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**DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

In the Matter of the Automatic Suspension of  
Approval to Operate Degree Granting  
Programs Directed to:

Case No. 1006336

**DECISION**

**BRENTWOOD UNIVERSITY,**  
Appear Media Inc., Owner  
15615 Alton Parkway # 450  
Irvine, CA 92618

School Code No. 42693395

Appellant.

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**INTRODUCTION**

Effective November 14, 2020, the Bureau for Private Postsecondary Education (Bureau) automatically suspended the approval to operate degree granting programs to Brentwood University (University), and Appear Media Inc., as owner. On or about December 9, 2020, the University requested an informal hearing before the Director of the Department of Consumer Affairs and the matter was heard on January 7, 2021, before the Director's designee, Jason Hurtado. The University's President, Dr. Marc Pakbaz appeared on behalf of the University. Education Specialist Dianne Arechiga and Education Administrator Robert Bayles 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 University and the Bureau, the Bureau's decision is AFFIRMED.

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2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 Bureau records reflect that the University obtained a provisional approval to operate on  
4 or about August 11, 2016, permitting the University to operate two degree programs in business  
5 administration. The provisional approval was granted in accordance with Education Code section  
6 94885.5, subdivision (a). The University was statutorily required to achieve accreditation  
7 candidacy or pre-accreditation by August 11, 2018, and full accreditation by August 11, 2021.  
8 (Ed. Code § 94885.5, subd. (a)(2).) To achieve pre-accreditation status, the University was  
9 required to provide a completed application for initial accreditation with the required fee to a  
10 recognized United States Department of Education accrediting agency, and the application had to  
11 be accepted by the accreditor. (Cal. Code Regs., title 5, § 7000, subd. (s).)

12 Prior Extensions Granted by the Bureau

13 On July 5, 2018, Dr. Pakbaz, on behalf of the University submitted a formal request to  
14 the Bureau seeking “a 24-month extension in acquiring outside accreditation for Brentwood  
15 University.” (Ex. 9.) The extension request noted “the reason we [the University] are asking for  
16 two years, is because even though we are applying for early accreditation from DEAC, it is not  
17 guaranteed Brentwood would be approved.” In response to the University’s request, on August  
18 18, 2018, Senior Education Specialist Jeanne Matsumoto notified the University that “your  
19 institution has been granted a 7-month extension and must provide evidence of having achieved  
20 pre-accreditation or accreditation candidacy on or before **March 11, 2019.**” (Emphasis original.)  
21 The Bureau’s approval apprised the University that “failure to provide evidence of pre-  
22 accreditation or accreditation candidacy by March 11, 2019 may lead to an automatic suspension  
23 of Brentwood University’s degree programs.” (Ex. 11.)

24 On March 13, 2019, the Bureau mailed and emailed the University a notice of the  
25 “Expiration of Extension to Achieve Accreditation Candidacy.” The Bureau’s notice stated in  
26 relevant part: “[t]o date, the Bureau has not received evidence that Brentwood University has  
27 submitted an initial application for accreditation that was subsequently accepted by its accreditor,  
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1 the Distance Education Accrediting Commission (DEAC).” (Ex. 12.) Thereafter, on April 12,  
2 2019, the Bureau issued its first Order Suspending Approval to Operate Degree Granting  
3 Programs to the University, with an effective date of April 17, 2019.  
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5 On or about May 13, 2019, the University appealed the suspension order, and on May 16,  
6 2019 the University requested a second extension, this time asking for “a 17-month extension in  
7 acquiring outside accreditation for Brentwood University.” (Ex. 14.) The University’s request  
8 provided as follows:

9 Due to DEACs standards, a school is unable to apply for accreditation, until after it  
10 has been in operation (enrolling students) for two years. In January of 2019,  
11 Brentwood University petitioned DEAC for early consideration of accreditation. This  
12 petition was granted in January of 2019.

13 On May 20, 2019, the Bureau notified the University its request for a 17-month extension  
14 to achieve pre-accreditation or accreditation candidacy had been granted. The Bureau’s approval  
15 also notified the University that “[t]he 17-month extension is calculated from the date the  
16 Institution’s previous extension expired (March 11, 2019).” (Ex. 15.) The University was further  
17 apprised the Bureau’s April 12, 2019 suspension order had been lifted, and the new statutory  
18 deadline to achieve pre-accreditation or accreditation candidacy was now “on or before August  
19 11, 2020.” (*Ibid.*) The University was informed the failure to meet this deadline may result in  
20 automatic suspension of its degree programs.

