



Bureau for Private Postsecondary Education
Notice of Advisory Committee Meeting and Agenda

Tuesday, November 19, 2019, at 9:30 a.m.
Department of Consumer Affairs
Hearing Room, 1st Floor
1625 North Market Blvd.,
Sacramento, CA 95834

The Bureau plans to webcast this meeting on its website. Webcast availability cannot, however, be guaranteed due to limitations on resources or technical difficulties that may arise. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at the physical location. To view the Advisory Committee meeting webcast, please visit the following link: <https://thedcapage.wordpress.com/webcasts/>.

Agenda

The public may provide appropriate comment on any issue before the Advisory Committee at the time the item is discussed. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment.

1. Welcome, Introductions and Establishment of a Quorum
2. Public Comment on Items not on the Agenda (Note: The Committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125 and 11125.7(a))
3. Review and Approval of August 21, 2019, Advisory Committee Meeting Minutes
4. Remarks by a Representative of the Department of Consumer Affairs, which may include updates pertaining to the Bureau's Operations, Human Resources, Department's Administrative Services, Enforcement, Information Technology, Communications and Outreach, as well as Regulatory and Policy Matters.
5. Bureau Operations Update and Discussion related to the following:
 - a. Compliance and Discipline Report
 - i. Disciplinary Highlights and Resulting Actions Statistics
 - ii. Citation and Fines
 - iii. School Inspections by the Bureau
 - b. Complaint and Investigation Report
 - i. Update on Legal Analysis of Complaint/Investigatory Files Provided to Advisory Committee
 - ii. Complaint and Investigation Statistics

- c. Licensing Report
 - i. Licensing Applications Status Statistics
 - ii. Report on the Number of Institutions by Location Type (Main, Branch, and Satellite)
 - d. Office of Student Assistance and Relief (OSAR) Report
 - i. Overview of OSAR Activities Summary Report
 - ii. School Closure Outreach Update
 - iii. Student Tuition Recovery Fund (STRF) Claims and Large Impact Closure Statistics
 - iv. Status Update on Processing and Eligibility of Claims of Former Corinthian College Students
6. Status Updates related to the following Regulations:
 - a. English as a Second Language Programs [Title 5, California Code of Regulations (CCR), Section 70000 (k)]
 - b. Application for Verification of Exempt Status (CEC Sections 94874, 94874.2, 94874.7, 94874.5, and 94927.5); Title 5, CCR Section 71395)
 - c. Compliance with Laws and Procedures (Title 5, CCR, Section 71755)
 - d. Student Records and the Maintenance of Records (Title 5, CCR Sections 71920, 71930, 71940 and 71950)
 7. Presentation by Department of Consumer Affairs Representative on the Sunset Review Process
 8. Discussion on AB 1313 Higher Education: Prohibited Debt Collection Practices (2019-2020)
 9. Future Agenda Items
 10. Adjournment

Notice to the Public

All times are approximate and subject to change. The meeting may be cancelled without notice. A lunch break will be taken at a time determined by the Advisory Committee members. Action may be taken on any item on the agenda. Public comments will be taken on agenda items at the time the item is heard. Total time allocated for public comment may be limited. Agenda items may be taken out of order.

This meeting facility is accessible to the physically disabled. A person who needs a disability-related accommodation or modifications in order to participate in the meeting may make a request by contacting Richie Barnard at (916) 431-6930 or, for the hearing impaired, TDD (800) 326-2297; or by sending a written request to the Bureau at P.O. Box 980818, W. Sacramento, California 95798-0818, Attention: Richie Barnard. Providing at least five working days' notice before the meeting will help ensure the availability of accommodations or modifications.

Interested parties should call the Bureau at (916) 431-6959 to confirm the date and specific meeting site of any Advisory Committee meeting or access the Bureau's website at <http://www.bppe.ca.gov>. Requests for further information should be directed to Richie Barnard at (916) 431-6930.

WELCOME, INTRODUCTIONS AND ESTABLISHMENT OF A QUORUM

Committee Member Roster

Katherine Lee-Carey, Chair

- Institutional Representative (Appointed by DCA Director)

Margaret Reiter, Vice-Chair

- Consumer Advocate (Appointed by Senate Committee on Rules)

Natalie Lyons

- Consumer Advocate (Appointed by DCA Director)

Diana Amaya

- Public Member (Appointed by Senate Committee on Rules)

Thomas Wong

- Public Member (Appointed by Speaker of the Assembly)

Hanya Carbajal

- Past Student of an Institution (Appointed by DCA Director)

Dr. Robert Snowden

- Past Student of an Institution (Appointed by DCA Director)

Joseph Holt

- Institutional Representative (Appointed by DCA Director)

David Vice

- Institutional Representative (Appointed by DCA Director)

Assemblymember Jose Medina (Kevin Powers)

- Non-Voting, Ex Officio Member (Appointed by Speaker of the Assembly)

Senator Steven Glazer (Sarah Mason)

- Non-Voting, Ex Officio Member (Appointed by the Senate Committee on Rules)

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

(Note: The Committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125 and 11125.7(a).)

Agenda Item 3

**REVIEW AND APPROVAL OF AUGUST 21, 2019, ADVISORY COMMITTEE
MEETING MINUTES**

ATTACHMENT:

A. Advisory Committee Draft Meeting Minutes from August 21, 2019



Business, Consumer Services and Housing Agency— Governor Edmund G. Brown Jr.

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**Advisory Committee Meeting Minutes
 Wednesday, August 21, 2019**

**Department of Consumer Affairs
 Hearing Room, 1st Floor
 1625 North Market Blvd.
 Sacramento, CA 95834**

Advisory Committee Members in Attendance

1. Joseph Holt
2. Katherine Lee-Carey
3. Margaret Reiter
4. Kevin Powers (on behalf of Assemblymember Jose Medina)
5. Dr. Robert Snowden
6. Natalie Lyons
7. David Vice
8. Sarah Mason (on behalf of Senator Steven Glazer)

Committee Members Absent

Diana Amaya
 Hanya Carbajal

Bureau for Private Postsecondary Education (Bureau) and Department of Consumer Affairs (DCA) Staff in Attendance

Dr. Michael Marion Jr., Bureau Chief
 Leeza Rifredi, Deputy Bureau Chief
 Beth Scott, Bureau Enforcement Chief
 Beth Danielson, Bureau Enforcement Chief
 Marina O'Connor, Bureau Licensing Chief
 Robert Bayles, Bureau Education Administrator
 Scott Valverde, Office of Student Assistance and Relief (OSAR) Chief
 Yvette Johnson, Bureau Administration Chief
 Christina Villanueva, Bureau Staff Services Manager I
 Kent Gray, Bureau Legislative Analyst
 Norine Marks, DCA Legal Counsel
 Kristy Schieldge, DCA Legal Counsel

Brian Skewis, DCA Budget Office Manager
Sean Oconnor, Office of Information Services (OIS)

Agenda #1 - Welcome, Introductions, and Establishment of a Quorum

Committee Chair Katherine Lee-Carey called the meeting to order at 9:36 AM.

Agenda #2 - Public Comment on Items not on the Agenda

No public comments.

Agenda #3 - Review and Approval of February 13, 2019, Advisory Committee Meeting Minutes

Margaret Reiter moved to approve the minutes; Joseph Holt seconded the motion. (Ms. Lee-Carey: Aye; Ms. Reiter: Aye; Mr. Holt: Aye; David Vice: Aye; Dr. Robert Snowden: Aye; Natalie Lyons: Aye) The motion passed.

Agenda #4 - Remarks by Representative of the Department of Consumer Affairs

Department of Consumer Affairs (DCA) provided a written report: Attachment 4A in the meeting packet.

Public Comment:

No Public Comment

Agenda #5 – Bureau Operations Update and Discussion

Bureau Budget Update:

Brian Skewis, DCA Budget Office Manager, provided an update on the Bureau's budget. He outlined Attachment 5A of the meeting packet.

Ms. Reiter questioned if the Bureau has a minimum reserve balance limit. Kristy Schieldge, DCA Legal Counsel, explained that the Bureau has a 6 month maximum reserve balance amount, but no minimum reserve balance limit. Ms. Schieldge added that there is a recommended 3 month minimum reserve balance limit. Mr. Skewis noted that unused expenditures are added back to the reserve balance.

Natalie Lyons asked what prompted the question of using the Student Tuition Recovery Fund (STRF) for other purposes than tuition recovery. David Vice explained that when a school closes, the school is responsible for ensuring transcripts are readily available to students but noted that some schools are not doing so. He suggested that STRF could be utilized to set up a repository, to give students access to their records. Ms. Lee-Carey added that the question is whether those funds could be used to do so. Ms. Schieldge pointed out that the prior Bureau, before 2010, was able to allocate STRF funds for transcript management at the benefit of the student. She stated that, since that provision was struck from the current Act, it would take a legislative change to utilize STRF funds for other purposes. She added that the Bureau currently uses Administrative funds to manage student records that are in the Bureau's possession.

Public Comment

No Public Comment

Compliance and Discipline Report:

BPPE Enforcement Chief Beth Scoot provided a report on the Bureau's Compliance and Discipline units. She discussed Attachment 5A in the meeting packet.

Ms. Reiter asked if there was an estimate when the Bureau might reach the statutory required number of inspections it must perform in 5 years. Ms. Scott stated that the unit is rapidly moving towards fulfilling the statutory requirement. She pointed out the unit currently has 4 vacancies. She noted that once those positions are filled, the unit will more quickly move to fulfilling the requirement. Ms. Reiter asked for an estimate timeframe when the requirement will be met. Dr. Marion stated a better estimate could be reported once the vacant positions have been filled.

Ms. Lee-Carey asked what led to the large increase in the number of inspections performed. Ms. Scott explained that assistance from all the units in the Bureau has helped with the increase. She added that the implementation of process efficiencies also helped increase the number of inspections. She noted that proactive outreach to educate institutions on compliance issues added to the efficiency of the inspection process likewise.

Public Comment:

No Public Comment

Complaint and Investigation Report:

BPPE Enforcement Chief Beth Danielson provided a report on the Bureau's Complaint and Investigation units.

Ms. Scott provided an update on the results of the Task Force, to assist the unit with decreasing the complaint case load. She reported that the Task Force was active from January 2019 to June 2019. She explained that a Specialized Enforcement Unit was established, and the Discipline unit moved from the Complaint Unit to the Compliance unit. She outlined that the following efficiencies were implemented: a new intake process; new complaint handling process; new best practices for managers and analysts; new report template; new closure memo; and the transfer of more complex cases to the Specialized Enforcement Investigators. She added that staff also received training from the State Attorney General's office. She noted that, prior to the Task Force, 55% of the caseloads were over 365 days old, and each analyst had between 50 to 77 pending cases. She reported that currently 31% of the caseloads are over 365 days old, and that each analyst is now working between 15-25 cases. She added that, in order to ensure progress is maintained, she will do the following: monitor adherence to current and future implementations, periodically participate in case reviews, monitor statistics, provide on-going training to staff, and continue to utilize Special Investigators in more complex cases.

Ms. Danielson discussed Attachment 5B in the meeting packet.

Ms. Lee-Carey asked for an explanation of voucher fraud. Ms. Danielson explained that an individual can receive voucher money for retraining, after losing employment. She stated that voucher fraud is when an institution accepts the voucher without providing any training. Ms. Lee-Carey asked where the vouchers originate. Leeza Rifredi, Deputy Bureau Chief, stated that the vouchers usually come from insurance companies, and the Bureau refers these cases to the Department of Insurance for investigation.

Ms. Lyons asked what the criteria is in determining which complaints are handled urgently. Ms. Danielson replied that the criteria is determined by statute.

Kevin Powers asked for an elaboration on how the complaint intake process has changed. Ms. Danielson explained that there is now a dedicated complaint intake analyst, who closely analyzes complaints at intake, to determine whether they are jurisdictional. She added that after the intake analyst performs a review, the intake manager then reviews the complaint, to determine which analyst or special investigator to assign to the case.

Ms. Reiter commented on the importance of not overlooking complaints based on jurisdiction or too quickly determining them to be unsubstantiated. Ms. Danielson noted that staff caseload is now at a much more manageable level.

Ms. Lee-Carey directed discussion on the random sampling of complaints, provided in the meeting package, as Attachment 5B2.

Ms. Reiter stated that she could not determine if the complaints in the sample had been adequately handled or not, based on the information that was provided. She questioned what process was used to select the complaints provided. Dr. Marion explained that the sampling

was pulled from a previous public records request based on the type of complaints the Committee requested to see.

Ms. Lee-Carey suggested discussing the general complaint handling processing, prior to discussing the random complaint sampling process. Ms. Danielson outlined the general complaint handling process. Ms. Lee-Carey asked if staff discuss the complaint process with the complainant(s). Ms. Danielson responded that staff do discuss the process and attempt to obtain additional information from the complainant. Ms. Lee-Carey pointed out that the sampling provides the initial written complaint information and the result, but not information obtained during the investigation, or from further discussions with the complainant. Ms. Danielson noted that once an investigator reaches out to the complainant, the investigation becomes confidential. Norine Marks, DCA Legal Counsel, added that the investigative process is confidential and protected from disclosure, and to prevent harming the integrity of future investigations, the Bureau does not want to reveal the investigative process.

Dr. Snowden asked if Bureau staff provide complainants with a timeline of the complaint process. Ms. Danielson stated that it is difficult to provide an accurate estimate of a timeline, because there are too many variables in place.

Ms. Lyons asked for more information on the process of closing a complaint. Ms. Danielson explained that there are “best practices” that are in place now, to help provide the complainant with a detailed explanation of the closure. She noted that there are instances when a detailed explanation cannot be provided. She added that, for example, if the complainants’ case involves an on-going investigation with another entity, then a detailed explanation would not be provided in the closure letter.

Ms. Reiter referred to one of the complaints provided in the sample. She explained that the complaint was resolved because the school offered the student to retake a course. She noted that the student provided documentation in the complaint stating that the teacher routinely cancelled class. She commented that based on the sample provided she has no way of knowing if the Bureau thoroughly investigated all possible violations in the complaint. She added that she also is unsure, based on the sampling, if the complaints are forwarded to other agencies, when relevant. Ms. Marks noted that the details or specifics of the investigations are not public.

Ms. Reiter stated that in order to provide advice, the Committee needs to see more detailed information about the complaints. Ms. Marks responded that any information provided to the Committee must also be made available to the public.

Ms. Lyons questioned if details from a closed case can be made public. Ms. Marks stated that the details remain confidential, even after the case is closed. Ms. Schieldge added that general information may be discussed, but details of or investigative actions taken in a specific case remain confidential. Ms. Reiter stated that she would like staff to look further into the legalities regarding providing the information to the Committee.

Christina Villanueva, Bureau Staff Services Manager I, outlined what occurs when complaints result in a violation. She explained that the Discipline Unit receives referrals from the Complaint Investigations and Licensing units for citations, Statement of Issues (SOI), and/or Revocation. She added that SOI are for an appeal that is received after a licensing application has been denied. She stated that SOIs states the basis for denial and goes through the Attorney General's office.

Ms. Villanueva described the process of referral submissions from the Complaint Investigations unit. She explained that once the investigation is concluded and violations are determined, the investigator recommends the case to the Discipline Unit, for disciplinary action(s) (such as Emergency Decision or Accusation to Revoke the Approval to Operate). She added that the investigation report, along with the attachments, are reviewed by the Discipline Unit's management team, to determine the next appropriate steps.

Ms. Villanueva outlined the process for issuing an emergency decision. She detailed that if the finding(s) of an investigation determine that an emergency decision is warranted, then the Discipline Unit's management team confers with the Deputy Attorney General's (DAG) Liaison and DCA's legal counsel, to confirm the finding(s). She continued that after the issuance of an emergency decision, the Bureau and the Attorney General's (AG) office have 10 days to issue the accusation(s) against the school. She noted that the 10-day process starts from the date of issuance of the emergency decision. She continued that the AG's office serves the accusation(s) to the school and handles all correspondence and communication(s) with the respondent(s)/institution owner(s). She stated that the DAG drafts the pleading(s) and provides them to the Discipline Analyst and management for review. She added that following the review, the pleading(s) are then forwarded to the Bureau Chief, for his signature and acknowledgment of the pleading(s), and the DAG's office then serves the pleading(s).

Ms. Villanueva explained that the Discipline Unit communicates with the DAG throughout the entire process. She added that if there are questions or a mitigation package(s), such as document(s) that can fix the deficiency, then the analyst will process them. She noted that the Bureau can withdraw the SOI if the school corrects the deficiencies, resulting in the school obtaining an approval to operate. She added that the school may decide to surrender their approval.

Ms. Villanueva outlined that for accusations, the Bureau could consider settlement terms, such as probation(s), or a surrender of an approval to operate. She noted that if the accusation(s) or SOI(s) move forward to hearing, the DAG will then set up a hearing date. She added that the time frame to get on the Office of Administrative Hearing's calendar is about 6 months out. She explained that the DAG will then prepare for the hearing, and prepare the assigned analyst to provide their testimony, in court, on behalf of the Bureau. She continued that the judge will then proceed with their proposed decision, to be sent to the Bureau. The Bureau then forwards the decision, to DCA legal, for review and adoption/rejection/modification of the proposed decision. She explained that for the cases that result in a proposed decision, after a hearing, DCA has 100 days to render a final decision. She added that for a stipulated settlement) and

default judgments, there is no set time frame for adoption/rejection/modification, by DCA legal. She concluded that the decision is then sent to the Bureau to serve to the school/owner.

Ms. Reiter questioned if the Bureau ever seeks restitution. Ms. Villanueva responded that the Bureau has sought restitution in the past. Ms. Reiter asked for an example of when the Bureau would seek restitution. Ms. Scott responded that if money can be collected to make the complainant whole, then restitution will be sought.

Ms. Reiter asked for examples of why the AG's office would reject a case submitted by the Bureau. Ms. Scott explained that a rejection could mean they need additional information.

Yvette Johnson, Bureau's Administration Unit Chief, outlined examples of triggers for enforcement. She indicated that California Code section 94941(c) (Complaints, Investigation) list factors to consider when prioritizing investigations. She continued that the following is also considered: age of the complaint; prior complaints regarding the institution; number of open complaints against an institution; health and safety issues; and the severity of the complaint.

Ms. Johnson stated that the composite score is also evaluated for schools who receive Title IV benefits. She added that another factor is whether a school is on heightened cash monitoring status with the Department of Education (DOE). She noted that an additional aspect is whether an institution is placed on show-cause, probation, or monitoring by its accreditor. She explained that the Bureau may conduct a separate investigation or utilize information received from other agencies.

Ms. Johnson continued that if there is immediate harm, then the Bureau can initiate an emergency action or emergency decision to protect students, prevent misrepresentation to the public, or prevent the loss of funds paid by students. She explained that with an emergency decision the Bureau can direct an institution to stop or limit enrolling new students in some or all programs and/or cease or limit collecting tuition and fees in some or all programs. She added that an emergency will become active within 48 hours after it is served. She noted that the institution is given the opportunity to be heard before the DCA Director, at least 24 hours prior to the decision becoming active.

Ms. Lyons asked if student complaints ever result in an emergency decision. Ms. Johnson explained that emergency decisions can originate from student complaints, tips from former employees, violations found while investigating other issues, or information provided by other agencies.

Ms. Reiter questioned if OSAR is notified when an emergency decision occurs that will make students eligible for STRF. Ms. Villanueva replied that OSAR, the closed school unit, and all of management is notified.

Public Comment:

No public comment.

Licensing Report:

Bureau's Licensing Chief, Marina O'Connor, provided a report on the licensing unit. She outlined Attachment 5C of the meeting packet.

Public Comment:

No comment.

Annual Report Unit Report:

Education Administrator, Robert Bayles, provided a report on the Annual Reports Unit. He stated that the 2017 Annual Report portal closed on May 16, 2019. He noted that 973 institutions were required to submit a report, and 820 institutions submitted a report on time. He added that the 2018 Annual Report portal opened on August 1, 2019 and will close on December 1, 2019.

Public Comment:

No public comment

Quality of Education Report:

Mr. Bayles provided a status update on the Quality of Education Unit (QEU) as well. Mr. Bayles outlined Attachment 5D of the meeting packet.

Public Comment:

No public comment

Bureau's IT System Project Report:

Sean Oconnor, Chief of Project Delivery and Administrative Services, provided an updated on the Bureau's IT system project. Mr. Oconnor reported that the Bureau is nearly complete with stage 3 of the project lifecycle. He noted that following the completion of stage 3, solicitations to vendors may begin.

Mr. Oconnor outlined a phased approach over an 18-month project period to expand the Bureau's current functionality. He continued that it will be an agile project approach enabling the team to take the overall scope of the project segmenting out and delivering functional

products to the end users earlier than the close of the 18-month project period. He added that the goal is to have expanded functionality within 6 to 8 months following the start of the project period. He noted the functionality would include the ability to accept licensing applications online, accept consumer complaints online, and offer added abilities on the backend for Bureau staff.

Mr. Holt questioned if training needs are being addressed and prepared to utilize the new system. Mr. O'Connor responded that training will be provided in correlation with the release of new functionality. He added that trainers will be available to staff.

Ms. Reiter asked for estimated timeframes of the phased roll out. Mr. O'Connor stated that the project will potentially begin in December 2019 or January 2020 with some functionality being launched within 5 to 6 months, following the start of the project. He added that completion is estimated at 18 months after the start of the project. He noted that a year of maintenance and operations following completion of the project will be included in the contract. He added that the contract will also include training for state staff, to learn how to maintain the new system.

Public Comment:

No public comment

Office of Student Assistance and Relief (OSAR) Report:

OSAR Chief, Scott Valverde, provided a report on OSAR. He covered OSAR's Cumulative Report within Attachment 5E of the meeting packet.

Ms. Reiter questioned if OSAR coordinates with local legal aid services, in conjunction with the closed school events. Mr. Valverde responded that OSAR does not coordinate directly with them, but does work along with them, when they are representing a student. Ms. Reiter suggested partnering up with local legal aid services, at future closed school events.

Leeza Rifredi, Bureau Deputy Chief, covered STRF statistics of Attachment 5E.

Ms. Lyons asked for more information on the STRF backlogs. Dr. Marion noted that, because of the outreach efforts that OSAR has been conducting, the Bureau experienced an increase in STRF claims. He explained that efforts are already being made to address the backlog. Mr. Valverde noted that the back to back closures of ECA and Dream Center institutions have heavily impacted the workload. He added that OSAR has recently filled some key positions, and the new employees are still being trained on OSAR's processes.

Ms. Schieldge provided a report on the duties of OSAR. She outlined the memo in attachment 5E2 of the meeting packet.

Ms. Reiter questioned how OSAR would handle a complaint with the Bureau, DOE, or another state agency. Mr. Valverde responded that OSAR would provide information and help the individual on how to file the complaint.

Ms. Reiter questioned if OSAR staff helps students locate legal counsel. Ms. Schiedge stated that there is no authority for staff to refer consumers to legal counsel. She added that it could be a liability. Ms. Reiter noted that legal aid services could be added to the list of student resources, which are provided to students. Ms. Lyons added that students could be directed to the California State Bar website.

Ms. Reiter asked if OSAR gets directly involved with every STRF application. Mr. Valverde that that all applications go through an initial evaluation by OSAR staff. He noted that after a claim is initially evaluated and determined complete, then it will be quickly forward on to the Bureau without any need for additional analysis by OSAR staff.

Ms. Reiter asked if there is ever an instance that OSAR recommended a student to not file a STRF claim. Mr. Valverde responded that staff always recommends that a student file a claim.

Ms. Reiter questioned, in connection with the "secondary review" by OSAR, whether OSAR finds that economic loss is insufficiently documented, and what step(s) OSAR takes after a secondary review, to help the student obtain the full amount of relief, that he or she is entitled to from the Bureau. Mr. Valverde explained that staff would assist the student in locating additional records.

Ms. Reiter asked what "added documentation" does OSAR forward to the Bureau, with a STRF application. Mr. Valverde responded that any documents that will help substantiate the students STRF eligibility, are included with the application.

Ms. Reiter asked if there are any standard forms OSAR uses to forward/transmit STRF applications to the Bureau. Mr. Valverde stated he would provide the templates to the Committee.

Ms. Reiter asked if OSAR makes a recommendation to the Bureau for how to handle a STRF application. Mr. Valverde stated that OSAR does not make recommendations to the Bureau.

Ms. Reiter asked if the Bureau notifies OSAR of the determination of each STRF claim? Mr. Valverde stated that determinations are tracked internally.

Ms. Reiter asked, what if any, assistance does OSAR offer to students' whose STRF applications are denied in full or in part. Mr. Valverde explained that denial letters provide information to all students of the appeal process and informing all students that they may reach out to OSAR at any time.

Public Comment:

No comment.

Agenda Item #6 - Status Updates on Regulations

Dr. Marion provided a status update on regulations. He outlined Attachment 6A of the meeting packet.

Public Comment:

No comment.

Agenda Item #7 - Discussion and Consideration of Draft Amendments to Current Regulations for “Substantial Relationship Criteria” and “Criteria for Rehabilitation” Related to License Denial, Suspension, and Revocation (Title 5, CCR, Sections 75060 and 75070)

Kent Gray, Bureau Legislative Analyst, outlined Attachment 7A (Amendments to Title 5, CCR, Sections 75060 and 75070).

Ms. Reiter referenced section 75060(b) and suggested striking the text “in a manner consistent with the public health, safety, or welfare.” She noted that striking that text could eliminate some of the burden of proof a prosecutor would need to provide.

Ms. Lyons referenced section 75070(e) and suggested adding a non-exhaustive list of what would constitute “rehabilitation.” She added there are existing examples of lists in regulation that could be used as a point of reference.

Ms. Reiter moved to consider the above suggestions; Ms. Lee-Carey seconded the motion. (Mr. Vice: Aye; Dr. Snowden: Aye; Ms. Lee-Carey: Aye; Ms. Reiter: Aye; Ms. Lyons: Aye; Mr. Holt: Aye) The motion passed.

Public Comment:

No Public Comment

Agenda Item #8 - Discussion Regarding Proposed Legislation Related to Income Sharing Agreements – AB 154 – “Public Postsecondary Education: Income Share Agreement: Pilot

Mr. Gray reported on AB 154. He stated that bill did not make it through the Appropriations Committee at the CA state legislature.

Ms. Lee-Carey stated that a U.S. Senate bill outlining a regulatory framework for ISA was recently proposed. She noted that currently no state has passed any legislation tied directly to ISA. She added that the ISA is growing, but that there is still no legal framework in place for them.

Public Comment:

No Public Comment

Agenda Item #9 – Future Agenda Items

Ms. Reiter requested a legal analysis, regarding student complaints, on the limitations of what information can be released to the Committee. She clarified that she wants information pertaining to the complaint progress, from start to finish, which cannot be released.

Mr. Holt suggested providing information on the sunset review process and pointing out what assistance the Committee could provide to the Bureau. Ms. Schieldge suggested having a DCA representing provide a presentation on the general sunset review process.

Agenda #10 – Adjournment

Adjourn at 2:22

Agenda Item 4

REMARKS BY A REPRESENTATIVE OF THE DEPARTMENT OF CONSUMER AFFAIRS

(Note: May include updates pertaining to the Bureau's Operations, Human Resources, Department's Administrative Services, Fees, Enforcement, Information Technology and BreEZe, Communications and Outreach, as well as Regulatory and Policy Matters)

ATTACHMENT:

A. Letter from Christopher Castrillo, Deputy Director, Board and Bureau Services, dated November 18, 2019



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR

Executive Office

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November 18, 2019

Dr. Michael Marion
 Bureau Chief
 Bureau for Private Postsecondary Education
 2535 Capitol Oaks Drive, Suite 400
 Sacramento, CA 95833

Bureau Chief Marion:

Thank you for this opportunity to submit a written update from the Department of Consumer Affairs (DCA) to the Bureau for Private Postsecondary Education. You will find below an update on recent Department activities:

DEPARTMENT OF CONSUMER AFFAIRS DIRECTOR APPOINTMENT

We are pleased to share that, on October 8, 2019, Governor Newsom announced his appointment of Kimberly Kirchmeyer as Director of Department of Consumer Affairs. Ms. Kirchmeyer enters her new role with a wealth of DCA experience. Ms. Kirchmeyer has served as Executive Director of the Medical Board of California since 2013, where she was deputy director from 2011 to 2013. She was deputy director of board and bureau relations at the Department of Consumer Affairs from 2009 to 2011 and deputy director at the Medical Board of California from 2005 to 2009, where she was a staff services manager from 2001 to 2005 and an associate governmental program analyst from 1999 to 2001. Ms. Kirchmeyer is also a member of the International Association of Medical Regulatory Authorities, Federation of State Medical Boards Committees, Administrators in Medicine, and the United States Medical Licensing Examination State Board Advisory Panel.

We look forward to Ms. Kirchmeyer's leadership and working with her to carry out her vision for the Department!

EXECUTIVE TEAM UPDATE

It is bittersweet to report the departure of some of our colleagues in the DCA executive team:

- Chief Deputy Director, Chris Shultz, was appointed by Governor Newsom to serve as Chief Deputy Commissioner at the California Department of Business Oversight. Mr. Shultz's last day with the Department was Friday, November 1, 2019.
- Deputy Director Christopher Castrillo's last day with the Department will be Friday, November 22, 2019. Mr. Castrillo is exploring opportunities for the coming year.

- Deputy Director Dennis Cuevas-Romero’s last day with the Department was Friday, November 15, 2019. Mr. Cuevas-Romero accepted a position with the American Civil Liberties Union.
- Assistant Deputy Director Karen Nelson’s last day with the Department was Thursday, October 31, 2019. Ms. Nelson accepted a position as Chief Impact Officer with the American Leadership Forum – Mountain Valley Chapter.

Mr. Shultz, Mr. Castrillo, Mr. Cuevas-Romero, and Ms. Nelson have been integral members of DCA’s executive staff and their contributions to the Department will be dearly missed. We wish them well in the next chapter of each of their careers.

BOARD MEMBER RESOURCES CENTER ONLINE PORTAL

The DCA Board Member Resource Center has been revamped and relocated to the DCA public website (dca.ca.gov).

The DCA Board Member Resource Center is an online tool designed to provide information and resources to current board and committee members, and to those who are interested in becoming appointed to serve as a board or committee member. Examples of items offered via the Resource Center are: informational tools regarding required trainings and Form 700, the DCA Travel Guide, the Bagley-Keene Open Meeting Act, Board meeting dates, and appointment information for individuals interested in an appointment to a board or committee.

We encourage you to visit the refreshed, newly designed page and we welcome your feedback!

NEW PUBLICATION – “DCA – WE’RE LISTENING”

DCA’s Communications Division has been working to find ways to improve the interactions of the public with DCA and our boards and bureaus; to help them understand how to bring to you their concerns, comments, accolades, and complaints as effectively as possible.

Toward that effort, the Communications Division created a simple, visual how-to guide for Californians who want to approach us.

It’s called “DCA-We’re Listening,” and it lays out everything the public needs to know about giving their feedback to DCA, our boards and bureaus. From public comment etiquette to meeting mechanics, this guide is the perfect primer for approaching the podium.

The guide is available in both brochure and poster form. The brochures work great at the welcome table for any public meeting, and anywhere else interested parties may see it. The poster will hang in DCA’s two Sacramento hearing rooms, but additional copies are available for purchase, laminated with foam backing, to go in any room where you may hold a public meeting. If you would like more information, please contact the Communications Division.

Thank you again for your valued partnership. Please let us know if the Department can be of service to your board. If you have any questions, feel free to contact Christopher.Castrillo@DCA.ca.gov.

All the best,

A handwritten signature in cursive script, appearing to read "Chris Castrillo".

Christopher Castrillo
Deputy Director, Board and Bureau Services
Department of Consumer Affairs

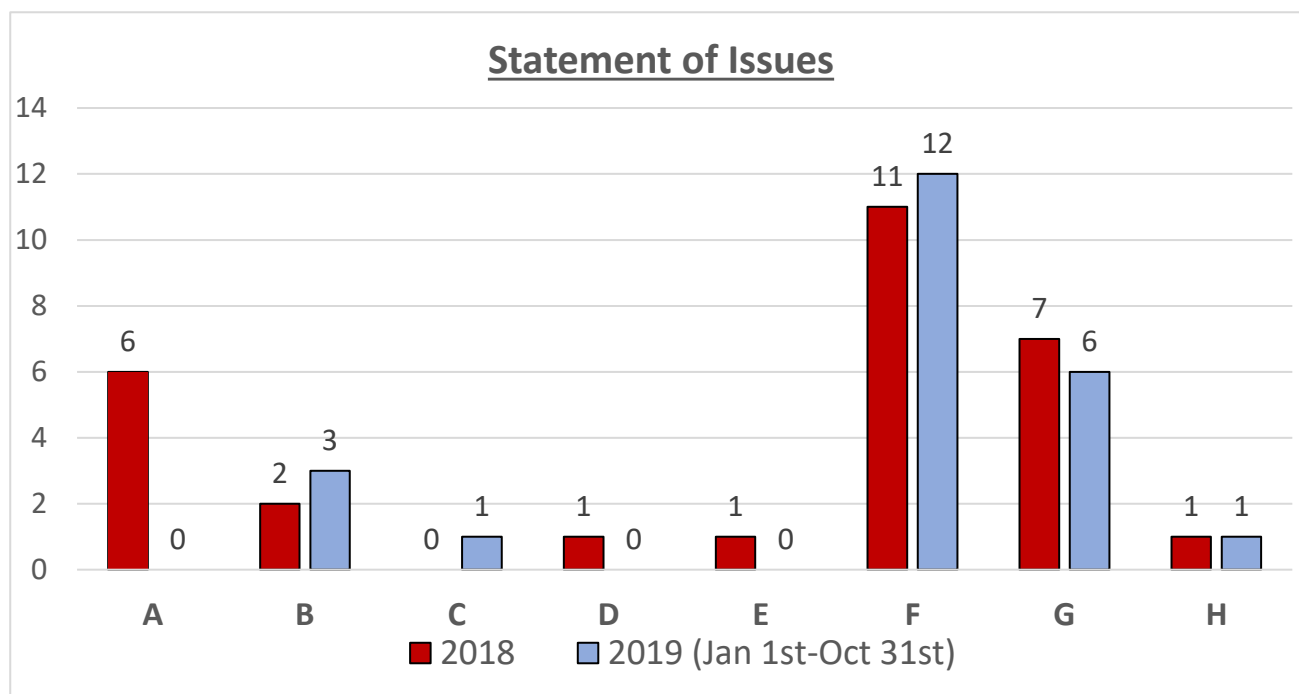
BUREAU OPERATIONS UPDATE RELATED TO THE FOLLOWING:

- a. Compliance and Discipline Report**
- b. Complaint and Investigation Report**
- c. Licensing Report**
- d. Office of Student Assistance and Relief (OSAR) Report**

ATTACHMENTS:

- A. Compliance and Discipline Report
- B. Complaint and Investigation Report
- C. Licensing Report
- D. Office of Student Assistance and Relief (OSAR) Report

BPPE DISCIPLINE STATS



ACTIONS:	2018	2019 (Jan 1st-Oct 31st)
A In-House Default: Denial Upheld	6	0
B Proposed Decision: Denial Upheld	2	3
C Proposed Decision: Conditional Approval Granted	0	1
D Stipulated Settlement: Denial Upheld (School Closure)	1	0
E Stipulated Settlement: Conditional Approval Granted	1	0
F Withdrawn: Approval Granted (mitigation cured deficiencies)	11	12
G Withdrawn: Denial Upheld (School withdrew appeal)	7	6
H Withdrawn: Exempt Institution	1	1
Totals:	29	23

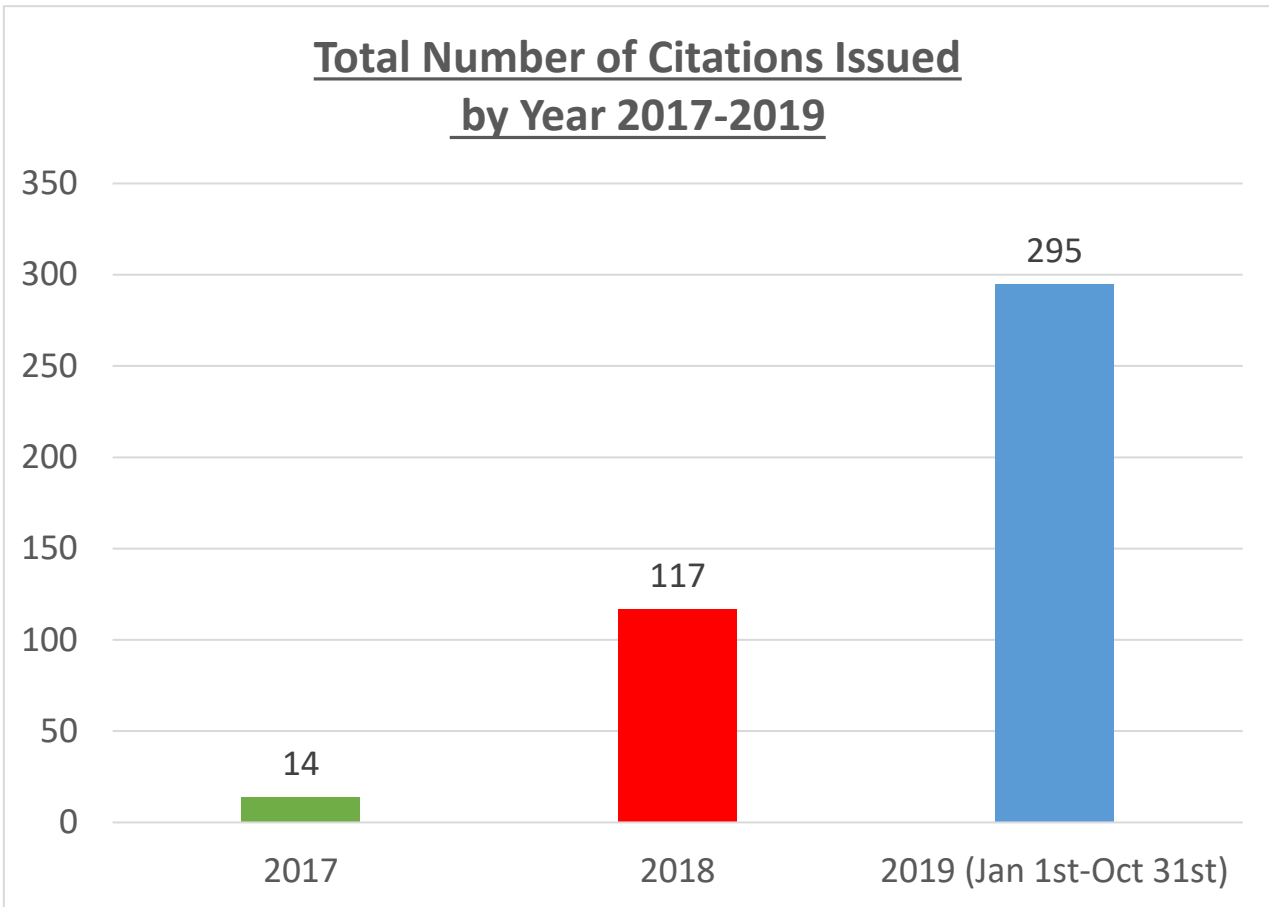
BPPE DISCIPLINE STATS

Accusation

ACTIONS:	2018	2019 (Jan 1st-Oct 31st)
Default: Revocation	1	0
PC 23	1	1
Proposed Decision: Probation Granted	0	1
Proposed Decision: Revocation	1	0
Rejected by DAG	0	3
Stipulated Settlement Probation	0	3
Stipulated Surrender	2	3
Withdrawn By Bureau: Citation Issued	1	1
Withdrawn by Bureau: Renewal Granted	2	0
Totals:	8	12

