

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

In the Matter of the Statement of Issues Against:

DIFAI CITY COLLEGE

Respondent

Institution No. 1940981

Case No. 1005808

OAH Case No.: 2020120419

DECISION AND ORDER

This matter comes before the Director of the Department of Consumer Affairs (Director) for decision after reconsideration of the administrative law judge's proposed decision.

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on December 30, 2020.

Complainant, Dr. Michael Marion, Jr., Chief, Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, was represented by Christina Thomas, Deputy Attorney General. Respondent Difai City College (College) was represented by Victor Duruhesie.

Oral and documentary evidence was received. The record was held open until January 11, 2021, for the College's questions of witness Shakira Rule, presentation of

evidence, and closing argument in writing, and until January 25, 2021, for complainant's response.

The College submitted no questions for Ms. Rule or evidence, but timely submitted a closing brief, which was marked for identification as Exhibit A. Complainant submitted nothing further. The record was closed and the matter was submitted for a proposed decision.

On February 22, 2021, the administrative law judge issued a proposed decision that sustained the Bureau's decision to deny the College's application for renewal of approval to operate.

The Director adopted the proposed decision and the College timely submitted a petition for reconsideration of the decision. On June 29, 2021, the Director granted the petition.

The College submitted additional argument and evidence on July 8, 2021, the Bureau submitted additional argument on July 22, 2021, and the College submitted further briefing on August 4, 2021.

The Director, having considered the entire record, including the written argument and evidence the parties submitted, renders the following decision after reconsideration.

STATEMENT OF THE CASE

At the time the College applied for renewal of its approval to operate in July 2019, it was required to submit to the Bureau its 2018 financial statements that were reviewed by an accountant in accordance with generally accepted accounting principles. The College did not do so. Even by the time the Bureau denied the College's renewal application eight months later, the College still had not provided the

Bureau with reviewed 2018 or 2019 financial statements. Eventually, days before the administrative hearing in this matter, the College provided the Bureau with its 2019 financial statements, but even now, there is no evidence that the College provided the Bureau with reviewed 2018 financial statements, as originally required.

The College argues that it should not be denied an approval to operate and its lack of compliance should be excused because: (i) it has not been out of compliance with regulations since its operations started in 2001; (ii) its current lack of compliance is a minor matter that it tried in good faith to remedy; (iii) the College was out of compliance with regulations only temporarily; (iv) it would have corrected its lack of compliance but for disruptions caused by an administrator's trip abroad and broader societal disruption as a result of the worldwide COVID-19 pandemic; and (v) the College has now submitted the outstanding financial statements.

ISSUES

Whether it is appropriate to excuse the College's failure to comply with regulations regarding financial statements based on its record of past compliance, its good faith attempts at compliance, an administrator's unavailability, or unexpected disruption caused by a worldwide pandemic.

SUMMARY OF DECISION

The College did not provide the Bureau with compliant financial statements and there is no compelling reason to excuse respondent's noncompliance with the laws governing its operations. Compliance is a simple, straightforward process that the College could have planned for more carefully, even in the present difficult circumstances caused by a pandemic. Proper financial statements are particularly

crucial, as a way for the Bureau to oversee institutions for the protection of students from harm in case of an institution's lack of financial means or weakness in its financial ability to provide instruction.

FINDINGS OF FACT

In early March 2020, the Bureau denied the College's application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions. On March 17, 2020, the College sent the Bureau notice it would appeal the denial.

License History

On March 25, 2020, Jason Laughlin, Licensing Analyst for the Bureau, issued on the Bureau's behalf a Certification of Institutional and Program Approvals, Exhibit 2. The certification shows that the College was approved to operate since 2001. Its temporary approval was followed by the institution's full approval, which the Bureau issued on February 16, 2005. The approval expired on September 16, 2019.

Respondent's Noncompliance With Laws

The College applied for renewal of its approval to operate on July 24, 2019. With its application, the College submitted financial statements for the fiscal year ending December 31, 2018. The financial statements were accompanied by a cover letter from LPW CPAs (Certified Public Accountants), addressed to the College's Board of Directors, which stated that "[w]e did not audit or review the financial statements" (Exhibit 3, AGO 0040.)

On August 23, 2019, the Bureau notified the College that it was not approved and requested that the College provide the Bureau with reviewed 2018 financial statements and reviewed statements covering the first five months of 2019:

Please provide the Bureau with reviewed financial statements prepared according to CCR 74115(d) [California Code of Regulations, title 5, section 74115, subdivision (d)] covering no less than the most recent fiscal year and if more than 8 months have elapsed between the close of the most recent completed fiscal year and the time it is submitted, the fiscal statements shall also cover no less than five months of the current fiscal year.

(Exhibit 3, AGO 0138-0139.)

On March 9, 2020, having not received 2018 or 2019 reviewed financial statements, the Bureau denied the College's application for renewal of approval to operate. (Exhibit 3, AGO 0181-0183.) On page AGO 0182, the Bureau set out the facts underlying its decision:

The institution provided financial statements for the year ending in December 31, 2018. This report was not audited or reviewed as required in 5, CCR 71475(e) [that is, California Code of Regulations, title 5, section 71475, subdivision (e)].

The institution failed to provide an additional five months for the fiscal year according to CCR 74115(d) as requested by the Bureau on August 23, 2019.

The College has annual gross revenues of less than \$500,000, as shown in its financial statements. (Exhibit 3, AGO 0041-0043, 0136.) Under applicable sections of the California Code of Regulations, quoted below, the College was required to submit with its application reviewed financial statements that were current. Current financial statements are those covering the most recent completed fiscal year that are submitted no more than eight months after the close of that fiscal year.

Respondent failed to provide such current and reviewed financial statements. It did not submit reviewed financial statements with its application on July 24, 2019. And by the time the Bureau denied the application in March 2020, it had not submitted either reviewed 2018 or 2019 financial statements, including statements covering the first five months of 2019 that the Bureau identified in its August 23, 2019, notification letter.

On reconsideration, the College submitted an email exchange between the College and the Bureau's counsel, indicating that in December 2020, days before the administrative hearing, the College submitted reviewed 2019 financial statements to the Bureau, and the Bureau found them to be compliant with the requirements for such statements. But even now, there is no evidence that the College submitted a reviewed 2018 financial statement, as originally required.¹ Moreover, at no point since it applied for renewal has the College submitted the appropriately-reviewed financial statements that cover the applicable preceding financial period, as prescribed in the regulations.

Reviewed financial statements are critical for the Bureau to protect student consumers by overseeing institutions' financial health and ability to provide instruction and services to students, and to ensure that institutions meet minimum financial operating standards.

The College argued that the deficiency in the financial information it provided should be excused for several reasons, in particular: (i) respondent's past good conduct, including its record of submitting appropriate and timely financial statements in

¹ The Bureau's counsel also requested in December 2020 the financial statements for the first five months of 2020, and the College submitted an email with the Bureau's counsel stating that it provided "the requested 2020 financials as well," on February 23, 2021. There is no evidence to indicate that the 2020 financial statements were reviewed in accordance with generally accepted accounting principles or were otherwise acceptable to the Bureau. There is also no evidence of the College's financial condition for the balance of 2020 or 2021.

all years except for the present since 2001; and (ii) respondent showed good faith in remedying the defects in its renewal application. The College also argued that its lack of compliance was minor and temporary, due to disruptions caused by an administrator's trip abroad and disruptions by the COVID-19 pandemic.

PRINCIPLES OF LAW

An institution must demonstrate its ability to meet minimum operating standards to be granted a renewal of an approval to operate. (Ed. Code, § 94891, subd. (b).) The Bureau will deny an application that does not satisfy the standards. (Ed. Code, § 94887.) In relevant part, an institution demonstrates that it satisfies minimum financial operating standards by submitting to the Bureau audited or reviewed financial statements. (Cal. Code Regs., tit. 5, § 71475, subd. (e).) An institution that fails to submit audited or reviewed statements, as applicable, is ineligible for renewal and its application will be denied. (*Id.* at subd. (kk).)

California Code of Regulations, title 5, section 71475 states in pertinent part:

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

California Code of Regulations, title 5, section 74115 provides in pertinent part:

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

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

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

(d) "Current" with respect to financial statements means completed no sooner than 120 days prior to the time it is submitted to the Bureau, and covering no less than the most recent complete fiscal year. If more than 8 months will have elapsed between the close of the most recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no less than five months of that current fiscal year.

ANALYSIS

There is cause to deny the College's renewal application. At the time the College applied for renewal on July 24, 2019, it was required to submit reviewed financial statements for the 2018 fiscal year. It did not do so. The Bureau notified the College of this defect by letter dated August 23, 2019, and requested five additional months of reviewed financial statements. At the time the Bureau denied the College's application seven months later in March 2020, it had not submitted reviewed 2018 or 2019 financial statements, including the five months that the Bureau requested in August.

The current financial statements that respondent failed to submit as required under California Code of Regulations, title 5, section 74115, particularly subdivision (d), are crucial because they allow the Bureau to protect students. It is the Bureau's duty to protect students by preventing an institution whose finances have not been properly ascertained from conduct that could lead to failure to provide instruction.

The College's arguments present no appropriate basis for excusing its failure to follow regulations and submit current financial statements.

The College is correct that, before the current proceedings, it had not failed to provide current financial statements and its license to operate was undisciplined and in good standing for more than 10 years. It also cooperated in good faith with the Bureau. But a good past record and current cooperation in investigation is not enough.

Especially in the case of finances, the issue here, past performance is no guarantee or adequate assurance of future financial health and performance. The College's failure to provide current financial statements puts students and the public at risk.

The College's arguments based on practicalities, that an administrator was not available and the world has been struggling with a pandemic, are unpersuasive. There was no showing that, among other things, at the time the College was notified of the application deficiency in August 2019, it could not have remedied it, that only one administrator could remedy the College's failure to provide required information, or that there was no other way for respondent to comply with the laws governing its operations.

There is also no merit to the College's claim, made on reconsideration, that it has now corrected the original outstanding application deficiencies. Even after

reconsideration and the passage of two and a half years, there is no evidence that the College provided the Bureau with reviewed 2018 financial statements.

CONCLUSIONS OF LAW

The Bureau properly denied the College's application and there is no good reason to excuse the College's failure to comply with regulations regarding financial statements based on a record of past compliance, respondent's good faith attempts at compliance, an administrator's unavailability, or unexpected disruption caused by a worldwide pandemic.

ORDER

The application of Difai City College, respondent, for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions, is denied.

This Decision shall become effective on January 12, 2022.

IT IS SO ORDERED this 8th day of December, 2021.

"Original signature on file"

RYAN MARCROFT
Deputy Director
Legal Affairs Division
Department of Consumer Affairs