



Advisory Committee Meeting Minutes
Tuesday, November 19, 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. Thomas Wong
7. Natalie Lyons
8. David Vice
9. Diana Amaya
10. Sarah Mason (on behalf of Senator Steven Glazer)

Committee Members Absent

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
Scott Valverde, Office of Student Assistance and Relief (OSAR) Chief
Yvette Johnson, Bureau Administration Chief
Doug Smith, Bureau General Counsel
Norine Marks, DCA Legal Counsel
Kristy Schieldge, DCA Legal Counsel
Gregory Pruden, DCA Legislative Manager

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

Robert Johnson, with the California Association of Private Postsecondary Schools, (CAPPS) provided public comment. Mr. Johnson commented on the application of Bureau laws regarding leisure type classes offered by institutions. He noted the importance of providing clarification, during the reauthorization process, on whether the Bureau should allocate any resources to these types of classes. He referenced Title 5, CCR, Section 7000 (k) and noted that the law lacks clear direction on exemptions.

Agenda #3 - Review and Approval of August 21, 2019, Advisory Committee Meeting Minutes

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

Compliance and Discipline Report:

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

Ms. Scott pointed out an increase of over 100% in the number of citations issued compared to the previous year. Ms. Lyons asked what caused the large increase. Ms. Scott noted that the unit added a citation analyst. She explained that streamlining the processes to increase efficiencies, and the hard work of staff, has led to the increase in the number of citations

issued. Dr. Marion added that guidance provided by the Department of Investigations helped develop more efficient processes. Ms. Lyons asked if the issues being identified were issues that would have previously been addressed. Ms. Scott noted that there has also been over a 100% increase in the number of inspections, which has contributed to the increase in citations.

Ms. Reiter asked, of the total allegations listed in Attachment 5A, for 2019, how many different institutions were involved. Ms. Scott noted that statistic is not tallied but could be included in future reports.

Complaint and Investigation Report:

Ms. Lee Carey moved agenda item 5(b)(i) (Update on Legal Analysis of Complaint/Investigatory Files Provided to Advisory Committee) to follow agenda item 7, to allow for the arrival of the presenter.

BPPE's Enforcement Chief, Beth Danielson, provided a report on the Bureau's Complaint and Investigation units. She outlined the statistics in Attachment 5B of the meeting packet.

Ms. Lyons referred to the closure reasons listed in Attachment 5B and asked if there is a further breakdown of the unsubstantiated category. Ms. Danielson stated that such data is not tracked.

Ms. Danielson explained that all complaints now go through an intake analyst who reviews the complaint and provides an analysis to an intake manager, who then determines the classification of the complaint and whether to assign the complaint for investigation. She added that the new process has greatly increased efficiencies in the unit. Mr. Holt asked if there are any additional checks in the process. Ms. Danielson stated that if there are any questions regarding the classification of the complaint, then she would make the determination.

Mr. Vice asked for clarification on the voucher count allegation category. Ms. Danielson explained that voucher fraud could occur when a student is overcharged for a course. She continued that a student receives a voucher for retraining, and fraud occurs when a school overcharges based on the max amount of the voucher a student receives.

Ms. Lyons asked how the classification of urgent is defined. Ms. Danielson stated an urgent classification is based on factors determined by statute. Ms. Reiter asked what statute determines urgency. Ms. Danielson stated the statute is CEC Section 94941 (Complaints, Investigations). Ms. Reiter added that CCR 75300 (Compliant Prioritization) also discusses priority of complaints.

Ms. Lee-Carey noted that the agenda item on the legal analysis of complaint/investigative files provided to the Committee, would be addressed upon the arrival of its presenter.

Licensing Report:

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

Ms. Lee-Carey asked how many analysts are on staff in the licensing unit. Ms. O'Connor reported that she believes there to be 14 filled positions and 3 unfilled positions.

Mr. Vice asked how an institution knows they have submitted an incomplete application. Ms. O'Connor explained that each application receives an initial review for completeness. She continued that institutions who submit an incomplete application, will receive a letter outlining what is missing from the application. She added that correspondence with the institution continues throughout the entire process.

