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8  
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. 1001322

13 **QBICS CAREER COLLEGE,**  
14 **EHKY GUTIERREZ, OWNER**

**STATEMENT OF ISSUES**

15 **Application for Renewal of Approval to**  
16 **Operate an Institution Non-Accredited**  
**Applicant**

17 **Institution Code No. 3014151**

18 Respondent.

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21 Complainant alleges:

22 **PARTIES**

23 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official  
24 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of  
25 Consumer Affairs.

26 2. On or about July 21, 2011, the Bureau for Private Postsecondary Education (Bureau)  
27 received an Application for a Renewal of Approval to Operate an Institution Non-Accredited  
28 (application number 23779) from Qbics Career College (Respondent), Ehky Gutierrez, owner.

1 On or about May 18, 2012, the Bureau issued a deficiency letter to Respondent explaining the  
2 deficiencies in its application. On or about July 11, 2012, the Bureau received a response and  
3 additional documentation from Respondent.

4 3. On or about April 7, 2014, the Bureau issued to Respondent an additional letter  
5 explaining the deficiencies in its application. On or about May 23, 2014, the Bureau received a  
6 response and additional documentation from Respondent. On or about June 10, 2014, the Bureau  
7 requested additional information and documentation from Respondent. On or about August 4 and  
8 October 30, 2014, the Bureau received additional documentation from Respondent.

9 4. On or about September 3, 2015, the Bureau issued an email explaining the  
10 deficiencies in its application. On or about October 7, 2015, the Bureau received a response and  
11 additional documentation from Respondent. On or about December 29, 2015, the Bureau issued a  
12 Notice of Denial of Application for Approval to Operate to Respondent. On or about January 5,  
13 2016, Respondent sent the Bureau a letter requesting an administrative hearing. On or about  
14 January 11, 2016, the Bureau received financial statements prepared by a licensed certified public  
15 accountant, for fiscal years ending December 31, 2011, 2012 and 2013 from Respondent.

## 16 JURISDICTION

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

## 21 STATUTORY AND REGULATORY PROVISIONS<sup>1</sup>

22 6. Education Code Section 94886 states:

23 Except as exempted in Article 4 (commencing with section 94874) or in  
24 compliance with the transition provisions in Article 2 (commencing with Section  
25 94802), a person shall not open, conduct, or do business as a private postsecondary  
26 educational institution in this state without obtaining an approval to operate under  
27 this chapter.

28 <sup>1</sup> The California Private Postsecondary Education Act of 2009 was recently amended, effective  
January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the pre-  
amendment version of the Act.

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7. Education Code Section 94887 states:

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.

8. Title 5, California Code of Regulations, title 5, section 71475, subdivisions (e) and (kk) state:

(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.

...

(kk) An incomplete application filed under this section will render the institution ineligible for renewal.

9. Title 5, California Code of Regulations, title 5, 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.

10. Title 5, California Code of Regulations, section 71745, subdivisions (a) and (c) state:

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

1 requirements of the U.S. Department of Education. For the purposes of this  
2 section, current assets does not include: intangible assets, including  
3 goodwill, going concern value, organization expense, startup costs, long-  
4 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.

5 ...

6 (c) An institution shall provide to the Bureau its most current financial statements  
7 upon request.

8 11. Title 5, California Code of Regulations, section 74115 states:

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

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

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

15 (2) Financial statements prepared on an annual basis as required by section  
16 74110(b) shall be prepared in accordance with the generally accepted accounting  
principles established by the American Institute of Certified Public Accountants.  
17 Nonprofit institutions shall provide annual financial statements as required under  
generally accepted accounting principles for nonprofit organizations.

18 (3) The financial statements shall establish that the institution meets the  
19 requirements for financial resources required by Section 71745.

20 (4) If an audit performed to determine compliance with any federal or state  
student financial aid program reveals any failure to comply with the requirements of  
21 the program and the noncompliance creates any liability or potential liability for the  
institution, the financial statements shall reflect the liability or potential liability.

22 (5) Any audits shall demonstrate that the accountant obtained an  
23 understanding of the institution's internal financial control structure,  
assessed any risks, and has reported any material deficiencies in the internal  
24 controls.

25 ....

26 (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  
27 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,  
28 the fiscal statements shall also cover no less than five months of that current fiscal  
year.

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**CAUSE FOR DENIAL OF APPLICATION**

**(Failure to Provide Current Financial Statements)**

**(Educ. Code § 94887; and Cal. Code Regs., title 5 §§ 71475, subd. (e), 71745, subd. (c)  
and 74115, subd. (d))**

12. Respondent's application is subject to denial because Respondent failed to provide current financial statements. (Cal. Educ. Code § 94887; Cal. Code Regs., title 5, § 71475, subd. (e), 71745, subd. (c) and 74115, subd. (d)). In particular, Respondent failed to submit a currently reviewed financial statement for fiscal year ending December 31, 2015 with its application. Respondent has therefore failed to provide evidence that it has the capacity to meet the minimum operating standards.

**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 Qbics Career College, Ehky Guterrez (owner) for a Renewal of Approval to Operate a Non-Accredited Institution; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/28/16

  
 JOANNE WENZEL  
 Chief  
 Bureau for Private Postsecondary Education  
 Department of Consumer Affairs  
 State of California  
 Complainant

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