Pending with AG as of 10/31/2019	Total Transmitted	Total Served of Transmitted
Accusations	17	14
Statement of Issues	22	16
Totals:	39	30

Automatic Suspensions and Emergency Decisions	2018	2019 (Jan 1st-Oct 31st)
Automatic Suspensions	1	3
Emergency Decisions	4	1
Totals:	5	4



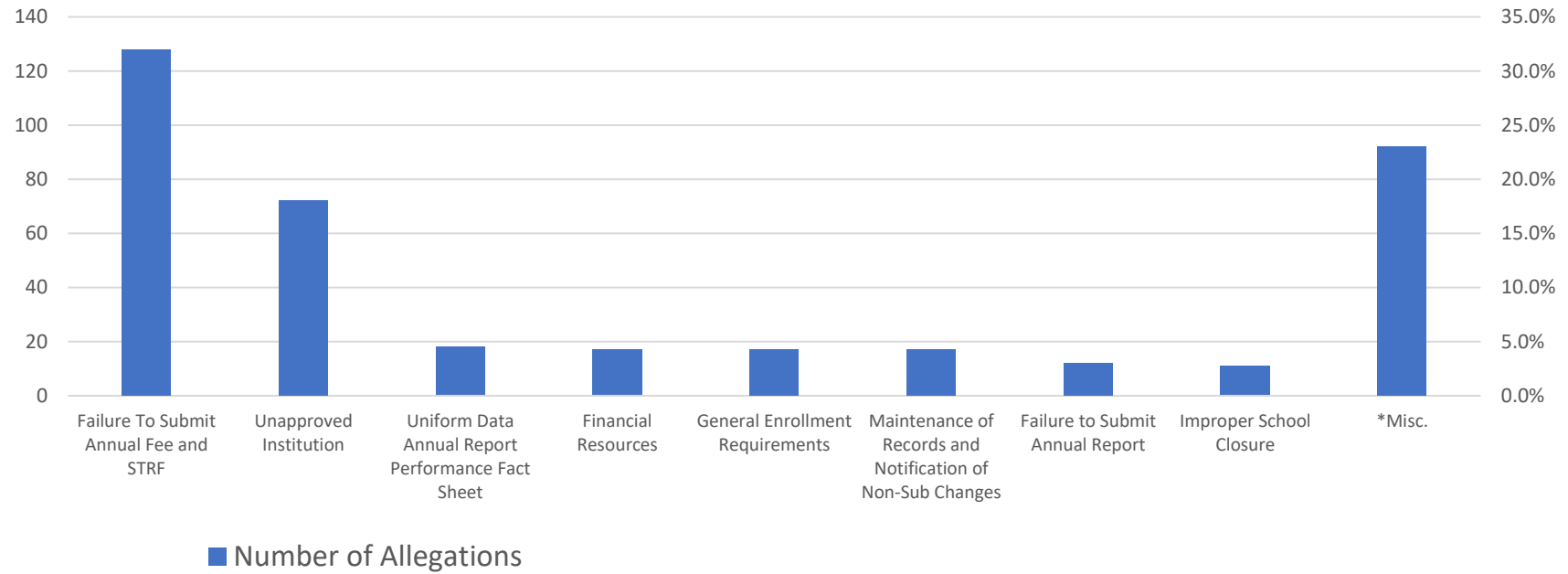
Citations Issued	
2017	14
2018	117
2019 (Jan 1st-Oct 31st)	295

2019 January 1st-October 31st Allegations Breakdown

Failure To Submit Annual Fee and STRF	128	33.3%
Unapproved Institution	72	18.8%
Uniform Data Annual Report Performance Fact Sheet	18	4.7%
Financial Resources	17	4.4%
General Enrollment Requirements	17	4.4%
Maintenance of Records and Notification of Non-Sub Changes	17	4.4%
Failure to Submit Annual Report	12	3.1%
Improper School Closure	11	2.9%
Signature Initials Required	11	2.9%
*Student Records	11	2.9%
*Enrollment Agreement	11	2.9%
*Notice to Comply	9	2.3%
*Admission Standards and Transferred Credits Policy	7	1.8%
*Website Requirements	6	1.6%
*Prohibited Business Practice	6	1.6%
*Ability-To-Benefits Students	5	1.3%
*Minimum Requirements for SPFS	5	1.3%
*Minimum Operating Standards	4	1.0%
*Faculty	4	1.0%
*Announced and Unannounced Compliance Inspections	4	1.0%
*Requirement for Substantive Change	3	0.8%
*Non-Substantive Change	2	0.5%
*Application to Change Location	1	0.3%
*Approved by Means of Accreditation	1	0.3%
*Pre-Enrollment Disclosure	1	0.3%
*Professions Requiring Licensure Internships	1	0.3%
Total:	384	100.0%

Included in "Misc." on Allegations chart*

Allegations January 1st-October 31st 2019



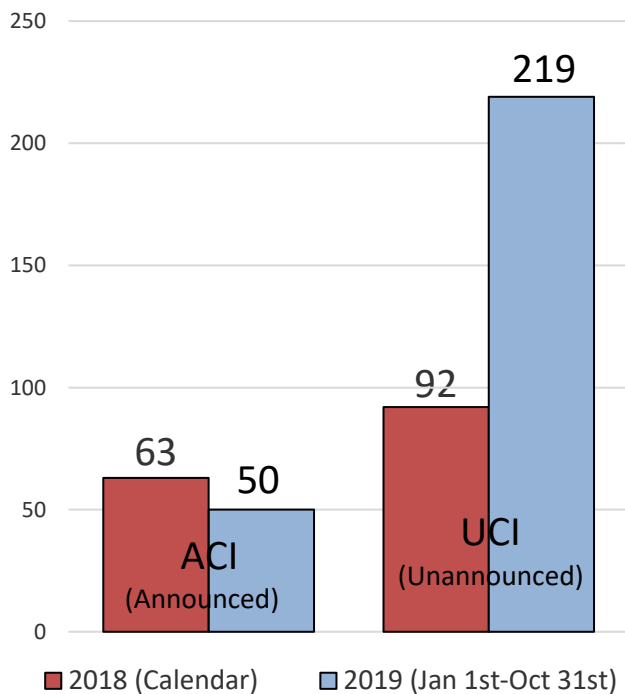
BPPE COMPLIANCE STATS

REPORTING AS OF: October 31st, 2019		
STATS Compliance Unit	2018 (Calendar)	2019 (Jan 1st-Oct 31st)
Total Completed Inspections	155	269
ACI - Announced Inspections	63	50
UCI - Unannounced Inspections	92	219
Notice To Comply Issued	65	48
Enforcement Referral Issued	56	83
Inspections Cancelled *	7	17

*** Causes for Cancellations:**

- (1) The school closed during inspection process.
- (2) The renewal to operate was denied.
- (3) The school refused to allow inspection resulting in further action.

Inspections by Type



2018 (Calendar)
PERCENTAGES:

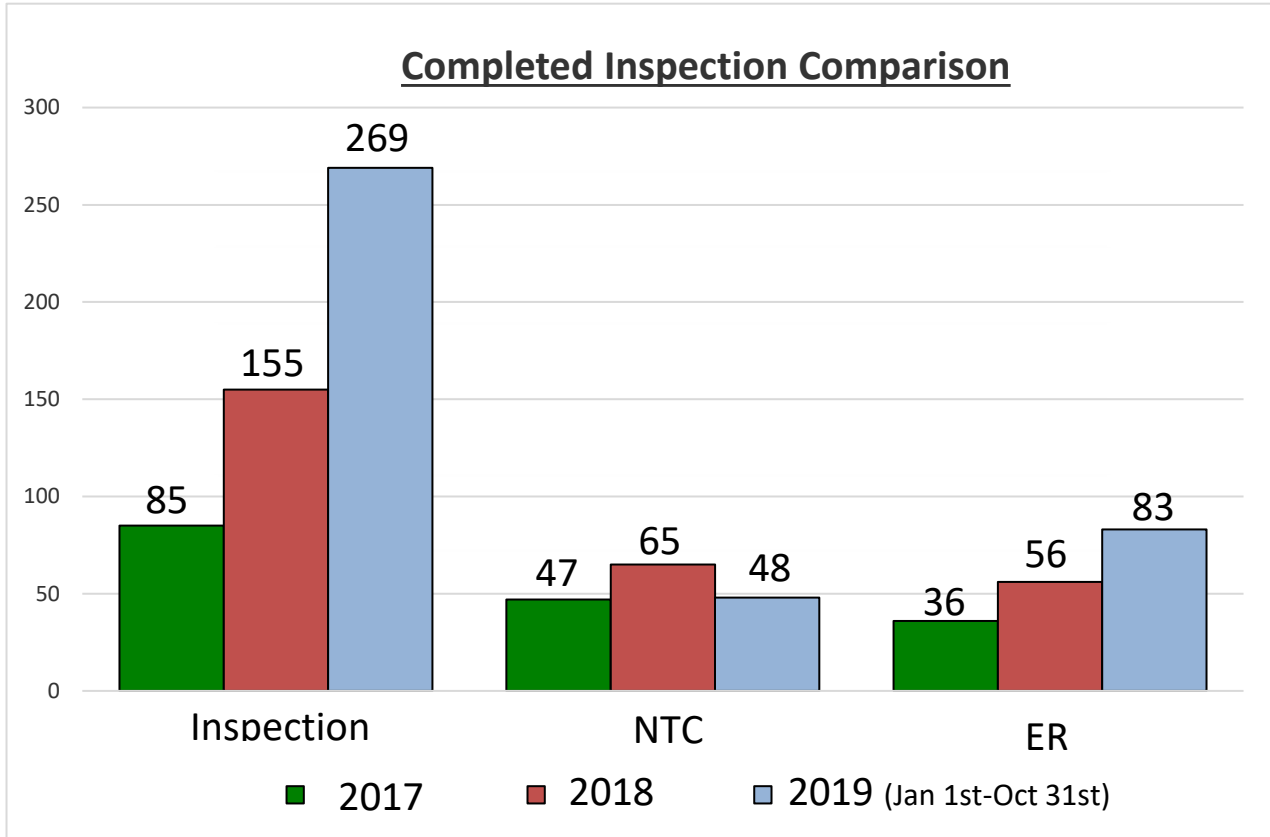
ANNOUNCED: 40.6
UNANNOUNCED: 59.4

2019 (Jan 1st-Oct 31st)
PERCENTAGES:

ANNOUNCED: 18.6
UNANNOUNCED: 81.4

2018 (Calendar) Total Inspections: 155
2019 (Jan 1st-Oct 31st) Total Inspections: 269

BPPE COMPLIANCE STATS



	2017 (Calendar)	2018 (Calendar)	2019 (Jan 1st-Oct 31st)
Announced Compliance Inspection (ACI)	51	63	50
Unannounced Compliance Inspection (UCI)	34	92	219
Total Compliance Inspections (ACI + UCI) Completed	85	155	269
Notice to Comply (NTC)	47	65	48
Enforcement Referral (ER)	36	56	83

LEGAL AFFAIRS DIVISION

1625 North Market Blvd., Suite S-309, Sacramento, CA 95834
 Phone (916) 574-8220 Fax (916) 574-8623 www.dca.ca.gov

MEMORANDUM

DATE	November 19, 2019
TO	Bureau of Private Postsecondary Education Advisory Committee Members
FROM	Norine Marks, Attorney IV Department of Consumer Affairs Legal Affairs Division
SUBJECT	Advisory Committee Access to Records in the Investigatory Files

QUESTION PRESENTED

Are the Advisory Committee members for the Bureau for Private Postsecondary Education entitled to full disclosure of unredacted records from Bureau investigatory files compiled for licensing/enforcement actions?

At their request, the committee members for the Bureau for Private Postsecondary Education (BPPE or Bureau) were provided a sampling of numerous Bureau investigatory complaints and closure letters prior to the August 21, 2019, Advisory Committee meeting. Essentially the committee was provided with a random sampling from a recent Public Records Act request asking for all complaint files and records for the 2017-2018 timeframe. For each file, they received a completed Complaint intake form and the closure letter with redactions. The names of individuals involved, as well as any personally identifiable information (e.g., social security numbers, personal addresses and telephone numbers, credit card numbers, and personal email addresses), were redacted prior to disclosure. The committee members inquired why they could not see the investigators' notes, action plan, summary of witness interviews and conclusions, or recommendations from the investigator included in the investigation files. Typically, investigatory files of this nature may include:

- Complaint forms submitted to the Bureau by a student or other consumer;
- Any response from the school identified in the complaint;
- Correspondence between the Bureau and the school identified in the complaint and/or the person making the complaint;
- Notes of investigations conducted, witnesses interviewed, documentation collected;
- Assessment of any violations found, any financial penalties assessed, and/or other disciplinary action taken;
- Documentation of any fines paid by the school; and
- Documentation of the Bureau's final resolution of the case (investigator's analysis);

SHORT ANSWER

Public records are subject to disclosure unless exempted from disclosure under Government Code section 6254 or other applicable provisions of law. With respect to records of complaints to the Bureau, including complaints and related investigations, Government Code sections 6254, subds. (f) and (k), and section 6255, in conjunction with Evidence Code section 1040, Civil Code section 1798.24, and California's privacy laws, exempt such records from disclosure.