Ms. Reiter asked to see the amount of registered schools reported. She also requested to see the number of approved institutions back to the year 2010. Mr. Vice requested a breakdown by approval type for previous years.

Public Comment:

No 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 5D, of the meeting packet.

Sarah Mason asked if Mr. Valverde has had any discussions with the California Department of Veterans Affairs (CalVet), now that it is no longer an approving agency contracted by the U.S. Department of Veterans Affairs. Mr. Valverde stated that he has been tracking the issue, but he has not had any discussions with CalVet regarding that issue.

Mr. Valverde reported on planned outreach efforts to former Corinthian College students regarding new eligibility parameters and the changing definition of economic loss, outlined in Assembly Bill No. 1346 Student Tuition Recovery Fund (2019-2020). He noted that there are a significant number of current Student Tuition Recovery Fund (STRF) claims that are ineligible under current law that will or may become eligible, after the new bill takes affect on January 1, 2020. He stated that OSAR will be reaching out to all former Corinthian College students for whom OSAR has contact information.

Ms. Lyons asked what the total number of ineligible Corinthian College claims are, that may become eligible after January 1, 2020. Mr. Valverde responded that he did not have that number but could provide it at the next meeting. She asked what the message will be when

reaching out to former Corinthian students. He stated that the message will be that STRF eligibility requirements have changed and that they may be eligible for STRF.

Ms. Reiter asked how the Bureau is interpreting the change in the definition of economic loss regarding those who have previously applied for STRF. Kristy Schieldge, DCA Legal Counsel, responded that statute is applied prospectively, not retroactively.

Ms. Reiter questioned if OSAR will be making any attempts to get updated contract information for Corinthian students. Mr. Valverde responded that staff have an account with LexisNexis, that can be used to locate current contact information.

Leeza Rifredi, Deputy Bureau Chief, reported on STRF claim statistics, within Attachment 5D, of the meeting packet. She noted, of the 607 claims with a status of "waiting for student response," staff will attempt to contact the student at 30, 60, and 90 days. She continued that if staff is still unable to contact the student with the contact information on file, then LexisNexis will be utilized to attempt to obtain current contact information. She added that after staff are unable to contact the student three more times, up to 90 days, then the claim is closed as "unable to contact." She noted that if the student contacts OSAR, then the claim will be reopened.

Ms. Rifredi explained that, in part, due to OSAR's continuing outreach efforts, resources will need to be redirected to address the growing number of claims.

Ms. Lyons asked about the 562 claims that are in queue, and what the process is for moving those for analyst review. Ms. Rifredi explained that claims in queue are reviewed to determine if the claim should go to OSAR for assistance or go to a STRF analyst for processing.

Ms. Lyons asked if the redirecting of resources is to address the large number of claims in queue. Ms. Rifredi confirmed that is where resources will be redirected to include offering staff overtime.

Ms. Reiter requested data on the age of STRF claims and the dates they were received.

Ms. Rifredi stated that staff could look into that.

Ms. Lyons asked Mr. Valverde if a Corinthian students' eligibility for STRF was discussed with the Legal Aid Foundation of Los Angeles (LAFLA) regarding the judgement from the California Attorney General's case against Corinthian. Mr. Valverde stated that eligibility was discussed with LAFLA. Ms. Schieldge added that the judgment from State Attorney General's case against Corinthian did not include a breakdown of a specific students' economic loss. She referenced CCR Section 76212(d) (Claims by Government Agency on Behalf of Students) and pointed out that the judgment did not include an amount allocable to each student. She noted that, however, many of the students involved in the case attended Corinthian in 2010 and later and therefore could become eligible under the new law, in January 2020. Mr. Valverde added that he informed LAFLA that OSAR staff would not sit idle on Corinthian's claims until January 2020, but staff would be actively reviewing past claims for potential eligibility under the new law.

Public Comment:

No comment.

Agenda Item #7 - Presentation by Department of Consumer Affairs Representative on the Sunset Review Process (agenda item taken out of order to accommodate the presenter)

Gregory Pruden provided a high level overview of the sunset review process. Mr. Pruden explained the sunset review is a legislative oversight process that generally occurs every 4 years. He noted that the Bureau is set to sunset on January 1, 2021 absent a reauthorization of extension by the Legislature. He stated the Legislature provided the Bureau with a sunset questionnaire that is due on December 1, 2019. He added that the report is currently with the Governor's office for approval, and once approved will be forwarded to the Legislature and made available to the Committee.

Mr. Pruden explained that the Bureau provided the completed questionnaire to DCA for review in September 2020. He continued that following DCA's review, the report was forwarded to the Business, Consumer Services and Housing Agency (Agency), and from Agency the report was forwarded to the Governor's office in October 2019.

Mr. Pruden outlined the remaining steps in the process. He stated that the report will remain under review by the Legislature throughout the Winter. He continued that the Legislature will produce a background paper or a summary of the report a few weeks prior to the Bureau's sunset hearing. He noted that hearings usually take place towards the end of February and the beginning of March. He added that Bureau will be given 24 to 48 hours to conduct a fact check on the statistics that are contained within the background paper.

Mr. Pruden stated that the Legislature will identify a set of issues to be addressed at the sunset hearing. He explained the Bureau Chief will be asked to testify pertaining to a selection of the identified issues. He noted that the Legislature can ask all sorts of questions during the hearing. He continued that the Chief will provide a written response to all of the identified issues. He added that the written responses will require approval by Agency and the Governor's office.

Mr. Pruden explained that sometime in 2020 a sunset bill will be introduced. He stated that the initial bill will not include any substantive language, as the bill will be introduced prior to the sunset hearing. He noted that the substantive language will likely be added by Summer 2020.

Mr. Holt questioned if there is any role the Committee could or should play in the process. Mr. Pruden stated that it would be within the Committee's advisory role to discuss issues identified by the Legislature, which could be placed on the agenda at future Committee meetings.

Ms. Lyons asked if a high level description or summary of the issues that are currently being reviewed at the Governor's office could be provided to the Committee. She also asked if any of the written documents described are public. Mr. Pruden responded that the testimony and written responses are currently not public as part of the administrative process, until the Governor approves the report. He noted a few things in the report that are public, such as the licensing statistics, enforcement statistics, and Committee member attendance records.

Ms. Reiter asked if the Committee could be provided with a blank sunset review questionnaire, to get a sense of what questions are asked. Dr. Marion responded that staff would look in to that.

Public Comment:

No public comment.

Agenda Item #5(b)(i) Update on Legal Analysis of Complaint/Investigatory Files Provided to Advisory Committee (agenda item taken out of order awaiting the arrival of the presenter)

Norine Marks, DCA Legal Counsel, outlined a memorandum from DCA Legal Affairs, dated November 19, 2019, titled Advisory Committee Access to Records in the Investigatory Files.

Ms. Reiter questioned if complaints could be provided, with personally identifying information redacted. Ms. Marks stated the Bureau generally does not provide complaint files, even with redacted information, unless the complaint has previously been made public.

Ms. Reiter questioned if complaints that were previously provided to the Committee came from a public records request. Ms. Marks responded that those complaints were part of a public records request.

Ms. Lyons asked for clarification in regard to the Bureau's ability to disclose complaint information, if personal information is redacted. Ms. Schieldge responded that the privilege to not disclose could be waived, but it is not the general practice, in order to protect consumer privacy and to avoid compromising the Bureau's investigative process. Ms. Lyons noted that without seeing the contents of complaints the Committee's oversight capacity is limited. She added that she is concerned that the Committee is unable to address the complaint process without access to the records.

Ms. Reiter stated that privacy concerns can be addressed by redacting personal information, and the investigative process would not be compromised, if only the complaint itself is provided. She added that it would be helpful to see unsubstantiated complaints to get a sense of what the complainants are saying, and to see what complaints are being found to be unsubstantiated.

Ms. Schieldge asked if the Committee could review complaints that were previously provided to the Committee and provide the Bureau with advice and recommendations on how to best address the complaints, or what to further investigate, based on the complaint. She added that this would allow the Bureau to protect the deliberative investigative process, while allowing the Committee to fulfill its advisory role.

