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

12 In the Matter of the Statement of Issues
Against:

Case No. 998608

13 **SAFeway TRUCK DRIVING SCHOOL;**
14 **BALWINDER KAUR; owner**
15 **Renewal of Approval to Operate and Offer**
16 **Educational Programs for Non-Accredited**
17 **Institutions Applicant**
18 **Institution Code: 5355593**

AMENDED STATEMENT OF ISSUES

Respondent.

19 Complainant alleges:

PARTIES

20 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Chief of the Bureau for Private Postsecondary Education ("Bureau"), Department
22 of Consumer Affairs.

23 2. On or about March 2, 2012, the Bureau received an Application for Renewal of
24 Approval to Operate and Offer Educational Programs for Non-Accredited Institutions (#24501)
25 from Balwinder Kaur, owner (Respondent). On or about February 29, 2012, Respondent certified
26 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. On or about March 20, 2012, the Bureau mailed a deficiency to Respondent.
28 Subsequently, Respondent submitted addendums or additional documentation to address the

1 deficiencies. Five subsequent deficiency notices were sent to Respondent. Each time Respondent
2 attempted to modify the deficient items on the application. The Bureau denied application #24501
3 on October 12, 2012.

4 **JURISDICTION**

5 3. This Statement of Issues is brought before the Director of the Department of
6 Consumer Affairs (Director) for the Bureau under the authority of the following laws.

7 **STATUTORY PROVISIONS**

8 4. Business and Professions Code section 22 defines the term "board" to include
9 "bureau."

10 5. Business and Professions Code section 480 states, in pertinent part:

11 "(a) A board may deny a license regulated by this code on the grounds that the applicant
12 has one of the following:

13

14 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
15 would be grounds for suspension or revocation of license.

16 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
17 substantially related to the qualifications, functions, or duties of the business or profession for
18 which application is made. . . ."

19 6. Education Code section 94885¹ states:

20 "The bureau shall, by January 1, 2011, adopt by regulation minimum operating standards
21 for an institution that shall reasonably ensure that all of the following occur:

22 "(a) The content of each educational program can achieve its stated objective.

23 "(b) The institution maintains specific written standards for student admissions for each
24 educational program and those standards are related to the particular educational program.

25 "(c) The facilities, instructional equipment, and materials are sufficient to enable students
26 to achieve the educational program's goals.

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

1 “(d) The institution maintains a withdrawal policy and provides refunds.

2 “(e) The directors, administrators, and faculty are properly qualified.

3 “(f) The institution is financially sound and capable of fulfilling its commitments to
4 students.

5 “(g) That, upon satisfactory completion of an educational program, the institution gives
6 students a document signifying the degree or diploma awarded.

7 “(h) Adequate records and standard transcripts are maintained and are available to
8 students.

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

11 7. Education Code section 94886 states:

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

16 8. Education Code section 94887:

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

22 9. Education Code section 94897(l) provides:

23 “(l) Use the terms "approval," "approved," "approval to operate," or "approved to operate"
24 without stating clearly and conspicuously that approval to operate means compliance with state
25 standards as set forth in this chapter.

26 10. Education Code section 94909 provides minimum content requirements for the
27 educational institution's catalog and states in pertinent part:

28

1 (a) Prior to enrollment, an institution shall provide a prospective student, either in writing
2 or electronically, with a school catalog containing, at a minimum, all of the following:

3 (3) The following statements:

4 (A) "Any questions a student may have regarding this catalog that have not been
5 satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary
6 Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and
7 fax numbers)."

8 * * *

9 (6) If the educational program is designed to lead to positions in a profession, occupation,
10 trade, or career field requiring licensure in this state, a notice to that effect and a list of the
11 requirements for eligibility for licensure.

12 (8) A detailed description of institutional policies in the following areas:

13 (A) Admissions policies, including the institution's policies regarding the acceptance of
14 credits earned at other institutions or through challenge examinations and achievement tests,
15 admissions requirements for ability-to-benefit students, and a list describing any transfer or
16 articulation agreements between the institution and any other college or university that provides
17 for the transfer of credits earned in the program of instruction. If the institution has not entered
18 into an articulation or transfer agreement with any other college or university, the institution shall
19 disclose that fact.

20 (B) Cancellation, withdrawal, and refund policies, including an explanation that the student
21 has the right to cancel the enrollment agreement and obtain a refund of charges paid through
22 attendance at the first class session, or the seventh day after enrollment, whichever is later. The
23 text shall also include a description of the procedures that a student is required to follow to cancel
24 the enrollment agreement or withdraw from the institution and obtain a refund consistent with the
25 requirements of Article 13 (commencing with Section 94919). "

26 11. Education Code section 94911 provides the minimum requirements for the
27 educational institution's enrollment agreement and states in pertinent part:

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

1 (b) A schedule of total charges, including a list of any charges that are nonrefundable and
2 the student's obligations to the Student Tuition Recovery Fund, clearly identified as
3 nonrefundable charges.

