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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 Against:	Case No. 999531
13 14 ACCELERATED TECHNICAL TRAINING INSTITUTE; GENE KELLY, 50% Owner; and PAULA KELLY, 50%	FIRST AMENDED STATEMENT OF ISSUES
15 Owner	
16 Application for Approval to Operate an Institution Non-Accredited Applicant	
17 18 Respondent.	

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20 Complainant alleges:

21 **PARTIES**

- 22 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
24 Consumer Affairs.
- 25 2. On or about March 15, 2012, the Bureau for Private Postsecondary Education
26 (Bureau) received an Application for Approval to Operate an Institution Non-Accredited
27 (application number 24574) from Accelerated Technical Training Institute; Gene Kelly, 50%

1 Owner; and Paula Kelly, 50% Owner (Respondent). On or about September 14, 2012, the Bureau
2 issued a deficiency letter to Respondent explaining the deficiencies in its application.

3 3. On or about June 21, 2013, the Bureau issued to Respondent an additional letter
4 explaining the deficiencies in its application. On or about November 25, 2013, the Bureau
5 received an addendum to the Application from Respondent. On or about January 15, 2014, the
6 Bureau issued to Respondent a Notice of Denial of Application for Approval to Operate. On or
7 about March 10, 2014, Respondent sent the Bureau a letter requesting an administrative hearing.

8 JURISDICTION

9 4. This Statement of Issues is brought before the Director of the Department of
10 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
11 authority of the following laws. All section references are to the Education Code unless
12 otherwise indicated.

13 STATUTORY & REGULATORY PROVISIONS¹

14 5. Code section 94834 states:

15 “‘Distance education’ means transmission of instruction to students at a location separate
16 from the institution.”

17 6. Code section 94838 states:

18 “‘Educational program approval’ means authorization by the bureau, another government
19 agency of this state, or a federal government agency, to provide educational programs, and is an
20 element of an approval to operate.”

21 7. Code section 94887 states:

22 “An approval to operate shall be granted only after an applicant has presented sufficient
23 evidence to the bureau, and the bureau has independently verified the information provided by the
24 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
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26
27 ¹ The California Private Postsecondary Education Act of 2009 was recently amended, effective
28 January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the pre-
amendment version of the Act.

1 has the capacity to satisfy the minimum operating standards. The bureau shall deny an
2 application for an approval to operate if the application does not satisfy those standards.”

3 8. Code section 94897 states, in part:

4 “An institution shall not do any of the following:

5 . . .

6 “(i) Use a name in any manner improperly implying any of the following:

7 “(1) The institution is affiliated with any government agency, public or private corporation,
8 agency, or association if it is not, in fact, thus affiliated.

9”

10 9. Code of Regulations, title 5, section 71250 states:

11 “The Form Application 94886 shall include a statement that the institution has contracted
12 with sufficient duly qualified faculty members who meet the qualifications of section 71720.”

13 10. Code of Regulations, title 5, section 71475, subdivision (e) states:

14 “(e) The institution shall submit at the time it applies for renewal current financial
15 statements that meet the requirements of section 74115 as follows: (1) for an institution with
16 annual gross revenues of \$500,000 and over, statements shall be audited; (2) for an institution
17 with annual gross revenues less than \$500,000, statements shall be reviewed.”

18 11. Code of Regulations, title 5, section 71700 states:

19 “The Bureau may request that an institution document compliance with the standards set
20 forth in the Act and this Division to obtain and maintain an approval to operate.”

21 12. Code of Regulations, title 5, section 71710 states, in part:

22 “In order to meet its mission and objectives, the educational program defined in section
23 94837 of the Code shall be comprised of a curriculum that includes:

24 “. . .

25 “(c) course or module materials that are designed or organized by duly qualified faculty.

26 For each course or module, each student shall be provided with a syllabus or course outline that
27 contains:

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

- 1 “(2) a statement of educational objectives;
- 2 “(3) length of the educational program;
- 3 “(4) sequence and frequency of lessons or class sessions;
- 4 “(5) complete citations of textbooks and other required written materials;
- 5 “(6) sequential and detailed outline of subject matter to be addressed or a list of skills to be
- 6 learned and how those skills are to be measured;
- 7 “(7) instructional mode or methods.

