

**Judgment: Non-Compliance.
Now What?**

NASASPS Conference
Savannah, Georgia: April 26-29, 2015

John Ware, Executive Director
Ohio State Board of Career Colleges and Schools

Joanne Wenzel, Bureau Chief
California Bureau for Private Postsecondary Education

Sylvia Rosa-Casanova, Director of Private and Out-of-State Postsecondary Education
State Council of Higher Education for Virginia

OUR PURPOSE TODAY
To discuss practices and procedures
used by state regulators to deal with
non-compliance issues.

OUR TEAM
Ohio, California, and Virginia

Ohio's Compliance Process



1. Achieving Voluntary Compliance
 - a. Informal Process
2. Administrative Action
 - a. Formal Board Action
 - b. Consent Agreements
 - c. Administrative Hearing Process

Ohio: Resolution of Compliance Issues



Ohio Revised Code 3332.091(D)
<http://codes.ohio.gov/orc/3332.091>
Authority to Initiate Compliance Action

(D) The board may, upon its own initiative and independent of the filing of any complaints, conduct a preliminary investigation relating to any possible violations of section 3332.02 of the Revised Code. At any time while a school is in session, the board or its designee may conduct on-site inspections and reviews of a school and its courses of instruction. The board shall conduct such visits and reviews, including visits without prior notice to the schools, as necessary to ensure compliance with this chapter. All books, records, and files of a school shall be open for inspection by the board, its designees, or staff during on-site inspections, or whenever requested by the board for the purpose of ensuring compliance with the provisions of this chapter. For the purpose of conducting any investigation, inspection, or review, the board may administer oaths, take the testimony of any person under oath, issue subpoenas, compel the attendance of witnesses, or require the production for examination of any books and papers relating to any matter under investigation or in question before the board.

Ohio: Resolution of Compliance Issues

Informal Resolution of Compliance Issues
<http://codes.ohio.gov/orc/3332.091>

3332.091 Complaints.

(A)(1) Any person adversely affected by the actions of a certificate holder may file a complaint with the state board of career colleges and schools alleging that any school registered with the board has violated any provision of section 3332.09 of the Revised Code. The complaint shall be in writing and signed by the complainant and shall be filed with the board within six months after the violations allegedly were committed. Upon receiving a complaint, the board shall initiate a preliminary investigation to determine whether it is probable that violations were committed. If the board determines after preliminary investigation that it is not probable that any violations were committed, it shall notify the person who filed the complaint that it has so determined and that it will not issue a formal complaint in the matter. If the board determines after a preliminary investigation that it is probable that violations were committed, it may issue a formal complaint under division (A)(2) of this section or it may endeavor to eliminate such practices by informal methods of conference, conciliation, and persuasion. Nothing said or done during these endeavors shall be disclosed by any member of the board or its staff or be used as evidence in any subsequent proceedings. If, after such investigation and conference, the board is satisfied that such violations will be eliminated, it may treat the complaint as conciliated, and entry of such disposition shall be made in the records of the board.

Ohio: Resolution of Compliance Issues

Formal Resolution of Compliance Issues
<http://codes.ohio.gov/orc/3332.091>

(2) If as a result of any informal methods utilized under division (A)(1) of this section, the board fails to effect the elimination of violations or fails to obtain voluntary compliance with this chapter, the board shall issue a formal complaint to the holder of a certificate of registration of the school under investigation. The formal complaint shall state the charges against the school and grant the certificate holder the opportunity to appear before the board at a public hearing pursuant to Chapter 119. of the Revised Code. The board shall hold the public hearing not sooner than thirty days after issuance of the formal complaint. Any formal complaint issued pursuant to this section must be issued within one year after the state board's receipt of a complaint from a person adversely affected by the actions of a certificate holder. If at the time of issuing a formal complaint, the board has reasonable cause to believe that the violations that are the subject of the complaint will continue and constitute an immediate threat to the welfare of current and prospective students, the board, for a period not to exceed the lesser of ninety days or the period of time until a final adjudication order dismissing the complaint or imposing a penalty is issued under this section, may:

Ohio Resolution of Compliance Issues

Formal Resolution of Compliance Issues:
Disciplinary Resolution:

Resolution Adopted by the State Board of Career Colleges and Schools at its November 1, 2006 Board meeting.

WHEREAS ABC School currently holds valid certification of Registration (Ohio Registration Numbers: 00-330-0007, 00-00-0007, and 00-00-0007) with this Board; and


WHEREAS the ABC School was not providing graduation and placement data to potential students prior to the students enrolling and signing their enrollment agreement; and,

WHEREAS an ABC School employee was hired and began working as an agent for the school in May of 2006, but did not receive an agent permit from the State Board until August of 2006; and,

WHEREAS these actions constitute a violation of Ohio Revised Code Sections 3332.10(A) and Ohio Administrative Code Sections 3332.1-09 (C) and 3332.1-17(A)

Therefore be it resolved that

RESOLVED that the Executive Director of this Board, be, and he hereby is, directed to notify ABC School and the owners thereof, that this Board intends to initiate formal disciplinary action pursuant to Ohio Revised Code Section 3332.09 and 3332.091 and in accordance with Ohio Revised Code Chapter 119 for the aforementioned violations.



Ohio: Resolution of Compliance Issues

Formal Resolution of Compliance Issues:
Disciplinary Letter:

STATE BOARD OF CAREER COLLEGES AND SCHOOLS

48 West Broad Street, Suite 400, Columbus, OH 43260-4402
614.393.4000 Fax: 614.393.4001 TDD: 614.393.4002
614.393.4003 Email: info@ohio.edu Website: <http://ohio.edu>

November 10, 2006

NOTICE OF DISCIPLINARY PROCEEDINGS

Dear Mr. Smith:

In accordance with Chapter 119 of the Ohio Revised Code, and pursuant to the State Board of Career Colleges and Schools, authority under Ohio Revised Code Sections 3332.09 and 3332.091, Ohio Revised Code Sections 3332.10(A) and Ohio Administrative Code Sections 3332.1-09(C) and 3332.1-17(A), the State Board of Career Colleges and Schools, "Board," is hereby formal disciplinary proceedings against ABC School, hereby notified as follows:

- ABC School was operating graduation and placement data incorrectly pursuant to the statute enabling and signing their enrollment agreement; and,
- ABC School employee was hired and began working as an agent for the school in May of 2006, but did not receive an agent permit from the State Board until August of 2006.

These actions constitute a violation of Ohio Revised Code Sections 3332.10(A) and Ohio Administrative Code Sections 3332.1-09 (C) and 3332.1-17(A).

Pursuant to Chapter 119 of the Ohio Revised Code, you are hereby advised that the administrative process as defined herein is hereby initiated. You are hereby notified as follows: 1) All records shall be retained as defined in Ohio Revised Code Sections 3301.03, 3301.04, 3301.05, 3301.06, 3301.07, 3301.08, 3301.09, 3301.10, 3301.11, 3301.12, 3301.13, 3301.14, 3301.15, 3301.16, 3301.17, 3301.18, 3301.19, 3301.20, 3301.21, 3301.22, 3301.23, 3301.24, 3301.25, 3301.26, 3301.27, 3301.28, 3301.29, 3301.30, 3301.31, 3301.32, 3301.33, 3301.34, 3301.35, 3301.36, 3301.37, 3301.38, 3301.39, 3301.40, 3301.41, 3301.42, 3301.43, 3301.44, 3301.45, 3301.46, 3301.47, 3301.48, 3301.49, 3301.50, 3301.51, 3301.52, 3301.53, 3301.54, 3301.55, 3301.56, 3301.57, 3301.58, 3301.59, 3301.60, 3301.61, 3301.62, 3301.63, 3301.64, 3301.65, 3301.66, 3301.67, 3301.68, 3301.69, 3301.70, 3301.71, 3301.72, 3301.73, 3301.74, 3301.75, 3301.76, 3301.77, 3301.78, 3301.79, 3301.80, 3301.81, 3301.82, 3301.83, 3301.84, 3301.85, 3301.86, 3301.87, 3301.88, 3301.89, 3301.90, 3301.91, 3301.92, 3301.93, 3301.94, 3301.95, 3301.96, 3301.97, 3301.98, 3301.99, 3301.100.

The Board cannot determine if you are entitled to appeal or seek a hearing pursuant to your authority, or such other responsibility as is provided in statute, before the Board, or any other appeal or hearing, or otherwise, as indicated in this notice and hereby you may present evidence and submit evidence supporting for and against you.