These statutory exemptions protect the integrity of the agency's investigative decision-making process, prevents any possible chilling effect on the agency's complaint handling process, and, keeps information confidential so that there is no interference with the ability of the agency to accurately assess the qualifications of an applicant or licensee. This assertion of privilege also ensures that the release of complaint information, including information about witnesses and possible evidence, does not impede current or future investigations due to premature disclosure (e.g., witness tampering, destruction of evidence, disclosure of investigative techniques or strategies). However, these exemptions and privileges are waived when investigative files and documents have previously been withheld from the public but are subsequently made available to the Committee. Since the disclosure of records to the Committee would waive any privileges over the records as to the general public, the Bureau is not inclined to release documents wholesale to the Committee. Nonetheless, the Bureau will continue releasing records to the Committee to the same extent those records are made available to the public generally.

BACKGROUND

The advisory committee for the Bureau was established by Education Code section 94880:

(a) There is within the bureau a 12-member advisory committee. The members of the committee shall be appointed as follows:

...

(h) The advisory committee shall have **the same access** to records within the Department of Consumer Affairs related to the operation and administration of this chapter as **do members of constituent boards of the department in regard to records related to their functions.** (Educ. Code § 94880, subds. (a), (h); emphasis added.)

State bodies, such as boards within the Department of Consumer Affairs, generally have the authority to hold closed sessions to have confidential deliberations on a decision to be reached on a disciplinary matter under the Administrative Procedure Act (APA) under their jurisdiction. This is an exception to the requirement that statutorily created, multi-member bodies hold public meetings in open session on all matters within their respective jurisdictions. (See Gov. Code, § 11123, subd. (a) [all meetings must be "public" unless

otherwise provided], Gov. Code, § 11126, subd. (c)(3) [permits boards to hold a closed session to deliberate on a decision to be reached in an enforcement case in accordance with the Administrative Procedure Act])

However, unlike boards in the Department, the Committee has no authority to make decisions on disciplinary matters. The Director for the Department, or her designee, holds that authority. Accordingly, there is no law that provides an exception to the Open Meeting Act that would permit this Committee to discuss confidential investigative information or files in closed session or otherwise. In addition, all Advisory Committee meeting materials must be posted on the Internet. (Educ. Code, § 94880; see also Gov. Code, § 11125.1 [requiring all materials distributed to the state body at a meeting to be made available to the public].) As a result, any disclosure of investigative files to the Committee that have not been previously made available to the public (e.g., disclosed at an administrative hearing) would result in a waiver of confidentiality and publication of the Bureau's investigative files.

With this background in mind, this memo discusses the law and policy that precludes disclosure of investigatory records to the Bureau's Advisory Committee.

ANALYSIS

The overriding principle for the protection of privacy begins with the California Constitution. The exemptions contemplate two public policy goals: (1) privacy, and (2) successful agency prosecutions. California Constitution, Article I, section 1 states:

Article I Declaration of Rights

Section 1.

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

(Sec. 1 added Nov. 5, 1974, by Proposition 7. Resolution Chapter 90, 1974.)

This section, along with Government Code section 6254, subdivision (k); the Information Practices Act of 1977 (Civil Code sections 1798.24 and 1798.40, subdivision (d)), and Business and Professions Code section 30, subdivision (h), requires the Bureau to redact or withhold certain personal information from documents disclosed in response to a PRA request in order to protect the privacy of the licensee and any private individual included in the licensee's file. This information includes social security numbers, personal addresses and telephone numbers, personal credit card numbers, personal email addresses, and any other personally-identifiable information.¹

¹ (See Civ. Code, § 1798.3, subd. (a) ["personal information" includes: ". . . any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.].")

Government Code Section 6254, subdivision (f):

The PRA generally promotes and favors the disclosure of records maintained by state government. There are, however, exceptions to disclosure. As explained by the California Court of Appeal, the PRA "includes two exceptions to the general policy of disclosure of public records: (1) materials expressly exempt from disclosure pursuant to [Government Code] section 6254 and (2) the catchall exception of [Government Code] section 6255 . . ." (*Gilbert v. City of San Jose* (2003) 114 Cal.App.4th 606, 610, 611.)

The Bureau routinely withholds as confidential, exempt, or privileged information and records contained within a complaint or investigation file when requested under the PRA. Government Code section 6254 provides:

Except as provided in Sections 6254.7 and 6254.13, this chapter **does not require the disclosure** of any of the following records:...

(f) Records of complaints to, or investigations conducted by, or records of ... **any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.** ... (Emphasis added)

Courts have construed investigatory files to include broader categories of documents than records of investigations. Investigatory files may include documents that are not exempt investigatory records on their face. Such documents gain significance—and qualify for the exemption under Government Code section 6254, subd. (f)—through their placement in an “investigatory file,” rather than because of their content judged in isolation. For example, “[a] commonplace business card may reveal the name and endanger the safety of an informant. Receipts for transportation may tell the astute observer which clues the police have checked and which they have not yet found.” (*Williams v. Superior Court (Freedom Newspapers, Inc.)* (1993) 5 Cal.4th 337, 346, 356.)

Even when the investigation results in no charges being filed, the contents of the investigative file remain exempt from disclosure as long as the file is not disclosed to any member of the public. In *Rackauckas v. Superior Court*, a deputy district attorney investigated alleged misconduct by a police officer and wrote a letter to the police department concluding there was insufficient evidence to file criminal charges. A newspaper requested records regarding the investigation, but the district attorney claimed the letter was exempt from disclosure under Government Code section 6254, subdivision (f) as part of its investigative file. (*Rackauckas v. Superior Court (Los Angeles Times Communications)* (2002) 104 Cal.App.4th 169, 171-72.) Construing “the ‘broad’ investigation exemption” in Government Code section 6254, subdivision (f), the court held that the letter was exempt because the “**investigation exemption does not terminate when the investigation terminates.**” (*Id.* at 171-172 [Emphasis added].) The court reasoned that the exemption under Government Code section 6254, subdivision (f) protects important public policy considerations. For example, investigations include raw data, some of which is unreliable and “could prove ruinous to personal reputations, careers, or relationships.” (*Id.* at 171-172)

Investigators need to feel free to provide candid comments on what they learn in the investigation, including providing a frank closing report. Further, disclosure may compromise reopening a case and the effectiveness of related investigations (*Id.* at 174-78.)

Also, in the case of *Williams v. Superior Court*, the California Supreme Court ruled that investigation documents did not lose their exempt status due to a **failure to prosecute** or the **close of an investigation**. (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 355 [emphasis added].)

Government Code Sections 6254(k) and 6255:

Even though the Bureau investigatory files fall squarely within the exemption set forth in Government Code section 6254, subdivision (f), the files must also be excluded by application of Government Code section 6255:

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code § 6255, subd. (a).)

This *exemption* is often referred to as the “catchall” exemption. (See, e.g., *Long Beach Police Officers Assn v. City of Long Beach* (2014) 59 Cal.4th 59, 74.) To justify nondisclosure under the catchall exemption, the agency must demonstrate “that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code § 6255, subd. (a)) A similar analysis must also be applied when analyzing Government Code section 6254, subdivision (k).

Records of complaints to or investigations by the Bureau are also exempt from disclosure pursuant to Government Code section 6254, subdivision (k), incorporating Evidence Code section 1040, in that the necessity for preserving the confidentiality of complaint records outweighs the necessity for disclosure.

Government Code section 6254, subdivision (k) and Evidence Code section 1040 provide the Bureau with the authority to claim a privilege from disclosure with respect to “official information” acquired in confidence by a public employee in the course of his or her duty; if disclosure is forbidden by an act of the U.S. Congress or a state statute; or if it is deemed that disclosure of the information is against the public interest because there is a necessity of preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice:

(a) As used in this section, “official information” means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and either of the following apply:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered. (Evid. Code § 1040.)

The Bureau is the state agency within the Department of Consumer Affairs that licenses and regulates private postsecondary schools in accordance with the California Private Postsecondary Education Act of 2009 (Education Code section 94000, et seq.) As such, the Bureau has broad authority to receive complaints and investigate violations of laws. (See, e.g., Ed. Code, §§ 94941, 94942, 94874.9, 94875, 94877, 94932, 94932.5, 94933, 94933.5, 94935, 94936, 94937, 94938, 94939, 94944.)

The Bureau's decision to withhold exempt records protects the integrity of the Bureau's investigative decision-making process, prevents any possible chilling effect on the Bureau's complaint handling process, and keeps information confidential so that there is no interference with the ability of the Bureau to accurately assess the qualifications of an institution as an applicant or licensee. Preserving the confidentiality of the records also ensures that the release of complaint information, including information about witnesses and possible evidence, does not impede current or future investigations due to premature disclosure. "It is an unassailable proposition that disclosure of law enforcement materials which when revealed assist in thwarting and circumventing the law is not in the public interest." (*Eskaton Monterey Hosp. v. Myers* (1982) 134 Cal.App.3d 788, 793.)

Important Public Policy Considerations

California case law and important public policies also support the Bureau's assertion of the exemptions here. In *Black Panther Party v. Kehoe* the California Court of Appeal articulated the policy reasons why a state agency in the Department of Consumer Affairs could claim exemptions under the PRA:

The objectives of the Public Records Act thus include preservation of islands of privacy upon the broad seas of enforced disclosure. Recognition of privacy as a distinct statutory goal fully confirms

our textual interpretation of section 6254, subdivision (f). Both complaining citizens and the public have an interest in the confidentiality of complaints of wrongdoing prior to the inception of formal enforcement or disciplinary proceedings. Effective enforcement of penal laws depends to no small extent upon the readiness of citizens to complain of alleged crime. Complainants often demand anonymity. The prospect of public exposure discourages complaints and inhibits effective enforcement. Similarly, effective policing of licensed occupations depends heavily on citizens' readiness to complain of wrongdoing by licensees.

In the formulation of a statutory policy governing disclosure of citizen complaints, public concern extends to the alleged wrongdoer as well as the alleged victim. Many a reputation has been lost, many a life damaged, by unfounded accusations of wrongdoing. The public has an ethical interest in protecting private reputations against notoriety emanating from “crank” or malicious accusations.

...

Overbroad claims to disclosure may threaten the privacy of individual citizens and accelerate the advent of the Orwellian state. As we have noted, subdivision (f) of section 6254. reflects a genuine legislative concern for the privacy of citizen complaints. The Legislature has balanced competing interests and demarcated a limited area of permissive nondisclosure.

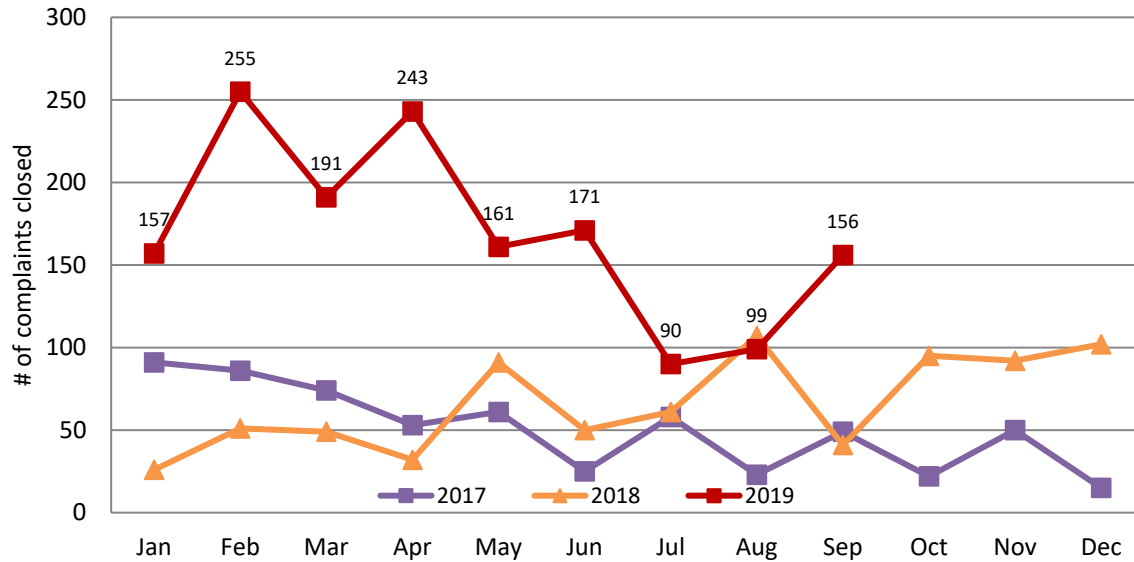
(*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653, 655.)

Government Code § 6254.5:

The Bureau’s decision to withhold exempt records serves these recognized public interests. Nonetheless, the Advisory Committee Members have requested that the Bureau consider permitting the Advisory Committee Members access to the records.

Generally, whenever an agency such as the Bureau discloses an otherwise exempt public record to any member of the public, the disclosure constitutes a waiver of exemptions contained in the PRA for all future requests for the same information. (Gov. Code, § 6254.5.) Indeed, in the *Black Panther Party* case, the agency there ultimately lost its bid to refuse disclosure of its complaints because it had “routinely disclose[d] complaints” to the affected licensees, essentially waiving the exemption. The Bureau does not have a practice of routinely disclosing portions of the investigatory files other than redacted complaints and dismissal letters provided to members of the public and this advisory committee. Accordingly, we are unable to provide this committee with any more information from the Bureau’s investigatory files.

Complaints Closed 2017, 2018, and Q1-Q3 2019



Source: CPEI Monthly Statistical Reports

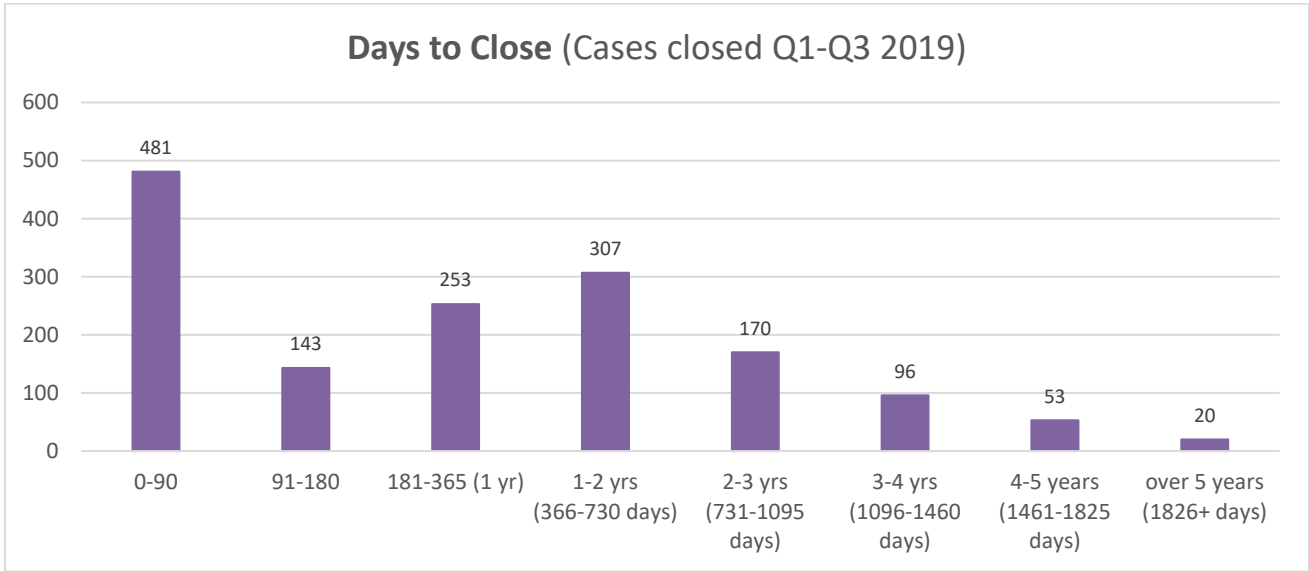
Complaints Closed Q1-Q3

Month	2019
Jan	157
Feb	255
Mar	191
Apr	243
May	161
Jun	171
Jul	90
Aug	99
Sep	156
Total	1523

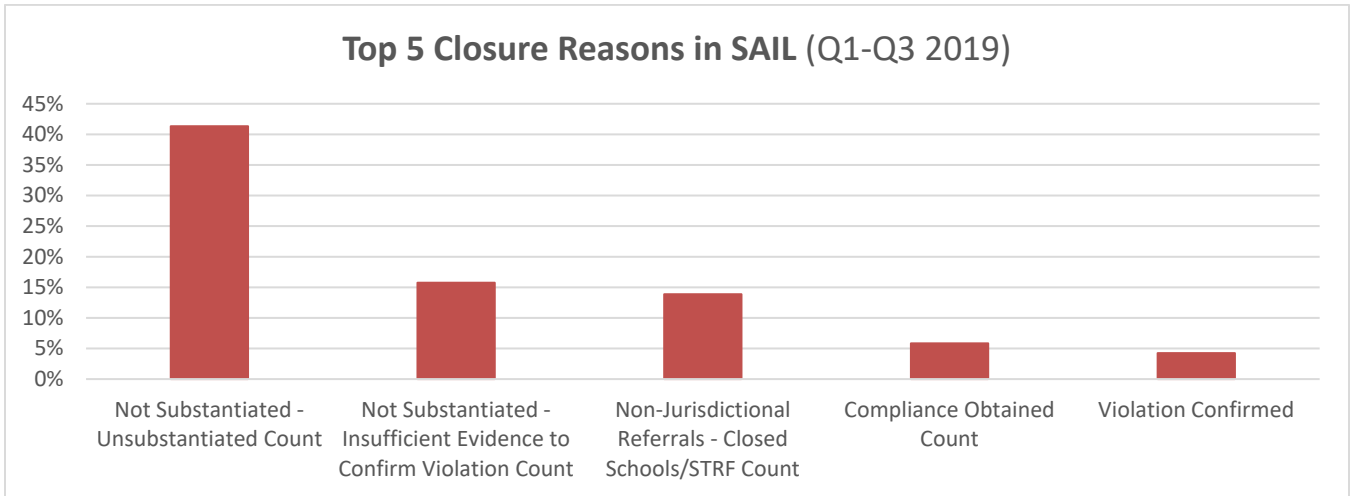
CASE DISPOSITION - Q1 – Q3

	%	#
Referral for Citation	11%	126
Referral for Disciplinary action	1%	7
Unsubstantiated, Compliance Obtained, Mediated Settlement, Non-jurisdictional	89%	1390
SUBTOTAL	100%	1523
Starting 6/21/19: Referrals to Discipline Unit for further action*		20

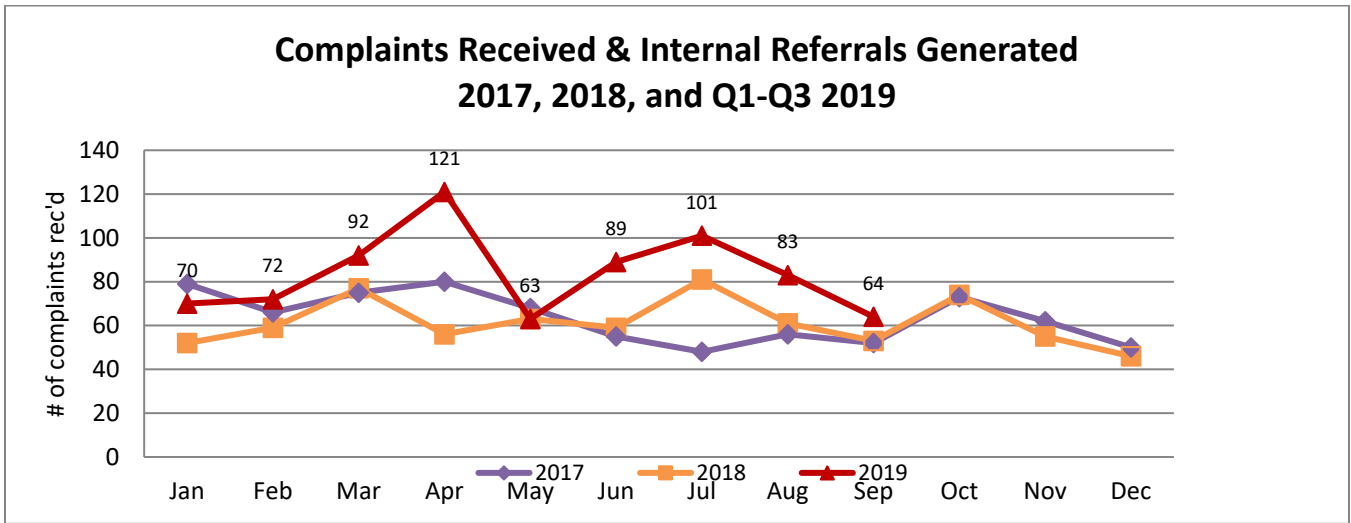
*Transferred to the Discipline Unit and closed only after the Discipline Unit approves case for further action. Discipline Unit determines whether further action is citation or disciplinary action.



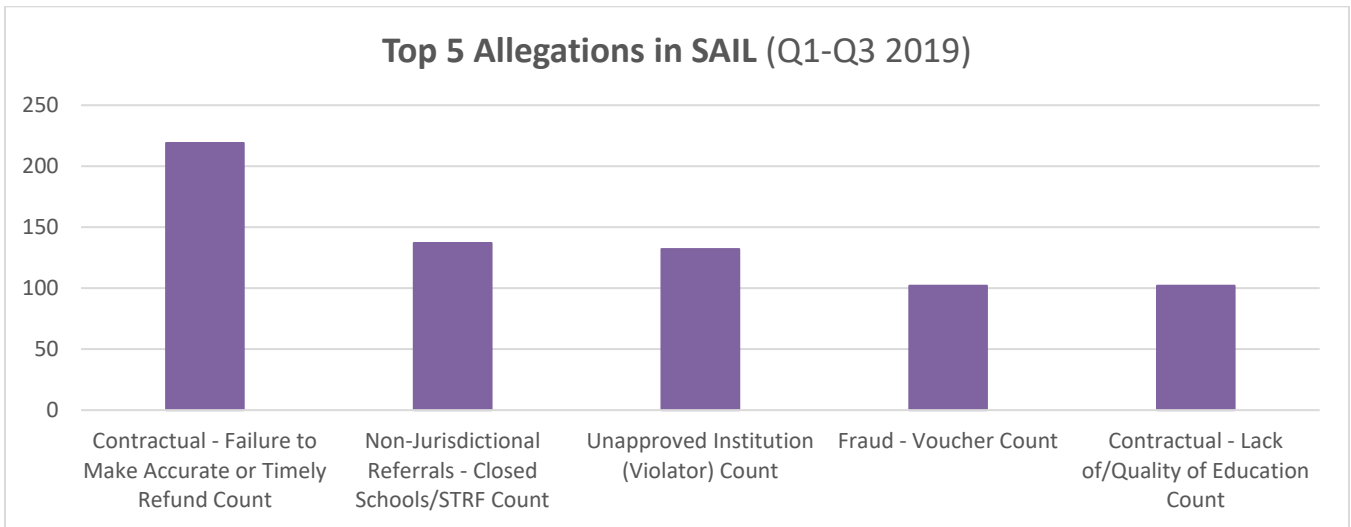
Source: BPPE Complaint Case Tracking Log



Source: Custom SAIL report provided by DCA Office of Information Services



Source: CPEI Monthly Statistical Reports



Source: Custom SAIL report provided by DCA Office of Information Services

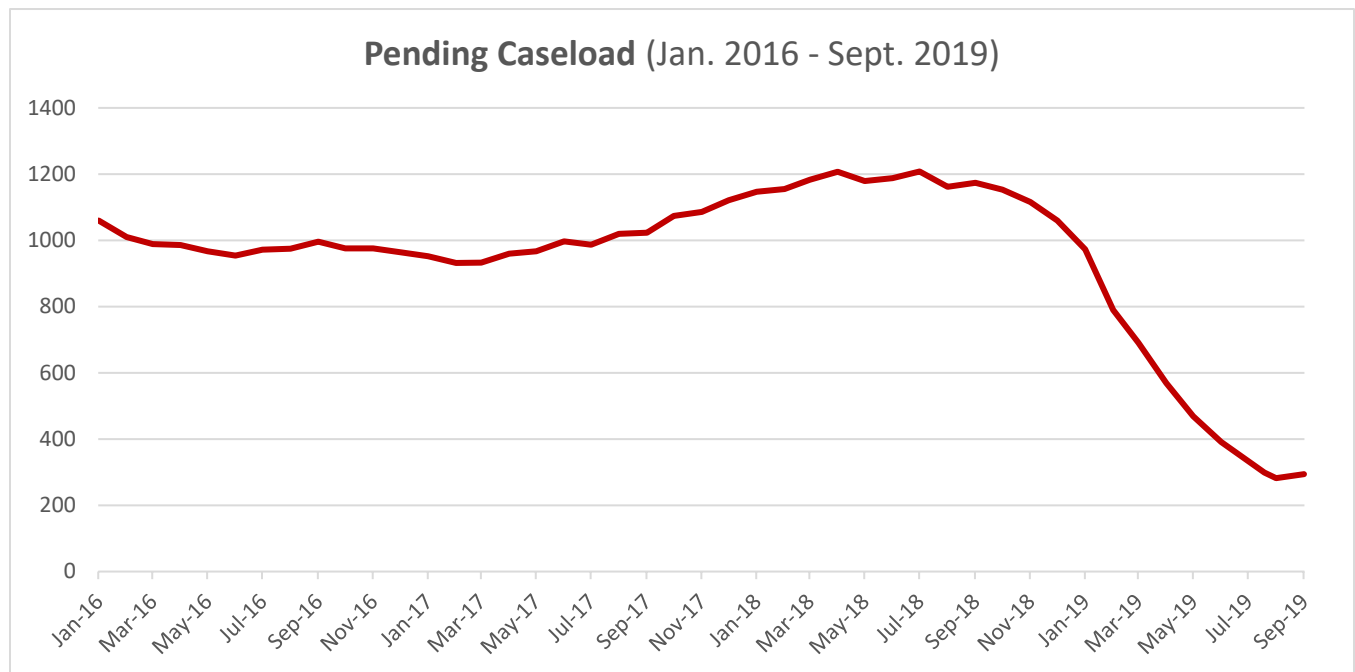
**PENDING CASELOAD AS OF
9/30/19**

CASE AGE	PENDING		EXTERNAL-STUDENT		URGENT	
	#	%	#	%	#	%
0-90	136	46%	85	53%	31	60%
91-180	53	18%	23	14%	19	37%
181-365 (1 yr)	32	11%	22	14%	2	4%
1-2 yrs (366-730 days)	37	13%	16	10%	0	0%
2-3 yrs (731-1095 days)	23	8%	7	4%	0	0%
3-4 yrs (1096-1460 days)	11	4%	6	4%	0	0%
4-5 years (1461-1825 days)	0	0%	0	0%	0	0%
over 5 years (1826+ days)	2	1%	2	1%	0	0%
TOTAL	294	100%	161	100%	52	100%

55% of pending

18% of pending

Source: BPPE Complaint Case Tracking Log



Source: BPPE Complaint Cast Tracking Log

STUDENT IMPACT (January – September 2019)

Investigators' advocacy on behalf of students resulted in the following:

- Total of **\$118,869.77** in refunds to students or to their federal student aid account.
- Restitution ordering full refund to 3 students (\$52k each).
- Students received degree, diploma, proofs-of-training, certificate, license, and transcripts.
- Student received missing equipment.
- Students re-enrolled, allowed to retake exam.
- Student account balance of \$632 cleared.
- Students referred for Student Tuition Recovery Fund.
- Negative credit report removed for student.
- Students allowed to reinstate in program.
- Students placed in externships

Licensing Applications Status as of October 1, 2019 for Fiscal Year 19/20

Type									
New Full Approval									
New Accreditation									
Renewal Full									
Renewal Accreditation									
Changes Full									
Changes Accreditation									
Verification of Exemption									
Out of State Registration									
Totals:									

^aAverage Days to Approve is calculated from time assigned to analyst.

*9 applications pending new term of accreditation.

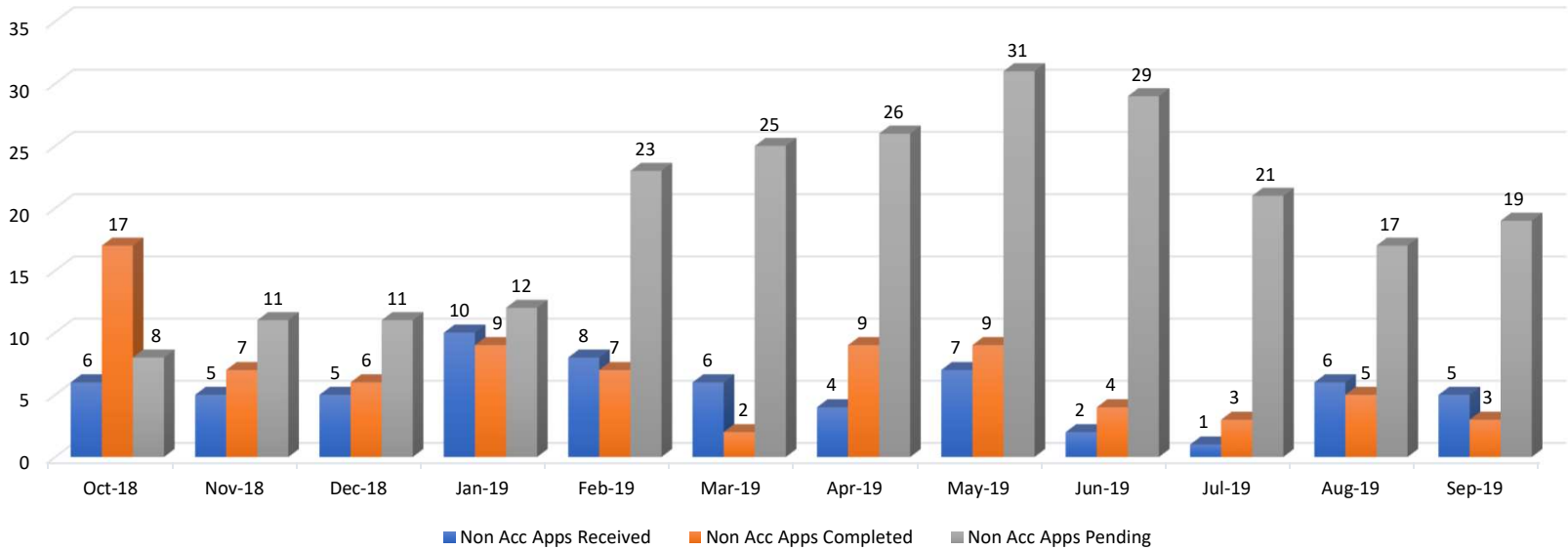
Total Pending Applications by Date

Total pending applications on 5/1/2019:	227
Total pending applications on 8/1/2019:	249

Oldest Pending Full Applications (as of 10/1/19)

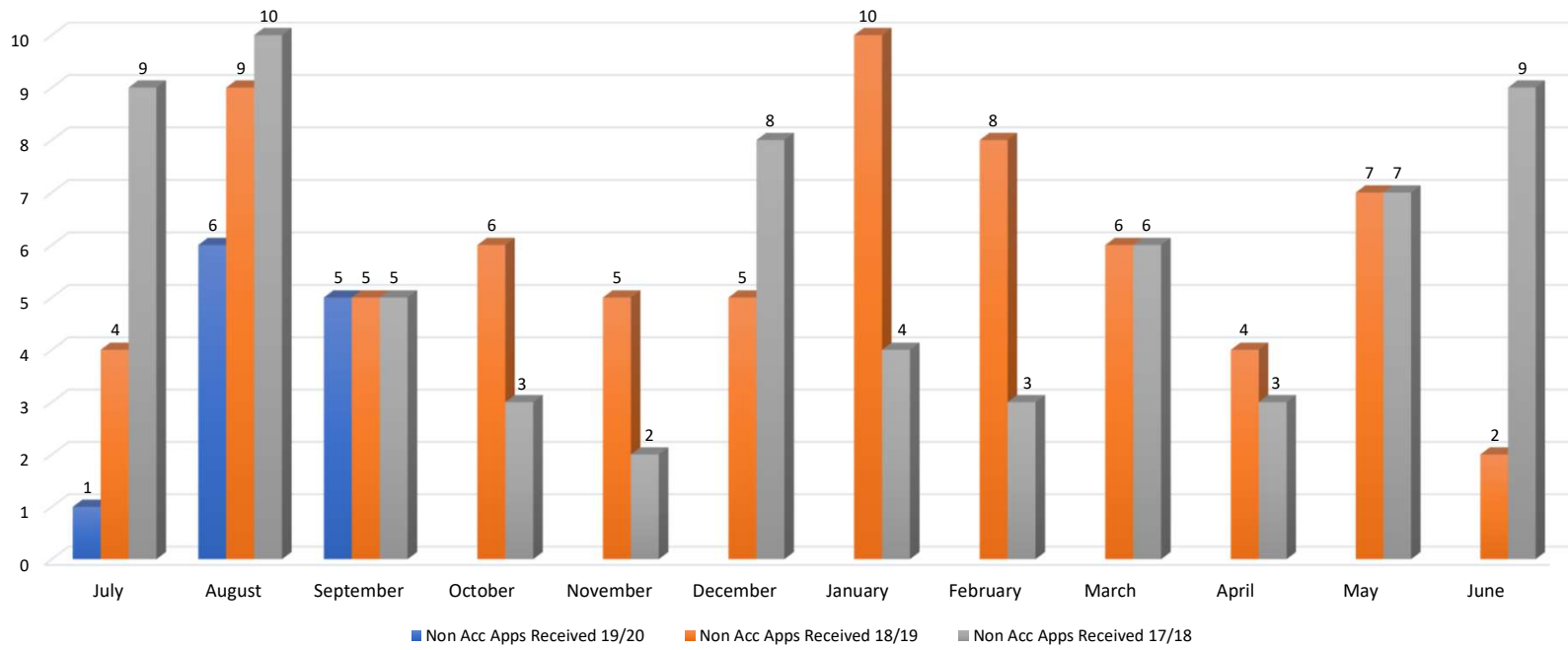
Oldest Full Apps Under Review:	5/1/2017
Oldest Renewal Full Apps Under Review:	2/3/2017

12 Month NEW Non ACC App Overview



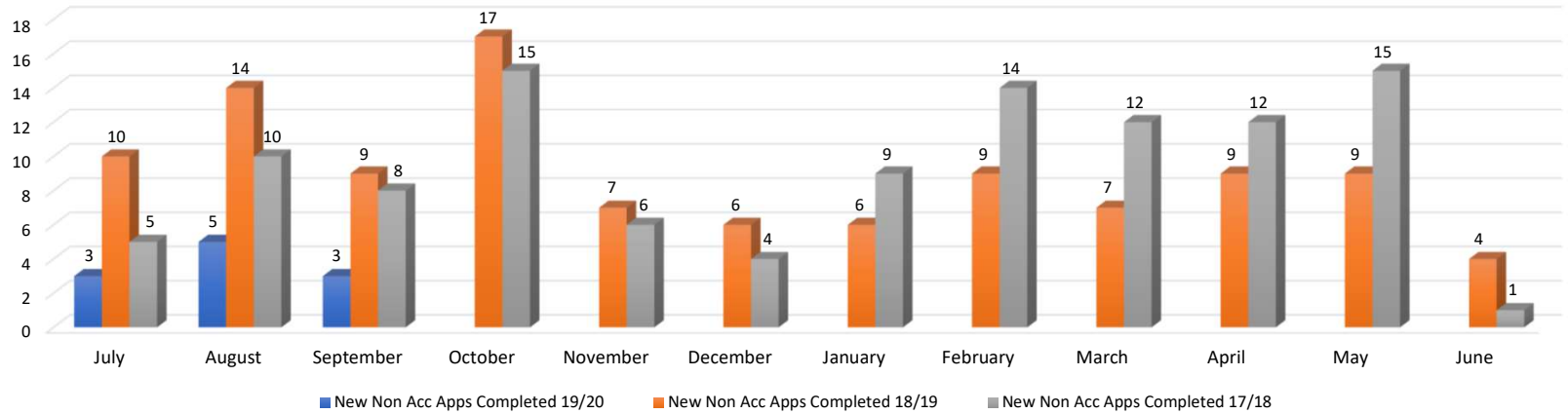
Month	Non Acc Apps Received	Non Acc Apps Completed	Non Acc Apps Pending
Oct-18	6	17	8
Nov-18	5	7	11
Dec-18	5	6	11
Jan-19	10	9	12
Feb-19	8	7	23
Mar-19	6	2	25
Apr-19	4	9	26
May-19	7	9	31
Jun-19	2	4	29
Jul-19	1	3	21
Aug-19	6	5	17
Sep-19	5	3	19

NEW NON ACCREDITED APPLICATIONS RECEIVED



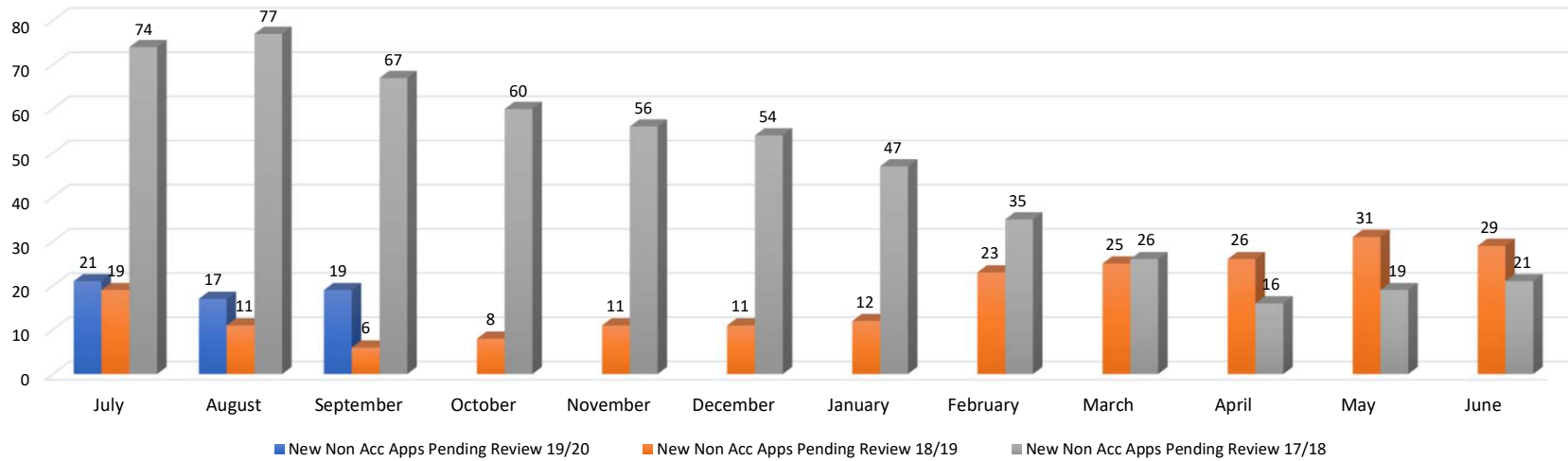
Month	Non Acc Apps Received 19/20	Non Acc Apps Received 18/19	Non Acc Apps Received 17/18
July	1	4	9
August	6	9	10
September	5	5	5
October		6	3
November		5	2
December		5	8
January		10	4
February		8	3
March		6	6
April		4	3
May		7	7
June		2	9

NEW NON ACCREDITED APPLICATIONS COMPLETED



Month	New Non Acc Apps Completed 19/20	New Non Acc Apps Completed 18/19	New Non Acc Apps Completed 17/18
July	3	10	5
August	5	14	10
September	3	9	8
October		17	15
November		7	6
December		6	4
January		6	9
February		9	14
March		7	12
April		9	12
May		9	15
June		4	1

NEW NON ACCREDITED APPLICATIONS PENDING REVIEW



Month	New Non Acc Apps Pending Review 19/20	New Non Acc Apps Pending Review 18/19	New Non Acc Apps Pending Review 17/18
July	21	19	74
August	17	11	77
September	19	6	67
October		8	60
November		11	56
December		11	54
January		12	47
February		23	35
March		25	26
April		26	16
May		31	19
June		29	21

Total Number of Schools by Location Type & Approval Type				
As of October 1, 2019				
Location Type	Mains	Branches	Satellites	Total Locations
	1,041	381	533	1,955
Approval Type	ABMA (Accredited)	Full (Non-Accredited)	Conditional^a	Provisional^b
	438	563	0	40
^a Conditional Approvals are issued for a period up to six months when minor deficiencies exist but the institution is substantially in compliance with the requirements of the laws and regulations (California Code of Regulations section 71400(d)(1)).				
^b Provisional Approvals are issued to unaccredited institutions seeking approval to offer one or more degree programs and must satisfy the requirements under California Education Code section 94885.5.				

		10/30/2018	2/1/2019	5/3/2019	8/1/2019	10/1/2019
Location Type	Main	1,073	1,093	1,066	1,042	1,041
	Branch	397	401	390	386	381
	Satellite	505	520	530	530	533
Approval Type	ABMA	440	442	431	433	438
	Full	598	607	592	568	563
	Conditional	21	0	1	1	0
	Provisional	14	44	42	39	40

Office of Student Assistance and Relief

Outreach Events

2019/20 State Fiscal Year

Data as of 10/28/2019



SUMMARY OF OUTREACH AND EDUCATIONAL ACTIVITIES

Student Outreach Activities	Event Type	Event Date	Event Location
Mt Sierra College School Closure Outreach Event	Student Workshop	7/16/2019	Monrovia, CA
California Transition Assistance Program Beale Air Force Base Workshop	Student Workshop / Presentation	7/17/2019	Yuba County, CA
California Transition Assistance Program Fort Irwin Workshop	Student Workshop / Presentation	7/22/2019	Fort Irwin, CA
A-Technical College School Closure Outreach Event	Student Workshop	7/24/2019	Huntington Park, CA
Student Tuition Recovery Fund Claim Acceleration Workshop	Student Workshop	7/30/2019	San Diego, CA
California Transition Assistance Program Marine Corps Recruit Depot Workshop	Student Workshop / Presentation	8/1/2019	San Diego, CA
California Transition Assistance Program Travis Air Force Base Workshop	Student Workshop / Presentation	8/2/2019	Travis AFB, CA
Assemblymember Chris Holden's 20th Annual Community Resource Fair & Block Party	College Fair	8/3/2019	Pasadena, CA
A-Technical College School Closure Outreach Event	Student Workshop	8/8/2019	San Diego, CA
University of Philosophical Research School Closure Outreach Event	Student Workshop	8/15/2019	Los Angeles, CA
Blue Star Learning School Closure Outreach Event	Student Workshop	8/21/2019	San Diego, CA
California Transition Assistance Program Marine Corps Base Camp Pendleton Workshop	Student Workshop / Presentation	9/4/2019	Oceanside, CA
California Transition Assistance Program 29 Palms Workshop	Student Workshop / Presentation	9/12/2019	Twentynine Palms, CA
California Transition Assistance Program Vandenberg Workshop	Student Workshop / Presentation	9/13/2019	Vandenberg AFB, CA
College Prep Workshop 2019: Hosted by the Office of Student Assistance and Relief & Natomas Unified School District	College Fair	9/28/2019	Sacramento, CA
California Transition Assistance Program Naval Air Station Lemoore Workshop	Student Workshop / Presentation	9/30/2019	Lemoore, CA
Veterans Stand Down & Resource Fair	Resource Fair	10/4/2019	Modesto, CA
Commercial Drivers Learning Center Closure Outreach Event	Student Workshop	10/9/2019	Sacramento, CA
California Transition Assistance Program MCAS Miramar Workshop	Student Workshop / Presentation	10/15/2019	MCAS Miramar, CA

Venture Academy College and Career Fair	College Fair	10/16/2019	Stockton, CA
California Transition Assistance Program Beale Air Force Base Workshop	Student Workshop / Presentation	10/17/2019	Yuba County, CA
Your Future LA: Beyond the Diploma	College Fair	10/18/2019 – 10/19/2019	Los Angeles, CA
2019 Camp Pendleton College Fair	College Fair	10/18/2019	Oceanside, CA
Latino College Expo	College Fair	10/19/2019	Pomona, CA
California Student Opportunity and Access Program (Cal-SOAP) Event	College Fair	10/23/2019	San Diego, CA
Los Angeles Beauty College School Closure Outreach Event	Student Workshop	10/25/2019	Los Angeles, CA
Paul Mitchell The School (San Jose Branch) School Closure Outreach Event	Student Workshop / Presentation	10/28/2019	San Jose, CA
International Culinary Center School Closure Outreach Event	Student Workshop / Presentation	10/28/2019	San Jose, CA
TRU Hope Youth Summit	College Fair	10/29/2019	Stockton, CA
Region 10 Veterans Meeting at UC San Diego	Resource Fair	11/1/2019	La Jolla, CA
College Awareness Workshop	College Fair	11/22/2019	Los Angeles, CA
Black College Expo	College Fair	11/23/2019	Sacramento, CA
Black College Expo	College Fair	2/1/2020	Los Angeles, CA
Black College Expo	College Fair	2/8/2020	Oakland, CA

Student Tuition Recovery Fund Claims

Student Tuition Recovery Fund (STRF) Claims Received 2019/20 State Fiscal Year

135

Claims Closed 2019/20 State Fiscal Year

Claims Paid	63	Amount	\$542,148
Claims Ineligible ¹	30		
Claims Denied ¹	17		
Closed - Unable to Contact ²	24		
Total	134		

Current Claims

In Queue	562		
Analyst Review	104		
Waiting for Student Response	607		
Analyst's First Review Complete / Recommendation Pending	181		
Total	1,454		

Payment Requested From State Controller's Office

50

Definitions

Ineligible / Denied ¹	Student Not Eligible For Payment and/or Claim Did Not Satisfy The Requirements of California Education Code §94923(b)(2)
Unable to Contact ²	OSAR Staff Reached Out to Student via Phone, Email & Written Correspondence At Least Three Times

Current Fund Balance: \$24,788,693

Historical Fund Balances (State Fiscal Year Closing):

2018-19	\$25,100,695
2017-18	\$26,295,000
2016-17	\$28,497,000

Data as of 11/8/2019

Student Tuition Recovery Fund Claims

Large Impact Closures

2019/20 State Fiscal Year

	STRF Claims Received	STRF Claims in Progress	Ineligible / Denied	Unable to Contact	Number of STRF Claims Paid ¹	STRF Claims Paid
ITT Tech	3	3	0	0	1	\$7,020
Heald ²	14	14	0	0	1	\$9,988
WyoTech ²	1	1	0	0	0	\$0
Everest ²	11	11	0	0	0	\$0
Art Institute ³	15	15	0	0	0	\$0
Argosy ³	8	8	0	0	0	\$0
Brightwood ⁴	23	23	0	0	18	\$75,195
Golf Academy ⁴	3	3	0	0	0	\$0

From School Closure to Current (Total Impact)

	STRF Claims Received	STRF Claims in Progress	Ineligible / Denied	Unable to Contact	Number of STRF Claims Paid	STRF Claims Paid
ITT Tech	296	30	141	74	51	\$300,292
Heald ²	355	243	62	28	22	\$213,041
WyoTech ²	146	32	39	25	50	\$278,243
Everest ²	461	203	100	74	84	\$255,795
Art Institute ³	66	64	2	0	0	\$0
Argosy ³	109	109	0	0	0	\$0
Brightwood ⁴	349 ⁴	324	0	7	18	\$75,195
Golf Academy ⁴	13	13	0	0	0	\$0

¹ These values may include STRF claims that were received prior to the 2019/20 State Fiscal Year but processed in the 2019/20 State Fiscal Year.

² Heald College, WyoTech, and Everest College were operated by Corinthian Colleges, Inc.

³ The Art Institute of California and Argosy University were operated by Dream Center Education Holdings, LLC.

⁴ Brightwood College and Golf Academy of America were operated by Education Corporation of America.

Data as of 10/28/2019

STATUS UPDATES RELATED TO THE FOLLOWING REGULATIONS:

- a. English as a Second Language Programs [Title 5, California Code of Regulations (CCR), Section 70000 (k)]**
- b. Application for Verification of Exempt Status (CEC Sections 94874, 94874.2, 94874.7, 94874.5, and 94927.5); Title 5, CCR Section 71395)**
- c. Compliance with Laws and Procedures (Title 5, CCR, Section 71755)**
- d. Student Records and the Maintenance of Records (Title 5, CCR Sections 71920, 71930, 71940 and 71950)**

Agenda Item 7

**PRESENTATION BY DEPARTMENT OF CONSUMER AFFAIRS REPRESENTATIVE
ON THE SUNSET REVIEW PROCESS**

**DISCUSSION ON AB 1313 HIGHER EDUCATION: PROHIBITED DEBT
COLLECTION PRACTICES (2019-2020)**

ATTACHMENT:

A. Assembly Bill 1313 Higher Education: Prohibited Debt Collection Practices (2019-2020)



AB-1313 Higher education: prohibited debt collection practices. (2019-2020)

SECTION 1. Title 1.6C.7 (commencing with Section 1788.90) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.6C.7. Educational Debt Collection Practices

1788.90. This title shall be known, and may be cited, as the Educational Debt Collection Practices Act.

1788.91. The Legislature finds and declares all of the following:

(a) Schools and colleges have threatened to withhold transcripts from students as a debt collection tactic. The practice can cause severe hardship by preventing students from pursuing educational and career opportunities, and it is therefore unfair and contrary to public policy. Moreover, the practice is counterproductive as it may further delay the payment of the debt by creating obstacles to student employment.

(b) It is the purpose of this title to prohibit schools from interfering with student educational and career opportunity by the withholding of transcripts.

1788.92. For purposes of this title, the following terms shall have the following meanings:

(a) "School" means any public or private postsecondary school, or any public or private entity, responsible for providing transcripts to current or former students of a school.

(b) "Debt" means any money, obligation, claim, or sum, due or owing, or alleged to be due or owing, from a student, but does not include the fee, if any, charged to all students for the actual costs of providing the transcripts.

1788.93. Notwithstanding any provision of law, a school shall not do any of the following:

(a) Refuse to provide a transcript for a current or former student on the grounds that the student owes a debt.

(b) Condition the provision of a transcript on the payment of a debt, other than a fee charged to provide the transcript.

(c) Charge a higher fee for obtaining a transcript, or provide less favorable treatment of a transcript request because a student owes a debt.

(d) Use transcript issuance as a tool for debt collection.

SEC. 2. Section 66022 of the Education Code is amended to read:

66022. (a) The governing board of every community college district, the Trustees of the California State University, the Regents of the University of California, and the Board of Directors of the Hastings College of the Law shall adopt regulations providing for the withholding of institutional services from students or former students who have been notified in writing at the student's or former student's last known address that ~~he or she is~~ **they are** in default on a loan or loans under the Federal Family Education Loan Program.

"Default," for purposes of this section, means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments.

(b) **(1)** The regulations adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute or when the student or former student demonstrates to

either the governing board of the community college district, the Trustees of the California State University, the Regents of the University of California, or the Board of Directors of the Hastings College of the Law, as appropriate, or to the Student Aid Commission, or both the Student Aid Commission and the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The regulations shall specify the services to be withheld from the student and may include, but are not limited to, the following:

~~(1)~~ (A) The provision of grades.

~~(2)~~ (B) The provision of ~~transcripts-~~ *diplomas*.

~~(3)~~ (2) The ~~provision of diplomas-~~

~~The-~~ adopted regulations shall not include the withholding of registration ~~privileges-~~ *privileges or transcripts*.

(c) When it has been determined that an individual is in default on a loan or loans specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans.

(d) This section shall not impose any requirement upon the University of California or the Hastings College of the Law unless the Regents of the University of California or the Board of Directors of the Hastings College of the Law, respectively, by resolution, make this section applicable.

(e) Guarantors, or those who act as their agents or act under their control, who provide information to postsecondary educational institutions pursuant to this section, shall defend, indemnify, and hold harmless the governing board of every community college district, the Trustees of the California State University, the Regents of the University of California, and the Board of Directors of the Hastings College of the Law from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or untimely information provided to the postsecondary educational institution by the guarantors, their agents, or those acting under the control of the guarantors.

SEC. 3. Section 76225 of the Education Code is amended to read:

76225. Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, or college or university upon a request from the student. ~~However, the community college, college, or university from which the student is transferring may notify the student that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college, or university.~~ Any community college, college, or university making a transfer of these records shall notify the student of ~~his or her~~ *the student's* right to receive a copy of the record and ~~his or her~~ *the student's* right to a hearing to challenge the content of the record.

The board of governors may adopt rules and regulations concerning transfer of these records to, from, or between colleges under its jurisdiction.

SEC. 4. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

FUTURE AGENDA ITEMS

ADJOURNMENT