

DEPARTMENT OF CONSUMER AFFIARS

STATE OF CALIFORNIA

In the Matter of the Emergency Decision Against:

SOUTH BAY MASSAGE COLLEGE

School Code 1936381 & 96110280

Appellant.

DECISION

INTRODUCTION

To protect students, prevent misrepresentations to the public, and prevent loss of student funds, on June 29, 2022, the Bureau for Private Postsecondary Education (the Bureau) issued an Emergency Decision (Decision) against South Bay Massage College (the College), directing it to cease enrolling new students, cease instruction, and cease collecting tuition and fees.

The College requested an opportunity to be heard before the Director of the Department of Consumer Affairs and the matter was heard on July 1, 2022, and July 6, 2022, before the Director's designee, Deputy Director Ryan Marcroft. Dr. Kevin Dobalian and Lin Shu appeared on behalf of the College and the Bureau's attorney Linh Nguyen and Special Investigator Susan Sadler appeared on behalf of the Bureau. At the conclusion of the hearing, the matter was submitted for a final decision.

After considering the evidence and argument submitted by the College and the Bureau, the Decision is AFFIRMED.

FACTUAL AND PROCEDURAL BACKGROUND

I. THE COLLEGE'S APPROVAL TO OPERATE AND OFFER MASSAGE THERAPY TRAINING

According to the Bureau, the College is approved to operate 56 programs, including a 500-hour massage therapy program. But according to the College, it offered

somewhere between 10 and 46 programs, and it did not offer a 500-hour program. The College also testified that it offered a 125-hour program, plus an optional 75-hour internship.

The evidence sufficiently demonstrated that the College offered a 500-hour massage therapy program comprised of different classes. The Bureau received 19 student complaints relating to the College's 500-hour massage therapy program between May and August 2021. Moreover, the California Massage Therapy Council approves schools offering 500-hour massage therapy educational programs. (Bus. & Prof. Code, §§ 4601, subd. (a), 4604, subd. (a).) Massage therapy schools are not required to be approved by the Council, but only students who complete their education at Council-approved schools may qualify for certification from the Council as a massage therapist. (Bus. & Prof. Code, § 4604, subd. (a).) Council certification, while voluntary, can expand the job opportunities available for massage therapists.

The College was previously approved by the Council, but as of June 30, 2022, the College was not approved by the Council. The Council initiated an investigation into the College in January 2021, and as part of its initiation letter, stated that the College offered several massage programs, "including the 500-hour massage program approved by [the Council]." Despite the College's testimony to the contrary, since the College was previously considered a Council-approved school, and in light of the Council's statements about the College's prior approval status with the Council, it is reasonable to infer that the College offered a 500-hour massage therapy program.

The College also testified that it did not enroll new students after May 2021, and that it last provided instruction to students in May 2022. According to the College, there are no students currently enrolled at the College, and it has no immediate plans to enroll students. Nothing, however, otherwise prevents the College from enrolling students at any time.

II. THE BUREAU'S EMERGENCY DECISION

On June 29, 2022, the Bureau issued an Emergency Decision and ordered the College to cease enrolling new students, cease instruction, and cease collecting tuition and fees. The Bureau determined that the institution posed an immediate danger to the public health, safety, and welfare, requiring immediate action to protect students, prevent misrepresentations to the public, and prevent the loss of monies paid by students. The Bureau's decision was based on a multitude of grounds:

- The College did not employ administrative personnel with expertise to achieve the institution's mission and objectives and the operation of the educational programs.
- The College made untrue and misleading statements to students regarding accruing hours of credit, which resulted in false attendance records and student completion records, and regarding student eligibility for Council certification once they completed the massage program.
- The College substantively changed the approved program by offering instruction in a foreign language without the Bureau's prior approval, and although it advertised instruction in a foreign language, it did not offer students enrollment agreements, disclosures, and other statements in an appropriate foreign language.
- The College did not provide students with the school catalog and performance fact sheet prior to signing the enrollment agreement, or provide students with a signed enrollment agreement.
- The College did not have personnel scheduled to be present at all times during normal business hours who know how to operate the devices on which records are stored and can explain them to the Bureau.
- The College did not maintain information about instructors completing continuing education, and did not have instructors present at the same location as students.
- The College did not maintain electronic records related to Student Tuition Recovery Fund Assessment reporting and performance fact sheets, did not provide prospective students with placement rate, salary and wage information, and did not maintain refund information.

