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

13 In the Matter of the Statement of Issues  
Against:  
14 **UNIVERSITY OF BAY AREA**  
15 **Application for Approval to Operate for an**  
16 **Institution Non-Accredited**  
17 Respondent.

Case No. BPPE23-0572

**STATEMENT OF ISSUES**

18  
19 **PARTIES**

20 1. Deborah Cochrane (Complainant) brings this Statement of Issues solely in her official  
21 capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau), Department of  
22 Consumer Affairs.

23 2. On or about August 31, 2022, the Bureau for Private Postsecondary Education  
24 received an Application for Approval to Operate for an Institution Non-Accredited from  
25 University of Bay Area (Respondent), owned by Grameen Education Fund, a California non-  
26 profit corporation. On or about June 8, 2023, the Bureau denied the application. On or about  
27 July 24, 2023, Respondent requested an administrative hearing regarding the Bureau's denial of  
28 its application.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Director of the Department of  
3 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the  
4 authority of the following laws. All section references are to the Education Code unless  
5 otherwise indicated.

6 4. Section 94887 states, in part:

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

12 **STATUTORY PROVISIONS**

13 5. Section 94801.7, subdivision (b) states:

14 “(b) An institution is considered to have a physical presence in the state if it offers  
15 instruction or core academic support services from a physical location owned, operated, or rented  
16 by or on behalf of the institution in California.”

17 6. Section 94816 states:

18 “‘Applicant’ means a person, as defined in Section 94855, who has submitted an  
19 application to the board for an approval to operate or for a renewal of an approval to operate. An  
20 approval to operate shall be issued only to an applicant.”

21 7. Section 94817 states:

22 “‘Approval to operate’ or ‘approval’ means the authorization pursuant to this chapter to  
23 offer to the public and to provide postsecondary educational programs, as well as the written  
24 document issued to an institution signifying its approval to operate.”

25 8. Section 94817.5 states:

26 “‘Approved to operate’ or ‘approved’ means that an institution has received authorization  
27 pursuant to this chapter to offer to the public and to provide postsecondary educational  
28 programs.”

1           9.     Section 94837 states:

2           “‘Educational program’ means a planned sequence composed of a set of related courses or  
3 modules, or a single course or module if not offered as a component of a set of related courses or  
4 modules, that provides education, training, skills, or experience, or a combination of these, except  
5 that “educational program” does not include a single course, workshop, seminar, continuing  
6 education course, or other instruction that consists of 32 hours of instruction or less that is not  
7 designed to lead to employment.”

8           10.    Section 94841 states:

9           “‘Faculty’ means the instructional staff of an institution, whether these persons are  
10 employees or independent contractors.”

11          11.    Section 94843 states:

12          “‘Institution’ means any private postsecondary educational institution, including its branch  
13 campuses and satellite locations.”

14          12.    Section 94858 states:

15          “‘Private postsecondary educational institution’ means a private entity with a physical  
16 presence in this state that offers postsecondary education to the public for an institutional charge.”

17          13.    Section 94885, subdivision (a) states:

18          “(a) The bureau shall adopt by regulation minimum operating standards for an institution  
19 that shall reasonably ensure that all of the following occur:

20               “(1) The content of each educational program can achieve its stated objective.

21               “(2) The institution maintains specific written standards for student admissions for each  
22 educational program and those standards are related to the particular educational program.

23               “(3) The facilities, instructional equipment, and materials are sufficient to enable students to  
24 achieve the educational program's goals.

25               “(4) The institution maintains a withdrawal policy and provides refunds.

26               “(5) The directors, administrators, and faculty are properly qualified.

27               “(6) The institution is financially sound and capable of fulfilling its commitments to  
28 students.

1           “(7) That, upon satisfactory completion of an educational program, the institution gives  
2 students a document signifying the degree or diploma awarded.

3           “(8) Adequate records and standard transcripts are maintained and are available to students.

4           “(9) The institution is maintained and operated in compliance with this chapter and all other  
5 applicable ordinances and laws.

6           14. Section 94886 states:

7           “Except as exempted in Article 4 (commencing with Section 94874) or in compliance with  
8 the transition provisions in Article 2 (commencing with Section 94802), a person shall not open,  
9 conduct, or do business as a private postsecondary educational institution in this state without  
10 obtaining an approval to operate under this chapter.”

11           15. Section 94887 states:

12           “An approval to operate shall be granted only after an applicant has presented sufficient  
13 evidence to the bureau, and the bureau has independently verified the information provided by the  
14 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant  
15 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application  
16 for an approval to operate if the application does not satisfy those standards. The bureau may  
17 deny an application for an approval to operate institutions that would be owned by, have persons  
18 in control of, or employ institution managers that had knowledge of, should have known, or  
19 knowingly participated in any conduct that was the cause for revocation or unmitigated discipline  
20 at another institution.”

21           16. Section 94909, subdivisions (a)(1) and (a)(4) state:

22           “(a) Except as provided in subdivision (d), before enrollment, an institution shall provide a  
23 prospective student, either in writing or electronically, with a school catalog containing, at a  
24 minimum, all of the following:

25           “(1) The name, address, telephone number, and, if applicable, internet website address of  
26 the institution.

27           . . .

28           “(4) The address or addresses where class sessions will be held.”

1 **REGULATORY PROVISIONS**

2 17. California Code of Regulations, title 5, section 71110, subdivision (d) states:

3 “An institution shall provide the following information on the Form Application 94886:

4 . . .

5 “(d) The street address of each campus and branch at which the educational programs will  
6 be offered, including the identification of the institution's main location and branch locations. If  
7 an institution is applying for a branch in conjunction with the main location, all required  
8 information must be provided for each location.”

9 18. California Code of Regulations, title 5, section 71400.5, subdivision (a) states:

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

13 19. California Code of Regulations, title 5, section 71710, subdivision (a) states:

14 “(a) In order to meet its mission and objectives, the educational program defined in Section  
15 94837 of the Code shall be comprised of a curriculum that includes:

16 “(1) Those subject areas that are necessary for a student to achieve the educational  
17 objectives of the educational program in which the student is enrolled;

18 “(2) Subject areas and courses or modules that are presented in a logically organized  
19 manner or sequence to students;

20 “(3) Course or module materials that are designed or organized by duly qualified faculty.  
21 For each course or module, each student shall be provided with a syllabus or course outline that  
22 contains:

23 “(A) A short, descriptive title of the educational program;

24 “(B) A statement of educational objectives;

25 “(C) Length of the educational program;

26 “(D) Sequence and frequency of lessons or class sessions;

27 “(E) Complete citations of textbooks and other required written materials;

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1 “(F) Sequential and detailed outline of subject matter to be addressed or a list of skills to be  
2 learned and how those skills are to be measured;

3 “(G) Instructional mode or methods.

4 “(4) If degree granting, require research of an appropriate degree that utilizes a library and  
5 other learning resources;

6 “(5) Specific learning outcomes tied to the sequence of the presentation of the material to  
7 measure the students' learning of the material; and

8 “(6) Evaluation by duly qualified faculty of those learning outcomes.”

9 20. California Code of Regulations, title 5, section 71715, subdivisions (b) and (c) state:

10 “(b) The institution shall document that the instruction offered leads to the achievement of  
11 the learning objectives of each course.

12 “(c) Direct instruction requires the physical presence of one or more students and one or  
13 more faculty members at the same location. Direct instruction includes instruction presented in a  
14 classroom, seminar, workshop, lecture, colloquium, laboratory, tutorial, or other physical learning  
15 settings consistent with the mission, purposes, and objectives of the institution.”

16 21. California Code of Regulations, title 5, section 71720, subdivisions (a)(1) and (a)(5)  
17 state:

18 “(a) An Educational Program Leading to a Degree.

19 “(1) An institution offering an educational program that leads to a degree shall employ duly  
20 qualified faculty sufficient in number to provide the instruction, student advisement, and learning  
21 outcomes evaluation necessary for the institution to document its achievement of its stated  
22 mission and objectives, and for students to achieve the specific learning objectives of each course  
23 offered;

24 . . .

25 “(5) The institution's faculty as a whole shall possess a diverse educational background  
26 which shall be demonstrated in part by earned degrees from a variety of colleges and universities  
27 or by credentials generally recognized in the field of instruction;”

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1 22. California Code of Regulations, title 5, section 71735 state:

2 “(a) An institution shall have sufficient facilities and necessary equipment to support the  
3 achievement of the educational objectives of all of the courses and educational programs in which  
4 students are enrolled. If an institution represents that the educational service will fit or prepare a  
5 student for employment in a particular occupation or as described in particular job titles, either of  
6 the following conditions shall be met:

7 “(1) The equipment used for instruction or provided to the student shall be comparable in  
8 model type or features to equipment generally used in those occupations or job titles at the time  
9 the instruction is offered.

10 “(2) The institution shall establish that the equipment used for instruction or provided to a  
11 student is not obsolete and is sufficient for instructional purposes to reasonably assure that a  
12 student acquires the necessary level of education, training, skill, and experience to obtain  
13 employment in the field of training and to perform the tasks associated with the occupation or job  
14 title to which the educational program was represented to lead.

15 “(b) An institution's facilities, including heating and cooling, ventilation, lighting,  
16 classrooms, laboratories, and campus environs, shall be well-maintained. The institution shall  
17 maintain all valid permits required by any public agencies relating to the health and safety of the  
18 institution's facilities and equipment on file, and such permits shall be available to the Bureau  
19 upon request.”

20 23. California Code of Regulations, title 5, section 71740 states:

21 “(a) A degree granting institution shall make available for student use a library and other  
22 learning resources.

23 “(b) An institution shall provide or make provisions for the library and other learning  
24 resources needed to support each educational program it offers, including resources such as  
25 reference works, periodicals, monographs, and media and equipment specific to the educational  
26 programs offered.

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1 “(c) An institution shall describe onsite library and other learning resources, if any, that  
2 enable students to pursue inquiries, searches for information and documentation, and assignments  
3 connected with their study programs.

4 “(d) An institution that depends for library and other learning resources primarily on other  
5 institutions' collections and resources not in its possession shall do all of the following:

6 “(1) Describe those library and other learning resources, in the application and catalog.

7 “(2) Provide students and faculty with access to the regular services of a professional  
8 librarian or information specialist experienced in the electronic retrieval of information, who shall  
9 provide support for faculty in curriculum matters and actively serve as a resource guide for both  
10 graduate and undergraduate students.

11 “(3) Assure that students have access to the library collections and resources of another  
12 institution, organization, or library.

13 “(4) Document compliance with paragraphs (1), (2), and (3).”

14 24. California Code of Regulations, title 5, section 71800, subdivision (a) states:

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

17 “(a) The name and address of the institution and the addresses where instruction will be  
18 provided.”

19 25. California Code of Regulations, title 5, section 71810, subdivision (a) states:

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

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1 **FACTUAL BACKGROUND – CAMPUS**

2 26. Respondent’s application seeks an approval to operate a private postsecondary  
3 educational institution to offer a three-year program resulting in a Masters of Science degree in  
4 Applied Data Science. But Respondent does not have a campus, or even a library, from which to  
5 provide the instruction it proposes to offer. This is a fundamental flaw in Respondent’s  
6 application.

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 (Lack of Campus)

9 27. Respondent’s application is subject to denial because, to obtain an approval to  
10 operate, an applicant must be a private postsecondary educational institution. (Educ. Code §§  
11 94816, 94817, 94817.5, 94843, 94885, subd. (a), 94886, and 94887). Because, as described in  
12 paragraph 26, above, Respondent’s proposed school does not have a campus or other physical  
13 location from which to offer instruction or core academic support services, it is not a private  
14 postsecondary educational institution, and therefore cannot receive an approval to operate.

15 28. In particular, a school must have a “physical presence” in California to be a private  
16 postsecondary educational institution. (Educ. Code § 94858 [“Private postsecondary educational  
17 institution’ means a private entity with a physical presence in this state that offers postsecondary  
18 education to the public for an institutional charge.”] [emphasis added]). “Physical presence” in  
19 California means that the applicant “offers instruction or core academic support services from a  
20 physical location owned, operated, or rented by or on behalf of the institution in California.”  
21 (Educ. Code §§ 94801.7, subd. (b).) Because Respondent does not have a campus or other  
22 physical location from which to offer instruction or core academic support services, it does not  
23 have a “physical presence” in California. Because Respondent does not have “physical presence”  
24 in California, it is not a “private postsecondary educational institution.” And because Respondent  
25 is not a private postsecondary educational institution, it cannot receive an approval to operate.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 (Institution Address)

3 29. Respondent’s application is subject to denial because it does not have an address for  
4 its institution, as described in paragraph 26, above. (Educ. Code §§ 94885, subd. (a)(1), (a)(3),  
5 and (a)(9); 94887; and 94909, subds. (a)(1) and (a)(4); and Cal. Code of Regs., title 5, §§ 71110,  
6 subds. (d) and 71810, subd. (a).) In particular:

7 a. Respondent’s application fails to include the street address of each campus and  
8 branch at which Respondent’s educational programs will be offered. (Cal. Code Regs., title 5, §  
9 71110, subd. (d).)

10 b. Respondent’s proposed enrollment agreement fails to contain the address of the  
11 institution and the address(es) where instruction will be provided. (Cal. Code Regs., title 5, §  
12 71800, subd. (a).)

13 c. Respondent’s proposed catalog does not contain the Respondent’s address or  
14 the address(es) where class sessions will be held. (Educ. Code § 94909, subds. (a)(1) and (a)(4).)

15 **THIRD CAUSE FOR DENIAL OF APPLICATION**

16 (Facilities and Equipment)

17 30. Respondent’s application is subject to denial because Respondent lacks facilities and  
18 equipment to enable the achievement of its educational program goals. (Educ. Code §§ 94801.7,  
19 94885, subds. (a)(3) and (a)(9), and 94887; and Cal. Code Regs., title 5, §§ 71715, subds. (b) and  
20 (c) and 71735, subds. (a) and (b).) In particular:

21 a. Due to Respondent’s lack of campus, as described in paragraph 26, above,  
22 Respondent does not have sufficient facilities and necessary equipment to support the  
23 achievement of its educational objectives. (Cal. Code Regs., title 5, §§ 71715, subds. (b) and (c)  
24 and 71735, subd. (a).)

25 b. Due to Respondent’s lack of campus, as described in paragraph 26, above,  
26 Respondent is unable to comply with the requirements of a well-maintained facility and retaining  
27 applicable permits, as required by California Code of Regulations, title 5, section 71735,  
28 subdivision (b).

1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 (Library and Other Learning Resources)

3 31. Respondent’s application is subject to denial because its institution does not have a  
4 library or other learning resources, as described in paragraph 26, above. (Educ. Code §§ 94885,  
5 subd. (a)(3) and 94887; and Cal. Code of Regs., title 5, §§ 71710, subd. (a)(4) and 71740.) In  
6 particular, because it intends to grant a Masters Degree, Respondent’s proposed educational  
7 program requires research of an appropriate degree that utilizes a library and other learning  
8 resources. Accordingly, Respondent’s application is subject to denial for failing to have a library  
9 or other learning resources. (Cal. Code Regs., title 5, §§ 71710, subd. (a)(4) and 71740).

10 **FACTUAL BACKGROUND – FACULTY AND CURRICULUM**

11 32. Respondent’s application proposes offering a program of instruction that results in a  
12 Masters of Science degree in Applied Data Science. But Respondent’s proposed faculty consists  
13 of just one individual (DK). According to Respondent’s application, DK “possesses a bachelor’s  
14 degree in Electrical Engineering, a master’s degree in Computer Science, and more than 30 years  
15 of working and instructional experience in the IT industry.”

16 33. In its application, Respondent represented that its proposed “curriculum was authored  
17 by [DK].” But most of the course or module materials offered by Respondent as its proposed  
18 curriculum appear to be copied, with little to no substantive alteration, from materials made by  
19 other, unaffiliated institution(s) and/or individual(s).

20 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

21 (Faculty – Insufficient in Number)

22 34. Respondent’s application is subject to denial because it fails to propose a faculty that  
23 is sufficient in number. (Educ. Code §§ 94841; 94885, subd. (a)(5); and 94887; and Cal. Code of  
24 Regs., title 5, § 71720, subd. (a)(1).). The circumstances are set forth in paragraph 32, above.

25 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

26 (Faculty – Lack of Diversity in Educational Background)

27 35. Respondent’s application is subject to denial because it fails to propose a faculty that,  
28 as a whole, possesses a diverse educational background, demonstrated in part by earned degrees

1 from a variety of colleges and universities or by credentials generally recognized in the field of  
2 instruction. (Educ. Code §§ 94841; 94885, subd. (a)(1); and 94887; and Cal. Code of Regs., title  
3 5, § 71720, subd. (a)(5).) The circumstances are set forth in paragraph 32, above.

4 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

5 (Educational Programs Not Designed or Organized by Duly Qualified Faculty)

6 36. Respondent's application is subject to denial because its proposed course or module  
7 materials are not designed or organized by duly qualified faculty. (Educ. Code §§ 94837 and  
8 94885, subds. (a)(1) and (a)(3); and Cal. Code Regs., title 5, § 71710, subd. (a)(3).) The  
9 circumstances are set forth in paragraphs 32 and 33, above.

10 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

11 (Inclusion of False or Misleading Information)

12 37. Respondent's application is subject to denial for the inclusion of false or misleading  
13 information. (Cal. Code of Regs., title 5, §§ 71400.5, subd. (a) and 71710, subd. (a).)  
14 The circumstances are set forth in paragraphs 32 and 33, above.

15 **PRAYER**

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

- 19 1. Denying Respondent University of Bay Areas's Application for Approval to Operate  
20 for an Institution Non-Accredited; and  
21 2. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: 12/21/2023

24 "Original Signature on File"  
25 DEBORAH COCHRANE  
26 Chief  
27 Bureau for Private Postsecondary  
28 Education  
Department of Consumer Affairs  
State of California  
*Complainant*

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