



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

Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
P.O. Box 980818, West Sacramento, CA 95798-0818
P (916) 431-6959 F (916) 263-1897 www_bppe.ca.gov



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. Schiledge 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 Scott 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. Leesa 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 update 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. Schieldge 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 representative provide a presentation on the general sunset review process.

Agenda #10 – Adjournment

Adjourn at 2:22