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

11
12 In the Matter of the Statement of Issues
Against:

Case No. 1003057

13
14 **ONLINE VOCATIONAL ACADEMY,**
INC.

STATEMENT OF ISSUES

15
16 **Approval to Operate an Institution Non-**
Accredited Applicant

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about December 8, 2015, the Bureau for Private Postsecondary Education
25 received an application for an Approval to Operate an Institution Non-Accredited from Online
26 Vocational Academy, Inc. (Respondent). On or about December 7, 2015, David Pinnell certified
27 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
28 application. The Bureau denied the application on September 28, 2017.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Director of the Department of
3 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education (Bureau), under
4 the authority of the following laws. All section references are to the Education Code unless
5 otherwise indicated.

6 4. Education Code (Code) Section 94886 states:

7 Except as exempted in Article 4 (commencing with section 94874) or in
8 compliance with the transition provisions in Article 2 (commencing with Section
9 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.

10 5. Code Section 94887 states:

11 An approval to operate shall be granted only after an applicant has presented
12 sufficient evidence to the bureau, and the bureau has independently verified the
13 information provided by the applicant through site visits or other methods
14 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.

15 **STATUTORY AND REGULATORY PROVISIONS**

16 6. Code section 94909 states in part:

17 (a) Except as provided in subdivision (d), prior to enrollment, an institution shall
18 provide a prospective student, either in writing or electronically, with a school
catalog containing, at a minimum, all of the following:

19 ...

20 (4) The address or addresses where class sessions will be held.

21 ...

22 (9) The schedule of total charges for a period of attendance and an estimated
23 schedule of total charges for the entire educational program.

24 ...

25 7. Code section 94911 states in part:

26 An enrollment agreement shall include, at a minimum, all of the following:

27 ...

28 (j) The following statements:

1 (1) "Any questions a student may have regarding this enrollment agreement
2 that have not been satisfactorily answered by the institution may be directed to
3 the Bureau for Private Postsecondary Education at (address), Sacramento, CA
4 (ZIP Code), (Internet Web site address), (telephone and fax numbers)."

5 ...
6
7
8 8. Code section 94916 states:

9 An institution extending credit or lending money to an individual for institutional
10 and noninstitutional charges for an educational program shall cause any note,
11 instrument, or other evidence of indebtedness taken in connection with that
12 extension of credit or loan to be conspicuously marked on its face in at least 12-
13 point type with the following notice:

14 "NOTICE"

15 "You may assert against the holder of the promissory note you signed in order to
16 finance the cost of the educational program all of the claims and defenses that
17 you could assert against this institution, up to the amount you have already paid
18 under the promissory note."

19 9. Code section 94917 states:

20 A note, instrument, or other evidence of indebtedness relating to payment for an
21 educational program is not enforceable by an institution unless, at the time of
22 execution of the note, instrument, or other evidence of indebtedness, the
23 institution held an approval to operate.

24 10. Code section 94918 states:

25 In making consumer loans to students, an institution shall also comply with the
26 requirements of the Federal Truth in Lending Act pursuant to Title 15 of the
27 United States Code.

28 11. Title 5, California Code of Regulations (CCR), section 71100 states:

(a) An applicant seeking approval to operate pursuant to Section 94886 of the
Code, other than Approval to Operate by Accreditation pursuant to Section
94890(a)(1) of the Code, shall complete the "Application for Approval to Operate
for an Institution Not Accredited," Form Application 94886 (rev. 2/10). An
applicant seeking approval to operate by accreditation pursuant to Section
94890(a)(1) of the Code shall comply with section 71390.

(b) An applicant shall submit the completed form, the information or
documentation required by this Article, the appropriate application fee as
provided in Section 94930.5(a)(1) of the Code, and any appropriate annual fee as
required by Article 1 of Chapter 5 of this Division, to the Bureau.

(c) An application that fails to contain all of the information required by this
article shall render it incomplete.

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12. Title 5, CCR, section 71700 states:

The Bureau may request that an institution document compliance with the standards set forth in the Act and this Division to obtain and maintain an approval to operate.

13. Title 5, CCR section 71710 states in part:

In order to meet its mission and objectives, the educational program defined in section 94837 of the Code shall be comprised of a curriculum that includes:

(a) those subject areas that are necessary for a student to achieve the educational objectives of the educational program in which the student is enrolled;

(b) subject areas and courses or modules that are presented in a logically organized manner or sequence to students;

(c) course or module materials that are designed or organized by duly qualified faculty. For each course or module, each student shall be provided with a syllabus or course outline that contains:

...

(3) length of the educational program;

...

(6) sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured;

...

(d) if degree granting, require research of an appropriate degree that utilizes a library and other learning resources;

(e) specific learning outcomes tied to the sequence of the presentation of the material to measure the students' learning of the material; and

...

14. Title 5, CCR, section 71715 states in part:

...

(b) The institution shall document that the instruction offered leads to the achievement of the learning objectives of each course.

...