III. THE COLLEGE'S OPPORTUNITY TO BE HEARD

At the College's timely request, a hearing in this matter was held on July 1, 2022, and July 6, 2022. Representatives of the Bureau appeared at the hearing and offered testimony in support of the Bureau's Decision. Representatives of the College also appeared and offered testimony in the matter.

The following factual background was adduced at hearing and from the investigation exhibits the Bureau submitted for the hearing.

Evidence Relating to Administrative Personnel

Dr. Dobalian owns the institution and he worked 35 years in the massage industry. He and his wife Ms. Shu shared responsibility for operating the institution.

For extended periods of time in 2021, Dr. Dobalian was treated for serious medical and mental health conditions and Ms. Shu cared for him. They were also involved in weeks-long court proceedings in 2021, and during these extended periods of time, no one managed the institution.

Dr. Dobalian was also admitted multiple times in the summer of 2021 for mental health treatment. In addition, he executed a power of attorney authorizing Ms. Shu to act on his behalf "in any lawful way that [he] could act if [he] were personally present," including "in dealing with all governmental agencies," and it specifically authorized Ms. Shu to "[p]repare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency" The power of attorney was accompanied by the statement of two physicians who, in June 2021, determined that Dr. Dobalian "is incapacitated, is unable to handle his own financial affairs, and requires the services of some other person to handle his financial affairs for him."

The power of attorney was effective as of June 2021, but the current status of the power of attorney is unclear. At hearing, Dr. Dobalian testified that the power of

attorney was revoked, and Ms. Shu testified that she was unsure if it remained in effect at that time.

The Bureau also testified to several interactions with Dr. Dobalian in late 2021 and early 2022 where he exhibited extreme, erratic, and confused behavior. And at hearing, Dr. Dobalian exhibited similarly erratic behavior, and at one point during a heated exchange at the hearing, Ms. Shu said that Dr. Dobalian struck her while she was testifying. He did not present as credible, and these circumstances cast considerable doubt on Dr. Dobalian's ability to operate the College.

Moreover, Ms. Shu testified that she was the administrator of the College since 2019. But according to the Bureau, Ms. Shu told the Bureau she did not know how to run the College and that no one managed it. In a January 17, 2022, letter to the Bureau, Ms. Shu described her role at the College that she "helped [Dr. Dobalian] with some administrative matters, [but she was] not familiar with the aspects of running [the College] or how [Dr. Dobalian] manages company records." The Bureau also testified about its observations of Ms. Shu at a February 2022 site inspection, and it did not believe that she understood the legal requirements to operate the College. As an example, the Bureau explained that Ms. Shu was unable to produce records that the Bureau requested during the site visit, even though institutions must immediately produce records for the Bureau's inspection. (See e.g., Cal. Code Regs., tit. 5, § 71930.)

Contrary to her prior statements to the Bureau, Ms. Shu testified at hearing that she was trained by Dr. Dobalian and believed she was qualified to run the College. She also stated that the College is considering hiring a temporary director.

Evidence Relating to Hours of Credit, Student Records, and Council Certification

Between July 2020 and November 2020, the College improperly permitted students to accrue eight hours of credit after attending only three hours of class. The Bureau

asserted that the College misled students by permitting them to accrue class credit at an accelerated rate, when students should have obtained only one hour of credit for each hour of attendance.

The College acknowledged at hearing that students should receive only one hour of credit for each hour of attendance, and that for a time, the College permitted students to accrue credit at an accelerated rate. The College testified that the Council advised the College that it could permit students to accrue credit at this rate, but the Bureau testified that the Council did not authorize an accelerated accrual rate.

