



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, November 7, 2018**

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

Advisory Committee Members in Attendance

1. Diana Amaya
2. Joseph Holt
3. Katherine Lee-Carey
4. Margaret Reiter
5. Kevin Powers (on behalf of Assembly member, Jose Medina)
6. Sarah Mason (on behalf of Senator Jerry Hill)

Committee Members Not in Attendance

1. Tamika Butler
2. Hanya Carbajal
3. Megumi Tsutsui
4. David Vice

Bureau for Private Postsecondary Education (Bureau) and DCA Staff in Attendance

Dr. Michael Marion Jr., Bureau Chief
Leeza Rifredi, Deputy Bureau Chief
Yvette Johnson, Enforcement Chief
Beth Scott, Enforcement Chief
Marina O'Connor, Licensing Chief
Robert Bayles, Education Administrator
Scott Valverde, Office of Student Assistance & Relief Chief
Mina Hamilton, Legal Counsel, Department of Consumer Affairs
Kristy Schieldge, Legal Counsel, Department of Consumer Affairs
Kent Gray, Legislative Analyst
Karen Nelson, Assistant Deputy Director, Office of Board and Bureau Services
Matt Nishimine, Budget Analyst, Department of Consumer Affairs
Jason Piccione, Chief Information Officer, Office of Information Systems

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

Advisory Committee Chair, Katherine Lee-Carey, called the meeting to order at 9:31 AM. She announced that agenda items 6, 7, and 8 would be moved to follow item 4.

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

No public comments.

Agenda #3 - Review and Approval of August 16, 2018 Advisory Committee Meeting Minutes

Margaret Reiter moved to approve the minutes; Ms. Lee-Carey seconded the motion. (Ms. Lee-Carey: Aye; Ms. Reiter: Aye; Joseph Holt: Aye; Diana Amaya: Aye). The motion passed.

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

Karen Nelson, Assistant Deputy Director for the Office of Board and Bureau Services, provided remarks on behalf of DCA. She reported on the most recent Director's quarterly meeting, which was held on October 29, 2018. She noted that staff members are working on scheduling the Director's quarterly meetings for 2019.

Ms. Nelson stated that the DCA Licensing and Enforcement workgroups come together monthly to discuss efficient business practices. She added that the workgroups recently helped develop an interactive enforcement measurement tool. She thanked BPPE's staff for active participation and contribution to the workgroup.

Ms. Nelson provided an update on the Future Leadership Development program, noting that the second cohort held its first meeting in September. She detailed the program as a means for DCA leaders to mentor staff through customized leadership training and project management.

Ms. Reiter asked for more information on the interactive enforcement measurement tool.

Ms. Nelson explained that the tool enables users to sort data to generate customized reports. She noted that the workgroups provide insight and feedback to help expand the tool's usefulness. She added that the tool is still in the development phase. She added that BPPE staff could potentially use the tool to generate customized reports from annual report data.

Public Comment:

No comment.

Agenda #6 - Status Updates on Regulations

Dr. Marion pointed to the meeting agenda and provided a status update on Bureau regulations. He noted that modifications to the out-of-state registration regulation (CEC Sections 94850.5 and 94801.5) is currently under review by DCA. He stated that the English as a second language programs (Title 5, California Code of Regulations (CCR), Section 70000 (k)) regulatory package will likely be submitted to the Business, Consumer Services and Housing Agency (Agency) by the end of the month. He added that the verification of exempt status (CEC Sections 94874, 94874.2, 94874.7, 94874.5, and 94927.5); CCR Section 71395) package is under review by DCA and Agency. He noted that the compliance with laws and procedures package (CCR, Section 71755) is currently under review by Bureau legal counsel.

Ms. Reiter asked if the Committee would have an opportunity to discuss the drafted language in the Compliance with Laws and Procedures regulatory package (CCR, Section 71755). Kent Gray, Bureau Legislative Analyst, noted that the language was presented to the Committee for discussion at the February 2018 meeting.

Public Comment:

No comment.

Agenda #7 - Discussion and Consideration of Draft Regulatory Language for Required Notices and Teach-Out Plan (Proposed Amendments to CCR Section 76240)

Mr. Gray introduced the proposed amendments to CCR Section 76240 (Required Notices and Teach-Out Plan).

Ms. Lee-Carey asked for an example of a type of suspension that would promote requirements for institutions to post notices and submit a teach-out plan. Ms. Schieldge pointed out that the intent of the proposed language is to capture all instances when a teach-out is required by law. She added that “suspended institution” refers to those institutions which fail to comply with CEC Section 94885.5 (Accreditation Required for Degree Granting Institutions).

Ms. Lee-Carey asked if the suspension is tied to specific programs or the entire institution. Ms. Schieldge stated the proposed language includes instances of program suspensions.

Ms. Lee-Carey suggested that the language should clarify that closure plans are only required for “impacted” programs.

Ms. Reiter pointed out that the word “owner” should be clarified to exclude shareholders, which is included in the statutory definition of “owner.” Ms. Schieldge suggested changing the language from “owner” to “authorized owner.”

Ms. Reiter suggested a future discussion on whether the statute should be changed to require teach-out plans when an institution discontinues a program. Ms. Lee-Carey stated that the STRF

and closed school statutory language was originally drafted to align with the Department of Education's teach-out requirements, which focus on school closures and not discontinuation of programs. She added that there is a difference between a school strategically choosing to discontinue a program and the discontinuation of a program due to suspension.

Ms. Lee-Carey asked if a CEO would be considered an authorized owner. Ms. Schieldge responded that the CEO could be considered an authorized owner. She added that an authorized owner is designated by an institution and is legally bound.

Ms. Reiter suggested adding the students' last date of attendance to the list of required information in the list of students who were enrolled in a closed program.

Ms. Reiter suggested adding language that includes more direction related to the custodian of records. She noted that simply requiring contact information of an individual may not be enough. She suggested language that would require teach-out plans to include how costs associated with record maintenance will be covered long term. Mr. Gray pointed out that the draft language for 76240 (Required Notices and Teach-Out Plan) refers to CCR Section 71930 (Maintenance of Records), which addresses Ms. Reiter's concern.

Ms. Reiter noted that the language could be more specific regarding notifications sent to students pending a school closure or program suspension. She added that more specificity could be included regarding OSAR services available to students

Public Comment:

No Public Comment.

Agenda #8 - Discussion and Consideration of Draft Regulatory Language Regarding Student Records and the Maintenance of Records (Proposed Amendments to CCR Sections 71920 and 71930 and Adoption of CCR Sections 71940 and 71950)

Mr. Gray introduced the proposed amendments to CCR Sections 71920, 71930, 71940, and 71950.

Ms. Reiter commented that, regarding CCR Section 71920 (b) (12) (Student Records Other Than Transcripts), the language should state that the entire complaint file be maintained.

Ms. Reiter suggested including language that specifies the amount of time a school is granted by the Bureau to provide records to students.

Ms. Lee-Carey commented on the requirement that records be maintained in a PDF format. She expressed concern that PDF could possibly become obsolete in the future. Mr. Gray pointed out that PDF is the current industry standard. Ms. Reiter stated that requiring records to be kept in a PDF format could pose difficulties. She noted that it could be cost and time extensive to extract a spreadsheet from a PDF document. Mr. Holt stated that a PDF is essentially a picture of data. He

noted that the school performance facts sheet regulation may provide a good example for language to use to cover the need for row data.

Ms. Reiter questioned the section that outlines a \$0.10 per page reimbursement to institutions. Mr. Gray clarified that reimbursement is specifically referring to instances that the Bureau uses equipment at an institution, such as using an institutions copier during an inspection, and not for other documents provided to the Bureau.

Ms. Lee-Carey noted that 2 business days may not be a sufficient amount of time for an institution to provide documents. Ms. Schieldge suggested adding language that grants an institution more time upon request for good cause.

Mr. Holt questioned the purpose of the requirement for adding language that grants more time upon request when it seems to fall more in line with 76240 (Required Notices and Teach-out Plan). He added that an institution will be reviewing regulations to ensure compliance, and it could be missed if it is not under the same regulation. Mr. Gray suggested adding a cross reference to ensure it is not missed.

