

1 XAVIER BECERRA
Attorney General of California
2 ANTOINETTE B. 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) 738-9435
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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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:
13 **ONLINE VOCATIONAL ACADEMY, INC.**
14
15 **Approval to Operate an Institution Non-**
Accredited Applicant
16
17 Respondent.

Case No. 1003057
OAH No. 2018110438
SECOND AMENDED
STATEMENT OF ISSUES

18 Complainant alleges:

19 **PARTIES**

20 1. Dr. Michael Marion, Jr. (Complainant) brings this Second Amended Statement of
21 Issues solely in his official capacity as the Chief of the Bureau for Private Postsecondary
22 Education, Department of Consumer Affairs.

23 2. On or about December 8, 2015, the Bureau for Private Postsecondary Education
24 received an application for an Approval to Operate an Institution Non-Accredited from Online
25 Vocational Academy, Inc. (Respondent). On or about December 7, 2015, David Pinnell certified
26 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The Bureau denied the application on September 28, 2017.

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2 **JURISDICTION**

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

7 4. Education Code (Code) Section 94886 states:

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

13 5. Code Section 94887 states:

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

20 **STATUTORY PROVISIONS**

21 6. Code section 94837 states:

22 “Educational program” means a planned sequence composed of a single course
23 or module, or set of related courses or modules, that provides education, training,
24 skills, or experience, or a combination of these.

25 7. Code section 94897 states in pertinent part:

26 An institution shall not do any of the following:

27 ...

28 (b) Promise or guarantee employment, or otherwise overstate the availability of
 jobs upon graduation.

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1 **REGULATORY PROVISIONS**

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

3 (a) An applicant seeking approval to operate pursuant to Section 94886 of the
4 Code, other than Approval to Operate by Accreditation pursuant to Section
5 94890(a)(1) of the Code, shall complete the "Application for Approval to Operate
6 for an Institution Not Accredited," Form Application 94886 (rev. 2/10). An
7 applicant seeking approval to operate by accreditation pursuant to Section
8 94890(a)(1) of the Code shall comply with section 71390.

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

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

15 9. Title 5, CCR, section 71700 states:

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

19 10. Title 5, CCR section 71710 states in part:

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

22 ...

23 (e) specific learning outcomes tied to the sequence of the presentation of the
24 material to measure the students' learning of the material; and,

25 (f) evaluation by duly qualified faculty of those learning outcomes.

26 11. Title 5, CCR, section 71715 states in part:

27 ...

28 (d) Distance education as defined in section 94834 of the Code, does not require
the physical presence of students and faculty at the same location but provides
for interaction between students and faculty by such means as
telecommunication, correspondence, electronic and computer augmented
educational services, postal service, and facsimile transmission. In addition to the
other requirements of this chapter and the Act, an institution offering distance
education shall:

(1) ensure that the educational program offered through distance education
is appropriate for delivery through distance education methods;

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1 (2) assess each student, prior to admission, in order to determine whether
2 each student has the skills and competencies to succeed in a distance education
3 environment;

4 ...

5 (4) provide for meaningful interaction with faculty who are qualified to
6 teach using distance education methods;

7 ...

8 **FACTS**

9 12. On December 8, 2015, the Bureau received an Application for Approval to Operate
10 For [sic] An Institution Non-Accredited (Application No. 28811) from Respondent. Respondent
11 seeks to provide certificate level programs in information technology through a combination of
12 "one-on-one" instruction at the student's residence and on-line instruction. According to
13 Respondent's mission statement, Respondent "provide[s] individualized and intensive training to
14 injured workers so they may acquire the new skills required for re-employment ...[and]...
15 provide[s] training to assist students in orientation for new employment."

16 13. On December 21, 2015, the Bureau sent Respondent a letter confirming receipt of the
17 Application but informed Respondent that the application was incomplete in that the contact
18 information for all members of the governing board were not included and an accreditation plan
19 had not been submitted.

20 14. On January 19, 2016, the Bureau received an updated list of Respondent's governing
21 board members and clarification regarding its certificate program. On September 30, 2016, the
22 Bureau sent Respondent a letter advising that the Bureau could not grant Respondent an approval
23 to operate because of deficiencies in the Application, including deficiencies pertaining to the
24 institution's owner, governing board, enrollment agreement, instruction and degrees offered, the
25 description of the educational programs and the school catalog, among other things.

26 15. On or about January 4 and 23, 2017, the Bureau received Respondent's response to
27 the deficiency letter. On July 10, 2017, the Bureau sent Respondent another deficiency letter
28 identifying deficiencies pertaining to the owner's information, organization and management,
governing board, Enrollment Agreement, instruction and degrees offered, the description of the

1 educational programs and the school catalog, among other things. The Bureau requested
2 additional information be submitted by August 15, 2017.

3 16. On August 15, 2017, the Bureau received Respondent's response to the second
4 deficiency letter. The Bureau denied Respondent's Application for Approval to Operate a Non-
5 Accredited Institution and sent Respondent a "Notice of Denial" on September 28, 2017.

6 17. On or about February 15, 2019 and February 22, 2019, Respondent submitted
7 additional documents in support of its application for an approval to operate. The additional
8 documents submitted corrected some deficiencies but an additional deficiency was discovered in
9 the newly submitted documents.

10 18. On or about March 14, 2019, Respondent submitted additional documents in support
11 of its application for an approval to operate. The additional documents submitted corrected some
12 deficiencies but new deficiencies were discovered in the newly submitted documents.

13 19. On or about July 15, 2019, Respondent again submitted additional documents in
14 support of its application for an approval to operate. The additional documents submitted
15 corrected some but not all deficiencies.

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**

18 **- Student Assessment Prior to Admission)**

19 20. Respondent's application is subject to denial under Code section 94887 and title 5,
20 CCR, sections 71100, 71700, 71710 and 71715, for failing to demonstrate its capacity to satisfy
21 minimum operating standards as follows:

22 a. Respondent's 2018 catalog failed to demonstrate how Respondent will assess each
23 student, prior to admission, in order to determine whether each student has the skills and
24 competencies needed to succeed in a distance education environment, in violation of title 5, CCR,
25 71715(d)(2).

26 b. Respondent's 2019 catalog identified admissions requirements that include

27 ✓ Have access to a computer and an internet connection

28 ✓ Be able to turn on and off a computer.

- 1 ✓ Be able to type on a computer (typing speed with be taught in the program)
- 2 ✓ Be able to sign onto an internet distance education program.
- 3 ✓ Have the ability to concentrate in a distance education environment.
- 4 ✓ Have the discipline to direct self-study activities and meet deadlines.
- 5 ✓ Be able to contact the instructor via telephone for assistance.

6 However, Respondent failed to demonstrate how it will assess whether a prospective
7 student has met these requirements and how the assessment will assist it in determining whether
8 each student has the skills and competencies needed to succeed in a distance education
9 environment, in violation of title 5, CCR, 71715(d)(2).

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**
11 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**
12 **- Meaningful Interaction with Faculty)**

13 21. Respondent's application is subject to denial under Code section 94887 and title 5,
14 CCR, sections 71100, 71700, and 71715(d)(4), for failing to demonstrate how it will provide for
15 meaningful interaction with faculty who are qualified to teach using distance education methods,
16 in that the school catalog received by the Bureau in March, 2019 provides the instructor's
17 telephone number and e-mail address but fails to demonstrate how meaningful interaction
18 between students and faculty will be provided.

19 **THIRD CAUSE FOR DENIAL OF APPLICATION**
20 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**
21 **- Evaluation by Duly Qualified Faculty of Learning Outcomes)**

22 22. Respondent's application is subject to denial under Code sections 94887, and title 5,
23 CCR, sections 71100, 71700 and 71710(e) and (f) for failing to demonstrate that its course syllabi
24 contain specific learning outcomes to measure the students' learning of the material and that
25 duly qualified faculty evaluate those learning outcomes in that:

- 26 a. Respondent failed to demonstrate whether assignments are to be submitted to faculty
27 for assessment, and how and when a student is expected to submit assignments in the syllabi or in
28 the Canvas Learning Management System.

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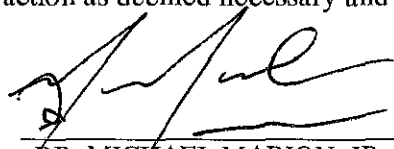
b. For competency-based courses such as "Beginning Word 2016," "Beginning Excel 2016," and "Beginning PowerPoint 2016," which do not use quiz-based assessments, Respondent failed to demonstrate how specific learning outcomes are measured by duly qualified faculty to determine if students are learning the material.

c. The course description for "Seeking New Employment" states that competencies are measured by both practical and written testing, however Respondent failed to demonstrate how practical assessments are performed by duly qualified faculty.

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

1. Denying the application of Online Vocational Academy, Inc. for a Approval to Operate an Institution Non-Accredited; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 7/24/19


DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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