Relatedly, the Bureau asserted that the College maintained false attendance and student completion records, and that it could not determine whether students completed classes based on the College's records. Moreover, during a February 2022 site visit, the College told the Bureau that it did not keep attendance records at all. Instead, the College offered to watch recorded Zoom classes to see which students attended classes and determine the number of hours each student completed based on the recordings. The College similarly testified at hearing that it maintains "Zoom attendance records."

After the Bureau's site visit, and at the Bureau's request, the College supplied the Bureau with written student attendance records. But the records were confusing and unreliable. Six records showed students completed more class hours than necessary to complete the class. The College explained to the Bureau that the extra hours were accrued in separate educational subjects, but this explanation is not consistent with the attendance records in at least two different ways. First, some of the records show that all of the accrued hours, including the extra hours, were applied to a single class subject and then divided between "Hands-on Hours" and "Lecture Hours." The division of hours between hands-on and lecture hours indicates that all of the hours, including the extra hours, were accrued in a single subject, not in multiple separate subjects as the College suggested. Second, in instances where the extra hours were not divided between

hands-on and lecture hours, they were simply unaccounted for. The attendance sheets showed that students attended class in a single subject, and they provide no indication about any other subject in which the extra hours might have been accrued.

At hearing, the College offered another unsatisfactory explanation for the attendance record discrepancies. The College testified that it did not offer hands-on training during the pandemic, and the extra hours were attributable to lecture training in multiple separate subjects. But again, the attendance records show attendance in only a single subject, and they show attendance for “Hands-on” training, contrary to the College’s testimony.

The College’s attendance records are unreliable for a separate reason. They confusingly show that one instructor taught different students in different classes on the same day and at the same time. The attendance sheets of different students were signed by the same instructor, and they show that on certain days, some students completed 8 hours in training in one subject (from 8:00 a.m. to 12:00 p.m., and again from 1:00 p.m. to 5:00 p.m.), while other students completed 8 hours in training in a different subject (but during the same times and dates, and with the same instructor). The College did not explain how one instructor could teach two separate classes to different students at the same time and on the same day.

The College’s inadequate recordkeeping also adversely affected students. As discussed, in January 2021, the Council initiated an investigation into the College’s 500-hour massage therapy program. As part of the investigation, the Council noted that the College’s failure to keep accurate student records “renders [the Council] unable to determine whether or not students from your school successfully completed the hours listed on their transcripts.” The Council determined that “all applicants with education from [the College] will be held while [the College] is under investigation,” and that if further investigation is needed, as a prerequisite to Council certification, students would be required to provide additional proof of adequate education by passing an education

hearing. Thereafter, in June and September 2021, the Council informed students who applied for certification that the Council would not accept their school transcripts as sufficient evidence that they qualified for certification.

Separately, the Bureau asserted that the College misled students by telling them that the Council would certify them once they completed the College's massage therapy program, and by not disclosing to students upon enrollment that the Council was investigating the College. The College testified, however, that it did not advise students that the Council would certify them upon completing the program, but instead advised students that they could apply for certification after completing the program.

The Bureau's exhibits support the College's testimony on this point. The College's enrollment agreement, exhibit seven, provides that "[a]ttendance and/or graduation from a California Massage Therapy Council approved school does not guarantee Certification by [the Council]." The Bureau's first exhibit, an advertisement for the College, similarly states that after completing the program, students "*can* get [their] Hours Certificate and California Massage License" (Emphasis added.) The advertisement did not purport to promise prospective students that they *would* be certified upon completing the program. Based on the current record on appeal, the Bureau did not establish that the College misled students by informing them that they would be certified after completing the program, nor did the Bureau establish that the College was required to inform students about the investigation during enrollment.

Evidence Relating to Unapproved Foreign Language Instruction

Institutions must apply specially for approval to offer an educational program in a language other than English. (Cal. Code Regs., tit. 5, § 71230.) The Bureau did not approve the College to offer instruction in a foreign language. Nonetheless, the College advertised and offered classes in Chinese. One of the College's WeChat postings advertised the schedule for "classes in Chinese . . . : from Oct 12, 8:00 am -11:00 am (Monday to Friday). Three hours a day, five days a week." The College's website,

under the heading “Language of Instruction,” similarly provided, “[c]ourses will be offered in English and Chinese.” Students supplied the Bureau with live screenshots of class instruction in Chinese, and during the Council’s investigation of the College, the Council observed class instruction “presented entirely in a foreign language, presumably Chinese.”

At hearing, the College acknowledged that it translated courses into Chinese, and that it believed that offering classes in a foreign language amounted to a non-substantive change that did not require the Bureau’s prior approval. The College notified the Bureau of the instructional change pursuant to the procedures governing non-substantive changes. The College, however, also started the process to request the Bureau’s approval to make a substantive change to the program and offer instruction in Chinese, but it did not complete the process and the Bureau did not authorize a change in the approved program.

Evidence Relating to the College’s Failure to Provide Students with Performance Fact Sheets and Related Information

The College provided prospective students with outdated performance fact sheets that lacked current information relating to completion rates, placement rates, and salary and wage information. The Bureau presented enrollment agreements dated in 2020 and 2021 that each included performance fact sheets with information from calendar years 2016 and 2017. The College also did not collect placement data or provide records of placement data to the Bureau.

Evidence Relating to the College’s Failure to Properly Supervise Students

The College’s massage therapy program includes a 75-hour internship located at Coastline Spa and Chiropractic. Students participating in the internship informed the Bureau that instructors were not present during the internship. The College testified, however, that instructors generally were present with students during the internship.

The record on appeal was not sufficient to evaluate whether students participated in an internship without instructor supervision.

LEGAL STANDARDS

I. EMERGENCY DECISIONS

An emergency decision may be issued if there is an immediate danger to the public health, safety, or welfare that requires immediate action to protect students, prevent misrepresentation to the public, or prevent the loss of public funds or moneys paid by students. (Ed. Code, § 94938; Cal. Code Regs., tit. 5, § 75150, subd. (b).) Activities that warrant the Bureau's emergency intervention include fraud, substantial misrepresentations in the institution's performance fact sheet, school catalog, or enrollment agreement, or a substantial failure to meet institutional minimum operating standards. (Cal. Code Regs., tit. 5, § 75150, subd. (b).)

The Bureau may order temporary, interim relief in the form of the following:

- (1) Cease or limit enrollment of new students;
- (2) Cease part or all instruction for some or all programs; and
- (3) Cease collection of tuition or fees for some or all programs.

(Cal. Code. Regs., tit. 5, § 75150, subd. (c).)

Institutions subject to an emergency decision may request an opportunity to be heard before the Director of the Department of Consumer Affairs or her designee. (Cal. Code. Regs., tit. 5, § 75150, subd. (f).)

II. MINIMUM INSTITUTIONAL OPERATING STANDARDS AND PROGRAM CHANGES

School Administration and Operation

The Bureau adopted minimum operating standards for approved institutions, and an institution may only operate in California if it presents sufficient evidence to the Bureau that it can satisfy the standards. (Ed. Code, §§ 94885, 94887 & 94891; Cal. Code Regs., tit. 5, § 71700.)

Minimum operating standards are designed to ensure that directors, administrators, and faculty are properly qualified, adequate records and standard transcripts are maintained and available to students, and that an institution is lawfully operated. (Ed. Code, § 94885.)

To satisfy minimum standards, institutions must employ administrative personnel with expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs. (Cal. Code Regs., tit. 5, § 71730, subd. (f).) They must have a chief executive officer, chief operating officer, and chief academic officer, but one person may serve in all roles. (*Id.* at subd. (a).) The chief executive officer is the person primarily responsible for the overall administration of the institution. (Cal. Code Regs., tit. 5, § 70000, subd. (d).) The chief operating officer is the person primarily responsible for the administration of an institution's business operation, including finances, management, personnel, and contracting for goods, services, or property. (*Id.* at subd. (e).) The chief academic officer is the person primarily responsible for the administration of the institution's academic affairs, including supervising faculty, development of educational programs and curricula, and implementation of the institution's mission, purpose and objectives. (*Id.* at subd. (c).)

