

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

In the Matter of the First Amended Statement
of Issues Against:

CALIFORNIA PREMIER UNIVERSITY;
SEEJOON KAHNG, 51% Owner
HYELAN KAHNG, 49% Owner

Approval to Operate an Institution Non
Accredited Applicant,

Respondents.

Case No.: 999775

OAH No.: 2015030479

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Consumer Affairs, Bureau for Private Postsecondary Education as its Decision in the above-entitled matter.

This Decision shall become effective DEC 18 2015.

IT IS SO ORDERED NOV 13 2015.

DEPARTMENT OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA

ref



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Statement of Issues Against:

CALIFORNIA PREMIER UNIVERSITY;
Sejoon Kahng,¹ 51% Owner
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Respondent.

Case No. 999775

OAH No. 2015030479

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on August 26, 2015.

Cristina Felix, Deputy Attorney General, represented complainant Joanne Wenzel, Chief, Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs.

Respondent California Premier University was represented by Sejoon Kahng, its Chief Executive Officer and part owner.

The matter was submitted on August 26, 2015.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is a for-profit California corporation that was formed in May 2012. Initially, respondent's owners were Sejoon Kahng and Chang Hwan Kim. On a date not established, Sejoon Kahng became a 51% owner, and Hyelan Kahng, his wife, became a 49% owner.

¹ The Statement of Issues misspells Sejoon Kahng's name as "Seejoon Kahng."

2. On December 4, 2012, the Bureau received an "Application for an Approval to Operate for an Institution Non Accredited" concerning respondent.

3. Following several deficiency notices from the Bureau and replies from respondent, the Bureau denied the application on May 2, 2014.

4. On June 6, 2014, respondent requested a hearing on the Bureau's denial of the application.

5. On a date not established, complainant filed a Statement of Issues. On December 10, 2014, complainant filed a First Amended Statement of Issues, requesting that the denial be upheld.

Background Facts

6. Respondent is a proposed new private postsecondary institution that would operate in southern California. As originally conceived, respondent's objective was to educate postsecondary students in fashion design, pattern making, applied music, and English as a second language (ESL). (Ex. 4 p. AGO00083.) On a date not established, respondent eliminated fashion design and pattern making from its proposed curriculum, and shifted its focus to degree and certificate programs in music, and a certificate program in ESL.

7. Sejoon Kahng, respondent's Chief Executive Officer and majority owner, is a music producer, audio professional, and guitarist. This is his first effort to obtain an approval to operate an educational institution from the Bureau.

Reasons for Denial of Application

8. The Bureau denied the application due to alleged non-compliance with the California Private Postsecondary Education Act of 2009 (Ed. Code, § 94800 et seq.)² and supporting regulations. (Ex. 3.) The Bureau's denial letter lists 15 alleged deficiencies in the application, and referenced the associated statutory or regulatory requirements, as summarized below:

INSTRUCTION AND DEGREES OFFERED

- a. Lack of specific written objectives or expected outcomes for each of the five ESL levels. (Cal. Code Regs., tit. 5 (Regs.), § 71705.)
- b. No clear statement of the requirements for students graduating from each of the five ESL level programs. (Regs., § 71710, subd. (a).)

² All further undesignated statutory references are to the Education Code.

- c. Insufficient evidence of the advanced level of the subjects to be covered in the Master of Music degree program. (Regs., § 71865, subd. (a).)
- d. No course description for a life science class, and no clear indication whether there is a required laboratory class associated with it. (Regs., § 71710, subd. (a).)
- e. Failure to offer 25 percent of credits in general education requirements for associate and bachelor degrees. (Regs., § 71850, subd. (a).)
- f. Deficient course syllabi for various subjects. (Regs., § 71710, subds. (c)(6), (7) & (f).)

FACULTY

- g. Lack of faculty course assignments for two courses and five programs. (Regs., § 71720, subd. (a)(1), (9).)
- h. Missing transcripts for some faculty members, and failure to screen faculty qualifications. (Regs., § 71720, subd. (a)(4)(A), (9).)
- i. Faculty members assigned to teach subjects in which they were unqualified. (Regs., § 71720, subd. (a)(9).)

