

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

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

MANNA ADULT CONTINUING EDUCATION
CENTER; EDRA BOZKURT, OWNER

Application for Approval to Operate a Non-
Accredited Institution Applicant

Application No. 226527

Respondent.

Case No. 999858

OAH No. 2015030555

PROPOSED DECISION

This matter convened for hearing on June 5, 2015, in Sacramento, California, before Vincent Pastorino, Administrative Law Judge for the Office of Administrative Hearings, State of California.

Elena Almanzo, Deputy Attorney General, was present and represented complainant Joanne Wenzel, Chief of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs. Erica Smith, licensing manager, was also present.

Respondent Edra Bozkert, owner of Manna Adult Continuing Education Center (MACEC), was present and represented herself.

Each party submitted evidence and argument. The record was closed and the matter submitted on June 5, 2015.

FACTUAL FINDINGS

Background

1. Ms. Bozkurt, as owner of MACEC, filed her Application for Approval to Operate for an Institution Non Accredited (Application) with the Bureau on July 29, 2013. MACEC's intent is to provide nursing assistant training in a 21-day course.

2. By letter dated July 11, 2014, the Bureau notified Ms. Bozkurt that the Application was denied due to various specified deficiencies in documentation submitted during the application process.

3. Ms. Bozkurt appealed the Bureau's denial of the Application. As part of the appeal process, the Bureau filed a Statement of Issues and the matter was set for hearing under the jurisdiction and procedures set forth in California Code of Regulations, title 5, section 7140.5, and Government Code section 11500 et seq.

4. The Bureau filed and served a First Amended Statement of Issues on or about May 20, 2015. The matter convened for hearing on June 5, 2015.

Application

THE PROCESS

5. The Bureau uses a standardized application form designed to obtain information required by applicable statutes and regulations. The requests for required information appear in sections 1 thru 24 on the application and cover, among other items, the governance and administrative structure of the institution; the relationship between faculty and administrative positions; names and contact information of members of the governing board; the institution's mission and objectives; student enrollment agreements and instruments of indebtedness; financial aid policies, practices, and disclosures; advertising; educational programs offered; financial resources; facilities and equipment; library and other learning resources; job placement assistance; the institution's "catalogue"; graduation or completion documents; recordkeeping methods; and self-monitoring procedures.

6. In reviewing applications, the Bureau's licensing analysts use detailed checklists to ensure that all statutory and regulatory requirements are met.

7. On August 28, 2013, following its initial review of Ms. Bozkurt's July 29, 2013 Application, the Bureau's licensing intake unit requested additional documentation pertinent to seven sections of the Application. Ms. Bozkurt submitted additional documentation pertinent to those sections on September 4 and September 30. On November 8, the Bureau sent a deficiency letter which listed deficiencies in 18 sections of the Application.

8. On February 11, 2014, Ms. Bozkurt submitted additional documentation pertinent to each of the 18 sections referenced in the previous deficiency letter. On February 13, the Bureau sent a deficiency letter which listed deficiencies in eleven sections of the Application. On March 17, Ms. Bozkurt submitted additional documentation pertinent to each of those eleven sections.

9. On March, 19, 2014, the Bureau sent a deficiency letter which listed deficiencies in four sections of the Application. On that same date, the Bureau also notified Ms. Bozkurt that it would be visiting the school on April 3 in order to “assist in making a decision on the application.” The notification included a request for “all documentation, records, and faculty access.” On March 27, Ms. Bozkurt submitted documentation pertinent to four sections of the Application.

10. The Bureau visited the school, as scheduled, on April 3, 2014. During the visit, the Bureau identified deficiencies in Ms. Bozkurt’s March 27 response, and it requested corrections. The visit report states that the school gave “corrections and additional documentation” to the Bureau.

11. On April 24, 2014, the Bureau requested information pertinent to deficiencies that it found during the April 3 review. It requested information concerning the following items: faculty records, syllabus, self-monitoring procedures, performance evaluation criteria for each administrator, school performance fact sheet, and enrollment agreement.

12. On May 13, 2014, Ms. Bozkurt submitted additional documents.

13. On July 11, 2014, the Bureau sent a Notice of Denial which listed the Bureau’s grounds for denial of the Application. Those grounds are addressed below.

DEFICIENCIES ALLEGED IN THE NOTICE OF DENIAL

FAILURE TO PROVIDE PERFORMANCE EVALUATION CRITERIA

14. The Notice of Denial states that Manna did not provide the “performance evaluation criteria” for each administrator in a personnel manual or other writing maintained by the institution. (Citing Cal. Code Regs., tit. 5, § 71730, subd. (b).)

15. On or before May 13, 2014, MACEC submitted a form entitled Nursing Assistant Training Administrator – Job Performance Evaluation. The one-page form lists the job functions of the nursing training administrator and has a scoring system for rating the performance as relevant to each job function.

16. Ms. Smith, the Bureau’s licensing manager, testified that the performance evaluation criteria submitted by MACEC was deficient because the form submitted by MACEC applied to only one position, and no performance evaluation criteria was provided for MACEC’s other administrators.

17. Page three of MACEC's Course Catalogue & Student Handbook for January 1, 2014 to January 1, 2015 (Catalogue) lists four persons, by name, on the Board of Directors. Each person named on the Board of Directors is identified as holding one of four "positions." Those positions are "President/CEO," "Vice President of Education/CAO," "Administrator/COO," and "Treasurer & Accountant." Page three also names a Director of Nursing, holding the position of Nursing Assistant Program Director. Page three, under the Faculty heading, names two Instructors.

18. The job performance evaluation that MACEC provided for the position of Nursing Assistant Training Administrator was appropriate for that position. However, MACEC failed to provide performance evaluation criteria for the administrative positions of President/CEO, Vice President of Education/CAO, Administrator/COO, Treasurer & Accountant, and Director of Nursing.

19. Ms. Smith testified that the performance evaluation criteria requirement also applied to the Instructor positions. However, there was no showing as to whether the Instructors would perform in an administrative capacity.

FAILURE TO PROVIDE A LIST OF EMPLOYMENT POSITIONS

20. The Notice of Denial states that MACEC's School Performance Fact Sheet was deficient because MACEC failed to provide a "statement informing the reader of where he or she may obtain from the institution a list of the employment positions determined to be within the field for which a student received education and training for the calculation of job placement rates as required by subdivision (b)." (Citing Ed. Code § 94910, subd. (f)(2).) Instead, according to the Notice of Denial, MACEC provided a link "which is a sample web address from the Bureau's online sample of a School Performance Fact Sheet."

21. MACEC's School Performance Fact Sheet (Fact Sheet) appears on pages 39 thru 42 of the Catalogue, and it was also provided to the Bureau as a separate document. The Fact Sheet is slightly modified from a sample that MACEC downloaded from the Bureau's website. The Fact Sheet contains charts entitled "On-time Completion Rates," "Students Completing After Published Program Length," "Placement Rates," "Examination Passage Rates," and "Salary and Wage Information." The charts refer to the calendar years 2012 and 2013. The data entry for all of those charts is blank, as MACEC is awaiting the Bureau's approval before it begins enrolling students.

22. With regard to listing employment positions within the field for which a student would receive education and training, the Fact Sheet contains the following statement:

Students are entitled to a list of job classifications considered to be in the field of this educational program. To obtain this list, please ask an institutional representative or you can review the

list of the institution's website at <http://www.schoolofchoice.com/jobclassifications>

23. The Fact Sheet also has a chart that "contains the average wage data for the programs offered at MACEC." The chart refers to the occupational job title of Certified Nursing Assistant, marked by an asterisk linked to the statement that "Wage data for Certified Nurse Assistants and Acute Care CNA's is encompassed by the Employment Development Department's Occupational employment Statistics category of 'Nursing Assistant'."

24. The Fact Sheet states that a list of job classifications considered to be in the field of MACEC's educational program can be obtained by asking an institutional representative or by going to a website link. The link was associated with the Bureau's sample school performance fact sheet.