Ms. Reiter suggested adding student financial agreements, separate from enrollment agreements or student financial ledgers, to the list of required documents a school must provide prior to closing.

Public Comment:

No Public Comment.

Agenda #5 - Bureau Operations Update and Discussion

Budget Report:

Matt Nishimine, DCA Budget Analyst, provided an update on the status of Bureau funds. He outlined Attachment 5A in the meeting packet. He noted that for 2017-2018 the Bureau's reserve for economic uncertainties is 5.8 months, which is below the statutory cap of 6 months. He added that current year projections show the reserve will be 5.6 months.

Mr. Nishimine explained that Bureau finances are complicated, and projections are based on some uncertain factors. He noted that the reserve balance is prudent. He added that projections do not consider legislative changes that may occur. Furthermore, he mentioned that the Bureau's IT upgrade is not included in the projections.

Ms. Lee-Carey asked what difference the annual fee increase made on the Bureau's revenue. Mr. Nishimine responded that the annual fee increase resulted in an estimated 3 million dollars increase of total revenues. Ms. Lee-Carey asked if the increase is reasonable. Mr. Nishimine replied that his report is restricted to the Bureau's fund condition and projections based on market trends.

Enforcement Report:

BPPE Enforcement Chief Yvette Johnson provided a report on the enforcement unit. She outlined Attachment 5B in the meeting packet.

Ms. Johnson reported on efforts to reduce the complaint backlog. She stated that staff workloads have been redistributed more evenly. She explained that managers are allocating more time to assist staff with case reviews. She noted that 9 of 11 vacancies have been filled, and two retired annuitants were hired. She added that staff have been working overtime and on the weekends. She detailed how licensing staff have begun assisting enforcement staff with unlicensed activity. She noted that there has been an increase of collaboration on enforcement issues, between all units within the Bureau.

Dr. Marion added that nearly one-third of the Bureau's open complaints are referred internally. He noted that the processing time to resolve a complaint has not been considered in regard to the complaint caseloads.

Mr. Holt asked what the target processing time would be to resolve a complaint. Ms. Johnson stated that the processing time was originally set at 180-days, which does not include complaints that result in disciplinary action.

Mr. Holt questioned if staff have been working on identifying duplicate complaints. Ms. Johnson responded that staff have been working on consolidating cases. She stated that a complaint against an institution, received anonymously, can be tied to a non-anonymous complainant, when dealing with the same issue. She clarified that complaints against an institution involving the same issue are only consolidated with another complaint if it is received anonymously.

Ms. Johnson reported that in August 2018 staff initiated a plan to contact students with older unresolved complaints. She explained that the first step was for staff to reach out to complainants who had no contact with the Bureau in 2018. She stated that 265 complaints were identified through the initial stages of the plan. She reported that staff sent out 129 letters, 77 emails, and made 59 phone calls to students. She detailed that staff received 96 responses, with 71 students requesting the Bureau continue pursuing their complaint, and 25 indicating they no longer wanted to pursue their complaint. She noted that older cases, with substantiated evidence, would continue to be processed, regardless of whether student contact was reestablished. She stated that unsubstantiated cases would be closed. She added that each staff member is working with managers to resolve their 5 oldest complaints.

Ms. Johnson outlined the Bureau's working relationships with DCA and other consumer protection agencies, including "Memorandum of Understanding" (MOU) agreements. She stated that the Bureau has MOU's with the Bureau for Barber Cosmetology, Board of Registered Nursing, Board of Vocational Nursing and Psychiatric Technicians, and the California Acupuncture Board. She explained that the Bureau has conducted joint investigations with all the above noted boards and bureaus. She added that the Bureau also collaborates with DCA's Division of Investigation (DOI). Dr. Marion added that there is a pending MOU with the

California Massage Therapy Council. Mina Hamilton, DCA Legal Counsel, noted that the Bureau also has a MOU with the Respiratory Care Board of California.