4 * * *

5 (i) (1) The following statement: "Prior to signing this enrollment agreement, you must be
6 given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to
7 review prior to signing this agreement. These documents contain important policies and
8 performance data for this institution. This institution is required to have you sign and date the
9 information included in the School Performance Fact Sheet relating to completion rates,
10 placement rates, license examination passage rates, salaries or wages, and the most recent three-
11 year cohort default rate, if applicable, prior to signing this agreement."

12 (2) Immediately following the statement required by paragraph (1), a line for the student
13 to initial, including the following statement: "I certify that I have received the catalog, School
14 Performance Fact Sheet, and information regarding completion rates, placement rates, license
15 examination passage rates, salary or wage information, and the most recent three-year cohort
16 default rate, if applicable, included in the School Performance Fact sheet, and have signed,
17 initialed, and dated the information provided in the School Performance Fact Sheet."

18 **REGULATORY PROVISIONS**

19 12. California Code of Regulations, title 5, division 7.5, section 70000 states:

20 "(q) "Mission" means an institution's stated educational reasons to exist. A mission
21 statement contains all of the following characteristics:

22 (1) The mission includes the institution's broad expectations concerning the education that
23 students will receive, including the acquisition of the body of knowledge presented in the
24 educational program, the development of intellectual, analytical, and critical abilities, and the
25 fostering of values such as a commitment to pursue lifelong learning; and

26 (2) The mission relates to the educational expectations of the institution's students, faculty
27 and community that the institution serves.

28 (r) "Objectives" are the goals and methods by which the institution fulfills its mission and

1 transforms it into measurable student learning outcomes for each educational program.”

2 13. California Code of Regulations, title 5, division 7.5, section 71100 states:

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

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

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

14 14. California Code of Regulations, title 5, division 7.5, section 71745(A)(6) states:

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

17 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
18 end of the most recent fiscal year when using generally accepted accounting principles, or for an
19 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
20 composite score requirements of the U.S. Department of Education. For the purposes of this
21 section, current assets does not include: intangible assets, including goodwill, going concern
22 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
23 returnable deposits, or state or federal grant or loan funds that are not the property of the
24 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
25 be accounted for in accordance with general accepted accounting principles.”

26 15. California Code of Regulations, title 5, division 7.5, section 71770, subdivision (b)
27 states:
28

1 "(b) The institution shall specify the maximum credit it will transfer from another
2 institution for each educational program, and the basis upon which the transferred credit will be
3 awarded.

4 (1) Except as limited by subdivision (c) of this section, a maximum of 75 percent of the
5 units or credit that may be applied toward the award of a bachelor's degree may be derived from a
6 combination of any or both of the following:

7 (A) Units earned at institutions approved by the Bureau, public or private institutions of
8 higher learning accredited by an accrediting association recognized by the U. S. Department of
9 Education, or any institution of higher learning, including foreign institutions, if the institution
10 offering the undergraduate program documents that the institution of higher learning at which the
11 units were earned offers degree programs equivalent to degree programs approved by the Bureau
12 or accredited by an accrediting association recognized by the U.S. Department of Education;

13 (B) Challenge examinations and standardized tests such as the College Level
14 Placement Tests (CLEP) for specific academic disciplines.

15 (2) No more than 20% of graduate semester units or the equivalent in other units awarded
16 by another institution may be transferred for credit toward a Master's degree. An institution may
17 accept transfer credits only from the institutions of higher learning described in subsection (1)(A).

18 (3) No more than 30 graduate semester credits or its equivalent awarded by another
19 institution may be credited toward a doctoral degree. This subdivision does not apply to graduate
20 programs that lead to a profession or an occupation requiring state licensure where the licensing
21 agency has a regulation permitting a different standard."

22 16. California Code of Regulations, title 5, division 7.5, section 71800 provides the
23 minimal information required within the enrollment agreement in addition to the requirements of
24 section 94911 and states:

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

27 (a) The name and address of the institution and the addresses where instruction will be
28 provided.

1 (b) Period covered by the enrollment agreement.

2 (c) Program start date and scheduled completion date.

3 (d) Date by which the student must exercise his or her right to cancel or withdraw, and the
4 refund policy, including any alternative method of calculation if approved by the Bureau pursuant
5 to section 94921 of the Code.

6 (e) Itemization of all institutional charges and fees including, as applicable:

7 (1) tuition;

8 (2) registration fee (non-refundable);

9 (3) equipment;

10 (4) lab supplies or kits;

11 (5) Textbooks, or other learning media;

12 (6) uniforms or other special protective clothing;

13 (7) in-resident housing;

14 (8) tutoring;

15 (9) assessment fees for transfer of credits;

16 (10) fees to transfer credits;

17 (11) Student Tuition Recovery Fund fee (non-refundable);

18 (12) any other institutional charge or fee.

19 (f) Charges paid to an entity other than an institution that is specifically required for
20 participation in the educational program."

21 17. California Code of Regulations, title 5, division 7.5, section 71810 provides minimum
22 content requirements for the school's catalog pursuant to Education Code section 94909 and
23 states in pertinent part:

24 "(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
25 all of the following:

26 (2) A statement of the institution's missions and purposes and the objectives underlying
27 each of its educational programs;

28 * * *

1 (13) Housing information including all of the following:

2 (A) Whether the institution has dormitory facilities under its control;

3 (B) The availability of housing located reasonably near the institution's facilities and an
4 estimation of the approximate cost or range of cost of the housing; and

5 (C) If the institution has no responsibility to find or assist a student in finding housing, a
6 clear and conspicuous statement so indicating. A statement that the program is "non-residential"
7 does not satisfy this subparagraph..

8 18. California Code of Regulations, title 5, division 7.5, section 76120 provides:

9 (a) Each qualifying institution shall collect an assessment of fifty cents (\$.50) per one
10 thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars, from
11 each student in an educational program who is a California resident or is enrolled in a residency
12 program. For institutional charges of one thousand dollars (\$1,000) or less, the assessment is fifty
13 cents (\$.50).

14 (b) Unless a student has a separate agreement to repay the third party, a student whose costs
15 are paid to the institution by third-party payer shall not pay the STRF assessment to the qualifying
16 institution.

17 (c) Except when an institution provides a 100% refund pursuant to section 94919(d) or section
18 94920(b) of the Code, the assessment is non-refundable.

19 **CAUSES FOR DENIAL OF APPLICATION**

20 **(Incomplete Application)**

21 19. Respondent's application is subject to denial under Business and Professions Code
22 sections 480, subdivision (a)(3)(A), Education Code section 94887 and California Code of
23 Regulations, title 5, division 7.5, section 71100, subdivisions (a) - (c), in that on or about March
24 20, 2012, and prior to said point in time, Respondent submitted an incomplete application to the
25 Bureau, each ground is a sole and separate cause for denial. The grounds are as follows:

26 a. Application Deficiencies. Respondent's financial statements do not demonstrate
27 compliance. The ratio of current total assets to total current liabilities is .60 to 1.00. The
28 institution resubmitted the financial reports on December 19, 2012; the table of contents indicates

1 the report should consist of 11 pages; however pages 5, 6, 10 and 11 are not included. In review
2 of the incomplete financial statements, the difference between the previously submitted and the
3 most recently submitted financials lies within the total current liabilities; the older set of
4 financials indicates the total current liabilities total \$60,940.41 and the new set indicate that same
5 as \$23,621.00. The new set of financials separates accounts payable and "Current Portion-Long
6 Term debt". The Statement of Cash Flows also differs in that the older set of financials indicates
7 accounts payable in the amount of \$89,893.35 and the new set of financials indicates the same in
8 the amount of \$56,126.35. Also in the statement of cash flows section, the older financials do not
9 include an amount for "Owner's Draw" in the "Cash Flows from Financing Activities"; the new
10 set of financials list this category in the amount of \$39,967.00. Page 8 of the Notes to Financial
11 Statements (note 6) indicates on the old set of financials that the institution has no long term debt.
12 However the new set of financial statements indicates \$3,200 for "Current Portion of Long Term
13 Debt" and \$39,319 for "Long Term Portion of Long Term Debt". The institution resubmitted
14 financial statements on March 20, 2013. The statements are for the nine months ended September
15 30, 2012. The table of contents indicates that the Independent Accountants Report is included,
16 along with balance sheets on pages 1 and 2, Statement of Income on page 3, Statement of Cash
17 Flows on page 4 and Notes to Financial Statements on pages 5 – 11. The discrepancies are that
18 the Statement of Cash Flows is listed as page 1, and pages 10 and 11 of the Notes to Financial
19 Statements have not been included. The foregoing acts and omissions constitute violations of
20 California Code of Regulations, title 5, division 7.5, section 71745(a)(6).

21 b. Catalog Deficiencies. Respondent failed to provide a catalog that contains admission
22 policies regarding the ability-to-benefit exam for students, violating Education Code section
23 94909, subd. (a)(8)(A) and California Code of Regulations, title 5, division 7.5, section 71770,
24 subdivision (b)(1-3).

25 c. Catalog Deficiencies. Respondent failed to provide a catalog that contains Housing
26 information to include all of the following: (B) The availability of housing located reasonably
27 near the institution's facilities and an estimation of the approximate cost or range of cost of the
28 housing, violating California Code of Regulations, title 5, division 7.5, section 71810,

1 subdivisions (b)(13) (A-C).

2 d. Catalog Deficiencies. Respondent failed to provide a catalog that requires the
3 following specific language: "Any questions a student may have regarding this catalog that have
4 not been satisfactorily answered by the institution may be directed to the Bureau for Private
5 Postsecondary Education at 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833,
6 www.bppe.ca.gov, toll-free telephone number (888) 370-7589 or by fax (916) 263-1897." This
7 disclosure appears twice; once on page 1 (which is stated correctly) and again on page 8. Page 8
8 mistakenly makes reference to questions regarding the enrollment agreement instead of the
9 catalog and is in violation of Education Code section 94909(a)(3)(A).

10 e. Catalog Deficiencies Respondent's schedule of fees on page 9 of its catalog includes
11 a statement indicating the Student Tuition Recover Fund (STRF) assessment is based on tuition,
12 which is incorrect. The assessment is based on total institutional charges, not tuition. Also, due
13 to regulatory changes that took effect after the submission of the application the STRF assessment
14 is currently \$.50 per each \$1,000 of institutional charges. The foregoing acts or omissions are in
15 violation of California Code of Regulations, title 5, division 7.5, section 76120.

16 f. Catalog Deficiencies The statement in Respondent's catalog that the institution is a
17 private institution and that it is approved to operate by the Bureau does not include the meaning
18 of approval as is required by Education Code section 94897(l).

19 g. Catalog Deficiencies California Code of Regulations, title 5, division 7.5, sections
20 71810(b)(2), 70000(q) and 70000(r) require that the catalog shall contain a statement of the
21 institution's missions and purposes and the objectives underlying each of its educational
22 programs. "Mission" means an institution's stated educational reasons to exist. A mission
23 statement contains all of the following characteristics: (1) The mission includes the institution's
24 broad expectations concerning the education that students will receive, including the acquisition
25 of the body of knowledge presented in the educational program, the development of intellectual,
26 analytical, and critical abilities, and the fostering of values such as a commitment to pursue
27 lifelong learning (2) The mission relates to the educational expectations of the institution's
28 students, faculty and community that the institution serves. (r) "Objectives" are the goals and

1 methods by which the institution fulfills its mission and transforms it into measurable student
2 learning outcomes for each educational program. Respondent's catalog stated mission of the
3 institution does not include the above required elements. The institutions objectives have not been
4 included in the catalog.

5 h. Catalog Deficiencies Respondent's catalog did not contain: Cancellation,
6 withdrawal and refund policies, including an explanation that the student has the right to cancel
7 the enrollment agreement and obtain a refund of charges paid through attendance at the first class
8 session, or the seventh day after enrollment, whichever is later, in violation of Education Code
9 section 94911(a)(8).

10 i. Enrollment Agreement Deficiencies. Respondent failed to provide an enrollment
11 agreement that includes a schedule of total charges, including a list of nonrefundable charges and
12 the student's obligation to the STRF, clearly identified as a nonrefundable charge, violating
13 Education Code section 94911, subd. (b). Respondent's statement within this section that
14 indicates non-resident students are not eligible for STRF is incorrect. Further, Respondent's
15 statement indicating STRF assessment is \$2.50 per \$1,000 of tuition is incorrect since the
16 assessment is based on total institutional charges, not solely tuition. Due to regulatory changes,
17 the STRF assessment is currently \$.50 per each \$1,000 of institutional charges.

18 j. Enrollment Agreement Deficiencies. Respondent failed to provide an enrollment
19 agreement that includes the specific required statements and a line for the student to initial,
20 violating Education Code section 94911(i)(1-2).

21 k. Enrollment Agreement Deficiencies. Respondent provided an enrollment agreement
22 that while in compliance with California Code of Regulations, title 5, division 7.5, section 71800,
23 subdivisions (a-f), makes the following incorrect statements: that non-resident students are not
24 eligible for STRF; and that the STRF assessment is \$2.50 per \$1,000 of tuition, when in fact the
25 assessment is based on total institutional charges, not solely tuition. Due to regulatory changes
26 the STRF assessment is currently \$.50 per each \$1,000 of institutional charges.

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PRAYER

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 Safeway Truck Driving School; Balwinder Kaur, owner for a Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions;

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

DATED: 9/4/13


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