25. There was no persuasive evidence to suggest that a MACEC "institutional representative" had an actual list to provide upon inquiry from a student, or that such a list even existed. The website link was not specific to the field for which a student would receive education and training at MACEC. The chart concerning average wage data indicates that a student could obtain the position of Certified Nurse Assistant or other positions referenced by asterisk, but that indirect information is not sufficient to constitute a list. Thus, the Fact Sheet was deficient.

UNAUTHORIZED INFORMATION IN THE SCHOOL PERFORMANCE FACT SHEET

26. School Performance Facts Sheets shall contain "all and only" the information required or specifically permitted by statute or regulation. (Cal. Code Regs., tit. 5, § 74112, subd. (a).) The Fact Sheet provided by MACEC included a chart that contained low, median, and high salary percentile information for the Employment Development Department's occupational job title of Certified Nursing Assistant. It also included, on its third page, a certification statement to be signed by the student, acknowledging information received by the student, and a summary of rules concerning the certificate of completion. None of those items are required or specifically permitted by statute or regulation.

INSUFFICIENT ASSETS/RESOURCES

27. The Notice of Denial states that MACEC failed to provide financial information sufficient to show that it could do the following: provide for all of the educational programs that MACEC represented it would provide; ensure that all students admitted to its educational programs would have a reasonable opportunity to complete the programs and obtain their degrees or diplomas; maintain the minimum standards required by law; pay timely refunds; and pay all operating expenses due within 30 days. (Citing Cal. Code Regs., tit. 5, § 71745, subd. (a)(1-5).)

28. MACEC provided the Bureau with extensive financial information for 2013. The information was reviewed, on MACEC's behalf, by a Certified Public Accountant (CPA) group which stated that "we are not aware of any material modification that should be made to the accompanying financial statements in order for them to be in conformity with accounting principles generally accepted in the United States of America."

29. Cash flow information submitted by MACEC showed that the net change in cash for the year ending December 31, 2013, was negative \$83,543, and there was a net income loss of \$44,937. There were also losses in prior years. The balance sheet ending December 31, 2013, showed \$262 in cash assets and \$8,112 in total assets when counting property, equipment, and a security deposit for rental of the business premises. Liabilities totaled \$11,582. "Note 4" in the financial documents, which appears to be written by a CPA, states that in addition to the losses suffered in 2013, the company experienced losses in the prior two years. Note 4 further states that "these losses have reduced working capital and retained earnings to the extent that the Company may well not be able to continue as a going concern."

30. The financial statements portray a dire picture of the financial status of MACEC. That dire status is largely explainable by the fact that Ms. Bozkurt started MACEC in 2011, incurring expenses for entering into a lease for the business premises and for purchasing equipment and supplies. Physically, the facility has been ready to operate for months, if not years. However, MACEC has been unable to obtain approval from the Bureau. Ms. Bozkurt first applied in 2011 but was unsuccessful. She had a person help her with the current Application, filed in 2013, but has not received approval. Consequently, since its inception in 2011, MACEC has had ongoing expenses but no enrollment and thus no income from students.

31. Ms. Bozkurt testified that she still has sufficient assets to meet MACEC's financial obligations as an ongoing education center. However, no such remaining assets are indicated on the financial statements and she provided no persuasive proof of such assets. Accordingly, MACEC has failed to demonstrate that it has sufficient assets and financial resources to meet its obligations to its future students as described in Finding 27.

Discussion

32. The evidence showed that Ms. Bozkurt consistently attempted in good faith to meet the Bureau's procedural and substantive application requirements. The Bureau, in turn, invested much time and effort working with Ms. Bozkurt to assist her in the process. In November 2013, the Bureau's list of deficiencies pertained to 18 sections of the Application. The list of deficiencies pertained to only four sections when the Bureau sent its Notice of Denial. Ms. Bozkurt had multiple opportunities to correct the identified deficiencies, but the Application remains deficient in the areas discussed above.