Ms. Johnson stated that a summary of complaints was provided to the Committee, at the May 2018 meeting. Ms. Hamilton pointed out that a student's right to privacy and the potential of jeopardizing an investigation are both reasons to not publicize details of student complaints. Ms. Reiter stated she is interested in seeing cases that are no longer active. Ms. Reiter continued that personal information could be redacted from those complaints. She stated that she would like to see random examples of unsubstantiated claims and cases where compliance was contained. She continued that she is interested in seeing what happens to complaints that are found to be non-jurisdictional to see whether those complaints are forwarded to the proper jurisdiction.

Ms. Reiter asked what caused the increase in the number of cases that were closed in August 2018, and why the number of cases closed in September 2018 dropped. Ms. Johnson answered that the variation in cases closed from August and September was due to the ability of managers to allocate more time in August to strictly focusing on closing cases.

Kevin Powers asked for a breakdown of the timeframe to complete the complaint intake process. Ms. Johnson stated that within 14 business days the complaint should be assigned to an investigator, and the investigator should have reached out to the complainant during that timeframe. Mr. Holt asked if the Bureau tracks the delivery of that timeframe. Ms. Johnson replied that the Bureau is working on tracking the timeframes.

Mr. Holt pointed out, in relation to the outstanding caseloads, that the Bureau currently has no system in place to statistically distinguish between complaints that are on hold due to a lack of information or non-responsive complainants and complaints that are on hold due to staff performance and production. Ms. Johnson stated that the Bureau is working to improve the current IT system and to update tracking spreadsheets to identify those factors. She added that implementing new tracking methods will also help identify areas where improvements can be made.

Dr. Marion added that the Bureau is working with the Office of Information Systems (OIS) to improve current systems and processes. Ms. Reiter asked how long it will take to implement the improvements. Dr. Marion responded that he would have to follow-up on time frames.

Mr. Powers asked what steps are taken to train new investigators. Ms. Johnson responded that investigators receive two weeks of initial on-board training, attend DCA's Enforcement Academy, and receive training from the Council on Licensure, Enforcement and Regulation (CLEAR). She added that staff works with the Attorney General's Office for training in investigative techniques and report writing.

Ms. Reiter questioned how the unit will catch up with the caseload when the Bureau receives more complaints than the Bureau closes. Dr. Marion stated that with the implementation of the licensing unit task force helping handle unlicensed activities and the addition of new hires, the

Bureau will eventually catch up. Ms. Johnson added that there should be a noticeable turnaround within 6 months.

Annual Reports and Compliance Report:

Beth Scott, BPPE Enforcement Chief, provided a report on the Compliance and Annual Reports units. Ms. Scott provided details on the monthly conference calls with institutions. She explained that the conference calls provide an opportunity to discuss hot topics and gives institutions an opportunity to ask questions. She noted that there have been 8 conference calls with 63 participating institutions, and some of the most popular questions concern annual reports and school performance fact sheets.

Ms. Scott referred to Attachment 5C in the meeting packet. She detailed how portions of the compliance inspections have been automated. She stated that inspectors are now using tablets at the inspections enabling them to digitally issue a Notice to Comply during the inspection. She added that the number of monthly inspections performed is trending upward.

Ms. Scott referred to the compliance inspection student survey provided in the meeting packet. She noted that recommendations provided by the Committee were taken into consideration during the development of the survey. She added that staff are working on developing a separate survey to incorporate additional suggestions that were provided by the Committee. She stated that the new survey staff are working on will be used outside of the compliance inspection. Dr. Marion added that he has been having discussions within the Bureau about developing a new data and research unit that would partially assist in the surveying process.

Ms. Reiter commented that it makes more sense to list multiple choice answers in alphabetical order to avoid showing any favoritism to one answer over another. She also questioned if the survey should include a question that asks a student “how far along he or she is in a program at the institution.” Ms. Scott responded that, during the inspection, the inspectors are able to give the survey to a controlled sample of students. She added that she understands the benefits of giving a more robust survey to students, when there is an opportunity outside of disrupting a class, during the compliance inspection process. Ms. Reiter asked if the survey provided in the meeting packet is currently being utilized. Ms. Scott replied that the survey is currently being used.

Public Comment:

Angela Perry, with the Institute for College Access and Success (TICAS), provided public comments. She stated that she supports the idea of the Bureau creating a data and research unit. She noted that data utilization is important for students, institutions, and the state. She added that she supports the expansion of student surveys, to address the need to collect data from graduated students. She also noted the importance of increasing the number of inspections the Bureau performs and suggested that the Bureau consider utilizing advocates to assist in the inspection process.

Licensing Report:

Bureau Licensing Chief Marina O'Connor provided a report on the licensing unit. She outlined Attachment 5D of the meeting packet. She noted that the total number of pending applications is continuing to decline.

Ms. Lee-Carey asked if there has been a reduction of applications received. Ms. O'Connor stated that over the past 3 years the number of applications received is widely inconsistent.

Ms. Lee-Carey asked if the increase in investigating unlicensed activity has resulted in an increase in applications received. Ms. O'Connor stated that it is too early to tell. She added that increasing outreach to institutions and informing them of compliance issues may result in an increase in applications received.

Ms. Reiter commented that she would like to see how many of the schools approved by the Bureau are not required to have an approval to operate. Ms. Lee-Carey pointed out that schools who are under contract with the Bureau are listed on the Bureau website. Ms. Reiter clarified that she would like to see the number of schools who are not required but still voluntarily applied for approval to operate under full jurisdiction of the Bureau. Ms. O'Connor stated that such data points have not been tracked.

Education Administration Report:

Robert Bayles, Education Administrator, provided a report on the Quality of Education Unit. He outlined Attachment 5E of the meeting packet. He discussed student outcome requirements for accreditors Western Association of Schools and Colleges (WASC) and Distance Education Accrediting Commission (DEAC). He explained that, in addition to the accreditors requirements, all institutions are required to meet the Bureau's minimum operating standards.

Ms. Reiter stated that she is concerned whether the Bureau would need more resources to ensure institutions are meeting standards, based on the number of schools choosing accreditors that do not have placement or retention standards. Mr. Bayles responded that all schools, regardless of their accreditor, are required to submit School Performance Fact Sheets and meet the Bureau's minimum operating standards. Mr. Bayles noted that some schools initially try to get accreditation through WASC, but ultimately do not gain accreditation through WASC. He added that getting accredited through WASC is at least a 5-year process.

Bureau's IT System Project Report:

Mr. Bayles provided a status update on the Bureau's IT system project. He explained that the stage one business analysis was approved by the Department of Technology (DOT) on May 10, 2018. He stated that the Bureau started their market research on May 11, 2018. He mentioned that a stage two kick-off meeting was held with DOT on August 30, 2018. He added that a mid-level functional requirements document was submitted on October 8, 2018. He further stated that on October 16, 2018, a request for information was sent out to multiple potential vendors, of

which responses are to be reviewed November 8-9, 2018. He concluded that the next goal is to select a vendor by the end of the year.

Jason Piccione, Chief Information Officer, provided additional information on the progress of the Bureau's new IT system. He also provided information on the intermediary steps being taken to improve the Bureau's current IT system. He detailed improvements that are being worked on to help improve the annual reports submission process. He presented a prototype annual report submission portal, to help improve upon the efficiency of annual report submissions. He pointed out one new feature allowing institutions to save annual report submission progress and allow Bureau staff to directly communicate with institutions through the new portal. He added that the new system will greatly increase efficiency of Bureau staff, by automating the generating of reports.

Student Tuition Recovery Fund (STRF) Report:

Office of Student Assistance and Relief (OSAR), Chief Scott Valverde, provided a report on OSAR. He outlined Attachment 5F of the meeting packet.

Ms. Reiter asked how many STRF claims are pending awaiting a decision from the Department of Education. Mr. Valverde stated that particular data point is not tracked. Ms. Lee-Carey asked if any information regarding pending claims are sent to OSAR by the Department of Education. Mr. Valverde stated that information is generally supplied by the student.

Mr. Valverde commented on the Committee's request to provide a projection on the total potential unpaid STRF liability. He stated that there have been internal conversations on how to look at data differently, with the future IT system in mind. He noted that staff have primarily been focusing on data elements that meet the statutory reporting requirements.

Ms. Schieldge reported that she hopes to have the Committee's request for a status update on the analysis of the duties of OSAR and Bureau implementation at the next Committee meeting.

Mr. Valverde provided the Committee an opportunity to comment on OSAR's consumer handouts that were provided at the August 2018 Committee meeting.

Ms. Reiter asked if the Committee could be notified about upcoming OSAR outreach events. Mr. Valverde replied that the outreach page on OSAR's website is continuously updated with events. He added that an email blast goes out informing interested parties of upcoming outreach events.

Mr. Valverde commented on the use of the STRF eligibility category for students enrolled more than 120-days prior to closure or discontinuation of a program. He noted that OSAR's process includes a systematic review of every pathway for STRF eligibility. He added that each specific pathway that leads to a recommendation of approval is not tracked. He explained that staff researched claims and found approximately 7 instances when a STRF claim was recommended for approval where a student was enrolled in a program more than 120-days prior to closure or a program discontinuation.

Public Comment:

No comment.

Agenda Item #9 - Analysis of Income Sharing Agreements' Compliance with the Bureau's Current Laws and Regulations (Status Update Only)

Ms. Hamilton reported that a status update on the analysis of income sharing agreements and compliance with the Bureau's current laws and regulations will be provided at the next Committee meeting.

Agenda Item #10 - Discussion Related to the Bureau Becoming the Lead Agency to Address Industry Problems, Including Staffing and Location of Bureau Offices

Ms. Reiter stated that her intended request was for input from the Bureau on becoming the lead agency in identifying industry problems, and potentially adding an office in Southern California. She added she was seeking input from Bureau staff. Dr. Marion stated that the agenda item was included to provide an opportunity for the Committee to offer suggestions. Ms. Reiter suggested providing an opportunity for Bureau staff to give recommendations to the Committee and the Bureau on ways the Bureau can become the lead agency in addressing industry problems. Dr. Marion clarified that the current agenda item is to provide the Committee an opportunity to provide suggestions.

Mr. Holt commented that staff provided input on addressing the student complaint caseload. He added that the term lead agency is subjective and not easily measured. He asked Ms. Reiter for more specificity. She stated that she would like to see an analysis on whether it would benefit the inspection process and reduce the caseload, if the Bureau set up an office in Southern California. She added that she would like to see input on whether it would be helpful for the Bureau to redistribute staffing, by moving staff from other units to the enforcement unit. She noted that additional ideas could potentially come from Bureau staff who work in this area daily.

Ms. Reiter stated that she believes statute was intended to enable the Bureau to be the lead agency in identifying industry issues before an issue transpires into a major issue. She continued that she does not think the Bureau is identifying issues early enough and wants to figure out how the Bureau can become the lead agency in stopping problem schools. She noted that the Committee may not be aware of the actions the Bureau has taken to avert major issues.

Ms. Lee-Carey pointed out the high frequency in which the Bureau proactively takes disciplinary actions. She agreed that statute gives the Bureau the power to act in response to schools not meeting standards. She suggested that the Bureau provide more information on disciplinary actions taken. Mr. Holt suggested that, like the student impact section in Attachment 5B, the Bureau highlight impacts resulting from disciplinary action.

Public Comment:

Ms. Perry echoed Ms. Lee-Carey's suggestion that the Bureau provide additional data on disciplinary actions it has taken. She added that advocates are readily available to assist the Bureau.

Agenda #11 - Future Agenda Items

Ms. Schieldge confirmed that the OSAR duty analysis and ISA analysis would be provided at the next meeting. She noted the addition of statistics on disciplinary actions taken by the Bureau. Ms. Reiter added that the statistics be framed in regard to the Bureau being the lead agency.

Ms. Amaya requested a Bureau organizational chart be provided at the next meeting.

Mr. Powers requested comments from Dr. Marion on the strategic vision of the Bureau.

Ms. Reiter suggested additional summaries of student complaints, to include an analysis with a response.

Agenda #12 - Discuss Potential Meeting Dates for 2019

Dr. Marion listed the following 2019 meeting dates: February 13, May 14, August 14, and November 13. He noted that one meeting may be moved to Southern California.

Agenda #13 - Adjournment

Ms. Lee-Carey adjourned the meeting with the consent of all Committee members present.