

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

In the Matter of the First Amended Accusation Against:

DOLPHIN TRUCKING SCHOOL, DOLPHIN TRUCKING SCHOOL, INC., CARLA GALVEZ, OWNER

3668 S. Soto St.

Vernon, CA 90058

Institution Code: 36348745

BPPE Case No.: 1006582

OAH Case No.: 2023020706

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on 8/21/2024, 2024.

It is so ORDERED July 19, 2024.

"Original Signature on File"

RYAN MARCROFT
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION
DEPARTMENT OF CONSUMER AFFAIRS

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FOR THE BUREAU FOR PRIVATE POSTSECONDARY
EDUCATION
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In the Matter of the First Amended Accusation Against:

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SCHOOL, INC., CARLA GALVEZ, OWNER,**

Respondent.

Approval to Operate Institution Code No. 36348745

Agency Case No. 1006582

OAH No. 2023020706

PROPOSED DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 10-11, April 3-5, and June 4-5, 2024.

Complainant Deborah Cochrane, Chief of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, was represented by Vinodhini Ramagopal, Deputy Attorney General.

Respondent Dolphin Trucking School, Dolphin Trucking School, Inc., Carla Galvez (Respondent or School) was represented by Respondent's institution representative, Maria Galvez, and co-owner, Carla Galvez.

Testimony and documents were received into evidence, the record closed, and the matter was submitted for decision on June 5, 2024.

FACTUAL FINDINGS

Parties and Jurisdiction

1. In October 1999, Respondent opened as a sole proprietorship. On October 29, 2004, the Bureau of Private Postsecondary and Vocational Education (BPPVE), the predecessor agency to the Bureau, issued Respondent a temporary Approval to Operate Institution Code Number 36348745. On May 16, 2006, the BPPVE issued Respondent a full Approval to Operate Institution Code Number 28 36348745 (Approval).

2. The BPPVE ceased operations on July 1, 2007, and from July 1, 2007 through December 31, 2009, there was no regulatory body charged with the oversight of private postsecondary schools.

3. After the Bureau was created on January 1, 2010, the Bureau renewed the Approval. The Approval was in full force and effect at all times relevant to the charges brought herein (operative period) and expired on October 13, 2022. Respondent filed a Renewal for Approval to Operate and Offer Educational Programs for Non-Accredited Institution Application (Renewal Application). The Renewal Application is currently pending and no license has been issued pursuant to that application.

4. Complainant, acting in her official capacity as the Chief of the Bureau, filed the First Amended Accusation (FAA) seeking to revoke the Approval, alleging Respondent violated numerous laws and regulations related to its records (documentary violations), failed to provide students an appropriate educational program, did not have adequate equipment to facilitate the students' education, did not maintain appropriate campus grounds, failed to have qualified faculty and administration, and engaged in financial improprieties.

5. Respondent timely filed a Notice of Defense and the hearing ensued.

Respondent's Courses

6. At all times relevant to the charges in the FAA, Respondent was approved to offer seven vocational courses, four commercial driver's license (CDL) courses and three electrical wiring technician courses.

7. Respondent's school catalogs from 2020, 2021, and 2022 (Catalogs) state that each of Respondent's CDL instructors have a commercial driver's license and a minimum of five years driving experience. The instructors are identified in the Catalogs as Lincoln Galvez, Jose Luis Herera, Lawrence Alvitre, and Isidro Pimentel.

8. The CDL courses consisted of classroom/immobile truck component, skills driving component, and road driving component. The Catalogs list the different subjects that are covered during each of the course components.

9. The four CDL courses offered by Respondent are described in the Catalogs as follows:

The Class "A" Commercial Driver's Training Course (Class A Course) is a 168-hour course consisting of 80 classroom hours, 60 hours of skills driving, 20 hours of

road driving, and an eight-hour Skills Performance Test. At the end of the course, the school administers both a Department of Motor Vehicles (DMV) prep final exam and final for the classroom after which, the DMV administers the CDL final test.

The Class "B" Commercial Driver's Training Course (Class B Course) is a 120-hour course, consisting of 40 hours of classroom/immobile vehicle instruction, 40 hours of skills driving and 40 hours of road driving. At the end of the course, the school administers a final exam, and the DMV administers the CDL final test.

The Commercial Driver's License Advanced Course (CDL Advanced Course) is an 80-hour course, consisting of 30 hours of classroom/immobile vehicle instruction, 40 hours of skills driving and 10 hours of road driving. At the end of the course, the school administers a final examination. The Class "A" Commercial with Passenger Endorsement is a 240-hour course, consisting of 100 hours of classroom/immobile instruction, 100 hours of skills driving, and 40 hours of road driving. At the end of the course, the school administers a DMV prep final exam after which, the DMV administers the CDL final test.

10. To be admitted into Respondent's CDL courses, prospective students must complete a qualification application, provide a high school diploma/transcript, GED certificate, DD-214, college transcript, CDL permit or Ability to Benefit assessment from the referring agency. In 2020, applicants were required to "currently have (or have had in the past) a commercial driver's license . . . [or] have taken CDL classes at another institution" as a prerequisite to the CDL Advanced Course. (Exh. 12, p. A166.) The following year, Respondent eliminated the prior experience prerequisite and simply "recommend[ed]" students "have (or have had in the past a commercial driver's license or CDL permit" before enrolling in the course. (Exh. 35, p. A422.)

Student D.Y.

11. On July 27, 2020, after seeing an advertisement, D.Y. visited the school and met with an admissions officer. After discussion, Respondent enrolled D.Y. in its CDL Advanced 80-hour Course even though D.Y. had never held a CDL or taken any CDL classes at another institution. D.Y. paid Respondent the tuition and fees in cash and Respondent provided him with a handbook.

12. D.Y. began attending classes on August 3, 2020. Though the classes were scheduled from 6:00 a.m. to 10:00 a.m. in the morning, D.Y. did not receive instruction for the scheduled four hours. The gates to the training yard would open at 6:00 a.m. and the instructor would prepare the trucks for the class while students waited. Some days, instruction would not begin until 7:00 a.m. Even so, students were told that they needed to leave the school grounds promptly at 10:00 a.m. During the road driving sessions, the instructor would take three to four students in the truck and provide each student some time behind the wheel.

13. During the first three weeks, D.Y. was taught air brakes, straight line backing, offset left and right and parallel parking on one of the sides. By the final week of the course, D.Y. received instruction on parallel parking on the other side, alley docking, and how to couple and uncouple tractor-trailers (coupling and uncoupling).

14. D.Y. contacted the school's administration staff to express his concerns about the instruction and was directed to Carla Galvez. When D.Y. spoke with Carla Galvez, she told him she had already spoken to the instructor and the instructor denied everything and she yelled at him when he tried to tell her what he was experiencing. The instructor confronted D.Y. for complaining to the administration and later seemed to avoid providing him further instruction. Carla Galvez subsequently

visited the training yard and met with a few students. The students collectively complained they had not been given enough driving time and had not yet been taught alley docking. After the discussion, Carla Galvez agreed to give the students an extra week of instruction. Even during that week, however, D.Y., did not receive training or driving time to learn alley docking or coupling and uncoupling.

15. On September 4, 2020, D.Y. notified Respondent he would no longer be attending the school. At that time, D.Y. had only completed six road driving sessions lasting anywhere from 15 to 20 minutes each time, far less than the 15 hours required by the DMV for a CDL. D.Y. was not given any exams at the school and did not feel prepared to take the DMV CDL final test. D.Y. ultimately enrolled in another truck driving school and passed the final DMV CDL test.

16. On or about November 13, 2020, D.Y. filed a complaint with the Bureau which was largely consistent with D.Y.'s uncontroverted testimony at hearing.

2021 Bureau Investigation of D.Y.'s Complaint

17. On November 24, 2020, the Bureau assigned Leslie Feist, a Bureau enforcement analyst, to investigate D.Y.'s complaint.

18. On May 5, 2021, Feist visited the Respondent's teaching site in Los Angeles, California. During the visit, Feist spoke with two instructors, Lawrence Alvitre, and Jairo Reyes, a student, D.G., and Maria Galvez. (Alvitre, Reyes and D.G. did not testify at the hearing but their statements to Fiest during the investigation were considered to the extent the statements explained or supplemented other, direct evidence, including the testimony of other witnesses.)

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19. Alvitre and Reyes told Feist they were both former students of the School. Alvitre and Reyes did not have any trucking experience before attending the School and were employed by the School shortly after they graduated and received their CDLs. The classes were generally taught by two instructors, one who would focus on teaching students the parts of the truck and the other would work on driving instruction. Neither instructor had any textbooks or other written material other than the DMV test book. The instructors stated they relied on the students to let them know what information they needed to cover and if they needed additional drive time. The attendance was tracked by administration via a sign in sheet, which was also used to grade the students.

20. D.G. told Feist he completed the 168-hour CDL program (Class A Course) and that Reyes and Alvitre had been his instructors. While he was in the program, D.G. had only received one hour of actual driving time on the roads outside the training yard and was now waiting, along with other students who had completed their program, at the training yard in the hopes of getting additional drive time before the DMV test.

21. During the visit, Alvitre told Feist not to stand near the office as the truck being driven in the yard had bald tires and could possibly explode. The instructor stated another truck had a blowout recently and it was likely to recur. Based on this information, Feist inspected the equipment in the yard. Feist found that the majority of the trucks did not appear roadworthy as the tires had exposed cables in the rubber, were completely bald and lacked tread, or had deep grooves, indicating excessive wear and tear. Feist also observed little pieces of metal cable from tires covering the ground. Alvitre told Feist that several students had been stabbed through their shoes

by the pieces of cable. Feist took photographs of the conditions she observed and attached them to her report.

22. Maria Galvez's statements to Feist during the site visit were consistent with her testimony at hearing. Maria Galvez has been Respondent's Compliance Director since 2016. She confirmed Respondent does not have a separate syllabus for the courses and uses the curriculum in the Catalogs and Student Orientation Packet as the class syllabus. Respondent keeps track of student attendance and progress through the sign in sheets. After each class, she is provided with the sign in sheets, and she transfers the information into the computer on a weekly basis.

23. Feist requested and received a copy of the 2020 Catalog, School Orientation Packet and List of Faculty (Faculty List). Feist also requested a copy of student D.G.'s file, and faculty resumes, which she later received by email.

24. Though Reyes was not listed in the Catalogs as an instructor, Feist was able to confirm that Alvitre and Reyes, who were both listed as instructors on the Faculty List, did not have the required three years of experience, education and training in the trucking industry nor did Respondent document any equivalent qualifications.

25. During her records review, Feist also determined there were numerous violations, which are referenced in paragraphs 43 through 47, 49, and 51 of the FAA, and were established at hearing. (Government Code section 11425.50, subdivision (b), authorizes the findings in the proposed decision to be made "by reference to the pleadings.")

26. Feist completed her investigation report on August 11, 2021, documenting her investigation and findings, which was admitted into evidence as

Exhibit 4. Feist, however, did not issue Respondent any citation for violating its own admission policies and instead recommended Respondent issue D.Y. a refund. The School issued D.Y. a refund on September 15, 2021.

October 13, 2021 Site Inspection

27. On October 13, 2021, Sam Alcantar, Bureau Compliance Inspector, conducted a site inspection of the School at their new premises in Vernon, California. During the inspection, Alcantar met with Maria Galvez and reviewed Respondent's self-monitoring procedures, finding them to be "adequate." (Exh. 17, p. A240.)

28. Alcantar requested several records, including Respondent's 2021 Student Tuition Recovery Fund (STRF), substantiating data, current financial statements, student brochures and pamphlets, School Performance Fact Sheet (SPFS), School Catalog, Enrollment Agreement, student files, and faculty personnel files of Lincoln Galvez, Jose Luis Herrera and Alvitre. (The STRF is a fund administered by the Bureau that relieves or mitigates economic loss suffered by a student while enrolled in a qualifying institution. California resident students or students enrolled in a residency program, who pay tuition to an institution are charged an assessment to fund this STRF.) Maria Galvez was unable to provide Alcantar with the current financial statements, which she stated were being prepared by Respondent's accountant but provided all the other records. After reviewing the records and Respondent's website, Alcantar found there were some deficiencies in the Catalog, which Maria Galvez corrected by the end of Alcantar's inspection, and that the SPFS was missing key data points, including the contact information for students and their employers, which prevented Alcantar from validating the reported information. At hearing, Respondent submitted an updated 2018 SPFS Sheet containing the missing information.

29. Alcantar then visited Respondent's training yard in Los Angeles. Alcantar observed the training area was paved, marked and suitable for truck driver training and instruction. He also inspected the training vehicles, finding them to be "in good to fair condition with no frayed tires, leaking engines or other hazards." (Exh. 17, p. A239.)

30. On October 13, 2021, Alcantar completed his inspection report, which was admitted into evidence as Exhibit 17.

Student L.C.

31. On February 22, 2022, L.C. went to the School and Respondent enrolled him in its 80-hour Advanced CDL Course. During the intake procedure, L.C. was told he would not need his CDL permit before he began classes, consistent the language in the 2022 School Catalog which only "recommends" that students have their CDL permit. (Exh. 35, p. A422.) L.C. left a cash deposit of \$1,200 and was told classes would begin on March 14, 2022.

