

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
4 State Bar No. 169207
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2564
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the Statement of Issues
Against:

Case No. 1000839

13 **INSTITUTE OF PSYCHO-STRUCTURAL**
14 **BALANCING; LISA SCHWAB, Owner**
15 **Application for Renewal of Approval to**
Operate an Institution Non-Accredited
School Code: 1909331

STATEMENT OF ISSUES

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about September 28, 2011, the Bureau for Private Postsecondary Education
24 received an Application for Renewal of Approval to Operate an Institution Non-Accredited from
25 Institute of Psycho-Structural Balancing, a corporation owned individually by Lisa Schwab
26 (Respondent). On or about September 26, 2011, Lisa Schwab certified under penalty of perjury
27 to the truthfulness of all statements, answers, and representations in the application. Multiple
28 deficiency letters were sent to Respondent. The Bureau denied the application on June 26, 2015.

1 **JURISDICTION**

2 3. Education Code section 94891¹ states:

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

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

7 (c) (1) An institution that is denied renewal of an approval to operate may file an
8 appeal in accordance with the procedures established by the bureau pursuant to Section 94888.

9 (2) An institution that has filed an appeal of a denial of a renewal application may
10 continue to operate during the appeal process, but must disclose in a written statement, approved
11 by the bureau, to all current and prospective students, that the institution’s application for renewal
12 of approval to operate was denied by the bureau because the bureau determined the application
13 did not satisfy the requirements to operate in California, that the institution is appealing the
14 bureau’s decision, and that the loss of the appeal may result in the institution’s closure.

15 (3) If the bureau determines that the continued operation of the institution during the
16 appeal process poses a significant risk of harm to students, the bureau shall make an emergency
17 decision pursuant to its authority provided in Section 94938.”

18 **STATUTORY PROVISIONS**

19 4. Business and Professions Code section 477 as used in this division provides in
20 pertinent part:

21 (a) “Board” includes “bureau”

22 (b) “License” includes certificate, registration or other means to engage in a business
23 or profession regulated by this code.

24 5. Education Code section 94885 states:

25 “The bureau shall adopt by regulation minimum operating standards for
26 an institution that shall reasonably ensure that all of the following occur:

27 (a) The content of each educational program can achieve its stated

28 ¹ California Private Postsecondary Education Act of 2009, Ed. Code §§ 94800 et seq.

1 objective.

2 (b) The institution maintains specific written standards for student
3 admissions for each educational program and those standards are related to
4 the particular educational program.

5 (c) The facilities, instructional equipment, and materials are
6 sufficient to enable students to achieve the educational program's goals.

7 (d) The institution maintains a withdrawal policy and provides
8 refunds.

9 (e) The directors, administrators, and faculty are properly qualified.

10 (f) The institution is financially sound and capable of fulfilling its
11 commitments to students.

12 (g) That, upon satisfactory completion of an educational program,
13 the institution gives students a document signifying the degree or diploma
14 awarded.

15 (h) Adequate records and standard transcripts are maintained and are
16 available to students.

17 (i) The institution is maintained and operated in compliance with
18 this chapter and all other applicable ordinances and laws.

19 (b) Except as provided in Section 94855.1, an institution offering
20 a degree must satisfy one of the following requirements:

21 (i) Accreditation by an accrediting agency recognized by the
22 United States Department of Education, with the scope of that accreditation
23 covering the offering of at least one degree program by the institution.

24 (ii) An accreditation plan, approved by the bureau, for the
25 institution to become fully accredited within five years of the bureau's
26 issuance of a provisional approval to operate to the institution. The
27 provisional approval to operate to an unaccredited degree-offering institution
28 shall be in compliance with Section 94885.5."

6. Education Code section 94886 states:

“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.”

7. Education Code section 94887:

“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

1 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
2 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application
3 for an approval to operate if the application does not satisfy those standards.”

4 8. Education Code section 94930.5 states:

5 “Subject to Section 94930, an institution shall remit to the bureau for
6 deposit in the Private Postsecondary Education Administration Fund the following
7 fees, in accordance with the following schedule:

7 ...

