XAVIER BECERRA
Attorney General of California
LINDA L. SUN
Supervising Deputy Attorney General
STEPHEN D. SVETICH
Deputy Attorney General
State Bar No. 272370
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6306
Facsimile: (213) 897-2804
E-mail: Stephen.Svetich@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **LOS ANGELES ORT TECHNICAL INSTITUTE DBA LOS ANGELES ORT COLLEGE** **Applicant for Approval to Operate an Accredited Institution** **School Code: 1914661** Respondent.	Case No. 1003352 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

1. Dr. Michael Marion, Jr. ("Complainant") brings this Statement of Issues solely in his official capacity as the Chief of the Bureau for Private Postsecondary Education (the "Bureau"), Department of Consumer Affairs.

2. On or about March 21, 2017, the Bureau received an application for an Approval to Operate an Accredited Institution from Respondent Los Angeles ORT Technical Institute dba Los

Angeles ORT College ("Respondent"). On or about March 21, 2017, Los Angeles ORT College certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on February 8, 2018.

JURISDICTION

3. This Statement of Issues is brought before the Director of the Department of Consumer Affairs ("Director") for the Bureau, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board or Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

STATUTORY PROVISIONS

6. Section 480 of the Code states, in pertinent part:

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

". . . .

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

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

7. Section 94886 of the Education Code states that:

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

8. Section 94887 of the Education Code states that:

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.

9. Section 94891 of the Education Code states, in pertinent part:

"(a) The bureau shall adopt by regulation the process and procedures whereby an institution may obtain a renewal of an approval to operate.

"(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its continued capacity to meet the minimum operating standards. . . ."

REGULATORY PROVISIONS

10. Title 5, section 71745 of the California Code of Regulations states in part:

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

". . . .

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

///

FACTS

11. Section 498(c) of the Higher Education Act ("HEA") of 1965 requires for-profit and non-profit institutions to annually submit audited financial statements to the U.S. Department of Education to demonstrate they are maintaining the standards of financial responsibility necessary to participate in the Title IV programs. One of many standards, which the Department utilizes to gauge the financial responsibility of an institution, is a composite of three ratios derived from an institution's audited financial statements. The three ratios are a primary reserve ratio, an equity ratio, and a net income ratio. These ratios gauge the fundamental elements of the financial health of an institution, not the educational quality of an institution.

12. The composite score reflects the overall relative financial health of institutions along a scale from negative 1.0 to positive 3.0. A score greater than or equal to 1.5 indicates the institution is considered financially responsible. Schools with scores of less than 1.5 but greater than or equal to 1.0 are considered financially responsible, but require additional oversight. These schools are subject to cash monitoring and other participation requirements.

13. A school with a score less than 1.0 is considered not financially responsible. However, a school with a score less than 1.0 may continue to participate in the Title IV programs under provisional certification. In addition, this lower score typically requires that the school be subject to cash monitoring requirements and post a letter of credit (equal to a minimum of 10 percent of the Title IV aid it received in the institution's most recent fiscal year). In the event a school with a composite score less than 1.5 posts a letter of credit equal to 50 percent or more of their Title IV aid received, that school is considered financially responsible. As a result, the school may be free of cash monitoring and other participatory requirements if there are no other substantive problems related to its Title IV participation.

14. On or about July 28, 2017, the U.S. Department of Education sent a letter to Respondent indicating that it completed its review of Respondent's financial statements and determined that Respondent's composite score is -0.1 out of a possible 3.0. The letter also stated that Respondent could continue to participate in Title IV, HEA programs by posting a letter of credit of $2,026,032, which represents 50% of the Title IV, HEA program funds received by

Respondent during the most recently completed fiscal year (as of the date of the letter). Posting a letter of credit of $2,026,032 would deem Respondent a financially responsible institution. Alternatively, Respondent could post a letter of credit of $607,810 and receive provisional certification for a period of up to three award years. This alternative option required Respondent to comply with various other monitoring requirements. The letter indicates that should Respondent choose the alternative option that requires a lower letter of credit, it is an acknowledgment that Respondent "has not met the U.S. Department of Education's (Department's) standards of financial responsibility."

15. On or about January 5, 2018, the Bureau sent a letter to Respondent indicating that Respondent's Application was deficient. The basis for the deficiency was that the Bureau received information from the U.S. Department of Education indicating that Respondent maintained a composite score of -0.1. The Bureau asked Respondent to provide the Bureau with new financial records to indicate that Respondent meets the composite score requirements of the U.S. Department of Education.

16. Respondent has not provided updated financial records to the Bureau to indicate that Respondent meets the composite score requirements of the U.S. Department of Education. Respondent has not produced a letter of credit for $2,026,032,[1] and therefore is not deemed a financially responsible institution.

CAUSE FOR DENIAL OF APPLICATION

(Failure to Establish Financial Responsibility)

17. Respondent's Application is subject to denial under Business and Professions Code section 480, subdivision (a)(3), Education Code sections 94886, 94891 and California Code of Regulations, title 5, section 71745, subdivision (a)(6), in that Respondent has not provided financial statements sufficient to establish its financial resources to conduct business. Respondent's composite score of -0.1 does not meet the composite score requirements of the U.S.

[1] Respondent produced a letter of credit for $607,810. By choosing to operate under the U.S. Department of Education's alternative for provisional certification, Respondent acknowledged that it has not met the U.S. Department of Education's standards of financial responsibility.

Department of Education. The institution did not submit a 50% Letter of Credit and is not deemed financially responsible by the U.S. Department of Education.

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 Los Angeles ORT Technical Institute dba Los Angeles ORT College for an Approval to Operate an Accredited Institution;

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

DATED: 12/17/18

DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

LA2018601576
63055553.docx