32. When L.C. arrived at the training yard on March 14, 2022, there were two instructors present. They asked L.C. if he had his CDL permit and when L.C. informed them he did not, the instructors told him the training was for people who had their permits. L.C. signed the sign in sheet to confirm that he had shown up for class and called the office repeatedly until he finally reached the individual who enrolled him. During the call, L.C. reported he had been turned away by the instructors. The individual told him that someone would call him back. The following day, L.C. received a call from Aida Galvez. L.C. found her to be extremely rude and disrespectful. After their conversation, L.C. decided to disenroll from the School as he did not feel he would get the instruction he had been promised. A few days later, L.C. spoke with Maria Galvez who told him that, within 45 days, he would be getting a refund of \$835

(\$1,200 less the \$250 registration fee, \$113.50 supplies and material fees and \$1.50 STRF fee). L.C. asked her to email him the information. When he received the email, however, it stated Respondent would only be refunding L.C. \$697.84, because Respondent was deducting for the cost of the first day of instruction. L.C. was not able to attend another school due to a lack of funds.

33. On April 7, 2022, L.C. filed a complaint with the Bureau which was consistent with his uncontroverted testimony at hearing.

2023 Bureau Investigation of L.C.'s Complaint

34. On April 7, 2022, the Bureau assigned Feist to investigate L.C.'s complaint.

35. On July 6, 2022, Feist visited Respondent's training yard in Los Angeles, California. During the visit, Feist spoke to an instructor, Jeremy Martinez, a student who was currently in the CDL program, J.D., three students who had completed the program, J.Z., R.I. and A.V., Maria Galvez; and Carla Galvez. (Martinez, J.D., A.V. and R.I. did not testify at the hearing and their statements to Feist were only considered to the extent they explained or supplemented direct evidence in the record.)

36. J.Z.'s statements to Feist during the investigation supplemented his largely uncontroverted testimony at hearing. J.Z. heard about Respondent while attending LA Trade Tech. The college offered to pay for his attendance and it seemed like a good option for some additional income while he completed his college degree. When J.Z. showed up at his first scheduled day of class, the instructor asked him if he had a CDL permit. When J.Z. stated he did not, the instructor told J.Z. to come back when he did. J.Z. returned a few days later after he obtained his CDL permit from the DMV.

37. During his testimony, J.Z. acknowledged he was occasionally late for class but it did not matter because most days, the instructors would spend the first 45 minutes switching our batteries and checking equipment. According to J.Z., there were usually two instructors in the yard, one who taught Pre-Trip (described in the catalog as part of the classroom hours) while the other instructor would focus on driving skills. The yard was very disorganized and that students from different classes were merged at the yard. J.Z. stated he spent a large portion of his time in the yard trying to teach himself by reading various resources he found and watching YouTube videos. He realized through this process that the handbook Respondent provided him was outdated as the language did not match the current tests being used by the DMV.

38. J.Z. estimated he received five to 10 hours of driving instruction. During each session, three or four students would go in the truck cab with an instructor. Each student would have a turn driving as the others would watch. J.Z. could not estimate how much actual time he spent driving a truck on the road but was certain it was well below ten hours.

39. At the completion of his course hours, J.Z. was not provided with a final exam and the administrator, who was responsible for setting up the test with DMV would not set up his final test date.

40. J.Z. also had concerns regarding Respondent's equipment, noting that he had witnessed a tire of a truck being driven by a student explode because it was worn down to its wires. J.Z. also stated that he found it problematic that he had never seen any fire extinguishers in training yard.

41. J.D., R.I., A.V. and Martinez all described class conditions where student progress was not tracked by the instructors. Students were expected to track their own

progress, those with different start dates and in different programs were merged together in classes, and they were not given a final exam or provided with any feedback on their progress. The only tracking system Respondent had in place to ensure students were getting the proper hours of instruction was the sign in sheet which was sent to the office after class.

42. Feist requested Respondent provide her with several records, only some of which Respondent was able to produce. After reviewing the records, Feist determined there were numerous violations, which are referenced in paragraph 58, 60-64, 67, 70, 74, 76, 87, 89-105 of the FAA and were established at hearing.

43. Feist completed an Investigation Report on September 20, 2023, which documented her investigation and findings, and which was admitted into evidence as Exhibit 18. At the conclusion of her investigation, Feist requested Respondent refund L.C. the balance of his initial cash deposit. (The Bureau later rescinded that request without any explanation.)

Student C.M.

44. C.M. was referred to the School by her husband and friends who were all former students. On May 23, 2023, C.M. went to the School and Respondent enrolled C.M. in the Advanced CDL Course. C.M. paid a cash deposit of \$2,750 and received a handbook, a folder with the contract, a receipt of her payment and a textbook containing three practice tests with answers.

45. C.M.'s uncontroverted testimony about her experience at the School was similar to the statements of other students. Specifically, she was not given the hours of instruction she was promised because classes would not start as scheduled at 6:00 a.m. but would end promptly at 10:00 a.m., student attendance was tracked by sign in

sheets that only reflected the day but not the time the students were there, Class A Course students were comingled with Class B Course students, resulting in in students being taught information that was not always relevant, and C.M. was not given enough drive time.

