file a complaint about this institution with the Bureau for Private
27 Postsecondary Education by calling (toll-free telephone number) or by completing a complaint

28 ///

1 form, which can be obtained on the bureau's Internet Web site (Internet Web site address)."
2 (Educ. Code, § 94911, subd. (j)(2).)

3 l. The enrollment agreement does not contain the statements set forth in Education
4 Code section 94911, subdivisions (i)(1) and (i)(2).

5 m. The enrollment agreement does not contain a clear and conspicuous statement that the
6 enrollment agreement is legally binding when signed by the student and accepted by Respondent.
7 (Educ. Code, § 94911, subd. (d).)

8 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

9 **(Failure to Provide Current Audited Financial Statements)**


10 21. Respondent's renewal application is subject to denial under California Code of
11 Regulations, title 5, sections 71475, subdivisions (e) and (w)(2), and 74115, subdivision (d), in
12 that Respondent did not provide the Bureau with audited financial statements for the fiscal year
13 ending December 31, 2013.

14 **PRAYER**

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

- 18 1. Denying the Application for Renewal of Approval to Operate and Offer Educational
19 Programs for Non-Accredited Institutions submitted by Bay Area Video Coalition;
20 2. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: 3/11/13


24 JOANNE WENZEL
25 Chief
26 Bureau for Private Postsecondary Education
27 Department of Consumer Affairs
28 State of California
Complainant

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