

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

In the Matter of the Citations Against:

CALIFORNIA INSTITUTE OF SCIENCE AND TECHNOLOGY, INC., OWNER

CALIFORNIA INSTITUTE OF SCIENCE AND TECHNOLOGY, dba SOUTH BAY JOB INSTITUTE

25835 Narbonne Avenue, Suite 280

Lomita, CA 90717

Citation Nos.: 2021187, 2021059

OAH Case Nos.: 2021040368, 2021050298

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 _____ "January 30" _____, 2022.

It is so ORDERED _____ "December 28" _____, 2021.

"Original Signature on File"

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

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Respondent.

Citation No. 2021187 / OAH No. 2021040368

Citation No. 2021059 / OAH No. 2021050298

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference on October 21, 2021.

Christina Thomas, Deputy Attorney General, represented complainant, Dr. Michael **Marion**, Jr., Chief, Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs.

Rohullah Nowaid, owner, represented California Institute of Science and Technology, Inc. and California Institute of Science and Technology dba South Bay Job Institute.

Oral and documentary evidence was received. The record was held open for respondent to file three additional documents by October 21, 2021, and for complainant to file written objections, if any, by November 4, 2021. Respondent filed three documents, which were collectively marked as Exhibit A. No written objections were filed by complainant. Exhibit A was admitted pursuant to Government Code section 11513, subdivision (d), as "administrative hearsay" to explain and supplement the testimony of respondent's witnesses.

The record closed and the matter was submitted for decision on November 4, 2021.

FACTUAL FINDINGS

Background

1. The Bureau is the state agency responsible for regulating private postsecondary educational (PPE) institutions in California. (Ed. Code, § 94875.)

2. A PPE institution is defined as "a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge." (Ed. Code, § 94858.) Postsecondary education means "a formal institutional educational program whose curriculum is designed primarily for students who have completed their secondary education or are beyond the compulsory age of secondary education." (Ed. Code, § 94857.)

3. Rohullah Nowaid and his **wife**, Mitra Nowaid, are the owners of California Institute of Science and Technology Inc. (CIST, Inc.). Ms. Nowaid owns 51 percent and Mr. Nowaid owns 49 percent.

4. On January 18, 2018, the Bureau issued full approval to CIST, Inc. to operate California Institute of Science and Technology dba South Bay Job Institute (Institute), located at 25835 Narbonne Avenue in Lomita, California, as a PPE institution. The full approval will expire on January 18, 2023. (CIST, Inc. and the Institute are collectively referred to herein as respondent.)

5. As of January 18, 2018, the Institute's approved programs were "Computer Office and Vocational ESI." (Exh. 2.) Subsequently, on April 25, 2018, the Institute received approval for additional programs in "Computer Hardware, Software & Repair Fundamentals" and "Software Testing & Software Quality Assurance." (*Ibid*)

Citation 2021059

6. On August 26, 2020, the Bureau issued citation number 2021059 (Citation 2021059) to respondent. (See Exh. 1, pp. AGO-30 to 35.)

7. Citation 2021059 alleges respondent violated California Code of Regulations, title 5 (CCR), section 76130 by failing to submit certain quarterly STRF Assessment Reporting Forms (STRF Forms) for the calendar years 2018, 2019, and 2020, and violated CCR section 74006 and Education Code sections 94930.5 and 94931 by failing to pay its annual fee for the 2020 calendar year. Citation 2021059 imposed a total administrative fine of \$50 and included orders of abatement requiring respondent to submit the delinquent STRF Forms and to submit payment for its annual fee for calendar year 2020 and all late payment penalty fees.

8. On December 30, 2020, Beth Scott, Enforcement Chief, held an informal telephone conference with Mr. Nowaid regarding Citation 2021059. On February 12, 2021, Enforcement Chief Scott issued a decision affirming Citation 2021059 on the grounds that "[n]o new substantive facts were presented at the conference." (Exh. 1, p. AGO-21.)

FAILURE TO SUBMIT STRF FORMS

9. STRF stands for the "Student Tuition Recovery Fund," which is a fund that "relieves or mitigates economic loss suffered by a student while enrolled in an institution not exempt from this article pursuant to Article 4 (commencing with Section 94874), who, at the time of the student's enrollment, was a California resident or was enrolled in a California residency program, prepaid tuition, and suffered economic loss." (Ed. Code 94923, subd. (a).)

10. All PPE institutions are required to submit a STRF Form to the Bureau no later than the last day of the month following the close of the quarter as follows: April 30 for the first quarter; July 31 for the second quarter; October 31 for the third quarter; and January 31 for the fourth quarter. (CCR § 76130, subd. (b)(1)-(4).) For example, the first quarter runs through January, February, and March; therefore, the STRF Form for the first quarter is due on April 30.

11. The STRF Form requires the institution to disclose certain information for each quarterly reporting period, specifically: the total number of students who signed enrollment agreements; the total number of students eligible for STRF who signed enrollment agreements; the total number of students who signed their enrollment agreement, were eligible for STRF, and made their first payment during the reporting

period; and the total amount of institutional charges for all eligible STRF students whose STRF assessment was collected in the reporting period. (CCR § 76130, subd. (c).)

12. Shelley McCarthy (formerly Shelley Sommercamp) testified at the hearing. Ms. McCarthy is a STRF Analyst for the Bureau. Her job duties include mailing STRF Forms each quarter to schools in active status, updating the Bureau's database, sending notices to schools that have not timely submitted their quarterly STRF Forms, and drafting citations.

13. Ms. McCarthy is the STRF Analyst who drafted Citation 2021059 issued against respondent. Thirty days before the close of each quarter, the Bureau sends written notifications to all approved institutions to file their STRF Form. Ms. McCarthy reviewed spreadsheets of STRF Forms that were mailed out and noted that respondent failed to submit its STRF Forms. Ms. McCarthy determined that, as of August 26, 2020, respondent had not submitted its STRF Forms to the Bureau for the second, third, and fourth quarters of 2018; the first through fourth quarters of 2019; and the second quarter of 2020. (See Exh. 1, p. AGO-32.) Respondent failed to submit its STRF Forms despite the Bureau having sent written notification 30 days before the due date. (*Ibid*)

14. Ms. McCarthy explained that submission of STRF Forms and payment of annual fees (discussed below) are important because they enable the Bureau to monitor PPE institutions and ensure compliance with the applicable statutes and regulations. Before conducting inspections, the Bureau relies on and reviews information in the STRF Forms to determine an institution's status. All required forms, including STRF Forms, must be submitted. In this case, respondent's STRF Forms were not in compliance.

FAILURE TO PAV ANNUAL FEE FOR CALENDAR YEAR 2020

15. All PPE institutions are required to pay an annual fee within 30 days of the date on which the institution originally received its approval to operate and each year thereafter on the anniversary of the date of the original approval. (CCR§ 74006, subd. (a).) A PPE institution is also required to pay any other applicable fees. (CCR§ 74006, subd. (b).)

16. Under Education Code section 94930.5, subdivision (g), effective July 1, 2018, the annual fee for the main campus and each branch campus, if any, "shall be in an amount equal to 0.55 percent of that campus' total gross revenue derived from students in California, but not to be less than [\$2,000] and not to exceed [\$60,000] for each campus."

17. Under Education Code section 94931, subdivision (a), "[a] fee that is not paid on or before the 30th calendar day after the due date for the payment of the fee shall be subject to a 25 percent late payment penalty fee." Subdivision (b) provides that "[a] fee that is not paid on or before the 90th calendar day after the due date for payment of the fee shall be subject to a 35 percent late payment penalty fee."

18. By an invoice dated December 2, 2019, the Bureau notified respondent that payment of the Institute's annual fee for 2020 was due on January 1, 2020. The invoice indicated the Institute's "Institutional Approval Month" was January. (Exh. 3, p. AGO-65.) The invoice also indicated the "1st Delinquent Date" for the payment would be January 31, 2020, and the "2nd Delinquent Date" for the payment would be March 31, 2020. (See Exh. 3, p. AGO-65.)

19. As of August 26, 2020, the date Citation 2021059 was issued, the Bureau had not received respondent's payment for the Institute's annual fee for the 2020 calendar year.

OTHER FINDINGS

20. At the request of Deputy Attorney General Christina Thomas, Ms. McCarthy sent respondent a letter dated August 27, 2021, that summarized respondent's outstanding STRF Forms and outstanding annual fee payments. (See Exh. 3, pp. AGO-49 to 52.) In addition, by an email dated August 27, 2021, Ms. McCarthy sent respondent the outstanding STRF Forms and invoices for the delinquent annual fees. (*Id.*, pp. AGO-49 to 85.)

21. On or about September 24, 2021, Deputy Attorney General Thomas forwarded to Ms. McCarthy a letter from Mr. Nowaid that included quarterly STRF Forms for 2018 through 2021 and annual fee invoices, that were all signed by Mr. Nowaid and dated September 24, 2021. (See Exh. 4, pp. AGO-89 to 114.) On the annual fee invoices, Mr. Nowaid indicated the Institute had zero revenues and was closed and not in operation. (E.g., *Id.*, pp. AGO-104 and 107.) Similarly, on the STRF Forms, Mr. Nowaid indicated the Institute was not in operation, closed, and had zero students enrolled. (E.g., *Id.*, pp. AGO 89 to 95.)

22. Ms. McCarthy testified that the late-filed STRF Forms and annual fee invoices, which Mr. Nowaid signed on September 24, 2021, were not sufficient to excuse the violations stated in Citation 2021059. She explained that STRF Forms are mailed out 30 days before the close of each quarter, and the completed forms must be submitted to the Bureau within 30 days after. Here, respondent's STRF Forms were not submitted within the statutory deadlines. Ms. McCarthy noted that each STRF Form

indicates a "Report/Due Date" in the upper right corner. For example, the STRF Form for the fourth quarter of 2019 (i.e., October, November, December) showed a due date of January 27, 2020, for submitting the form to the Bureau. (Exh. 4, p. AGO-95.)

Citation 2021187

23. On February 11, 2021, the Bureau issued citation number 2021187 (Citation 2021187) to respondent. (See Exh. 1, pp. AGO-16 to 20.)

24. At the time Citation 2021187 was issued on February 11, 2021, the previous citation issued to respondent, Citation 2021059, remained outstanding. As discussed in Finding 8, above, an informal decision affirming Citation 2021059 was not issued until February 12, 2021. By an email dated February 18, 2021, respondent requested one hearing to appeal both Citation 2021187 and the informal decision by Enforcement Chief Scott affirming Citation 2021059. {Exh. 1, p. AGO-44.}

25. Citation 2021187 alleges respondent violated Education Code section 94926 and CCR section 76240 by failing to comply with the requirements and procedures for closing a PPE institution, and violated Education Code section 94927.5 by failing to provide the Bureau with a plan for the retention of student records and transcripts prior to closing. Citation 2021187 imposed a \$5,000 fine for each of these violations, for a total administrative fine of \$10,000. Citation 2021187 included orders of abatement requiring respondent to provide the Bureau with a complete school closure plan and a plan for the retention of student records, including information on how students could obtain their records.

FAILURE TO COMPLY WITH CLOSING PROCEDURES

26. A PPE institution is required to notify the Bureau, in writing, of its intention to close, at least 30 days prior to closing. (Ed. Code, § 94926; CCR § 76240.) The written notice must be accompanied by a closure plan containing, among other things, the exact date and reason for closure; the last date of instruction for each educational program; a list of students who were enrolled at any time during the 60 days prior to closure; a plan for disposition of student records; and a plan to notify students of their rights and options. (CCR § 76240, subd. (a).)

27. Margaret Christian testified at the hearing. She is a Closed School Analyst for the Bureau. Her job duties include assisting institutions regarding the school closure process and reviewing compliance with closure requirements.

28. Ms. Christian testified that her involvement with this case began on September 15, 2020, when she was forwarded an email Mr. Nowaid had sent to the Bureau's Licensing Unit. In the email, Mr. Nowaid identified himself as the authorized trustee of record for closure and stated his intent to close the Institute. However, the email did not include a closure plan or indicate a specific date of closure. Mr. Nowaid also requested that the Bureau cancel the Institute's license and waive all outstanding fees and citations.

29. Between September 22 and October 6, 2020, Ms. Christian and Mr. Nowaid exchanged multiple email communications regarding closure of the Institute. (See Exh. 5.) In her email to Mr. Nowaid on September 22, Ms. Christian provided a closure reporting form and informational materials titled "Seven Steps to a Successful School Closure" and "Immediate Action Guide for School Closure," and she asked about the timeline for closure of the Institute. In his response emails, Mr. Nowaid

indicated the Institute had ceased and suspended all operations and had not had any students enrolled since its inception. Mr. Nowaid requested a waiver of all taxes, fees, dues, and fines. Ms. Christian advised that financial issues were not handled by the Closed School Unit and would need to be addressed by the unit within the Bureau that imposed the fees. In his October 5 email, Mr. Nowaid again requested information on the steps for closing the Institute. In her response email on October 6, Ms. Christian reminded Mr. Nowaid that she previously sent him a closure report form and informational materials on September 22, 2020. Ms. Christian advised Mr. Nowaid that, as an alternative to the closure reporting forms, the Bureau would accept a letter from him containing all the required school closure information. She also advised that school closure was a separate issue from any outstanding fees or past financial obligations.

30. The Bureau referred this matter to the Attorney General's Office on October 6, 2020. Ms. Christian testified that, prior to the matter being referred to the Attorney General's Office, she did not receive any record of closure, in writing, from the Institute, which would outline the exact date and reason for closure, the last date of instruction, the plan for maintaining student records, and the plan for providing information and records to students.

31. The Bureau contends that as of February 11, 2021, the date Citation 2021187 was issued, the Bureau had not received the required closure information and payment for Institute's outstanding fees.

32. Ms. Christian explained respondent violated Education Code section 94926 by failing to provide the Bureau with 30 days' written notice prior to closure of the Institute and violated CCR section 76240 by failing to report in writing, in a timely manner, any of the required information to substantiate the Institute's closure. As a

result of these violations, the Bureau did not know the status of the school at the time of closing. For example, schools are required to provide the Bureau with, among other things, a list of students enrolled, even if there are zero students, the closure date, and the reason for closure. According to Ms. Christian, Mr. Nowaid "flat-out" refused to provide the closure information unless the Bureau waived the outstanding fees.

FAILURE TO PROVIDE RECORDS RETENTION PLAN

33. Pursuant to Education Code section 94927.5, subdivision (a)(1), prior to closing, a PPE institution is required to provide the Bureau with "[c]opies of pertinent student records, including transcripts, in hardcopy or electronic form, as determined by the bureau, pursuant to regulations adopted by the bureau."

34. As of February 11, 2021, the date Citation 2021187 was issued, respondent failed to provide the Bureau with a plan for the retention of student records and transcripts prior to closing the Institute.

Respondent's Evidence and Contentions

35. Mr. Nowaid testified at the hearing. Mr. Nowaid is a teacher and his idea for the Institute was to create an environment where he could deliver a good education at a good price for his community, and help people get jobs. Mr. Nowaid admitted he failed in that endeavor. Mr. Nowaid contends that both citations should be dismissed and all administrative fines should be waived or reduced.

36. Mr. Nowaid contends that all requested documentation has been provided to the Bureau. In a letter dated September 24, 2021, Mr. Nowaid provided the missing STRF Forms and annual fee invoices to complainant's counsel, Deputy Attorney General Thomas, who then provided them to Ms. McCarthy at the Bureau.

(Exh . 4.) For the reasons stated in Findings 14 and 22, above, the bulk submission of the STRF Forms on September 24, 2021, all signed by Mr. Nowaid on that date, did not excuse the Institute's failure to submit the STRF Forms according to the quarterly schedule prescribed by CCR section 76130.

37. Mr. Nowaid disputes the Bureau's contention that the Institute failed to provide written notice of closure and a closure plan. He contends the required closure information was submitted to the Bureau in May 2019 by the Institute's chief executive officer (CEO), Sajid Raza. Mr. Nowaid entrusted the operation of the Institute to Mr. Raza during the period December 2017 to December 2019, when Mr. Nowaid was unable to work because of a severe injury.

38. In 2020, Mr. Nowaid returned to take over the Institute. At that time, he found the school was not operating and the school's documents were stored in boxes. In reviewing the documents, Mr. Nowaid found copies of letters by Mr. Raza to the Bureau requesting assistance with school closure. In letters dated November 19, 2018 (first request), and February 13, 2019 (second request), Mr. Raza requested school closure assistance from the Bureau's Closed School Unit. (Exh. A, pp. 1-2.) In the letters, Mr. Raza notified the Bureau that the Institute "is intending to permanently close its doors due to inactivity and lack of student enrollment." (*Ibid*)

39. In reviewing the Institute's documents, Mr. Nowaid found a letter dated May 22, 2019, by Mr. Raza to the Bureau, which read: "Thank you for providing our school with your guidance and support. Please find attached, the completed School Closure Plan Form. Please kindly confirm our school closure as soon as possible." (Exh. A, p. 3.) Mr. Nowaid also found a School Closure Plan Form signed by Mr. Raza and dated May 22, 2019. The School Closure Plan Form indicated the Institute's exact date of closure would be June 30, 2019, and the reason for closure was "[l]ack of business,

no students ever enrolled in any of our programs." (Exh. A, pp. 4-8.) The School Closure Plan Form, in multiple places, stated that no students ever enrolled at the Institute. Consequently, the Institute did not have any lists of enrolled students, student information, student records, copies of correspondence to notify students of their rights, a teach-out plan (defined in Ed. Code, § 94866) or transfer plan, or a plan to provide its custodian of records (identified as Ms. Nowaid) with student information and records.

40. The three letters by Mr. Raza dated November 19, 2018, February 13, 2019, and May 22, 2019, respectively, were addressed to the correct post office box address for the Bureau's Closed School Unit. However, none of the letters include written confirmation of the mode of delivery (e.g., regular mail, overnight mail, or electronic mail) or confirmation of the date of delivery to or receipt by the Bureau. When Mr. Nowaid asked Ms. Christian, on cross-examination, if she received a letter dated November 19, 2018, from Mr. Raza, she answered, "I would have *to* say no. Not that I recall." Similarly, when asked if she was in contact with Mr. Raza, Ms. Christian answered, "I don't recall," although she recalled seeing his name in emails as an additional recipient but did not know who he was.

41. At the hearing, Mr. Raza testified that he contacted the Bureau in November 2018 about the school closure process. When asked if he completed a School Closure Plan Form, Mr. Raza testified that he recalled seeing the document, but he did not recall filling it out. Mr. Raza testified his last communication with the Bureau regarding school closure was in May 2019, when he wrote to thank the Bureau for providing the required paperwork.

42. Mr. Nowaid disputes the Bureau's contention that the Institute never submitted a school closure plan form. In his September 24, 2021 letter to Deputy

Attorney General Thomas, Mr. Nowaid wrote, in part: "In a similar situation, if you recall, BPPE [i.e., the Bureau] stated to you that California Institute of Science and Technology had never submitted a school closure form, however in reality Mr. Raza submitted a school closure package back in May 2019 which BPPE was not able to confirm receipt of when discussions were facilitated through you." (Exh. 4, p. 1.)

43. Mr. Nowaid contends the Bureau should waive or reduce the administrative fines imposed by the citations at issue. Mr. Nowaid contends that he and his wife have suffered financial losses from operating the Institute. The Institute's operations and student enrollment were adversely affected by the Covid-19 pandemic and nearby wildfires. Although money was spent on marketing and advertising, no students ever enrolled. Mr. Nowaid testified the Institute has not operated since 2018 and has generated no revenue. Mr. Nowaid wants to dissolve CIST, Inc. but was told by an attorney he must close the Institute first.

LEGAL CONCLUSIONS

Legal Principles

1. In an administrative citation proceeding, the agency bears the burden of proving the violations in the citation by a preponderance of the evidence. (Evid. Code, § 115; *Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567).

2. The California Private Postsecondary Education Act of 2009 (Act) is set forth at Education Code section 94800 et seq., and the implementing regulations are set forth at CCR section 75010 et seq.

3. The California Legislature has found that "[p]rivate postsecondary schools can complement the public education system and help develop a trained workforce to meet the demands of California businesses and the economy." (Ed. Code, § 94801, subd . (b).) The Legislature has also found, however, that "concerns about the value of degrees and diplomas issued by private postsecondary schools, and the lack of protections for private postsecondary school students and consumers of those schools' services, have highlighted the need for strong state-level oversight of private postsecondary schools." (*Ibid*) Thus, protection of the public is the Bureau's highest priority when exercising its powers and performing its duties under the Act. (Ed. Code, § 94875.)

4. Under CCR section 75020, subdivision (a), the Bureau is "authorized to issue citations containing orders of abatement and/or administrative fines pursuant to section 94936 of the [Education] Code against approved private, postsecondary institutions that have committed any acts or omissions that are in violation of the Act or any regulation adopted pursuant thereto."

5. Education Code section 94936, subdivision (b)(2), provides, in part, that an administrative fine imposed in a citation shall not exceed \$5,000 for each violation. Subdivision (b)(2) further provides that the Bureau shall base its assessment of the administrative fine on the following factors: "(A) The nature and seriousness of the violation. [ff] (B) The persistence of the violation. [11] (C) The good faith of the instituti on. [1f] (D) The history of previous violations. [11] (E) The purposes of this chapter. [11] (F) The potential harm to students."

6. Under CCR section 75030, subdivisions (a) through (d), violations of the Act are classified, according to the nature of the violation, as Class A (most serious)

through Class D (least serious), with each classification assigned a range of administrative fines, as follows:

(a) A "Class A" violation shall not be less than \$2,501 nor more than \$5,000. A Class A violation is one that the Bureau has, in its discretion, determined to be more serious in nature, deserving the maximum fine. A Class A violation may, in the Bureau's discretion, be issued to an institution that has committed one or more prior, separate Class B violations .