CATALOG

- j. An unclear policy for acceptance of credits earned at other institutions. (§ 94909, subd. (a)(8)(A);³ Regs., § 71770, subd. (b).)
- k. No indication of the level of English language proficiency required, or the kind of documentation of proficiency that will be accepted. (Regs., § 71810, subd. (b)(4).)
- l. No indication whether any instruction will occur in a language other than English and, if so, the level of proficiency required and what documentation of proficiency would be accepted. (Regs., § 71810, subd. (b)(5).)
- m. No information regarding the faculty and their qualifications. (§ 94909, subd. (a)(7).)

³ The First Amended Statement of Issues incorrectly alleges that this is a violation of Education Code section 94909, subdivision (a)(3)(A), rather than subdivision (a)(8)(A).

- n. Insufficient information of the institution's financial aid policies and practices, including required disclosures. (Regs., § 71810, subd. (b)(6).)

LIBRARY AND OTHER LEARNING RESOURCES

- o. No showing of sufficient library resources, such as reference works, a services memorandum or contract with local public libraries, and a contract with a professional librarian or information specialist. (Regs., §§ 71270, 71740, subds. (a), (b) & (d)(4).) (Ex. 3.)

9. At the hearing, Seyed Dibaji-Foroshani, the former Bureau employee who reviewed respondent's application, described his review process and these deficiencies. His testimony indicates that the Bureau thoroughly reviewed respondent's application with reference to the minimum operating standards for a non-accredited private postsecondary institution.

Respondent's Contentions

10. Respondent does not dispute that its application was deficient for the above-described reasons, apart from the one involving library and other learning resources. As to that issue, respondent asserts that the Bureau's regulations do not require an actual contract or memorandum with a local public library. Rather, respondent's primary argument is that it should have had more time and chances to correct the deficiencies before the Bureau denied the application.

11. The Bureau's denial letter states that the Bureau sent respondent deficiency letters in June 2013, August 2013, and February 2014. In contrast, respondent asserts that it only received deficiency letters in June 2013 and February 2014. Only the February 2014 deficiency letter is in evidence, and therefore the record is insufficient to resolve this discrepancy.

12. At the hearing, respondent offered into evidence a letter dated August 22, 2015, which replied to the Bureau's denial letter dated May 2, 2014. To address many of the deficiencies, the letter proposes to eliminate all ESL, Associate of Arts in Music, and Bachelor of Arts in Music programs from the application, and focus only on music certificate and Master of Music programs. The letter also includes proposed revisions to the institution's catalog, and states that respondent had added unspecified library and learning resources, "such as reference works, periodicals, monographs, media, and equipment" (Ex. A p. 6.) The letter also states that respondent was still looking for a qualified professional librarian. (*Ibid.*) Respondent concedes that these modifications do not correct every deficiency, but asserts that allowing respondent to continue with the application process would lead to a prompt resolution of the remaining issues.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that it meets all prerequisites necessary for the requested approval to operate. (See *Kensington Univ. v. Council for Private Postsecondary and Vocational Education* (1997) 54 Cal.App.4th 27, 47, fn. 7.) This burden of proof requires proof by a preponderance of the evidence. (*Ibid.*; see also Evid. Code, § 115.)

2. The Bureau regulates private postsecondary institutions under the California Private Postsecondary Education Act of 2009. (§ 94800 et seq.) Subject to exceptions not applicable here, “a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate” from the Bureau. (§ 94886.) “An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards.” (§ 94487.) Those standards are set by regulation, and are designed to ensure that an institution has adequate programs, facilities, recordkeeping, and faculty, is financially sound, and has definite admission and degree policies, among other requirements. (§ 94885; Regs., § 71700 et seq.) “The bureau shall deny an application for an approval to operate if the application does not satisfy those standards.” (§ 94487.)

3. To seek approval to operate a non-accredited private postsecondary institution, an applicant must submit a completed “Form Application 94886” to the Bureau, along with a \$5,000 non-refundable fee. (Regs., § 71100; see also § 94930.5, subd. (a)(1).) The application must contain all the information required by California Code of Regulations, title 5, sections 71100 through 71380. (Regs., § 71100.) This includes all “material facts . . . that might reasonably affect the Bureau’s decision to grant an approval to operate.” (Regs., § 71340, subd. (a).) “An application that fails to contain all of the information required by [sections 71100 through 71380] shall render it incomplete.” (Regs., § 71100, subd. (c).)

4. Here, the First Amended Statement of Issues alleges that respondent’s application should be denied because it is incomplete. (Ex. 1 [First Am. Stmt. of Issues p. 11.]) But with one exception concerning library and learning resources, the First Amended Statement of Issues alleges grounds for denial that are not described in the regulations concerning an application’s completeness. (*Id.* at pp. 11-13 [citing only section 71270 from those regulations].) The other alleged grounds for denial involve the actual minimum operating standards for a private postsecondary institution, which are found elsewhere in the regulations and the Education Code. (See *id.* [citing § 94909 and Regs., §§ 71705, 71710, 71720, 71740, 71770, 71810, 71850 & 71865].) Therefore, complainant’s main argument appears to be that respondent has not presented sufficient evidence that it has the capacity to meet the Bureau’s minimum operating standards. (See § 94887.)

5. Respondent has not proven that it has the capacity to meet the Bureau’s minimum operating standards. Complainant presented persuasive evidence that respondent’s

application contains a variety of deficiencies concerning its instruction and degrees offered, faculty, and catalog. (Factual Findings 8-9.) The deficiencies concern the Bureau's minimum operating standards for a non-accredited postsecondary institution. (See Factual Finding 8.) Respondent does not dispute any of these deficiencies, and only disputes another alleged deficiency concerning library and learning resources. (Factual Finding 10.) Even on that issue, respondent did not present sufficient evidence that it can "provide or make provisions for the library and other learning resources needed to support each educational program it offers . . ." (Regs., § 71740, subd. (b).) Respondent is still looking for a qualified professional librarian, and gave no specifics on the additional library and learning resources it recently added. (Factual Finding 12.) Respondent's failure to satisfy the minimum operating standards for a non-accredited private postsecondary institution justifies denial of respondent's application. (§§ 94885-94887.)

6. Respondent's assertion that it should have had more time and chances to correct the deficiencies before the Bureau denied the application is unpersuasive. Respondent did not identify any statute or regulation that entitles respondent to a particular time period or number of deficiency notices before denial. To the extent that respondent is alleging a procedural due process violation, the Bureau's denial was not improper. Respondent was provided with at least two deficiency notices, and its application was pending for about seventeen months before the Bureau denied it. (Factual Findings 2, 3, 11.) Even now, respondent has not corrected all of the deficiencies. (Factual Finding 12.) Procedural due process does not require the Bureau to give respondent more time and chances to correct them. (See *Kensington Univ. v. Council for Private Postsecondary and Vocational Education*, *supra*, 54 Cal.App.4th at pp. 42-43 [no procedural due process violation where application denied after less than a year and only one deficiency notice, where applicant had opportunity thereafter to address deficiencies at an administrative hearing].)

7. Furthermore, respondent's most recent proposal would change the application significantly, by eliminating all ESL, Associate of Arts in Music, and Bachelor of Arts in Music programs from the application. (Factual Finding 12.) Given these significant changes, a new application would be more appropriate than extending the existing application process further. No statute or regulation prohibits respondent from submitting a new application immediately, if desired.⁴

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⁴ Complainant's counsel made this representation at the hearing.

ORDER

Respondent California Premier University's application to operate as a non-accredited private postsecondary institution is denied.

DATED: September 23, 2015

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Thomas Heller
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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings