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

12 In the Matter of the Statement of Issues
Against:

13 **NEWPORT TECHNOLOGICAL**
14 **UNIVERSITY; ANNA GAO**

15 **Approval to Operate an Non-Accredited**
16 **Institution Applicant**

17 Respondent.

Case No. 1004700

STATEMENT OF ISSUES

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19 **PARTIES**

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

23 2. On or about September 24, 2018, the Bureau for Private Postsecondary Education
24 received an application for Approval to Operate an Institution Non-Accredited from Newport
25 Technological University (Respondent). On or about September 12, 2018, Anna Gao, as Chief
26 Executive Officer, certified under penalty of perjury to the truthfulness of all statements, answers,
27 and representations in the application. The Bureau denied the application on June 5, 2019.

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1 **JURISDICTION**

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

6 **STATUTORY PROVISIONS**

7 4. Section 94846 states: “‘Instruction’ means an institution's specific, formal
8 arrangements in which its faculty present a part of the curriculum.”

9 5. Section 94885¹ states:

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

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

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

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

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

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

19 (6) The institution is financially sound and capable of fulfilling its commitments to
20 students.

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

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

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

26 (b) Except as provided in Section 94885.1, an institution offering a degree must satisfy one
27 of the following requirements:

28 ¹ California Private Postsecondary Education Act of 2009, Ed. Code § 94800 et seq.

1 (1) Accreditation by an accrediting agency recognized by the United States Department of
2 Education, with the scope of that accreditation covering the offering of at least one degree
3 program by the institution.

4 (2) An accreditation plan, approved by the bureau, for the institution to become fully
5 accredited within five years of the bureau's issuance of a provisional approval to operate to the
6 institution. The provisional approval to operate to an unaccredited degree-offering institution
7 shall be in compliance with Section 94885.5.”

8 6. Section 94886 states: “Except as exempted in Article 4 (commencing with Section
9 94874) or in 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 postsecondary educational
11 institution in this state without obtaining an approval to operate under this chapter.”

12 7. Section 94887 states: “An approval to operate shall be granted only after an applicant
13 has presented sufficient evidence to the bureau, and the bureau has independently verified the
14 information provided by the applicant through site visits or other methods deemed appropriate by
15 the bureau, that the applicant has the capacity to satisfy the minimum operating standards. The
16 bureau shall deny an application for an approval to operate if the application does not satisfy
17 those standards.”

18 8. Section 94889 states:

19 “(a) Except as provided in subdivision (b) of Section 94890 and subdivision (b) of this
20 section, an approval to operate shall be for a term of five years.

21 (b) The bureau may adopt, by regulation, a process by which an institution with an approval
22 to operate may request, and be approved by the bureau for, an inactive status. To regain an active
23 approval status with the bureau, the institution shall apply for an approval to operate in
24 accordance with this chapter.”

25 **REGULATORY PROVISIONS**

26 9. California Code of Regulations, title 5, section 71865, states, in pertinent part:

27 “(a) A Master's degree may only be awarded to a student who demonstrates at least the
28 achievement of learning in a designated major field that is equivalent in depth to that normally

1 acquired in a minimum of 30 semester credits or its equivalent or one year of study beyond the
2 Bachelor's degree.

3 (b) A professional Doctoral degree may only be awarded to a student who has completed a
4 prescribed level of study normally requiring a minimum of three academic years of full-time
5 graduate study or the equivalent in part-time study; or, if the program leads to a profession or
6 occupation requiring state licensure, which satisfies the requirements of the state agency. The
7 degree shall include the name of the field in which it is offered (e.g., Juris Doctor or Doctor of
8 Music).”

9 10. California Code of Regulations, title 5, section 71710, states:

10 “In order to meet its mission and objectives, the educational program defined in section
11 94837 of the Code shall be comprised of a curriculum that includes:

12 (a) those subject areas that are necessary for a student to achieve the educational objectives
13 of the educational program in which the student is enrolled;

14 (b) subject areas and courses or modules that are presented in a logically organized manner
15 or sequence to students;

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

19 (1) a short, descriptive title of the educational program;

20 (2) a statement of educational objectives;

21 (3) length of the educational program;

22 (4) sequence and frequency of lessons or class sessions;

23 (5) complete citations of textbooks and other required written materials;

24 (6) sequential and detailed outline of subject matter to be addressed or a list of skills to be
25 learned and how those skills are to be measured;

26 (7) instructional mode or methods.

27 (d) if degree granting, require research of an appropriate degree that utilizes a library and
28 other learning resources;

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

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

4 11. California Code of Regulations, title 5, Section 71715 states:

5 “(a) Instruction shall be the central focus of the resources and services of the institution.

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

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

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

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

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

22 (3) ensure that the materials and programs are current, well organized, designed by faculty
23 competent in distance education techniques and delivered using readily available, reliable
24 technology;

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

27 (5) maintain clear standards for satisfactory academic progress;

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1 (6) timely complete student evaluations of learning outcomes by duly qualified faculty,
2 which are appropriate for use with the distance education methods used, and evaluated by duly
3 qualified faculty.

4 (7) employ a sufficient number of faculty to assure that (A) the institution's response to, or
5 evaluation of, each student lesson is returned to the student within 10 days after the lesson is
6 received by the institution; and (B) the institution's response to, or evaluation of, each student
7 project or dissertation is returned to the student within the time disclosed in the catalog; and

8 (8) shall maintain a record of the dates on which lessons, projects, and dissertations were
9 received and responses were returned to each student.”

10 12. California Code of Regulations, title 5, Section 71735 states:

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

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

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

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

1 **FACTUAL BACKGROUND**

2 13. On September 24, 2018, the Bureau received Respondent’s Application for Approval
3 to Operate for an Institution Non Accredited.

4 14. On November 8, 2018, the Bureau’s Licensing Unit mailed a deficiency letter to
5 Respondent. On December 17, 2018, the Bureau received Respondent’s response to the
6 deficiency letter.

7 15. On March 13, 2019, the Bureau’s Quality of Education Unit mailed a deficiency letter
8 to Respondent. On April 23, 2019, the Bureau received Respondent’s response to the deficiency
9 letter.

10 16. On June 5, 2019, the Bureau mailed the Notice of Denial of Application for Approval
11 to Operate to Respondent.

12 17. On June 19, 2019, the Bureau received Respondent’s Request for Appeal.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 (Failure to Meet Minimum Operating Standards – Educational Program)

15 18. Respondent's application is subject to denial under Sections 94885, subsection (a)(1),
16 94886, and 94887 and California Code of Regulations, title 5, sections 71865, subsections (a) and
17 (b), and 71710, subsections (a) and (b), in that Respondent has not met minimum operating
18 standards where the institution has not demonstrated that the contents of its educational programs
19 can achieve its stated objective as follows:

20 **MBA Program vs. DBA Program**

21 a. The Doctoral in Business Administration (DBA) program’s prescribed level of
22 study does not appear to exceed the achievement of learning that is required for the Master’s in
23 Business Administration (MBA) program, as multiple classes are virtually the same in content
24 and rigor between the two programs, including but not limited to:

25 i. BUS 800: International Finance compared to BUS 575: International
26 Financial Management;

27 ii. BUS 810: Marketing Management and Strategy compared to BUS 530:
28 Marketing Management;

1 iii. BUS 830: Organizational Leadership compared to BUS 520:
2 Organizational Leadership; and

3 iv. BUS 890: Technological Management Strategies compared to BUS 550:
4 Technology and Operations Management.

5 b. The above-referenced subject areas and courses do not appear to be presented in
6 a logically organized manner or sequence to students.

7 c. If it is necessary for certain subjects, objectives, and lessons to be repeated in
8 the DBA program, then the MBA program is not covering all subject areas that are necessary for
9 a student to achieve the educational objectives of the educational program in which the student is
10 enrolled.

11 **DBA Program**

12 d. The following DBA courses have virtually identical student learning outcomes
13 and major instructional areas as well as many identical course assignments as other DBA courses
14 offered by the institution:

15 i. BUS 880: Strategies and Implementation compared to BUS 885: Strategy
16 Theory and Application; and

17 ii. BUS 900: Doctoral Research Methods compared to BUS 920: Research
18 Methods I.

19 e. The above-referenced subject areas and courses do not appear to be presented in
20 a logically organized manner or sequence to students.

21 f. If it is necessary for certain subjects, objectives and lessons to be repeated in
22 subsequent DBA courses, then the program is not covering all subject areas that are necessary for
23 a student to achieve the educational objectives of the educational program in which the student is
24 enrolled.

25 **MBA Program**

26 g. The following MBA course has identical student learning outcomes, major
27 instructional areas and course assignments as another MBA course offered by the institution:

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1 i. BUS 525 Human Resource Management compared to BUS 590: Business
2 Models of Organization.

3 h. The above-referenced subject area and course do not appear to be presented in a
4 logically organized manner or sequence to students.

5 i. If it is necessary for the subjects, objectives and lessons to be repeated in
6 subsequent MBA courses, then the program is not covering all subject areas that are necessary for
7 a student to achieve the educational objectives of the education program in which the student is
8 enrolled.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 (Failure to Meet Minimum Operating Standards – Failure to Provide Course Content)

11 19. Respondent's application is subject to denial under Sections 94885, subsection (a)(1),
12 94886, and 94887 and California Code of Regulations, title 5, sections 71715, subsections (d)(3)
13 and (6), and 71710, subsections (c), (e), and (f), in that Respondent has not met minimum
14 operating standards where the institution has not demonstrated that the contents of its educational
15 programs can achieve its stated objective. Specifically, Respondent proposes to offer online
16 instruction via Moodle, a Learning Management System. No course content had been uploaded
17 to Moodle. In the absence of developed course content, uploaded in the platform and ready for
18 review, the Bureau cannot determine the following:

19 a. Whether the materials and programs are current, well organized, designed by
20 faculty competent in distance education techniques and delivered using readily available, reliable
21 technology;

22 b. Whether the online curriculum covers subject areas that are necessary for a
23 student to achieve the educational objectives of the educational program in which the student is
24 enrolled;

25 c. Whether subject areas and courses or modules are being presented in a logically
26 organized manner or sequence to students; and

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1 d. Whether specific learning outcomes are tied to the sequence of the presentation
 2 of the material to measure the students' learning of the material and if/how duly qualified faculty
 3 are evaluating of those learning outcomes.

4 **THIRD CAUSE FOR DENIAL OF APPLICATION**

5 (Failure to Meet Minimum Operating Standards – Faculties and Equipment)

6 20. Respondent's application is subject to denial under Sections 94885, subsection (a)(3),
 7 94886, and 94887 and California Code of Regulations, title 5, sections 71735, subsection (a), in
 8 that Respondent has not met minimum operating standards where it did not establish that it has
 9 secured sufficient facilities to support the achievement of the educational objectives of all of the
 10 courses and educational programs in which students will be enrolled.

11 21. Respondent has only contracted for services and a small “physical record location.”
 12 No space has been allocated for students to meet with administrative staff or faculty or to consult
 13 with the librarian, for example. Additionally, hybrid classes, which require students to attend
 14 campus-based lectures, are to be scheduled in conference rooms that must be reserved as they are
 15 shared with all other businesses contracting for services and/or space at Premier Business
 16 Centers, Koll Center Pasadena. Respondent’s contract states, “Reservation shall be subject to
 17 availability.” Respondent cannot reasonably ensure that there will be a classroom available for
 18 lecture under these circumstances.

19 **PRAYER**

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

22 1. Denying the application of Newport Technological University; Anna Gao for
 23 Approval to Operate an Institution Non-Accredited; and

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

DATED: 9/5/19

Signature on File

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

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