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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. 998958

13
14 **CASTELL DENTAL ASSISTING**
SCHOOL; MARIO CASTELLANOS,
15 **Owner**
2063 E. Florida Ave
16 Hemet, CA 92544

STATEMENT OF ISSUES

17 **School Code No. 76549133**

18 Application for Approval to Operate

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

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

1 9. Education Code Section 94887 states:

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

8 10. Title 5, California Code of Regulations (hereinafter "CCR"), section 71400.5 states:

9 (a) The inclusion of false or misleading information, or the intentional or negligent
10 omission of pertinent information on any application may result in the denial of the
11 application or a delay in processing, and may be grounds for action pursuant to
12 Article 18 of the Act.

13 (b) In addition to denying an application pursuant to section 94887 of the Code, the
14 Bureau may deny any application based on any act that constitutes grounds for the
15 denial of a license under Section 480 of the Business and Professions Code,
16 incorporated herein by reference.

17 (c) The proceedings under this section shall be conducted in accordance with
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
19 the Government Code.

20 STATUTORY AND REGULATORY PROVISIONS

21 11. Title 5, California Code of Regulations (hereinafter "CCR"), section 71100 states:

22 (a) An applicant seeking approval to operate pursuant to Section 94886 of the
23 Code, other than Approval to Operate by Accreditation pursuant to Section
24 94890(a)(1) of the Code, shall complete the "Application for Approval to Operate
25 for an Institution Not Accredited," Form Application 94886 (rev. 2/10). An
26 applicant seeking approval to operate by accreditation pursuant to Section
27 94890(a)(1) of the Code shall comply with section 71390.

28 (b) An applicant shall submit the completed form, the information or documentation
required by this Article, the appropriate application fee as provided in Section
94930.5(a)(1) of the Code, and any appropriate annual fee as required by Article 1
of Chapter 5 of this Division, to the Bureau.

(c) An application that fails to contain all of the information required by this article
shall render it incomplete.

12. Section 94897 of the Education Code states in part:

An institution shall not do any of the following:

...

(e) Advertise, or indicate in promotional material, that the institution is accredited,
unless the institution has been accredited by an accrediting agency.

1 ...
2 (l) Use the terms "approval," "approved," "approval to operate," or "approved to
3 operate" without stating clearly and conspicuously that approval to operate means
4 compliance with state standards as set forth in this chapter. If the bureau has
5 granted an institution approval to operate, the institution may indicate that the
6 institution is "licensed" or "licensed to operate," but may not state or imply either
7 of the following:

8 ///

9 (1) The institution or its educational programs are endorsed or recommended
10 by the state or by the bureau.

11 (2) The approval to operate indicates that the institution exceeds minimum
12 state standards as set forth in this chapter.

13

14 13. Section 94902 of the Education Code states in part:

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

18

19 14. Section 94909 of the Education Code states:

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

23 ...

24 (2) Except as specified in Article 2 (commencing with Section 94802), a
25 statement that the institution is a private institution and that it is approved to
26 operate by the bureau.

27 (3) The following statements:

28 (A) "Any questions a student may have regarding this catalog that have
not been satisfactorily answered by the institution may be directed to the
Bureau for Private Postsecondary Education at (address), Sacramento, CA
(ZIP Code), (Internet Web site address), (telephone and fax numbers)."

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

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

address).”

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2
3 (6) If the educational program is designed to lead to positions in a profession,
4 occupation, trade, or career field requiring licensure in this state, a notice to that
5 effect and a list of the requirements for eligibility for licensure.

6
7 ...
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9 (8) A detailed description of institutional policies in the following areas:

10 (A) Admissions policies, including the institution's policies regarding
11 the acceptance of credits earned at other institutions or through challenge
12 examinations and achievement tests, admissions requirements for ability-to-
13 benefit students, and a list describing any transfer or articulation agreements
14 between the institution and any other college or university that provides for
15 the transfer of credits earned in the program of instruction. If the institution
16 has not entered into an articulation or transfer agreement with any other
17 college or university, the institution shall disclose that fact.

18 (B) Cancellation, withdrawal, and refund policies, including an
19 explanation that the student has the right to cancel the enrollment agreement
20 and obtain a refund of charges paid through attendance at the first class
21 session, or the seventh day after enrollment, whichever is later. The text shall
22 also include a description of the procedures that a student is required to
23 follow to cancel the enrollment agreement or withdraw from the institution
24 and obtain a refund consistent with the requirements of Article 13
25 (commencing with Section 94919).

26 ...
27 (9) The schedule of total charges for a period of attendance and an estimated
28 schedule of total charges for the entire educational program.

(10) A statement reporting whether the institution participates in federal and
state financial aid programs, and if so, all consumer information that is required to
be disclosed to the student pursuant to the applicable federal and state financial aid
programs.

(11) A statement specifying that, if a student obtains a loan to pay for an
educational program, the student will have the responsibility to repay the full
amount of the loan plus interest, less the amount of any refund, and that, if the
student has received federal student financial aid funds, the student is entitled to a
refund of the moneys not paid from federal student financial aid program funds.

(12) A statement specifying whether the institution has a pending petition in
bankruptcy, is operating as a debtor in possession, has filed a petition within the
preceding five years, or has had a petition in bankruptcy filed against it within the
preceding five years that resulted in reorganization under Chapter 11 of the United
States Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.).

...

(15) The following statement:

1 "NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND
2 CREDENTIALS EARNED AT OUR INSTITUTION

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

15 (16) A statement specifying whether the institution, or any of its degree
16 programs, are accredited by an accrediting agency recognized by the United States
17 Department of Education. If the institution is unaccredited and offers an associate,
18 baccalaureate, master's, or doctoral degree, or is accredited and offers an
19 unaccredited program for an associate, baccalaureate, master's, or doctoral degree,
20 the statement shall disclose the known limitations of the degree program, including,
21 but not limited to, all of the following:

22 (A) Whether a graduate of the degree program will be eligible to sit for
23 the applicable licensure exam in California and other states.

24 (B) A degree program that is unaccredited or a degree from an
25 unaccredited institution is not recognized for some employment positions,
26 including, but not limited to, positions with the State of California.

27 (C) That a student enrolled in an unaccredited institution is not eligible
28 for federal financial aid programs.

29 (b) If the institution has a general student brochure, the institution shall
30 provide that brochure to the prospective student prior to enrollment. In addition, if
31 the institution has a program-specific student brochure for the program in which the
32 prospective student seeks to enroll, the institution shall provide the program-
33 specific student brochure to the prospective student prior to enrollment.

34 (c) An institution shall provide the school catalog to any person upon request. In
35 addition, if the institution has student brochures, the institution shall disclose the
36 requested brochures to any interested person upon request.

37 15. Section 94910 of the Education Code states:

38 Prior to enrollment, an institution shall provide a prospective student with a School
39 Performance Fact Sheet containing, at a minimum, the following information, as it
40 relates to the educational program:

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

43 (b) Placement rates, for each educational program, as calculated pursuant to Article
44 16 (commencing with Section 94928), if the educational program is designed to

1 lead to, or the institution makes any express or implied claim related to preparing
2 students for, a recognized career, occupation, vocation, job, or job title.

3 (c) License examination passage rates for programs leading to employment for
4 which passage of a state licensing examination is required, as calculated pursuant
5 to Article 16 (commencing with Section 94928).

6 (d) Salary or wage information, as calculated pursuant to Article 16
7 (commencing with Section 94928).

8 (e) If a program is too new to provide data for any of the categories listed in this
9 subdivision, the institution shall state on its fact sheet: "This program is new.
10 Therefore, the number of students who graduate, the number of students who are
11 placed, or the starting salary you can earn after finishing the educational program
12 are unknown at this time. Information regarding general salary and placement
13 statistics may be available from government sources or from the institution, but is
14 not equivalent to actual performance data."

15 (f) All of the following:

16 (1) A description of the manner in which the figures described in
17 subdivisions (a) to (d), inclusive, are calculated or a statement informing the reader
18 of where he or she may obtain a description of the manner in which the figures
19 described in subdivisions (a) to (d), inclusive, are calculated.

20 (2) A statement informing the reader of where he or she may obtain from the
21 institution a list of the employment positions determined to be within the field for
22 which a student received education and training for the calculation of job
23 placement rates as required by subdivision (b).

24 (3) A statement informing the reader of where he or she may obtain from the
25 institution a list of the objective sources of information used to substantiate the
26 salary disclosure as required by subdivision (d).

27 (g) The following statements:

28 (1) "This fact sheet is filed with the Bureau for Private Postsecondary
Education. Regardless of any information you may have relating to completion
rates, placement rates, starting salaries, or license exam passage rates, this fact
sheet contains the information as calculated pursuant to state law."

(2) "Any questions a student may have regarding this fact sheet that have not
been satisfactorily answered by the institution may be directed to the Bureau for
Private Postsecondary Education at (address), Sacramento, CA (ZIP Code),
(Internet Web site address), (telephone and fax numbers)."

16. Section 94911 of the Education Code states:

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

...

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

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

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

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

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

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

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

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

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

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

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

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

25 (2) Immediately following the statement required by paragraph (1), a line for
26 the student to initial, including the following statement: 'I certify that I have
received the catalog, School Performance Fact Sheet, and information regarding
27 completion rates, placement rates, license examination passage rates, and salary or
wage information, and the most recent three-year cohort default rate, if applicable,
28 included in the School Performance Fact sheet, and have signed, initialed, and dated
the information provided in the School Performance Fact Sheet.'

1 (j) The following statements:

2 (1) 'Any questions a student may have regarding this enrollment agreement
3 that have not been satisfactorily answered by the institution may be directed to the
4 Bureau for Private Postsecondary Education at (address), Sacramento, CA (ZIP
5 Code), (Internet Web site address), (telephone and fax numbers).'

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

10 (k) The following statement above the space for the student's signature: 'I
11 understand that this is a legally binding contract. My signature below certifies that I
12 have read, understood, and agreed to my rights and responsibilities, and that the
13 institution's cancellation and refund policies have been clearly explained to me.'

14 17. Section 94934 of the Education Code states in part:

15 (a) As part of the compliance program, an institution shall submit an annual report
16 to the bureau, under penalty of perjury, signed by a responsible corporate officer,
17 by July 1 of each year, or another date designated by the bureau, and it shall include
18 the following information for educational programs offered in the reporting period:

19 (1) The total number of students enrolled by level of degree or for a diploma.

20 (2) The number of degrees, by level, and diplomas awarded.

21 (3) The degree levels and diplomas offered.

22 (4) The Student Performance Fact Sheet, as required pursuant to Section
23 94910.

24 (5) The school catalog, as required pursuant to Section 94909.

25 (6) The total charges for each educational program by period of attendance.

26 (7) A statement indicating whether the institution is, or is not, current in
27 remitting Student Tuition Recovery Fund assessments.

28 (8) A statement indicating whether an accrediting agency has taken any final
disciplinary action against the institution.

(9) Additional information deemed by the bureau to be reasonably required to
ascertain compliance with this chapter.

(b) The bureau, by January 1, 2011, shall prescribe the annual report's format and
method of delivery.

18. Title 5, CCR, section 71180 states, "The institution shall include, with its Form
Application 94886, exemplars of all student enrollment agreements and instruments of
indebtedness."

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19. Title 5, CCR, section 71290 states:

The Form Application 94886 shall include a copy of the institution's catalog, in published or proposed-to-be-published form. The catalog shall meet the requirements of the Act and of section 71810.

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20. Title 5, CCR, section 71745 states:

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

...

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

....

21. Title 5, CCR, section 71475 states:

...

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

...

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

....

22. Title 5, CCR, section 71700 states:

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

23. Title 5, CCR, section 71770 states:

...

(b) The institution shall specify the maximum credit it will transfer from another institution for each educational program, and the basis upon which the transferred credit will be awarded.

(1) Except as limited by subdivision (c) of this section, a maximum of 75 percent of the units or credit that may be applied toward the award of a bachelor's degree may be derived from a combination of any or both of the following:

(A) Units earned at institutions approved by the Bureau, public or private institutions of higher learning accredited by an accrediting association recognized by the U. S. Department of Education, or any institution of higher learning, including foreign institutions, if the institution offering the undergraduate program documents that the institution of higher learning at which the units were earned offers degree programs equivalent to degree programs approved by the Bureau or accredited by an accrediting association recognized by the U.S. Department of Education;

(B) Challenge examinations and standardized tests such as the College Level Placement Tests (CLEP) for specific academic disciplines.

(2) No more than 20% of graduate semester units or the equivalent in other units awarded by another institution may be transferred for credit toward a Master's degree. An institution may accept transfer credits only from the institutions of higher learning described in subsection (1)(A).

(3) No more than 30 graduate semester credits or its equivalent awarded by another institution may be credited toward a doctoral degree. This subdivision does not apply to graduate programs that lead to a profession or an occupation requiring state licensure where the licensing agency has a regulation permitting a different standard.

....

24. Title 5, CCR, section 71800 states:

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

...

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

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

- (1) tuition;
- (2) registration fee (non-refundable);
- (3) equipment;

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- (4) lab supplies or kits;
- (5) Textbooks, or other learning media;
- (6) uniforms or other special protective clothing;
- (7) in-resident housing;
- (8) tutoring;
- (9) assessment fees for transfer of credits;
- (10) fees to transfer credits;
- (11) Student Tuition Recovery Fund fee (non-refundable);
- (12) any other institutional charge or fee.

....

25. Title 5, CCR, section 71810 states:

(a) Each institution shall provide a catalog pursuant to section 94909 of the Code, which shall be updated annually. Annual updates may be made by the use of supplements or inserts accompanying the catalog. If changes in educational programs, educational services, procedures, or policies required to be included in the catalog by statute or regulation are implemented before the issuance of the annually updated catalog, those changes shall be reflected at the time they are made in supplements or inserts accompanying the catalog.

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

(1) The specific beginning and ending dates defining the time period covered by the catalog;

...

(3) If the institution admits students from other countries, whether visa services are provided or whether the institution will vouch for student status, and any associated charges;

(4) Language proficiency information, including: (A) the level of English language proficiency required of students and the kind of documentation of proficiency, such as the Test of English as a Foreign Language (TOEFL), that will be accepted; and (B) whether English language services, including instruction such as ESL, are provided and, if so, the nature of the service and its cost;

(5) Whether any instruction will occur in a language other than English and, if so, the level of proficiency required and the kind of documentation of proficiency, such as the United States Foreign Service Language Rating System, that will be accepted;

(6) The institution's policies and practices regarding any form of

1 financial aid, including all consumer information which the institution is
2 required to disclose to the student under any state or federal financial aid
3 program;

4 (7) The institution's policies and procedures for the award of credit for
5 prior experiential learning, including assessment policies and procedures,
6 provisions for appeal, and all charges that a student may be required to pay;

7 ...

8 (10) A description of library and other learning resources and the
9 procedures for student access to those resources;

10 ...

11 (12) A description of all student services;

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

13 (A) Whether the institution has dormitory facilities under its
14 control;

15 (B) The availability of housing located reasonably near the
16 institution's facilities and an estimation of the approximate cost or
17 range of cost of the housing; and

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

22 (14) Policies on student rights, including the procedure for addressing
23 student grievances; and

24 (15) Policies on the retention of student records.

25 26. Title 5, CCR, section 71930 states:

26 (a) An institution shall maintain all records required by the Act and this chapter.
27 The records shall be maintained in this state.

28 (b)(1) In addition to permanently retaining a transcript as required by section
94900(b) of the Code, the institution shall maintain for a period of 5 years the
pertinent student records described in Section 71920 from the student's date of
completion or withdrawal.

....

27 27. Title 5, CCR, section 74110 states:

28 (a) The annual report required by section 94934 of the Code shall include the
information required by section 94934 for all educational programs offered in the
prior calendar year.

(b) In addition to the information required by section 94934 provided under penalty

1 of perjury, the institution shall have annual financial statements prepared for the
2 institution's prior fiscal year and signed under penalty of perjury, and shall submit a
3 hard copy under separate cover of such statements in conjunction with its annual
4 report. The form, content and mode of preparation of financial statements shall
5 comply with section 74115 of this Division. The Bureau may request that the
6 institution immediately make available for inspection to a representative of the
7 Bureau, these financial statements at the offices of the institution.

8 (c) An institution shall file its annual report by September 1st. The Bureau may
9 extend the period for filing if the institution demonstrates evidence of substantial
10 need but in no case longer than 60 days. The institution shall not change the date of
11 its filing its annual report because of a change in the fiscal year without the Bureau's
12 approval.

13 (d) The annual report shall be electronically filed by submitting the information
14 required by section 94934 of the Code via the Bureau's website, electronically
15 attaching, as directed, the School Performance Fact Sheet and the school catalog.
16 An institution without the capability to submit the information electronically shall
17 inform the Bureau not less than 45 days prior to the date the information is required
18 by subdivision (c), and receive direction on alternative means of submission.

19 28. Title 5, CCR, section 74115 states:

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

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

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

(c) Work papers for the financial statements shall be retained for five years from the

1 date of the statements and shall be made available to the Bureau upon request.

2 (d) "Current" with respect to financial statements means completed no sooner than
3 120 days prior to the time it is submitted to the Bureau, and covering no less than
4 the most recent complete fiscal year. If more than 8 months will have elapsed
5 between the close of the most recent complete fiscal year and the time it is
6 submitted, the fiscal statements shall also cover no less than five months of that
7 current fiscal year.

8 29. Title 5, CCR, section 76215 states:

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

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

- 14 1. You are a student in an educational program, who is a California resident,
15 or are enrolled in a residency program, and prepay all or part of your tuition
16 either by cash, guaranteed student loans, or personal loans, and
- 17 2. Your total charges are not paid by any third-party payer such as an
18 employer, government program or other payer unless you have a separate
19 agreement to repay the third party.

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

- 22 1. You are not a California resident, or are not enrolled in a residency
23 program, or
- 24 2. Your total charges are paid by a third party, such as an employer,
25 government program or other payer, and you have no separate agreement to
26 repay the third party."

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

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

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, and
suffered an economic loss as a result of any of the following:

1. The school closed before the course of instruction was completed.
2. The school's failure to pay refunds or charges on behalf of a student to a
third party for license fees or any other purpose, or to provide equipment or
materials for which a charge was 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
2 guaranteed student loan program as required by law or to pay or reimburse
3 proceeds received by the school prior to closure in excess of tuition and other
4 costs.

5 4. There was a material failure to comply with the Act or this Division within
6 30 days before the school closed or, if the material failure began earlier than
7 30 days prior to closure, the period determined by the Bureau.

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

10 However, no claim can be paid to any student without a social security
11 number or a taxpayer identification number.

12 **FACTS**

13 30. On or about September 9, 2005, the BPPVE received an application for an approval to
14 operate (Application Number 19301) Castell Dental Assisting School from Respondent.

15 31. On or about March 21, 2006, the BPPVE granted Respondent a Temporary Approval
16 to Operate as a nondegree-granting institution pending a qualitative review and assessment of the
17 institution. The temporary approval was to remain in effect for at least 90 days, but no more than
18 360 days in order to allow the BPPVE to conduct a site visit and inspection of the school.

19 32. On June 30, 2007, the BPPVE sunsetted. At the time of the BPPVE's sunset,
20 Respondent had not obtained a full approval to operate.

21 33. After the California Private Postsecondary Education Act of 2009 (the "Act") became
22 effective and the Bureau began operations, the Bureau mailed a "Temporary Approval to Operate"
23 letter to Respondent on February 14, 2011, advising Respondent that the current Act did not
24 provide for a temporary approval to operate and Respondent's application would be deemed
25 "pending." Respondent was asked to submit a copy of the current school catalog, School
26 Performance Fact Sheet and Enrollment Agreement for the Bureau's review by March 14, 2011.

27 34. The Bureau did not receive the documents requested from Respondent. On May 6,
28 2011, the Bureau mailed Respondent a second notice regarding the temporary approval to operate
and again requested submission of the school catalog, School Performance Fact Sheet and
Enrollment Agreement. The Bureau requested submission of these documents by June 6, 2011.

1 35. The Bureau did not receive the documents requested from Respondent. On February
2 26, 2013, the Bureau sent Respondent a letter advising that since Respondent was issued a
3 temporary approval to operate prior to sunset of the BPPVE, Respondent had been permitted to
4 continue operating but was required to comply with the current Act. As such Respondent was
5 requested to supplement his application within six months of the new application becoming
6 available. The Bureau advised Respondent that in order to complete his application, Respondent
7 was required to submit the school catalog, School Performance Fact Sheet, Enrollment
8 Agreement, 2010 Annual Report, 2011 Annual Report and reports regarding the Student Tuition
9 Recovery Fund ("STRF") assessments for all four quarters of 2011 and 2012. The Bureau
10 requested submission of these documents by April 26, 2013.

11 36. The Bureau did not receive the documents requested from Respondent. On May 6,
12 2013, the Bureau denied Respondent's application for an approval to operate on the grounds that
13 Respondent did not submit additional documentation to supplement his application, as required for
14 compliance with the Act. Respondent was advised that Application No. 19301 was deficient
15 because Respondent failed to submit the following required documents: the school catalog;
16 enrollment agreement; School Performance Fact Sheet; 2010 Annual Report; 2011 Annual Report;
17 and, STRF assessments for all quarters of 2010, 2011, 2012 and for the first quarter of 2013.
18 Respondent also failed to submit the 2013 Annual Fee due March, 2013.

19 37. On June 28, 2013, Respondent submitted the school catalog, enrollment agreement,
20 School Performance Fact Sheet, 2010 Annual Report, 2011 Annual Report and STRF
21 assessments. Respondent submitted the 2013 Annual Fee with delinquency fees. The school
22 catalog, enrollment agreement and financial statements submitted failed to comply with the
23 Bureau's statutory and regulatory requirements.

24 **FIRST CAUSE FOR DENIAL**

25 **(Failure to Include Required Language in Enrollment Agreement)**

26 38. Respondent's application is subject to denial under title 5, CCR, sections 71100,
27 71180, 72800 and Code section 94911 in that the school's enrollment agreement submitted with
28 Respondent's application fails to comply with the Bureau's statutes and regulations as follows:

1 a. The enrollment agreement failed to include the specific date by which the student
2 must exercise his or her right to cancel or withdraw as required by CCR 71800(d).

3 b. The enrollment agreement failed to include the correct Student Tuition Recovery
4 Fund ("STRF") fee as required by CCR 71800(e)(11).

5 c. The enrollment agreement failed to clearly identify the STRF fee as a nonrefundable
6 charge as required by Code section 94911(b).

7 d. The enrollment agreement failed to include the text regarding institutional charges as
8 required by Code section 94911(c).

9 e. The enrollment agreement failed to include the text regarding the STRF as required
10 by CCR 76215(b).

11 f. The enrollment agreement failed to include the disclosures required by Code section
12 94911(e)(1), (2) and (3).

13 g. The enrollment agreement failed to include the required statement regarding student
14 loans as set forth in Code section 94911(f).

15 h. The enrollment agreement failed to include the required statements regarding federal
16 or state loans as required by section Code 94911(g)(1) and (2).

17 i. The enrollment agreement failed to include the transferability disclosure required by
18 Code sections 94909(a)(15) and 94911(h).

19 j. The enrollment agreement failed to include the required statements referring students
20 or members of the public to the Bureau as set forth in Code section 94911(j).

21 k. The enrollment agreement failed to include the statements required by Code section
22 94911(i).

23 l. The enrollment agreement failed to include a space designated for an authorized
24 employee of the institution to sign as required by Code section 94902(a).

25 m. The enrollment agreement failed to include a clear and conspicuous statement that the
26 enrollment agreement is legally binding when signed by the student and accepted by the institution,
27 as required by Code section 94911(d).

28

1 n. The enrollment agreement failed to include the required statement as set forth Code
2 section 94911(k).

3 o. The enrollment agreement failed to include the specific beginning and ending dates
4 defining the time period covered by the catalog as required by CCR section 71810(b)(1).

5 **SECOND CAUSE FOR DENIAL**

6 **(Failure to Include Required Language in School Catalog)**

7 39. Respondent's application is subject to denial under title 5, CCR, sections 71100,
8 71290, 71770, 71810 and Code section 94909 in that the school's catalog submitted with
9 Respondent's application fails to comply with the Bureau's statues and regulations as follows:

10 a. The school catalog failed to include the required statement regarding Bureau approval
11 as required by Code sections 94909(a)(2) and 94897(l).

12 b. The school catalog failed to include the required statement regarding bankruptcy
13 disclosures as set forth in Code sections 94909(a)(12).

14 c. The school catalog failed to include the required statement directing prospective
15 students to review the School Performance Fact Sheet prior to signing an enrollment agreement as
16 required by Code sections 94909(a)(3)(B).

17 d. The school catalog failed to contain a description of library and other learning
18 resources and the procedures for student access to those resources as required by CCR section
19 71810(b)(10).

20 e. The school catalog failed to contain the specific language directing students to the
21 Bureau for unanswered questions as required by Code section 94909(a)(3)(A).

22 f. The school catalog failed to contain the specific language that refers individuals
23 wishing to file a complaint about the institution to the Bureau as required by Code section
24 94909(a)(3)(C).

25 g. The school catalog failed to contain the specific language concerning transferability of
26 credits and credentials earned at the institution as required by Code section 94909(a)(15).

27 h. The school catalog failed to contain admission policies, including the policies
28 regarding acceptance of credits earned at other institutions or through challenge examinations and

1 achievement tests, admissions requirements for ability-to-benefit students, and whether or not the
2 institution has entered into an articulation or transfer agreement with any other college or
3 university. Such information is required by Code section 94909(a)(8)(A) and CCR section
4 71770(b).

5 i. The school catalog failed to contain the institution's policies and procedures for the
6 award of credit for prior experiential learning, including assessment policies and procedures,
7 provisions for appeal, and all charges that a student may be required to pay, as required by CCR
8 section 71810(b)(7).

9 j. The school catalog failed to contain the institution's language proficiency information,
10 visa services information, whether or not the institution will vouch for student status, and any
11 associated charges, as required by CCR section 71810(b)(3), (4) and (5).

12 k. The school catalog failed to contain a notice and list of the requirements for eligibility
13 for licensure if the educational program is designed to lead to positions in a profession,
14 occupation, trade, or career field requiring licensure in this state, as required by Code section
15 94909(a)(6).

16 l. The school catalog failed to contain a statement specifying whether the institution or
17 any of its degree programs are accredited by an accrediting agency recognized by the United
18 States Department of Education, as required by Code sections 94909(a)(16) and 94897.

19 m. The STRF fee in the catalog was calculated incorrectly, therefore the schedule of total
20 charges for the period of attendance and the estimated schedule of total charges for the entire
21 educational program is inaccurate and does not comply with Code section 94909(a)(9).

22 n. The school catalog failed to contain the specific language related to the STRF as
23 required by CCR section 76215(a) and (b).

24 o. The cancellation, withdrawal and refund policy listed in the school catalog does not
25 comply with the requirements of Code section 94909(a)(8)(B).

26 p. The school catalog failed to contain a statement reporting whether the institution
27 participates in federal and state financial aid programs, and if so, all consumer information that is
28

1 required to be disclosed to the student pursuant to federal and state financial aid programs, as
2 required by Code section 94909(a)(10).

3 q. The school catalog failed to contain the specific language concerning student loans
4 required by Code section 94909(a)(11).

5 r. The school catalog failed to contain the institution's policies and practices, including
6 required disclosures, regarding any form of financial aid as required by CCR section 71810(b)(6).

7 s. The school catalog incorrectly stated the Bureau's address in the section pertaining to
8 the institution's policies on student rights and the procedure for addressing student grievances, as
9 set forth in CCR section 71810(b)(14).

10 t. The school catalog failed to contain a description of all student services as required by
11 CCR section 71810(b)(12).

12 u. The school catalog failed to contain housing information including whether the
13 institution has dormitory facilities under its control, availability of housing, and whether or not the
14 institution provides assistance in finding housing for students as required by CCR section
15 71810(b)(13).

16 v. The institution's policy regarding retention of records as stated in the school catalog
17 does not state that the institution will retain student transcripts permanently as required by CCR
18 sections 71810(b)(15) and 71930(b)(1).

19 **THIRD CAUSE FOR DENIAL**

20 **(Failure to Submit Compliant Financial Statements)**

21 40. Respondent's application is subject to denial under title 5, CCR, sections 71100,
22 74100, 74115 and 71745 in that the financial statements submitted with Respondent's application
23 fails to comply with the Bureau's statutes and regulations as follows:

24 a. The financial statements submitted were not reviewed or audited by an independent
25 certified public accountant in accordance with the generally accepted accounting principles
26 established by the American Institute of Certified Public Accountants as required by CCR section
27 74115(b)(1).

28

1 b. The financial statements submitted were not current as defined by CCR section
2 74115(d).

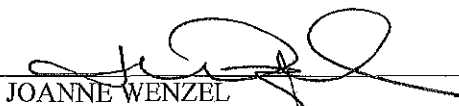
3 c. The financial statements submitted do not show that the institution's ratio of current
4 assets to current liabilities was 1.25 to 1.00 or greater at the end of the most recent fiscal year
5 when using generally accepted accounting principles, or for an institution participating in Title IV
6 of the federal Higher Education Act of 1965, meet the composite score requirements of the U.S.
7 Department of Education. As such, the financial statement submitted do not comply with CCR
8 section 71745(a)(6).

9 **PRAYER**

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

- 13 1. Denying the application of Mario Castellanos for an Approval to Operate (Application
14 Number 19301); and,
15 2. Taking such other and further action as deemed necessary and proper.

16
17 DATED: March 12, 2014


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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