(d) Distance education as defined in section 94834 of the Code, does not require the physical presence of students and faculty at the same location but provides for interaction between students and faculty by such means as telecommunication, correspondence, electronic and computer augmented educational services, postal service, and facsimile transmission. In addition to the

1 other requirements of this chapter and the Act, an institution offering distance
education shall:

2 (1) ensure that the educational program offered through distance education
3 is appropriate for delivery through distance education methods;

4 (2) assess each student, prior to admission, in order to determine whether
5 each student has the skills and competencies to succeed in a distance education
6 environment;

7 (3) ensure that the materials and programs are current, well organized,
8 designed by faculty competent in distance education techniques and delivered
9 using readily available, reliable technology;

10 (4) provide for meaningful interaction with faculty who are qualified to
11 teach using distance education methods;

12 ...

13 **FACTS**

14 15. On December 8, 2015, the Bureau received an Application for Approval to Operate
15 For [sic] An Institution Non-Accredited (Application No. 28811) from Respondent. Respondent
16 seeks to provide certificate level programs in information technology through a combination of
17 class and on-line instruction.

18 16. On December 21, 2015, the Bureau sent Respondent a letter confirming receipt of the
19 Application but informed Respondent that the application was incomplete in that the contact
20 information for all members of the governing board were not included and an accreditation plan
21 had not been submitted.

22 17. On January 19, 2016, the Bureau received an updated list of Respondent's governing
23 board members and clarification regarding its certificate program. On September 30, 2016, the
24 Bureau sent Respondent a letter advising that the Bureau could not grant Respondent an approval
25 to operate because of deficiencies in the Application, including deficiencies pertaining to the
26 institution's owner, governing board, enrollment agreement, instruction and degrees offered, the
27 description of the educational programs and the school catalog, among other things.

28 18. On or about January 4 and 23, 2017, the Bureau received Respondent's response to
the deficiency letter. On July 10, 2017, the Bureau sent Respondent another deficiency letter
identifying deficiencies pertaining to the owner's information, organization and management,
governing board, Enrollment Agreement, instruction and degrees offered, the description of the

1 educational programs and the school catalog, among other things. The Bureau requested
2 additional information be submitted by August 15, 2017.

3 19. On August 15, 2017, the Bureau received Respondent's response to the second
4 deficiency letter. The Bureau denied Respondent's Application for Approval to Operate a Non-
5 Accredited Institution and sent Respondent a "Notice of Denial" on September 28, 2017.

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**

8 **- Enrollment Agreement)**

9 20. Respondent's application is subject to denial under Code sections 94887, 94911,
10 94916, 94917 and 94918, and title 5, CCR, sections 71100 and 71700, for failing to demonstrate
11 its capacity to satisfy minimum operating standards in that the institution's Enrollment
12 Agreement contained the following deficiencies:

13 a. the Enrollment Agreement did not have the specific, verbatim, required language set
14 forth in Code section 94911(j)(1) and the Enrollment Agreement refers to "catalog" instead of
15 Enrollment Agreement.

16 b. the Enrollment Agreement does not contain the specific, verbatim, required language
17 regarding an institution extending credit or lending money to an individual for institutional and
18 non-institutional charges, as set forth in Code sections 94916, 94917 and 94918.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**

21 **- Instruction and Degrees Offered)**

22 21. Respondent's application is subject to denial under Code section 94887 and title 5,
23 CCR, sections 71100, 71700, 71710 and 71715, for failing to demonstrate its capacity to satisfy
24 minimum operating standards as follows:

25 a. Respondent failed to demonstrate that the presentation of the material used to
26 measure the students' learning of the material leads to the achievement of the learning objectives
27 of each course, in violation of title 5, CCR, 71710(e) and 71715(b). The circumstances are as
28 follows.

1 i. Respondent's school catalog states, "The academy defines students' satisfactory
2 completion of academic requirements through participation in course modules, assignment [sic]
3 and testing completion." The Bureau requested Respondent provide the Bureau with a sample
4 test. Respondent has not provided the requested sample test. Furthermore, Respondent has not
5 documented how the proposed instruction will achieve the learning objectives stated for each
6 course.

7 b. Respondent's 2018 catalog failed to demonstrate how Respondent will assess each
8 student, prior to admission, in order to determine whether each student has the skills and
9 competencies needed to succeed in a distance education environment, in violation of title 5, CCR,
10 71715(d)(2).

11 c. Respondent failed to demonstrate how it will provide for meaningful interaction with
12 faculty who are qualified to teach using distance education methods, in violation of title 5, CCR,
13 71715(d)(4), in that the syllabi and school catalog do not contain instructions for contacting the
14 instructor.

15 **THIRD CAUSE FOR DENIAL OF APPLICATION**

16 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**

17 **- Description of Educational Programs)**

18 22. Respondent's application is subject to denial under Code section 94887 and title 5,
19 CCR, sections 71100, 71700, 71710 and 71715, for failing to demonstrate its capacity to satisfy
20 minimum operating standards as follows:

21 a. Respondent failed to demonstrate that subject areas and courses or modules in its
22 educational programs are presented in a logically organized manner or sequence to students, in
23 violation of title 5, CCR, 71710(b), as follows.

24 i. Respondent proposed use of demonstrations and simulations as instructional
25 methods. The Bureau requested a sample lesson plan for the demonstration and simulation
26 methodologies. Respondent has not provided the requested lesson plan.

27 ii. The Academic Policies in Respondent's catalog requires each student to log
28 into a course module during the first week of instruction. However, the syllabus for the

1 “Introduction to Computers” program does not include an educational component addressing how
2 to log on the course nor an orientation to the on-line learning management system.

3 b. Respondent failed to demonstrate how the course content for the “Coping with New
4 Employment” educational program supports the educational objectives listed in the program
5 syllabus, in violation of title 5, CCR, 71710(a).

6 c. Respondent failed to demonstrate that the six proposed educational programs offered
7 through distance education are appropriate for delivery through distance education methods, in
8 violation of title 5, CCR, 71715(d)(1).

9 i. The “Text Requirements” of the syllabi Respondent provided for the
10 educational programs states, “The instructor will deliver the following equipment and materials
11 and will assist the student to set up.” This is contrary to Respondent’s statement to the Bureau
12 that, “Faculty will not be meeting with students in their homes. All interaction with faculty will
13 be via Canvas online learning management system.” The “Text Requirements” demonstrates that
14 the proposed programs are not appropriate for distance education.

15 ii. In Respondent’s August 15, 2017, response to the second deficiency letter,
16 Respondent provided a sample lesson plan entitled, “The Job Search.” The sample lesson plan
17 did not use an online learning platform and did not demonstrate how the lesson plan will be
18 implemented through distance learning. This lesson plan was not appropriate for distance
19 education.

20 d. Respondent failed to demonstrate that the syllabus for the Microsoft Office program
21 contains the duration of the program in that the syllabus for the Microsoft Office program shows
22 100 clock hours and lists 102 topics the student will study, however the catalog received from
23 Respondent on August 15, 2017, indicates the Microsoft Office program has 40 clock hours and
24 seven competencies. This is a violation of title 5, CCR, 71710(c)(3).

25 e. Respondent failed to demonstrate a sequential and detailed outline of the Orientation
26 Unit or a list of skills to be learned and how those skills are to be measured. In Respondent’s
27 August 15, 2017, response to the second deficiency letter, Respondent stated “Upon enrollment,
28 student will first go through short Orientation Unit to familiarize them with the asynchronous

1 format in general and with the Canvas system in particular.” Respondent did not provide any
2 additional information about the Orientation Unit and the Orientation Unit is not disclosed to the
3 student in the school catalog. This is a violation of title 5, CCR, 71710(c)(3) and (6).

4 f. Respondent failed to ensure that the materials and programs offered through distance
5 education are current, well organized, designed by faculty competent in distance education
6 techniques and delivered using a readily available, reliable technology platform, in violation of
7 title 5, CCR, 71715(d)(3):

8 i. On July 10, 2017, the Bureau requested detailed information about the distance
9 education platform to be used, but Respondent failed to provide information demonstrating the
10 distance education platform proposed for use by Respondent is well organized and will be
11 delivered using reliable technology.

12 ii. On July 10, 2017, the Bureau requested detailed procedures that students and
13 faculty will use to access the distance education platform. Respondent did not provide this
14 information.

15 iii. On July 10, 2017, the Bureau requested log-in information for remote access to
16 the distance education platform in order to assess the distance education platform. Respondent
17 did not provide this information.

18 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

19 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards**

20 **- Deficiencies in School Catalog)**

21 23. Respondent's application is subject to denial under Code sections 94887 and 94909,
22 and title 5, CCR, sections 71100 and 71700, for failing to demonstrate its capacity to satisfy
23 minimum operating standards in that Respondent's catalog contained deficiencies as follows:

24 a. The information in the school catalog fails to state the address or addresses where
25 class sessions will be held, in violation of Code section 94909(a)(4) in that page 7 of the school
26 catalog under “Facilities” states that class sessions are held online or at the student's home.
27 However, all course syllabi under “Text Requirements” and the school catalog in the “Make Up
28 Work” section refer to the instructor visiting the student's home. This information conflicts with

1 Respondent's August 15, 2017, response to the second deficiency letter that states: "Faculty will
2 not meet with students in their home. All interaction with faculty will be via Canvas online
3 learning management system."

4 b. The schedule of fees does not include information regarding fees for the Ability to
5 Benefit (Wonderlic) test, in violation of Code section 94909(a)(9.)

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Director of the Department of Consumer Affairs issue a
9 decision:

10 1. Denying the application of Online Vocational Academy, Inc. for a Approval to
11 Operate an Institution Non-Accredited; and,

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

13
14 DATED: 6/25/18



15 DR. MICHAEL MARION, JR.
16 Chief
17 Bureau for Private Postsecondary Education
18 Department of Consumer Affairs
19 State of California
20 *Complainant*

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