(b) A "Class B" violation shall not be less than \$1,001 nor more than \$2,500. A Class B violation is one that the Bureau has, in its discretion, determined to be less serious in nature and may include, but is not limited to, a violation that could have resulted in student harm. Typically some degree of mitigation will exist. A Class B violation may be issued to an institution that has committed one or more prior, separate Class C violations.

(c) A "Class C" violation shall not be less than \$501 nor more than \$1,000. A Class C violation is one that the Bureau has, in its discretion, determined to be a minor or technical violation, which may be directly or potentially detrimental to students or potentially impacts their education .

(d) A "Class D" violation shall not be less than \$50 nor more than \$500. A Class D violation is one that the Bureau has, in

its discretion, determined to be a minor or technical violation, which is neither directly or potentially detrimental to students nor potentially impacts their education.

Analysis

7. Cause exists to affirm Citation 2021059 and the total administrative fine of \$50, in that respondent violated the Act and regulations by failing to timely submit quarterly STRF Reports and failing to pay the 2020 annual fee, based on Factual Findings 6 through 22.

8. By imposing a total \$50 administrative fine for the failure to timely submit STRF Reports and failure to pay the 2020 annual fee, the Bureau classified respondent's violations as Class D violations. This classification and the \$50 fine, which is the statutory minimum for Class D violations, are appropriate and supported by the evidence.

9. Cause exists to dismiss Citation 2021187 in its entirety on the grounds that complainant **failed** to meet its burden of proving by a preponderance of the evidence that respondent failed to comply with school closure procedures and requirements, including providing 30 days' written notice prior to closure and submission of a closure plan and other closure information.

10. Complainant contends the violations alleged in Citation 2021187 arose when Mr. Nowaid, in an email dated September 15, 2020, notified the Bureau of his intention to close the Institute, but in subsequent communications with Ms. Christian, refused to submit a school closure plan and other closure information unless the Bureau agreed to waive all outstanding fees. The Bureau did not agree to waive the fees.

11. Mr. Nowaid disputes the allegation that the Institute failed to comply with school closure requirements. Mr. Nowaid presented copies of correspondence by the Institute's former CEO, Mr. Raza, evidencing Mr. Raza's request for school closure assistance from the Bureau in November 2018 and February 2019. The Bureau provided assistance and the required closure paperwork, which was acknowledged in Mr. Raza's May 22, 2019 letter to the Bureau transmitting a completed School Closure Plan Form for a closure date of June 30, 2019. Mr. Raza, in his testimony, could only recall seeing closure paperwork sent by the Bureau but could not recall filling out the paperwork. Mr. Raza's three letters to the Bureau and the School Closure Plan Form (Exhibit A) were not presented at the hearing but filed with OAH afterwards. However, at the hearing, Mr. Nowaid did ask Mr. Raza and Ms. Christian questions about the documents.

12. Mr. Nowaid presented compelling circumstantial evidence that the Institute provided the Bureau with the required school closure plan and closure information in May 2019, for a closure date of June 30, 2019. Ms. Christian's testimony that she could not recall whether she was in contact with Mr. Raza or received correspondence from him was not sufficient to refute Mr. Nowaid's evidence to the extent necessary for complainant to meet its burden of proof. Complainant's counsel was aware of Mr. Nowaid's contention that a closure package was sent to the Bureau in May 2019, because he mentioned it in his letter to counsel dated September 24, 2021. (Factual Finding 42.) Complainant presented no evidence that a reasonable and diligent search of the Bureau's records was made to determine whether the School Closure Plan Form dated May 22, 2019, was, in fact, received by the Bureau.

13. Therefore, Citation 2021187 shall be dismissed in its entirety based on complainant's failure to establish the violations by a preponderance of the evidence. (Factual Findings 23 through 34 and 37 through 42; Legal Conclusions 9 through 12.)

ORDER

1. Citation 2021059 is affirmed. Respondent shall pay the administrative fine of \$50 within 30 days of the effective date of this Decision and Order.

2. Citation 2021187, including the administrative fine of \$10,000 and the order of abatement, is dismissed in its entirety.

DATE: 12/17/2021

"Original Signature on File"

Erlinda G. Shrenger {Dec 17, 2021 :02 PST}

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings