

**DEPARTMENT OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**

ORDER OF ADOPTION

1. Amend the title of Chapter 5 of Division 7.5 of Title 5 of the California Code of Regulations to read as follows (amendments to this chapter are currently part of another rulemaking file):

Chapter 5. ~~Student Tuition Recovery Fund~~ Enforcement and Discipline

2. Add Article 1 to Chapter 5 of Division 7.5 of the California Code of Regulations to read as follows:

Article 1. Notices to Comply

3. Add Section 75010 of Article 1 of Chapter 5 to read as follows:

§ 75010. Notice to Comply; Informal Appeal Process.

(a) Pursuant to section 94935 of the Code, bureau staff may issue a notice to comply to a person approved to operate an institution for minor violations of the Act or this Chapter detected during an inspection.

(b) The notice to comply shall be in writing and shall describe the nature and facts of the violation, including a reference to the statute or regulation violated, and may indicate the manner in which the institution must correct the violation to achieve compliance.

(c) The notice to comply shall be given prior to leaving the institution after the inspection to any owner, person in control, chief academic officer, chief executive officer, chief operating officer, institution director, or any person delegated by any of the aforementioned persons to facilitate the inspection or accept such notice.

(d) The notice to comply shall inform the person approved to operate the institution that he or she may do either of the following:

(1) Within 30 days from the date of the inspection, sign and return the notice to comply, declaring under penalty of perjury that the violation was corrected and describing how compliance was achieved; or

(2) Within 30 days from the date of the inspection, file with the Bureau a written notice of disagreement, specifying the minor violations described in the notice to comply with which the person approved to operate the institution disagrees, and appealing it by requesting an informal office conference. If a written notice of disagreement is not timely filed with the Bureau, the right to appeal is deemed to have been waived.

(e) Within 30 days from the timely receipt of a written notice of disagreement, the Director or his or her designee, shall hear the appeal by holding an informal office conference with the person approved to operate the institution or an authorized representative. Upon request and approval by the Director or his or her designee, the person approved to operate the institution or representative may participate in the office

conference by telephone. The 30-day period may be extended by the Director or his or her designee for good cause.

(f) Prior to or at the office conference, the person approved to operate the institution or authorized representative may submit to the Director or his or her designee declarations or documents pertinent to the subject matter of the notice to comply, which shall be duly considered along with the notice to comply and any supporting documentation.

(g) Following the informal office conference to appeal the notice to comply, the Director, or his or her designee, may affirm, modify, or withdraw the notice. A written order affirming, modifying, or withdrawing the original notice to comply shall be served on the person approved to operate the institution within 30 days from the informal office conference. If the order affirms or modifies the original notice to comply, said order shall fix a reasonable period of time up to 30 days for correction of the violation. This order shall be deemed the final administrative decision concerning the notice to comply prior to any enforcement action.

(h) Within the time set for correcting the violation, the person approved to operate the institution shall comply with the order affirming or modifying the notice to comply, and shall submit to the Bureau a declaration under penalty of perjury that the violation(s) was (or were) corrected, containing facts sufficient to document compliance with the order, and incorporating attached documentation to that effect.

NOTE: Authority cited: Sections 94877 and 94935, Education Code. Reference: Sections 94933, 94933.5, and 94935, Education Code.

4. Add Article 3 to Chapter 5 of Division 7.5 of Title 5 of the California Code of Regulations to read as follows:

Article 3. Standards Related to Denial, Discipline, and Reinstatement of Approvals to Operate

5. Renumber Section 74120 as Section 75060 of Article 3 of Chapter 5 (*amendments to this section were part of another rulemaking file at the time it was originally noticed – changes have been made to reflect recently approved language*):

§ 74120. § 75060. Substantial Relationship Criteria.

In determining whether any of the grounds for denial set forth in Section 480 of the Business and Professions Code exist, a crime or act shall be considered substantially related to the qualifications, functions, or duties of any owner, corporate director or member of the governing board, officer, or administrator, ~~or instructor~~ under any of the following circumstances:

(a) The crime or act involves any violation of the Act or this chapter, Title IV of the federal Higher Education Act of 1965, the closure of an institution, fraud or misrepresentation, breach of fiduciary duty, any type of forgery or theft, or any type of dishonesty causing any financial loss.

(b) The crime, to a substantial degree, evidences present or potential unfitness to perform the functions and duties authorized or required by the Act or this chapter in a manner consistent with the public health, safety, or welfare, including a crime prohibited by Title

8 (commencing with Section 187) or Title 9 (commencing with Section 261) of the Penal Code.

NOTE: Authority cited: Sections ~~94803~~, 94877, 94885, and 94932, Education Code. Reference: Sections 480 and 481, Business and Professions Code; Sections 94885, 94887, 94932, and 94937, Education Code.

6. Renumber Section 74130 as Section 75070 of Article 3 of Chapter 5 (*amendments to this section were part of another rulemaking file at the time it was originally noticed – changes have been made to reflect recently approved language*):

§ 74130. § 75070. Criteria for Rehabilitation.

In determining whether any of the grounds for denial set forth in Section 480 of the Business and Professions Code exist, the Bureau shall consider evidence of rehabilitation and present eligibility for any approval or ~~certificate~~ issued by the Bureau, including all of the following factors:

- (a) The nature and severity of the acts or crimes under consideration as grounds for denial;
- (b) Evidence of any act committed after the acts or crimes under consideration as grounds for denial that also could be considered grounds for denial;
- (c) The time that has elapsed since commission of the acts or crimes described in subdivisions (a) and (b) of this section;
- (d) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant;
- (e) Evidence of any rehabilitation submitted by the applicant;
- (f) Total criminal record;
- (g) Evidence, if any, of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

NOTE: Authority cited: Sections ~~94803~~, 94877, 94885, and 94932, Education Code. Reference: Sections 480 and 482, Business and Professions Code; and Sections 94885, 94887, 94932, and 94937, Education Code.

7. Renumber Section 74160 as Section 75080 of Article 3 of Chapter 5 (*amendments to this section were part of another rulemaking file at the time it was originally noticed – changes have been made to reflect recently approved language*):

§ 74160. § 75080. Surrender of Approval.

Any institution may at any time voluntarily surrender an approval to operate by providing written notice to the Bureau. The surrender shall be deemed irrevocable, and if the institution-surrendering the approval desires to regain approval, the institution shall submit a new application.

NOTE: Authority cited: Sections ~~94803~~, 94877, and 94932, Education Code. Reference: Section 118, Business & Professions Code; Sections 94932 and 94937, Education Code.

8. Renumber Section 74170 as Section 75090 of Article 3 of Chapter 5 (*amendments to this section were part of another rulemaking file at the time it was originally noticed – changes have been made to reflect recently approved language*):

§ 74170-§ 75090. Stipulations.

(a) The Director, on behalf of the Bureau, may enter into a written stipulation with any institution for an order to do any of the following:

- (1) Impose probation;
- (2) Impose a condition or restriction on, or the suspension or revocation of, an approval to operate;
- (3) Require the payment of fees, penalties, costs and expenses incurred by the Bureau, reimbursements to the Student Tuition Recovery Fund, or refunds or other amounts to or on behalf of students.

(b) The written stipulation shall disclose that the institution entering into the stipulation has waived the right to notice, hearing, and appeal concerning the subject matter of the stipulation.

NOTE: Authority cited: Sections ~~94803~~, 94877, and 94932, Education Code. Reference: Sections 94932 and 94937, Education Code.

9. Add Section 75100 of Article 3 of Chapter 5 to read as follows:

§ 75100. Suspension, Revocation, or Probation of Approval to Operate.

(a) The Bureau may suspend, revoke or place on probation with terms and conditions an approval to operate.

(b) “Material violation” as used in section 94937 of the Code includes committing any act that would be grounds for denial under section 480 of the Business and Professions Code.

(c) The proceedings under this section shall be conducted in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, as requested by the institution.

NOTE: Authority cited: Sections 94877 and 94937, Education Code. Reference: Section 480, Business & Professions Code; Sections 94933, 94935, 94936, 94937, and 94940, Education Code.

10. Add Section 75500 of Article 3 of Chapter 5 to read as follows:

§ 75500. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Bureau shall comply with the “Disciplinary Guidelines” [August 2010], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Bureau in its sole discretion determines that the facts of the particular case warrant such deviation, e.g.,

the presence of aggravating or mitigating factors; age of the case; discipline history; evidentiary issues.

NOTE: Authority cited: Sections 94877 and 94937, Education Code. Reference: Section 480, Business & Professions Code; Sections 94933, 94935, 94936, 94937, and 94940, Education Code; Section 11425.50(e), Government Code.

11. Renumber existing Chapter 5 to be Chapter 6 (commencing with section 76000) of Division 7.5 of Title 5 of the California Code of Regulations to read as follows:

Chapter ~~5~~. 6. Student Tuition Recovery Fund