8 (d)(1) In addition to any fees paid to the bureau pursuant to subdivisions
9 (a) to (c), inclusive, each institution that is approved to operate pursuant to this
chapter shall remit both of the following:

10 (A) An annual institutional fee, in an amount equal to three-quarters of 1
11 percent of the institution's annual revenues derived from students in California, but
not exceeding a total of twenty-five thousand dollars (\$25,000) annually.

12 (B) An annual branch fee of one thousand dollars (\$1,000) for each
13 branch or campus of the institution operating in California.

14 (2) The amount of the annual fees pursuant to paragraph (1) shall be
proportional to the bureau's cost of regulating the institution under this chapter.”

15 9. Education Code section 94931, states:

16 “(a) A fee that is not paid on or before the 30th calendar day after the due date for the
17 payment of the fee shall be subject to a 25 percent late payment penalty fee.

18 (b) A fee that is not paid on or before the 90th calendar day after the due date for
19 payment of the fee shall be subject to a 35 percent late payment penalty fee.”

20 10. Education Code section 94934 states:

21 “(a) As part of the compliance program, an institution shall submit an
22 annual report to the bureau, under penalty of perjury, signed by a responsible
23 corporate officer, by July 1 of each year, or another date designated by the bureau,
and it shall include the following information for educational programs offered in the
reporting period:

24 (1) The total number of students enrolled by level of degree or for a
25 diploma.

26 (2) The number of degrees, by level, and diplomas awarded.

27 (3) The degree levels and diplomas offered.

28 (4) The Student Performance Fact Sheet, as required pursuant to Section
94910.

- 1 (5) The school catalog, as required pursuant to Section 94909.
- 2 (6) The total charges for each educational program by period of
attendance.
- 3 (7) A statement indicating whether the institution is, or is not, current in
4 remitting Student Tuition Recovery Fund assessments.
- 5 (8) A statement indicating whether an accrediting agency has taken any
final disciplinary action against the institution.
- 6 (9) Additional information deemed by the bureau to be reasonably
7 required to ascertain compliance with this chapter.
- 8 (b) The bureau, by January 1, 2011, shall prescribe the annual report's
format and method of delivery."

9 **REGULATORY PROVISIONS**

10 11. California Code of Regulations, title 5, division 7.5, section 71100 states:

11 "(a) An applicant seeking approval to operate pursuant to Section 94886
12 of the Code, other than Approval to Operate by Accreditation pursuant to Section
13 94890(a)(1) of the Code, shall complete the "Application for Approval to Operate for
14 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.

15 "(b) An applicant shall submit the completed form, the information or
16 documentation, required by this Article, the appropriate application fee as provided in
Article 1 of Chapter 5 of this Division, to the Bureau.

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

19 12. California Code of Regulations, title 5, division 7.5, section 71700 states:

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

22 13. California Code of Regulations, title 5, division 7.5, section 71475 states:

23 "(a) Unless renewed, an approval to operate shall expire at 12 midnight
24 on the last day of the institution's term of approval to operate as granted pursuant to
section 94802 or section 94889 of the Code.

25 (b) An institution seeking to renew its Approval to Operate pursuant to
26 section 94891 of the Code shall, prior to its expiration, complete and submit to the
Bureau the 'Application for Renewal of Approval to Operate and Offer Educations
27 Programs for Non-Accredited Institutions,' Form Application 94891 (rev. 2/10).

28 (c) The application for renewal of approval to operate and offer
educational programs for non-accredited institutions shall include all of the following:

1 (1) The name, institution/school code and website address of the
2 institution.

3 (2) The physical address of the institution's primary administrative
4 location in California.

5 (3) The mailing address, identified either by physical address or by post
6 office box number, telephone number and fax number of the institution.

7 (4) The physical address, phone number and fax number of each campus
8 and branch at which the educational programs will be offered, including the
9 identification of the institution's main location and branch locations.

10 (5) The name, address, email address, telephone number, and fax
11 number of an individual who will function as the institution's contact person for the
12 purposes of the application.

13 (6) The form of business organization of the institution (e.g., sole
14 proprietorship, general or limited partnership, for-profit corporation, nonprofit
15 corporation, or Limited Liability Corporation). If the institution is incorporated, the
16 institution shall also identify the state within which the institution is incorporated and
17 the date of incorporation, and provide copies of the articles of incorporation and
18 bylaws.