California's Compliance Process

What might lead to an Enforcement Action?

Investigations as a result of:

- Referral from a Compliance Inspection
- Referral from other internal units
- Complaint



California Compliance Inspection vs. Investigation

- Compliance Inspections are inspections of the institution in California they are mandated - at least one announced and one unannounced every five years.
- Investigations are more focused review as a result of either a referral from another unit within the Bureau or a complaint.



10

California Compliance Inspections

- Compliance Inspections result in a clear report or a "Notice to Comply" (NTC)
- NTCs are issued for minor violations only and are basically a "fix it ticket". The institution has 30 days to fix the issue and provide proof or file a "notice of disagreement" (NOD)
- A NOD triggers an "informal conference" with the Director of their designee (Bureau Chief). As a result of the "informal conference" the NTC may be affirmed, modified or withdrawn.
- If affirmed or modified, the institution is provided a period of time to provide the evidence of compliance.
- If the institution fails to respond to an NTC within 30 days they may be issued a Citation.

11

California: Investigations



As a result of an investigation and finding that the institution has committed a violation or that the institution failed to comply with an NTC, the Bureau may issue citations and/or an order of abatement.

12

California: Investigations

Citations

- An administrative fine may not exceed \$5,000.00 for each violation. The amount of the fine is determined by:
 - The nature and seriousness of the violation
 - The persistence of the violation
 - The good faith of the institution
 - The history of previous violations
 - The potential harm to students
- Operating without approval is a public offense (infraction) and carries a \$50,000.00 citation.



13

California: Investigations

Citation Appeals



- Citations may be appealed in two ways – request for an informal conference and/or a full hearing in front of an administrative law judge.
- An informal conference is identical to the NTC process.
- A full hearing requires moving the action to the Attorney General's Office for representation.

14

California: Other Options

- Accusation – could lead to suspension, probation or revocation of a license or enforcement of conditions on the license
- Action for Equitable Relief – Temporary Restraining Order, Restitution or the appointment of a receiver, preliminary or permanent injunction.

15

California: Other Options

- Emergency Decision to
 1. cease enrollments of new students,
 2. cease part or all instruction for some or all programs; or
 3. cease collection of tuition or fees for some or all programs
- If the Bureau issues an Emergency Decision we must follow up with an Accusation within 10 days.

16

Virginia's Compliance Process

Enforcement actions are triggered in two ways:

1. As a result of compliance audits
2. Violations discovered through other means
 - Reports from accrediting agencies or other Virginia agencies
 - Websites/advertising
 - Student complaints
 - Slip-of-the-Tongue disclosures
 - SCHEV internal process



17

Virginia: Compliance Audits

- Goal: To provide institutions the opportunity to come into compliance
- Non-Punitive
- New regulations February 2014-eliminated non-compliance fees



18

Virginia: Compliance Audits

- Random
 - New Schools- 18 months- 2 years
 - Established institutions every 3-4 Years
- Triggered
 - Multiple complaints
 - Actions by accrediting agency/USED, other VA Agency
 - Media reports



19

Virginia: Audit Results

- Actions taken as result of audit
- Correct and send proof
 - no action – small issues
 - Recommend follow-up audit: 6months- 1 year multiple violations, more serious violations, repeat violations
 - Recommend revocation
 - In accordance to Administrative Process Act (APA) - major issues (loss of accreditation, multiple, repeat, serious violations)

20

Virginia: APA Process



In conjunction with Office of the Attorney General: SCHEV assigned Counsel

- Informal fact Finding Conference
- Formal Hearing presided by hearing officer appointed by Virginia Supreme Court
 - Hearing officer makes recommendation
 - Council has thirty days to decide - not bound by recommendation

21

Virginia: Consent Agreements

Institution is given time to correct violations.

- Who-What- When-Why-of consent agreements
- Terms
- What happens if terms are not met?



22

Virginia: Other Violations

Violations discovered through means other than Audits

- Institutions offering unapproved programs
- Unreported change of ownership or name
- Institutions operating without certification

23

Virginia: Actions

Actions taken as result discovery of non-compliance

Existing institutions

- Letter citing violations
- Meeting with SCHEV (IFFC or other)
- Corrective action letter or Consent Agreement

Unauthorized institutions

- Letter stating certification requirement- 30 days
- No response cease and desist, pull business license

24

Question, Answer and Discussion



35