21 On August 2, 2020, the University emailed the Bureau advising them that the University  
22 could not meet the August 11, 2020 deadline to achieve accreditation, and were therefore  
23 requesting a third extension, this time seeking a one year extension. (Ex. 20.) On August 3, 2020,  
24 the Bureau responded to Dr. Pakbaz, informing him the University “has exhausted the allowable  
25 extension of time by law to achieve candidacy/pre-accreditation with DEAC as of 8/11/2020.”  
26 (*Ibid.*) On November 9, 2020, the Bureau issued to the University a second Order Suspending  
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1 Approval to Operate Degree Granting Programs, effective November 14, 2020. The University  
2 timely appealed the Bureau's suspension order within 30 days. (Cal. Code Regs., tit. 5, §71410,  
3 subd. (b).)  
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### 5 **LEGAL STANDARDS**

6 The University was required to submit evidence to the Bureau of having achieved  
7 accreditation candidacy or pre-accreditation by August 11, 2020. Education Code section  
8 94885.5, subdivision (a)(2) provides:

9 The institution shall submit an accreditation plan, approved by the bureau, for the  
10 institution to become fully accredited within five years of issuance of its provisional  
11 approval to operate. The plan shall include, at a minimum, identification of an  
12 accreditation agency recognized by the United States Department of Education, from  
13 which the institution plans to seek accreditation, and outline the process by which  
14 **the institution will achieve accreditation candidacy or pre-accreditation within  
two years, and full accreditation within five years, of issuance of its provisional  
approval.**

15 (Emphasis added.)

16 Similarly, subdivision (b)(3) of section 94885.5 states:

17 The institution shall provide evidence of accreditation candidacy or pre-accreditation  
18 within two years of issuance of its provisional approval, and evidence of  
19 accreditation within five years of issuance of its provisional approval, with the scope  
20 of that accreditation covering the offering of at least one degree program.

21 In addition, Education Code section 94885.5, subdivision (d)(1), sets forth the maximum  
22 time the Bureau may grant an extension to an institution:

23 The bureau shall, upon the timely submission of sufficient evidence that an  
24 unaccredited institution is making strong progress toward obtaining accreditation,  
25 grant an institution's request for an extension of time, **not to exceed two years**, to  
26 meet the requirements of this section.

27 (Emphasis added.)  
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1 An institution failing to comply with the statutory timelines “shall have its provisional  
2 approval to operate automatically suspended on the applicable date.” (Ed. Code § 94885.5, subd.  
3 (c).) Further, a suspended institution must cease enrolling students, provide the Bureau with a  
4 degree program closure plan within 30 days, and provide notice to currently enrolled students  
5 within five days. (Cal. Code Regs., tit. 5, §§ 71410, 74250.) The closure plan must include the  
6 following elements:

- 7 1) The date the institution stopped enrolling new students in its degree programs;
- 8 2) A list of contact information for all students currently enrolled in each degree  
9 program;
- 10 3) A teach-out plan that includes a plan for the disposition of student records and is  
11 compliant with the provisions of section 94927 of the Education Code; and
- 12 4) A copy of the notification to be provided to students.

13 (Cal. Code of Regs., tit. 5, § 74520, subd. (a).)

14 Further, the notice to students must include:

- 15 1) That the institution has received a notice of suspension from the Bureau and may no  
16 longer offer degree programs;
- 17 2) A teach-out plan, which shall provide, at a minimum, the following information:
  - 18 (A) The name and location of the institution(s) that is (are) providing the teach-out;
  - 19 (B) The date upon which instruction at the teach-out institution(s) will begin;
  - 20 (C) How and when payments will be made to the new institution and any relevant  
21 financial information; and
  - 22 (D) Whom to contact at the new institution(s).
- 23 3) That the student may choose not to participate in the teach-out, and instead seek a  
24 refund for any classes the student is currently enrolled in or has not yet completed.

25 (Cal. Code Regs., tit. 5, § 74250, subd. (b).)

1 Failure of any institution to comply with the regulatory requirements is considered a  
2 violation and subject to action by the Bureau. (Cal. Code Regs., tit. 5, § 74250, subd. (d).)

### 3 DISCUSSION

4 The evidence and testimony support upholding the Bureau’s November 9, 2020  
5 suspension order. The University was required to have achieve accreditation candidacy or pre-  
6 accreditation by August 11, 2020. The documentary evidence shows the Bureau granted two  
7 prior extensions to the University – one in August 2018 and another in May 2019, which totaled  
8 the two year maximum time period allowed by statute. The Bureau has no statutory authority to  
9 grant a third extension for an additional year, as requested by the University. Granting this  
10 request would contravene the statutory language of Education Code section 94885.5, subdivision  
11 (d)(1). Indeed, the Bureau, “like all administrative agencies, has no inherent powers; it possesses  
12 only those powers that have been granted to it by the Constitution or by statute. (*See Carmel*  
13 *Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 299–300; 3 Koch,  
14 *Administrative Law & Practice* (2d ed.1997) § 12.13, pp. 170–171 [“Administrative agencies  
15 derive their power from other sources ... and hence agencies have only such authority as is  
16 delegated by the legislature”].) [A]n agency literally has no power to act ... unless and until [the  
17 Legislature] confers power upon it. That an agency has been granted some authority to act within  
18 a given area does not mean that it enjoys plenary authority to act in that area. (*Security National*  
19 *Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 419.)

21 In addition, Dr. Pakbaz failed to offer any credible testimony on behalf of the University  
22 to support their assertion that the University could obtain full accreditation if granted an  
23 extension by the Bureau. On October 30, 2020, Dr. Pakbaz submitted a written request to the  
24 Bureau asking for a third extension until April 30, 2021. However, at the informal conference,  
25 Dr. Pakbaz expressed his confidence that the University could obtain accreditation if granted an  
26 extension until August 2021. He also remarked that the University’s delay in achieving  
27 accreditation was the result of the current pandemic (COVID-19.) However, the evidence does  
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1 not support the University’s contention. According to DEAC’s website, “institutions should  
2 anticipate a minimum of two years and often up to five years from the first step through the final  
3 decision on granting initial accreditation.”<sup>1</sup> Further, Education Specialist Dianne Arechiga and  
4 Education Administrator Robert Bayles credibly testified that the University was unlikely to  
5 achieve accreditation by either of the requested dates of April or August 2021. Ms. Arechiga  
6 offered her professional opinion that the University’s failure to timely achieve accreditation was  
7 the result of “poor planning,” on the institution’s part.  
8

9 In the matter at hand, the record establishes that the University was eligible to apply to  
10 DEAC for accreditation as early as July 2019, but failed to do so. The evidence proves DEAC’s  
11 approval was granted pre-pandemic. Despite receiving approval in 2019, the University allowed  
12 a year to lapse without taking any further action toward accreditation. Moreover, a review of  
13 Bureau records shows as of July 7, 2020, DEAC had not received an application from the  
14 institution. Thus, the earliest the University could conceivably obtain accreditation would be in  
15 2023.

16 To that end, the Bureau provided the University the maximum four years to obtain  
17 accreditation candidacy or pre-accreditation. The institution failed to meet the statutory deadline,  
18 as prescribed by the Education Code. As a result, there is little reason to believe the University  
19 would be successful in achieving accreditation with DEAC, if granted a third extension. Most  
20 importantly, the Bureau has no authority to grant this request. The statutory language of  
21 Education Code section 94885.5, subdivision (d)(1) is unambiguous – the Bureau shall grant an  
22 extension of time, “not to exceed two years, to meet the requirements of this section.”  
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24 Accordingly, an institution that does not submit evidence to the Bureau by the applicable  
25 statutory deadline of having achieved accreditation shall have its approval to operate  
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28 <sup>1</sup> Located at <https://www.deac.org/Seeking-Accreditation/Applying-for-Accreditation.aspx>

1 “automatically suspended.” (Ed. Code § 94885.5, subd. (c).) Since the University did not satisfy  
2 the statutory timeframe to achieve accreditation, the Bureau appropriately suspended the  
3 University’s approval to operate degree programs.  
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5 **DECISION**

6 For the foregoing reasons, the Bureau’s Order Suspending Approval to Operate Degree  
7 Granting Programs is **AFFIRMED**.

8  
9 DATED January 22, 2021

*Jason Hurtado*

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10 JASON HURTADO  
11 Attorney III, Legal Affairs Division  
12 Department of Consumer Affairs  
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