Ms. Lyons questioned what the process would be, for the Committee to provide advice, based on the complaints provided. Ms. Schieldge responded that members would analyze the complaints and make suggestions on what actions the Bureau should take, based on the complaint. She added that recommendations would need to be discussed at Committee meetings and would need to be voted on and passed by the Committee. Ms. Marks clarified that recommendations would need to be based on what actions could be taken in general to address a certain type of complaint and not recommendations on how to treat a single particular complaint. Ms. Reiter noted that it would be helpful to for the Committee to make recommendations if they received a larger sample of unsubstantiated complaints. Dr. Marion responded that it would be helpful to the Bureau for the Committee to provide recommendations based on the complaints the Committee has already received.

Public Comment:

Mr. Johnson pointed out that the Bureaus operations are based on statutes, regulations, and input from legal counsel. He stated that it does not seem productive to further review unsubstantiated complaints when the Bureau has already gone through the process of determining the complaints to be dismissible. He noted that there are still risks to privacy when reviewing a redacted complaint. He added that the motive for requesting a larger sampling of unsubstantiated complaints seems to be to find additional ways to go after institutions.

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 public comment.

Agenda Item #8 - Discussion on AB 1313 Higher Education: Prohibited Debt Collection Practices (2019-2020)

Ms. Lee Carey opened up the discussion on AB 1313.

Ms. Marks referenced CEC Section 94885(a)(9) (Minimum Operating Standards) which states that the Bureau shall adopt a regulation maintaining that an institution must comply with other applicable ordinances and laws. She noted that currently there is a pending regulation package, to add Section 71755 (Compliance with laws and procedures) that could include, in addition to all other applicable ordinances and laws, the civil code.

Ms. Lee Carey stated that the question is not about applicability but how to interpret the law. She provided the example of how a transcript is defined. Ms. Marks stated the Bureau would not go as far as to provide individual legal advice to institutions. Ms. Schieldge noted that if the law does not specifically define the term “transcript”, then it is to be taken as it is ordinarily understood. She added that CCR Section 71920(b)(5) (Student Records) outlines what a transcript should contain.

Public Comment:

Mr. Johnson asked the Committee for clarification on what laws the Bureau enforces. Ms. Mason responded that it depends if the law is applicable to the Bureau. Mr. Johnson stated that regulatory language, that broadly references compliance with other ordinances and laws, creates a less clear regulatory environment for institutions. He continued that, in reference to AB 1313, it would be more helpful if the Bureau had a concise regulation that defined a transcript and outlined the expectations. Ms. Marks stated that there are Bureau regulations that describe a transcript. Mr. Johnson responded that it is the aspect of withholding a transcript that needs to be clarified by the Bureau. Ms. Marks asked if the suggestion is to reference specific sections, instead of referencing more generally. Mr. Johnson responded that that would be helpful.

Greg Gollaher of the Fashion Institute of Design and Merchandising (FIDM) commented on AB 1313. He raised the question of what the nature of a debt is. He continued that FIDM has a substantial amount of valuable library material, that students never return, that could be considered debt. He added that there is a question of how to interpret what is considered a tool for collecting debt. He questioned whether it was a violation to ask for contact information from a student when they reach out to the school requesting a transcript. He stressed the need for clarity of the law in order to maintain compliance. Doug Smith, Bureau’s General Legal Counsel, stated that debt is defined in AB 1313. Mr. Gollaher again questioned if library materials would be considered an obligation under the law. He continued that students have an obligation to the school to return the library material. Ms. Reiter asked if the school charges the student for unreturned library material. Mr. Gollaher said the school does not charge the student but does require the student to return the materials in order to get a transcript.

Agenda Item #9 – Future Agenda Items

Ms. Reiter requested an update on the Bureau’s IT project. She requested an update on any recently passed legislation that may affect the Bureau. She requested an additional sample of

unsubstantiated complaints. She also requested additional discussion on whether the Bureau should adopt a specific regulation pertaining to AB 1313. She suggested a discussion on what can be done to increase the number of staff employed by the Bureau. She requested clarification on how the Bureau determines priority in regard to complaints and investigations.

Mr. Holt requested to see a Bureau organizational chart to include open positions.

Agenda #10 – Adjournment

Adjourn at 2:22