46. In addition, C.M. enrolled in the School based on Respondent's assurance she would be taught how to drive a manual transmission truck (manual truck). Respondent's manual truck, however, was out of commission while she was attending the School and she was only taught how to drive an automatic transmission truck. Because of these issues, C.M. did a lot of self-studying and consulted her father and her husband, who are both truck drivers, as resources.

47. At the end of her scheduled hours, Respondent gave C.M. a form to sign that stated that she received 26 hours of over the road training. The form accurately reflected the days she had been in attendance but did not accurately reflect the training she participated in and so she refused.

48. In addition, C.M. had to miss some classes after she was exposed to COVID-19. C.M. was therefore surprised to receive notification from the DMV that she was scheduled to take her CDL test on July 10, 2023.

49. C.M. contacted Respondent immediately to let them know that she was not ready to take the test as she had not yet been taught how to drive a manual truck. The administration refused to reschedule the test. C.M. ultimately cancelled the DMV test herself. Though C.M. had originally just wanted additional instruction, she decided she no longer wanted to continue with the School and asked for a refund. Respondent refused to refund her tuition stating she was no longer eligible for a refund.

50. On July 11, 2023, C.M. filed a complaint with the Bureau.

2023 Bureau's Investigation of C.M.'s Complaint

51. On August 23, 2023, the Bureau assigned Feist to investigate C.M.'s complaint.

52. Feist interviewed C.M., reviewed the 2023 Catalog Respondent posted in its website, and spoke with Kenny Dinh, a witness C.M. identified as someone with information about the School.

53. On November 8, 2023, Feist called Dinh, a former student and instructor at the School. Dinh's statement supplemented his largely uncontroverted testimony at hearing. According to Dinh, he attended the School in July 2022 and completed his CDL course in December 2022. In January 2023, Respondent offered him a position as an instructor with the School. Dinh left the School when Respondent blamed him for students failing their DMV tests.

54. Dinh had no prior experience in the industry before attending the School. He later learned the DMV required instructors to have at least three years of training and experience when after separating from the school, he tried to get an instructor position at a different trucking school.

55. Dinh's experience as a student at the School mirrored that of the other students who testified or provided statements to Feist during her investigation into D.Y. and L.C.'s complaints.

56. While he was an instructor at the School, Dinh was responsible for air brake training and teaching students how to perform proper pre-trip inspections. Dinh stated that he was not provided with any training from the School on how to or what to teach. While teaching, Dinh observed students coming and going all the time,

sometimes staying only for an hour and then leaving, but did not make any notation of that as he was told by Respondent not to record the times students arrived or left class on the sign-in sheets.

57. On November 7, 2023, Feist completed an Investigation Report, which was admitted into evidence as Exhibit 86.

Respondent's Evidence

58. Respondent presented testimony from Maria Galvez, Carla Galvez and Lincoln Galvez, and several documents.

MARIA GALVEZ

59. Maria Galvez argued that as Feist did not attend a trucking school, she did not have the expertise to accurately assess whether Respondent was providing students with an education program that would meet their goals. She admitted Respondent merged students from different courses, asserting that there was no detriment to the students as all the students all had to be familiar with the same information and each student gets their turn to practice skills and driving. Maria Galvez explained that the instructors used the sign in sheets to assess students on their skills on a scale from one to four (with four being excellent). The office would then transfer the grades into student records. Respondent has also hired a new employee to be in charge of the sign-in sheet so Respondent could more accurately documents the hours of education being provided to each student.

60. Maria Galvez denied that the School's equipment and grounds were unsafe. The School's terminal, i.e. training yard, is subject to inspections by the California Highway Patrol (CHP) under Vehicle Code sections 34501 and 34501.12.

During the inspection, the CHP assigns a safety compliance rating that reflects the terminal's overall compliance with the laws and regulations governing drivers' hours of service, vehicle condition, preventive maintenance practices, hazardous materials carriage and records required by statute or regulation. (See Cal. Code Regs., tit. 13, § 1233, subd. (b).) Maria Galvez presented reports of inspections performed by CHP of the School's training yard and equipment on March 25, 2020, September 3, 2020, February 17 and 24, 2022, April 25, 2023 and May 1, 2023. The CHP inspection reports reflect a rating of 'satisfactory.' A satisfactory compliance rating is defined as "compliance with applicable laws and regulations or only minor discrepancies in statutory or regulatory requirements were noted, and overall compliance was within reasonable bounds." (Cal. Code Regs., tit. 13, § 1233, subd. (a)(1).) The 2022 and 2023 inspection reports indicate that CHP also performed three inspections in 2021. Though the reports of those inspections were not offered into evidence, the reports which were provided and admitted into evidence reflect there were no prior prosecutions stemming from the earlier inspections.

61. Finally, Maria Galvez presented extensive evidence focused on the various documentary violations as mitigation or evidence of Respondent's efforts to rectify the violations. The evidence included an email from Kimberly Harris, a Bureau licensing analyst reviewing Respondent's renewal application, stating that she had reviewed the School's 2023 Catalog and "everything looks good." (Exh. SS.)

CARLA GALVEZ

62. Carla Galvez testified that the School was first opened in October 1999 as a sole proprietorship and has been instrumental in helping individuals who had recently been released from prison, and other difficult situations to obtain the

education to become gainfully employed. Carla Galvez took special pride in the fact the School was considered to be an essential business during the recent COVID crisis.

63. Carla Galvez has been the School's Director since it was approved by the BPPVE. Carla Galvez disputed that she lacked sufficient experience to be the School's director and further stated that it had been a BPPVE representative who suggested she should appoint herself the director during the application process. As the academic director, Carla Galvez is required to have a minimum of three years' experience in the trucking industry. Carla Galvez maintained she has many years of trucking experience, working for Coca-Cola, Los Angeles International Airport (LAX), Fontana Airport, among others. These employers are not listed in her resume, or the other records Feist requested to substantiate Carla Galvez's experience. (Exh. 16, p. A227.)

64. Carla Galvez is in charge of hiring instructors for the School and explained her hiring process. After confirming that the applicant has a Class A license, she runs a search to see if the applicant has had any accidents, citations, or endorsements. She then meets with the applicant and decides if the applicant is the type of person she would want to do business with. If she approves of the applicant, she sends the applicant to Lincoln Galvez so he can test what the applicant knows. Carla Galvez denied Kenny Dinh was hired as an instructor for Respondent, claiming he was "a helping instructor, not an instructor."

65. Carla Galvez believes Feist acted inappropriately during her site visits to the training yard. According to Carla Galvez, Feists would not speak to her and said she could not understand her. Carla Galvez contacted Richard Acosta, the Bureau's Complaint Investigations Manager, to report her concerns. According to Acosta, he responded to Carla Galvez with an email letting her know her next steps if she wanted

to file a formal complaint against Feist. Carla Galvez maintained she did not recall seeing the email and so she did not file a formal complaint.

LINCOLN GALVEZ

66. Lincoln Galvez has held a Class A license for approximately 25 years. He did not attend trucking school as that was not required at the time he became licensed., Lincoln Galvez has worked for Mayflower, Dootson and other trucking companies.

67. Lincoln Galvez's role in the School is as the lead instructor. He regularly goes to the School six days a week, teaching or doing paperwork. Lincoln Galvez will also go to the School on Sunday if students indicate they need additional help. When teaching, Lincoln Galvez uses the CDL Handbook that was developed by the DMV to teach his classes. A copy of the handbook is also provided to the students. At the end of the course, he uses the DMV checklist as a final exam and shares that information with the student.

68. During the hiring process, the office would send him prospective instructors and he their trucking knowledge. Lincoln Galvez trains the other instructors and evaluates them monthly, using an office form.

Analysis

69. Complainant established Respondent violated the numerous statutes and regulations governing a private postsecondary school. The students who testified at hearing uniformly testified that the classes were disorganized and would not be held for the full four hours for which they were scheduled during the 2020, 2021, and 2022 school terms. Though Respondent implemented some changes in response to Bureau

visits, they were insufficient for addressing the ultimate issues of whether Respondent was providing the education promised in their advertisements and whether their instruction ensured students who completed the course would be safe drivers.

70. The record also established inconsistencies between the observations of Feist and the students about the condition of the training yard and trucks and those Alcantar and the CHP. CHP, as the agency responsible for ensuring the safety of terminals, has an expertise that Feist and the students lack and therefore the safety concerns were not established at hearing. However, it was established that Respondent lacked the equipment necessary for the educational objectives of the courses and educational programs in which students are enrolled. For instance, the School did not have a working manual truck available to teach C.M. how to operate drive a manual transmission. In addition, the trucks that were available had tires so worn, they were unsafe to drive.

Costs

71. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$68,791.15. This amount consists of investigative costs of \$45,646.15, and enforcement costs incurred by the Office of the Attorney General \$23,145.

72. In support of Complainant's cost award request, Complainant introduced, without objection, a Certification of Costs of Investigation. California Code Regulations, title 1, section 1042, subdivision. (b)(1) requires that costs for services by a regular agency employee "shall describe the general tasks performed, the time spent on each task and the method of calculating the cost." The Certification asserts 561 "Hours of Investigation" were spent by an Associate Governmental Program Analyst

(AGPA) at an hourly rate of \$61.27 from 2020 to 2023 performing various investigative tasks and 184 hours were spent by an AGPA on "Report Writing." (Exh. 3.) The investigative costs fail to specify how much time was spent on each investigative task and therefore are not properly supported and are disallowed. The costs for Report Writing are properly supported and reasonable considering the complexity of this matter and are allowed. The reasonable cost of investigation is \$11,273.68.

73. Complainant also introduced, without objection, a Certification of Prosecution Costs; Declaration of Deputy Attorney General Vinodhini Ramagopal requesting prosecution costs of \$23,145. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the amount of \$23,145. Those costs are reasonable for prosecution of this matter.

74. The reasonable and supported costs of investigation and prosecution is \$34,418.68.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Absent a statute to the contrary, the burden of proof in administrative disciplinary proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) Thus, as the charging party, the burden of proof is on Complainant.

2. The standard of proof in license disciplinary proceedings depends on whether the license in question is a professional license. (*Ettinger v. Board of Medical*

Quality Assurance (1982) 135 Cal.App.3d 853, 856.) Unlike applicants for professional licenses, who are required to have extensive training and pass a rigorous state administered examination, applicants for an establishment license have no educational or training requirements. An applicant for Approval to Operate for a Non-Accredited Institution need only show that the applicant has the capacity to satisfy the minimum operating standards. (Ed. Code, § 94887; Cal. Code Regs., tit. 5, § 75500) Therefore, to impose discipline on the Approval, Complainant need only prove cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917; Evid. Code, §115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

3. This matter is governed by the California Private Postsecondary Education Act of 2009 (Act), set forth at Education Code section 94800 et seq., and the implementing regulations set forth at California Code of Regulations, title 5, section (CCR) 75010 et seq. The Bureau is the state agency responsible for regulating private postsecondary educational institutions in accordance with the Act.

4. Cause for disciplinary action may arise from "a material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, 'material violation' includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an Enrollment Agreement and that resulted in harm to the student." (Ed. Code, § 94937, subd. (a)(2).)

5. The main purpose of an administrative disciplinary proceeding is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger, supra*, 135 Cal.App.3d at 856.) It is far more desirable to impose discipline before a licensee harms anyone than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

Causes for Discipline

6. As its First, Second, Seventh, Eighth, Ninth, 10th through 14th, 18th through 24th, 26th to 30th, 32nd through 38th Causes of Discipline, Complainant alleges Respondent had multiple deficiencies in the documentation it maintained in the operation of Dolphin Trucking. Complainant established by a preponderance of evidence that Respondent routinely failed to maintain records in compliance with statutes and regulations governing postsecondary schools as set forth in Factual Findings 25, 28, 41, 42, 45 and 47. Cause therefore exists to discipline Respondent's Approval to Operate under Education Code section 94937, in conjunction with Education Code section 94897, subdivisions (j) and (k), 94900, subdivisions (b)(1), (b)(2), and (b)(3), 94900.5, subdivisions (b) and (c), 94902, subdivision (a), (b)(1) and (b)(3), 94905, subdivision (a), 94909, subdivisions (a)(4), (a)(6), and (a)(8)(C), (a)(9), 94910, 94911, subdivisions (b), (c), (h), 94912, 94913, subdivisions (a)(1), (a)(2), and (a)(5), 94929, subdivision (a), 94929.5, subdivision (a)(1-3), 94934, subdivision (a)(1-9) and CCR 71745, subdivision (c), 71750, subdivision (c)(3), and (f), 71760, 71770, subdivision (c), 71800, subdivisions (b) and (d), (e)(1)-(12), and (f), 71810, subdivisions (a), (b)(3), (b)(6), (b)(7), and (b)(12), 71920, subdivisions (b)(4), (b)(5)(A-E), (b)(9), and (b)(10), 71930, subdivisions (a), (b)(1), and (e), 74110, subdivisions (a)(1-6), (b), (c), and (d), 74112, subdivision (m)(1)-(9), 74117, 76120, subdivision (a), 76130, subdivision (a)(1), (b)(3), and (b)(4), and 76140, subdivision (a). (Though complainant alleged the

conduct set forth above constituted violations of Education Code section 94000, subdivision (b)(1)-(3), CCR 71620, subdivision (a), that appears to be a typographical error as those provisions do not exist.)

7. As its Third, Fourth, 15th and 16th Causes of Discipline, Complainant alleges multiple deficiencies in the education program Respondent provided to students. Complainant established, by a preponderance of the evidence, that students were not provided with an educational program necessary to achieve stated educational goals as set forth in Factual Findings 12, 14, 15, 19, 20-24, 31, 32, 37-41, 45-47, and 56. Cause therefore exists to discipline Respondent's Approval to Operate under Education Code section 94937, in conjunction with Education Code section 94898, subdivision (a), and CCR 71710, subdivisions (a)(1), (a)(2), (a)(3)(A-G), (a)(5), and (a)(6), and 71715, subdivision (b).

8. As its Fifth Cause for Discipline, Complainant alleges that Respondent failed to have and maintain equipment sufficient for instructional purposes and failed to properly maintain its campus environs. Complainant established, by a preponderance of the evidence, that Respondent lacked sufficient equipment for instructional purposes resulting in students having insufficient drive times as set forth in Factual Findings 19, 21, 27-40, 45 and 46. Cause therefore exists to discipline Respondent's Approval to Operate under Education Code section 94937, in conjunction with CCR 71735, subdivisions (a)(2) and (b).

9. As its Sixth and 17th Causes for Discipline, Complainant alleges that Respondent's staff and instructors did not have proper qualifications, experiences, and/or training. Complainant established, by a preponderance of the evidence that Respondent's staff and instructors lacked the required experience as set forth in Factual Findings 19, 23-25, 42, 53-54 and 63. Cause therefore exists to discipline

Respondent's Approval to Operate under Education Code section 94937, in conjunction with CCR 71720, subdivisions (b)(1) and (b)(2), 71730, subdivisions (c) and (f).

10. As its 25th and 31st Causes of Discipline, Complainant alleges financial improprieties in the operation of Dolphin Trucking. Complainant established, by a preponderance of the evidence that Respondent failed to issue students proper refunds and collect STRF funds as set forth in Factual Findings 25, 31, 32 and 42. Cause therefore exists to discipline Respondent's Approval to Operate under Education Code section 94937, in conjunction with Education Code section 94920, subdivision (b), and CCR 71750, subdivisions (a) and (b), and 76120, subdivision (a).

Level of Discipline

11. The Bureau has adopted Disciplinary Guidelines to be used when determining the appropriate discipline for violations. (Cal. Code Regs., tit. 5, § 75500.) The Disciplinary Guidelines provide that for proven violations, the maximum recommended discipline is revocation and the minimum recommended discipline is stayed revocation with anywhere from three to five years' probation.

12. The Bureau's Disciplinary Guidelines set forth the following factors to be considered when deciding whether an approval to operate should be revoked or suspended, or an institution should be placed on probation:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, student or the general public.

3. Prior record of discipline, citations, or notices to comply.

4. Number and/or variety of current violations.

5. Mitigation and aggravation evidence.

6. Rehabilitation evidence.

7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.

8. Overall criminal record.

9. Time passed since the act(s) or offense(s) occurred.

10. Whether or not the respondent cooperated with the Bureau's investigation, other law enforcement or regulatory agencies, and/or the injured parties.

11. Recognition by respondent of its wrongdoing and demonstration of corrective action to prevent recurrence.

13. The violations alleged and proven by Complainant are numerous, the most serious being the allegations related to Respondent's failure to provide students with an adequate education. Students were being made eligible for their truck driver's license examinations without sufficient instruction. Those students who did not pass suffered significant financial loss while those students who did pass pose a significant potential danger to the public. The actual and potential harm to both Respondent's students and the general public is significant and substantial. Though Respondent was cooperative during the investigation and has taken corrective actions, those efforts were focused on the documentary violations. There was no evidence that Respondent

has implemented significant changes to the education being provided to the students. Based on the forgoing, it would be against public protection to permit Respondent to retain the Approval.

Costs

14. Complainant requests an award of investigative and enforcement costs. (Ed. Code, § 94937, subd. (c).) "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the [Department of Consumer Affairs], upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (Bus. & Prof, § 125.3, subd. (a).)

15. In evaluating a request for costs, the administrative law judge must consider whether Complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed"; (2) had a "'subjective good faith belief in the merits of his or her position"; (3) raised a "'colorable challenge"' to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [quoting *California Teachers Ass'n. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

16. Respondent did not present any evidence of financial inability to pay the Bureau's costs nor did the hearing process result in a reduction in the severity of the discipline imposed from the maximum discipline requested in the FAA. Accordingly,

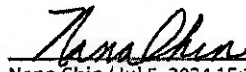
Respondent shall pay the costs of investigation and prosecution in the amount of \$34,418.68.

ORDER

The Approval to Operate Institution Code Number 36348745, issued to Dolphin Trucking School, Dolphin Trucking School, Inc., Carla Galvez, owner, is revoked.

Within 30 days after the effective date of this decision, Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$34,418.68. Respondent may pay these costs pursuant to a payment plan approved by the Bureau.

DATE: 07/05/2024


Nana Chin (Jul 5, 2024 15:29 PDT)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings