

1 XAVIER BECERRA
Attorney General of California
2 ANTOINETTE CINCOTTA
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Statement of Issues	Case No. 1001325
13 Against:	
14 WESTERN CAMBRIDGE UNIVERSITY	SECOND AMENDED
15	STATEMENT OF ISSUES
16 Respondent.	

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Joanne Wenzel (Complainant) brings this Second Amended Statement of Issues
21 solely in her official capacity as the Chief of the Bureau for Private Postsecondary Education
22 (Bureau), Department of Consumer Affairs.
- 23 2. On or about May 5, 2011, the Bureau received an Application for an Approval to
24 Operate a Non-Accredited Institution (Application Number 23453) from American University of
25 California, which was subsequently changed to Western Cambridge University (Respondent). On
26 or about April 29, 2011, J.Lu. certified under penalty of perjury to the truthfulness of all
27 statements, answers, and representations in the application. The Bureau denied the application on
28 November 13, 2015.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

JURISDICTION

3. This Second Amended Statement of Issues is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau under the authority of the following laws.¹ All section references are to the Education Code (Code) unless otherwise indicated.

4. Code section 94886 states:

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

5. Code section 94887 states:

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

STATUTORY AND REGULATORY PROVISIONS

6. Title 5, California Code of Regulations (CCR), section 71100 states:

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

(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.

24 ///

25
26
27
28

¹ On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009 (SB 48 and hereinafter, "the Act") was signed into law. The Act, which became operative on January 1, 2010, established the Bureau for Private Postsecondary Education (hereinafter "Bureau"). The California Private Postsecondary Education Act of 2009 was recently amended, effective January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on amended version of the Act.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Code section 94900.5 states:

An institution shall maintain, for a period of not less than five years, at its principal place of business in this state, complete and accurate records of all of the following information:

(a) The educational programs offered by the institution and the curriculum for each.

(b) The names and addresses of the members of the institution's faculty and records of the educational qualifications of each member of the faculty.

(c) Any other records required to be maintained by this chapter, including, but not limited to, records maintained pursuant to Article 16 (commencing with Section 94928).

8. Code section 94911 states:

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

(e) (1) A disclosure with a clear and conspicuous caption, "STUDENT'S RIGHT 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.

(2) The disclosure shall contain the institution's refund policy and a statement 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 funds.

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

...

9. Title 5, CCR, section 71120 states:

The institution shall specify the form of business organization of the institution (e.g., sole proprietorship, general or limited partnership, for-profit corporation, nonprofit corporation, or Limited Liability Corporation). If the institution is incorporated, the institution shall also identify the state within which the institution is incorporated and the date of incorporation, and provide copies of the articles of incorporation and bylaws.

10. Title 5, CCR, section 71130 states:

(a)(1) The institution shall identify the name, address, email address, and telephone number of each person, as defined in section 94855 of the Code, who owns or controls 25% or more of the stock or an interest in the institution and, to the extent applicable, each general partner, officer, corporate director, member of the board of directors and any other person who exercises

1 substantial control over the institution's management or policies. For the
2 purpose of this paragraph, a person exercises "substantial control over the
3 institution's management or policies" if the person has the authority to cause the
4 institution to expend money or incur debt in the amount of five thousand dollars
5 (\$5,000) or more in any year.

6 (2) For each address required, the institution shall provide a physical home
7 address, and may request that the address, email address, and telephone
8 number, of each person described in paragraph (1) be maintained as personal
9 information.

10 (b) The institution shall describe the nature and percentage of the ownership
11 interest and any other financial involvement in the institution of any person
12 identified in subdivision (a) of this section.

13 (c) The institution shall provide a statement from any person identified in
14 subdivision (a) of this section who -

15 (1) Was found in any judicial or administrative proceeding to have
16 violated the Act or the law of any other state related to untrue or misleading
17 advertising, the solicitation of prospective students for enrollment in an
18 educational service, or the operation of a postsecondary school;

19 (2) Was denied any type of license on grounds set forth in Section 480 of
20 the Business and Professions Code;

21 (3) Was adjudicated as responsible for the closure of an institution in
22 which there were unpaid liabilities to the state or federal government or any
23 uncompensated pecuniary losses suffered by students;

24 (4) Has stipulated to a judgment or administrative order or entered a
25 consent decree involving any of the matters described in this section.

26 (5) Was convicted of any misdemeanor or felony as provided in Section
27 480(a)(1) of the Business and Professions Code;

28 (d) The institution shall furnish an explanation of any legal action pending
against the institution or ownership or any of the institution's owners, officers,
corporate directors, administrators, or instructors by any federal, state, or local
law enforcement agency involving alleged acts of fraud, dishonesty, financial
mismanagement, unpaid liabilities to any governmental agency or claims for
pecuniary loss suffered by any student.

11. Title 5, CCR, section 71140 states:

24 (a) The institution shall include in its Form Application 94886 an organization
25 chart that shows the governance and administrative structure of the institution
26 and the relationship between faculty and administrative positions.

27 (b) The institution shall provide a description of the job duties and
28 responsibilities of each administrative and faculty position.

///

1 (c) The institution shall identify the chief executive officer, chief operating
2 officer, and chief academic officer and describe their education, experience, and
3 qualifications to perform their duties and responsibilities.

4 12. Title 5, CCR, section 71220 states in part:

5 For each educational program that the institution offers or proposes to offer, the
6 Form Application 94886 shall contain a statement that the educational program
7 meets the requirements of section 71710, as well as the following:

8 (a) A description of the educational program.

9 (b) A description of the equipment to be used during the educational program.

10 (c) A description of the number and qualifications of the faculty needed to teach
11 the educational program.

12 (d) A projection, and the bases for the projection, of the number of students that
13 the institution plans to enroll in the educational program during each of the
14 three years following the date the Form Application 94886 was submitted.

15 (e) A description of the learning, skills, and other competencies to be acquired
16 by students who complete the educational program.

17 ...

18 13. Title 5, CCR, section 71240 states

19 (a) The Form Application 94886 shall contain a statement that the institution
20 has and can maintain the financial resources required pursuant to section 71745.

21 (b) The institution shall submit current, reviewed financial statements at the
22 time it applies for approval to operate. Each set of financial statements shall
23 comply with Section 74115 of this chapter.

24 14. Title 5, CCR, section 71260 states in part:

25 ...

26 (f) The Form Application 94886 shall contain a list of all permits, certifications,
27 or other evidence of inspections or authorizations to operate required by the
28 jurisdictions within which the institution operates that the institution has
obtained, and/or an explanation as to why those permits, certifications, or
inspections have not yet been obtained.

15. 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."

///

///

1 16. Title 5, CCR, section 71710 states in part:

2 In order to meet its mission and objectives, the educational program defined in
3 section 94837 of the Code shall be comprised of a curriculum that includes:

4 ...

5 (c) course or module materials that are designed or organized by duly qualified
6 faculty. For each course or module, each student shall be provided with a
7 syllabus or course outline that contains:

8 ...

9 (e) specific learning outcomes tied to the sequence of the presentation of the
10 material to measure the students' learning of the material; and

11 ...

12 17. Title 5, CCR, section 71715, subdivision (b) states, "The institution shall document
13 that the instruction offered leads to the achievement of the learning objectives of each course."

14 18. Title 5, CCR, section 71720 states in part:

15 (a) An Educational Program Leading to a Degree.

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

22 ...

23 (4) The faculty shall have sufficient expertise to support the institution's
24 awarding of a degree identifying a specialty or major field of emphasis,
25 demonstrated by, at a minimum:

26 (A) That the person possesses one of the following:

27 1. a degree from: an institution approved by the Bureau or
28 previously approved by a predecessor agency of the Bureau; or an
29 accredited institution in the United States or Canada; or other state
30 approved institution that documents that the institution at which the
31 faculty member earned his or her degree is equivalent to an
32 institution that is approved by the Bureau; or an institution outside
33 the United States or Canada and in addition provides a
34 comprehensive evaluation of the degree performed by a foreign
35 credential evaluation service that is a member of the National
36 Association of Credential Evaluation Services (NACES).

37 2. a credential generally recognized in the field of instruction.

38 (B) The degree, professional license, or credential possessed by

1 the person shall be at least equivalent to the level of instruction
2 being taught or evaluated;

3 19. Title 5, CCR, section 71740 states:

4 (a) A degree granting institution shall make available for student use a library
5 and other learning resources.

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

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

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

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

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

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

25 (4) Document compliance with paragraphs (1), (2), and (3).

26 20. Title 5, CCR, section 71745 states in part:

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

(1) Provide all of the educational programs that the institution represented
it would provide.

(2) Ensure that all students admitted to its educational programs have a
reasonable opportunity to complete the programs and obtain their degrees or
diplomas.

(3) Maintain the minimum standards required by the Act and this chapter.

(4) Pay timely refunds as required by Article 13 of the Act.

(5) Pay all operating expenses due within 30 days.

(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00

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

11 ...
12 (c) An institution shall provide to the Bureau its most current financial
13 statements upon request.

14 21. Title 5, CCR, section 71800 states in part:

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

18 ...
19 (b) Period covered by the enrollment agreement.

20 ...
21 22. Title 5, CCR, section 71810 states in part:

22 (a) Each institution shall provide a catalog pursuant to section 94909 of the
23 Code, which shall be updated annually. Annual updates may be made by the
24 use of supplements or inserts accompanying the catalog. If changes in
25 educational programs, educational services, procedures, or policies required to
26 be included in the catalog by statute or regulation are implemented before the
27 issuance of the annually updated catalog, those changes shall be reflected at the
28 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:

29 ...
30 (2) A statement of the institution's missions and purposes and the objectives
31 underlying each of its educational programs;

32 ...
33 23. Title 5, CCR, section 74115 states:

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

36 (b) A set of financial statements shall contain, at a minimum, a balance sheet,
37 an income statement, and a cash flow statement, and the preparation of financial
38

statements, shall comply with all of the following:

1
2 (1) Audited and reviewed financial statements shall be conducted and prepared in accordance with the generally accepted accounting principles

3
4 established by the American Institute of Certified Public Accountants by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution.

5
6 (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.

7
8
9 (3) The financial statements shall establish that the institution meets the requirements for financial resources required by Section 71745.

10
11 (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.

12
13 (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.

14
15 (c) Work papers for the financial statements shall be retained for five years from the date of the statements and shall be made available to the Bureau upon request.

16
17 (d) "Current" with respect to financial statements means completed no sooner than 120 days prior to the time it is submitted to the Bureau, and covering no less than the most recent complete fiscal year. If more than 8 months will have elapsed between the close of the most recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no less than five months of that current fiscal year.

18
19
20
21 **FACTS**

22 24. On May 5, 2011, the Bureau received an Application for Approval to Operate a Non-
23 Accredited Institution (Application No. 23453) from American University of California
24 (Respondent).

25 25. On June 11, 2012, the Bureau received an amended version of the application from
26 Respondent.

27 26. On October 19, 2012, the Bureau sent Respondent a letter advising that the Bureau
28 could not grant Respondent an approval to operate because of deficiencies in the application,

1 including deficiencies pertaining to the institution's form of business organization and
2 management, the student enrollment agreement, catalog, instruction and degrees offered, facilities
3 and equipment, financial resources and statements, and faculty, among others.

4 27. On November 6, 2012, the Bureau sent Respondent a letter advising that the Bureau
5 could not grant Respondent an approval to operate because of deficiencies that remained in the
6 application.

7 28. On November 14, 2012, the Bureau received Respondent's response to the deficiency
8 letter. On the same date, the Bureau received a fax from Respondent requesting that CAO, C.C.
9 be added as an authorized contact person.

10 29. On December 5, 2012, March 18, 2013, October 11, 2013, and October 29, 2014, the
11 Bureau received Respondent's additional responses to the November 6, 2012 deficiency letter.

12 30. On March 18, 2013, the Bureau received a letter from the institution notifying the
13 Bureau of the institution's name change from American University of California to Western
14 Cambridge University.

15 31. On October 11, 2013, the Bureau received financial statements as of June 30, 2013.

16 32. On March 17, 2014, the Bureau received financial statements as of February 28,
17 2014.

18 33. On July 10, 2015, the Bureau sent Respondent a second letter advising that the
19 Bureau could not grant Respondent an approval to operate because of deficiencies that remained
20 in the application and supporting documents.

21 34. The Bureau denied Respondent's Application for Approval to Operate a Non-
22 Accredited Institution and sent Respondent a "Notice of Denial" on November 13, 2015.

23 35. On January 5, 2017, May 9, 2017, June 21, 2017 and June 28, 2017, Respondent
24 submitted additional documents to cure the deficiencies in the application and supporting
25 documents. However, deficiencies remain.

26 ///

27 ///

28 ///

1 a. Respondent failed to submit a description of the learning, skills, and other
2 competencies to be acquired by students who complete the educational program, in violation of
3 title 5, CCR, sections 71220(e) and 71710(e);

4 b. Respondent failed to provide the qualifications of, J.K., the curriculum developer,
5 which includes a resume or curriculum vitae, in violation of title 5, CCR, sections 71710(c) and
6 71720(a)(1).

7 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

8 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**
9 **- Financial Resources and Statements)**

10 40. Respondent's application is subject to denial under Education Code section 94887
11 and title 5, CCR, sections 71100, 71240, 71745 and 74115 for failing to demonstrate its capacity
12 to satisfy minimum operating standards by failing to document that it has at all times sufficient
13 assets and financial resources to provide all of the educational programs that the institution
14 represented it would provide. The financial statements provided were neither audited nor
15 reviewed financial statements and only covered a three-month period.

16 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

17 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**
18 **- Faculty)**

19 41. Respondent's application is subject to denial under Education Code sections 94887
20 and 94900.5 and title 5, CCR, sections 71100, 71220(c), and 71720(a)(1), (a)(4)(A) and (a)(4)(B)
21 for failing to demonstrate its capacity to satisfy minimum operating standards as follows:

22 a. The institution failed to demonstrate the qualifications of its faculty. On June 21,
23 2017, the institution submitted transcripts for only one faculty member, J.L., although M.G. and
24 J.K. were identified in other documentation as faculty members.

25 b. The institution did not submit a complete list of faculty members and their proposed
26 faculty contracts as indicated in Paragraph 16 of the Form Application and as requested by the
27 Bureau in its deficiency letter dated July 10, 2015.

28 ///

1 Chief Academic Officer (CAO) and failed to provide documentation of the CAO's education,
2 experience and qualifications to perform the CAO's duties and responsibilities.

3 **NINTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**
5 **- Deficiencies in Enrollment Agreement)**

6 45. Respondent's application is subject to denial under Education Code sections 94887,
7 94911(e)(3), and title 5, CCR, sections 71800(b) and (d), for failing to demonstrate its capacity to
8 satisfy minimum operating standards in that the enrollment agreement was deficient as follows.
9 The enrollment agreement contains the heading "Period Covered by Enrollment Agreement,"
10 followed by the words "Scheduled Start Date" and "Scheduled Completion Date." However, it is
11 unclear whether the dates refer to the program's "Scheduled Start Date" and "Scheduled
12 Completion Date" or the period covered by the enrollment agreement.

13 **TENTH CAUSE FOR DENIAL OF APPLICATION**

14 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**
15 **- Catalog)**

16 46. Respondent's application is subject to denial under Education Code section 94887
17 and title 5, CCR, section 71810(b)(2) for failing to demonstrate its capacity to satisfy minimum
18 operating standards in that the catalog did not state the mission and objectives of the MBA
19 program.

20 **PRAYER**

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

24 1. Denying the application of Western Cambridge University for an Approval to
25 Operate an Institution Non-Accredited; and,

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Taking such other and further action as deemed necessary and proper.

DATED: 7/21/17



JOANNE WENZEL
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

SD2016100531/81736151.doc