19 (7) The name, title, address, email address, telephone number, nature of
20 interest and percentage of ownership of each person, as defined in section 94855 of
21 the Code, who owns or controls 25% or more of the stock or an interest in the
22 institution and, to the extent applicable, each general partner, officer, corporate
23 director, member of the board of directors, and any other person who exercises
24 substantial control over the institution's management or policies. For the purpose of
25 this paragraph, a person exercises "substantial control over the institution's
26 management or policies" if the person has the authority to cause the institution to
27 expend money or incur debt in the amount of five thousand dollars (\$5,000) or more
28 in any year.

(A) For each address required, the institution shall provide a physical
home address, and may request that the address, email address, and telephone
number, of each person described in paragraph (7) be maintained as personal
information.

(B) The federal employer identification number for partnerships or the
social security number for individual owners identified in the application pursuant to
section 71130(a)(1).

(d) In addition to the form required in (b), the institution shall submit all
information required by section 71100(b), and the appropriate renewal fee as
provided in Sections 94930.5(b)(1) and 94930.5(b)(2) of the Code, as applicable, to
the Bureau. Except for the financial statements required by subdivision (e) of this
section and the statement required in subdivision (f) of this section, if the information
required in order to renew its approval to operate is substantially similar to the
information submitted by the institution in its last renewal application, or initial
application if it is the first renewal, the institution may state that there are no
substantial changes.

...

1 (gg) The institution demonstrates its continued capacity to meet the
2 minimum operating standards by submitting the renewal application signed and
3 dated, and each fact stated therein and each attachment thereto declared to be true
4 under penalty of perjury, as follows:

5 (1) Signatories:

6 (A) Each owner of the institution, or

7 (B) If the institution is incorporated, the chief executive officer of the
8 corporation and each person who owns or controls 25 percent or more of the stock or
9 interest in the institution, or

10 (C) Each member of the governing body of a nonprofit corporation.

11 (2) The declaration shall be in the following form:

12 'I declare under penalty of perjury under the laws of the State of
13 California that the foregoing and all attachments are true and correct.

14 _____
15 (Date)

16 _____
17 (Signature)

18 (hh) In addition to the fees required by subdivision (d) of this section:

19 (1) An application for renewal that is received by the Bureau more than
20 30 days after the expiration of the approval to operate shall be submitted with the 25
21 percent late payment penalty fee required by section 94931(a) of the Code.

22 (2) An application for renewal that is received by the Bureau more than
23 90 days after the expiration of the approval to operate shall be submitted with the 35
24 percent late payment penalty fee required by section 94931(b) of the Code."

25 ...

26 14. California Code of Regulations, title 5, division 7.5, section 71745 states:

27 (a) The institution shall document that it has at all times sufficient assets and financial
28 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.

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

10 (b) At an institution's request, the Bureau may consider the financial resources of a
11 parent company if he parent company, as defined by section 94853 of the Code, meets and
12 maintains all of the following provisions:

13 (1) consents in writing to be sued in California;

14 (2) consents in writing to be subject to the jurisdiction of the Bureau with respect to the
15 institution's regulation under the Act and this Chapter;

16 (3) designates and maintains an agent for service of process, consistent with section
17 74190;

18 (4) agrees in writing to pay any refund, claim, penalty, or judgment that the institution is
19 obligated to pay; and

20 (5) files financial reports, maintains financial records, and consents in writing to permit
21 the inspection and copying of financial records to the same extent as is required of the institution.

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

24 15. California Code of Regulations, title 5, division 7.5, section 71485 states:

25 Failure of an institution to have made current payments of the assessments to the Student
26 Tuition Recovery Fund as required by chapter 7 of this division, and annual fees as required by
27 chapter 5 of this Division shall render the institution ineligible for renewal.

28 ///

1 16. California Code of Regulations, title 5, division 7.5, section 74000 states:

2 “(a) An institution shall pay the fees established by Article 17 of the Act.
3 A failure to include a fee with an application or other request renders the application
4 or request incomplete.

5 (b) All fees lawfully collected are non-refundable.

6 (c) A fee that is not paid timely is subject to penalty as set forth in
7 section 94931 of the Code.

8 (d) The Bureau shall deny a renewal of an approval to operate if the
9 institution fails to submit at the time it files its application for renewal of an approval
10 to operate: all unpaid fees; penalty fees; penalties; orders for reimbursement of costs
11 and expenses; and assessments for, and reimbursement of all payments made to
12 students from, the Student Tuition Recovery Fund.

13 (e) (1) If an institution fails to pay any fee and any penalty fees timely,
14 the Bureau may initiate proceedings to revoke the institution's approval to operate for
15 failure to pay fees.

16 (2) Any proceeding to revoke an institution's approval to operate is
17 subject to the provisions of Chapter 5 of the Administrative Procedures Act. If a
18 hearing is requested, it shall be limited to the issues of whether any fee or penalty was
19 owed and, if so, whether the fee or penalty were paid when originally due.

20 (3) The procedure specified in this subdivision is cumulative to any other
21 right or remedy the Bureau may invoke against an institution which fails to pay its
22 annual fee or a penalty fee when originally due. Nothing in this subdivision restricts
23 the Bureau's authority to bring other administrative or judicial action against an
24 institution that fails to pay its fees when due.

25 (4) An institution whose approval to operate was revoked because of
26 nonpayment of an annual fee or penalty fee may seek to obtain approval to operate
27 only by filing an application for a new approval to operate.”

28 17. California Code of Regulations, title 5, division 7.5, section 74006 states:

“(a) An institution's annual fee is due within 30 days of the date on which the institution
originally receives its approval to operate and each year thereafter on the anniversary of the date
of the original approval.

(b) An institution shall pay its annual fee in addition to any other applicable fees.

(c) The annual institutional fee is based on the institution's annual revenue. For purposes
of this article, annual revenue is annual gross revenue.”

18. California Code of Regulations, title 5, division 7.5, section 74110 states:

“(a) The annual report required by section 94934 of the Code shall
include the information required by section 94934 for all educational programs
offered in the prior calendar year.

1 (b) In addition to the information required by section 94934 provided
2 under penalty of perjury, the institution shall have annual financial statements
3 prepared for the institution's prior fiscal year and signed under penalty of perjury, and
4 shall submit a hard copy under separate cover of such statements in conjunction with
5 its annual report. The form, content and mode of preparation of financial statements
6 shall comply with section 74115 of this Division. The Bureau may request that the
7 institution immediately make available for inspection to a representative of the
8 Bureau, these financial statements at the offices of the institution.

9 (c) An institution shall file its annual report by September 1st. The
10 Bureau may extend the period for filing if the institution demonstrates evidence of
11 substantial need but in no case longer than 60 days. The institution shall not change
12 the date of its filing its annual report because of a change in the fiscal year without
13 the Bureau's approval.

14 (d) The annual report shall be electronically filed by submitting the
15 information required by section 94934 of the Code via the Bureau's website,
16 electronically attaching, as directed, the School Performance Fact Sheet and the
17 school catalog. An institution without the capability to submit the information
18 electronically shall inform the Bureau not less than 45 days prior to the date the
19 information is required by subdivision (c), and receive direction on alternative means
20 of submission.”

21 19. California Code of Regulations, title 5, division 7.5, section 74115 states in pertinent
22 part:

23

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

27 (1) Audited and reviewed financial statements shall be conducted and
28 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.

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

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

(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 the program and the noncompliance creates any liability or potential
liability for the institution, the financial statements shall reflect the liability or
potential liability.

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

3 (c) Work papers for the financial statements shall be retained for five
4 years from the date of the statements and shall be made available to the Bureau upon
request.

5 (d) "Current" with respect to financial statements means completed no
6 sooner than 120 days prior to the time it is submitted to the Bureau, and covering no
7 less than the most recent complete fiscal year. If more than 8 months will have
8 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.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 (Ownership of Institution)

11 20. Respondent's application is subject to denial under Education Code section 94887 and
12 California Code of Regulations, title 5, division 7.5, section 71100, subdivisions (a) – (c), and
13 71475, in that on or about September 28, 2011 and continuing thereafter, Respondent submitted
14 incomplete applications to the Bureau. Each violation is a sole and separate cause for denial.
15 The violation(s) are as follows:

16 a. The institution's current owner, Institute of Psycho-Structural Balancing (IPSB), a for
17 profit corporation, that was originally filed with the Secretary of State on November 27, 1995 has
18 a reported status of "FTB (Franchise Tax Board) Suspended." Respondent has not provided
19 documentation demonstrating that the corporation is "active" and qualified to do business in the
20 State of California.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 (Financial Resources and Statements)

23 21. Respondent's application is subject to denial under Education Code section 94887 and
24 California Code of Regulations, title 5, division 7.5, section 71100, subdivisions (a) – (c), and
25 71745, 74115, subdivision (b)(3), and (d) in that on or about September 28, 2011 and continuing
26 thereafter, Respondent submitted incomplete applications to the Bureau. Each violation is a sole
27 and separate cause for denial. The institution has not provided qualifying audited or reviewed
28 financials despite repeated requests. The violations are as follows:

1 a. On or about August 27, 2012, Respondent provided a profit and loss statement for
2 December 2009 through November 2010 and a balance sheet for November 2010. The
3 statements did not include the required documents, which include but are not limited to: a cash
4 flow statement, income statement and a preparation statement from a licensed Certified Public
5 Accountant (CPA). Additionally, the financial statements do not demonstrate a ratio of current
6 assets to current liabilities of 1.25 to 1.0 or greater.

7 b. On or about May 29, 2015, Respondent provided a profit and loss statement for
8 December 2013 through November 2014, a balance sheet for November 20, 2014, and a
9 preparation statement from a person identified as "Diane McCalley," purporting to be a CPA.
10 However, there was no confirmation of her licensure status.

11 c. On or about June 2, 2015, Respondent again provided a balance sheet as of November
12 2014, statement of cash flows from December 2012 through November 2013, and a profit and
13 loss statement from December 2013 through November 2014. Again, there was no proper
14 certification statement, and the financial documents did not meet the requirements for licensure.

15 **THIRD CAUSE FOR DENIAL OF APPLICATION**

16 (Annual Reports)

17 22. Respondent's application is subject to denial under Education Code sections 94887
18 and 94934 and California Code of Regulations, title 5, division 7.5, section 71100, subdivisions
19 (a) – (c), 74110, and in that about September 28, 2011 and continuing thereafter, Respondent
20 submitted an incomplete application to the Bureau. Each violation is a sole and separate cause for
21 denial. The violations are as follows:

22 a. Respondent failed to submit annual reports from 2011, 2012, and 2013.

23 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

24 (Annual Fee and Late Penalty Fee)

25 23. Respondent's application is subject to denial under Education Code sections 94887,
26 94930.5, subdivision (d)(1)(A), and sections 94931 and 94934 and California Code of
27 Regulations, title 5, division 7.5, section 71100, subdivisions (a) – (c), and sections 71485,74000
28 subdivisions (c)-(e), 74006, and 74110 in that about September 28, 2011 and continuing

1 thereafter, Respondent submitted an incomplete application to the Bureau. Each violation is a
2 sole and separate cause for denial. The violations are as follows:

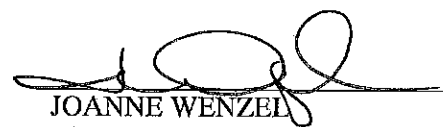
3 a. Respondent failed to submit the annual fee plus 35% penalty fee for 2012, 2013 and
4 2015; and the 2014 plus a 25% penalty fee.

5 **PRAYER**

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

- 9 1. Denying the application of Institute of Psycho-Structural Balancing: Lisa Schwab,
10 Owner, for Renewal of Approval to Operate;
11 2. Taking such other and further action as deemed necessary and proper.

12
13 DATED: 2/19/16



14 JOANNE WENZEL
15 Chief
16 Bureau for Private Postsecondary Education
17 Department of Consumer Affairs
18 State of California
19 *Complainant*

20
21
22
23
24
25
26
27
28
LA2015502154
51951454.doc