8”

9 13. Code of Regulations, title 5, section 71715, subdivision (d) states, in part:

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

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

18 “. . .

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

22 “(4) provide for meaningful interaction with faculty who are qualified to teach using
23 distance education methods;

24 . . .

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

28”

1 14. Code of Regulations, title 5, section 71720, subdivision (b) states, in part:

2 “(b) Instructors in an Educational Program Not Leading to a Degree.

3 “(1) An institution shall employ instructors who possess the academic, experiential and
4 professional qualifications to teach, including a minimum of three years of experience, education
5 and training in current practices of the subject area they are teaching. If an instructor does not
6 possess the required three years of experience, education and training in the subject area they are
7 teaching, the institution shall document the qualifications the instructor possesses that are
8 equivalent to the minimum qualifications.

9 “(2) Each instructor shall maintain their knowledge by completing continuing education
10 courses in his or her subject area, classroom management or other courses related to teaching.

11”

12 15. Code of Regulations, title 5, section 71745, subdivision (a) states:

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

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

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

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

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

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

22 “(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
23 end of the most recent fiscal year when using generally accepted accounting principles, or for an
24 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
25 composite score requirements of the U.S. Department of Education. For the purposes of this
26 section, current assets does not include: intangible assets, including goodwill, going concern
27 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
28 returnable deposits, or state or federal grant or loan funds that are not the property of the

1 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
2 be accounted for in accordance with general accepted accounting principles.”

3 16. Code of Regulations, title 5, section 71810, subdivision (b) states, in part:

4 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
5 all of the following:

6 “... ”

7 “(6) The institution’s policies and practices regarding any form of financial aid, including
8 all consumer information which the institution is required to disclose to the student under any
9 state or federal financial aid program;

10 “... ”

11 “(15) Policies on the retention of student records.

12 17. Code of Regulations, title 5, section 74115 states, in part:

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

15 “(b) A set of financial statements shall contain, at a minimum, a balance sheet, an income
16 statement, and a cash flow statement, and the preparation of financial statements, shall comply
17 with all of the following:

18 “(1) Audited and reviewed financial statements shall be conducted and prepared in
19 accordance with the generally accepted accounting principles established by the American
20 Institute of Certified Public Accountants by an independent certified public accountant who is not
21 an employee, officer, or corporate director or member of the governing board of the institution.

22 “(2) Financial statements prepared on an annual basis as required by section 74110(b) shall
23 be prepared in accordance with the generally accepted accounting principles established by the
24 American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual
25 financial statements as required under generally accepted accounting principles for nonprofit
26 organizations.

27 “(3) The financial statements shall establish that the institution meets the requirements for
28 financial resources required by Section 71745.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Duly Qualified Faculty)

(Cal. Educ. Code § 94887; Cal. Code Regs., title 5, §§ 71250 and 71720, subds. (b)(1) and (b)(2))

19. Respondent's application is subject to denial because it fails to include the requisite information regarding its faculty. Respondent has therefore failed to provide evidence that it has the capacity to meet the minimum operating standards. In particular:

a. Respondent failed to provide a list of duly qualified faculty to teach CMTT Level I and II. Instead, Respondent stated that the faculty will "be retained contingent upon approval by the Bureau for Private Postsecondary Education." (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, §§ 71250 and 71720, subds. (b)(1) and (b)(2)).

b. The Bureau was unable to determine from Respondent's application if the faculty (Trade Professionals) that may be actually employed by Respondent met the minimum qualification for "duly qualified faculty" because Respondent failed to submit resumes, CMTT or NCCER certificates, transcripts for continuing education courses and degrees for the following faculty members listed in Respondent's catalog: G.B. (Plumbing), W.W. (Locksmith), M.C. (Electrical), R.R. (Welding), and D.H. (Machining).² (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71720, subds. (b)(1) and (b)(2)).

c. The Bureau was unable to determine if the faculty (Trade Professionals) listed by Respondent in its application are actually employed by Respondent. Respondent failed to submit contract agreements for the following faculty members listed in Respondent's catalog: G.B. (Plumbing), W.W. (Locksmith), M.C. (Electrical), R.R. (Welding), and D.H. (Machining). (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71250).

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² In the interests of privacy, proposed faculty members' initials, rather than full names, have been used. These individuals' full names were included in the Notice of Denial of Application for Approval to Operate.

1 practice necessary for application. (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71715,
2 subd. (d)(1)).

3 b. The Bureau was unable to determine if faculty (Trade Professionals) that may
4 be actually employed by Respondent meet the minimum qualification as “duly qualified faculty”
5 competent in distance education techniques and able to use readily available, reliable technology.
6 Respondent failed to submit resumes (which contain faculty experience teaching and developing
7 distance education), CMTT or NCCER certificates, transcripts for continuing education courses
8 and degrees. (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71715, subd. (d)(3)).

9 c. Respondent’s distance education does not provide computer augmented
10 services for students and faculty to have meaningful interactions. In response to Code of
11 Regulations, title 5, section 71715, subdivision (d)(4), Respondent submitted the definition
12 developed by an accrediting agency, Distance Education and Training Council (DETC).
13 Respondent implied that, since DETC’s definition does not have a requirement of “providing
14 meaningful interaction,” it is not necessary for Respondent to implement such a component. (Cal.
15 Educ. Code § 94887; Cal. Code Regs., title 5, § 71715, subd. (d)(4)).

16 d. The assessments of Respondent’s video programs (student testing) are
17 insufficient to evaluate learning outcomes. For example, “Testing and Certificate Requirements”
18 as referenced in Respondent’s catalog at page 35, states “When you complete the video
19 instruction in the Welding Course, you will take an online examination to test your knowledge.
20 Also, for each of the assigned chapters in your Welding textbook, you may optionally complete
21 an end-of-chapter quiz. Quizzes are optional study tools to support passing your final exam.
22 Exams are online, not timed, and are open book, open video. Once started, an online exam may
23 be suspended but must be completed within 60 days. When you pass your final exam with a
24 score of 80% or higher, you will receive a Welding Theory Certificate.” Such testing is
25 insufficient to evaluate students’ learning outcomes. In addition, Respondent’s proposed
26 programs require practical application, but its institution does not offer practical training. (Cal.
27 Educ. Code § 94887; Cal. Code Regs., title 5, § 71715, subd. (d)(6)).

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FIFTH CAUSE FOR DENIAL OF APPLICATION

(Financial Resources – Assets To Liabilities Ratio)

(Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71700; 71745, subd. (a)(6); and 74115, subd. (b)(3))

22. Respondent’s application is subject to denial because it fails to document that Respondent has sufficient assets and financial resources to maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year. (Educ. Code § 94887, and Cal. Code Regs., title 5, §§ 71700; 71745, subd. (a)(6); and 74115, subd. (b)(3)). In particular, Respondent most recent financial statements state a ratio of current assets to current liabilities of 1.11 to 1.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Financial Resources – Cash Flow Statement)

(Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71700 and 74115, subd. (b))

23. Respondent’s application is subject to denial because the financial statements included with the application do not contain a cash flow statement, as required by Code of Regulations, title 5, section 74115, subdivision (b). (Educ. Code § 94887; Cal. Code Regs., title 5, §§ 71700 and 74115, subd. (b)).

SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Audited Financial Statements)

(Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71475, subd. (e); 71700; and 74115, subd. (b)(3))

24. Respondent’s application is subject to denial because it does not include audited financial statements. (Educ. Code § 94887; Cal. Code Regs., title 5, §§ 71475, subd. (e); 71700; and 74115, subd. (b)(3)). In particular, according to its financial statements, Respondent’s gross revenue is well over \$500,000 per year. Accordingly, pursuant to Code of Regulations, title 5, section 71475, subdivision (e), Respondent was required to provide audited financial statements with its application. But the financial statements Respondent offered for the period ending December 31, 2011 were reviewed. The financial statements Respondent offered for the period ending December 31, 2012 were neither audited nor reviewed.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing the Bureau for Private Postsecondary Education issue a decision:

1. Denying the Application for Approval to Operate an Institution Non-Accredited of Accelerated Technical Training Institute; Gene Kelly, 50% Owner; and Paula Kelly, 50% Owner; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/21/13



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

SF2014902503