Student Records

Institutions must maintain for each student accurate records relating to the courses and units they complete, including "[w]ritten records and transcripts of any formal education or training . . . that are relevant to the . . . institution's award of credit (Ed. Code, § 94900, subd. (b); Cal. Code Regs., tit. 5, § 71920, 71930.) They must not make false or misleading statements relating to attendance records or records indicating student completion. (Ed. Code, § 94897, subd. (j).)

Institutions must be able to immediately reproduce printed copies of student records, and must have personnel on hand at all times during normal business hours who can provide the Bureau with access to student records. (Cal. Code Regs., tit. 5, § 71930.)

Institutions must provide immediate access to the Bureau of all records during normal business hours. (*Ibid.*)

Program Changes

Educational institutions and their educational programs must be approved by the Bureau. (Ed. Code, §§ 94817, 94838 & 94886.) In applying for approval, an institution must describe the educational program it offers or proposes to offer, the title of the educational programs and other components of instruction offered, and the method of instruction. (Cal. Code Regs., tit. 5, §§ 71210, subds. (a) & (c), 71220, subd. (a).)

Substantive changes to an approved program require the Bureau's prior approval: "[i]f an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau." (Ed. Code, § 94893.)

Substantive changes include, "[a] significant change in the method of instructional delivery." (Ed. Code, § 94894.) A significant change in the method of instructional delivery is "any change that alters the way students interact with faculty or access significant equipment." (Cal. Code Regs., tit. 5, § 71600.) Institutions seeking to make substantive changes to their program must apply to the Bureau to make the change. (Cal. Code Regs., tit. 5, §§ 71600 & 71655.)

In contrast to substantive changes, institutions may implement non-substantive changes by simply notifying the Bureau of the change. (Cal. Code Regs., tit. 5, § 71660.) Non-substantive changes are changes to a program that do not affect the quality or educational integrity of an approved program (i.e., their substance), such as the "change of mailing address," "change of location of less than 10 miles," "addition of a satellite," or an "addition of a program related to the approved programs offered by the institution." (Cal. Code Regs., tit. 5, § 71660.)

III. INFORMATION FOR PROSPECTIVE STUDENTS

Performance Fact Sheets

Institutions must provide prospective students with current student performance fact sheets that include program completion rates, placement rates, and salary or wage information. (Ed. Code, §§ 94910, 94929, & 94929.5; Cal. Code Regs., tit. 5, § 74112.) The performance fact sheet must be updated annually and report data for the previous two calendar years. (Cal. Code Regs., tit. 5, § 74112.) Students must acknowledge receipt of the information prior to executing an enrollment agreement. (Ed. Code, §§ 94902, 94911 & 94912.)

Institutions must maintain for five years the underlying information used to substantiate the information reported in the performance fact sheets, such as placement information, and provide the information to the Bureau upon request. (Ed. Code, § 94929.7; Cal. Code Regs., tit. 5, § 74112.)

DISCUSSION

The Bureau's emergency decision is proper because there is an immediate danger to the public health, safety, and welfare that requires immediate action to protect students and prevent misrepresentation to the public. The evidence demonstrates that the Bureau's immediate intervention is appropriate due to the College's substantial failures to meet institutional minimum operating standards and substantial misrepresentations in the institution's performance fact sheet. Though the College represented that it last provided instruction to students in May 2022, nothing prevents the College from enrolling students at any time. In light of the pervasive nature of the violations, permitting the College to continue operating pending the outcome of a full administrative adjudication of the issues would pose an unnecessary risk to the public health, safety, and welfare.

I. THE EMERGENCY DECISION IS APPROPRIATE TO PROTECT STUDENTS AND PREVENT MISREPRESENTATIONS TO THE PUBLIC BECAUSE THE COLLEGE SUBSTANTIALLY FAILED TO MEET MINIMUM INSTITUTIONAL OPERATING STANDARDS

The College substantially failed to meet minimum operating standards with respect to the institution's lack of qualified administrative personnel, faulty recordkeeping, and unapproved foreign language instruction.

Minimum institutional operating standards require that institutions employ administrative personnel with expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs. (Cal. Code Regs., tit. 5, § 71730, subd. (f).) Here, the evidence shows that Dr. Dobalian and, in his absence, Ms. Shu, manage the College. But for lengthy periods of time in 2021, no one managed the College due to Dr. Dobalian's health conditions and protracted court proceedings.

And as of June 2021, Dr. Dobalian was incapacitated, unable to manage his own affairs, and he assigned to Ms. Shu the right to act on his behalf "in any lawful way that [he] could act if [he] were personally present," including "in dealing with all governmental agencies" Ms. Shu similarly testified that she was the administrator of the College since 2019, but she informed the Bureau that she was "not familiar with the aspects of running [the College] or how [Dr. Dobalian] manages company records." And during the Bureau's February 2022 site visit, she was not aware of the requirements for operating the College, including maintaining and producing records to the Bureau. Indeed, as discussed below, the College does not maintain appropriate written student attendance records.

The evidence sufficiently establishes that for substantial periods in 2021 and 2022, while the College was operating, it lacked the personnel necessary to ensure the operation of the College's educational programs, and that its continued operation would

pose a risk to students who attend an institution that lacks personnel experienced in operating a private postsecondary institution.

The College also substantially failed to maintain accurate and appropriate student records. Institutions must maintain for each student accurate records relating to the courses and units they complete, including “[w]ritten records and transcripts of any formal education or training . . . that are relevant to the . . . institution’s award of credit . . .” (Ed. Code, § 94900, subd. (b); Cal. Code Regs., tit. 5, §§ 71920, 71930.) They must not make false or misleading statements relating to attendance records or records indicating student completion. (Ed. Code, § 94897, subd. (j).) Additionally, institutions must immediately reproduce printed copies of student records, and have personnel on hand at all times who can provide the Bureau with access to student records. (Cal. Code Regs., tit. 5, § 71930.)

Here, the College substantially failed to meet institutional operating standards in three separate ways. First, the College does not maintain appropriate written student attendance records. Instead, the College testified that it maintains “Zoom attendance records,” which are simply video recordings of classes, not written student attendance records.

Second, because the College does not maintain appropriate written student attendance records, they cannot be immediately reproduced and provided to the Bureau at all times, including during the Bureau’s February 2022 site visit.

Third, and most importantly, the written attendance records the College eventually produced to the Bureau were manifestly inaccurate and unreliable. Most of the records showed students completing more hours than necessary to complete classes, and the College did not adequately explain the serious discrepancies. The records discrepancies are even more troubling in light of the College’s acknowledgement that between July 2020 and November 2020, it inappropriately permitted students to accrue more hours of credit than they actually completed.

The College's faulty recordkeeping also harms students and thwarts the Bureau's ability to protect the public. The Bureau's top priority is public protection, and one of the main purposes of the Private Postsecondary Education Act of 2009 is to prevent "harm to students and the deception of the public that results from fraudulent or substandard educational programs" (Ed. Code, §§ 94801, subd. (d)(6), 94875.) But the Bureau cannot verify—and students cannot reliably demonstrate—that students actually received the training they paid for or completed the educational training recorded on the College's attendance records. There is also no reliable way to ensure that students who graduate from the school are adequately prepared to provide services to the public. Indeed, in January 2021, the Council initiated an investigation into the College's recordkeeping practices and noted that the College's failure to keep accurate records "renders [the Council] unable to determine whether or not students from [the College] successfully completed the hours listed on their transcripts." Students graduating from the College had to provide additional proof that they were adequately educated by the College in order to be certified as massage therapists.

The College also substantially failed to meet minimum operating standards with respect to the unapproved foreign language instruction it provides. As discussed, an institution may only offer approved educational programs, and an institution will only be approved to operate if it demonstrates that it meets minimum operating standards. (Ed. Code, §§ 94817, 94838, 94885, 94887 & 94891; Cal. Code Regs., tit. 5, § 71700.) Additionally, program approval is a component part of an institution's overall approval to operate, and it is unlawful to operate an unapproved institution in California. (Ed. Code, §§ 94838, 94886, 94943.)

The College was approved to offer massage therapy programs in English and no other language. Nonetheless, the College offered massage therapy instruction in Chinese, but it did not have approval to do so, and it did not demonstrate standards compliance with respect to the foreign language instruction it offered.

The College could have sought the Bureau's approval to offer foreign language instruction as a substantive change to the approved program, which would have enabled the Bureau to evaluate the program. Substantive program changes require the Bureau's prior approval: "[i]f an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau." (Ed. Code, § 94893.) Substantive changes include, "[a] significant change in the method of instructional delivery," which, in turn, includes "any change that alters the way students interact with faculty or access significant equipment." (Ed. Code, § 94894; Cal. Code Regs., tit. 5, § 71600.) A change from English-language instruction to foreign-language instruction qualifies as an alteration in the way students interact with faculty and, consequently, is a substantive change requiring the Bureau's prior approval. But the College did not obtain the Bureau's approval.

Instead, the College argued at hearing that it notified the Bureau that it would offer instruction in a foreign language, pursuant to the notification procedures that govern non-substantive changes. (See Cal. Code Regs., tit. 5, § 71660.) Non-substantive changes, however, involve programmatic changes that do not affect the quality or educational integrity of the approved program, like a change in mailing address, or change of location within 10 miles. The College's unilateral change to offer instruction in a foreign language, on the other hand, potentially affects the quality and integrity of the instruction provided and the educational program. Students must be conversant in the foreign language, instructors must be qualified to teach in that language, and textbooks and class materials must be available in language. Indeed, institutions desiring to offer foreign language instruction must satisfy special application requirements before they may do so, which must first be approved by the Bureau. (See Cal. Code Regs., tit. 5, § 71230.) The College did not have Bureau approval to offer foreign language instruction and, consequently, substantially failed to meet minimum standards in offering the instruction.

Moreover, the harm to the school's students under these circumstances is evident. If, as the Bureau contends and as the evidence demonstrates, students graduate from the program without completing the approved educational program, the students do not receive the education they pay for. The Bureau's immediate action is necessary to protect students and prevent the loss of their money, in that the purpose of the program is to train students in massage therapy, but there is a substantial risk that this will not be achieved, since students are not completing the approved program.

II. THE EMERGENCY DECISION IS APPROPRIATE BECAUSE THE COLLEGE DOES NOT PROVIDE PROSPECTIVE STUDENTS WITH CURRENT AND ACCURATE PERFORMANCE FACT SHEETS

The Legislature enacted the Private Postsecondary Education Act of 2009 to address “concerns about the value of degrees and diplomas issued by private postsecondary schools, and the lack of protections for private postsecondary school students and consumers of those schools’ services” (Ed. Code, § 94801.) As discussed, its substantive provisions are designed to prevent “harm to students and the deception of the public that results from fraudulent or substandard educational programs” (*Ibid.*) A key component to preventing student harm and public deception involves disclosing to prospective students information about the quality and historical success of a program, prior to their enrollment, so that they may make informed decisions about whether to attend an institution.

Accordingly, institutions must provide prospective students with current student performance fact sheets that include program completion rates, placement rates, and salary or wage information. (Ed. Code, §§ 94910, 94929, 94929.5; Cal. Code Regs., tit. 5, § 74112.) The performance facts sheet must be updated annually and report data for the previous two calendar years. (Cal. Code Regs., tit. 5, § 74112.)

Here, the College provided prospective students with outdated and, consequently, misleading school performance fact sheets. The College provided students in 2020 and