LEGAL CONCLUSIONS

First Cause for Denial- performance evaluation criteria

1. Complainant alleges that MACEC did not provide the performance evaluation criteria for each administrator as required by statute.

2. Education Code section 94887 provides:

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. The bureau shall deny an application for an approval to operate if the application does not satisfy those standards.

3. California Code of Regulations, title 5, section 71730, subdivision (b), states that “[t]he duties, responsibilities, and performance evaluation criteria for each administrator shall be set forth in a personnel manual or other writing maintained by the institution.”

4. As set forth in Findings 14 thru 19 and pursuant to Education Code 94887 and California Code of Regulations, title 5, section 71730, subdivision (b), cause exists for the denial of respondent’s Application in that respondent failed to comply with the requirements pertaining to performance evaluation criteria for each administrator.

Second Cause for Denial – list of employment positions

5. Complainant alleges that MACEC “failed to provide a list of employment positions within the field for which a student would receive education and training as required by statute and instead provided a link to the Bureau’s online sample of a School Performance Fact Sheet.”

6. Education Code section 94910, subdivision (f)(2), provides that with certain exceptions, and prior to enrollment, an institution shall provide a prospective student with a “School Performance Fact Sheet” containing, among other information, a “statement informing the reader of where he or she may obtain from the institution a list of the employment positions determined to be within the field for which a student received education and training for the calculation of job placement rates as required by subdivision (b).”¹

¹ Subdivision (b) refers to “[p]lacement rates for each educational program, as calculated pursuant to Article 16 (commencing with Section 94928), if the educational

7. As set forth in Findings 20 thru 25 and pursuant to Education Code 94910, subdivision (f)(2), cause exists for the denial of respondent's Application in that respondent failed to comply with the requirements pertaining to the provision of a list of employment positions within the applicable field.

Third Cause for Denial – unauthorized information in the School Performance Fact Sheet

8. Complainant alleges that the "School's Performance Fact Sheet listed EDD Certified Nursing Assistant low, median and high salaries and a certification statement and definition of the certificate of completion, which is not permitted."

9. California Code of Regulations, title 5, section 74112, subdivision (a), states, in pertinent part, that the "Performance Fact Sheet shall contain all and only the information required or specifically permitted by section 94910 of the Code or this chapter."

10. As set forth in Finding 26 and pursuant to California Code of Regulations, title 5, section 74112, subdivision (a), cause exists for the denial of respondent's Application in that respondent's School Performance Fact Sheet contained information not required or specifically permitted by applicable law.

Fourth Cause for Denial – insufficient assets/resources

11. Complainant alleges that there are insufficient assets or resources as required by California Code of Regulations, title 5, section 71745, subdivision (a)(1-5), which provides as follows:

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

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

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

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

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

program is designed to lead to, or the institution makes any express or implied claim related to preparing students for, a recognized career, occupation, vocation, job, or job title."

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

12. As set forth in Findings 27 thru 31 and pursuant to California Code of Regulations, title 5, section 71745, subdivision (a)(1-5), cause exists for the denial of respondent's Application in that respondent has failed to document sufficient financial resources.

Conclusion

13. Ms. Bozkurt made progress toward narrowing and eliminating deficiencies on the Application, but significant deficiencies remain. Each deficiency identified above constitutes cause for denial of the Application. At the hearing, Ms. Bozkurt requested another opportunity to provide the required documentation. However, it is unlikely that an order granting an additional opportunity to correct the deficiencies would be productive. The history of this Application includes repeated attempts to correct deficiencies specified by the Bureau on multiple occasions.

ORDER

The application of Edra Bozkurt for approval to operate an Institution Non Accredited known as Manna Adult Continuing Education Center is denied.

DATED: July 6, 2015



VINCENT PASTORINO
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Statement of Issues Against:

**MANNA ADULT CONTINUING EDUCATION
CENTER,**

Respondent.

Case No. 999585

OAH No. 2015030555

DECISION

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

This Decision shall become effective SEP. 6 2015.

DATED: AUG 03 2015


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

