

**BEFORE THE DIRECTOR
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

**GIANNI SCHOOL OF BARBERING;
JUNIOR A. WILLIAMS, Owner**

Applicant for Approval to Operate an
Institution Non-Accredited,

Respondent.

Case No. 999772

OAH No. 2015030526

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective SEP - 1 2015.

DATED: JUL 29 2015



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

This matter was heard before Ed Washington, Administrative Law Judge, State of California, Office of Administrative Hearings, on April 28, 2015, in Sacramento, California.

David E. Brice, Deputy Attorney General, represented Complainant Joanne Wenzel, Chief of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs.

Respondent Junior A. Williams represented himself.

Evidence and argument were received. The record remained open through May 19, 2015, to allow submission of supportive documentation by respondent and any corresponding objections by complainant. Respondent's supportive documentation and complainant's objections were received by May 19, 2015.¹

¹ Respondent submitted a "petition with 40 intending students in support of Gianni relicensing," three letters in support of respondent and his desire to open Gianni School of Barbering, and a grouping of 55 documents described by respondent as "other relevant documents previously submitted to the Department of Consumer Affairs but were not part of the evidence." These documents were marked as Exhibits A, B, and C, respectively, and admitted into evidence as administrative hearsay, and have been considered to the extent permitted under Government Code, section 11513, subdivision (d). Complainant's objections to the materials submitted by respondent have been marked as Exhibit 13.

The record was closed and the matter submitted for decision on May 19, 2015.

SUMMARY

Junior A. Williams submitted an application to operate a private postsecondary non-accredited institution known as the Gianni School of Barbering. His application contained several deficiencies. He was given multiple opportunities to correct those deficiencies, but ultimately failed to do so. Grounds for denial of his application thereby exist.

FACTUAL FINDINGS

1. On or about February 12, 2011, respondent submitted an application to the Bureau for approval to operate an institution non-accredited known as Al Jayz Barber College. Respondent's submission was rejected for failure to pay the required application fee on or about October 25, 2011.

2. Respondent resubmitted the application with the required application fee, and filed the application on or about September 11, 2012. The name of the institution was later changed to Gianni School of Barbering.

3. Between March and December 2013, the Bureau sent notices advising respondent that his application could not be approved because it did not meet applicable statutory and regulatory requirements. Each of these "deficiency letters" listed the areas of concern and requested additional information.² Respondent submitted additional information on seven occasions in an effort to clear the deficiencies. On April 14, 2014, the Bureau ultimately denied the application.

4. The application listed respondent as the President and sole owner of the institution. Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

5. The statutes and regulations under which the Bureau operates are complex and detailed. They require that institutions provide students and prospective students with catalogs and enrollment agreements, each of which must contain specific and highly detailed information about the school and its programs, policies, costs and more. The application itself is complex and detailed. It contains 24 sections, many of which require the applicant to provide information in great depth and some of which require the applicant to attach exemplars, including the catalog and the enrollment agreement. In reviewing applications,

² The deficiency letter is the primary method utilized by the Bureau to identify application deficiencies. It specifies the deficiencies noted for each section of the application as well as the specific statute(s) or regulation(s) forming the basis for the application requirement.

the Bureau's licensing analysts use detailed checklists to ensure that all statutory and regulatory requirements are met.

6. Respondent's application was processed by Licensing Manager Erica Smith. Respondent's application was assigned to Ms. Smith in March 2013, when she was a Licensing Analyst. On her initial review, Ms. Smith determined respondent's application was deficient in 18 of its 24 sections. On March 22, 2013, she sent respondent a deficiency letter listing the areas of deficiency and requesting additional information.

7. The Bureau received additional information from respondent in response to the first deficiency letter on June 12, 2013, November 8, 2013, and November 25, 2013, which corrected two minor deficiencies, but the application remained deficient in 16 of its 24 sections. Between March and June 2013, respondent's application was reassigned to Licensing Analyst Valerie Thornros. On December 23, 2013, Ms. Thornros sent respondent a second deficiency letter.

8. Both Ms. Smith and Ms. Thornros spoke with respondent multiple times and explained the application requirements, how his application was deficient, and what was needed to address the deficiencies. Respondent became frustrated with the application process and what he considered to be unnecessary bureaucracy. His discussions with Ms. Thornros became contentious and devolved to the point of being virtually useless.

9. The Bureau received additional information from respondent on January 23, 2014, and March 10, 2014. However, his application remained deficient in 11 of its 24 sections.

10. On April 14, 2014, the Bureau formally denied respondent's application, citing deficiencies in 11 sections of the application. (Organization and Management, Mission and Objectives, Exemplars of Student Agreements, Instruction and Degrees Offered, Description of Educational Program, Description of Financial Resources and Statements, Faculty, Facilities and Equipment, Catalog, Recordkeeping: Custodian of Records, and School Performance Fact Sheet.) Respondent appealed.

11. Ms. Smith testified at hearing for the Bureau. Through her testimony, the Bureau established that respondent's application, including all supplemental materials submitted to the Bureau, was deficient in the following areas:

- a. The Organizational Management: The application did not provide the education, experience, and qualifications of the Chief Academic Officer to perform their duties and responsibilities; the organizational chart contradicted the list of the institution's job duties and responsibilities; and, the application failed to demonstrate that the institution employed administrative personnel with the expertise to ensure the achievement of the institution's mission and objectives.

- b. Mission and Objectives: The application failed to describe, in detail, the institution's mission and objectives. Multiple statements were submitted that contradicted the institution's catalog.
- c. Exemplars of Student Agreements: The application indicated that instruction may be provided in a language other than English, but does not specify how the enrollment agreement, disclosures, and statements to students will be distributed to non-English speaking students; the schedule of charges is incomprehensible and mathematically incorrect; the "Student's Right to Cancel" policy within the enrollment agreement and the catalog are inconsistent; the institution failed to include the required transferability disclosure in the catalog; and, the materials also utilized the title "degrees" when the institution does not award degrees.
- d. Instruction and Degrees Offered: The application failed to specify the acceptable passing score for the Ability-to-Benefit exam and who would independently administer said exam.
- e. Description of Educational Programs: The application failed to describe the number and qualifications of faculty needed to teach the educational program and did not include an approval, or intent to approve, from the appropriate licensing agency.
- f. Faculty: The application did not demonstrate that the instructors possess the academic, experiential, and professional qualifications to teach.
- g. Facilities and Equipment: The application failed to provide an adequate description and an acceptable copy of any use, lease, or rental agreement for the facility, and failed to provide an adequate description of the facilities used for instruction.
- h. Catalog: The application failed to provide an adequate description of the facilities used for instruction; failed to include required information regarding the "Notice Concerning Transferability of Credits and Credentials Earned at our Institution;" provided inconsistent information regarding the programs offered by the institution; failed to disclose whether the institution has policies and procedures for the award of credit for prior experiential learning; failed to include language proficiency information; failed to provide a complete description of the requirements for completing each program; failed to specify that the Examination Fee and Licensure Fee would be paid to another entity; failed to adequately describe the "Brush Up" fee; failed to provide adequate qualifications for faculty Mango Watts, and Abram Espinosa; failed to provide consistent and complete student loan information; failed to provide clear policies on attendance, probation and dismissal, leaves of absence, student

rights; and, included incorrect financial aid information after multiple requests that the information be removed.

- i. Recordkeeping: Custodian of Records: The application included information that did not pertain to the institution, such as financial aid and requirements for graduate students.
- j. School Performance Fact Sheet: The application included a deficient School Performance Fact Sheet missing a significant amount of required information utilized by students to make informed choices.

12. Roderick Ray Ross testified on behalf of respondent. Mr. Ross has known respondent since 2011 and described himself as one of respondent's former students. He initially attended Molar Barber College, but was dissatisfied with the experience and decided to be mentored by respondent. He spoke very favorably of respondent's ability to mentor young barbers. In addition to barbering, respondent taught Mr. Ross business management techniques, and "about life in general." Mr. Ross emphasized that respondent provided him with the knowledge and skill necessary for him to pursue his career goals.

13. Douglas Gibson also testified on behalf of respondent. Mr. Gibson is a certified public accountant and certified fraud specialist. He is employed as an audit manager for the California Department of Transportation (CalTRANS). He has worked for CalTRANS for approximately 14 years. Mr. Gibson prepared and audited the final set of financial statements submitted to the Bureau by respondent. He prepared the financial statements after discussing the requirements with Ms. Smith. He testified that the statements were prepared and audited in accord with generally accepted accounting principles and auditing standards generally accepted in the United States of America. Mr. Gibson asserted that the audited financial statements demonstrated that respondent was financially sound, because respondent's ratio of current assets to current liabilities was 8.4:1. On cross-examination, Mr. Gibson also explained that "rent" did not appear as an expense on respondent's Income Statement because the rent had been pre-paid by respondent's former business and was reflected as a line item on respondent's Statement of Owner's Capital. The Bureau utilized a certified public accountant to evaluate respondent's financial statements during the application review process. However, the Bureau's accountant did not testify at hearing.

14. Respondent feels he is the victim of bureaucracy and that either Ms. Thornros or someone else at the Bureau is intent on interfering with his desire to provide opportunities for individuals in need and to provide for both his family and his community. He claimed that he has already submitted everything the Bureau requires, despite overwhelming evidence to the contrary. Notwithstanding the testimony of Mr. Gibson, it appears respondent's primary purpose at hearing was to complain about the application process and question the barbering expertise of the Bureau's analysts, rather than present evidence of compliance with the statutes and regulations governing his application to operate an institution non-accredited.

Discussion

15. Though respondent may consider the application process unwieldy and bureaucratic, the necessity of a comprehensive application process to begin an educational institution is apparent. The Bureau is responsible for promoting and protecting the interests of students and consumers. This is accomplished, in part, by ensuring individuals holding leadership positions at these institutions have the education, qualifications, and experience needed; by ensuring that institutions are financially sound before opening their doors to the public; and by ensuring that the policies, procedures, and requirements related to student enrollment, financial aid, academic advancement, and degree requirements, are consistently and clearly defined within institutions' written publications.

16. Despite multiple attempts to do so, respondent simply has not met the Bureau's requirements to open a non-accredited institution.

LEGAL CONCLUSIONS

1. An applicant for a license must prove that he should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Board* (1959) 52 Cal.2d 238.) At a hearing regarding the denial of an application, the respondent "must show compliance" with the statutes and regulations outlined in the Statement of Issues. (Gov. Code, § 11504.)

2. Education Code section 94887 provides that an approval to operate shall be granted only after an applicant has presented sufficient evidence to the Bureau that the applicant has the capacity to satisfy the minimum operating standards. An application that does not satisfy those standards shall be denied. California Code of Regulations, title 5, section 71100, provides that an application that fails to contain all information required by sections 71100-71380 is incomplete.

Cause for Denial

3. As set forth in Finding 11a, cause for denial of respondent's application exists, because respondent failed to describe the education, experience, and qualifications of the Chief Academic Officer; failed to include an organizational chart that shows the governance and administrative structure of the institution and relationship between faculty and administrative positions; and failed to employ administrative personnel who have the expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational program, in violation of California Code of Regulations, title 5, sections 71140 and 71730.

4. As set forth in Finding 11b, cause for denial of respondent's application exists, because respondent failed to describe in detail the institution's mission and objectives, in violation of California Code of Regulations, title 5, sections 70000, subdivisions (q), and (r), 71170, and 71705.

5. As set forth in Finding 11c, cause for denial of respondent's application exists, because respondent failed to provide information on how the institution provides enrollment agreement, disclosures, and statement to students for whom English is not the primary language and whether recruitment was conducted in a language other than English, in violation of Education Code section 94906.

6. As set forth in Finding 11c, cause for denial of respondent's application exists, because respondent failed to provide a comprehensible schedule of charges, in violation of Education Code section 94911, subdivision (b).

7. As set forth in Finding 11c, cause for denial of respondent's application exists, because respondent failed to provide a consistent "Students Right to Cancel" policy in both the enrollment agreement and the catalog, including the refund policy, in violation of Education Code sections 94909, subdivision (a)(8)(B), 94911, subdivision (e), and 94920, subdivision (d), and California Code of Regulations, title 5, section 71750, subdivision (b).

8. As set forth in Finding 11c, cause for denial of respondent's application exists, because respondent failed to include the transferability disclosure required in the school catalog, in violation of Education Code sections 94909, subdivision (a)(15), and 94911, subdivision (h).

9. As set forth in Finding 11d, cause for denial of respondent's application exists, because respondent failed to provide information regarding the Ability-to-Benefit examination, in violation of Education Code section 94904, subdivision (a), and California Code of Regulations, title 5, section 71770, subdivision (a)(1).

10. As set forth in Finding 11e, cause for denial of respondent's application exists, because respondent failed to include a description of the number and qualifications of the faculty needed to teach the education program; and, did not include an approval or intent to approve, from the appropriate licensing agency, in violation of California Code of Regulations, title 5, section 71220, subdivisions (c) and (f), and California Code of Regulations, title 5, section 71720, subdivision (b)(1).

11. As set forth in Finding 11f, cause for denial of respondent's application exists, because respondent failed to demonstrate that the instructors possess the academic, experiential and professional qualifications to teach, including a minimum of three years of experience, education, and training in current practices of the subject area they are teaching, in violation of California Code of Regulations, title 5, sections 71250 and 71720, subdivision (b)(1).

12. As set forth in Finding 11g, cause for denial of respondent's application exists, because respondent failed to provide an adequate description and an acceptable copy of any use, lease, or rental agreement for the facility, in violation of California Code of Regulations, title 5, sections 71260, subdivision (b), and 71735, subdivision (a).

13. As set forth in Findings 11g and 11h, cause for denial of respondent's application exists, because respondent failed to provide an adequate description of the facilities used for instruction, in violation of Education Code section 94909, subdivision (a)(4), and California Code of Regulations, title 5, sections 71260 and 71735, subdivision (a).

14. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to include required information regarding transferability of credits and included the term "degrees" with the materials provided, when the institution does not award degrees, in violation of Education Code sections 94897, subdivision (i)(3), and 94909, subdivision (a)(15).

15. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to disclose the policies and procedures for the award of credit for prior experiential learning, in violation of California Code of Regulations, title 5, section 71770, subdivision (c).

16. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide language proficiency information and whether English language services are provided, at their cost, in violation of California Code of Regulations, title 5, section 71810, subdivision (b)(4).

17. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide a complete description of the requirement for completion of each program, in violation of Education Code section 94909, subdivision (a)(5).

18. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to identify that certain fees would be paid to other entities and how those fees would be paid, in violation of California Code of Regulations, title 5, section 71800, subdivision (f).

19. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide a clear description of charges for a period of attendance, total charges for the entire educational program, and other listed fees, in violation of Education Code section 94909, subdivision (a)(9).

20. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide inadequate description of the institution's instructors' qualifications, in violation of Education Code section 94909, subdivision (a)(7), and California Code of Regulations, title 5, section 71250.

21. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide a statement, specifying students' obligations regarding loans and financial aid funds, in violation of Education Code sections 94909, subdivision (a)(11) and 94920, subdivision (d).

22. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide a clear attendance policy, in violation of Education Code section 94909, subdivision (a)(8)(D).

23. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide a sufficient probation and dismissal policy, in violation of Education Code section 94909, subdivision (a)(8)(C).

24. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide a comprehensible leave of absence policy, in violation of Education Code section 94909, subdivision (a)(8)(E).

25. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to provide a comprehensible policy on student rights, including the procedure for addressing student grievances, in violation of California Code of Regulations, title 5, section 71810, subdivision (b)(14).

26. As set forth in Finding 11h, cause for denial of respondent's application exists, because respondent failed to remove incorrect information regarding financial aid from the institution's catalog after multiple requests, in violation of Education Code section 94897, subdivision (j), and California Code of Regulations, title 5, section 71810, subdivision (b)(6).

27. As set forth in Finding 11i, cause for denial of respondent's application exists, because respondent included financial aid information in the institution's catalog when it does not offer financial aid, in violation of Education Code section 94897, subdivisions (j)(2) and (3).

28. As set forth in Finding 11j, cause for denial of respondent's application exists, because respondent failed to provide a compliant school performance fact sheet, in violation of Education Code section 94910, and California Code of Regulations, title 5, section 74112.

29. As set forth in Finding 13, complainant did not establish a cause for denial of respondent's application due to a failure to demonstrate financial viability as required by California Code of Regulations, title 5, sections 71240, 71745, and 74115.

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ORDER

The application of Junior A. Williams for approval to operate an Institution Non-Accredited known as Gianni School of Barbering is DENIED by reason of Legal Conclusions 3 through 28, separately and collectively.

DATED: June 18, 2015



ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings